

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

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

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

आयकर अपील सं./ITA No.729/Chny/2018

निर्धारण वर्ष /Assessment Year : 2012-13

M/s Vacha Fine Arts,
14/11, Abdul Kareem Cross
Street,
(Off. CNK Road), Triplicane,
Chennai - 600 005.

v. The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 9,
Chennai - 600 034.

PAN : AACFV 7002 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri V.S. Jayakumar, Advocate

प्रत्यर्थी की ओर से / Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख / Date of Hearing : 14.08.2019

घोषणा की तारीख / Date of Pronouncement : 03.09.2019

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -10, Chennai, dated 27.12.2017 and pertains to assessment year 2012-13.

2. Shri V.S. Jayakumar, the Ld.counsel for the assessee, submitted that the assessee sold a land along with building for

₹7,00,00,000/-. The long term capital gains arising out of the transaction to the extent of ₹3,02,52,400/- was offered for taxation. However, the Assessing Officer found that the gain arising out of the sale of land was short term capital gain and the building was constructed within a period of three years. Therefore, the profit on sale of land has to be considered as short term capital gain. Accordingly, the Assessing Officer computed the short term capital gain at ₹6,99,36,361/-. According to the Ld. counsel, while computing the fair market value as on 01.04.1981, the assessee adopted ₹125/- per sq.ft. However, the Assessing Officer as well as the CIT(Appeals) adopted the fair market value at ₹2.35 per sq.ft. According to the Ld. counsel, the fair market value adopted by the Assessing Officer as well as the CIT(Appeals) was on the basis of the guideline value obtained from Sub-Registrar.

3. Placing reliance on the order of this Tribunal in ACIT v. Best & Crompton Engineering Limited in I.T.A. No. 803/Mds/2012 dated 09.08.2012, the Ld.counsel for the assessee submitted that this Tribunal directed the Assessing Officer to adopt market value at ₹50/- per sq.ft. According to the Ld. counsel, the subject matter of the land before this Tribunal in the present appeal and in the case of

Best & Crompton Engineering Limited (supra) were situated in the same locality, therefore, the fair market value as on 01.04.1981 has to be adopted at ₹50/- per sq.ft. as against ₹2.35 per sq.ft. Placing reliance on another order of this Tribunal in DCIT v. Shri Vikram Jain in I.T.A. No.600/Chny/2018 dated 18.07.2019, the Ld.counsel submitted that for estimating the fair market value, the Assessing Officer was expected to consider various factors such as location of the land, area of the land, infrastructure facilities available around the land, potential for future development, guideline value / circle rate and other factors which may influence the market rate at that locality. In this case, according to the Ld. counsel, the CIT(Appeals) has taken only guideline value of the Sub-Registrar. The other factors were not taken into consideration. Therefore, in the interest of justice, according to the Ld. counsel, the Assessing Officer may be directed to adopt the fair market value at ₹50/- per sq.ft. as on 01.04.1981,

4. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessee sold the land and building at Ambattur Industrial Estate for a total consideration of ₹7 Crores as per the sale deed dated 16.05.2011

to M/s Autotech Industries (India) Pvt. Ltd. According to the Ld. D.R., the assessee claimed ₹125 per sq.ft. as fair market value before the Assessing Officer. However, the Assessing Officer called for guideline value of the Sub-Registrar as on 01.04.1981 and adopted the information received from Sub-Registrar at ₹2.35 per sq.ft. Referring to para 4.3.39 of the order of the CIT(Appeals), the Ld. D.R. submitted that in the case of Best & Crompton Engineering Ltd. (supra), the decision was rendered after taking into consideration of the reports of two independent valuers, who estimated the value on the reverse working by applying cost inflation index. Therefore, the benefit of the Tribunal order cannot be made available to the assessee. Hence, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

5. We have considered the rival submissions on either side and perused the relevant material available on record. As rightly submitted by the Ld.counsel for the assessee, fair market value has to be determined after considering various factors such as location of the land, area of the land, infrastructure facilities available around the land, potential for future development and guideline value of the

Sub-Registrar. It is also to be considered when the property was sold. In addition to that, the comparative sale instance in the locality also needs to be taken into consideration. In this case, the Assessing Officer has not considered any of the factors other than the guideline value of the Sub-Registrar. This Tribunal is of the considered opinion that the guideline value is only to guide the Sub-Registrar to determine the fair market value of the property. The guideline value may not in all the cases reflect the market value. This Tribunal is of the considered opinion that market value is not a constant figure. The market value is nothing but the price that may be agreed between the willing purchaser and willing seller. It may also fluctuate depending upon various factors referred above. Therefore, the Assessing Officer is expected to examine/consider all the above facts.

6. Now the assessee claims that as in the case of Best & Crompton Engineering Limited (supra), the value may be estimated at ₹50 per sq.ft. The land sold by the assessee is also situated at Ambattur Industrial Estate. The assessee before the Tribunal in Best & Crompton Engineering Ltd. (supra) claimed market value of the land at ₹108/- as on 01.04.1981. In the present case, the

assessee claims ₹125/- per sq.ft. Since the land is located at Ambattur industrial area, this Tribunal is of the considered opinion that the value adopted by the Tribunal in the case of Best & Crompton Engineering Ltd. (supra) can very well be adopted in the case of the present assessee also. Accordingly, orders of both the authorities below are set aside and the Assessing Officer is directed to adopt fair market value as on 01.04.1981 at ₹50/- per sq.ft. The Assessing Officer thereafter shall compute the capital gain. Since the levy of interest under Section 234B of the I.T. Act is mandatory and consequential, the Assessing Officer shall also recompute the interest levied under Section 234B of the Act.

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

Order pronounced in the court on 3rd September, 2019 at Chennai.

sd/-

(एस. जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 3rd September, 2019.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-10, Chennai-34
4. Principal CIT- 7, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.