

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री इंटर्री रामा राव, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Inturi Rama Rao, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A. No. 2224/Chny/2018
निर्धारण वर्ष/Assessment Year: 2007-08

Shri W.M.M. Shamsudeen,
191, N.S.C. Bose Road,
Chennai 600 001.

The Income Tax Officer,
Vs. Non-Corporate Ward 12(4),
Chennai - 45.

[PAN:AAOPS9619R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से/Respondent by : Shri Balina Suresh Babu, JCIT
सुनवाई की तारीख/ Date of hearing : 17.07.2019
घोषणा की तारीख /Date of Pronouncement : 25.07.2019

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 13, Chennai, dated 28.06.2018 relevant to the assessment year 2007-08. The only effective ground raised in the appeal of the assessee is that the Id. CIT(A) has erred in confirming the long term capital gains tax levied based on the duplicate copy of the sale deed.

2. Brief facts of the case are that the assessee is an individual and filed his return of income for the assessment year 2007-08 on 11.04.2008

disclosing taxable income of ₹. 5,68,360/-. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 ["Act" in short]. Thereafter, the case of the assessee was reopened and notice under section 148 of the Act was served on the assessee on 07.03.2012. After considering the details filed against statutory notices, the assessment under section 143(3) r.w.s. 254 of the Act was completed by assessing income of the assessee at ₹. 19,41,380/- by determining long term capital gains tax. On appeal, the Id. CIT(A) confirmed the assessment order.

3. On being aggrieved, the assessee is in appeal before the Tribunal. None appeared on behalf of the assessee. However, the assessee filed written submissions by enclosing copy of the letter of Registration Department including decision of the Tribunal in assessee's own case for considering and adjudicating the issue on merits.

5. On the other hand, the Id. DR fairly conceded that the appeal may be remitted back to the file of the Assessing Officer for re-adjudication of the issue on merits.

6. We have heard the Id. DR, perused the materials available on record and gone through the orders of authorities below including written submissions filed by the assessee along with copy of the order of the Tribunal dated 15.12.2016. While giving effect to the order of the ITAT order

under section 143(3) r.w.s. 254 of the Act dated 29.12.2017, the Assessing Officer computed the long term capital gain by adopting guideline value of the property as 50C value of the property at ₹.1,40,00,000/- and assessed the LTCG at ₹.1,12,69,609/-, where 1/8th share of the assessee being ₹.14,08,701/- was brought to tax. On appeal, despite not considering the confirmation letter from the Joint II Sub Registrar, Registration Department, the Id. CIT(A) confirmed the determination of LTCG by observing that the second entry made for registration fees paid for ₹.1,40,160/- was not struck off from the document.

6.1 Facts leading the issue are that the assessee owned 1/8th share of the property at 27, Jambulingam Street. This entire property was sold for ₹.75,00,000/- on 21.7.2006. The assessee registered the same on 21.7.2006, the documents were signed before the Sub-Registrar, possession of the property was given on the same day and the transfer of the property was complete. On that day, the guideline value was ₹.1,282/- per sq. ft., which was above the sale consideration (5912 sq.ft. x 1282 = ₹.69,38,184/-). This property was gifted by the assessee's aunt on 25.8.2000 by way of Hiba. For Hiba gifts, the assessee claimed that no stamp duty is payable according to Muslim Law.

6.2 The case of the assessee was reopened and notice under section 148 of the Act was served on the assessee on 07.03.2012. After considering the details filed by the assessee, the Assessing Officer determined the long term capital gains (arising from the sale of vacant land at 27, Jambulingam Street, Nungambakkam, Chennai) not only by adopting the sale consideration of ₹.1,96,87,500/- but also by restricting the indexed cost of acquisition at ₹.10,56,714/- w.r.t. financial year 2000-01 rate owing to the Hiba (gift) of the property to him by his aunt on 25.08.2000 on the actual cost of the property at ₹.8,47,000/- in the year 1988-89 (Document No. 6 of 1989 dated 09.01.1989), besides not admitting the assessee's claim for exemption under section 54F of the Act to the extent of ₹.5,53,571/-. In short, as to the assessee's 1/8th share in the sale consideration (supra), the Assessing Officer assessed the long term capital gains for the impugned sale at ₹.23,28,848/- as against ₹.42,630/- admitted in the return of income, which was confirmed by the Id. CIT(A). On further appeal, vide order dated 15.12.2016 in I.T.A. No. 1565/Mds/2016 & Ors., while allowing assessee's claim for indexed cost of acquisition w.r.t. actual cost in financial year 1988-89 to the donors, the Tribunal dismissed the claim for exemption under section 54F of the Act and remitted the issue of adoption of sale consideration for the impugned immovable property sold on 21.07.2006 to the file of the Assessing Officer for fresh consideration

6.3 The issue whether the Guideline Value of 2006 or 2009 is to be adopted for assessment was taken up on Appeals and the I.T.A.T. decided that if the possession was handed over in 2006, the consideration received and document stamped by the Registrar on the same day, the Guideline Value of 2006 has to be considered, adopted and assessed. The matter was verified and the handing over of possession is accepted by the Assessing Officer vide para 3 of the assessment order. Further, in the Sale Deed, the back history that the property was made by a Hiba on 25.8.2000 is narrated. The Sub-Registrar took the stand that the Hiba gets recorded and registered in the present Sale Deed, and therefore, stamp duty is leviable. The Sub-Registrar levied stamp duty of Rs.9,75,000/- which was paid by the purchaser.

6.4 The Assessing Officer subsequently found that there are two types of stampings on 21.7.2006 as detailed below:

	Original Sale Deed In page No.2/21	Duplicate Sale Deed In page No.2/20
Stamp Duty	₹.6,00,000/-	₹.11,20,000/-
Registration Fee	₹. 75,180/-	₹. 1,40,160/-

Based on the above higher figure in the duplicate Sale Deed in page No.2/20, the Assessing Officer determined the sale value of the impugned property at ₹.1,40,00,000/-. ($₹.11,20,000 \div 8\% \times 100$). The assessee

contacted the Sub-Registrar and confronted him as to how this could happen. The Sub-Registrar verified the same and agreed that it is the mistake on the part of his office that another document stamping has wrongly been made in the duplicate copy of the Sale Deed and she also confirmed, "Actually, ₹.75,180/- only has been collected as Registration Fee, but in the duplicate, it has been wrongly entered as ₹.1.40,160/-. The same matter is clarified with IT Dept. also" through the Sub-Registrar's letter No.354/2017 dated 27.12.2017 (copy of the letter was brought on record). It was the submission that by the time of letter of the Registration Department, the Assessing Officer completed the assessment under section 143(3) r.w.s. 254 dated 20.12.2017 adopting the higher value which was not correct. On Appeal, the Id. CIT(A) confirmed the assessment for the reason that two stampings are there on the same day would mean the higher amount is paid. However, while doing so, the Id. CIT(A) has not obtained any report from the Assessing Officer since the Assessing Officer had no knowledge of the letter of Registration Department vide letter No. 354/2017 dated 27.12.2017, wherein, it was mentioned that *"Actually, ₹.75,180/- only has been collected as Registration Fee, but in the duplicate, it has been wrongly entered as ₹.1.40,160/-. The same matter is clarified with IT Dept. also"*. Under these facts and circumstances, we direct the Assessing Officer to verify and decide

the issue of actual registration fees paid by the assessee by allowing an opportunity of being heard to the assessee.

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

Order pronounced on the 25th July, 2019 in Chennai.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, 25.07.2019

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.