

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3187/Chny/2016

निर्धारण वर्ष / Assessment Year : 2011-12

&

आयकर अपील सं./ITA No.756/Chny/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Smt. Kalavathy Sundaram,
New no.26/1, Old No.23,
Lakshman Street, Mahalingapuram,
Nungambakkam, Chennai - 600 034.

The Income Tax Officer,
Non Corporate Ward 3(4),
Chennai - 600 034.

v

PAN : BMTPS 0139 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Anandd Babunath, CA

प्रत्यर्थी की ओर से/Respondent by : Shri M. Mathivanan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 28.06.2018

घोषणा की तारीख/Date of Pronouncement : 07.09.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals) -4, Chennai, for the assessment years 2011-12 and 2010-11.

Therefore, we heard both the appeals together and disposing of the same by this common order.

2. Let's first take the assessee's appeal in I.T.A. No.3187/Chny/2016 for the assessment year 2011-12.

3. The only issue arises for consideration is with regard to valuation of property under Section 50C of the Income-tax Act, 1961 (in short 'the Act').

4. Shri Anandd Babunath, the Ld representative for the assessee, submitted that during the year under consideration, the assessee sold a property a Narayanapuram Varisai to the extent of 4800 sq.ft. As per the sale deed, according to the Ld. representative, the assessee received ₹50,00,000/- towards sale consideration. However, the Assessing Officer adopted the sale consideration under Section 50C of the Act at ₹90,20,000/-. According to the Ld. representative, the assessee, during the course of assessment proceeding, requested the Assessing Officer to refer the matter to the Departmental Valuation Officer. However, the Assessing Officer refused to do so and ultimately adopted the value under Section 50C of the Act at ₹90,20,000/-. According to

the Ld. representative, the CIT(Appeals) also confirmed the order of the Assessing Officer. The Ld. representative further submitted that the assessee in turn filed a report from an Approved Valuer who estimated the cost at ₹50,40,000/-. According to the Ld. representative, the land is situated in the interior area of Narayanapuram Varisai and there was no proper approach road, therefore, the Approved Valuer has rightly valued the property at ₹50,40,000/-.

5. Shri Anandd Babunath, the Ld representative for the assessee, further submitted that the assessee claimed a sum of ₹3,10,000/- towards the cost of levelling the land. According to the Ld. representative, the plot was in a low lying area, therefore, the assessee required to fill the land with sand so that the ground level can be increased. According to the Ld. representative, the contractor Shri Manikandan has certified that he completed the work and received a sum of ₹3,10,000/-. However, without accepting the material filed by the assessee, the Assessing Officer came to a conclusion that it is a bogus one. According to the Ld. representative, since Shri Manikandan has confirmed the expenditure, which was not controverted by the Assessing Officer

by bringing on record any of the material, the CIT(Appeals) ought to have allowed the claim of the assessee.

6. Shri Anandd Babunath, the Ld. representative for the assessee, further submitted that the assessee also paid a sum of ₹3,00,000/- towards brokerage for the sale of land. According to the Ld. representative, the assessee has also filed the vouchers before the Assessing Officer. However, the Assessing Officer disallowed the claim of the assessee without any valid reason.

7. On the contrary, Shri M. Mathivanan, the Ld. Departmental Representative, submitted that the assessee executed sale deed on 28th January, 2011. According to the Ld. D.R., the stamp duty authority assessed the value of the property at ₹90,20,000/-. The assessee explained before the Assessing Officer that there was no proper road and it was situated in an interior place. According to the Ld. D.R., the assessee has also filed valuation report from Approved / Registered Valuer. The Approved / Registered Valuer valued the property at ₹50,40,000/-. Even though the Approved / Registered Valuer found that there are schools, hospital, market, etc. in the nearby area, he has not identified the distance between

the said infrastructure facilities and the subject land. Moreover, according to the Ld. D.R., the Assessing Officer is bound to consider the guideline value or the value assessed by the Sub-Registrar for the purpose of collecting stamp duty. Since admittedly the property was valued at ₹90,20,000/-, according to the Ld. D.R., the Assessing Officer has rightly adopted the same.

