

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.178/Viz/2019
(निर्धारण वर्ष/Assessment Year : 2014-15)

M/s Venkateswara Vara Prasada Rao Vs. Asst. Commissioner of
Karipineni Income Tax
D.No.3-201, Sai Soudha Circle-1
Gangaraju Nagar Kakinada
1st Street, Valasapakala
Kakinada
[PAN : AEQPK8553E]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by : Shri D.Manoj Kumar, DR

सुनवाई की तारीख / Date of Hearing : 05.11.2019
घोषणा की तारीख/Date of Pronouncement : 15.11.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Visakhapatnam in I.T.A.No. 10396/2016-17/ACIT,C-1, KKD/VSP/2018-19 dated 21.02.2019 for the Assessment Year (A.Y.) 2014-15.

2. All the grounds of appeal are related to determining the cost of acquisition on sale of property for computing the capital gains. The assessee is an individual engaged in the business of money lending and filed his return of income for the A.Y.2014-15 on 28.07.2014 declaring total income of Rs.17,33,900/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer (AO) found that the assessee has sold the immovable property consisting of land admeasuring 450.55 sq.yards and building with Madras Terrace roof at Akulavari Street, Governorpet, Vijayawada for a consideration of Rs.1,63,00,000/-. In the return of income, the assessee has worked out the capital gains loss of Rs.13,39,212/- taking the Fair market Value(FMV) at Rs.18,51,758.- as on 01.04.1981. The AO did not believe the fair market value adopted by the assessee on the basis of valuation report and collected the information from the Sub Registrar, who had furnished the information of SRO rate at Rs.250/- per sq.yard for land and Rs.21/- per sft for Madras Terrace building. Accordingly, the AO issued show cause notice to the assessee proposing to determine the cost of acquisition or fair market value as on 01.04.1981 at Rs.250/- per sq.yd for land and Rs.21/- per sq.ft for Madras Terrace building. The assessee has objected for adopting the fair market value as on 01.04.1981 as per SRO value stating that the SRO rates

are the guide line values, but not the fair market value and the fair market values are different from SRO values and argued that the proposed addition is unjustified and requested to accept the fair market value adopted by the assessee as the cost of acquisition as on 01.04.1981. The assessee also furnished the valuation report from the Registered valuer who had valued the land at Rs.10,93,358 and building at Rs.7,72,800/- aggregating to Rs.18,66,000/-. However, the AO rejected the contention of the assessee stating that since, the assessee had adopted the sale consideration as determined by the SRO, thus the cost of acquisition as on 01.04.1981 also required to be taken as per SRO rates and accordingly rejected the contention of the assessee and computed the capital gains adopting the indexed cost of acquisition @Rs.250/- per sq.yd for land and Rs.21/- per sq.ft for Madras Terrace building and worked out the indexed cost of acquisition at Rs.18,02,437/- and computed the capital gains at Rs.1,44,97,563/- as under :

Indexed Cost :

<i>Land 450.55 sq.yds @250</i>	<i>1,12,637 x 939/100</i>	<i>Rs.10,57,666/-</i>
<i>per sq.yd</i>		
<i>Building 2503 sq.ft @21/-</i>	<i>52,563 x 939/100</i>	<i>Rs.4,93,567/-</i>
<i>per sq.ft</i>		
<i>Stamp duty & others</i>	<i>1,47,405 x 939/551</i>	<i>Rs.2,51,204/-</i>
<i>2007-08</i>		
	<i>TOTAL</i>	<i>Rs.18,02,437/-</i>

Calculation of capital

gains :

<i>Sale consideration</i>	<i>Rs.1,63,00,000/-</i>
<i>Less : Indexed cost of acquisition</i>	<i>Rs.18,02,437/-</i>
<i>Long Term Capital Gains</i>	<i>Rs.1,44,97,563/-</i>

3. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee stating that the rates of Rs.250/- per sq.yd for land and Rs.21/- per sq.ft for building are stipulated by the Government for particular area, thus, there is no infirmity in the order of the AO, accordingly, dismissed the appeal of the assessee. Against which the assessee is in appeal before this Tribunal.

