

आयकर अपीलीय अधिकरण , ' बी ' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" 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./I.T.A. Nos. 2545 & 2546/Chny/2017

निर्धारण वर्ष/Assessment Years : 2011-12

Shri Kandaswamy Chetty Lakshmanan,
#44, Acharappan Street,
Kothwal Bazaar,
Chennai – 600 001.

Income Tax Officer,
Vs. Non Corporate Ward – 11(5),
2nd Floor, BSNL Building,
#16, Greams Road,
Chennai – 600 006.

[PAN: AAAPL1645E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by

: Shri. Philip George, Advocate

Revenue by

: Mrs. Ruby George, CIT

सुनवाईकीतारीख/Date of Hearing

: 30.01.2018

घोषणाकीतारीख/Date of Pronouncement

: 25.04.2018

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed these appeals against the orders of Commissioner of Income Tax – 13, Chennai in ITA No. 68/CIT(A)-13/2011-12 dated 11.07.2017 against re-assessment order passed u/s. 143(3) r.w. 147 for ay 2011-12 and ITA No. 188/CIT(A)-13/2011-12 dated 05.09.2017 against the order of penalty levied u/s. 271(1)(c) for ay 2011-12, respectively.

ITA No. 2545/Chny/2017

2. Shri Kandaswamy Chetty Lakshmanan, the assessee, along with two others sold three units of property on 21.10.2010 for Rs. 51 lakhs and his share was Rs. 17 lakhs. The capital gain arising out of these transactions was assessed to tax u/s. 143(3) and the assessment was completed on 23.12.2013. Subsequently, it came to the notice of the Assessing Officer that the guideline value of the property was re-fixed by the Sub-Registrar u/s. 47A of the Registration Act by which the sale consideration was worked out at Rs. 2,17,08,500/-. Applying the provisions of section 50C, the assessee's share of capital gains worked out at Rs. 65,14,966/-, for this reason the AO re-opened the assessment u/s. 147. After due consideration completed the re-assessment adopting the assessee's share at Rs. 72,36,166/-, from which he reduced the cost of acquisition at Rs. 7,21,200/- and arrived the long term capital gains at Rs. 65,14,966/-.

3. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal on all these issues. Aggrieved, the assessee filed this appeal in ITA No. 2545/2017 challenging the jurisdiction for re-opening the assessment u/s. 147, the value adopted for the property at 23 to 25, 4th Lane, Beach Road, Muthialpet, George Tow, Chennai, the value as on 01.04.1981 of the property, the computation of the long term capital gains etc.

4. The AR submitted that before completion of assessment u/s. 143(3), all facts relevant to the computation of long term capital gains has been fully and truly disclosed and hence there is no reason to belief that income had escaped assessment and hence the notice issued u/s. 148 is invalid. With regard to the application of section 50C valuation and computation, the AR submitted that this tribunal in ITA No. 2277/Mds/2015 dated 16.09.2016 in the co-owners case i.e., in the case of Shri K. Ramaswamy Shetty, on similar grounds set aside the order passed by the Ld. CIT(A) and remitted the issues to the file of the Assessing Officer to decide the issues afresh after allowing opportunity of being heard. Per contra, the DR supported the orders of the lower authorities.

4. We have considered the rival submissions and gone through the relevant materials. While working out the long term capital gains during the assessment proceedings u/s. 143(3), the AO had no information about the valuation of property made u/s. 47A of the Registration Act. On receipt of information of Stamp Valuation of the property u/s. 47A and finding that the value arrived by them, i.e., the value u/s. 50C was different, then the value of sale consideration, the assessment was re-opened u/s. 147 and hence the plea made by the assessee on the validity of re-opening of the assessment is held as untenable. On the above facts and circumstances, it is held that the

re-opening of assessment is validly done. Thus, the assessee's grounds relating to re-opening of the assessment u/s. 147 is dismissed. With regard to the computation of long term capital gains, the relevant portion from the order of the ITAT in the case of Shri K. Ramaswamy, supra, is extracted as under:

"2. Brief facts of the case are that the assessee is an individual and engaged in the business of trading of pulses. He filed his return of income on 30.09.2011 admitting total income of Rs. 3,65,060/-. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 [Act" in short] on 27.12.2011. The case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued on 03.08.2012. In response thereto, the assessee filed details for sale of immovable property and other documents as called for. The Assessing Officer has noticed that as per the AIR information, the assessee has sold immovable property to the tune of Rs. 51,00,000/-. On perusal of the registered sale deed furnished by the Sub-Registered office, Chennai, the Guideline Value of the property was re-fixed by the Sub Registrar under section 47(A) of the Registration Act. Hence, section 50C of the Income Tax Act is attracted in the properties sold during the F.Y. 2010-11 and accordingly the value adopted as per 47(A) of the Registration Act and the details of the immovable properties are as under:-

1. Unit-I: Old Municipal Door No.10, part of Municipal Door No.9/il, New No.23, Fourth Lane Beach Road, Muthialpet, George Town Chennai, measuring 1100 sq. feet.

