

आयकर अपीलीय अधिकरण , 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1282/Chny/2018

निर्धारण वर्ष/Assessment Year : 2012-13

Shri Shashabindu Das,
New No. 222, Old No. 867,
Flat No. 2A, K.G.S. Vrudhi,
Poonamalle High Road,
Kilpauk,
Chennai – 600 010.

The Deputy Commissioner of Income
Tax,
Non Corporate Circle 10(1),
New Block,
Chennai – 600 034.

[PAN: AASPS 4341L]

आयकर अपील सं./I.T.A. No. 1284/Chny/2018

निर्धारण वर्ष/Assessment Year : 2012-13

Shri Bhagawan Das Dhananjaya Das,
New No. 222, Old No. 867,
Flat No. 2A, K.G.S. Vrudhi,
Poonamalle High Road,
Kilpauk,
Chennai – 600 010.

Vs. The Deputy Commissioner of Income
Tax,
Non Corporate Circle 10(1),
New Block,
Chennai – 600 034.

[PAN: AAFPD 4477R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by

: Shri. D. Anand, Advocate

Revenue by

: Shri. |AR V Sreenivasan, JCIT

सुनवाईकीतारीख/Date of Hearing

: 29.11.2018

घोषणाकीतारीख/Date of Pronouncement

: 29.11.2018

आदेश/ ORDER**PER S. JAYARAMAN, ACCOUNTANT MEMBER :**

The assesseees', co-owners, filed the above appeals against the orders of the Commissioner of Income Tax (Appeals)-12, Chennai in ITA Nos. 80 & 77/CIT(A)-12/15-16 dated 20.02.2018 for assessment year 2012-13.

2. Shri. Shashabindu Das and Shri Bhagwan Das Dhananjaya Das, the co-owners of a property , admitted 4.14% of the total consideration received on sale of property as their respective shares in their respective returns. Against such amount, each of them claimed 4.14% of total expenses on Rs. 10,81,70,554/- in connection with the transfer of the property. Further, they claimed the cost of acquisition of the property as on 01.04.1981 at certain values based on a valuer's report. At the time of making the respective assessments, the Assessing Officer held that the expenditures claimed by each of them were not wholly and exclusively incurred in connection with transfer and hence he did not allowed the claim. Further, based on the rate determined by the Sub-Registrar for the guide line value, the A O determined the cost of acquisition of the property as on 01.04.1981. Aggrieved, the respective assesseees' filed appeals before the CIT(A).

The CIT(A) confirmed them. Aggrieved, the assessee's filed these appeals. Since, the subject matter of appeals are common, both of them are heard together and being disposed together.

3. The Ld. AR submitted that Mr. K. Seetharama Rao, the founder of the "Dasaprakash" group of hotels had, inter alia, acquired the properties at Poonamallee High Road and was running "Hotel Dasaprakash" in them. Vide his last Will dated 7th January 1968, he had bequeathed the said properties absolutely to his sons. However, since there existed certain liabilities, the properties were vested in certain Trustees, who were entrusted with the job of conducting the business, clear the liabilities and then distribute the property among the children. Shri K. Seetharama Rao died on 15th January 1968. The Will was duly probated on 18th March 1969.

3.1 Certain disputes arose among the family members and the matter was taken to court. Vide Memorandum dated 22nd December 1988, various properties were split among the sons of Mr K. Seetharama Rao. The properties out of which Hotel Dasaprakash Madras was operated was allotted to four brothers viz. K. Balaramdas, K. Bhagavandas, K. Ramadas and K. Narayanadas, which was approved by the High Court and acted upon. However, a further

dispute as to the way of conducting business had resulted in the business being conducted by a Receiver appointed by the Court.

3.2 The disputing parties agreed to the Court auctioning the properties and settle their disputes. The Receiver, who was running the business till then, had presented a list of liabilities to the Court, including Commercial Taxes, Property Taxes, EPF ,ESI etc. The various statutory authorities had issued orders of attachment on the impugned property. The Court directed that the intending purchaser was to deposit a sum of Rs.20 crores with the Court towards settlement of these dues as also settling the staff and vacating the tenants. The receiver had to obtain a no dues certificate from the various statutory authorities for the Court to approve the sale. On complying with that order, the Court approved sale of the properties and the sale was completed on 27th April 2011.

