

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्रीमंजूनाथा.जी, लेखासदस्यएवं
श्रीमनोमोहनदास, न्यायिकसदस्यकेसमक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER
AND SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.3285/Chny/2019
निर्धारणवर्ष/Assessment Year: 2016-17

Mr.K.S.Anbuselvan,
109/56, Fifth Street,
Padmanabhanagar,
Adyar,
Chennai-600 020.

v. The Income Tax Officer,
Non-Corporate Ward-15(1),
Chennai.

[PAN:AAEPA 3906 B]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकरअपीलसं./ITA No.103/Chny/2020
निर्धारणवर्ष/Assessment Year: 2016-17

The Income Tax Officer,
Non-Corporate Ward-15(1),
Chennai.

v. Mr.Kesavaramanujam-
SoundararajanAnbuselvan,
No.56, 5th Street,
Padmanabhanagar,
Adyar,
Chennai-600 020.

(अपीलार्थी/Appellant)

[PAN: AAEPA 3906 B]
(प्रत्यर्थी/Respondent)

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

: Mr.S.Sridhar, Adv.
: Mr.AR.V.Sreenivasan,
Addl.CIT

सुनवाईकीतारीख/Date of Hearing

: 06.06.2023

घोषणाकीतारीख /Date of Pronouncement

: 14.06.2023

आदेश / ORDER

PER BENCH:

These cross-appeals filed by the assessee as well as the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-15, Chennai, dated 25.09.2019, and pertains to assessment year 2016-17.

2. The assessee has raised the following grounds of appeal in ITA No.3285/Chny/2019:

1. The Ld.CIT (A) has erred in sustaining the order of the AO for making additions under Section 50C, even though he has accepted as true the fact that the property sold consisted of two parts - one measuring 3000 square feet of plot adjacent to 50 feet road, and another un plotted land measuring 2.50 acre which is land locked area and that the two parts of the aforesaid land property which comes under two different survey numbers cannot be valued with the same guideline value as the Fair Market Value of both the parts of land cannot be the same.

2. The LD CIT (A) has erred in law in sustaining the additions made the AO, even though it is accepted by the Ld.AIT(A) that the adoption of the uniform guideline value in the case of the appellant would be grossly iniquitous on account of the differentiation in the land parts transferred and the inherent difference in valuations.

3. The CIT (Appeals) erred in sustaining the 50-C on Long Term Capital Gains from the sale of the land, namely, the land at Perumbakkam village, Sholinganallur Taluk, Kanchipuramdist, without assigning proper reasons and justification.

4. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

3. The Revenue has raised the following grounds of appeal in ITA No.103/Chny/2020:

1. The order of the Ld. CIT(A) is contrary to the law and facts of the case.

2. The Ld. CIT(A) ought to have upheld the Assessing Officer's denial of benefit of indexation as the Assessing Officer has rightly done so as contemplated in explanation (iii) to section 48 of the Act, as the asset was first held in FY 2015-16 and also sold in the same year?

3. The Ld CIT(A) erred in deleting the disallowance of deduction u/s 54F when the assessee has not commenced any construction activity even after stipulated period of 3 years as contemplated in section 54F of the Act.

3.1. *The Ld. CIT(A) erred in allowing the assessee's claim of deduction u/s.54F of the Act without obtaining any evidence for proof of construction done / completion certificate.*

3.2. *The Ld CIT(A) ought to have upheld the disallowance of the claim of deduction u/s 54F of the ACT made by the assessee, when the assessee failed to produce any proof to substantiate their claim both during assessment proceedings and remand report proceedings that the conditions mandated under the provisions of Sec.54F of the Act have been complied with.*

3.3. *The Ld. CIT(A) failed to appreciate the detailed analysis made in the remand report with regard to the claim of development charges of Rs.1 .37 crores paid to 13 persons by the assessee for claiming Section 54F of the Act.*

3.4. *The Ld. CIT(A) failed to note that the land purchased by the assessee was originally taken on lease by M/s. La Farge Aggregates & Concrete India Pvt Ltd from M/s.Trimurthy Associates and it was confirmed by the M/s. La Farge Aggregates & Concrete India Pvt Ltd that the cement / RMS block plant were removed / demolished by them when the land was handed over back to the seller M/s.Trimurthy Associates who in turn sold the land to the assessee.*

3.5. *The Ld. CIT(A) failed to note that the payments were made to the 13 persons for removal of cement plant erected, filling the land etc., were routed back to the seller of the land M/s.Trimurthy Associates which proves that it is a tailor made transactions to suit the needs of the seller.*

4. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) may be set aside and the order of the Assessing Officer be restored.*

4. The brief facts of the case are that the assessee has filed his return of income for AY 2016-17 on 29.06.2017 admitting total income of Rs.8,13,600/-. The case was selected for scrutiny, and during the course of assessment proceedings, the AO noticed that during the Financial Year relevant to AY 2016-17, the assessee along with three family members had sold 2.50 acres of land comprised in Sy.No.466/1,Perumbakkam village, Sholinganallur Taluk, for a consideration of Rs.26.60 Crs. to National Academy for Learning. The assessee had also sold one more land for a consideration of Rs.90 lakhs. The assessee has computed long term capital gains derived from sale of land by adopting his share of sale consideration of Rs.7 crores, and after claiming deduction towards indexed cost of acquisition and exemption u/s.54F of the Income Tax Act,

1961, (in short "the Act") for purchase of another residential house property, determined net capital gains of Rs.59,95,214/-. During the course of assessment proceedings, the AO referred violation of property to the District Valuation Officer (in short "DVO") as per request of the assessee on 19.12.2018. Since, the assessment was timebarring on 31.12.2018, the AO without help of Valuation Report, completed assessment, and adopted sale consideration of the property as per the provisions of Sec.50C of the Act, and worked out the assessee's share of consideration of Rs.8,57,79,770/-. The AO had also re-worked cost of acquisition and allowed deduction for Rs.8,84,593/-. However, the deduction claimed u/s.54F of the Act, has been denied towards purchase of another house property on the ground that the assessee could not file any evidences to prove construction of house property within time prescribed under the provisions of Sec.54F of the Act. However, allowed deduction towards amount deposited in Capital Gain Account Scheme for Rs.1 Cr., and computed net capital gains of Rs.8,48,95,177/-.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee challenged adoption of sale consideration as per provisions of Sec.50C of the Act, without the report of DVO to determine correct Fair Market Value (in short "FMV") of the property in terms of provisions of Sec.50C(2) of the Act. The assessee had also disputed computation of indexed cost of acquisition, and also denial of deduction u/s.54F of the Act, for purchase

and construction of another residential house property. The Ld.CIT(A) after considering relevant facts and also by taken note of reasons given by the AO to deny deduction claimed u/s.54F of the Act, rejected arguments of the assessee in so far as adoption of sale consideration as per provisions of Sec.50C of the Act. However, allowed relief to the assessee towards deduction claimed u/s.54F of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee as well as the Revenue are in appeal before us.

6. The Ld.Counsel for the assessee referring to grounds of appeal filed by the assessee submitted that the only issue involved in the assessee's appeal is computation of full value of consideration in terms of provisions of Sec.50C of the Act. The Ld.Counsel for the assessee submitted that when the matter is referred to the DVO for determining FMV of the property, the AO is erred in completing assessment by adopting s.50C value and computed long term capital gains. The Ld.Counsel for the assessee submitted that in case of another co-owner, under identical set off facts, the ITAT, Chennai Benches, has set aside the issue to the file of the Ld.CIT(A) for re-adjudication after receipt of the Valuation Report from the DVO in terms of provisions of Sec.50C of the Act. Therefore, similar directions may be given and appeal filed by the assessee may be set aside to the file of the CIT(A).

