

आयकर अपीलीय अधिकरण "ए" न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JMAND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.1501/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri K.Gopalakrishnan C/o. Sarada Menon, Firms Prasantham Apartments, A-1 Block, Old No.88, New No.25, 5 th Street, Anna Nagar, Chennai-600 040.	बनाम/ Vs.	Income Tax Officer, International Taxation-1(1) Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AANPG-0684-R		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Smt. T.V.Muthu Abirami (Advocate) – Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri AR.V. Sreenivasan – (Addl. CIT) – Ld. Sr. DR

सुनवाईकी तारीख/ Date of Hearing	:	27-10-2022
घोषणाकी तारीख / Date of Pronouncement	:	02-11-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 arises out of order of learned Commissioner of Income Tax (Appeals)-16, Chennai [CIT(A)] dated 28-07-2016 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 19-02-2016. The grounds taken by the assessee read as under:

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case.
2. For that the order of the Commissioner of Income Tax (Appeals) is against the principles of equity, natural justice and fair play.
3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.
4. For that the Commissioner of Income Tax (Appeals) erred in confirming the addition made by the Assessing Officer towards long term capital gains.
5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the sale consideration received by the appellant was only Rs.75,00,000/- as against the alleged sale consideration of Rs.1,82,76,666/-.
6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in holding that the appellant was entitled to receive 1/3rd share in the value of residential flats at Anna nagar towards sale consideration.
7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had rightly worked out his computation of capital gains based on the terms of family arrangement entered into by the appellant with his mother and sister.
8. For that, without prejudice to the above, the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant was eligible for deduction u/s.54 towards investment made in residential flats at Anna nagar also.
9. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the benefit of indexation in respect of cost of acquisition has to be allowed from the year in which the appellant's father held the asset.
10. The appellant craves leave to add / alter any of the grounds of appeal before or at the time of hearing.”

2. The Registry has notified delay of 576 days in the appeal, the condonation of which has been sought by Ld. AR on the strength of an affidavit filed by authorized representative the assessee. It has been submitted that assessee preferred a rectification application u/s 154 against assessment order on 30.09.2016 which was rejected on 02.12.2016. The assessee filed revision petition u/s 264 on 15.07.2017 against rejection of rectification application. However, as per legal advice, the revision was withdrawn on 27.03.2018 and the assessee was advised to file further appeal against first appellate order before Tribunal. Since the assessee was residing outside India, the formalities were completed with delay and the appeal was finally filed on 03.05.2018. Under these circumstances, Ld. AR submitted that the assessee was

pursuing alternative remedy. The Ld. Sr. DR opposed condonation of delay on the ground that it was only after the rejection of application u/s 264, the assessee thought it fit to prefer further appeal. Having considered the pleadings made in condonation petition and considering the contents of affidavit, the bench formed an opinion that the delay was to be condoned since the assessee was already pursuing alternative remedy and it would not stand to gain anything by filing the appeal with a delay. Accordingly the delay is condoned and the appeal is admitted for adjudication on merits.

3. The Ld. AR submitted that the assessee received sale consideration of Rs.75 Lacs which was offered to tax. The Ld. AR submitted that as per the terms of Joint Development Agreement dated 14.11.2012, the flat was to be shared by other co-owners only. The Ld. AR, in the alternative, pleaded for consequential deduction u/s 54. The assessment orders and Income tax Returns of the other co-owners has been placed on record to substantiate the claim. The Ld. Sr. DR supported the assessment framed by Ld. AO and submitted that the sale consideration was to be divided equally amongst co-owners. Having heard rival submissions and after due consideration of material facts, our adjudication would be as under.

Assessment Proceedings

4.1 The assessee is a non-resident. The assessee being joint owner of a property along with her sister and mother, earned Long-Term Capital Gains from residential house Plot No.2404 in Anna Nagar under a Joint Development Agreement. As per the agreement, the builder agreed to develop the property into a residential complex and agreed to give the owners payment of Rs.225 Lacs in cash and 2 flats of 2200 Sq. Ft. Each.

Accordingly, the gains were computed by the owners in the following manner: -

Particulars	Mrs. Sarada Menon	Mrs. Mini Pillai	MrK.Gopala Krishnan
Sale consideration			
Cash	75,00,000	75,00,000	75,00,000
Flat Value (4400 sq.ft. Rs.10000 Guideline value)	2,20,00,000	2,20,00,000	
Total	2,95,00,000	2,95,00,000	75,00,000
Less: Indexed Cost	3,35,776	3,35,776	3,35,776
Long Term Capital Gains	2,91,64,224	2,91,64,224	71,64,224
Invested in Bldg.	2,20,00,000	2,20,00,000	21,64,228
Invested in Bonds 54EC	50,00,000	50,00,000	50,00,000
Expected cost in Interior	13,20,000	13,20,000	---
Taxable LTCG	8,44,224	8,44,224	---
Tax on LTCG	1,73,910	1,73,910	---
Challan No.	09868	09587	10202
Date of Chai/an	25.03.2013	25.03.2013	25.03.2013
ITR Ack. No.	674718810 240713	674928500 240713	674792200 240713

4.2 The Ld. AO noted that assessee's father who was in possession and enjoyment of the property died intestate on 15.05.2009 leaving behind his wife Mrs. Sarada Menon, daughter Mrs. Mini Pillai and the assessee. Accordingly, the assessee became co-owner of the property from 15.05.2009 onwards having 1/3rd share in the property. This property was subjected to a Joint Development agreement wherein the assessee transferred 50% of his 1/3rd undivided share in favor of the builder M/s Firm Foundations and Housing Ltd. The incidence of taxation happens when the assessee signed the agreement. Accordingly, Ld. AO held that the sale consideration would also include proportionate value of proposed flats in the hands of the assessee which was opposed on the

ground that the assessee only received cash consideration under the agreement whereas the flats was to be shares by other co-owners only.

4.3 Finally, rejecting various arguments of the assessee, Ld. AO held that 1/3rd of total sale consideration would be taxable in the hands of the assessee. After calling information u/s 133(6) form the builder, Ld. AO adopted the value of the proposed flats at Rs.161.65 Lacs each and arrived at value of two flats at Rs.323.23 Lacs. Thus, the total sale consideration was computed at Rs.548.30 Lacs (Rs.225 Lacs + Rs.323.23 Lacs). The assessee's share therein would be Rs.182.76 Lacs. The benefit of indexation was allowed only from financial year 2009-10 when the assessee acquired the property. Accordingly, 1/3rd cost of acquisition was worked out at Rs.0.26 Lacs.

4.4 The assessee claimed deduction for investment in specified bonds u/s 54EC for Rs.50 Lacs. The assessee also claimed deduction u/s 54 for Rs.73.66 Lacs which was also allowed. Finally, taxable Long-Term Capital Gains were worked out at Rs.58.83 Lacs.

4.5 The assessee's further appeal stood dismissed by Ld. CIT(A) vide impugned order dated 28.07.2016 wherein Ld. CIT(A) chose to confirm the computations made by Ld. AO. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. The basic facts are not in dispute. The assessee's father died intestate on 15.05.2009 and accordingly, the property under consideration delved upon to his wife Mrs. Sarada Menon, daughter Mrs. Mini Pillai and the assessee. The three persons became joint owners of the property. This property was subject matter of joint development agreement. Under the terms of the agreement, the joint owners agree to

convey 50% of undivided share in the property against 50% built-up area along with liquid consideration of Rs.225 Lacs. In other words, the joint owners were to receive 50% of built-up area in the developed property along with cash consideration of Rs.225 Lacs. The 50% built up area was in the shape of 2 flats which was valued by the owners at Rs.220 Lacs each. The assessee requested the developer to pay his own share of consideration representing 2 flats in favor of his mother and sister. Accordingly, 1 flat each was to be acquired by his mother as well as his sister. As per the terms, the assessee agreed to receive 1/3rd of cash component of Rs.225 Lacs. From the tabulation as extracted in para 4.1, it could be seen that the amount of Rs.225 Lacs has been divided equally amongst the three owners whereas the value of two flats has been divided by assessee's mother and sister. The three joint owners have computed capital gains in the above manner and has paid due taxes thereon accordingly.

6. The perusal of assessment framed in the hands of Smt. Mini Pillai u/s 143(3) order dated 30.03.2016 would show that Ld. AO has adopted sale consideration for this assessee at Rs.295 Lacs and granted deduction u/s 54 to the extent of Rs.220 Lacs for deemed investment in the proposed flat. After making adjustment in cost of acquisition, Ld. AO computed capital gains of Rs.24.73 Lacs. The assessee preferred further appeal to seek adjustment in cost of acquisition as well as cost of improvement which was allowed by Id. first appellate authority vide order dated 23.04.2018.

7. The perusal of assessment framed in the hands of Smt. Sharda Menon u/s 143(3) r.w.s. 147 dated 31.07.2017 would show that Ld. AO has adopted sale consideration for this assessee at Rs.182.76 Lacs and

granted deduction u/s 54 to the extent of Rs.107.76 Lacs for deemed investment in the proposed flat. After making adjustment in cost of acquisition, Ld. AO has computed capital gains of Rs.15.82 Lacs.

8. Upon perusal of above assessment orders, it could thus be seen that Ld. AO has accepted the declared sale consideration in case of Smt. Mini Pillai whereas it has rejected the sale consideration in the case of Smt. Sharda Menon. Both the assessment, prima-facie, has attained finality. Therefore, considering the same, the adoption of value of Rs.182.76 Lacs in the case of assessee before us stand confirmed. The corresponding grounds thus raised stand dismissed.

9. Having said so, the present assessee would logically be eligible to claim deduction u/s 54 for deemed investment in the proposed flat to the extent of Rs.107.76 Lacs as similar deduction has been granted to both the other co-owners also. Regarding the revenue's plea that deduction u/s 54 was not to be granted for more than one property, we find that the ratio of decision of jurisdictional High Court in the case of **CIT V/s Gumanmal Jain (80 Taxmann.com 21)** would apply. This decision considers catena of judicial decisions as well as amendment made by Finance Act, 2014 and finally held that the assessee would be eligible to claim deduction for more than one property. Following the same, Ld. AO is directed to adopt sale consideration of Rs.182.76 Lacs and grant additional deduction u/s 54 for Rs.107.76 Lacs. We order so. The corresponding ground stand allowed. No other ground has been urged in the appeal.

10. The appeal stands partly allowed in terms of our above order.

Order pronounced on 02nd November, 2022.

Sd/-
(V. DURGA RAO)
न्यायिकसदस्य / JUDICIAL MEMBER

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

चेन्नई/ Chennai; दिनांक/ Dated : 02-11-2022
DS

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