

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **610/Chny/2020**

निर्धारण वर्ष / Assessment Year: 2014-15

Smt. Murali Vidhya, Income Tax Officer,
No. 51, Subramaniyapuram, v. Ward -2,
Mayiladuthurai, Kumbakonam – 612 001.
Nagapattinam – 609 001.

[PAN: AOHPV-4251-M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.: **611/Chny/2020**

निर्धारण वर्ष / Assessment Year: 2014-15

Shri. Pondian Murali, Income Tax Officer,
No. 51, Subramaniyapuram, v. Ward -2,
Mayiladuthurai, Kumbakonam – 612 001.
Nagapattinam – 609 001.

[PAN: BQBPM-8040-C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 10.01.2023

घोषणा की तारीख/Date of Pronouncement : 18.01.2023

आदेश /ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These appeals filed by different assessee's are directed
against separate, but identical orders passed by the learned

Commissioner of Income Tax-1, Trichy, dated 11.03.2020 & 10.03.2020 and pertains to assessment year 2014-15.

2. At the outset, we find that there is a delay of 23 days in appeal filed by the assessee in ITA No. 610/Chny/2020 and delay of 24 days in appeal filed by the assessee in ITA No. 611/Chny/2020. During the course of hearing, when defect was brought to the notice of the learned AR present, he has submitted that delay in filing of both appeals is mainly due to lockdown imposed by the Govt. on account of spread of Covid-19 infections and in view of the Hon'ble Supreme Court *suomotu* Writ Petition No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court, then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

3. The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

4. Having heard both sides and considered reasons given by the learned AR, we find that the Hon'ble Supreme Court in *suomotu* Writ Petition No.3 of 2020, has extended limitation

applicable to all proceedings in respect of Courts and Tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court extending limitation period applicable for all proceedings before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeals filed by the both the assessee's.

5. Both the assessee's has more or less filed common grounds of appeals. Therefore, for the sake of brevity, grounds of appeal filed in ITA No. 610/Chny/2020 are reproduced as under:

"1. The order of the Commissioner of Income Tax (Appeals)- 1, Trichy dated 11.03.2020 in I.T.A.No.260/2016-17/CIT(A)1/TRY for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the action of the Assessing Officer in re-computing the long term capital gains by invoking the provisions of Section SOC of the Act and consequently erred in sustaining the adoption of the fair market value at Rs. 3,13,92,000/- (assessee's share) without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the action of the Assessing Officer in adopting the guideline value as the fair market value for the purpose of computing long term capital gains during the pendency of the reference made to the Valuation Cell for estimating the FMV for the purpose of computing the long term capital gains was wrong, erroneous and unsustainable in law.

4. The CIT (Appeals) failed to appreciate that the provisions of Section 50C of the Act had no automatic application to the facts of the present case and ought to have appreciated that the mechanical substitution of guideline value as fair market value without considering the other vital factors for determining the fair market value for the purpose of Section 50C of the Act was wholly unjustified and unsustainable in law.

5. The CIT (Appeals) failed to appreciate that the wrong understanding of the explanation offered by the Appellant both during the re-assessment proceedings as well as the appellate proceedings in the context of her reported long term capital gains would vitiate the related findings in the impugned order in so far as the disputed re-computation both in the re-assessment order as well as the impugned order passed.

6. The CIT (Appeals) failed to appreciate that the findings in the Registered Valuer's report were completely distorted and misunderstood and further ought to have appreciated that having not obtained/discussed on the pending reference to the Departmental Valuation Cell for ascertaining the FMV, the decision to sustain the AO's order in this regard was wholly unjustified and unsustainable in law.

7. The CIT (Appeals) failed to appreciate that in the absence of independent valuation for ascertaining the FMV as on the date of transfer for computing the capital gains for taxation, the sustenance of the computation made by the AO should be reckoned as bad in law while non consideration of the depressing factors for independent evaluation of the FMV was accordingly wholly unjustified.

8. The CIT (Appeals) failed to appreciate that the impact of the agreement entered into earlier especially in the context of the amendment provisions of Section SOC of the Act was completely overlooked in the determination of the FMV for the purpose of computing the long term capital gains.

9. The CIT (Appeals) failed to appreciate that in any event the acceptance of the date of transfer in the previous year relating to assessment year under consideration was wrong and incorrect in the absence of proper interpretation of the term transfer under the Act, thereby vitiating the entire capital gains computation in the assessment year under consideration.

10. The CIT (Appeals) failed to appreciate that the entire re-computation of the long term capital gains on various facets was wrong, erroneous, unjustified, incorrect and not sustainable in law.

11. The CIT(Appeals) failed to appreciate that the re-assessment order was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.”

6. The brief facts extracted from ITA No. 610/Chny/2020 in the case of Smt. M. Vidhya are that, during the course of previous year relevant to assessment year 2014-15, the assessee had sold a vacant land at Korattur village, Ambattur Municipal Limit, jointly owned by the assessee and her husband Shri. R. Murali for a consideration of Rs. 1,50,00,000/- and the guideline value of the property as per registered document was at Rs. 6,27,84,000/-. Since, the assessee has not filed her return of income for the assessment year 2014-15, the case was re-opened u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) and notice u/s. 148 of the Act, dated 10.04.2015 was issued and served on the assessee. The assessee filed the return of income in response to 148 notice on 10.08.2015 and declared

total income of Rs.23,90,220/-. The case was selected for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has computed long term capital gains by considering sale consideration of Rs. 75,00,000/- (1/2 share) and claimed exemption u/s. 54F of the Act. The AO called upon the assessee to file necessary details to justify computation of long term capital gains by considering guideline value of the property as on the date of the sale. During the course of assessment proceedings, the assessee had filed letter on 18.11.2016 and requested the AO to refer the case for Departmental Valuation Cell for valuation of fair market value of the property. The AO referred the valuation to the DVO u/s. 142A r.w.s. 50C(2) of the Act. However, no valuation report has been received from the DVO. Therefore, the AO has computed long term capital gain from sale of property by adopting guideline value of the property as on the date of sale at Rs. 6,27,84,000/- and considered 50% share of the assessee which works out to Rs. 3,13,92,000/-, without allowing any deduction towards cost of acquisition and deduction claimed u/s. 54F of the Act. The assessee carried the matter in appeal before the first appellant authority. Before the Id. CIT(A), the assessee has filed a valuation report

obtained from the registered valuer, who has arrived at fair market value of the property at Rs. 500 sq.ft., as against guideline value of the property determined by the stamp duty authority at Rs. 2500 sq.ft. The Id. CIT(A), after considering relevant submissions of the assessee rejected arguments of the assessee, including valuation report obtained from registered valuer and determined full value of consideration as per section 50C of the Act and computed long term capital gains derived from sale of property at Rs. 2,18,38,612/-, after allowing indexed cost of acquisition and exemption u/s. 54F of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

7. The Ld. Counsel for the assessee, referring to the assessment order submitted that the AO has completed assessment without taking note of reference made to DVO, to determine fair market value of the property, which is evident from the fact that the AO himself has admitted that he had referred the valuation to Departmental Valuation Cell, however no report has been received from the DVO. Therefore, the Id. Counsel for the assessee submitted that the matter may be set

aside to the file of the AO to reconsider the issue in light of valuation by the DVO.

8. The Ld. DR, on the other hand supporting the order of the CIT(A) submitted that, the assessee could not obtain valuation report from the DVO even before appellant proceedings. Therefore, there is no reason to set aside the issue to the file of the AO.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As per provisions of section 50C(2) of the Act, once assessee makes a request for reference to DVO, it is the duty of the AO to refer valuation of property to the Departmental Valuation Cell to determine correct fair market value of the property, for the purpose of computation of capital gains in terms of provisions of section 50C of the Act. Further, as per said provisions, once the Departmental Valuation Cell determines fair market value of the property, then the AO is bound to adopt value determined by the DVO. In this case, the assessee has requested for reference to DVO and the Assessing Officer has referred valuation of property to

Departmental Valuation Cell. Further, the AO admitted fact that the DVO did not submit valuation report. Therefore, he has completed assessment by adopting guideline value fixed by the authorities for payment of stamp duty. In our considered view, the mandate of law as prescribed u/s. 50C(2) of the Act, is that the AO is bound to refer valuation of property to the DVO, in case the assessee seeks to refer valuation to the Departmental Valuation Cell and further, the AO is bound to consider value determined by the DVO for the purpose of provisions of section 50C(1) of the Act. Since, the AO has failed to comply with mandate of the law, even though he had referred valuation to the DVO, in our considered view, the issue needs to go back to the file of the AO to reconsider the issue in light of provisions of section 50C(2) of the Act. Hence, we set aside the issue to the file of the AO and direct the AO to obtain necessary valuation report from the DVO and re-compute the capital gain from sale of property by adopting fair market value determined by the DVO. The AO is also directed to consider cost of acquisition of the property and exemption claimed u/s. 54F of the Act in accordance with law.

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

ITA NO: 611/Chny/2020:

11. The facts and issues involved in this appeal are identical to the facts which are considered in ITA No. 610/Chny/2020 in the case of Smt. Murali Vidhya. We find that the assessee had computed long term capital gains by adopting 50% sale consideration and the AO has determined long term capital gains by considering guideline value of the property in terms of provisions of section 50C of the Act. The reasons given by us in preceding para 9 & 10 in ITA No. 610/Chny/2020 in the case of Smt. Murali Vidhya shall *mutandis mutatis* apply to this appeal as well. Therefore, for similar reasons we set aside the issue to the file of the AO and direct the Assessing Officer to re-consider the issue after obtaining necessary valuation report from DVO and re-compute capital gains derived from sale of property by adopting fair market value determined by the DVO in terms of provisions of section 50C(2) of the Act. The AO is also directed to consider indexed cost of acquisition claimed by the assessee and also exemption claimed u/s. 54F of the Act.

12. In the result, both the appeals filed by different assessee's are treated as allowed for statistical purposes.

Order pronounced in the court on 18th January, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /**Vice President**

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 18th January, 2023

JPV

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 |