Unit-II: Old Municipal Door. No.1 /11 and now New Municipal Door No. 9/11, New No.24, Fourth lane Beach Road, Muthialpet, George Town, Chennai, measuring 684 Sq. Feet

Unit III: Old Municipal Door No.2/11, New Municipal Door No. 9/11, New No.25, Fourth Lane Beach Road, measuring 1142 sq. feet.

Thus, the assessee's share in the above mentioned unit was 1/3d of 2926 sq.ft. comes to .72,36,166/-

2. In the Survey No.RS.3748/1 at Dorr No.35,Fourth Lane, Muthialpet George Town, Chennai -600 001 .The total comes to 784 sq. ft.

3. In the Survey No. RS. 3866 at New Door No. 11, Fourth Lane, Muthialpet George Town, Chennai - 600 001 .The total comes to 791 sq. ft.

For the above said properties vide Sl.No.2 & 3 the assessee is having 100% share in the sale consideration made during the F. Y. 20010-11.

3. In the above Unit-I, Unit-II, and Unit-III, the full value of the sale consideration was taken at . 2,17,08,500/- (51,00,000+1,65,78,500+30000) in 3 Units since the above assessee is having 113rd Share of .2,17,08500/- Vide Serial No.1 as Rs. 72,36,166/- (Serial No.2 as .23,21,080/- and Serial No.3 as Rs. 18,15,103/- Considering the above facts, the total Long Term Capital gains was worked out at Rs. 1,06,51,033/- and assessed the total income of the assessee at Rs. 1,10,16,091/-.

4. The assessee carried the matter in appeal before the Id. CIT(A) by challenging the application of section 50C of the Act and valuation of fair market value as on 01.04.1981. After considering the submissions of the assessee, the Ld. CIT(A) dismissed the appeal filed by the assessee.

On being aggrieved, the assessee is in appeal before the Tribunal. By of sale deed and copy of letter from the Sub-Registrar, Chennai, the Ld. Counsel for the assessee has contended that the value adopted by the Stamp Valuation Authority in pursuant to the appeal filed under section 47A of Indian Stamp Act, 1899 was simply ignored and prayed that the final value adopted by the Stamp Valuation Authority under section 47A of Indian Stamp Act should be the full value of consideration received as per section 50C of the Act for the purpose of computation of capital gains With regard to determination of fair market value as on.Oi.04.1981, though the Joint Sub Registrar,. Chennai has furnished The value of the property as. On 01.04.1981 at Rs. 2,50,000/- as well as Rs. 6,00,000/-, the contention, of the Ld. Counsel for the assessee is that when the property on the same road was sold at Rs. 6,00,000/-, the Assessing Officer should have adopted the cost of acquisition as on 01 04 1981 at 6,00,000/-

6. On the other hand, the Id DR has supported the orders of authorities below.

7. We have heard both sides, perused the materials on.. record and gone through the orders of authorities below. The tale consideration of the property sold by the assessee was Rs. 51,00,000/-. The value adopted by the Joint Sub-Registrar Was Rs. 1,65,78,5000/-. On appeal against the above valuation under section 47A of the Indian Stamp Act, 1899, the District Revenue Officer has fixed the value of the property at Rs. 1,08,76,189/- and as per the above directions, the Joint Sub-Registrar has collected the deficit registration fee of .57,560I-. Therefore, the value of the property should be Rs. 1,08,76,000/- [rounded off]. By filing copy of the sale deed, the Ld. Counsel for the assessee has submitted that the assessee alone has not enjoyed the entire sale consideration of the property and the assessee was

holding only 1/3 share of the said property. We find force in the argument advanced by the Ld. Counsel for the assessee Accordingly, we direct the Assessing Officer to examine the sale deed of the property and work out the capital gains afresh.

8. With regard to determination of fair market value as on 01.04.1981 for the properties at SI. No. 1 to 3 in the assessment order, it is a fact that the Joint Sub-Registrar, Chennai North vide his letter dated 03.02.2014 furnished the Assessing Officer the value of the property as on 01.04.1981 at Rs. 21,50,000/- as well as Rs. 6,00,000/-. As contended by the Id Counsel for the assessee, the Assessing Officer is directed to verify the actual cost of the property and if there is any instance of property sold at Rs. 6,00,000/-, the same should be adopted for cost of acquisition as on. 01.04.1981 for the above said properties. Accordingly, on both counts, we set aside the order passed by the Ld. CIT(A) and remit the issues to the file of the Assessing Officer to examine and decide the issues afresh after allowing opportunity of hearing to the assessee."

