

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1985/Mds/2016
निर्धारण वर्ष / Assessment Year : 2010-11

Ms. Saraswathi
Venkatraman,
B-1, Sriji Apartments,
63, Old No.25,
Rajasekaran Street,
Mylapore, Chennai-600 004.

The Income Tax Officer,
v. Business Ward – 2(4),
Chennai – 34.

[PAN : AABPV 9340 F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S.G. Kalyanaraman, CA
प्रत्यर्थी की ओर से/Respondent by : Shri B. Sahadevan, JCIT
सुनवाई की तारीख/Date of Hearing : 03.01.2017
घोषणा की तारीख/Date of Pronouncement : 31.01.2017

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the Order dated 24.03.2016 of Commissioner of Income Tax (Appeals)-2, Chennai, in ITA No.7/ CIT(A)-2/2012-13 for the A.Y.2010-11.

2.0 The assessee has raised the following grounds of appeal and challenged the order of the Commissioner of Income Tax (Appeals):

1. *The order of the Commissioner of Income (Appeals) - 2, Chennai dated 24.03.2016 in ITA No.7/CIT (A)-2/ 12-13 for the above mentioned asst. year is contrary to law, facts and in the circumstances of the case.*
2. *The CIT (Appeals) erred in sustaining the computation of long term capital gains made by the Assessing Officer in her order of assessment dated 04.03.2013 without proper justification.*
3. *The CIT (Appeals) erred in confirming the value of the land measuring about 5954 sq.ft at No.18, 9th Street, Dr.R.K. Salai, Chennai - 600 004 as on 01.04.1981 at Rs.11.45 per sq.ft as against the valuer's report at Rs.54 per sq.ft. The appellant is a Co-owner holding 25% share of interest in the property. The guideline fixed by the registrar is not the sole factor for fixing the value as on 01.04.1981.*
4. *The CIT (Appeals) also erroneously held that the Assessing Officer has considered the whole value of the building as per the valuation report even though the valuation report covers only the building that existed as on 01.04.1981 and did not include the additions made in 1991-92. The Assessing Officer denied deduction for want of submission of evidence of cost of construction. The CIT(Appeals) erred in not considering the cost of construction of Rs.2,67,888/- for 576 sq.ft carried out in the F.Y 91-92 even though substantial evidence were submitted, the appellant being eligible for deduction of 1/4th of cost with indexation thereof.*
5. *The appellant prays that she may be permitted to raise supplementary and additional grounds / arguments at the time of hearing.*

3.0 Ground Nos. 1 & 5 are general in nature which do not require any specific adjudication.

4.0 Ground Nos. 2 & 3 are related to the adoption of fair market value as on 01.04.1981. The assessee was a co-owner of the property situated at No.18, 9th Street, Dr.R.K. Salai, Chennai-4, which was purchased by her mother in 1950 and inherited by the assessee on the death of her mother along with her sisters. The assessee was holding 1/4th of share in the property. The said property was sold on 12.09.2009 for a

consideration of Rs.6.00 crores. The assessee being 1/4th share holder of the property admitted the capital gain claiming fair market value of the property @ Rs.54/- per sq.ft. as on 01/04/1981 for the land of 5954 sq.ft, on the basis of valuation report obtained from a Registered Valuer Shri P.S.H.Y. Raju. The Registered Valuer arrived the rate of Rs.54/- per sq.ft. on the basis of a transaction undertaken in Sullivan Garden Road, Off Radhakrishnan Salai during 1980-81 at Rs.18/- per sq.ft. and made adjustments by adding registration charges at 14% and also making the addition for premium price @50% in view of locational advantage. The Assessing Officer referred the valuation to the Sub-Registrar Office and the Sub-Registrar Office has informed the guideline value at Rs.30,000/- per ground for undivided share of land and Rs.25,000/- per ground in the case of independent bungalow. When the guideline value of Rs.30,000/- per ground was confronted with the assessee, the assessee objected as it was related to the undivided share of land, hence the Assessing Officer made the second reference for bungalow and the Sub-Registrar Office has intimated Rs.25,000/- per ground in the case of independent bungalows. The Assessing Officer adopted the average value of both the guideline values and adopted Rs.11.45 per sq.ft. as fair market value as on 01.04.1981 and computed the capital gains at Rs.5,57,63,653/- and the share of the assessee worked out Rs.1,39,40,913/- and allowed the exemption u/s.54 and 54EC and the balance amount was brought to tax.

The assessee went on appeal before the Ld.CIT (Appeals) and was not successful. Hence, the assessee is in appeal before this Tribunal.