4. During the appeal hearing, the Ld.AR submitted that the assessee has acquired the property prior to 1981 and as per the provisions of Income Tax Act, fair market value as on 01.04.1981 required to be adopted for the purpose of computing the capital gains. As per section 49(1) of the Act, the assessee can either adopt the cost of the capital asset to the previous owner or the fair market value of the property as on 01.04.1981. According to the AO, the fair market value of the property as on 01.04.1981 is the SRO rate. The contention of the assessee is that the fair market value of the property was Rs.18,66,000/- based on the Chartered Engineer Certificate furnished before the AO. The Ld.AR submitted that there is lot of difference between

the fair market value and the guideline value. What the SRO supplied was guideline value, but not the fair market value. Fair market value is the value which fetches the rate if the property is sold in the open market. After introduction of 50C, full value of consideration is adopted as per the SRO value for all the sale transactions. Prior to insertion of section 50C, the actual sale consideration used to be adopted for the purpose of capital gains and subsequent to introduction of 50C, even if the actual consideration is lesser than the full value of sale consideration, the same required to be adopted for the purpose of computing the capital gains. However, for the properties purchased prior to 01.04.1981, the law has permitted the assessee for substituting FMV as on 01.04.1981 as cost of acquisition. Therefore, submitted that the Chartered Engineer had inspected the land and building and valued the land and building as per the information collected by the Chartered Engineer. Registered valuer is a qualified Engineer and expert in valuing the properties, hence, requested to adopt the fair market value as determined by the Chartered Engineer as on 01.04.1981 as cost of acquisition. Accordingly requested to set aside the order of the Ld.CIT(A) and delete the addition made by the AO. The Ld.AR also relied on the decision of this Tribunal in the case of Padarti Venka Rama Chandra Rao, Guntur in I.T.A. No.216/Viz/2012 dated 16.09.2016. On

the other hand, the Ld.DR strongly supported the orders of the lower authorities.

5. We have heard both the parties and perused the material placed on record. In the instant case, the assessee has sold the property admeasuring 450.55 sq.yds along with 2503 sq.ft building constructed with Madras Terrace roof for a consideration of Rs.1.63 crores. The assessee has computed the capital gains declaring loss of Rs.13,39,212/-. While computing the capital gains, the assessee had adopted the cost of acquisition or fair market value as on 01.04.1981 at Rs.18,51,758/- and further increased by a sum of Rs.1,47,405/- with aggregate fair market value of Rs.19,99,163/- and claimed indexation which resulted in capital gains loss of Rs.13,39,212/-. The fair market value as on 01.04.1981 was adopted by the assessee on the basis of Chartered Engineers certificate issued by S.V.Ramana, who has valued the building after making personal visit. The question whether the fair market value and the SRO value is one and the same or not was considered by this Tribunal in the case law cited supra and held that the fair market value is not a guideline value. For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal in para No.10 to 13 which reads as under :

“10. It is the contention of the assessee that he has adopted fair market value of the property based on the certificate of the registered valuer. The assessee further contended that the A.O. was not correct in applying SRO value as fair market value of the property, as the SRO value fixed by the State Government is not correct market value of the property. The A.O. was erred in equating with full value of consideration as a result of transfer to the fair market value of the property for the purpose of computation of cost of acquisition. We find force in the argument of the assessee for the reason that the A.O. was erred in adopting SRO value to substitute fair market value of the property for the purpose of computation of cost of acquisition of the property. Section 48 of the Act deals with the mode of computation of income chargeable under the head “capital gains” and in that context full value of consideration would mean the consideration or price received as a result of the transfer of a capital asset. It is different from fair market value of the property, which phrase is used in section 45(2) of the Act relating to capital gains and section 55(3)(b) in relation to cost of acquisition.