Since, this tribunal on due consideration of the sale deed has decided the issue above in one of co-owners case following it, we set aside the order passed by the Ld. CIT(A) and remit all the issues to the file of the Assessing Officer to examine and decide them afresh, after allowing due opportunity to the assessee in accordance with the above decision. The corresponding grounds of the assessee's are treated as allowed for statistical purposes.

5. In the result, the assessee's appeal in ITA No. 2545/2017 is partly allowed.

ITA 2546/Chny/2017:

6. Shri. K. Lakshmanan, the assessee, admitted income for assessment year 2011-12 from business as a wholesale merchant, income from house property and interest income. He sold a property, but has not admitted the

transaction of sale of property in the return as income. During the course of assessment, the Assessing Officer found that he and his two brothers sold the property for Rs. 51 lakhs and his share was Rs. 17 lakhs. When the AO proposed to assess the capital gains, the assessee claimed deduction u/s. 54 on the investments made in residential property at Linghi Chetty Street, Chennai. The Assessing Officer found that the property sold was a godown, a commercial property and hence the assessee was not eligible for claim of deduction u/s. 54. Then the assessee claimed deduction u/s. 54F. Since, the assessee owned more than one residential house property and has been admitting income from them, the AO did not grant deduction u/s. 54F also. He completed the assessment, computing the long term capital gains at Rs. 12,37,690/- and added to the admitted income and initiated penalty proceedings on the concealment of income from sale of property. After the ITAT confirming the assessment, the Assessing Officer initiated penalty proceedings u/s. 271(1)(c). After considering the assessee's reply etc levied a minimum penalty at 100% of tax on the income sought to be evaded. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal. Aggrieved, the assessee filed this appeal against the order of the CIT(A).

7. The AR submitted that the assessee was under bonafide belief that exemption u/s.s 54/54F is available towards sale of property, but

inadvertently omitted to mention the capital gains on sale of property and the claim of deduction in the return. The assessee had furnished complete, proper and valid explanation before the officer for not disclosing the capital gains. There is no wilful default or negligence by the part of the assessee in not disclosing the income and hence the findings recorded by the CIT(A) is wrong. The CIT(A) should have appreciated that the assessment proceedings and penalty proceedings are different and the penalty cannot be levied merely because the addition was upheld by the appellant authorities. Relying on the ratio of the Madras High Court in the case of CIT vs Gem Granites, TCA No 504 of 2009 dated 12.11.2013 86 CCH 160 Chen HC , the AR sought to relief.

8. Per contra, the DR submitted that the assessee has not disclosed the sale of property at all. Inviting our attention to the order of the CIT(A), the DR submitted that the assessee's case was taken up for scrutiny and the capital gains was brought to tax. If the scrutiny was not taken, the long term capital gains would have remained untaxed on account of the assessee having concealed particulars are thereby concealed the income. Since, the concealment and furnishing of inaccurate particulars and apparent and obvious, the case laws relied on by the assessee and the facts of the assessee's case are clearly distinguishable, as they have no direct implication on assessee's case. Even if the assessee was to make a claim of exemption or deduction, he support them with evidence. The assessee depending on the

situation kept on changing his stand on the eligibility of claim of exemption u/s. 54 or 54F to suit his convenience but without evidence or material. Therefore, the CIT(A) has rightly confirmed the action of the Assessing Officer in levying the penalty, which may be sustained.

9. We heard the rival submissions and gone through the relevant materials. The fact remains that the assessee admitted income from business, house property and interest income, but, he has not disclosed the sale of property in the return of income at all. In fact, based upon the AIR report, the case was selected for scrutiny by CASS to examine the taxability of sale of property. Thus, if there was no Annual Information Report gathered by the Revenue and that was not linked to the CASS, the fact that assessee sold the property, realised the gains would not have come to the notice of the Revenue at all. The Revenue having gathered all these information and on due processing detected this income. When the AO proposed to assess this income, first the assessee claimed deduction u/s. 54, when such claim was found untenable, the assessee sought alternative claim u/s. 54F, which was also found untenable. From the above facts and circumstances, it is clear that the assessee has not disclosed the sale of property and its consequential gains in his return at all. On such facts, the case clearly falls within the scope of section 271(1)(c) and hence, the penalty levied by the AO u/s. 271(1)(c)

and sustained by the CIT(A) does not require any interference. The assessee's appeal is dismissed.

10. In the result, assessee's appeal in ITA No. 2545/2017 is partly allowed and the appeal in ITA No. 2546/2017 is dismissed.

Order pronounced on Wednesday, the 25th April, 2018 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 25th April, 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त) अपील(/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |