

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.2686/CHNY/2018
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. T.S. Hajee Moosa & Co, Vs The ACIT,
33, Godown Street, Non-Corporate Circle -11,
Chennai – 600 001. Chennai.

PAN: AAFT4462D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri U. Mohamed Khalilullah, CA

प्रत्यर्थी की ओर से/Respondent by : Ms. D. Rohini, JCIT

सुनवाई की तारीख/Date of hearing : 20.06.2019

घोषणा की तारीख /Date of Pronouncement : 06.09.2019

आदेश / ORDER

Per S.JAYARAMAN, AM:

The assessee filed this appeal against the order of Commissioner of Income Tax (Appeals)-13, Chennai, in ITA No.98/CIT(A)-13/AY 2015-16 dated 27.07.2018 for the assessment year 2015-16.

2. The assessee has sold the land at Guindy for a sale consideration of Rs.28,17,03,500/- and the factory building for Rs.1,82,96,500/- for a total of Rs.30,00,00,000/-. The assessee has worked out LTCG for the assessment year 2015-16, adopting guideline value of the property u/s.50C of the Act at Rs.36,83,81,500/- (43,339 sq. ft. x Rs.8500/- per sq. ft.) , allowed selling and legal expenses for Rs.28,19,570/- and allowed indexed cost of acquisition of land at Rs.30,35,53,290/ - adopting guideline value as on 1988 at Rs.684 per sq. ft. (43,339 sq. ft. x Rs.684 per sq. ft. x 1024/100) based on Registered Valuer's Report and has worked out LTCG at Rs.6,20,08,639/-.

2.1 During the assessment proceedings the AO issued notice u/s.133(6) to the SRO, Adyar and asked him to furnish guideline value of the land in question as on 01.04.1981. The SRO furnished the guideline value @ Rs.20,000/- per ground (2400 sq. ft.) which works out to Rs.8.33 per sq. ft. as on 01.04.1981. Based on this, the AO show caused to the assessee saying that why the cost of acquisition should not be arrived at based on the guideline value

furnished by the SRO as on 01.02.1989. The assessee clarified before the AO that in 1975-77 there was no immediate public demand for land in Guindy Estate. As such, the Government has allotted the land to the assessee almost free, so that industries can develop and that is why the rate of land was at the rate of Rs.1.26 per sq.ft. During the period 1975-1980, the amenities and infrastructure development took place in the industrial area of Guindy and it is evident from the approved valuer's report that the rate of land in 1975 was at Rs.1.26 per sq.ft. In 1975-80, development took place and therefore in 2015, the rate of land is at Rs.8,500/- per sq.ft. Increase in rate from 1975 to 2014 it is Rs.8,499/- per sq.ft. Therefore, average for 39 years ($8499/39$) increase is for Rs.217/- per year and therefore from 1975-1981 increase for 5 years works out to Rs.1085 per sq.ft. (217×5) and accordingly the Government approved valuer has adopted the land rate at Fair Market Value at the rate of Rs.684/- per sq.ft. is reasonable. Considering the indexed cost of acquisition of 1981, the value of the land would be at Rs.48,15,13,626/- as on 01.04.1981 ($43339 \text{ sq. ft.} \times \text{Rs.}1085 \times 1024/100$). The AO found that the land

has been registered in the name of the assessee M/ s. T.S. Hajee & Co. in the year 1989 and the guideline value supplied by the SRO for the period 01.04.1989 to 31.03.1990 was for Rs.2,50,000/- per ground which works out to Rs.104.16 per sq.ft. during the year 1989-90. Based on that the cost of acquisition was worked out for Rs.45,14,190/- (43,339 sq.ft. x Rs.104.16 per sq.ft.) and indexed cost of acquisition in the year 1989-90 worked out to Rs.2,68,75,178/- (Rs.45,14,190 x 1024/172) and accordingly the AO held that if the indexed cost of acquisition itself works out to Rs.2,68,75,178/- in the year 1989-90 then how come the cost of acquisition would be at Rs.30,35,53,290/- (43,339 sq.ft. x Rs.684 per sq.ft. x 1024 /100) during the year 1981-82 and therefore AO held that the assessee adopting the value of land at the rate Rs.684/- per sq. ft. as on 1981 is unreasonable and not justifiable. Thus, based on this finding the AO calculated sale consideration by adopting guideline value of the property u/s.50C of the Act at Rs.36,83,81,500/- (43,339 sq. ft. x Rs.8500/- per sq. ft.) allowed selling and legal expenses for Rs.28,19,570/- and allowed indexed cost of acquisition of land at Rs.36,98,258/- adopting guideline value

as on 1981 at Rs.20,000/- per ground, i.e. Rs.8.33 per sq. ft. (43,339 sq. ft. x Rs.8.33 per sq. ft. x 1024/100) and has worked out LTCG for Rs.36,18,63,672/- as against LTCG declared and offered by the assessee for Rs.6,20,08,639/-. The balance of LTCG for Rs.29,98,55,033/- has been brought to tax accordingly. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal. Aggrieved, the assessee filed this appeal with following grounds :

