

आयकर अपीलीय अधिकरण , ' बी ' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 213/Chny/2019

निर्धारण वर्ष/Assessment Year : 2013-14

M. Mohamed Nayeem,
No. 94, 2nd Floor,
J.J. Complex,
Thirumangalam,
Chennai – 600 040.

Income Tax Officer,
Vs. Non Corporate Ward 7(4),
Chennai.

[PAN: AEYPM 6644L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. Suresh Periasamy. JCIT

सुनवाईकीतारीख/Date of Hearing

:

21.12.2020

घोषणाकीतारीख/Date of Pronouncement

:

06.01.2021

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER :

The assessee filed this appeal against the order of Commissioner of Income Tax (Appeals)-7, Chennai in ITA No. 8/CIT(A)-7/2016-17 dated 31.10.2018 for assessment year 2013-14.

2. The assessee filed this appeal belatedly by 1 day. It was pleaded that the assessee was suffering from viral fever, unable to attend to the office and in view of that there was one day delay in filing the appeal, which is neither wilful or wanton and prayed to condone the one day delay of filing the appeal.

3. We heard the rival parties and condone the delay.

4. Shri. M. Mohamed Nayeem, the assessee an Income Tax practitioner, admitted, inter alia, short term capital gains in his return of income. The AO found that the assessee, jointly with his wife, purchased a flat from Tamil Nadu Housing Board for Rs. 24,85,200/- vide document dated 18.12.2010,. It was sold on 21.06.2012 for a consideration of Rs. 43 lakhs. However, the registration department valued the property at Rs. 50,40,000/-. Adopting the registered value of the property as the sale consideration u/s. 50C, the Assessing Officer computed the capital gains. The assessee claimed interest paid on the capital asset as the cost of the asset. The AO refused to allow the same for the want of the evidences. Aggrieved, the assessee filed an appeal before the CIT(A), wherein the assessee, inter alia, claimed that he is co-owner of the property, the value of the property has to be referred to the departmental valuer u/s. 50C, certain cost of improvement made on the flats are to be considered, etc.

The Ld. CIT(A) on due examination held, inter alia, that there is no clear demarcation regarding the specific contribution of the assessee's wife out of her own sources, and no corroborative evidences such as return of income etc have been furnished towards the claim. Therefore, the Ld. CIT(A) upheld the stand taken by the AO that the property has to be assessed in the assessee's hand only. During the course of appeal, the property was referred to the DVO and the DVO furnished the valuation report. The Ld. CIT(A) found that the DVO valued the fair market value of the property at Rs. 47,28,600/- to which the assessee had no objection before the DVO. Therefore, the Ld. CIT(A) held that since the assessee has agreed to the fair market value adopted by the DVO, it has to be adopted as the sale consideration. Before the Ld. CIT(A), the assessee pleaded that the difference between sale consideration specified in the documents at Rs. 43 lakhs and the fair market value determined by the DVO at Rs. 47,28,600/- being very small, pleaded that the sale consideration received by the assessee is to be taken for the purpose of computation of capital gains. The Ld. CIT(A) held that the DVO report is self-speaking and the valuation made by the DVO was accepted by the assessee. Therefore, the assessee's plea is without basis and hence directed the AO to adopt the fair market value of the property at Rs. 47,28,600/- as fixed by the DVO. With regard to the issue of the interest paid on the capital asset forming part of the cost of capital asset, after

going through the interest certificate furnished by the Allahabad Bank and the return copy of the assessee for the last several years, the Ld. CIT(A) held that the assessee has not been claiming interest paid on the housing loan. Therefore, she held that there is no reason to deny the benefit of interest claim and accordingly allowed the appeal on this issue. Aggrieved against that order, the assessee filed this appeal.

5. The case was posted for video conferencing. The Ld. AR inviting our attention to the concise grounds of appeal submitted that the assessee is a co-owner of the property, however, the capital gain on the entire property was assessed in the hands of the assessee. The Ld. CIT(A) erred in sustaining such action of the Assessing Officer. The Ld. AR submitted that the Ld. CIT(A) erred in mechanically adopting the fair market value determined by the DVO without assigning proper reason and justification and failed to appreciate the fact that the difference between actual value and the DVO value is less than 10%. Therefore, the value shown by the assessee should have been accepted. The AR further submitted that the Ld. CIT(A) having found that the assessee purchased the flat availing housing loan, paid the interest on such loan from the date of purchase to sale but he has not claimed such interest against the rental income admitted in the income returns of earlier years etc., erred in partly allowing the interest expenditure for the assessment year 2013-14 alone as a

deduction, instead of directing the AO to allow the entire interest at Rs. 3,62,367/-. Therefore, he pleaded that the assessee's appeal to be allowed. Per contra, the Ld DR submitted that the assessee filed his return of income admitting the capital gains in his hands. Although, he has taken the plea that the property is of joint ownership, he has not furnished any evidence that his wife had her own sources of income out of which the impugned property was purchased and no corroborative evidences such as returns of income etc have been furnished. Therefore, the assessee's plea for the joint ownership has been correctly rejected by the lower authorities and hence, the Ld. DR supported the orders of the lower authorities. Before the Ld. CIT(A), the assessee sought a reference to the DVO for fixing the fair market value of the property. On a reference, the DVO after giving due opportunity to the assessee, fixed the value at Rs. 47,28,600/-, which has been accepted by the assessee also. Therefore, the fair market value determined by the DVO shall be taken as the full value of consideration received as the result of transfer in accordance with sub section 6 of section 16A r.w. section 50C. Therefore, the Ld. DR submitted that the orders of the lower authorities be sustained. With regard to the issue that the interest paid on the capital asset to be considered as part of cost of the asset, the Ld. DR supported the order of the Ld. CIT(A).

6. We heard the rival submissions and gone through the relevant material. The assessee admitted the short term capital gains in his return claiming that he is the owner of the flat purchased from the Tamil Nadu Housing Board. However, during the assessment and appeal proceedings, he claimed that he is a co-owner of the property. But, he has not furnished any evidences before the lower authorities that he is a joint owner of the property. Therefore, we do not find any reason to interfere with the orders of the lower authorities. Therefore, the assessee is correctly treated as owner of the property. As per documents, the flat was sold for Rs. 43 lakhs. However, the registration authority fixed the value of the property at Rs. 50,40,000/-. Since, the assessee objected to the adoption of the value fixed by the registration department, the property was referred to the DVO. The DVO after giving due opportunity to the assessee fixed the value at Rs. 47,28,600/-. The assessee has accepted this value before the DVO also. Therefore, the fair market value determined by the DVO at Rs. 47,28,600/- is directed by the Ld. CIT(A) to be adopted as the full value of consideration received as a result of transfer. This is in accordance with provisions of section 50C r.w.s. 16A of the Wealth Tax Act. Therefore, we do not find any merit in the submissions of the assessee. With regard to the assessee's claim that the interest paid on the capital asset should form part of the cost of asset when computing the capital gains, it is clear from the order of the Ld.

CIT(A) that the assessee has furnished interest certificate from Allahabad Bank certifying interest payments and return copies etc for the last several years. On examination of them, the Ld. CIT(A) has recorded a finding that the assessee has not claimed interest on the housing loan against the income from house property. Therefore, the Ld. CIT(A) held that there is no reason to deny the benefit of the claim of the assessee as the bank interest certificate indicates payment of interest towards housing loan. On such facts and circumstances, we are of the view that the assessee's interest claim for the entire loan period claimed at Rs. 3,62,367/- must form part of the cost of asset, subject to verification of the quantum of interest actually paid. Therefore, this issue is remitted back to the AO for due examination and for due re-computation of capital gains accordingly. This ground is allowed.

7. In the result, the assessee's appeal is partly allowed.

Order pronounced on 06th January, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 06th January, 2021

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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