

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1221/Chny/2018
निर्धारण वर्ष /Assessment Year: 2013-14

Dr.A.Thirumagal, Ph.D.,
Old No.84, New No.488,
Main Road, Gandhi Nagar,
Tirunelveli.

v. The Asst. Commissioner of
Income Tax,
Circle-I,
Tirunelveli.

[PAN: ADEPT 0523 C]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.D.Anand, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.M.Rajan, CIT
सुनवाई की तारीख/Date of Hearing : 29.09.2022
घोषणा की तारीख /Date of Pronouncement : 14.10.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the Principal Commissioner of Income Tax, Madurai-2, dated 08.03.2017 and pertains to assessment year 2013-14.

2. The brief facts of the case are that the assessee had filed his return of income for the AY 2013-14 on 27.07.2013 admitting total income of Rs.11,72,070/-. The case has been selected for scrutiny and during the course of assessment proceedings, the AO has verified long term capital gains declared from sale of property and consequent deduction claimed

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u/s.54 of the Act, and has accepted income declared by the assessee. The case has been, subsequently, taken up for revision proceedings by the PCIT, Madurai-2, u/s.263 of the Act, on the ground that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue. Because, the AO has not considered the long term capital gains computed by the assessee from sale of property in light of provisions of Sec.50C of the Act. Thus, issued show cause notice and called upon the assessee to file its objection, if any. In response, the assessee submitted that the issue of long term capital gains derived from sale of property has been thoroughly examined by the AO. The assessee has filed all details and explained why provisions of Sec.50C of the Act, cannot be applied. The AO after considering relevant submissions has accepted income declared by the assessee under the head 'long term capital gains'. Therefore, it cannot be said that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue. The PCIT, however, was not convinced with the explanation furnished by the assessee and according to the PCIT, the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue and thus, set aside the assessment order passed by the AO u/s.143(3) of the Act, dated 15.09.2015 and direct the AO to re-do the assessment in accordance with law after calling necessary enquiries and affording adequate opportunities to the assessee. Aggrieved by the order of the PCIT, the assessee is in appeal before us.

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3. The Ld.AR for the assessee submitted that the PCIT erred in setting aside the assessment order passed by the AO u/s.143(3) of the Act, dated 15.09.2015 in exercising his powers conferred u/s.263 of the Act, without appreciating the fact that the assessment order passed by the AO is neither erroneous nor prejudicial to the interest of the Revenue on the issue of capital gains declared from sale of property. He further submitted that as per the third proviso to sec.50C of the Act, if difference between guideline value and consideration paid for purchase of property is less than 5%, then there cannot be any addition in terms of sec.50C of the Act. In this case, difference between guideline value and consideration paid for purchase of property is less than 5% and thus, as per proviso inserted to sec.50C of the Act, the AO cannot make any addition. Although, the provision inserted to sec.50C(1) of the Act, subsequent to impugned assessment year, but the jurisdictional Madras High Court in the case of CIT v. Vummudi Amarendran (2020) 429 ITR 97 (Mad), had considered the first proviso and held that the amendment to sec.50C(1) of the Act, is curative in nature and applicable from the date of insertion to sec.50C of the Act. The AO after considering relevant submissions has rightly accepted the claim of the assessee and thus, there is no scope for PCIT to invoke jurisdiction u/s.263 of the Act.

4. The Ld.DR, on the other hand, supporting the order of the PCIT, submitted that the law is very clear in as much as the third proviso to sec.50C(1) of the Act, is effective from AY 2019-20 and thus, the same

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cannot be applicable to the impugned assessment year. The PCIT after considering relevant facts has rightly exercised his powers conferred u/s.263 of the Act, and set aside the assessment order passed by the AO u/s.143(3) of the Act. The Ld.DR further submitted that when the legislature has created a provision, the intention of the legislature is to extend the said provision to all people. Further, as per the provisions of Sec.50C of the Act, it is the assessee for him to adopt deemed consideration and compute long term capital gains. If you go with the arguments of Ld.Counsel for the assessee that said provision is retrospective in nature to be given benefit from the date of insertion of statute, then it creates a discrimination between the honest taxpayer who had themselves declared full value of consideration in terms of sec.50C of the Act, and those who have not declared full value of consideration in terms of sec.50C of the Act. Therefore, he argued that this may not be intention of the legislature and thus, if you give benefit to the assessee not complied with relevant provisions, then there will be injustice to those who have voluntarily complied with the provisions. Therefore, the benefit of amendment cannot be extended to retrospective date unless it is stated otherwise.

5. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The PCIT has set aside the assessment order passed by the AO u/s.143(3) of the Act, dated 15.09.2015 on the issue of differential consideration in terms of sec.50C of the Act. According to the PCIT, although there is a difference in guideline

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value of the property and consideration received for transfer of property, but the AO has accepted actual consideration declared by the assessee without applying provisions of Sec.50C of the Act. We find that the difference between guideline value of the property and consideration received for transfer of property, is less than 5%. As per the third proviso to sec.50C of the Act, if consideration received for transfer of property and guideline value fixed by Sub-Registrar Office for payment of stamp duty is less than 5%, then there cannot be any addition u/s.50C(1) of the Act. The third proviso has been inserted to the statute by the Finance Act, 2018 w.e.f. 01.04.2019 and applicable from AY 2019-20. If you go by plain reading of said provision, then it is applicable from AY 2019-20, however, jurisdictional High Court of Madras while interpreting the first proviso to sec.50C of the Act, held that proviso inserted to sec.50C(1) of the Act, is creative in nature and is applicable retrospectively from the date of the provisions were inserted to statute. The ITAT, Mumbai in the case of Maria Fernandes Cheryl v. ITO (International Taxation) reported in [2021] 198 DTR 0137, had considered very similar issue and after considering subsequent insertion of the third proviso to sec.50C(1) of the Act, held that if difference between guideline value and consideration paid for transfer of property is less than 10%, then the third proviso would come into operation and the AO cannot make any addition towards difference in consideration. Although, there is no direct judgment on the third proviso to sec.50C(1) of the Act, from the jurisdictional High Court, but if you go by the analogy

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adopted by the High Court on the first proviso to sec.50C(1) of the Act, then it can be safely held that the third proviso to sec.50C(1) of the Act, is also operates retrospectively from the date of provisions of Sec.50C(1) of the Act, is inserted to the statute. If you consider above provision, then the difference between guideline value and consideration received for transfer of property is less than 5% in the present case and thus, the AO cannot make any addition towards difference in terms of sec.50C(1) of the Act. Since, the AO himself does not have the authority to make addition, in our considered view on very same issue that the PCIT cannot exercise his powers conferred u/s.263 of the Act. Moreover, the issue of long term capital gains computed from transfer of property has been specifically examined by the AO during original assessment proceedings which is evident from the fact that in the body of the assessment order, the AO has discussed the issue and has accepted the explanation furnished by the assessee. Therefore, we are of the considered view that invocation of jurisdiction by the PCIT on this issue is incorrect and thus, we quashed the order passed by the PCIT u/s.263 of the Act.

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

Order pronounced on the 14th day of October, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

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चेन्नई/Chennai,
दिनांक/Dated: 14th October, 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