

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 560/CHNY/2020
निर्धारण वर्ष / Assessment Year: 2014-15

Shri Elumalai Rajendran,
No.4/27, Pachaiyappar Salai,
Mogappair East,
Chennai – 600 037.

Vs **The Income Tax Officer,**
Non-Corporate Ward -7(3),
Chennai – 34.

PAN: AELPR 3364K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Smt. Srividya Sivaram, CA
: Shri G. Johnson, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 30.11.2021

घोषणा की तारीख/Date of Pronouncement

: 01.12.2021

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by assessee is arising out of order of Commissioner of Income Tax (Appeals)-7, Chennai in ITA No.176/CIT(A)-7/2016-17, vide order dated 12.02.2020. The assessment was framed by ITO, Non-Corporate Ward-7(3), Chennai for the assessment year 2014-15 vide his order dated 29.12.2016 u/s. 143(3) of the Income Tax Act (hereinafter the 'Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the DVO in assessing the fair market value of the property sold at Rs.5,98,96,000/- as against sale consideration recorded in the sale deed at Rs.4.40 crores without considering the objections of the assessee raised vide letter dated 27.11.2019. For this, assessee has raised various grounds.

3. Brief facts are that the assessee is an individual and during the year under consideration sold property in survey No.507/2A and survey No.489/1 & 2, old patta No.140, new patta No.5112 in bearing old No.1, New door No.16, Plot No.52 situated in Balaji Nagar, Thirumullaivoyal, Ambattur Taluk, Chennai admeasuring an extent of 25,827 sq.ft., out of 32,480 sq.ft., for a total sale consideration of Rs.4.40 crores but the Sub-Registrar valued the property for the purpose of stamp duty collection i.e., as per circle rates at Rs.5.95 crores. The AO required the assessee to explain why provisions of Section 50C of the Act cannot be invoked for lesser value of transaction of property as against the value determined by the Stamp Valuation Authority. The AO by applying the provisions of Section 50C of the Act treated the sale consideration as per circle rates i.e., stamp duty valuation at Rs.5.95 crores and computed the capital gains accordingly.

Aggrieved, assessee preferred appeal before CIT(A). The assessee before CIT(A) raised the issue that the AO erred in invoking the provisions of Section 50C of the Act, without referring the property sold by assessee to the DVO for determining the fair market value for the purpose of computation of capital gains. The CIT(A) on this referred the property to DVO and DVO vide his report dated 28.11.2019 vide F.No.DVO/MDS/CG(01)/2018-19/738 determined the fair market value of the above said property at Rs.5,98,96,000/-. The CIT(A) on receipt of DVO's report, furnished copy of valuation report to the assessee for furnishing his comments. The assessee objected the valuation report vide letter dated 08.02.2020. The assessee raised various objections and the relevant letter is reproduced in the order of CIT(A). The CIT(A) decided the issue by observing in Para 7 as under:-

“7. Decision

The assessment order passed by the AO, ground of appeal taken by the appellant, written submissions filed by the AR, Valuation report and objection to Valuation report filed by appellant are duly considered. The DVO's report is binding on the department hence the AO is directed to adopt the value given by the DVO and enhance the sale consideration.”

Aggrieved against the order of CIT(A), now the assessee is in appeal before Tribunal.

4. Before us, the Id.counsel for the assessee Smt. Srividya Sivaram, Chartered Accountant, took us through Ground Nos.1 to 5 and stated that the DVO has not given proper opportunity to the assessee before determining fair market value of the property vide its letter inspite of the fact that the assessee objected the method of valuation and copy of objection was referred by Id.AR. The Id.AR for the assessee took us through the objections filed with the DVO dated 27.11.2019 which was actually filed only on 29.11.2019. The Id.AR for the assessee read out the objections, which is being reproduced as it is:-

“With reference to the above subject, under the advice of the client, we would like to inform you that, your good self has adopted Rs.2100/- as rate per sqft. to arrive the cost of the land and you have relied on the Two transactions vide document no. 3346 and 12247. However, you have failed to notice that, both the above transacted property is situated in the 22 feet main rod. [on the main road] Whereas, the property sold by the assessee is situated around 350 feet away from the same main road. As you are aware that, the price of the land will be higher in the main road property than the property situated in the passage property.

Kindly note that, both the above properties mentioned in your valuation are smaller properties. One property measuring 2647 sqft. and the other property measuring 2250 sqft. Whereas, the assessee's property was around 25857 sqft. Normally, smaller property will fetch more price than the bigger size property.

