

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' 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 अपीलसं./I.T.A.No.3351/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2016-17)

Mr. Jayandran Sureshkumar Flat No.K-6, Triumph Apartments 114, Appasamy Building, Inner Ring Road, Arumbakkam, Chennai-600 106.	vs.	The Income Tax Officer, Non-Corporate Ward-8(2) Chennai-600 034.
PAN: ATKPS 3219G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. G.Gopalan, (Retd. Joint CIT)
प्रत्यर्थीकी ओर से/Respondent by	:	Mr. G. Johnson, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	11.04.2022
घोषणाकीतारीख /Date of Pronouncement	:	13.04.2022

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)-9, Chennai, dated 10.10.2019 and pertains to assessment years 2016-17.

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

1. *The learned Commissioner of Income Tax (Appeals) - 9 has erred in confirming the addition made by the Assessing Officer Rs.1,09,53,080/-.*

2. *The appellant is engaged in the business of real estate and retail trading of building material. The learned assessing officer accepted the nature of business carried on by the appellant.*

3. The learned assessing officer erred in referring to the district valuation officer for determining the fair market value in respect of two properties which are in dispute. In respect of first property the learned assessing officer erred in adopting the difference between fair market value and cost under the head "short term capital gain". In respect of the second property here again the learned assessing officer erred in referring to the District Valuation Officer and the difference between fair market value and cost and improvement of the land under the head "income from business".

4. The learned assessing officer did not call for any objection or sent any proposal for converting the income under the head business into capital gain. The learned assessing officer further erred in stating in the assessment order that the representative of the appellant has given consent for referring the properties to the District Valuation Officer for determining the fair market value which the appellant denies categorically.

5. The learned Commissioner of Income Tax -Appeal (9) stated in his order in page No.4 that "During the course of appellate proceedings, the authorized representative also confirmed that the AO has adopted the value as per the valuation officer and no dispute on that. The appellant craves to submit that no such authorization was given to the Authorized Representative by the appellant and deny the same."

3. Brief facts of the case are that the assessee has filed his return of income for the assessment year 2016-17 on 07.09.2016 admitting total income of Rs.12,71,680/-. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has sold property for consideration of

Rs.28,16,000/-, whereas stamp duty value was fixed at Rs.52.00 lakhs, therefore, to ascertain correct value of the property, a reference has been made to District Valuation Officer. In the meantime, the Assessing Officer has completed the assessment and determined total income at Rs.1,32,53,010/- by making additions towards difference in sale consideration received as per provisions of section 50C of the Income Tax Act, 1961, without considering reference made to DVO for determining value of the property. The assessee did not challenge assessment before the first appellate authority. Subsequently, the Assessing Officer has passed rectification order u/s.154 r.w.s. 143(3) of the Income Tax Act, 1961, and determined total income at Rs.1,09,53,080/- by adopting fair market value of the property as determined by the DVO.

4. Aggrieved by the assessment order, the assessee preferred an appeal before learned CIT(A). Before the learned CIT(A), the assessee challenged findings of the Assessing Officer in adopting fair market value as determined by the DVO. The learned CIT(A), for the reasons stated in his appellate order dated 10.10.2019, has rejected appeal filed by

the assessee on the ground that the issue raised by the assessee in the appeal filed against order passed by the Assessing Officer u/s.154/155 of the Act, does not emanate from order passed by the Assessing Officer, because when the Assessing Officer has made additions towards difference in sale consideration as per provisions of section 50C of the Act, the assessee has chosen not to file appeal and thus, the issue attained finality. Therefore, the assessee cannot question value adopted by the Assessing Officer in appeal filed against order passed by the Assessing Officer u/s.154/155 of the Act. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

5. We have heard both the parties, perused material available on record and gone through orders of the authorities below. Admittedly, the Assessing Officer has referred valuation of the property to determine fair market value of the property as per request of the assessee, however, completed assessment without waiting for report of the DVO. It is also an admitted fact that the Assessing Officer has revised fair market value of the property and has adopted value determined by the DVO and

passed rectification order u/s.154 / 155 of the Income Tax Act, 1961. The assessee has challenged order passed by the Assessing Officer u/s.154 of the Act before the learned CIT(A) and questioned value adopted by the Assessing Officer. However, the learned CIT(A) rejected appeal filed by the assessee without adjudicating issue involved in the appeal on technical grounds by observing that issue challenged by the assessee is not emanating from rectification order passed by the Assessing Officer. We find that when the Assessing Officer has referred valuation of the property to the DVO, the A.O. ought to have waited for report of the DVO to determine fair market value of the property. Further, when the Assessing Officer has revised fair market value of the property, as per valuation report of the DVO, then in our considered view, the issue of fair market value of the property sold by the assessee is merged with rectification order passed by the Assessing Officer u/s.154/155 of the Income Tax Act, 1961, and thus, when the assessee has challenged value determined by the Assessing Officer on the basis of report of the DVO, the learned CIT(A) ought to have dealt with objection filed by the assessee. In this case, the learned CIT(A), without considering objection

filed by the assessee on the issue of valuation of the property has simply dismissed appeal filed by the assessee on technical reasons by holding that the issue is not emanating from order passed by the Assessing Officer u/s.154 of the Act. Therefore, we are of the considered view that there is an error in the order passed by the learned CIT(A), inasmuch as not considering the issue raised by the assessee and thus, we set aside order passed by the learned CIT(A) and restore the issue back to the file of the Assessing Officer and direct the A.O. to deal with objections filed by the assessee on the issue of fair market value determined by the DVO before invoking provisions of section 50C of the Income Tax Act, 1961.

6. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 13th April , 2022

Sd/-
(वी. दुर्गा राव)
 (V. Durga Rao)
 न्यायिक सदस्य /Judicial Member
 चेन्नई/Chennai,
 दिनांक/Dated 13th April, 2022
 DS

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

आदेश की प्रतिलिपि अद्येषित/Copy to:

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