आयकर अपीलीय अधिकरण ,'सी' न्यायपीठ,चेन्नई

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

श्री एन.आर.एस .गणेशन, न्यायिक सदस्य एवं
श्री एस जयरामन, लेखा सदस्य के समक्ष

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

आयकर अपील सं/.I.T.A. No. 839/Chny/2018
निर्धारण वर्ष/ Assessment year: 2011-12

Income Tax Officer, Non-Corporate Ward -10(4), 6th Floor, Wanarpathy Block, 121, Mahatma Gandhi Road, Chennai – 600 034.	Vs.	Shri Sreenivasan Saravanan, 4/205 E Type, 38th Street, SIDCO Nagar, Villivakkam, Chennai – 600 049. **[PAN: BIGPS 0543D]**

आयकर अपील सं/.I.T.A. No. 840/Chny/2018
निर्धारण वर्ष/ Assessment year: 2011-12

Income Tax Officer, Non-Corporate Ward -10(4), 6th Floor, Wanarpathy Block, 121, Mahatma Gandhi Road, Chennai – 600 034.	Vs.	Shri. Sreenivasan Selvakumar, 4/205 E Type, 38th Street, SIDCO Nagar, Villivakkam, Chennai – 600 049. **[PAN: BIGPS 0481J]**
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

Revenue by	:	Shri. Clement Ramesh Kumar, Addl. CIT
Assessee by	:	Ms. V. Padmaja, CA

सुनवाईकीतारीख/Date of Hearing	:	24.09.2018
घोषणाकीतारीख/Date of Pronouncement	:	30.11.2018

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The above assessees', co-owners, filed these appeals against the orders of the Commissioner of Income Tax (Appeals)-12, Chennai in ITA Nos. 130 & 131/CIT(A)-12/16-17 dated 02.01.2018 for assessment year 2011-12.

2. S/Shri. S. Saravanan & S. Selvakumar, brothers, jointly purchased a property of 13,309 sq.ft. at Egmore, Chennai on 05.04.2010. Out of which, they sold 10,086.04 sq.ft. on 18.10.2010 to four individuals for Rs.3,24,00,000/- and admitted the income from them which was assessed u/s. 143 in their respective hands. Subsequently, the AO reopened their assessments, as the value adopted by the Sub-Registrar was at Rs. 4,22,05,938/-, to assess the difference of Rs. 98,05,938/- in the value of sale consideration u/s. 50C. After giving adequate opportunity to the assessees, the AO adopted 50% of sale consideration determined by the Sub-Registrar as sale consideration in each of their hands. While computing the capital gains, since the assessees' have sold 10,086.04 sq.ft., only out of 13,309 sq.ft., the A O adopted proportionate cost of acquisition to that

extent and thus arrived the quantum of capital gain in the respective reassessments.

3. Aggrieved, both of the assessees' filed appeals before the CIT(A). They have submitted before the Ld. CIT(A) that the AO erred in holding that they have not transferred/sold the balance area of 3,223 sq.ft., which is nothing but common land/pathway which they have transferred without any consideration as per rectification deeds, a copy of which was also furnished to the Ld. CIT(A). After considering the material and submissions of the assessees, the Ld. CIT(A) held that giving right to use common parking is like creating an obligation in the nature of a Trust which would preclude the owner from transferring the interest to property and hence directed the AO to adopt the area as returned by the assessees.

3.1 With regard to value adopted by the AO, the Ld. CIT(A) obtained copies of rectification deeds from the assessee and held , inter alia, that the assessee has adopted value at Rs.81,00,000/- for the four pieces of land as follows:

	Area	Rate
Doc No.2181/2010	2612.57 sq.ft.	Rs.3100.39 per sq.ft.
2780/2010	2522.61 sq.ff.	Rs.3210.96 per sq.ft.

2179/2010	2522.61 sq.tt.	Rs.3210.96 per sq.ft.
2182/2010	2428.25	Rs.3335.73 per sq.ft

The Assessing Officer accepted the above values, except in the case of Doc.No.2179/2010 on which he adopted valuation made by the SDC (Special Deputy Collector) at Rs.5937.33 per sq.ft. This has resulted in estimating the sale consideration for this document at Rs.1,49,77,570/- instead of Rs.81,00,000/- adopted by the assessees. All four pieces of land which are similarly located and registered on the same day can only have one value. Assessing Officer has wrongly adopted Rs.5937.33 per sq.ft for Doc. No.2179/2010 whereas, he has accepted the value of Rs.3100/-, Rs.3210, and Rs,3210/- for other three pieces of land. The AO has wrongly taken the noting in rectification deed by Sub-Registrar in respect of Doc. No.2170/2010. As per Sale document of 18.10.2010, the consideration is Rs.81,00,000/- each , stamp duty has been paid on the same and the value arrived at was correctly disclosed by the assessees. The rectification deeds are done on 31.01.2012 only to include the right to use common pathway. At that time, the values were revised and that value was adopted by Sub Registrar, though there isno actual sales. Against the charge of fresh stamp duty, the purchasers of the property disputed the same and finally paid a much reduced amount under Samadhan Scheme under

stamp duty Act. In any case, this does not have any impact on the sale consideration and value at the time of sale made by the assessee in 2010. The stamp duty paid by purchasers on 18-01-2012 is under Samadhan Scheme and the additional stamp duty has no bearing on the property sold initially. The right to common pathway has been given by way of rectification deed, because it was omitted to be mentioned in the original deed and no consideration has been received. Therefore, the Ld CIT(A) directed the Assessing Officer to adopt the rates as per the original deed.

4. Aggrieved, the Revenue filed these appeals against the orders of the Ld CIT(A) with following grounds:

> *"1. The order of the learned CIT(A) is contrary to law and facts of the case.*
> *2.1 The learned CIT(A) is not justified in deleting the addition of 81,12,508/- on account of additional capital gain calculated as per provisions of section 50C.*
> *2.2 The learned CIT(A) ought to have seen that the assessee has sold the plots for total consideration of Rs.3,24,00,000/- as per sale deed whereas the Sub-Registrar, Periamet has assessed the value of the plot at Rs.4,22,05,938/- and collected the stamp duty on the same.*
> *2.3 The learned CIT(A) failed to appreciate the fact that on appeal before the Special Deputy Collector, the value of the four plots was fixed at Rs. 4,22,05,938/- by the Special Deputy Collector and hence the Assessing Officer right in adopting the same as sale consideration for the purpose of calculation of the Short Term Capital Gains.*

2.4 The observation of the learned CIT(A) in Para 7.1 that the Assessing Officer has wrongly taken the value of one of the plot at Rs.5937/- per square whereas the value of other plots are taken at 3210/- per square feet is not correct as the valuation was done by the State Revenue Authorities which may differ according to location and nature of property and its road access and width of the road, etc. The Assessing Officer has adopted the value arrived at by the State Revenue Authorities only.

3.1 The learned CIT(A) ought to have seen that the assessee has given the common path to the plot purchasers without receiving any consideration and hence the cost of the common path cannot be allowed to the assessee for computation of the capital gains.

3.2 The learned CIT(A) failed to appreciate that the common path has not been gifted to the Government and it has been used only as the private land by the owners of the four plots and hence the cost of the same cannot be reduced from the cost of the acquisition of land for purpose of calculation of the capital gains.

4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT (A) may be set aside and that of the Assessing Officer restored."

5. The Ld DR submitted that the assessees', S/Shri. S. Saravanan & S. Selvakumar, brothers, jointly purchased a property of 13,309 sq.ft. at Egmore, Chennai on 05.04.2010. Out of which, they sold 10,086.04 sq.ft. on 18.10.2010 to four individuals for Rs.3,24,00,000/-. On the same day, by a GPA they have transferred the balance 3225 sqft land, claimed by the assesses as common path area, without any consideration. The purchasers by rectification deeds added the so called common path area in their deed with the registration department in 2012 & 2013. At that time, the values were revised by

the Sub Registrar, Periamet. Against the charge of fresh stamp duty, the purchasers of the property disputed and contested the valuation demanded as per section 47A of the Indian Stamps Act and finally paid a much reduced amount under the Samadhan Scheme under stamp duty Act. While making the assessments, the AO assessed the Value based on one of the rectification deeds. The assesssee filed copies of all the rectification deeds before the Ld CIT(A) only and the Ld CIT(A) without forwarding those copies and seeking the AO's version on them has passed the impugned appeals. The Ld DR further submitted that he has collected those copies from the office of the Ld CIT(A) and when he analysed them, he has found that the value of the remaining 3 plots have not been considered either by the AO nor by the Ld CIT(A). Hence, the Ld DR pleaded that various facts and circumstances associated with the issues have not been properly considered and hence he pleaded that these assessments may be remitted back for a fresh consideration.

