

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 809/Mds/2017

निर्धारण वर्ष / Assessment Year : 2008-09

Shri J. Krishnan,
C/o Natesa Iyer & Co.,
New No.273, Old No.32,
Linghi Chetty Street,
Chennai - 600 001.

v. The Assistant Commissioner of
Income Tax,
Business Circle VIII,
Chennai - 600 034.

PAN : AABPK 3183 F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. J. Sree Vidhya, Advocate

प्रत्यर्थी की ओर से/Respondent by : Smt. Pavuna Sundari, JCIT

सुनवाई की तारीख/Date of Hearing : 01.06.2017

घोषणा की तारीख/Date of Pronouncement : 28.06.2017

आदेश / O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -13, Chennai, dated 09.03.2017 and pertains to assessment year 2008-09.

2. The only issue arises for consideration in this appeal is computation of capital gain.

3. Ms. J. Sree Vidhya, the Ld.counsel for the assessee, submitted that the assessee entered into an agreement for sale on 03.10.2006 along with one Ms. Pavithra Natarajan, who is the joint co-owner of the property. Copy of the agreement is available at page 1 of paper-book. The said deed was executed on 29.11.2007. According to the Ld. counsel, the sale consideration agreed in the agreement dated 03.10.2006 is ₹38,25,000/-. In fact, the sale deed discloses the sale consideration at ₹38,25,000/-. After the execution of agreement for sale but before execution of registered sale deed, the guideline value of the property was increased to ₹1,21,12,000/-. Therefore, the assessee along with the co-owner paid the stamp duty on the increased guideline value of ₹1,21,12,000/-. Taking advantage of this fact, according to the Ld. counsel, the Assessing Officer by adopting Section 50C of the Income-tax Act, 1961 (in short 'the Act') has taken the sale consideration at ₹1,21,12,000/- and computed the capital gain accordingly.

4. Referring to proviso to Section 50C of the Act, the Ld.counsel for the assessee submitted that the date of agreement fixing the sale consideration and date of registration of the sale

deed are not the same. The value adopted or assessable by stamp authority on the date of agreement has to be taken for the purpose of computing the sale consideration on transfer under Section 50C of the Act. According to the Ld. counsel, a proviso to Section 50C of the Act was introduced by Finance Act, 2016 with effect from 01.04.2017. However, this proviso is only to clarify the existing position of law, therefore, applicable retrospectively even for the year under consideration. According to the Ld. counsel, the guideline value or the value assessable by stamp authority on the date of agreement, i.e. on 03.10.2006 alone has to be taken and not the guideline value on the date of execution of registered sale deed.

5. On the contrary, Smt. Pavuna Sundari, the Ld. Departmental Representative, submitted that the stamp authorities valued the property at ₹1,22,20,750/-. The assessee being the co-owner of the property and entitled for 50% of share, the Assessing Officer has computed the capital gain by taking the sale consideration as per the value adopted by stamp authorities. According to the Ld. D.R., proviso to Section 50C of the Act came into force from 01.04.2017, therefore, it is not applicable during the year under consideration.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The only issue arises for consideration is determination of sale consideration of the property for the purpose of computing capital gain. The assessee claims that the sale consideration was only ₹38,25,000/- on the basis of agreement for sale. However, the Revenue claims that the guideline value at the time of registration of document was ₹1,21,12,000/-. The question arises for consideration is for the purpose of Section 50C of the Act, whether the guideline value on the date of agreement for sale of the property has to be taken into consideration or the guideline value on the date of execution of sale deed? The assessee contends before this Tribunal on the basis of proviso to Section 50C of the Act which was introduced with effect from 01.04.2017, that the guideline value as on the date of agreement has to be taken into consideration. The assessee claims that proviso to Section 50C of the Act introduced with effect from 01.04.2017 is applicable retrospectively since it clarifies the law as it stood at the relevant point of time.

7. Whenever the vendor and purchaser agreed to sell and purchase a property at a particular price and entered into a written

agreement, this Tribunal is of the considered opinion that the vendor and purchaser may not be able to change the agreed sale consideration unless some exceptional circumstances happen in the intervening period. In the case before us, no such exceptional circumstance was brought to the notice of the Tribunal. In the absence of any exceptional circumstances, the vendor and purchaser, as the case may be, has a right to enforce the agreement for sale. Therefore, merely because the guideline value was increased by State Revenue Department after execution of agreement for sale, that cannot be a reason for vendor and purchaser to increase the sale consideration. This Tribunal is of the considered opinion that the vendor is bound to sell the property at a price agreed as per the agreement. Therefore, the market value / guideline value which existed at the relevant point of time, i.e. on the date of agreement for sale, has to be taken into consideration to determine the sale consideration. This was clarified by way of proviso introduced by Finance Act, 2016. Hence, proviso introduced in Section 50C of the Act by Finance Act, 2016 would have retrospective in operation and applicable for the year under consideration also.

8. We have also carefully gone through the decision of this Bench of the Tribunal in the case of co-owner Smt. Pavithra Natarajan v. ITO in I.T.A. No.559/Mds/2012. The fact that there was an agreement between the parties on 03.10.2006 was not brought to the notice of the Bench which heard the appeal of the co-owner. Therefore, this Tribunal proceeded on the footing that the property was valued by the District Collector under Tamil Nadu Court Fees and Suit Valuation Act and under Section 47A of Indian Stamps Act. This Tribunal has not considered the value assessable by the stamp authority on the date of agreement, i.e. on 03.10.2006. Therefore, this Tribunal is of the considered opinion that the guideline value or the value assessable by the stamp authority as on 03.10.2006 has to be taken as sale consideration for the purpose of computing capital gain. Accordingly, the orders of the lower authorities are set aside and the Assessing Officer is directed to take the value assessable by the stamp authority / guideline value as on 03.10.2006 and thereafter compute the capital gain, after giving a reasonable opportunity to the assessee.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 28th June, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 28th June, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-13, Chennai
4. Principal CIT-8, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.