

आयकर अपीलीय अधिकरण, 'एस.एम.सी' 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL ,
'SMC' 'B' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष
Before Shri A. Mohan Alankamony, Accountant Member

आयकरअपीलसं./I.T.A.No.3/Mds/2017
(निर्धारणवर्ष / Assessment Year: 2011-12)

Dr.Francis Rajan, 58, Muthu Street, Santhome, Chennai – 600 004.	Vs	The Income Tax Officer, International Taxation 2(1), Chennai
PAN: AEQPR6877L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri M. Karunakaran, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Sagadevan, JCIT
सुनवाईकीतारीख/Date of hearing	:	24.07.2017
घोषणाकीतारीख /Date of Pronouncement	:	25.07.2017

आदेश / ORDER

This appeal by the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-16, Chennai dated 27.10.2016 in ITA No.4/CIT(A)-16/2011-12 for the assessment year 2011-12 passed U/s.250(6) r.w.s.143(3) & 147 of the Act.

2. The assessee has raised several grounds in his appeal, however the cruxes of the issues argued before me are as follows:-

- (i) Out of the 4 properties sold by the assessee during the relevant assessment year, the guideline value and sale values of the 3 properties were same and therefore provisions of 50C of the Act is not applicable.
- (ii) The guideline value of the fourth property was less than the market value stated in the sale deed, therefore only the guideline value has to be adopted for the purpose of computing capital gain invoking Section 50C of the Act.
- (iii) With respect to the property sold by the assessee, which was bequeathed from the mother of the assessee by way of settlement deed, the date of acquisition of the asset by the mother has to be adopted for the purpose of indexation while computing the capital gain of the assessee.

3. The brief facts of the case are that the assessee is an individual filed his return of income for the assessment year 2011-12 on 28.07.2011. Subsequently he filed revised return of income on 22.09.2011 admitting total income of Rs.8,48,090/- after claiming deduction U/s.54F of the Act. Thereafter on 21.10.2013, the case was reopened by issuance of notice U/s.148 of the Act and finally the assessment was completed on 23.02.2015, wherein the Ld.AO

invoking the provisions of Section 50C of the Act adopted the sale consideration as per the valuation report at Rs.6,14,63,000/-. The Ld.A.O further adopted the market value of the asset bequeathed from the mother of the assessee as on the date of the settlement deed for the purpose of indexation and also disallowed the claim of deduction U/s.54F of the Act, and accordingly computed the capital gain of the assessee at Rs.17,24,670/. On appeal, the Ld.CIT(A) confirmed the order of the Ld.AO by agreeing to the view of the Ld.A.O.

4. At the outset, the Ld.AR submitted before me that out of the 4 properties sold by the assessee, with regard to 3 properties provisions of Section 50C will not be attracted because the value disclosed in the sale deed was either equal to or more than the guideline value fixed by the State Revenue authorities. Further, with respect to the fourth property the guideline value fixed by the State Revenue authorities is less than the valuation made by the Ld.DVO in his report or as stated in the registered document. He therefore pleaded that the excessive addition made by the assessee invoking 50C of the Act may be deleted. The Ld.AR further submitted that one of the properties acquired by the assessee was by way of

settlement deed from the mother of the assessee and therefore for the purpose of indexation, the date of acquisition of the mother has to be adopted as per the ratio laid on in the case Manjula J. Shah reported in 355 ITR 474, however the Ld.AO had erroneously adopted the date of settlement deed as the date of acquisition of the asset for the purpose of indexation. Accordingly the Ld.AR pleaded for granting relief on the issue. On the other hand, the Ld.DR vehemently argued in support of the Orders of the Revenue authorities.

5. I have heard the rival submissions and carefully perused the materials on record. From the orders of the Revenue authorities, it is not clear in what manner the valuation is appraised by the Ld.DVO with respect to all the four individual properties sold by the assessee. It appears that the Ld.DVO had valued the properties grossly and not on the basis of individual property. Therefore, I remit the matter back to the file of Ld.AO, who shall obtain the valuation report from the DVO on the basis of individual property and if he finds the guideline value of the first three properties sold by the assessee to be the same or more than the value adopted by the assessee as sale consideration in his computation, then delete the

addition made by invoking the provision of Section 50C of the Act because in that situation Section 50C of the Act cannot be invoked. However, if found otherwise pass appropriate order as per law and merit after providing the assessee opportunity of being heard. Further, with respect to the fourth property also the matter is remitted back to the file of Ld.AO in order to obtain the market value of the property from the Ld.DVO and thereafter compute the capital gain by invoking 50C of the Act, if applicable. While doing so the Ld.A.O is also hereby directed to adopt the value appraised by the Ld.DVO, if it is less than the value stated in the registered document as the market value, because in such situation the market value stated in the document will have no relevance as per the provisions of the Act. I also hereby direct the Ld.AO to follow the binding ratio laid down by the Hon'ble Mumbai High Court in the case Manjula J. Shah reported in 355 ITR 474, wherein it was held that when property is acquired by the assessee by way of settlement deed the date of acquisition of the property by the settlor of the property has to be adopted for the purpose of indexation, while computing the capital gain of the assessee with respect to the property received by the assessee from his mother by way of settlement deed. Thus all

the three grounds raised by the assessee before us are remitted back to the Ld.AO with the above mentioned directions.

6. In the result, the appeal of the assessee is allowed for statistical purposes as indicated herein above.

Order pronounced on the 25th July, 2017.

Sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 25th July, 2017

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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