6. Per contra, the Ld AR relied on the orders of the Ld CIT(A). It is submitted that the impugned property was purchased by the assessees' father, who passed away without registering the same. So, the family had some bad sentiments about it, they also required immediate funds and thus wanted to sell immediately. The land was in

irregular shape and hence they could not find a buyer, hence sold to 4 different persons after splitting into 4 pieces and by laying a common path of 3223 sq ft., sale was made on 18.10.2010 and the value arrived at was correctly disclosed in the assessments. Subsequently, the purchasers have gone for rectification deeds before the registration department to include the right to common pathway. At that time, the values were revised and that value was adopted by the sub registrar, though there is no actual sales. Against the charge of fresh Stamp Duty, the purchasers disputed the same and finally paid a much reduced amount under Samadhan Scheme. This additional demands was raised and settled after 17 months from the date of registration to which the assessees' are not even a party. It is submitted that , for argument sake, even if the valuation made by the Registering authority needs to be considered for assessments , then the value on which date , ie the date of registration of sale or the date on which the subsequent events had happened , should be adopted and how come assessees could be held liable for subsequent events .In any case, this does not have any impact on the sale consideration and value at the time of sale by them in 2010. Further, it was submitted that the learned AO has erred by giving deductions towards proportionate cost of purchase (10086.04 sq. ft out of 13309 sq. ft.) treating the balance common path as unsold and held by the

assessees. Whereas in practice, if the common path is earmarked it cannot be sold. Since the appellant could not find a buyer for the entire property due to irregular shape. Common path is made only to find a buyer and then land is divided and sold. As per the Tamil Nadu town and country planning Act, any effect of the reservation of common pathway is that the assessee while losing his exclusive right as a legal owner, thereby restricting the rights of owner for selling or transferring his interest in it. Further, the effect of earmarking the common pathway resulted in creating an obligation in the nature of trust and may preclude the assessees from transferring or selling their interest in it. The Learned AO had not brought any material on record to support his finding that the ownership of the common pathway is held by the assessees. The Learned CIT(A) appreciated and understood our situation that, to sell the property and to get a buyer only we have made common path and we have not received any additional consideration on filing rectification deed to include the Common Path. So, it is pleaded that the orders of the Ld CIT(A) be sustained.

7. We heard the rival submissions and gone through relevant material. From the above facts and circumstances, it is clear that the same day on which the assessees have sold 10,086.04 sq.ft. land to

four individuals, they have transferred the balance 3225 sqft land by a GPA without any consideration. The nature and scope of this transactions and its ramifications have not been examined. The assesssees filed copies of all the rectification deeds before the Ld CIT(A) only and the Ld CIT(A) without forwarding those copies and seeking the AO's version has passed the impugned appeals. The Ld DR further submitted that when he analysed them, he has found that the value of the remaining 3 plots have not been considered either by the AO nor by the Ld CIT(A). Thus, the facts and circumstances of the cases have not been properly appreciated. Further, the assessee's plea that assuming, for argument sake, that the valuation made by the Registering authority needs to be considered for assessments then the value on which date, ie the date of registration of sale or the date on which the subsequent events had happened etc needs to considered . In the facts and circumstances of these cases, we deem it fit to remit the issues back to the AO for fresh examination, denovo. The assessee shall lay relevant materials in support of its contention before the AO and comply with the requirements of the AO in accordance with law. The AO is free to conduct appropriate enquiry as deemed fit, but he shall furnish adequate opportunity to the assesssee on the material etc to be used against it and decide the matter in accordance with law.

8. In the result, the above Revenue's appeals are treated as allowed for statistical purposes.

Order pronounced on Friday, the 30th day of November, 2018 at Chennai.

Sd/-	**Sd/-**
(एन.आर.एस .गणेशन)	**(एसजयरामन)**
(N.R.S. GANESAN)	**(S. JAYARAMAN)**
न्यायिकसदस्य/Judicial Member	**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated: 30th November, 2018
JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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