

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 2684/Chny/2018
निर्धारण वर्ष/Assessment Year:2011-12

Govindas Purushothamadass (HUF),
No. 3/2, Nowroji Street,
Chetpet, Chennai 600 031.
[PAN:AABHG4303F]

The Income Tax Officer,
Vs. Non Corporate Ward 3(4),
121, Nungambakkam High Road,
Chennai 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G. Baskar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 01.08.2022
घोषणा की तारीख /Date of Pronouncement : 24.08.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 4, Chennai, dated 10.08.2018 relevant to the assessment year 2011-12. The assessee has raised the following grounds:

- “1.1 The Commissioner of Income Tax (Appeals) having found that the capital gains arising on the transfer of entire property at Door No.8/17, Shafee Mohammed Street (now Rutland Gate Second Street) having been offered and assessed in the A.Y. 2013-14 went wrong in confirming the action of the Assessing Officer in bringing to tax the same capital gains in this year.
- 1.2 The Commissioner of Income Tax (Appeals) failed to note that this amounts to double taxation of the same income which is untenable in law.

- 2.1 *The Commissioner of Income Tax (Appeals) went wrong in holding that only the capital gains in respect of the three Sale Deeds executed during this Assessment Year alone had been brought to tax in this year. This observation of the Commissioner of Income Tax (Appeals) springs from an incorrect appreciation of facts and the submissions made before him.*
- 2.2 *The Commissioner of Income Tax (Appeals) further went wrong in upholding the action of the Assessing Officer in adopting the guidelines value of the property at Rs.8,000/- per sq. ft. whereas the prevalent guidelines value during the period as evidenced by the Sale Deeds themselves is only Rs.4,700/- per sq.ft.*
- 2.3 *The Commissioner of Income Tax (Appeals) having noted the guidelines value correctly in paragraphs 3, 4 & 5 of his order went wrong in giving a totally contrary finding in Para 34 of the Appellate Order.*
- 2.4 *The Commissioner of Income Tax (Appeals) having upheld inclusion of the capital gains arising in respect of the three Sale Deeds executed during this year, as a natural corollary ought to have directed the Assessing Officer to exclude these Sales in the assessment for the A.Y. 2013-14.*
- 3.1 *The Commissioner of Income Tax (Appeals) went wrong in upholding the levy of interest u/ss.234A and 234B of the Income Tax Act.*
- 3.2 *The Commissioner of Income Tax (Appeals) ought to have seen that the Assessee is under no obligation to file the Return of Income or to pay advance tax for this year and as such, the levy of interest is unwarranted.”*

2. Brief facts of the case are that the assessee HUF filed the return of income for assessment year 2011-12 on 25.01.2012 admitting a total income of ₹.2,47,220/- comprising of income from house property and income from other sources. The case was selected for scrutiny. Statutory notices under section 143 (2) & under section 142(1) of the Income-tax Act, 1961 [“Act” in short] were issued and duly served on the assessee. After considering the submissions of the assessee and verification of the details furnished by the assessee, the Assessing Officer has completed

the assessment under section 143(3) of the Act by assessing total income of ₹.6,97,65,795/- after making addition of income under the head capital gains at ₹.6,95,18,575/-. On appeal, the Id. CIT(A) confirmed the addition under the head "capital gains".

3. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessee has already offered the capital gains for taxation in the assessment year 2013-14, the year in which the built up area was actually handed over by the developer to the assessee. By filing copy of the assessment order for the assessment year 2013-14 in the form of paper book page 146, the Id. Counsel for the assessee has submitted that the Assessing Officer has completed the assessment by his order dated 07.03.2016 and the capital gains admitted has been enhanced to ₹.8,42,11,964. That being the situation, the addition towards capital gains needs to be deleted, else it would lead to double assessment. It was further submission that the Assessing Officer has no basis or reason to shift the capital gains to the assessment year 2011-12. Even if the Assessing Officer wanted to tax - the capital gains on the basis of the sale deeds executed by the assessee pursuant to the Joint Development Agreement, he could have brought to tax the capital gains arising on the sale deeds at Sl.Nos.3, 4 and 5 alone.

The sale deeds executed during that year on behalf of the assessee had been accepted for registration. In other words, the consideration is more than the guidelines value during that year which was only ₹. 4,700/- per sq. ft. this year. Therefore, the Assessing Officer could not have adopted ₹. 8,000/- per sq. ft. as the sale consideration. Further, the Id. Counsel has submitted that having offered the capital gains for taxation for the assessment year 2013-14, the taxes paid in respect of these capital gains needs to be adjusted towards the capital gains assessed in any other year and relied on the decision of the Tribunal in the case of DCIT Vs Standard Fire Works Pvt. Ltd. (4 ITR 379). Therefore, it was prayed that the capital gains assessed in the assessment year 2011-12 may be deleted and alternatively prayed for directions to compute the capital gains in accordance with law, and allow credit for the Capital Gains Tax already paid.

4. On the other hand, the Id. DR supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee. As per Individual Transaction Statement the assessee has sold three immovable properties as per the AIR information

available with the Department. It has been reported in the Annual Information Return filed by the Sub-Registrar Office Joint-II, Chennai-15 that the assessee has sold these immovable properties through registered Sale Deeds. On perusal of the said Sale Deeds, the Assessing Officer has ascertained and the details of the property as narrated in the appellate order are reproduced as under:

Property No. 1: A Sale Deed was executed on 31.05.2010 for sale of undivided share of land admeasuring 1223 ft.² situated at Municipal Door No: 8/17, Shafee Mohammed Street (now Rutland Gate, Second Street), Chennai and situated at Old Door No. 21 and New Door Nos. 157 and 157A, Greams Road, Chennai between the Sellers i.e., the assessee being the first party and Giridhiri Govind Das, M/s. Sabari Foundations Private Limited (rep. By V.A. Ramesh) and Sri Dwarkdhas Govardhandas & Sowbhagayavathi Ganga Bai Memorial Trust being the second party, third party and fourth party respectively AND the purchaser M/s Agni Estates & Foundations Private Limited. The Fair Market Value of the said property was Rs.5,74,85,700/-.

Property No.2: The Sale Deed was executed on 24.06.2010 for sale of an immovable property i.e. 2996 ft.² of UDS of land situated at Municipal Door No. 8/17, Shafee Mohammed Street (now Rutland Gate, Second Street) Chennai and situated at Old Door No. 21 and New Door Nos. 157 and 157A, Greams Road, Chennai between the Sellers i.e., the assessee being the first party and Giridhiri Govind Das, Govardhan Projects P. Ltd. and Sri Dwarkdhas Govardhandas Sowbhagayathi Ganga Bai Memorial Trust being the second party, third party and fourth party respectively AND the purchaser is Mr. Karthik Krishna (repr. by POA holder Mrs. Geetha Krishna Murthy). The Fair Market Value of the said property was Rs.1,40,81,200/-.

Property No. 3: The sale Deed was executed on 06.12.2010 for sale of an immovable property i.e. 1418 ft.² of UDS of land situated at Municipal Door No. 8/17, Shafee Mohammed Street (now Rutland Gate, Second Street), Chennai and situated at Old Door. No. 21 and New Door Nos. 157 and 157A, Greams Road, Chennai between the ellers i.e., the assessee being the second party and Messers Saban Foundations Private Limited, Goverdan Projectors Private Limited, Giridhiri Govind Das, and Sri Dwarkdhas Govardhandas & Sowbhagayavathi Ganga Bai memorial Trust being the first party, third party, fourth party and fifth party respectively. The Fair Market Value of the said property was Rs.66,64,600/-.

5.1 From the above sale deeds, the Assessing Officer ascertained that since the said immovable properties had been sold by executing a document registered with the Sub-Registrar Office in terms of provisions of section 45 of the Act, the profits or gains arising from the transfer of capital asset effected under the head "Capital Gains" and shall be deemed to be income of the person in which the transfer took place. After considering the submissions of the assessee as well as relying upon the decisions in the case of CIT v. F.X. Periera & Sons (Travancore) (P) Ltd. [1991] 155 Taxman 242 (Ker.) and in the case of CIT v. Alapati Venkataramiah [1965] 57 ITR 185 (SC), the Assessing Officer determined the capital gain of ₹.6,95,18,575/-arising out of the sale of the above mentioned three properties and brought to tax. On appeal, after considering the submissions of the assessee, the ratio of the judgements relied upon by the Assessing Officer, which is squarely applicable to the present case, the Id. CIT(A) confirmed the addition made on account of capital gains by holding that only those immovable properties were considered for capital gains tax for the relevant assessment year under consideration, which were sold through registered sale deeds during the assessment year 2011-12.

5.2 It is an admitted fact that the assessee has sold three properties through registered sale deeds duly executed on 31.05.2010 vide document No. 493 of 2010 in favour of M/s. Agni Estate & Foundations Pvt. Ltd.; vide document No. 591 of 2010 dated 24.06.2010 in favour of Shri Karthik Krishna and vide document No. 1091 of 2010 dated 06.12.2010 in favour of Shri T.S. Kumarasamy. Thus, it is clear that the above three properties were sold in the financial year 2010-11 relevant to the assessment year 2011-12 and thereby capital gains tax warranted in the assessment year 2011-12.

5.3 However, the contention of the assessee is that the assessee has offered capital gains for taxation in the assessment year 2013-14, the year in which the built up area was actually handed over by the developer to the assessee and therefore, the addition towards capital gains effected in the assessment year 2011-12 need to be deleted. The above submissions of the assessee is not acceptable for the reason that having executed registered sale deeds, it has to be understood that a valid transfer took place within the meaning of section 2(47) of the Income Tax Act and our view is duly fortified by the judgement of the Hon'ble Supreme Court in the case of CIT v. Balbir Singh Maini 398 ITR 531 (2017) (SC).

5.4 So far as another contention of the assessee that the assessee has already offered the capital gains for taxation in the assessment year 2013-14 is concerned, the three properties sold in the financial year 2010-11 are located at Municipal Door No: 8/17, Shafee Mohammed Street (now Rutland Gate, Second Street), Chennai and situated at Old Door No. 21 and New Door Nos. 157 and 157A, Greams Road, Chennai, whereas, the location of the property involved in the assessment order for the assessment year 2013-14 is Municipal Old Door No. 4&7 Rutland gate now Shafi Mohamed Road. Therefore, the capital gains for taxation admitted in the assessment year 2013-14 needs detailed verification of registered sale deed. In case, the capital gains for taxation admitted in the assessment year 2013-14 includes the three properties sold in the financial year 2010-11, then the Assessing Officer is directed to give due credit for the capital gains taxes paid in the assessment year 2013-14.

6. So far as adoption of ₹.8,000/- per sq. ft. being guideline value of land relinquished in favour of the developer in the financial year 2012-13 is concerned, by raising a specific ground in the grounds of appeal, the contention of the assessee is that the prevalent guidelines value during the period as per sale deeds is only ₹.4,700/- per sq. ft. and that has to be adopted for determining the capital gain. After considering the facts of the

case and the submissions of the assessee, we are of the considered opinion that the Assessing Officer should have adopted the SRO value as on the date of actual sale for arriving full value of sale consideration. Accordingly, we direct the Assessing Officer to obtain and consider the SRO value as full value of sale consideration and pass order in accordance with law by affording an opportunity of being heard to the assessee.

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

Order pronounced on the 24th August, 2022 in Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 24.08.2022

Vm/-

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.