

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.235/Chny/2021
निर्धारण वर्ष /Assessment Year: 2014-15

Mr.Mustufa Moiz Lohani
112/1-B, Nafees Manzil, Broadway
George Town,
Chennai.
[PAN: AAUPL 9326 J]
(अपीलार्थी/Appellant)

v. The Income Tax Officer,
Non-Corporate Ward-11(2),
Chennai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.Idris.M.K., CA
प्रत्यर्थी की ओर से /Respondent by : Mr.G.Johnson, Addl.CIT
सुनवाई की तारीख/Date of Hearing : 20.06.2022
घोषणा की तारीख /Date of Pronouncement : 29.06.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi, dated 17.03.2021 and pertains to assessment year 2014-15.

2. The brief facts of the case are that the assessee has filed its return of income for the AY 2014-15 on 27.02.2015 declaring total income of Rs.7,47,570/-. During the course of assessment proceedings, the AO noticed that the assessee has purchased a property jointly with other members of his family vide document No.2521/2013, registered in the

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Office of Sub-Registrar, Adyar, Chennai, for a sale consideration of Rs.1.25 Crs. The AO further noted that as per the registered Sale Deed, guideline value of the property, assessed for stamp duty purpose was at Rs.1,45,48,700/-. Therefore, the difference between consideration stated to have been paid for purchase of property and guideline value of the property has been added as income from other sources u/s.56(2)(vii)(b)(ii) of the Act. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in his appellate order dated 17.03.2021 sustained the additions made by the AO and dismissed the appeal filed by the assessee.

3. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in sustaining the additions made by the AO towards difference in consideration paid for purchase of property and guideline value as on the date of registration u/s.56(2)(vii)(b)(ii) of the Act, without appreciating the fact that the guideline value of the property is not a fair market value and thus, the AO, if at all, wants to make addition should have referred to the valuation to the Valuation Officer and determine the Fair Market Value. The Ld.AR further referring to the guideline value, subsequently revised by the State Government submitted that the State Government has revised the value of the properties in a place where the assessee has purchased property and as per which, w.e.f.09.06.2017, the guideline value of the property has been fixed at Rs.2,010/- per sq.ft. and if you consider said rate, then value paid by the assessee for purchase of property is more than

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guideline value of the property. Further, when the State Government itself has revised the guideline value for subsequent year, the value of the property, cannot be higher than the revised value for previous period. Therefore, submitted that the AO is erred in making additions and hence, additions should be deleted.

4. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that there is no dispute with regard to the fact that there is a difference between the consideration paid for purchase of property and guideline value as on the date of registration and thus, the AO has rightly invoked the provisions of Sec.56(2)(vii)(b)(ii) of the Act, and made additions.

5. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The AO has invoked provisions of Sec.56(2)(vii)(b)(ii) of the Act, and made additions towards difference between consideration paid for purchase of property and guideline value as on the date of registration. Admittedly, there is a difference between consideration and guideline value of the property on the date of registration. However, it was the arguments of the assessee that guideline value of the property is not a criteria for determining the Fair Market Value of the property. The Ld.AR for the assessee referring to subsequent reduction in guideline value of the property for the place where the assessee has purchased impugned asset submitted that when the State Government itself has revised the guideline value, then Fair Market Value

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of the property on the date of registration, cannot be higher than the revised guideline value. We find forces in the arguments of the assessee for the simple reason that the Stamps & Registration Department of Government of Tamil Nadu, has revised guideline value of the property for Venkateswara Colony, which comes under Adyar Sub-Registrar Office jurisdiction w.e.f.09.06.2017 and as per the said revised guidelines, value of the property has been fixed at Rs.2,010/- per sq.ft. If you consider revised guideline value, to the value paid by the assessee per sq.ft. when the property has been purchased then the consideration paid by the assessee is more than the revised value. But, fact remains that the guideline value has been revised subsequent to the date of registration. Therefore, whether revised guideline value, can be applied to determine the Fair Market Value in question or not has to be decided by taking into consideration relevant facts and circumstances. It is a well-established principle of law that value of properties for stamp duty purpose, cannot be treated as Fair Market Value and this principle is supported by the decision of the Hon'ble Allahabad High Court in the case of CIT v. Smt. Raj Kumari Vimla Devi reported in [2005] 279 ITR 360 (Allahabad) and this principle is also reiterated by many other High Courts, wherein, it has been, time and again, held that guideline value is not sacrosanct and the value of the property should be decided based on facts and circumstances of each case. In this case, admittedly there is a revision in the guideline value of the property subsequent to date of purchase and as per which, the State

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Government has reduced the guideline value to Rs.2,010/- per sq.ft. If you go by the rationale behind reduction in guideline value of the property by the State Government, then, it is obvious that the value of the property before the date of revision, cannot be higher than the revised value. If you apply this analogy to the facts of the present case, there is a merit in the arguments of the assessee that the value fixed for stamp duty purpose, cannot be considered as Fair Market Value of the property. In this case, the guideline value as on the date of registration was at Rs.3,000/- per sq.ft. The assessee has paid consideration of Rs.2,600/- per sq.ft. If you consider, consideration paid by the assessee and guideline value as on the date of registration, there is a difference. However, if you consider revised guideline value w.e.f.09.06.2017 to the consideration paid by the assessee, then consideration paid by the assessee is higher than the guideline value of the property. Since, we have already stated in earlier part of this order, the Fair Market Value of the property for the preceding period, cannot be higher than the Fair Market Value of the property for the subsequent period. Therefore, we are of the considered view that once State Government itself has revised the property value which is much lesser than the amount of consideration paid by the assessee then the AO should have adopted revised guideline value of the property to decide the issue. If at all, the AO is not satisfied with the explanation of the assessee, then the AO should have find out the Fair Market Value of the property by referring to the valuation Officer. In this case, the AO is neither accepted the revised

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guideline value nor referred the valuation to the Valuation Officer. Therefore, we are of the considered view that the AO is completely erred in making addition towards difference in value of property u/s.56(2)(vii)(b)(ii) of the Act. Hence, we direct the AO to consider the revised guideline value of the property based on subsequent revision by the State Government to determine the Fair Market Value of the property and decide the issue accordingly. In case, the AO is not convinced with revised guideline value, then he may refer the valuation of the property to the DVO and determine the Fair Market Value as on the date of registration and decide the issue accordingly.

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

Order pronounced on the 29th day of June, 2022, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 29th June, 2022.
TLN

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