

**आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई ।**

IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH : CHENNAI

**श्री बी.आर. बास्करन, लेखा सदस्य एवं  
श्री एस. एस. गोदारा, न्यायिक सदस्य के समक्ष ।**

[BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI S. S. GODARA, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A.No.1992/Mds/2014

निर्धारण वर्ष /Assessment year : 2009-10

The Income Tax Officer  
Business Ward XIV(3)  
Chennai

**Vs.** Smt.G.Poonkodi  
Plot No.8, 5<sup>th</sup> Street, R.V. Nagar  
Anna Nagar East  
Chennai 600 102  
**[PAN ALHPP 8247 J]**  
**(प्रत्यर्थी/Respondent)**

**(अपीलार्थी/Appellant)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri N. Madhavan, JCIT  
: Shri Anand Babunath, CA

सुनवाई की तारीख/Date of Hearing

: 29-01-2015

घोषणा की तारीख /Date of Pronouncement

: 06-02-2015

**आदेश / ORDER**

**PER S.S.GODARA, JUDICIAL MEMBER**

This Revenue's appeal for assessment year 2009-10, is directed against order of the Commissioner of Income-tax (Appeals)-VII Chennai dated 26.3.2014, passed in Appeal No.994/13-14, treating value of the assessee's land sold at ₹ 15,07,370/- as against ₹ 55,51,687/- adopted in the course of a 'regular' assessment framed on

28.12.2011, in proceedings under section 143(3) of the Income-tax Act, 1961 (in short the 'Act').

**2.** A perusal of the case file reveals that this appeal is time barred by 10 days in filing. The Income Tax Officer, Business Ward XIV(3), Chennai, has filed an affidavit stating reasons thereof. The assessee does not contest the solemn affirmations averred therein. Therefore, we condone this delay of 10 days in filing the appeal.

**3.** The assessee/individual trades in shares and securities. She had filed her return on 28.10.2009 admitting income of ₹ 3,42,557/-. The same was 'summarily' processed.

**4.** The assessee had purchased a property – Plot No.8, 5<sup>th</sup> Street, R.V Nagar, Anna Nagar East, Chennai -102 on 16.4.2008 for ₹ 41,38,500/-. This was followed by a joint venture agreement dated 19.11.2008 with M/s Aurovil Homes, Chennai, for developing the said property. Its total land area reads 2,759 sq ft. The assessee would retain 764 sq ft undivided share of land. The remaining land measuring 1995 sq ft would go to the developer for ₹ 60 lakhs consideration. The assessee was further paid an interest free deposit of ₹ 10 lakhs. The developer entity also agreed to give a flat F-2 measuring 1546 sq ft including common and car parking area. It

performed all of its obligations stipulated in the joint venture agreement..

5. The Assessing Officer took up 'scrutiny'. He inter alia noticed that the aforesaid development agreement amounted to a 'transfer' u/s 2(47)(v) of the Act. Also he was of the view that the total consideration in the development agreement aforesaid was ₹ 60 lakhs added by the market value of the assessee's flat F-2 measuring 1546 sq ft. The developer entity had intimated sale price of its flats sold on the assessee's land @ ₹ 3591 per sq ft. In view thereof, the Assessing Officer sought to compute value of the assessee's flat to ₹ 55,51,686/-. The assessee contested this proposal. She pleaded that consideration for her flat was due to transfer of land measuring 1995 sq ft had to be calculated with reference to the cost of construction and not market value. She further stated that her flat had been handed over in succeeding assessment year 2010-11 and not in the impugned assessment year. The Assessing Officer rejected both her contentions in assessment order, adopted value of the flat at ₹ 55,51,686/- as against ₹ 15,07,370/- for assessing the impugned short term capital gains of ₹ 70,22,541/-.

6. The assessee preferred an appeal. The CIT(A) has accepted her arguments on flat valuation issue as under:

"5.3. Regarding the sale consideration received, the A.O adopted the value of ₹ 55,51,686/- for the flat allotted to the appellant. But the joint venture partner in his letter filed on 25.3.2014 stated that the cost of construction was arrived as per actual cost of material and labour without including any profit. It was also stated in that letter that the flats sold to others include cost of land, construction cost and profit and flat sold to Mrs. Poonkodi includes only cost of construction being the land owner as per the joint venture agreement. In these circumstances adoption of sale value to others in the case of appellant is not justified. The A.O is directed to adopt ₹ 15,07,370/- instead of ₹ 55,51,686/-."

This leaves the Revenue aggrieved.

7. We have heard both parties and gone through the case file. The Revenue's pleadings seek to restore valuation of the assessee's flat as ₹ 55,51,686/- as against ₹ 15,07,370/- adopted in the lower appellate order. It is averred that the lower appellate authority has violated Rule 46A in admitting additional evidence. There is no dispute that the impugned assessment had been framed on 28.12.2011. Till then the developer entity never appears to have clarified that the cost of assessee's flat only included cost of construction as per joint venture agreement unlike other buyers paying for cost of land, construction and profits. It is evident that necessary clarification in this regard was filed in the lower appellate proceedings on 25.3.2014

i.e just a day before passing of the CIT(A)'s order. These facts lead us to a conclusion that the lower appellate authority has not verified the said factual position on the crucial issue of valuation. This course of action has violated principles of natural justice. We, therefore, feel that this issue deserves to be set aside to the assessing authority for decision afresh as per law. We order accordingly. The Revenue's sole substantive ground is remitted to the Assessing Officer.

8. The Revenue's appeal is allowed for statistical purposes.

Order pronounced on Friday, the 6<sup>th</sup> of February, 2015, at Chennai.

Sd/-

(बी.आर. बास्करन)

(B.R. BASKARAN)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 6<sup>th</sup> February, 2015

RD

Sd/-

(एस. एस. गोदारा)

(S. S. GODARA)

न्यायिक सदस्य/JUDICIAL MEMBER

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