

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2636/CHNY/2019**  
निर्धारण वर्ष / Assessment Year: 2015-16

**Shri Ambrish Damani,**  
13<sup>th</sup> Vannier Street,  
Broadway,  
Chennai – 600 001.

**The ACIT,**  
v. Non-Corporate Circle -11,  
Chennai.

**PAN: AACPD 8331K**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri J. Prabhakar, CA  
: Shri G. Suresh Periasamy, JCIT

सुनवाई की तारीख/Date of Hearing

: 28.07.2021

घोषणा की तारीख/Date of Pronouncement

: 18.08.2021

**आदेश /O R D E R**

**Per G. MANJUNATHA, AM:**

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals)-13, Chennai, dated 27.08.2019 and pertains to assessment year 2015-16.

2. The assessee has raised the following grounds of appeal:-

- “1. The Learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.84,87,500/- by adoption of alleged value under section 50 C of the Act.
2. The Learned Commissioner of Income Tax (Appeals) is not justified in rendering a unsubstantiated finding that no reference under section 50 C (2) was sought by the appellant prior to completion of assessment proceedings.
3. The Learned Commissioner of Income Tax (Appeals) erred by contradicting his finding on non application of section 50 C (2) while recording at page 6 of his appellate order, the specific claim of the assessee to make a reference to the valuation cell.
4. The Learned Commissioner of Income Tax (Appeals) is not justified in ignoring the binding jurisdictional High Court decision on mandatory reference to valuation cell under section 50 C (2) of the Act as held in [2014] 369 ITR 485 (Mad).
5. The Learned Commissioner of Income Tax (Appeals) is not justified in ignoring the valid claim of depressed market value of impugned property sold based on narrow pathway for access to entrance therein and justified lower resale value based on valuer report suo moto filed during assessment proceedings.
6. The Learned Commissioner of Income Tax (Appeals) is not justified in relying upon the unilateral and one sided version of the S.R.O. on guideline value obtained by the Assessing Officer behind the back of the assessee which was not a subject matter of endorsement at the time of registration of the impugned property.
7. The Learned Commissioner of Income Tax (Appeals) is not justified in delayed disposal of appeal almost after 10 months of personal hearing on 30/10/2018 and ignoring endorsement on reference to Valuation Cell by his predecessor CIT (A) at the time of hearing of the appeal on 12/4/2018.
8. In any event the order of CIT (A) is illegal, arbitrary and rendered without reference to records ex-facie available and quoted in his appellate order.
9. For these grounds and for such other grounds that may be adduced at the time of hearing, it is prayed that the order of the Commissioner of Income Tax (Appeals) be cancelled and/or modified to conform with the provisions of the Act.”

3. The brief facts of the case are that the assessee is an individual and proprietor of M/s. S.K. Enterprises, engaged in commission agent business, filed his return of income for the assessment year 2015-16 on 27.10.2015 declaring total income of Rs.52,03,550/-. During the financial year relevant to assessment year 2015-16, the assessee has sold a property at Egmore for apparent consideration of Rs.2,00,00,000/- and admitted long term capital gain of Rs.46,56,159/-. During the course of assessment proceedings, the AO obtained report from Sub-Registrar and found that stamp duty value of the property was fixed at Rs.12,500/- per sq.ft., as against Rs.8,707/-per sq.ft., declared by the assessee. The AO on the basis of information obtained from the office of Sub-Registrar, issued a show-cause notice and called upon the assessee to explain as to why, value fixed for payment of stamp duty at Rs.12,500/- per sq.ft., shall not be adopted as full value of consideration for transfer of property in terms of Section 50C(1) of the Income Tax Act, 1961 (hereinafter the 'Act'). In response, the assessee vide his letter dated 15.12.2017 submitted that although there is difference in value shown in registered deed and value assessed by the stamp duty authorities, he had

obtained a valuation report, as per which value of the property cannot exceed more than Rs.2 crores. The assessee further contended that although the property is situated at Victoria Crescent Road, Egmore, Chennai, but it is not in the main road connecting Egmore but, is only at the lane of Victoria Crescent Road and that the plot has access of only 3 feet path. Therefore, the value determined by the stamp duty authorities may not be correct market value of the property. He further submitted that the Government of Tamil Nadu itself had reduced the guideline value of property subsequently, as per the value, the rate per sq.ft., was fixed at Rs.9,179/- and if you adopt said rate, then there is a minor difference of less than Rs.10 lakhs, which is within the tolerance limit prescribed under the Act and hence, no addition could be made by invoking provisions of Section 50C(1)of the Act.

3.1 The AO, however was not convinced with the explanation furnished by the assessee and according to him, the assessee has shown consideration for transfer of property, which is less than market rate of the property fixed as per stamp duty authorities and hence, by taking note of the information

collected from office of the Sub-Registrar, adopted Rs.12,500/- per sq.ft., and recomputed capital gain in terms of Section 50C(1) of the Act and made addition of Rs.84,87,500/-

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee has reiterated his submissions made before the AO along with the decision of Hon'ble Madras High Court in the case of Appadurai Vijayaraghavan, 369 ITR 485 and submitted that market value fixed for payment of stamp duty is not sacrosanct and what is required to be seen is whether the property is capable of fetching the same rate in the open market to determine the full value of consideration for transfer of property. The assessee further contented that when the assessee has disputed value determined by the AO in accordance with provision of section 50C(1) of the Act, then it is the duty of the AO to refer the matter to the valuation officer but he could not do so. Therefore, the matter may be referred to the departmental valuation officer in terms of section 50C(2) of the Act, so that the correct valuation may be adopted. The CIT(A) after considering relevant submissions of the assessee

and also taken note of facts brought out by the AO observed that although the assessee has disputed value determined by the AO u/s.50C(1) of the Act, but he did not raise any objection nor requested for reference to departmental valuation officer for determining the correct market value of the property. The assessee rather requesting for reference to DVO, has justified the value of the property by citing various infirmities in the location of the property and hence, the question of reference to valuation officer does not arise.

4.1 As regards, value adopted by the AO at Rs.12,500/- per sq.ft., the CIT(A) observed that although the guideline value was fixed at Rs.13,700/- per sq.ft., but the AO has adopted Rs.12,500/- on the basis of value determined by the District Revenue Officer and reference made by the Sub-Registrar and hence, it is nothing but reference to another authority for valuation of property and hence, there is no error in the reasons given by the AO to adopt value of the property as per guideline value fixed for payment of stamp duty in terms of Section 50C(1) of the Act.

5. The Id.AR submitted that the Id.CIT(A) is not justified in sustaining the addition made by the AO by adoption of alleged fair market value of the property based on the value fixed by the stamp duty authorities in terms of Section 50C(1) of the Act, without appreciating the fact that when the assessee had disputed the value determined by the AO, then it is the duty of the AO to refer the valuation to the Departmental Valuation Officer in terms of Section 50C(2) of the Act. He, further submitted that although the assessee has justified the value shown in the registered document with various reasons but the AO has not accepted the arguments of the assessee and has simply adopted stamp duty value fixed by the authorities without complying the mandatory law as prescribed u/s.50C(2) of the Act and hence, the matter may be set aside to the file of the AO to reconsider the issue.

6. The Id.DR on the other hand strongly supporting order of the Id.CIT(A) submitted that the Id.CIT(A) has upheld addition made by the AO on the basis of factual finding recorded in the assessment order having regard to value of the property as per guideline value fixed by the stamp duty authorities, as per

which, market value of the property was fixed at Rs.12,500/- per sq.ft. The assessee has not offered any explanation to justify sale consideration shown in the registered sale deed. Therefore, there is no error in the findings recorded by the CIT(A) to confirm addition made by the AO and hence, his order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee has sold a property at Victoria Crescent Road, Egmore, Chennai for a consideration of Rs.2,00,00,000/- whereas, the market value of the property was determined at Rs.12,500/- sq.ft., by stamp duty authorities, as per which, there is a difference in sale consideration in the registered document and value arrived at by the stamp duty authorities and hence, the AO has adopted value determined by the stamp duty authorities in terms of Section 50C(1) of the Act and recomputed long term capital gain from sale of property. The assessee has disputed the value assessable or assessed by stamp duty authorities for payment of stamp duty and argued that property was situated in a lane adjacent to Victoria

Crescent Road and the road connecting property is only 3 feet width and hence, value fixed by the State Government for property situated in Victoria Crescent Road cannot be applied to the impugned property. The assessee had also tried to justify the value shown in the registered document by obtaining a valuation report from the registered valuer.

8. Having heard both sides, we find that it is an admitted fact that once there is difference in consideration received for transfer of property is less than value adopted or assessed (or assessable) by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purpose of Section 48, be deemed to be the full value of consideration received as a result of said transfer. However, sub-section (2) of Section 50C of the Act, makes it clear that in case the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer and further the value so adopted or assessed has not been disputed in any appeal or revision or

any reference has been made before any other authority, court or the High court, then the AO may refer the valuation of the capital asset to the valuation officer. From the above, it is very clear that when assessee objected the value adopted or assessed by the stamp duty authority with certain reasons, then it is the duty of the AO to refer the valuation of the property to the departmental valuation officer in terms of Section 50C(2) of the Act. In this case, although the assessee has requested for reference to departmental valuation officer u/s.50C(2) of the Act, before the AO as well as the CIT(A), both authorities have failed to comply with the requirement of law. Therefore, we are of the considered view that the AO as well as the CIT(A) have erred in computing LTCG by taking value fixed by the State Government authority for payment of stamp duty, even though the assessee has filed his objection for taking such valuation, contrary to provisions of Section 50C(2) of the Act. Hence, we set aside the appeal to the file of the AO and direct him to reconsider the issue in light of arguments of the assessee and further, as requested by the assessee, refer the valuation to the Departmental Valuation Officer to determine correct market value of the property.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the court on 18<sup>th</sup> August, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

**(V. Durga Rao)**

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

**(G. Manjunatha)**

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 18<sup>th</sup> August, 2021

**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.            |