7. The Ld.DR, Mr.AR.V.Sreenivasan, Addl.CIT, submitted that the Ld.CIT(A) erred in allowing relief to the assessee towards deduction

claimed u/s.54F of the Act, without appreciating the fact that the assessee could not file any evidences to prove that acquisition and construction of new house property, was completed within the prescribed time limit provided under the Act. However, he fairly agreed that since, if the main issue of determination of full value of consideration is restored to the file of the lower authorities, then this issue may also be restored to the file of the lower authorities to re-adjudicate the issue in accordance with law.

8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee along with other family members sold a property for a consideration of Rs.27.50 Crs., and computed long term capital gains by considering his share of sale consideration. The assessee has adopted sale consideration of Rs.7 Crs. as his share of consideration received towards sale of property and after claiming deduction towards indexed cost of acquisition of Rs.76,57,044/- arrived at net capital gains of Rs.6,23,42,957/-. From the above, the assessee has claimed deduction u/s.54F of the Act, for Rs.5,63,47,743/-, and reported capital gains from transfer of property at Rs.59,95,214/-. The AO has computed long term capital gains at Rs.7,48,95,177/- by adopting full value of sale consideration in terms of provisions of Sec.50C of the Act, at Rs.8,57,79,770/-. The Assessing Officer, while computing long term capital gains has allowed indexed cost of acquisition at Rs.8,84,593/- and deduction u/s.54F of the Act for Rs.1

Crs. towards amount deposited in Capital Gain Account Scheme. However, denied deduction claimed u/s.54F of the Act, towards amount re-invested for purchase of another residential house property.

9. The sole arguments of the assessee in light of reference to the DVO for determining FMV of the property in terms of provisions of Sec.50C of the Act, is that although, the AO has referred valuation of the property to the DVO, but completed the assessment before the DVO submitted their report. Therefore, the matter may be set aside to the file of the AO. We find that as per request of the assessee, the AO referred the valuation of the property to the DVO on 19.12.2018, but completed assessment on 25.12.2018 before the DVO submitted their report. Therefore, we are of the considered view that the AO is completely erred in adopting full value of consideration in terms of provisions of Sec.50C of the Act, even though, he had referred the valuation of the property to the DVO. We further noted that in two co-owners case, in ITA No.2322/Chny/2019&in ITA No.2333/Chny/2019 for AY 2016-17 vide order dated 19.11.2019, the Tribunal has set aside the issue to the file of the Ld.CIT(A) to re-adjudicate the issue of computation of long term capital gains from sale of property after receipt of the Valuation Report from the DVO in terms of provisions of Sec.50C of the Act. Since, the assessee is one of the co-owners of the property sold by family members, by following the decision of ITAT, Chennai Benches, in other co-owner case, we set aside the issue to the file of the Ld.CIT(A) for re-adjudication after receipt of the

Valuation Report from the DVO u/s.50C of the Act. In so far as, the appeal filed by the Revenue is concerned, the main issue involved is deduction claimed u/s.54F of the Act. Since, the main issue of computation of full value of consideration in terms of provisions of Sec.50C of the Act, has been set aside to the file of the Ld.CIT(A), and other consequential issues like deduction towards indexed cost of acquisition and deduction claimed u/s.54F of the Act, also needs to be re-adjudicated by the Ld.CIT(A), and thus, we set aside the issue to the file of the Ld.CIT(A) and direct the Ld.CIT(A) to re-adjudicate the issue of indexed cost of acquisition and deduction claimed u/s.54F of the Act, afresh, in accordance with law.

10. In the result, appeals filed by the assessee, as well as the Revenue are allowed for statistical purposes.

Order pronounced on the day of 14th June, 2023, in Chennai.

Sd/-
(मनोमोहनदास)
(MANOMOHAN DAS)

न्यायिकसदस्य/**JUDICIAL MEMBER**
चेन्नई/Chennai,
दिनांक/Dated: 14th June, 2023.
TLN

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent

Sd/-
(मंजूनाथा.जी)
(MANJUNATHA.G)

लेखासदस्य/**ACCOUNTANT MEMBER**

3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF