

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No. 1846/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

Smt. Diderot Kannagi Rep. by POA Shri. P. Muthukrishnan, No.2/858, Kalamegam Street, Mugappair West, Chennai – 600 037.	बनाम/ Vs.	CIT (International Taxation), No. 16, Greams Road, Chennai – 600 006.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. EAPPK-5647-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri D. Anand (Advocate) – Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Ms. Ann Mary Baby (CIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	21-02-2022
घोषणा की तारीख / Date of Pronouncement	:	04-03-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee contest legality of revisional jurisdiction u/s. 263 as exercised by Ld. Commissioner of Income Tax, International Taxation, Chennai [CIT] vide order dated 30-01-2019. The grounds raised by the assessee read as under:

1. The order of the learned Commissioner Of Income Tax (International Taxation), is wrong, illegal and opposed to facts of the instant case.

2. The learned Commissioner of income Tax (International Taxation) ought to have seen that the Assessing officer has applied his mind and passed the assessment order by adopting the value as on 1.4.1981 after considering the submissions made by the appellant.

3. The learned Commissioner of Income Tax (International Taxation) ought to have seen that what is contemplated under the act is FMV as on 1.4.1981 for the purpose of valuation and that the guideline value/ information from Dy. Collector Revenue (North) , Puducherry need not represent the FMV to allege that the assessment order is erroneous.

4. The learned Commissioner of Income Tax (International Taxation) while directing the AO to refer the valuation of property to the valuation officer failed to mention either in the show cause notice or in the subsequent proceedings that the order of assessment is erroneous in so far as the same has not been referred to the valuation officer.

5. The learned Commissioner of Income Tax (International Taxation) ought to have seen that reference to the valuation officer is warranted only when the value adopted by the Assessing officer is less than the FMV. In the instant cases once the value adopted by the assessing officer is FMV the learned Commissioner of Income Tax (International Taxation) direction to refer the case to the valuation officer itself is erroneous.

6. The learned Principal Commissioner of Income Tax ought to have seen that the order of assessment is not erroneous and that the learned PCIT can assume jurisdiction under section 263 only if the twin condition of the assessment order being erroneous and pre-judicial to the interest of the revenue is satisfied.

For these and other reasons that may be advanced at the time of hearing it is most humbly prayed that the Hon'ble Tribunal be pleased to quash the revision order made under section 263 of the Income Tax Act and thus render justice

2. The Registry has noted a delay of 48 days in the appeal, the condonation of which has been sought by the assessee on the strength of the condonation petition which is accompanied by the affidavit of assessee's power of attorney holder Shri P. Muthukrishnan. Though Ld. DR opposed the condonation of delay, however, keeping in view the principle of natural justice and after going through the contents of the affidavit, we condone the delay and admit the appeal for adjudication on merits.

3. The Ld. AR assailed the revision, inter-alia, on the ground that issue of Fair Market Value (FMA) as on 01.04.1981 was considered by Ld. AO during assessment proceedings. In fact the valuation submitted

by the assessee was not accepted by Ld. AO. It was also submitted that the value adopted by Ld. AO at Rs.30 square feet was much lesser than the value returned by the assessee. Thus, Ld. AO had already examined the issue and no error could be said to have occurred in the assessment order. The Ld. CIT-DR, on the other hand, submitted that Ld. AO did not make requisite enquiries and therefore, the revision was quite justified.

4. Having heard rival submissions and after going through the impugned order, our adjudication would be as given in succeeding paragraphs.

5. The assessee was assessed u/s 143(3) r.w.s. 147 on 23.12.2016. The assessee is a non-resident and represented by Power of Attorney holder Shri. P. Muthukrishnan. During assessment proceedings it transpired that the assessee sold certain property situated at Pondicherry and admitted capital gain of Rs.94.07 Lacs. To arrive at the same, the assessee valued the fair market value (FMV) as on 01.04.1981 at Rs.75/- per square feet. It was submitted that though the value was Rs.100/- per square feet, however, the same was adopted as Rs.75/- per square feet as ascertained on the basis of the enquiry in the area where the property was situated. The assessee also filed copy of document registered in 05.01.1999 to support the claim. However, enquiries were made from Deputy Collector, Revenue North, Puducherry. In response, the authority submitted that guideline value (GRL) value was not available for 1981 and it was available only from 1985-86. It was also stated that no GRL value was assigned to the land. However, the GRL value of the nearest Patta Land was fixed as Rs.15/- per square feet which may be adopted. The Ld. AO proceeded to adopt

the value of Rs.15/- per square feet which was opposed by the assessee. To defend its own valuation, the assessee submitted report of valuer who valued the property at Rs.45/- to Rs.50/- per square feet and accordingly, agreed for valuation of Rs.45/- per square feet. The Ld. AO, after considering all the factors including the fact that value as per the sale documents registered on 19.11.1983 was Rs.22/- per square feet, adopted value of Rs.30/- per square feet and made upward revision to capital gains as computed by the assessee.

6. However, upon perusal of case records, Ld. CIT formed an opinion that the value of Rs.30/- per square feet as adopted by Ld. AO was erroneous and prejudicial to the interest of the revenue within the meaning of Sec.263. Accordingly, the assessee was put to show-cause notice. The assessee submitted that Ld. AO after considering all the material and after due application of mind adopted the value of Rs.30/- per square feet. The value of Rs.75/- per square feet as taken by the assessee was reduced to Rs.30/- per square feet which resulted into additional tax demand for the assessee. Therefore, it was incorrect to say that the assessment resulted into loss of revenue. However, rejecting the same in the light of the fact that in the case of co-owner the FMV was taken at much lower rates, the assessment was set aside and Ld. AO was directed to redo the assessment after obtaining the valuation report from DVO, Income Tax Department on the fair market value of the property under consideration. Aggrieved, the assessee is in further appeal before us.

7. Upon due consideration of material facts, it could be gathered that the issue of FMV as on 01.04.1981 was already a subject matter of reassessment proceedings. The Ld. AO had delved into complete details

and computed capital gains. The assessee had taken FMV as Rs.75/- per square feet. Upon enquiry, it was found that no guideline value was available for the property for the year 1981. The assessee furnished valuation report wherein the valuation was done as Rs.45/- to Rs.50/- per square feet. The sale document registered in 1983 valued the property at Rs.22/- per square feet. However, it is a fact that no concrete valuation was available as on 01.04.1981. In such a case, there would be no option available to Ld. AO except to value the property after taking into account all the relevant factors. In the present case, Ld. AO estimated the valuation at Rs.30/- per square feet which was much lower than the value of Rs.75/- per square feet as taken by the assessee. The action of Ld. AO resulted into additional tax demand for the assessee. Considering all these facts, it could be said that Ld. AO had taken one of the possible views in the matter and that view could not be held to be unsustainable in law. In the absence of complete information, the matter of valuation would always involve certain estimation. Therefore, the assessment order could not be held to be erroneous or prejudicial to the interest of the revenue as alleged by Ld. CIT. Merely because, another AO in case of co-owner has taken a particular view, the same would not bind all the other AOs. As already stated, the matter of valuation, in the present case, was a matter of estimation only. Therefore, not convinced with the reasoning of Ld. CIT, we quash revisional order dated 30.01.2019 and restore the assessment framed by Ld. AO.

8. The appeal stands allowed in terms of our above order.

Order pronounced on 04th March, 2022 in Chennai.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 04-03-2022
JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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