8. Referring to the cost of levelling of land, the Ld. D.R. submitted that even though the assessee has produced a voucher from one Shri Manikandan, a copy of which is extracted by the Assessing Officer at page 13 of his order, the Ld. D.R. submitted that mere production of voucher is not sufficient to prove the expenditure said to be incurred by the assessee. Therefore, according to the Ld. D.R., the Assessing Officer has rightly disallowed the claim of the assessee to the extent of ₹3,10,000/-. Referring to the cost of brokerage to the extent of ₹3 lakhs, the Ld. D.R. submitted that the assessee has not furnished any details before the Assessing Officer for payment of brokerage, therefore, the Assessing Officer has rightly disallowed the claim of the assessee.

9. We have considered the rival submissions on either side and perused the relevant material available on record. The sale deed disclosed the value of property at ₹50,00,000/-. However, the guideline value shows the value of the property at ₹90,20,000/-. The Assessing Officer adopted the guideline value of the property at ₹90,20,000/- and computed the capital gain accordingly.

10. We have carefully gone through the provisions of Section 50C of the Act which reads as follows:-

"50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof,

has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer.

(2) Without prejudice to the provisions of sub-section (1), where-

(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer ;

(b) the value so adopted or assessed or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.— For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.— For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in

force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer."

11. In view of the above, wherever the consideration received for transfer of property is less than the value adopted by the stamp valuation authority of the State Government, for the purpose of collection of stamp duty, the value so adopted shall, for the purpose of capital gain, be deemed to be the full value of consideration received by the assessee. However, sub-section (2) of Section 50C of the Act says that when the assessee claims before the Assessing Officer that the value adopted by stamp valuation officer exceeded fair market value of the property on the date of transfer and the value adopted by the stamp valuation authority was not disputed in appeal or other proceeding, the Assessing Officer may refer the matter to the valuation officer.

12. In the case before us, it is the definite case of the assessee that the fair market value of the property is less than the value

adopted by the stamp valuation authority for the purpose of collection of stamp duty and a request was also made for reference to the Departmental Valuation Officer. The Assessing Officer simply rejected the claim of the assessee on the ground that Section 50C(2) says that Assessing Officer “may” refer the valuation of the asset to the Departmental Valuation Officer. Taking the advantage of the term “may” in Section 50C(2) of the Act, the Assessing Officer found that the Approved / Registered Valuer has not pointed out any specific disadvantage in the property, therefore, it is not necessary to refer the matter to the Departmental Valuation Officer. When the Assessing Officer placed reliance on the Approved / Registered Valuer’s report filed by the assessee, it is not known why the value adopted by the Approved / Registered Valuer was not accepted by the Assessing Officer. The Approved Valuer has valued the property at ₹50,40,000/-. When the assessee claims that the fair market value of the property is less than the guideline value or the value adopted by the stamp authorities for the purpose of collection of stamp duty, then the Assessing Officer has no other way except to refer the matter to the Departmental Valuation Officer.

13. The word “may” appearing in Section 50C(2) of the Act does not give any discretion to the Assessing Officer when the assessee is requesting the Assessing Officer to refer the matter to the Departmental Valuation Officer. The scheme of the Income-tax Act, 1961 is to find out the fair market value of the property on the date of transfer and to compute the capital gain accordingly. When the assessee filed the report of the Approved / Registered Valuer and specifically requested to refer the matter to the Departmental Valuation Officer, this Tribunal is of the considered opinion that the Assessing Officer cannot so lightly refuse to refer the matter to the Departmental Valuation Officer. The valuation under Section 50C of the Act has to be made as per the provisions of Wealth Tax Act. The fair market value is nothing but a price that may be agreed between the willing purchaser and the willing seller. The fair market value is not a constant figure. It may fluctuate depending upon various factors, such as the area of the land, location of property, accessibility to the infrastructure facilities like road, airport, bus stand, colleges and other educational institutions, etc. These factors play important role in determining the fair market value. Unfortunately, the Assessing Officer has not referred the matter to

the Departmental Valuation Officer. Therefore, the CIT(Appeals) ought to have accepted the value adopted by the Approved / Registered Valuer in the valuation report filed by the assessee.