3.3 The assessee's along with 14 other co-owners had sold the property, popularly known as 'Hotel Dasaprakash' located at Poonamallee High Road, for a total consideration of Rs.165 Crores. For their proportionate share in the sale consideration at 4.20%, the assessee's computed the Long Term Capital Gains, claimed, inter alia, the expenses adjusted by the Court appointed receiver against the sale proceeds as diversion of income by overriding title or in the alternative

expenses incurred in relation to the sale. The Assessing Officer had disallowed the claim. Further, the Assessing Officer while computing the Long Term Capital Gains had taken the guideline value of the land as on 1.4.1981 to be the fair market value as on that date and consequently computed/restricted the indexed cost/cost of acquisition. Against such action, the assessee filed appeals and the Ld CIT(A) dismissed them.

3.4. The AR further submitted that the Ld. CIT(A) ought to have appreciated the fact that the assessee became the owner of the premises subject to meeting the legal expenses connected with and it was not a case where the assessee has obtained the property free from all the attendant liabilities. While selling the said property, such costs have to be incurred by the assessee and other co-sellers as per directions of the court order, through court receiver duty appointed by the court. In the circumstances, the Ld. CIT(A) ought not to have dismissed these costs as "not relatable to the transfer". The Ld. CIT(A) ought to have appreciated that the expenditure for transfer of the subject matter was earlier than the transfer and not after the transfer and hence he ought to have accepted the assessee's version.

3.5. The AR submitted that the Ld. CIT(A) ought to have allowed the cost of acquisition of land at Rs. 1.95 lakhs per ground as on 01.04.1981 as against Rs. 50,000/- adopted by the Sub-Registrar for the main building and Rs. 1.5 lakhs per ground as against Rs. 30,000/- per ground for the staff quarters. The Ld. AR submitted that the property of "Dasaprakash" was a landmark by itself and it was in a very prominent locality close to Central Station. Valuing at Rs. 1.95 lakhs per ground for the main building and Rs. 1.59 lakhs for staff quarters was very fair and reasonable and ought to have accepted these values for working of the capital gains. The Ld. CIT(A) ought to have appreciated the fact that the valuation was done by an approved valuer and ought not to have ignored his valuation especially where a property which was 5 kms away from the said "Dasaprakash" property was valued at Rs. 3.43 lakhs per ground as on 01.04.1981 in case of M/s. Keyaram Hotel (P) Ltd., and accepted by High Court. The impugned property was very much closer to the Central Station and the market value as on 01.04.1981 would have been higher than the property which was sold by M/s. Keyaram Hotel (P) Ltd., etc. Per contra, the Ld. DR supported the orders of the lower authorities.

4. We heard the rival submissions. It is clear from the orders of the lower authorities that they have not examined as to whether the

impugned expenditure claimed by the assessee, arose out of a over-riding title there under. If the assessee's full ownership of a unqualified right to enjoy the property gets restricted in the parental deed, then it would create a over-riding title on the beneficiaries. These aspects require detailed examination and hence we deem it fit to remit this issue back to the AO for a fresh examination. 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 shall furnish adequate opportunity to the assessee and decide the matter in accordance with law.

5. With regard to the cost of acquisition as on 01.04.1981, various factors have to be evaluated for determining the fair market value as on a particular date viz., location of land, its potentiality, surroundings, rate of the adjacent land determined by the courts, if any, the condition of the lands, the expenditure required to develop the land, the limitations, if any viz., legal disputes as has happened in this case, eviction of unauthorized persons etc. In the very nature of things, the prices are bound to vary according to the contemporaneous economic environment, from land to land, depends upon buyer to buyer and seller to seller which includes even the reasons for which the sellers are selling the lands, the guideline value etc. Thus, the AO cannot determine the fair market value as on 01.04.1981 solely based

on the guideline value. In the facts and circumstances, we deem it fit to remit this issue back to the AO for a fresh examination. 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 assessee on the material etc to be used against it and decide the matter in accordance with law.

6. In the result, the assessee's appeals are treated as allowed for statistical purposes.

Order pronounced in the open court on 29th November, 2018 at Chennai.

Sd/-
(जॉर्जमाथन)
(GEORGE MATHAN)
न्यायिकसदस्य/Judicial Member

Sd/-
(एसजयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 29th 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