

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

आयकरअपीलसं./I.T.A.No.449/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2012-13)

Dr. K.S.Kavitha 6A, Thirupanalvar Street, Villupuram-605 602.	Vs	The Deputy Commissioner of Income Tax, Villupuram Circle, Villupuram.
PAN: ANQPK 0540C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. S.Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. R.Bhoopathi, JCIT

सुनवाईकीतारीख/Date of hearing	:	21.12.2021
घोषणाकीतारीख /Date of Pronouncement	:	05.01.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the learned Commissioner of Income Tax(Appeals), Puducherry, dated 11.12.2018 and pertains to assessment year 2012-13.

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

"1. The order of the Commissioner of Income Tax (Appeals), Puducherry dated 11.12.2018 in I.T.A.No.56/CIT(A)-PDY/2015-16 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the assessment resulting in the recomputation of the taxable total income at Rs.81,97,060/- without assigning proper reasons and justification.

3. *The CIT (Appeals) failed to appreciate that the recomputation of taxable total income as per the assessment order on various facets was wrong, erroneous, unjustified, incorrect and not sustainable in law.*

4. *The CIT (Appeals) erred in adopting the stamp duty value for converting the agricultural land into housing plots while overlooking the explanation offered for the computation/trading account furnished by the Appellant) without assigning proper reasons and justification.*

5. *The CIT (Appeals) failed to appreciate that the recasting of the trading account for the year ended 31.3.2012 on various facets was wrong, erroneous, unjustified, incorrect and not sustainable in law.*

6. *The CIT (Appeals) failed to appreciate that the legal issue of the applicability of section 50C of the Act in the context of computation as per section 45(2) of the Act should be examined as per the purposive legislation theory and ought to have appreciated that the conclusions reached on the said legal issue should be reckoned as bad in law.*

7. *The CIT (Appeals) erred in not adjudicating the issue relating to the estimation of net profit for the Villupuram Branch of distribution for Aircel products as per para 3 of the assessment order without assigning proper reasons and justification.*

8. *The CIT(Appeals) failed appreciate that there was no proper opportunity given before passing the impugned order and ought to have appreciated that any order passed in violation of the principles of natural justice should be reckoned as nullity in law.”*

3. Brief facts of the case are that the assessee is a Doctor by profession filed her return of income for assessment year 2012-13 on 21.03.2012 declaring total income of Rs.19,97,250/-. The case was taken up for scrutiny and during

the course of assessment proceedings, the Assessing Officer noticed that the assessee has admitted income from real estate business and thus, called upon the assessee to file necessary evidence. In response, the assessee has filed various details and submitted that she had purchased 10.315 acres of agricultural land at Marutheri Village, Kanchipuram in the year 2007 and same has been converted into stock in trade as on 01.04.2011 to exploit asset for commercial purpose and thus, derived income from sale of plots to be assessable under the head income from business. The Assessing Officer after considering relevant facts and has also taken note of value adopted by the assessee for conversion of capital asset into stock in trade as per provisions of section 45(2) of the Act, has disputed rate adopted by the assessee for conversion of land into stock in trade and accordingly, has adopted a sum of Rs. 25 lakhs per acre as fair market value of the land as on date of conversion and accordingly, reworked gross profit derived from real estate business, after valuing closing stock of the assessee at Rs.117.39 per sq.ft. Thus, the Assessing Officer has arrived gross profit at Rs.8,46,963/- for year ending

31.03.2012 and after reducing gross profit already declared by the assessee at Rs.3,38,834/-, balance of Rs.5,08,129/- has been added to the total income of the assessee. The Assessing Officer had also made addition towards difference in profit admitted by the assessee on sale of plots at Rs.62,580/-. The assessee carried matter in appeal before first appellate authority, but could not succeed. The learned CIT(A) for detailed reasons recorded in his appellate order dated 11.12.2018, sustained additions made by the Assessing Officer towards difference in gross profit admitted from real estate business by recasting trading account, after applying difference in value of property as on date of conversion of capital asset into stock in trade and further, valuation of closing stock at the end of financial year by adopting guideline value of property. Aggrieved by order of the learned CIT(A), the assessee is in appeal before us.

4. The learned A.R for the assessee submitted that the learned CIT(A) has erred in sustaining additions made by the Assessing Officer towards gross profit derived from real estate business by recasting trading account for relevant financial year

without appreciating fact that as per provisions of section 45(2) of the Act, fair market value of the asset on date of such conversion shall be full value of consideration and thus, in place of fair market value, the Assessing Officer cannot substitute guideline value of property.

5. The learned DR, on the other hand, strongly supporting orders of the lower authorities submitted that the assessee has adopted fair market value of the land at Rs.250/- per sq.ft., which is neither backed by any evidence nor supported by guideline value of property as on date of conversion and thus, the Assessing Officer has rightly adopted guideline value of property as on date of conversion and hence, there is no error in findings recorded by the learned CIT(A) to sustain additions made by the Assessing Officer.

6. We have heard both the parties, perused material available on record and gone through orders of the authorities below. There is no dispute with regard to fact that when capital asset was converted into stock in trade, it was an exempted asset being agricultural land. The assessee has adopted fair

market value of the property at Rs.250/- per sq.ft as on date of conversion of capital asset into stock in trade and claimed that said value is lesser than prevailing market rate of the property at relevant point of time. The Assessing Officer has adopted about Rs. 100/- per sq.ft as fair market value of the property as on date of conversion and such rate was determined on the basis of guideline value of property, when the assessee has subsequently sold plots after conversion of capital asset into stock in trade. The rate adopted by the Assessing Officer at Rs.100/- per sq.ft is neither supported by any evidence nor backed by guideline value of property as on date of conversion because, guideline value of the property is more than rate adopted by the Assessing Officer. At the same time, the assessee has failed to justify fair market value of Rs.250/- per sq.ft with any evidences or comparable cases of similar nature. No doubt, guideline value of property may not be a sound indicator for determining fair market value of the property. It is an admitted fact that there is large difference between guideline value and fair market value of property. Therefore, one cannot go by guideline value of property to

determine fair market value of the property, including for the purpose of conversion of capital asset into stock in trade. Therefore, we are of the considered view that to this extent reasons given by the Assessing Officer to adopt fair market value of the property at the time of conversion of capital asset into stock in trade at Rs.100/- cannot be sustained. Similarly, valuation of closing stock by adopting guideline value as on 31.03.2012 also cannot be accepted. However, fact remains that the assessee has also not able to justify adoption of fair market value at Rs.250/- per sq.ft at the time of conversion of capital asset into stock in trade. Therefore, considering fact that both the parties have failed to justify respective rates adopted for conversion of capital asset into stock in trade, we deem it appropriate to adopt a sum of Rs.200/- per sq.ft as fair market value of the property as on date of conversion of capital asset into stock in trade to settle dispute between the parties. Hence, we direct the Assessing Officer to adopt a sum of Rs.200/- per sq.ft. as fair market value of the property and rework gross profit, if any, to be considered for taxation.

7. In the result, appeal filed by the assessee is treated as partly allowed.

Order pronounced in the open court on 5th January, 2022

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 5th January, 2022

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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