11. The legislature has expressly drawn a distinction between the two phrases ‘full value of consideration’ and ‘fair market value’. The former would be the price received on transfer of capital asset and the later would be the price of a capital asset would ordinarily fetch on sale in open market on the relevant date. In the present case on hand, the assessee has adopted fair market value of the property as on 1.4.1981 as cost of acquisition which is based on a certificate issued by the registered valuer. The A.O. without assigning any reasons disbelieved registered valuer’s report and adopted SRO value of the property for the purpose of determination of computation of cost of acquisition, when Act specifically provides powers to the A.O. under the provisions of section 55(2) of the Act, to refer the valuation of the property to the valuation officer, when he is of the opinion that the fair market value of the property adopted by the assessee is higher than the fair market value of the property. The A.O., without exercising the option of referring the matter to the valuation officer, simply adopted SRO value which is fixed in a different context to determine the cost of acquisition of the property. Therefore, we are of the opinion that the A.O. was erred in adopting SRO value to substitute the fair market value adopted by the assessee, which is based on a registered valuer certificate.

12. Now it is pertinent to discuss here the case law relied upon by the assessee. The assessee has relied upon the decision of Hon’ble Karnataka High Court in the case of N. Govindaraju Vs. ITO & Anr. 377 ITR 243, wherein the Hon’ble High Court under similar circumstances held as under: “Section 48 of the Act deals with the ‘Mode of Computation’ of income chargeable under ‘Capital gains’ and in that context ‘full value of the consideration’ would mean the consideration or price received as a result of the transfer of a capital asset. It is different from ‘fair market value’ of the property, which phrase is used in section 45(2) [relating to capital gains] and section 55(2)(b) [relating to cost of acquisition]. (para 44) The legislature has expressly drawn a distinction

between the two phrases: 'full value of the consideration' and 'fair market value'. The former would be the price received on transfer of a capital asset and the latter would be the price that a capital asset would ordinarily fetch on sale in open market on the relevant date. (para 47) Assessee had provided the reasons for determining Rs.225/- per sq. ft. as the fair market value of the property by producing the relevant material, including valuation report of a registered valuer, which all have been ignored while arriving at the price of Rs 84/- per sq. ft. The Assessing Officer assessed the value of the property as on 1.4.1981 on the basis of sale deeds of some nearby properties registered for such price in the year 1981 and thus, arrived at that figure. In our opinion, the same cannot be the proper mode of arriving at the 'fair market value' of the property in question as on 1.4.1981, for the purpose of determining 'Capital gains' under the Act. (para 48)

Tribunal was not justified in arriving at the fair market value of the property in question as on 1.4.1981 without taking into consideration the material on record, including the valuation report filed by the assessee. The matter thus requires to be remanded to the Assessing Officer for determination of the fair market value of the property in question in accordance with law and in the light of the observations made hereinabove. (para 51)"

13. The CIT(A) after considering the relevant details has rightly directed the A.O. to substitute value adopted by the assessee as fair market value of the property as on 01.04.1981 to compute cost of acquisition. We do not find any reasons to interfere with the CIT(A) order. Hence, we inclined to uphold CIT(A) order and reject ground raised by the revenue."

5.1. In the instant case, both the lower authorities have simply brushed aside the Chartered Engineer's valuation report submitted by the assessee without assigning any reasons. Further the AO has adopted the SRO value as fair market value which is incorrect approach. The guide line value is the rate at which the properties are registered in and around the area, but not related to the exact premises of the assessee. Therefore, we are of the considered view that for the purpose of determining the capital gains, the guide line value cannot be applied blindly when there is registered valuer's report made available to the AO. Since the facts of this case are identical to

the facts of the case law relied upon by the assessee, we direct the AO to adopt the fair market value of the cost of acquisition as certified by the registered valuer's certificate, instead of substituting the same with SRO value. Accordingly, we set aside the order of the Ld.CIT(A) and delete the addition made by the AO.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 15th November, 2019.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 15.11.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee - M/s Venkateswara Vara Prasada Rao Karipineni
D.No.3-201, Sai Soudha, Gangaraju Nagar, 1st Street, Valasapakala, Kakinada
2. राजस्व/The Revenue - Asst.Commissioner of Income Tax, Circle-1,
Kakinada
3. The Principal Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-2, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam