

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिकसदस्यकेसमक्ष

**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.1507/Mds/2016  
निर्धारण वर्ष /Assessment year : 2008-2009

The Assistant Commissioner  
of Income Tax,  
Non Corporate Circle -4,  
Chennai 600 006.

**Vs.** Smt. Geetha Durai,  
New No.21, Old No.54,  
Devaraja Mudali Street,  
Park Town,  
Chennai 600 003.

(अपीलार्थी/Appellant)

**[PAN AEZPG 0183M]**  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. Shiva Srinivas, IRS, JCIT.  
प्रत्यर्थी की ओर से /Respondent by : Shri. B. Ramanakumar, Advocate

सुनवाई की तारीख/Date of Hearing : 08-08-2016  
घोषणा की तारीख /Date of Pronouncement : 17-08-2016

**आदेश / ORDER**

**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

The appeal filed by the Department is directed against order of the Commissioner of Income-tax (Appeals)-5, Chennai in ITA No.36/CIT(A)-5/13-14, dated 14.03.2016 for the assessment year

2008-2009 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

**2.** The Revenue has raised the following grounds of appeal:-

*“2.1 The learned CIT(A) erred in referring the valuation of land to the Valuation Officer.*

*2.2 The Id.CIT(A) failed to appreciate that the case of assessee is distinguishable from the decision of Madras High Court in 'the case of Shri.Appadurai Vijayaraghavan as in the case of Appadurai Vijayaraghavan there was a distress sale of property.*

*2.3 The Ld.CIT(A) failed to consider that the value has been fixed as per market value based on the report of the Sub-Registrar who is a competent authority under the State Government”.*

**3.** The Brief facts of the case are that the assessee is an individual and proprietor of M/s. Mudra Enterprises and filed Return of Income on 26.02.2010 admitting total income of ₹28,23,883/- and the Return of income was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and notice u/s.143(2) of the Act was issued. The Id. Assessing Officer called for furnishing of details of Bank statements, tenancy agreement, corporation tax paid payment, investments made during the financial year and Books of account. In compliance to notice, the Id. Authorised Representative of assessee appeared from time to time and submitted the information.

The Id. Assessing Officer found that the assessee has not admitted Long Term Capital Gains on sale of House property, but filed details of purchase and sale deed. The assessee has inherited 1/6 share of the property from her Grandfather through settlement deed dated 11.08.1949. The assessee while calculating Long Term Capital Gains claimed cost of acquisition of the property as on 01.04.1981 relying on the Valuation report dated 16.10.2009, the land value ₹43,28,625/- and Building value ₹17,40,328/-. The Id. Assessing Officer sent a letter to the Sub-Registrar, T. Nagar, Chennai on 09.11.2010 to ascertain the value of land as on 01.04.1981. The Sub-Registrar vide letter dated 25.11.2010 informed that the value of the land per ground as on 01.04.1981 is ₹80,000/- and the same value was adopted by the Id. Assessing Officer. The Id. Assessing Officer verified the settlement deed and not satisfied with the action of demolition of the Building in the year 1996 and further perused the demolition permit issued by the Corporation on 19.01.1995 and is of the opinion that there is no existence of Building on land and adopted the value of Building as on 01.04.1981 as Nil. The assessee filed copy of the approved plan issued by the Corporation of Chennai permitting construction of new building and demolition of existing Building. The Id. Assessing Officer is of the opinion that there is no connection in respect of settlement deed for the purpose of value of Building and

worked out the capital gains on land by adopting Sub-Registrar Value of ₹80,000/- per ground and also allowed cost inflation index and determined 1/6<sup>th</sup> share of assessee's Long Term Capital Gains and passed order with other additions u/s.143(3) of the Act dated 31.12.2010. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative of assessee argued the grounds and explained that the action the Id. Assessing Officer is against the provisions of law. The assessee has adopted Fair Market Value of the property as on 01.04.1981 ₹80,000/- per ground instead of ₹8,50,000/- as per valuers report. Similarly, the Id. Assessing Officer further erred in considering the value of Building as Nil on 01.04.1981 instead of ₹17,40,328/- supported by the valuer report claimed by the assessee. The Id. Commissioner of Income Tax (Appeals) considered the arguments and findings of the Id. Assessing Officer for adopting the value as on 01.04.1981 and elaborately dealt at page 2 & 3 of the order and considered the written submissions filed by the assessee on 29.02.2016 at para 4 of his order on the valuation of land and building and adopting fair market value and relied on the judicial decisions referred at page 4 to 9 of the Id. Commissioner of Income