5.0 During the appeal, the AR of the assessee submitted that no registered document was available for arriving at the fair market value of the property sold hence the assessee has approached the Registered Valuer for valuing the fair market value of the property and the registered Valuer, as per the information available, valued the land at Rs.54/- per sq.ft. which should have been accepted by the Assessing Officer. In spite of furnishing the Registered Valuer's Report, the Assessing Officer adopted the average of two guideline values of SRO for arriving the FMV as on 01/04/1981 by the A.O which is incorrect approach. The AR submitted that there was always difference between the guideline value and the fair market value and the guideline value cannot be fair market value. He relied on the decision [2013] 30 taxmann.com 130 (Cochin-Trib) in Shri R. Vidhyadharan v. DCIT, Cochin Bench, and also judgment of the Hon'ble Madras High Court in the case of CIT v. J. Chelladurai [2012] 17 taxmann.com 73 (Mad).

6.0 We heard the rival submissions and gone through the material placed before us. The assessee has sold the property along with three co-owners, land and building admeasuring 5954 sq.ft. in RK Salai, Chennai. The Assessing Officer adopted the value of Rs.11.45 per sq.ft.

against the claim of the assessee at Rs.54/- per sq.ft. The valuation adopted by the Assessing Officer was the guideline value but not the fair market value. There was no evidence to establish that the fair market value was Rs.11.45 per sq.ft as on 01.04.1981 and it appears the value of Rs.11.45 per sq.ft. was much lesser than Fair Market Value. It was an estimated price on the basis of the guideline values of the surrounding areas as per the inputs supplied by the Sub-Registrar Office. The Registered Valuer has valued the fair market value at Rs.54/- on the basis of a transaction and adjustments made for stamp duty and premium as discussed in the Assessment Order. Both are the estimated values, but not on the basis of any actual transaction. In the circumstance, we hold that the average of the estimated guideline value and the fair market value (as valued by the Registered Valuer) appears to be reasonable and justified and both the parties have agreed for such estimation. Accordingly, we hold that Rs.35/- per sq.ft. is reasonable estimate for valuing the land of 5954 sq.ft. This view also supported by Hon'ble Jurisdictional High Court order in the case of Shri J. Chelladurai cited *supra*. Accordingly, we direct the Assessing Officer to adopt the rate of Rs.35/- per sq.ft as on 01.04.1981 as FMV and re-compute the capital gains. Ground Nos.2 & 3 of the assessee are partly allowed.

7.0 Ground No.4 is related to the additional cost of construction of Rs.2,67,888/- for 576 sq.ft. carried out in the FY 1981-82. The assessee

claimed 1/4th of the additional cost of construction. For construction of 576 sq.ft. in 1991-92, the assessee's share 1/4th being worked out to Rs.66,972/-. The Assessing Officer rejected the claim of the assessee for non-submission of the documentary evidence. The Ld. CIT(Appeals) confirmed the order of the Assessing Officer. The CIT (Appeals) observed that in the absence of bills and vouchers, it is not possible to accept the entries in the Books of Accounts submitted by the assessee.

8.0 Aggrieved by the order of the Ld. CIT(Appeals), the assessee appealed before us.

Appearing for the assessee, the Ld. AR argued that the assessee has incurred additional cost of construction of Rs.2,67,888/- for construction of 576 sq.ft. in 1991 and the assessee should be allowed the indexed cost of construction for her 1/4th share from the FY 1991-92. In support of the assessee's claim, the AR produced the note book containing the details of cost of construction and building plan approvals which were produced before the Assessing Officer and pleaded to allow the additional cost of construction.

9.0 On the other hand, the Ld. DR argued that the Assessing Officer has allowed the cost of construction as per the Valuation Report produced by the assessee in the Assessment Order and hence no further additional

cost of construction required to be allowed. According to the Ld.DR, the additional cost of construction was already considered by the Registered Valuer while valuing the property and allowing the additional cost of construction separately tantamount to double allowance of same expenditure. Therefore, the Ld.DR vehemently opposed the contentions of the representative of the assessee.

10.0 We heard the rival submissions and perused the material placed on record.

The assessee has submitted the Valuation Report from Shri P.S.H.Y. Raju, a Registered Valuer, who has valued the entire super structure of the building at Rs.6,02,135/-. No separate valuation was made by the Registered Valuer from whom the assessee has submitted Valuation Report. Therefore, it was implied that the cost of construction of the building was included in the valuation made by the Valuer. Any further allowance amounts to double deduction of the same amount. The Assessing Officer duly considered the value of the building as per Valuation Report also. Therefore, we are of the considered opinion that no separate deduction needs to be allowed on account of additional cost of construction relating to 576 sq.ft. claimed by the assessee. Accordingly, this ground of the appeal is dismissed.

11.0 In the result, the appeal of the assessee is **partly allowed**.

Order pronounced in the open court on 31st January, 2017 at
Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S.SUNDER SINGH)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31st January, 2017.

tln

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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