

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Abraham P. George, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I T.A. No. 1984/Chny/2018
निर्धारण वर्ष/Assessment Year:2012-13

The Income Tax Officer,
Non Corporate Ward 13(4),
Chennai.

Shri P. Ganesh Kumar,
Vs. Old. No. 17, New No. 31, 3rd Street,
Santhi Nagar, Chennai 600 088.

[PAN:ARNPG6761G]

(Appellant)

(Respondent)

अपीलार्थी की ओर से / Appellant by : Shri AR.V. Sreenivasan, JCIT
प्रत्यर्थी की ओर से/Respondent by : None
सुनवाई की तारीख/ Date of hearing : 30.10.2018
घोषणा की तारीख /Date of Pronouncement : 31.10.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) 14, Chennai dated 26.03.2018 relevant to the assessment year 2012-13. In this appeal, besides challenging condonation of delay, the Revenue also challenged that the Id. CIT(A) has erred in deleting the addition of long term capital gains.

2. The appeal filed by the Revenue is delayed by one day, for which, the Revenue has filed petition for condonation of the delay, to which; the Id. Counsel for the assessee has not raised any serious objection.

Consequently, the delay of one day in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee filed the return of income belatedly on 16.10.2013 admitting a total income of ₹.1,67,490/-. The assessee along with 63 others sold the property at Door No. 71, LB Road, Thiruvanmiyur, Chennai for a total consideration of ₹.32 crores. The guideline value for the property as mentioned in the sale deed was ₹.100.04 crores. As the assessee has not admitted the 50C value and there was escapement of income, notice under section 148 of the Act was issued.

3.1 The Assessing Officer observed that as per the provisions of section 50C of the Act, when the admitted sale consideration is less than the guideline value of the property adopted by the Stamp Value Authority, guideline value of the property is to be adopted as the sale consideration for the purpose of computing long term capital gain. By adopting the 50C guideline value as sale consideration for working out the long term capital gain and the Assessing Officer determined the long term capital gain of both the assessee as well as his minor children at ₹.4,50,87,696/- and added to the income of the assessee.

4. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee and facts of the case and by

accepting the long term capital gains declared by the assessee in the return of income, the Id. CIT(A) deleted the addition.

5. Aggrieved, the Revenue is in appeal before the Tribunal. By referring to the grounds of appeal, the Id. DR submitted that the Id. CIT(A) wrongly assumed the sale consideration returned by the assessee at ₹.52.66 crores, whereas, it was only ₹.32 crores as mentioned in the sale deed dated 07.10.2011 and therefore, wrongly concluded that the valuation adopted by the DVO of ₹.48.91 crores was less than the sale consideration returned by the assessee. Since the DVO value of ₹.48.91 crores is more than the sale consideration of ₹.32 crores shown in the sale deed, the Id. DR has pleaded that the order of the Id. CIT(A) should be set aside and directed the Assessing Officer to adopt the DVO value and sale consideration and re-compute the long term capital gain. Despite service of notice, RPAD on record, none appeared on behalf of the assessee. Hence, we proceed to decide the appeal on merits after hearing the Id. DR.

6. We have heard the Id. DR, perused the materials available on record and gone through the orders of authorities below. The aforesaid land was sold by the descendants/ legal heirs of Late Dr. T. Kuppusamy Naicker by a sale deed dated 07.10.2011 to M/s Pee Dee Land Holding Pvt. Ltd. The total sale consideration as per the sale deed was ₹.52.66 crores. After claiming a deduction of ₹. 20.78 crores for settlement of encroachers, advocates,

agents etc., totalling 64 persons, the land owner admitted to have received a net sale consideration of ₹. 31.88 crores and offered Long Term Capital Gain as per their individual share in the said property. In the assessment order, the Assessing officer adopted guideline value of the land at ₹.100.04 crores and assessed Long Term Capital Gain under section 50C of the Act. Although the property was referred by the Assessing Officer to the valuation cell, the valuation report was awaited at the time of completion of assessment. Subsequent to the assessment, the District Valuation Officer (DVO) forwarded the valuation report dated 02.11.2017 estimating the Fair Market Value (FMV) on the date of sale at ₹. 48.99 Crores. The DVO's report was forwarded to the Assessing Officer for comments. In his remand report, the Addl. CIT has concluded to adopt the DVO value as fair market value instead of adopting guideline value fixed by the Assessing Officer under section 50C of the Act for determining the long term capital gains.

7. In the assessment order, the Assessing Officer adopted guideline value of the property at ₹.100.04 crores and assessed the long term capital gain under section 50C of the Act pending receipt of DVO value. During the course of remand proceedings, the assessee has raised a specific ground that the Assessing Officer should take the value fixed by the Valuation Cell of IT Department and rework the long term capital gain of the co-owners. However, we find that the Id. CIT(A) has erroneously taken the sale

consideration at ₹.52.66 crores and wrongly concluded that the valuation adopted by the DVO of ₹.48.99 cores was less than the sale consideration returned by the assessee and accordingly directed to accept the returned income. Since the DVO value of ₹.48.99 crores is more than the sale consideration of ₹.32 crores, we set aside the order of the Id. CIT(A) and direct the Assessing Officer to adopt the DVO value of ₹.48.99 crores as sale consideration for the purpose of computation of long term capital gain. Thus, the ground raised by the Revenue is allowed.

8. In the grounds of appeal, the Revenue has challenged with regard to the condonation of delay in filing the appeal by the assessee of 26 days without passing a speaking order. However, during the course of hearing, the Id. DR has not advanced any argument on this issue and accordingly, the ground raised by the Revenue is dismissed as not pressed.

9. In the result, the appeal filed by the Revenue is partly allowed.

Order pronounced on the 31st October, 2018 at Chennai.

Sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 31.10.2018

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.