- 1. The Appellant submits that the impugned land was assigned during 1975-77 and major infrastructure developments took place during 1975-1981, transforming the agricultural lands into a neighbourhood township.*
- 2. The Appellant firm engaged Sri. S. Ramamurthy B.E., F.I.V. Retd. Valuation Officer, Income Tax Department (Government of India), LT. Registered Valuer CAT-1/486/2000-2001, Approved Valuer of Institution of Valuers No.F-9, who has inspected the site, made extensive inquiries and valued the same at Rs. 684 per sq ft. in 1981. Even though all infrastructure developments were made by the Government only during 1975-1981, the valuer has adopted only 63% of the average increase method.*
- 3. The Assessing Officer called for the 1981 Valuation from the Sub-Registrar who replied that the 1981-1982 records are damaged and are not available. However, he gave a ridiculously low Guideline value of Rs. 8.33 per sq ft. in 1981.*
- 3. It is submitted that the Honorable Supreme Court in the case of R. Sai Bharath Vs J. Jayalalithaa and others has held the Guideline value is not the Fair Market Value. It is Trite Law that the Guideline Value published by the Registration Department is not a conclusive evidence to work out the Fair Market Value as on 01.04.1981.*

4. It is also submitted that the IT Appellate Tribunal B Bench Chennai in ITA 619/MDS/2012 Assessment 2007-2008 held that the Guideline Value of Rs.5/- per sq ft. is abysmally low and directed the Assessing Officer to accept the value of Rs.454 per sq ft. reported by the Registered Valuer.

5. The Appellant submits that the Assessing Officer neither rebutted the Registered Valuer's Report nor referred the matter to the DVO and in the absence of any evidence on record, the report of Registered Valuer should be accepted with regard to the Market Value as on 01.04.1981 for the purpose of computing Capital Gains.

6. In view of the above, the Appellant raises the following questions of Law whether the Assessing Officer is legally correct in totally ignoring:

(a) The Approved Valuer's Certificate and simply relying and adopting the guideline value when the Hon'ble Supreme Court has held that the Guideline Value is not the Fair Market Value;

(b) The case laws of the Jurisdictional ITAT cited by the Appellant in which the 1981 Fair Market Value was fixed at Rs.454/- per sq.ft. against the Guideline Value of Rs.5/- per sq.ft. furnished by the Sub-Registrar.

In conclusion, the Appellant prays that the Fair Market Value of Rs.684/- per sq.ft. as determined by the Approved Valuer, a technical expert be accepted.

3. The Ld. AR presented the case on the above lines. Per contra, the Ld.DR supported the orders of the lower authorities.

4. We heard the rival submissions. In the judgment of the Supreme Court referred to above, while considering the issue as to whether the land purchased has been undervalued or not, the

Supreme Court observed that the guideline value has relevance only in the context of section 47A of the Indian Stamp Act (as amended by T.N. Act 24 of 1967) which provides for dealing with instruments of conveyance which are undervalued. Guideline value will only afford a prima facie basis to ascertain the true or correct market value. Guideline value is not sacrosanct, but only a factor to be taken note of if at all available in respect of an area in which the property transferred lies. When the assessee relies on the Registered Valuer's report and if Assessing Officer is not satisfied about such claim then, the AO should have referred the matter to the DVO to ascertain the fair market value. Therefore, we deem it fit to remit this issue back to the AO who shall refer the matter to DVO and proceed to determine the issue in accordance with law. The assessee's corresponding grounds of the appeal are treated as allowed for statistical purpose

5. The next is in connection with the additional ground. It is submitted that the assessee firm had given guarantee / security for the borrowals made by other entities. The assessee did not receive

any benefit or accrue any benefits from the transfer and therefore ,
the levy of Capital Gains Tax is not correct.

“The assessee contends that since it has not received any benefit from the transfer of its property given as security to bank & others for borrowals made by other entities, no capital gain is leviable.