14. We have carefully gone through the order of the CIT(Appeals). During the appellate proceeding, it appears that the CIT(Appeals) directed the Assessing Officer to refer the matter to the Departmental Valuation Officer. Accordingly, the matter was referred to the DVO and the DVO appears to have estimated the value of the property at ₹81,68,304/ as against the guideline value of ₹90,20,000/-. A perusal of the Departmental Valuation Officer's report shows that the method prescribed under the Wealth Tax Act was not followed. Moreover, the factors such as the location of property, availability of infrastructure facility around the area, potential development in the near future, accessibility to the infrastructure facility such as road, airport, educational institutions, etc. were not properly considered either by the Approved Valuer or by the Departmental Valuation Officer. In those circumstances, relying upon both the Valuer's report would not reflect the correct fair market value of the property. Therefore, when the assessee claims that what was received is only ₹50,00,000/-, the Approved /

Registered Valuer estimated the property at ₹50,40,000/- and the Departmental Valuation Officer estimated at ₹81,68,304/-, this Tribunal is of the considered opinion that estimation of value of the property after considering the infrastructure facilities and other factors as referred above, at ₹69,00,000/- would meet the ends of justice. Accordingly, the orders of both the authorities below are modified and the Assessing Officer is directed to take the sale consideration of the property at ₹69,00,000/- and thereafter compute the capital gain.

15. Now coming to development charges of ₹3,10,000/-, the assessee has produced the receipt from Shri K. Manikandan for filling up the land to the extent of ₹3,10,000/-. This Tribunal is of the considered opinion that when the assessee has produced the receipt for filling the land, the Assessing Officer is not justified in disallowing the claim of the assessee. Therefore, the cost of filling of land has to be allowed while computing the capital gain. Moreover, the payment of brokerage was also disallowed by the Assessing Officer. It is a fact that in the real estate business, the assessee has to pay 2% to 3% of sale consideration as brokerage for negotiating the price of the property to the prospective

purchasers. Therefore, this Tribunal is of the considered opinion that 2% of the total sale consideration has to be allowed as brokerage charges. Accordingly, the Assessing Officer is directed to allow 2% of ₹69,00,000/- as brokerage while computing the capital gain.

16. In the result, the appeal of the assessee is allowed.

17. Now coming to assessee's appeal in I.T.A. No.756/Chny/2017.

18. Shri Anandd Babunath, the Ld. representative for the assessee, submitted that the assessee sold an immovable property at Flat No.16, Block No.3, Asiad Colony, Anna Nagar West, Chennai, for a consideration of ₹25,00,000/-. The assessee admitted long term capital gain of ₹1,09,844/-. According to the Ld. representative, the assessee computed the capital gain after computing the indexed cost of acquisition at ₹8,40,156/- and cost of repairs in respect of the property at No.26, Lakshmanan Street, Mahalingapuram, Chennai. According to the Ld. representative, the assessee has spent about ₹15,50,000/- in demolition and reconstruction of the property at No.26, Lakshmanan Street,

Mahalingapuram. According to the Ld. representative, the property stands in the name of the assessee's husband. The assessee, and her husband along with their children are living together in the said property. The capital gain on ₹15,50,000/- was used for additional construction. According to the Ld. representative, the Assessing Officer disallowed the claim of the assessee under Section 54F of the Act on the ground that the assessee has not invested the funds in any new construction. According to the Ld. representative, a new construction was made in the property belonging to the assessee's husband after demolishing a part of building. According to the Ld. representative, the Assessing Officer is not justified in rejecting the claim of the assessee. Moreover, the investment was used in the property belonging to the assessee's husband. Moreover, the Assessing Officer has also disallowed the cost of improvement. According to the Ld. representative, the improvement made to the extent of ₹3,20,000/- has to be allowed while computing the capital gain, therefore, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer.

