

आयकर अपीलीय अधिकरण, D/‘SMC’ न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
D/“SMC” BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य , के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.906/Mds./2017

(निर्धारण वर्ष /Assessment Year :2008-09)

Mr.S.Umapathy,
26/52,Vaithiyar Annamalai, Street,
Mylapore,
Chennai 600 004.
PAN ACEPU 1166 D

Vs. The Income Tax Officer,
Non-Corporate Ward 19(4),
Chennai 600 034.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by

: Mr.K.B.Muralidharan,C.A

प्रत्यर्थी की ओर से/Respondent by

: Mr.V.Sreenivasan, JICIT, D.R

सुनवाई की तारीख/ Date of hearing

: 19.06.2017

घोषणा की तारीख /Date of Pronouncement

: 19.06.2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is filed by the Assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-12, Chennai dated 14.02.2017 pertaining to assessment year 2008-09.

2. The Assessee has raised sixteen elaborate grounds in his appeal, however the crux of the issue is with regard to considering the capital gains on sale of a property at Chennai on 12.10.2007 in the hands of the assessee, though the impugned property belonged to assessee's father.

3. The facts of the case are that the assessee is an individual, employed as a welder in Tamil Nadu State Transport Corporation, Chennai. During the financial year 2007-08, the assessee along with his father and others entered into a sale transaction for selling their immovable property at New Door No.223/1, Periyarpettai,Choolaimedu, Chennai 600 094 on 12.10.2007. Assessee did not file his return of income for assessment year 2008-09 and he was treated as a non-filer of return of income. According to AO, the assessee jointly with others sold their immovable property during the financial year 2007-08 and that the capital gains arising out of this sale transaction, which is chargeable to tax, escaped assessment , notice u/s.148 was issued and the same was served

on 28.03.2015. In response, the assessee filed his return of income on 16.04.2015.

3.1 According to AO, the assessee had received a sum of ₹8 lakhs towards his share of the above property vide cheque No.456541 dated 11.10.2007, out of total sale consideration of ₹49,50,000/-. However, the market value of the property was assessed at ₹51,81,000/- by the Sub-Registrar for the purpose of payment of stamp duty. Accordingly, the AO worked out the proportionate sale consideration for the assessee's share u/s.50C of the Act. Similarly, the AO enquired about the guideline value of the subject property as on 01.04.1981 from the O/o. Sub Registrar, Kodambakkam and found out that the value of the property as on 01.04.1981 was ₹40,000/- per ground. Adopting the above value, the AO determined the cost of acquisition of the property at ₹52,333/- for the total land admeasuring 3140 sq.ft. Accordingly, the AO assessed the taxable capital gains at ₹7,90,730/- in the hands of the assessee. Aggrieved by the order of Id. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A).

3.2 During the first appellate proceedings, the Id.A.R submitted that the subject property was inherited by the assessee's father Mr.M.Subramaniam, by way of a family settlement from his mother Mrs. Jagadambal on 09.05.1975, who in turn, had received the property by way of family settlement executed on 26.08.1965. Further, the Id.A.R contended that since the assessee had signed the sale deed, he was also the co-owner of the property. The AO did not have any material to prove that the assessee is a co-owner of the property. The other contention of the Id.A.R was that the subject property having been sold by the assessee's father and being an inherited property, the long term capital gains should have been taxed in the status of HUF. Being an HUF property, the purchasers had insisted the members of the HUF to sign in the sale deed as vendors. Further, Id.A.R submitted that no return was earlier filed in the status of HUF as there was no taxable income.

3.3 On appeal, Id.CIT(A) arrived at a conclusion that the assessee's claim before the AO that the assessee had received the sale consideration of ₹8 lakhs on behalf of his father, was nothing but an after thought to escape the rigours of taxation. Accordingly, the

Ld.CIT(A) confirmed the action of Id. Assessing Officer. Against the order of Ld.CIT(A), now the Revenue is in appeal before us.

4. Before us, Id.A.R submitted that the A.O has wrongly concluded that since the assessee had signed the sale deed, he is also the co-owner of the property. The A.O. did not have any material to prove that the appellant is a co-owner of the property. The AO had not claimed that the property was purchased or funded by assessee. Hence, the conclusion of the A.O. that the assessee is one of the Co-owners is without any basis and bad in law. According to Id.A.R, the property sold by the appellant's father obtained by him from his mother vide settlement deed dated 09/05/1975 is not an inherited property but obtained under family settlement. Therefore appellant could not have interest / right over property belonging to father during the life time of his father. The Id.A.R contended that while both 'AO and CIT(A) had relied only on a portion of the facts mentioned in the sale deed, they have ignored main fact mentioned in the sale deed viz

“Even though First vendor (M.Subramanian) is the sole and absolute owner.....”

Further, Id.A.R submitted that Property co-ownership does not mean joint income tax liability. The son has not invested; He has merely signed along with other at the request of purchaser for the comfort of all including his father who had fairly ensured a portion of the consideration amount given to him at the time of sale of his (father's) property. The amount received by the appellant, which is part of the Sale Consideration fixed for the property of father, at best could be treated as gift received from his father and not otherwise. What exists on paper does not determine tax liability. Right to tax means income is taxed in right hands.