It was contended by the Id.AR that the same objections were raised by assessee before CIT(A) vide letter dated 08.02.2020 but neither

CIT(A) nor DVO considered these objections and determined fair market value u/s.50C of the Act and accordingly charged long term capital gain tax. The Id.AR for the assessee first of all stated that the order of CIT(A) is totally non-speaking and nothing was considered by CIT(A). Secondly, the Id.AR stated that the DVO has not considered the objections filed by the assessee vide letter dated 27.11.2019. When it was pointed out that the DVO has determined the fair market value of the property vide report dated 28.11.2019, whereas the assessee has filed his letter raising objections to the DVO vide letter dated 27.11.2019 which was filed only on 29.11.2019, the Id.AR stated that in any case, the principles of natural justice have been violated. But, it was pointed out to Id.AR that the preliminary valuation was intimated to the assessee as noted by DVO in Para 7 i.e., preliminary valuation and the assessee has not availed of the opportunity provided by the DVO. The relevant para of DVO's report reads as under:-

“7.0 PRELIMINARY VALUATION

7.1 Intimation to assessee : The preliminary valuation report was sent to the assessee vide F.No. A DVO/MDS/CG(01)/2018-19/618 dated 22.10.2019, by the undersigned regarding the fair market value of the property. All that piece and parcel of building site measuring an extent of 25,827 Sqft out of 32,480 sqft comprised in survey no.507/2A and Survey no.489/1 & 2, old patta no.140, new patta no.5112 in bearing old no.1, New door no.16 Plot no.52 situated in Balaji nagar, Thirumullaivoyal, Ambattur taluk, Chennai

“@Rs.5,98,96,000/- (Five Crores Ninety Eight Lakhs Ninety Six Thousand only) as on 17.04.2013 with a request to file objection, if any, on or before 1.11.2019.

7.2 Response from the assessee : For the notice sent assessee has not submitted any objection upto 27.11.2019. Hence the report finalized accordingly.”

On this, the Id.AR stated that in any case objection should have been considered by CIT(A) and matter could have been remanded back to the file of the DVO for considering these objections.

5. When these facts were confronted to Id.senior Department Representative, he contested the claim of assessee and stated that once there is no objection filed before DVO by the date when the DVO's report was prepared i.e., 28.11.2019, the objections filed on 29.11.2019 cannot be considered at all. He also contested that the DVO has provided opportunity of being heard to the assessee and allowed reasonable time to file any objection on or before 01.11.2019, but the assessee failed to avail of this opportunity. But, the Id. senior DR could not comment as regard to the objections filed by the assessee before CIT(A) and further stated that the CIT(A) referring the matter to DVO is in violation of provisions of the Act and he stated that the CIT(A) has no power to refer the matter to DVO as per Section 50C of the Act. In view of

the above, the Id. senior DR stated that the orders of the lower authorities be confirmed.

6. We have heard rival contentions and gone through facts and circumstances of the case. Admitted facts are that the DVO has valued the property at Rs.5,98,96,000/- as against sale consideration declared by the assessee in sale deed at Rs.4.40 crores and property valuation as per stamp duty is at Rs.5.95 crores. Admittedly, the DVO has provided opportunity to the assessee to file his objections on or before 01.11.2019 and the assessee has not submitted any objections up to 27.11.2019. But, now the assessee has produced one letter dated 27.11.2019 filed with the DVO only on 29.11.2019 raising objections, which is enclosed in assessee's paper-book at Page 14. Similar objections were raised by the assessee before CIT(A) and the CIT(A) has reproduced these objections in his order but these were never considered nor adjudicated upon. Keeping in view the entirety of facts in mind, we are of the considered view that the above objections cannot be decided at this stage because this being a technical issue. Moreover, the CIT(A) has passed a non-speaking order as noted above. Hence, we are of the view that let the matter be referred back to the file of the AO, who will refer the matter

back to the file of the DVO to consider the objections raised by the assessee and then determine the fair market value as per law. Hence, we set aside the orders of the lower authorities i.e., of the AO and that of the CIT(A) and remand the matter back to the file of the AO for reconsideration of the objections of the assessee.

7. The assessee has raised three more issues i.e., disallowance of improvement cost of Rs.23,00,000/-, disallowance of deduction towards brokerage expenses of Rs.8,80,000/- and disallowance of construction expenses of Rs.12,99,124/- vide Ground Nos.6, 7 & 8 which reads as under:-

“6. The learned CIT-[A] erred in confirming the action of the Assessing Officer in not allowing the improvement cost of Rs.23,00,000/- claimed by the assessee on the property sold.

7. The learned CIT-[A] erred in confirming the action of the Assessing Officer in not allowing the deduction towards brokerage expenses of Rs.8,80,000/- incurred for the property sold.

8. The learned CIT-[A] erred in confirming the action of the Assessing Officer in not allowing the construction expenses of Rs.12,99,124/- in spite of the fact that, the same are related to the labour, sand and other miscellaneous payments for constructing the new house.

8. At the outset, the Id.AR for the assessee stated that neither the AO nor the CIT(A) has considered these issues in proper perspective. Since the main issue is going back to the file of the

AO, these three issues can also go back to the file of AO because these issues will affect the determination of long term capital gain of the assessee. To this, the Id. senior DR has not objected. Hence, we set aside these three issues also to the file of the AO. The orders of the lower authorities are set aside and these three issues are remanded back to the file of the AO.

9. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 1st December, 2021 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 1st December, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |