

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.2221/Chny/2019
निर्धारण वर्ष/**Assessment Year: 2008-09**

Shri Anush Narayanan,
2, Second main Road,
CIT Colony, Chennai 600 004.
[PAN: AAFPA6195H]

The Assistant Commissioner of
Vs. Income Tax,
Non-Corporate Circle 1(1),
Chennai.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri R. Raman, C.A.
प्रत्यर्थी की ओर से/Respondent by : Ms. R. Anita, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 30.08.2021
घोषणा की तारीख /Date of Pronouncement : 08.09.2021

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 2, Chennai, dated 30.04.2019 relevant to the assessment year 2008-09.

2. There is a delay of two days in filing the appeal by the assessee. The assessee has filed a petition for condonation of delay in filing the appeal in support of an Affidavit. We have gone through the Affidavit and find that the assessee was prevented by sufficient cause for the delay in filing the appeal. Accordingly, the delay is condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee has sold two properties vide Document No. 835/2008 and Document No. 10911/2007 for a total consideration of ₹.21,04,800/-. The assessee has purchased this property admeasuring 2400 sq. ft. from Gandhi Nagar Cooperative Housing Society Ltd., Chennai on 03.02.2006 vide document No. 874 of 2006. Accordingly, the assessee has admitted short term capital gain on the sale consideration of ₹.21,04,800/-. Subsequently, by invoking the provisions of section 50C of the Income Tax Act, 1961 ["Act" in short], the Assessing Officer has adopted the sale consideration at ₹.52,80,000/- and calculated the short term capital gain at ₹.48,61,579/- and accordingly made addition of ₹.31,75,200/-. Before the Assessing Officer, the assessee has requested to refer the matter to the Department Valuation Officer. Accordingly, the Assessing Officer has referred the matter to the DVO for valuation of the property. However, without waiting for the report from the DVO, the assessment was completed.

4. On appeal before the Id. CIT(A), the Id. CIT(A) called for the remand report from the Assessing Officer on the report of the DVO. The Assessing Officer considered the report of the DVO, who has valued the property at ₹.39,58,100/- and proposed that the sale consideration may be taken at ₹.39,58,100/- instead of ₹.52,80,000/- for the purpose of applying provisions of section 50C of the Act. Accordingly, by considering the remand report and also the DVO's report, the Id. CIT(A) has given partial relief to the

assessee and directed the Assessing Officer to adopt the amount of ₹.39,58,100/- as the full value of the sale consideration and recompute the short term capital gains.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessee purchased the property from Gandhi Nagar Cooperative Housing Society Ltd., Chennai without knowing that the property is under dispute. The assessee was unable to find out buyers of the property, therefore, he sold the property at lower price as distress sale and submitted that the above facts were admitted by both the authorities below including the DVO. It was further submission that even today, the appeal is pending before the Hon. District Court at Chengalpet in O.S. No. 402 of 2006 in I.A. No. 157/2010 and now the case is posted for Trial on 06.09.2021. It was further submission that without considering the subject matter of the property, the DVO has simply gave 20% reduction, which is not correct and also submitted that the sale price as per the registered document has to be considered as the market value of the property and not as opined by the DVO.

6. On the other hand, the Id. DR supported the orders of authorities below.

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The assessee has sold two properties vide Document No. 835/2008 and Document No. 10911/2007 for a total consideration of ₹.21,04,800/-. The case of the assessee is that the property, which is under litigation before the Hon'ble District Court at Chengalpet, no buyers are ready to buy the property. Therefore, the property was sold as distress sale. The case of the Department is that the Assessing Officer during remand proceedings and the Id. CIT(A) during appellate proceedings considered the report of the DVO and 20% reduction given by the DVO has been considered to be the sale consideration and the Id. CIT(A) directed the Assessing Officer to recompute the short term capital gain. We have gone through the entire file and orders of authorities below. The Assessing Officer as well as Id. CIT(A) are agreed that the property is under litigation and not only that even today, the litigation is not cleared and nobody knows when the litigation will be cleared because, now the O.S. is posted for Trial on 06.09.2021. Even the DVO has accepted that the property is under litigation. However, the DVO gave the reduction for the sale price only 20%. We have gone through the entire report of the DVO and could not find the basis for the DVO to come to such conclusion to give 20% reduction. Once there is registered document and accordingly, the assessee has sold the property and it is a fact that the transaction is distress sale and this fact was admitted by both the authorities below including the

DVO. Thus, we find that there was no justification for the authorities below to reject the sale consideration adopted by the assessee as per the registered sale deed. Under these facts and circumstances of the case, the order passed by the Id. CIT(A) is cancelled and the ground raised in the appeal of the assessee is allowed.

8. By making endorsement in the grounds of appeal by the Id. Counsel for the assessee that “the assessee is not pressing for reopening”, there is no need to adjudicate the ground of reopening of assessment under section 147 of the Act.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 08th September, 2021 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, the 08.09.2021

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.