

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

I.T.A.No.2235/Mds./2017

(Assessment Year : 2009-10)

Shri D.Prasan Chand,
6, Thambu Naicken
st.,Sowcarpet,
Chennai 600 079.

PAN AAGPP 9190 G

(अपीलार्थी /Appellant)

The Income Tax officer,
Vs. NCR-5(4), Chennai-6.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Mr.K.Balasubramanian,Advocate
प्रत्यर्थी की ओर से/Respondent by : Mr.B.Sagadevan, JCIT, D.R

सुनवाई की तारीख/ Date of hearing : 04.12.2017
घोषणा की तारीख /Date of Pronouncement : 22.01.2018

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)-5, Chennai dated 24.07.2017 pertaining to assessment year 2009-10.

2. The assessee has raised the following grounds for adjudication.

1. Order of re-assessment u/s 143(3)/147 dt.15-3-2016 is illegal void and without jurisdiction in as much as the AO did not pass a separate speaking over to appellant's objection to reopening and to drop it.
- 2.1 Authorities below failed to appreciate that provisions of Sec.50C cannot be invoked to the facts of the appellant's cases in as much the sale agreement was dt.31-7-2008 which was before to the amendment to the above section from 1-10-2009.
- 2.2 CIT (A) erred in confirming the addition on the ground that the agreement of sale was not registered but failed to appreciate that in respect of an unregistered agreement of sale, prior to 1-10-2009, Sec.50C has no application.
- 2.3 He erred in confirming the addition for want of details of advance paid/further payments, while the bank A/c filed before him indicate the dates on which appellant received the consideration i.e., ₹25 lakhs on 4-7-2008 and ₹9,50,000/- on 2-8-2008 and he failed to appreciate that the other 2 remarks by him cannot be a reason for rejecting the ground that Sec.50C itself cannot be invoked in this case.

3. The assessee is an individual. The assessee along with the two others has sold the immovable property measuring 2300 sq.ft. out of total 4,050 sq.ft on 30.10.2008 for a sale consideration of ₹60 lakhs. Out of which the assessee is said to be received ₹34,50,000/- from the purchaser Smt. Prabitha. As per sale deed, the market value of the property was ₹92,70,450/-. Hence, the assessment was reopened and the AO considered the short term capital gains on proportionate market value of sale of assessee's share of land at ₹25,64,689/-. The assessee pleaded before the lower authorities that the said land was purchased by the assessee in the financial year

2007-08 and the same was shown at ₹27.10 lakhs and the said property was sold to Smt. Prabitha for a sale consideration of ₹34,50,000/- and the assessee had received the entire sale consideration of ₹25 lakhs on 04.07.2008 and ₹9.5 lakhs on 02.08.2008 totaling of ₹34,50,000/- through a sale agreement dated 31.07.2008. Further, it was submitted that the said payment of ₹34,50,000/- was received through bank account. The possession was handed over to the power holder and the assessee has no connection either with the agent or with the buyer of the said property. As such, the value of property u/s.50C cannot be brought to tax in the hands of assessee by invoking the provisions of the section 50C of the Act as the assessee has transferred the property earlier to such amendment brought under Sec.50C of the Act.

3.1 The Id. Assessing Officer observed that agreement of sale with Smt. Prabitha by the assessee mentioned that the sale of property to the tune of ₹34,50,000/-, but there is no evidence in the payments having received in the deed. Further, there was no possession of the property handed over to Smt. Prabitha. Since the possession of the

property was not handed over to the seller on the date of agreement, the agreement has not considered for the purpose of computation of capital gains.

3.2 Accordingly, as per the sale deed dated 30.10.2008 the rights of the property was handed over to the seller to Srt. Prabitha W/o. G. Diwakar on 30.10.2008 and hence the short term capital gain is arrived, also by invoking the provisions of Sec,50C of the Act. With these findings, the AO completed the assessment by determining the total income as under:

Total Income a per order 143(1)	₹ 4,00,000/-
Add: Additional STCG as per this order	₹ 21,54,700/-
Total income assessed as per this order	₹ 21,54,700/-

Aggrieved by the order of Id. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A). On appeal, Ld.CIT(A) confirmed the reopening of assessment as well as addition made by the Id. Assessing Officer.

4. Before us, the Id.A.R submitted that the assessee entered into agreement for sale of property on 31.07.2008 and finally entered into

sale deed on 30.10.2008. As per agreement of sale deed, the total sale consideration of the property is ₹60lakhs. Out of ₹60lakhs, the assessee received ₹34,50,000/- from the purchaser Smt.Prabitha. According to Id.A.R, stamp duty valuation was ₹92,70,450/-. Since the agreement was entered on 31.07.2008, amendment to Sec.50C, which came into effect from 01.10.2009, have no relevance. For this purpose, he relied on the judgement of jurisdictional High Court in the case of CIT Vs. R.Sugantha Ravindran reported in (2013) 352 ITR 488(Mad.).

5. On the other hand, Id.D.R relied on the order of lower authorities.

6. I have heard both the parties, perused the material on record carefully gone through the judgement of Madras High Court cited supra by Id.A.R. The agreement of sale deed dated 31.07.2008 with Smt.Prabitha said to be entered by the assessee is an unregistered agreement, which does not contain details of advances paid & further payments to be made. In the agreement, there was no details of handing over of the title and possession of the property. The sale deed dated 31.10.2008 have no reference to the said agreement

dated 31.07.2008. Being so, in my opinion, the assessee has to prove that the agreement dated 31.07.2008 is the agreement, which is actually entered before the sale deed executed and the assessee has to substantiate the sale agreement with reference to the sale deed, thereby to prove the evidence of the agreement. Otherwise, it should be considered as self-serving document. With this observation, I remit this issue in dispute to the file of Id. Assessing Officer for fresh consideration.

7. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced on 22nd January, 2018

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,

Dated the 22nd January, 2018

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 |