

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2783/Chny/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Smt. Sivasankaran Uma,
No.261, Bussy Street,
Puducherry – 605 001.

v. The Deputy Commissioner of
Income Tax,
Puducherry Circle,
Puducherry.

PAN : AAQPU 7482 C
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri T. Vasudevan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri R. Clement Ramesh Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 16.08.2018

घोषणा की तारीख/Date of Pronouncement : 12.09.2018

आदेश / O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Puducherry, dated 14.09.2017 and pertains to assessment year 2013-14.

2. The only issue arises for consideration is determination of fair market value under Section 50C of the Income-tax Act, 1961 (in short 'the Act') for the purpose of computing capital gain.

3. Shri T. Vasudevan, the Ld.counsel for the assessee, submitted that during the year under consideration, the assessee sold 4622 sq.ft. of land at Kulathu Mettu Street, Pondicherry Revenue Village. According to the Ld. counsel, the assessee has taken the sale consideration at ₹1,15,50,000/- for computation of capital gain. However, the Assessing Officer has taken the sale consideration as ₹2,19,57,000/- on the basis of guideline value for the purpose of levying capital gain tax. According to the Ld. counsel, the assessee has also claimed improvement cost to the extent of ₹34,96,567/-. The Ld.counsel further submitted that the assessee has also sold another land at Reddiyarpalayam Revenue Village for a sale consideration of ₹26,72,000/-. The assessee has also claimed improvement cost to the extent of ₹14,22,524/-. The assessee has obtained a Registered Valuer's report. According to the Ld. counsel, when the Registered Valuer was in the process of valuing the property, the Assessing Officer completed the assessment proceeding without referring the matter to the Departmental Valuation Officer.

4. Referring to Section 50C(2) of the Act, the Ld.counsel for the assessee submitted that when the assessee claimed the market value of the property is less than the guideline value, the Assessing Officer has no option except to refer the matter to the Departmental Valuation Officer. A similar claim of the assessee was allowed by Madras High Court in S.

Mathuraja v. CIT (2014) 369 ITR 483. Therefore, according to the Ld. counsel, the CIT(Appeals) is not justified when there is a mandatory requirement for referring to matter to the Departmental Valuation Officer.

5. On the contrary, Shri R. Clement Ramesh Kumar, the Ld. Departmental Representative, submitted that the assessee has not challenged the market value / guideline value taken by the Assessing Officer in the assessment proceeding. Since the objection was not made by the assessee, according to the Ld. D.R., it is not correct to say that the matter needs to be referred to the Departmental Valuation Officer.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The very fact that the assessee is challenging the adoption of guideline value as market value by the Assessing Officer, shows that the assessee claims that market value is less than the guideline value. Moreover, Section 50C of the Act is a deeming provision for the purpose of levying tax on the deemed capital gain. It is also a well settled principles of law that guideline value is only to guide the Sub-Registrar to find out the market value for the purpose of levying tax. Therefore, guideline value cannot be equated to market value.

7. There may be some instances where the guideline value would be equal to market value. However, in majority cases, guideline value

may not represent the market value. The market value is nothing but a price that may be agreed between the willing purchaser and seller. Market value is not a constant figure. It may vary on the facts and circumstances of the case. The market value would depend upon various factors, such as size of the land, location of the land, availability of infrastructure around the land, access to the property, potentiality for future development, availability of public transport system, educational institutions, hospital, etc. These factors need to be taken into consideration. Therefore, this Tribunal is of the considered opinion that when the assessee claims that the market value of the property is less than guideline value, it is obligatory on the part of the Assessing Officer to refer the matter to the Departmental Valuation Officer to find out the market value. Since such an exercise was not done by the Assessing Officer, this needs to be reconsidered. Accordingly, orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall refer the matter to the Departmental Valuation Officer to find out the market value of the property on the date of sale and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 12th September, 2018 at
Chennai.

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

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 12th September, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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