4.1 The Id.A.R submits as alternate ground, that the property sold by appellant's father being an ancestral one, at best acquire, the status of Hindu Undivided Family Property. In the case of HUF property, all the members of the family are coparceners having their interest / share over the property, but the interest of the respective members are not defined. Under Hindu Law, the rights of the members get crystallized only on partition amongst the members of the family. Being an HUF property, the purchasers had insisted the members of the HUF to sign in the sale deed as vendors.

According to A.O:

1. There is no existence of HUF.
 2. No returns were filed by the HUF.
 3. Hence, the same has been taxed in the appellant's hand.
- 4.2 The Id.A.R submitted that A.O. did not have any material to prove that the partition was made amongst the members of the HUF and the property vest received with the appellant as co-owner. The AO had erroneously concluded that the appellant had his share in the consideration when the sale deed executed by his father didn't specify so. The CIT (A) had erred in concluding that property in question could not partake the character of an HUF property when the facts clearly show that property was obtained from mother by appellant's father. The A.O. had made an erroneous conclusion that there is no existence of HUF in the absence of filing of return in HUF Capacity.
5. The Id.D.R relied on the order of lower authorities.
 6. I have heard both the parties and perused the material on record. In my opinion, as per the impugned sale deed dated 12.10.2007, there are seven vendors in total. In addition to Shri

M.Subramaniam, his wife, his sons and daughters, including the assessee, were also mentioned as vendors in the Sale deed. Moreover, all the vendors have signed the sale deed on every page. The sale deed also mentions that the sale consideration of ₹ 49,50,000/- has been paid mostly by cheque and pay orders. Only ₹ 7/- lakhs was paid by means of cash out of the total sale consideration of ₹ 49,50,000/-. From the clauses of the sale deed, it is found that the first vendor Shri M.Subramaniam obtained the property from his mother, Smt.Jagadambal, w/o Shri Muthuswamy Naicker by means of a Settlement Deed dated 09.05.1975. On perusal of the settlement deed dated 9.5.1975, it is observed that Smt Jagadambal had inherited the property from her mother. Since, the property in question was not from the paternal side of Shri M,Subramaniam, I agree with the finding given by the lower authority that it could not partake the character of an HUF property. Even otherwise, nowhere in the sale deed dated 12.10.2007, the subject property was described in the nomenclature of HUF property. Hence, the claim of the property, being an HUF, has been rightly rejected by the Assessing Officer.

6.1 According to Id.A.R, the following clause in the sale deed to support his claim that the subject property belonged to his father fully because it was inherited by him from his grandmother. Therefore, the Assessing Officer could not have held the appellant to be a joint owner of the above property.

Even though the First Vendor is the sole and absolute owner of the property, Vendors 2 to 7 have also joined as vendors at the request of the purchasers for an abundant caution and better security.

In my opinion, one cardinal principal of construing a document is that it should be read as a whole, one clause cannot be read to the exclusion of other clauses. If the entire Sale Deed is gone through, it is found that in addition to the assessee's father Shri M.Subramaniam, the appellant's mother, the assessee himself and all his brothers and sisters have signed the document as joint owners In addition to this, they have also got shares out of the sale consideration. The appellant himself has received Rs.8 lakhs out of the sale consideration. Based on this information only, the Department has re-opened the assessment in his case and has passed the impugned order. It is not disputed that the appellant has received a sum of Rs.8 lakhs vide cheque no. 456541 dated

11.10.2007 towards his share of sale consideration. There is also no dispute that after depositing his share of sale consideration in his own bank account, the appellant has utilized the same for his own purpose. In fact, it has been found that the appellant had purchased a plot of land in his individual name for Rs.3,27,456/- out of the sale consideration of Rs.8 lakhs. After having enjoyed the fruits of sale consideration, it does not lie in the mouth of the assessee to claim before the Assessing Officer that he received the amount on behalf of his father and he has no right or interest in the same.

6.2 It is also observed that there is ample proof to the effect that the appellant had not only received a sum of Rs.8 lakhs towards his share, but also utilized the same for purchasing a piece of land probably with a view to claim deduction u/s.54 or 54F of the Act. It is another matter that he did not claim such deduction in the Return, as he could not fulfill the other conditions such as constructing the house thereon within the stipulated period. Be that as it may, the fact remains that the appellant has been mentioned as one of the vendors in the Sale Deed executed on 12.10.2007, and has been paid Rs.8 lakhs, as his share of sale consideration, which he had utilised for his

own purposes without returning it to his father. Hence, the appellant's claim before the Assessing Officer that he had received the sale consideration of Rs.8,00,000/ on behalf of his father, was nothing but an afterthought.

7. In view of the above, I do not find any infirmity in the order of the CIT(Appeals) and the same is confirmed.

8. In the result, the appeal of assessee is dismissed.

Order pronounced on 19th June, 2017 at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,

Dated the 19th June, 2017.

K s sundaram.

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 |