19. On the contrary, Shri M. Mathivanan, the Ld. Departmental Representative, submitted that the assessee invested the funds in

the additional construction in the house which belongs to her husband. According to the Ld. D.R., the investment was not made in her name. The claim of the assessee is that part of existing building, which belongs to her husband, was demolished and additional construction was put up. If that is so, according to the Ld. D.R., the assessee is not eligible for exemption under Section 54F of the Act.

20. With regard to development charges the Ld. D.R. pointed out that the property was sold on 22.01.2010 but the quotation for renovation of the building was obtained only on 20.03.2010, after the sale of the property. Therefore, according to the Ld. D.R., the presumption is that the assessee has not spent any money. Hence, the Assessing Officer has rightly disallowed the claim of the assessee.

21. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee appears to have sold the property at ₹31,20,000/-. However, the assessee claimed before the Assessing Officer that it was sold for ₹25,00,000/-. The Assessing Officer, after verifying the copy of sale

deed and other material, found that for sale of property, the assessee has paid brokerage of ₹1 lakh and also taken the indexed cost of acquisition at ₹4,20,156/- and after reducing the brokerage and indexed cost of acquisition, the Assessing Officer computed the long term capital gains at ₹25,99,844/-. The assessee has not disputed the computation made by the Assessing Officer with regard to long term capital gains at ₹25,99,844/-. The dispute is only with regard to exemption claimed by the assessee under Section 54F of the Act to the extent of ₹15,50,000/- and development charges of ₹3,20,000/. The Assessing Officer disallowed the claim of exemption under Section 54F of the Act on the ground that there was no construction and investment was made in the property belonging to the assessee's husband and not in her property.

22. It is not in dispute that in India, dual ownership is permissible. In other words, the land can belong to one person and the building can belong to another person. In the case on our hand, the investment was said to be made not on the third party's property but the property belonging to the assessee's husband. The additional construction said to be made by the assessee after demolishing the

part of the building belonging to her husband is not in dispute. Hence, this Tribunal is of the considered opinion that the additional construction made has to be construed as investment in the immovable property. It is not the case of the Revenue that additional construction made by the assessee in the building belonging to her husband is not an independent habitable unit. The case would stand differently in case the additional construction cannot be construed as independent residential unit. When the additional construction can be construed as independent residential unit, this Tribunal is of the considered opinion that the Assessing Officer is not justified in rejecting the claim of the assessee. Moreover, in the eyes of common / Hindu law, husband and wife are considered to be one and same even though they are independent and distinct assessable entity under the Income-tax Act. Moreover, in a joint family system, particularly, male dominated society, the investment would always be made in the name of eldest male member of the family. Since the property sold was admittedly belonging to the assessee, this Tribunal is of the considered opinion that the investment made in the property belonged to the assessee's husband, has to be construed as investment made by

the assessee. The additional construction, which was not disputed as not an independent residential unit, belonging to the assessee, therefore, the assessee is eligible for exemption under Section 54F of the Act in respect of the investment made. Accordingly, both the authorities below are not justified in disallowing the claim of the assessee. Hence, the orders of both the authorities below are set aside and the Assessing Officer is directed to allow the claim of exemption under Section 54F of the Act.

23. Now coming to development expenditure of ₹3,20,000/-, it is not in dispute that the property was sold on 22.01.2010. But, the quotation for so-called development was obtained from M/s Thirumalai Construction only on 20.03.2010. Therefore, after the sale of property, this Tribunal is of the considered opinion that the assessee would not have incurred the expenditure. Therefore, as rightly submitted by the Ld. D.R., the claim of ₹3,20,000/- is not justified. The disallowance of development expenditure of ₹3,20,000/- is confirmed.

24. In the result, the appeal of the assessee is partly allowed.

25. To summarise the result, the assessee's appeal in I.T.A. No.3187/Chny/2016 is allowed and I.T.A. No.756/Chny/2017 is partly allowed.

Order pronounced on 7th September, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 7th September, 2018

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-4, Chennai-34
4. Principal CIT-5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.