The Appellant relies on the case law ITA (2006) 102 ITD 227 (Delhi) - Additional Commissioner of Income-Tax, Special Range-26, New Delhi Vs. Glad Investments (P) Ltd., a copy of which is enclosed.

The Appellant submitted that the property was sold for Rs.30 crores, the sale proceeds of which were disbursed to Bank and creditors of other entities and the disbursement details are also submitted herewith.

In view of the above, the legal question now raised is to cancel the levy of Capital Gains Tax.”

6. We heard the rival submissions and being a legal issue admit the additional ground. The assessee has pledged its property to Canara Bank as a security to the loan availed by its group concerns. No lay man can execute a deed of mortgage of his property against the loan availed by a third party/ parties, until and unless the individual has substantial interest over them. Thus, it is clear that the assessee availed loan from the Bank under the banner of group concerns by mortgaging its own property and group concerns failed to repay the loan, the bank sold the property and the entire consideration was recovered by the bank. Thus, it cannot be held

that the assessee has not received any consideration directly or indirectly, which were liable to tax.

6.1 We have gone through the judgment in the case of CIT v. Atilli N. Rao 252 ITR 880 (SC), wherein, the Hon'ble Supreme Court has observed and held as under:

"4. The assessment year with which we are concerned is the assessment year 1982-83. The assessee carried on abkari business. In the course of the financial year 1970-71 he mortgaged to the Excise Department of the State of Andhra Pradesh immovable property belonging to him at Waltair. He did so to provide security for the amounts of "kist" which were due by him to the State. The State, in the assessment year with which we are concerned, sold the immovable property by public auction, without the intervention of the court, to realise its dues. A sum of Rs. 5,62,980 was realised at the auction. Thereout, the State deducted the amount of Rs. 1,29,020 due to it towards "kist" and interest and paid over the balance to the assessee.

5. The Revenue contended that the assessee was liable to capital gains tax on capital gain in the sum of Rs. 3,70,970, having regard to the cost at which the said immovable property had been acquired by the assessee. According to the assessee, the sum of Rs. 1,29,020 due by him to the State on account of "kist" was required to be deducted from the amount of Rs. 5,57,980 realised at the auction before computing the capital gain. According to him, the capital gain was only Rs. 85,130. Neither the Income-tax Officer nor the appellate authority agreed with the assessee and the assessee went up in further appeal to the Income-tax Appellate Tribunal.

6. The Tribunal upheld the assessee's claim. According to it, the full sale price realised by the sale of the immovable property had two components; the first represented the price which could be ascribed to the interest of the assessee in the immovable property and the rest represented the arrears of debt and interest due to the State. In its opinion, as there was a clear charge or mortgage over the immovable property, the amount realised under the charge or mortgage was an

amount which never reached the hands of the assessee but which reached the Government by overriding title.

7. *From out of the judgment and order of the Tribunal, the questions aforesaid were placed before the High Court for its consideration. The High Court observed that the undisputed fact was that the immovable property was mortgaged to the State. Thereby, an interest in the property was created in favour of the State. When the immovable property was sold by public auction, its value had to be reduced to the extent of the interest that was created in favour of the State by reason of the mortgage.*

8. *We are of the view that the Tribunal and the High Court were in error. What was sold by the State at the auction was the immovable property that belonged to the assessee. The price that was realised therefore belonged to the assessee. From out of that price, the State deducted its dues towards "kist" and interest due from the assessee and paid over the balance to him. The capital gain that the assessee made was on the immovable property that belonged to him. Therefore, it is on the full price realised (less admitted deductions) that the capital gain and the tax thereon has to be computed.*

9. *In these premises, the first question is answered in the negative and in favour of the Revenue. The other questions do not arise for consideration."*

From the above judgment, it is clear that the mortgaged property sold, in discharge of the mortgage created by the assessee itself, belonging to the assessee and the price realized therefrom belonged to the assessee and hence the capital gain is very much warranted on the full price [less admissible deduction]. When the law laid down by the Hon'ble Supreme Court is very much available on the identical facts, the cases relied on by the assessee are held as not applicable. Otherwise also, availing loan itself is consideration and in this case,

constructive benefit was very well accrued to the assessee when the loan was availed by its group concerns, which was owned partly by the assessee. Accordingly, we dismiss the corresponding grounds of the assessee.

7. In the result, the assessee's appeal is treated as partly allowed.

Order pronounced in the court on 6th September, 2019 at Chennai.

Sd/-

(जॉर्ज माथन)

(George Mathan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 6th September , 2019

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य /Accountant Member

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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