

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

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

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

आयकर अपील सं./ITA No.345/Mds/2017

&

C.O. No.42/Mds/2017

(in I.T.A. No.345/Mds/2017)

निर्धारण वर्ष / Assessment Year : 2009-10

The Income Tax Officer,
Non Corporate Ward - 2(5),
63-A, Race Course Road,
Coimbatore.

v. Shri A. Jagannathan,
50A, Palanisamy Street,
No.2, Sai Baba Colony,
K.K. Pudur, Coimbatore – 641 038.

(अपीलार्थी/Appellant)

PAN : ADAPJ 9812 G

(Respondent & Cross-objector)

अपीलार्थी की ओर से/Appellant by : Shri N. Madhavan, Addl.CIT

प्रत्यर्थी की ओर से/Respondent by : Shri V. Deepan Raj Krishna, Advocate

सुनवाई की तारीख/Date of Hearing : 04.12.2017

घोषणा की तारीख/Date of Pronouncement : 07.12.2017

आदेश /O R D E R

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -2, Coimbatore, dated 31.10.2016, for the assessment year 2009-10, deleting the penalty levied under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). The assessee has also filed cross-objection in respect of

the same order of the CIT(Appeals). Therefore, we heard both, the appeal and the cross-objection together and disposing of the same by this common order.

2. There was a delay of 7 days in filing this appeal by the Revenue. The Revenue has filed a petition for condonation of delay. We have heard the Ld. D.R. and the Ld.counsel for the assessee. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Shri N. Madhavan, the Ld. Departmental Representative, submitted that the Assessing Officer determined the taxable income at ₹53,61,894/- after adding the capital gains to the extent of ₹51,35,203/-. The Assessing Officer levied penalty under Section 271(1)(c) of the Act on the ground that the fair market value as on 01.04.1981 was claimed without any supporting evidence. According to the Ld. D.R., the fair market value of the property as on 01.04.1981 has to be estimated for the purpose of determining the cost of the asset. Since the assessee has taken the fair market value as on 01.04.1981 without any material on record, according to the Ld. D.R., the Assessing Officer found that the assessee has

furnished inaccurate particulars of his income, therefore, the CIT(Appeals) is not justified in deleting the penalty levied by the Assessing Officer under Section 271(1)(c) of the Act.

4. On the contrary, Shri V. Deepan Raj Krishna, the Ld.counsel for the assessee, submitted that the estimation of fair market value may differ from person to person, therefore, it may not be the same. There was some difference in the estimation made by the assessee and that of the Assessing Officer, therefore, according to the Ld. counsel, that may not be construed that the assessee has furnished inaccurate particulars of his income. According to the Ld. counsel, the value as on 01.04.1981 has to be estimated on the basis of material available on record. Hence, it cannot be said that the assessee has concealed any particulars of income or furnished any inaccurate particulars of income. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly deleted the penalty by placing reliance on the decision of this Bench of the Tribunal in ACIT v. N. Meenakshi (2009) 125 TTJ 0856 and the judgment of Bombay High Court in CIT v. Fortune Hotels and Estates (P) Ltd. (2014) 52 taxmann.com 330.

5. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the issue arises for consideration is estimation of fair market value as on 01.04.1981. The assessee appears to have failed to produce evidences for adoption of fair market value claimed by him for the purpose of determining the fair market value as on 01.04.1981. It is a well settled principles of law that fair market value is nothing but a price that would be agreed between the willing purchaser and willing seller. Therefore, fair market value is not a constant figure. It may differ depending upon various factors such as demand in the market, necessity of seller to sell the property, location / area in which the property is situated, infrastructure facilities available around the location, access to the infrastructure facilities, etc. Therefore, as rightly submitted by the Ld.counsel for the assessee, estimation has to be made as on 01.04.1981 on the basis of material available on record. Estimation may differ from person to person, therefore, this Tribunal is of the considered opinion that merely because there was a difference between the fair market value estimated by the assessee and that of the Assessing Officer, it cannot be said that the assessee has furnished inaccurate particulars of his income. This Tribunal is of

the considered opinion that estimation of fair market value as on 01.04.1981 always remains to be estimation, therefore, on such reasoning, it cannot be said that the assessee has furnished inaccurate particulars of income. Therefore, the CIT(Appeals) has rightly deleted the penalty levied by the Assessing Officer under Section 271(1)(c) of the Act. Hence, this Tribunal does not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

6. The assessee has filed cross-objection only to support the order of the CIT(Appeals). Therefore, the cross-objection becomes infructuous.

7. In the result, both, the appeal and the cross-objection stand dismissed.

Order pronounced on 7th December, 2017 at Chennai.

sd/-

(संजय अरोड़ा)

(Sanjay Arora)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 7th December, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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