

आयकर अपीलिय 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 &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A.No.1342/Chny/2019
निर्धारण वर्ष/Assessment Year: 2015-16

Shri Ramprasad Gurunathan,
15, Old No. 8A,
Vidyodaya Main Road, T. Nagar,
Chennai 600 017.
[PAN: AHOPG4986A]

The Income Tax Officer
Vs. [International Taxation],
Ward 1(1), BSNL Building,
16, Greams Road,
Chennai 600 006.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri V. Nagaprasad
प्रत्यर्थी की ओर से/Respondent by : Shri Sailendra Mamidi, PCIT
सुनवाई की तारीख/ Date of hearing : 21.08.2019
घोषणा की तारीख /Date of Pronouncement : 24.10.2019

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)-16, Chennai dated 26.02.2019 relevant to the assessment year 2015-16. The grounds raised in the appeal of the assessee are that the Id. CIT(A) has erred in confirming the short term capital gains on sale of long term capital asset instead of computing long term capital gains as well as rejecting cost of improvement on the property.

2. Brief facts relating to the determination of short term capital gains are that the assessee is a NRI and filed his return of income for the assessment

year 2015-16 on 30.09.2015 admitting a total income of ₹.2,69,990/-. The case was selected for scrutiny. Later the assessee has filed a revised return on 30.09.2016 admitting revised total income of ₹.4,63,42,590/- with a tax payable of ₹.1,08,35,610/-. Against statutory notices, the assessee filed all the particulars. On perusal of the various documents furnished by the assessee relating to the acquisition of property, the Assessing Officer treated the entire transaction as short term capital gain against the computation of long term capital gain claimed by the assessee on the ground that the assessee becomes the legal owner of the said property only by virtue of the sale deed dated 15.07.2013 which was registered as Doc. No. 6685 of 2013 and the said property was sold by the assessee on 11.08.2014. As such, the Assessing Officer opined that the asset was held by the assessee only as a short term capital asset and the gains arising on the sale of the same has to be assessed only as short term capital gain. Consequently, no indexation benefit would be available to the assessee and moreover, the improvement costs claimed prior to the period of holding of asset cannot be reckoned as he was not the owner of the property. Accordingly, the Assessing Officer determined the short term capital gain at ₹.4,31,94,046/- and brought to tax. On appeal, the Id. CIT(A) confirmed the addition of short term capital gains.

3. On being aggrieved, the assessee is in appeal before the Tribunal. By filing copies of GPA, sale agreement and sale deed, bank statements, etc., the Id. Counsel for the assessee has submitted that the assessee is the rightful owner of the scheduled property from the year 2010 and thereby prayed for computation of long term capital gains. On the other hand, the Id. DR supported the orders of authorities below.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book and case law. The assessee has claimed the cost of acquisition at ₹.1,50,00,000/-, the date of acquisition as 18.10.2010 and claimed indexation from the year 2010-11. The assessee has executed sale agreement on 18.10.2010 with Mrs. Rashida towards purchase of vacant land comprised in survey No. 279/1B and situated in Injambakkam Village, Sholinganallur Taluk, Kancheepuram Dist. consisting of 1 acre and 43 cents or 62,348 sq. ft. for a consideration of ₹.1,50,00,000/-. The sale agreement was not a registered document. The consideration for the schedule property of ₹.1,50,00,000/- has been paid by the assessee from his bank account and the same is not in dispute. As per para 8 of the Sale agreement, the Party of the first part [Mrs. Rashida] specifically admits and acknowledges having handed over all the documents of title in original and put the party of the second Part [assessee] in possession of the Schedule Property. Further,

the sale agreement dated 18.10.2010 was followed by General Power of Attorney, which was registered on 18.10.2010, executed by the seller Mrs. Rashida in favour of Shri V.K. Gurunathan, father of the assessee and Mrs. G. Revathy, sister of the assessee for the purpose of carrying out development of the schedule property as well as to attend all other paper works, etc. for which the seller Mrs. Rashida paid an amount of ₹.10 lakhs to the attorneys. Subsequently, the seller Mrs. Rashida represented by Smt. G. Revathy, GPA agent executed the Sale Deed in favour of the assessee represented by Shri S. Elango GPA agent, which was registered on 15.07.2013, wherein, the relevant para 5 of the sale deed related to the consideration are reproduced as under:

Now this deed of absolute sale witnesseth that:-

In pursuance of the foregoing and in consideration of the sum of ₹.1,50,00,000/- (One Crore fifty lakhs only) paid by the PURCHASER to the VENDOR on several occasions the receipt of which the VENDOR doth admit and acknowledge in the manner stated above and acquit the PURCHASER from any other payment and the VENDOR doth hereby and hereunder Sell, Grant, Convey and Assign unto the PURCHASER all that piece and parcel of land of an extent of 1 acre and 43 cents or 62,348 sq. ft. or thereabouts comprised in survey No. 279/1B and situated in Injambakkam Village, Sholinganallur Taluk, Kancheepuram Dist. morefully described in the schedule hereunder and hereinafter called the said property.....”.

However, by ignoring the unregistered sale agreement dated 18.10.2010 coupled with registered Irrevocable GPA, the Assessing Officer has taken into account only the registered sale deed dated 15.07.2013 for the purpose of computation of short term capital gain on subsequent sale of the said property on 11.08.2014. The only dispute in determination of either short

term capital gain or long term capital gain lies on the validity of unregistered sale agreement executed on 18.10.2010 coupled with registered Irrevocable GPA. It was the submission of the Id. Counsel for the assessee that the schedule property was purchased from Mrs. Rasheeda for ₹.1,50,00,000/- in the year 2010 through sale agreement coupled with registered Irrevocable GPA executed jointly in favour of father Shri Gurunathan and sister Smt. Revathy of the assessee. As the property was having some legal issues and moreover the assessee is NRI only power was executed and however possession was taken from 2010 since the assessee was in enjoyment of the property, the long term capital asset should be reckoned from 2010 i.e. payment of sale consideration and its acknowledgement by the seller and indexation should be applied for computing LTCG. It was further submission that just because the sale agreement was not registered, the same cannot be ignored when an absolute Irrevocable General Power of Attorney was executed by the seller Mrs. Rashida in favour of Shri V.K. Gurunathan, father of the assessee and Mrs. G. Revathy, sister of the assessee and registered on 18.10.2010. We find force in the argument of the Id. Counsel. The Assessing Officer has observed that the assessee becomes the legal owner of the said property only by virtue of the sale deed dated 15.07.2013 which was registered. The Id. CIT(A) also simply accepted the findings of the Assessing Officer. The above observation of the Assessing Officer is very narrow since he has omitted to consider the irrevocable GPA. The sale deed

dated 15.07.2013 was executed by the GPA agent to the assessee's power agent. Even though the sale agreement is an unregistered document, both parties have duly signed and sale consideration paid on different occasions through banking channel for the said schedule property followed by registered irrevocable GPA on the same day, which was duly reflected in all the documents not disputed by the Department, cannot be out rightly rejected. In this case, the seller of the property Mrs. Rashida has executed an irrevocable GPA and registered vide document No. 1290 of 2010 dated 18.10.2010 in favour of the assessee's father and sister to carry out development activities of the property, to execute deed/s of sale, mortgage, lease, settlement, gift, release or any other document in favour of any person/organization including the Attorneys themselves in relation to the schedule property on her behalf, etc. Thus, the above GPA executed by the seller is an absolute and irrevocable GPA. On perusal of the sale agreement, GPA and sale deed, we find that the assessee represented by his GPA agent has acquired the said property on full payment of sale consideration which is evidenced by the sale agreement dated 18.10.2010. Under these facts and circumstances, we direct the Assessing Officer to compute the long term capital gain since the sale is originally effected on 18.10.2010 as well as cost of improvement and selling expenses in respect of Schedule I property after verification of evidences in accordance with law by allowing an opportunity of being heard to the assessee.

5. The AR of the assessee has filed a petition raising following additional grounds of appeal for consideration:

1. The Id. CIT(A) failed to adjudicate the ground regarding claim of selling expenses of ₹.20,94,000/- in the computation of capital gains even though the Id. AO omitted to consider the claim.
2. The Id. CIT(A) erred in confirming the order of the Assessing Officer in wrongly holding security and legal expenditure of ₹.18,71,430/- incurred to protect the property could not be attributed to cost of acquisition or cost of improvement.

While computing long term capital gain, the assessee has claimed selling expenses of ₹.20,94,000/- on the sale of the said schedule property on 11.08.2014. However, while adjudicating the issue at page 2 to 6, the Assessing Officer has not given any findings on the claim of selling expenses. Accordingly, the Assessing Officer is directed to consider the same after verifying the evidences and decide the issue in accordance with law by allowing an opportunity of being heard to the assessee.

6. With regard to the second additional ground of security and legal expenses of ₹.18,71,430/- claimed by the assessee and rejected by the Id. CIT(A) on the ground that the same could not be attributed to cost of acquisition or cost of improvement, we are of the opinion that the term 'cost of acquisition' though not defined under the Act denotes the price paid by the owner or the amount, which he has incurred for acquiring the property. While determining the taxable capital gains on sale of property, the owner is

entitled to the benefit of cost of acquisition as a deduction from the sale consideration. In simple words, the 'cost of acquisition' includes all the expenses which are incurred by the owner in purchasing such capital asset. Thus, since, we have directed the Assessing Officer to compute long term capital gain against determination of short term capital gain, we direct the Assessing Officer to allow the claim of security and legal expenses subject to verification of evidences on incurring such expenses while computing the long term capital gains 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 24th October, 2019 at Chennai.

Sd/-
(S JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 24.10.2019

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.