Tax (Appeals). The assessee has also objected for adoption of the Sub-Registrar value for computation of Capital gains. The Id. Commissioner of Income Tax (Appeals) placed reliance on the Jurisdictional High Court decision in the case of *Sri Appadurai Vijayaraghavan vs. JCIT (2014) 369 ITR 486* and the decision of Mumbai Tribunal in the case of *ACIT vs. Smt. Mona Malani and others in ITA No.6960/Mum/2011, dated 03.10.2012* discussed at page 11 to 15 of the order and finally directed the Id. Assessing Officer to refer the matter to the valuation officer which is in accordance with law and partly allowed the appeal of the assessee. Aggrieved by the order, the Revenue assailed an appeal before Tribunal.

**5.** Before us, the Id. Departmental Representative reiterated the submissions that the Commissioner of Income Tax (Appeals) erred in referring the valuation of land to the valuation officer which is against law and decision of the Jurisdictional High Court which is distinguishable because of distress sale. The Id. Assessing Officer relied on value as per report of the Sub-Registrar, being a component authority of State Government. Therefore, the action of the Id. Commissioner of Income Tax (Appeals) referring to the valuation officer is not appreciated. The assessee has adopted fair market value of land as on 01.04.1981 ₹8,50,000/- as against the Sub-Registrar

value of ₹80,000/-. Similarly, the Id. Assessing Officer adopted the value of Building as 'Nil' as against the value adopted by the assessee ₹17,40,328/- and prayed for set aside of the Commissioner of Income Tax (Appeals) order and allow the grounds of the Revenue.

**6.** Contra, the Id. Authorised Representative relied on the orders of Commissioner of Income Tax (Appeals) and submitted a copy of the valuation report relied in the assessment proceedings and vehemently opposed to the grounds.

**7.** We heard the rival submissions, perused the material on record and judicial decisions cited. In the course of assessment proceedings, the assessee has filed valuation report supporting the value as on 01.04.1981 alongwith building which is disputed by the Id. Assessing Officer and calculated Long Term Capital Gains. Aggrieved by the order, the assessee filed an appeal before the Id. Commissioner of Income Tax (Appeals). In appellate proceedings, the Id. Commissioner of Income Tax (Appeals) dealt with judicial decisions of Tribunal and High Court and directed the Id. Assessing Officer to refer to the valuation officer. The Revenue is disputing the action of the Id. Commissioner of Income Tax (Appeals) in directing to valuation officer. The assessee claimed cost of acquisition as on 01.04.1981 based on the valuation report. The assessee has a option to adopt asa

per provisions of the Act which she has rightly followed. The powers of the Id. Commissioner of Income Tax (Appeals) are Co-terminus with Id. Assessing Officer. The provisions of Sec. 251(1) of the Act are as under:-

*“(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers--*

*(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment ;*

*(aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment ;*

*(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;*

*(c) in any other case, he may pass such orders in the appeal as he thinks fit”.*

and referring to the valuation officer, the Id.CIT(A) directions are within the provisions of law. The valuation officer has to ascertain the fair market value of capital asset and the provisions u/sec. 55A are as under:-

*'With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer--*

*(a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of opinion that the value so claimed is less than its fair market value ;*

*(b) in any other case, if the Assessing Officer is of opinion--*

*(i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf ; or*

*(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,*

*and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clauses (ha) and (i) of sub-section (1) and sub-sections (3A) and (4) of section 23, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with the 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".*

On combined reading of both provisions, the Id. Commissioner of Income Tax (Appeals) powers are co-terminus with the Id. Assessing Officer and within provisions of law on referring to the valuation officer. Hence, considering the provisions of law, material on record

and judicial decisions, we are not inclined to interfere with the orders of the Commissioner of Income Tax (Appeals) who has dealt exhaustively on provisions and facts viz-a-viz explanation of the assessee and we dismiss the grounds of the Revenue.

**8.** In the result, the appeal of the Revenue is dismissed.

Order pronounced on Wednesday, the 17<sup>th</sup> day of August, 2016, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

Sd/-

(जी. पवन कुमार)

**(G. PAVAN KUMAR)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated:17th August, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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