

आयकरअपीलीयअधिकरण , 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI

श्री जॉर्जमाथन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 3212/Chny/2018

निर्धारण वर्ष/Assessment Year : 2005-06

Smt. R. RosalinVasanthi,
85-A-1, NarayanaPillai Street,
Peramanur, Salem – 636 007.

The Income Tax Officer,
Vs. Salem.

[PAN: AHTPR 3945D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No. 3242/Chny/2018

निर्धारण वर्ष/Assessment Year : 2005-06

Smt. R. RosalinVasanthi,
L/H of Late A. Sundarammal,
85-A-1, NarayanaPillai Street,
Peramanur, Salem – 636 007.

The Income Tax Officer,
Vs. Salem.

[PAN: BAVPS 6443M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. G. Baskar, Advocate &
Shri. I. Dinesh, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Ms. R. Anita, JCIT

सुनवाईकीतारीख/Date of Hearing

: 10.12.2019

घोषणाकीतारीख/Date of Pronouncement

: 05.03.2020

आदेश/ ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER :

The above assessee's filed these appeals against the orders of the Commissioner of Income Tax (Appeals)-Salem in ITA No. 179 & 181/08-09 dated 24.09.2018 for assessment year 2005-06, respectively.

2. Since these appeals are connected, they are heard together and being disposed. In the return filed by the above assessee's, they have claimed cost of acquisition as on 01.04.1981 @ Rs.231.50 per/sq.ft. for the land and building and computed the capital gains. While making the assessments, the Assessing Officer, inter alia, adopted the cost of acquisition of land at Rs. 11.46 p/sq.ft. based on the sub-registrar's guideline value and re-worked the indexed cost of acquisition. Further, in respect of cost of the building, the Assessing Officer referred the property to the Valuation Officer and adopted the value determined by the Assistant Valuation Officer and re-worked the indexed cost of acquisition and then determined the long term capital gain in the respective assessee's hands. Aggrieved, the assessee's filed appeals before the CIT(A). The CIT(A) dismissed the appeals. Aggrieved against those orders, the above assessee's are on appeal before us.

3. With regard to the value of the site, the Ld. AR submitted that the AO is not correct in adopting the value of site of 9234 sq.ft. as on 01.04.1981 at a low rate of 5000 per cent based on the registration department's guideline value instead of adopting the fair market value. The guideline value of land as certified by the Stamp Authorities Register at Rs. 5,000 per cent till 1983, Rs. 5,500 per cent between 1984-1985 and Rs. 25,000 per cent from 1986-1991 shows that the

value adopted by them was towards agricultural land and the value shown by them from the 1992 onwards it is for per sq feet, therefore, their value does not represent the correct market value. Therefore, the Ld. AR pleaded that the value adopted by the assessee may be directed to be adopted by the AO. On the value of the superstructure, the Ld AR submitted that the CIT(A) erred in coming to the conclusion that "what has been sold is the vacant piece of land only " which is factually incorrect when the Assessing Officer himself has considered the super structure's value as on 01.04.1981 and determined the value on the basis of valuation officer's report. The Valuation Officer's report dated 25.11.2008 is not correct with regard to adopting certain rates for super structure which has been demolished prior to 25.11.2008, before the date of his inspection. Therefore, his report should not be relied on as the impugned building was not in existence at the date of his inspection and hence his report can not be a scientific one. Inviting our attention to the valuation report wherein a mention is made that the building was constructed in the year 1919 and the total area of the building was 200 sq.mts., half of the building was Madras Terrace Roof Construction and half RCC Construction etc and since the impugned property was fetching a rent of Rs. 4,000/- per month as per the rental agreement dated 06.03.1985, with a rent advance of Rs. 2,00,000/- etc, the Ld AR submitted that on the facts and circumstances, the value of the building

should be worked out as per part B of Schedule III of the Wealth Tax Act and accordingly pleaded to allow the respective assessee's appeal. Per contra, the Ld DR submitted that the Ld CIT(A) obtained a remand report from the AO , furnished a copy to the assessee and after considering their reply etc , upheld the orders of the AO and hence he supported the orders of the lower authorities.

4. We heard the rival submissions and gone through the relevant material. The impugned property was an ancestral property of Shri. S.A. Thomas Caminus through a registered will during 1979. On 29.01.1995, Mr. Thomas Caminus executed a will in favour of his three brothers. The property consisted of land measuring 9234 sq.ft. and a building thereon which was received by the assessee (Mrs. A. Sundaramma), her daughter (Mrs. R. Rosalin Vasanthi) and assessee's son having 30% share in 1/3th share of land and building at Pollachi through a will dated 14.07.2001 executed by her husband Shri. A. Royappan. This property was sold on 13.10.2004 for Rs. 1,05,00,000/- and hence the respective assessee's admitted their share as capital gains. While computing the capital gains, the assessee's have adopted Rs. 231.50 per sq.ft. as the value of the property as on 01.04.1981 and worked out the indexed cost of acquisition. When the AO proposed to assessee the value of the land adopting the value shown by the registration authority and adopt the

value of the super structure as per the valuation officer's report, the assessee submitted that the impugned property was given on rent for Rs. 4,000/- per month with a rental advance of Rs. 2,00,000/- and therefore, it is proper to adopt the value on rent capitalisation method as per the provisions of the Wealth Tax Act. However, the AO did not agree with assessee's plea and proceeded to compute the capital gains based on the value shown by the stamp authorities and the valuation officer. Before us, the assessee pleads that the guideline value does not reflect the market value and by the time the valuation officer went for inspection, the property was already demolished and hence the valuation made by him cannot be considered as a scientific one. On these facts and circumstances of the case, we find merit in the submissions of the assessee. The existence of rental agreement, the receipt of rent and rental advance is not disputed. Therefore, we are of the view that the value of the land and building should be determined on the basis of rent capitalisation method. The assessee has quantified the value at Rs. 8,28,750/-, which may be rounded off to Rs. 10 lakhs. Therefore, we direct the AO to adopt Rs. 10 lakhs towards the cost of acquisition for the land and building as on 01.04.1981 and proceed to determine the cost of indexation accordingly, for the determination of capital gains in the respective assessee's hand. Corresponding grounds of the above assessee's are allowed to the above extent.

5. In the result, each of the assessee' s appeal is treated as partly allowed.

Order pronounced on Thursday, 05th March, 2020 at Chennai.

Sd/-
(जॉर्जमाथन)
(GEORGE MATHAN)
न्यायिकसदस्य/Judicial Member

Sd/-
(एसजयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 05th March, 2020

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF