

अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 701/CHNY/2022

निर्धारण वर्ष /Assessment Year: 2019-20

Shri Krishnan Prasad,
582, C Block, AECS Layout,
Kundalahalli,
Bangalore – 560 037.

The Income Tax Officer,
v. International Taxation Ward,
Coimbatore.

PAN: AALPP 7296G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri G. Baskar, Advocate
: Shri R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing : 19.04.2023

घोषणा की तारीख/Date of Pronouncement : 19.04.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal filed by the assessee is directed against the directions of the Dispute Resolution Panel-2, Bengaluru in F.No.200/DRP-2-BANG/2021-22 dated 28.06.2022. The final assessment order was passed by the Income Tax Officer, International Taxation Ward, Coimbatore for the assessment year 2019-20 u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter the 'Act') dated 12.07.2022.

2. The only issue in this appeal of assessee is against the final assessment order passed by AO u/s.143(3) r.w.s. 144C(13) of the Act, following the directions of the DRP in computing long term capital gain on various facets and the grounds raised read as under:-

2.1 The AO erred in providing the benefit of indexation to the appellant only from the date he inherited the property as against his claim for the benefit of indexation from 2001 on an incorrect understanding of the law.

2.2 The action of the AO in denying proper indexation benefit being contrary to the provisions of law and judicial precedents, the impugned order is to be reversed.

3.1 The AO erred in placing reliance on the Departmental Valuation Officer's (DVO) report which had erroneously undervalued the Fair Market Value of the land as on 01.04.2001 and 01.04.2009.

3.2 The AO erroneously failed to consider the indexed improvement charges of Rs.11,92,566/-(indexed improvement charges of Rs. 22,56,206/-) and the incidental charges aggregating to Rs.2,20,000/- incurred by the appellant.

4. The AO erred in reducing the quantum of deduction u/s.54F of the Act at Rs.1,00,20,545/- as against the correct admitted claim of Rs.1,02,00,545/-

3. Brief facts are that the assessee, a non-resident, filed his return of income for the relevant assessment year 2019-20 on 23.07.2019. The assessee sold his property land and building bearing Site No.582, Block-C, present BBMP Katha No.575/582, in AECS Layout, formed in Sy.Nos.115/1,116 to 121, 122/1 and 2, 124/1 and 3, 125 and 131/1 and 3 of Kundanahalli and Sy.Nos.39 to 43 of Chinnapanahalli, K.R Puram Hobli, and Sy.Nos.8 and 73 of

Tubarahalli, Varthur Hobli, earlier Bangalore South Taluk, presently Bangalore East Taluk, a Layout formed by the Aircraft employees Co-operative Society Ltd, approved by Bangalore development Authority, Bangalore vide Order No.BDATPM/DD(W)/206/87-88 dated 03/07/1987, presently under the administrative jurisdiction of Bruhath Bangalore MahanagaraPalike, measuring East to West 50 feet and North to South 80 feet, in all measuring 400 square feet along with RCC Roofed residential duplex building constructed thereon consisting of ground and First floor, ground floor, measuring 1776 sq.ft, and First floor measuring 1661 sq.ft and terrace floor measuring 97.50 sq.ft, totally measuring 3534.50 sq.ft super built up area. The sale deed was registered on 21.12.2018 vide document no.10521/2018-19 for Rs.4,75,00,000/-. The property was bought by the assessee's father Shri.R. Krishnan on 17.02.1993 for Rs.61,333/- and subsequently, gifted to his son, the assessee, on 04.09.2009 vide document no. 2047/09-10.

4. The above land was acquired by assessee's father Shri R. Krishnan, as per purchase deed on 17.02.1993 for a sum of Rs.61,333/-. The building was constructed by assessee's father in 2001 and later, land along with building was gifted to the assessee on 24.09.2009. The assessee sold this property i.e., land and

building vide document No.10521/2018-19 on 21.12.2018 for a total consideration of Rs.4.75 crore. The assessee for the purpose of computation of long term capital gain submitted valuation report from a registered valuer dated 21.12.2018 for determining the fair market value as on 04.09.2009. As per valuers report, the value of land has been determined at Rs.1 crore and the value of the building was determined at Rs.1,44,15,574/-. The assessee also submitted valuation report estimating the fair market value of land only as on 01.04.2001 determining the value of land at Rs.32 lakhs. Based on valuation report given by registered valuer, the assessee computed long term capital gains adopting fair market value of land as on 01.04.2001 at Rs.32 lakhs and building at Rs.23.37 lakhs and improvement to the building during 2009 at Rs.11,92,566/-. After indexing, the assessee computed long term capital gain and offered long term capital gain for tax on sale of land and building at Rs.1,43,19,649/- after claiming exemption u/s.54F and 54EC of the Act. These details are enclosed in assessee's paper-book at page 43.

5. During the course of assessment proceedings, according to AO the value of land as on 01.04.2001 should be at Rs.1,17,165/- and as on 04.09.2009 it should be Rs.1,73,823/-. He noted that as per

valuers report, fair market value of land is at Rs.32 lakhs as on 01.04.2001 and building Rs.23.37 lakhs. The AO considered that the fair market value of this land and building disclosed by assessee as on 01.04.2001 is on higher side, hence he referred the matter to DVO for determination of fair market value of property as on 01.04.2001 and as on 04.09.2009 i.e., the date of sale. But valuation report of DVO was yet to be received and accordingly, the assessment was completed u/s.144C of the Act. But the DVO reported later on the fair market value of land and building as under:-

#	Fair Market Value	Rate / Sq.ft.-Rs.	Rs.
1	FMV of land as on 01.04.2001 – 4000 Sq.ft	302	12,08,000/-
2	FMV of land as on 01.04.2009 – 4000 Sq.ft	2239	89,56,000/-
3	FMV for building as on 04.09.2009	LS	33,15,000/-
4	FMV for land and building as on 04.09.2009	LS	1,22,71,000/-

5.1 The AO computed the Long Term Capital Gain as under:-

- i. The AO has taken the fair market value of the land as on 01.04.2001 at Rs.32 lakhs as disclosed by assessee but adopted the cost of indexation from 2009 instead of 2001.
- ii. The AO took cost of building as on 2001 at Rs.23,37,000/- and indexed the building from 2009 as against the indexation adopted by assessee from 2001 and computed capital gains at Rs.3,70,24,595/-.

iii. The AO also allowed the claim of deduction u/s.54EC, 54F, loss on sale of shares and carry forward loss of assessment year 2018-19 and assessed the long term capital gain at Rs.1,93,89,452/-.

6. Aggrieved against the directions of Dispute Resolution Panel and final assessment order passed by AO, assessee came in appeal before the Tribunal on the following issues:-

I. The AO accepted the fair market value of land as on 01.04.2001 at Rs.32 lakhs but indexation allowed from 01.04.2009 instead of 01.04.2001. Now, the assessee's plea is that this land was acquired by assessee's father on 17.02.1993 and it was gifted to assessee on 24.09.2009 and hence, it cannot be indexed from 24.09.2009 instead it should be indexed from 01.04.2001. The facts are not in dispute and even Revenue has not agitated this point. Hence, we direct the AO to recompute the fair market value after adopting the indexation of cost of land at Rs.32 lakhs from 01.04.2001 and compute the fair market value of land accordingly.

II. The AO computed the fair market value of land at Rs.12.08 lakhs as on 01.04.2001 and computed indexation of building from 2009 as against computed by assessee from 2001. The

Id.counsel for the assessee stated that the AO / TPO adopted the fair market value of building as valued by DVO at Rs.33,15,000/- as on 01.04.2009 and determined the fair market value after indexation from 01.04.2009 because the building was constructed in 2001 and gifted by assessee's father on 24.09.2009. We direct the AO to adopt the cost of building at Rs.23.37 lakhs as on 01.04.2001 and allow indexation of this building to the assessee from that very date i.e., 01.04.2001 and recompute the capital gain accordingly. We direct the AO accordingly on this issue.

III. The cost of improvement to building in 2009 of Rs.3,53,400/- claimed by assessee can be verified by the AO vis-à-vis the supporting documents and bills and this issue can be considered by the AO afresh that how much cost of improvement he will estimate based on documentary evidence i.e., bills and vouchers to be submitted by assessee. Hence, this particular issue is remitted back to the file of the AO for estimating the cost of improvement.

IV. As regards to amenities added as per valuation report for an amount of Rs.8,39,166/-, the finding in above item No.III is set aside to the file of the AO for verification of supporting documents, bills, vouchers, etc. Hence, exactly on identical

findings the matter is restored back to the file of the AO and AO is directed accordingly.

V. As regards to incidental expenses claimed by assessee at Rs.2.20 lakhs, the AO will verify the payments whether the same were through bank or not and whatever the payments are proved by assessee i.e., incidental expenses that should be allowed from sale consideration which are directly relatable to sales.

In term of the above, the appeal of the assessee is partly allowed for statistical purposes.

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

Order pronounced in the open court on 19th April, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 19thApril, 2023

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|--------------------------|---------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF. | |