

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I. T. A.No.2285/CHNY/2017

(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. D.K. Heaters,
New No.41, Old No.20,
3rd Trust Cross Street,
Mandavali, Chennai – 28.

Vs The Deputy Commissioner of
Income Tax,
Non-Corporate Circle – I,
Chennai – 34.

PAN: AACFD 6086B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Shri B. Ramanakumar, Advocate

राजस्व की ओर से /Revenue by : Shri Clement Ramesh Kumar, Addl.CIT

सुनवाई की तारीख/Date of hearing : 02.07.2019

घोषणा की तारीख /Date of Pronouncement : 27.09.2019

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-2, Chennai in ITA No. 333/CIT(A)-2/2013-14 dated 29.06.2017 for the assessment year 2010-11.

2. M/s. D.K. Heaters, the assessee, a Firm is engaged in the business of treatment of steel. By a tripartite agreement between the assessee, Tamilnadu Housing Board and Tamilnadu Small Industries Development Corporation dated 22.07.1980 certain partition of land, valued at Rs.39,848/- and building valued at Rs.61,300/-, in total for Rs.1,01,148/- was leased to the assessee, which was ultimately sold by a sale deed dated 30.03.1992 for a total consideration of Rs.1,02,448/-. The assessee sold this property during this assessment year for a sale consideration of Rs.1,25,00,000/- and admitted long term capital gain (LTCG) on sale of land and short term capital gain (STCG) on the factory shed. While doing so, the assessee apportioned the sale consideration towards land at Rs.1,20,00,000/- and reduced the cost of acquisition in 1981-82 at Rs.210/- per sq.ft., and arrived the LTCG at Rs.56,82,528/-, with respect to sale consideration of the factory shed, apportioned the balance sum of Rs.5,00,000/- as sale consideration from which, it reduced the depreciated value of the building as on 31.03.2009 at Rs.3,335/- and arrived the STCG at Rs.4,96,665/-. While making the assessment, the AO found from the Annexure 1A of the sale deed, the estimated value of the land at Rs.66,76,000/- and the building at Rs.58,24,000/-. Therefore, he adopted these values and determined the respective capital gains. While arriving the LTCG, the AO

adopted the cost acquisition of the land value at Rs.39,848/- at 1991-92 rates. Aggrieved, the assessee filed an appeal before the CIT(A). The Id.CIT(A) upheld the computation made by the AO on STCG. On the LTCG computation made by the AO, the Id.CIT(A) directed the AO to adopt the cost of acquisition of land at Rs.39,848/- as on 01.04.1981 i.e., to adopt the denominator at 100 and not 182 as adopted by the AO. Aggrieved, the assessee filed this appeal.

3. The assessee sought to condone the delay in filing the appeal by 22 days. It is pleaded that the Managing Partner was on travel out of Chennai and unavailable to see the affairs of the firm during the period, while the other partner was not in a position to file the appeal as he was not in-charge of the accounts and he was not able to act on the same. Since, the firm is not even aware on which date it received the order of the Id.CIT(A), it had to calculate the delay from the date of the order of the Id.CIT(A), though such order must have been received by it at a later date. Since, the delay is not wanton or willful, it was pleaded that the delay in filing the appeal may be condoned.

3.1 We heard the rival submissions and condoned the delay in the interests of justice.

4. The Id.AR pleaded to admit the following additional grounds of appeal :

“1. For that the Commissioner of Income Tax (Appeals) "CIT(A)" erred in applying the Provisions of Section 50C only on the value of building.

2. The CIT(A) failed to appreciate that the entire property was sold for lump sum consideration, as per sale deed, and as such did not appreciate that the Provision of Section 50C must be applied on the entire amount without bifurcations.

3. For that the Assessing Officer "AO" and the CIT(A) did not make an application of mind when valuing a 1,000/- sqt of Ace Roof building built at 1980 at Rs.58,24,000/- which is not the market value of the Property.

4. For that the AO and the CIT(A) erred in not making a reference for the valuation of the asset to a valuation officer to determine the Market Value of the building, as he was obliged to do under the Provisions of Section 50C.

5. For that the CIT(A) erred in not granting the Appellant an opportunity to object to the application of the Provisions of Section 50C.

6. For that the Stamp Registration officer unilaterally framed the valuations in the Annexure 1A, which has been accepted by the AO and CIT(A) without making an application of mind.”

and submitted that due to inadvertence the above grounds were not raised and pleaded to admit them, as the omission is not intentional.

4.1 We heard the rival contention and admit the additional grounds, as they are integral to the issues on appeal.

5. The Id.AR invited our attention to the copy of Valuation Report dated 06.10.1994 of Shri S.Muthuvel, Registered Valuer, who valued the impugned property for the purpose of collateral security and submitted that, as per the report, the assessee constructed factory shed and other provisions in 1980 itself for Rs.3,86,060/- and constructed office room and other provisions in 1987 itself for Rs.69,525/-, the total of which in 1987 was Rs.4,55,585/- and the Registered Valuer valued the building as on 06.10.1994 at Rs.4,00,171/- only. Therefore, the market value of the building and other provisions during the assessment year 2010-11 could not be at Rs.58,24,000/-. Although, the assessee has objected for adoption of such value before the AO as well as the Id.CIT(A), they have failed to refer the same to the D.V.O to determine the fair market value (FMV) as required U/s.50C. Since the Stamp Registration Officer has unilaterally framed the valuation without due valuation of the building and other provisions, there is an injustice done to the assessee and hence pleaded to allow the appeal. Per Contra, the Id.DR supported the orders of the lower authorities.

6. We heard the rival submissions and gone through the relevant materials. It is clear from the above, that the FMV of the building has been the bone of contention and the AO / Id.CIT(A) has

not referred the matter to the D.V.O to determine the FMV of the impugned building and other provisions. Therefore, the assessee makes out a case in its favour. In the facts and circumstances, we deem it fit to remit the issues back to the AO. The assessee shall place all the material in support of its contention before the AO within 15 days from the receipt of this order. Thereafter, the AO shall evaluate them and refer the matter to the D.V.O for determining the FMV and then proceed to determine the issues in accordance with law after affording adequate opportunity to the assessee.

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

Order pronounced in the court on 27th September, 2019 at Chennai.

Sd/-

(धुव्वुरु आर एल रेड्डी)

(Duvvuru R.L Reddy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 27th September, 2019

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य /Accountant Member

RSR

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 |