

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri Manjunatha, G. Accountant Member

आयकर अपील सं./I.T.A. No.1700/Chny/2018  
निर्धारण वर्ष/Assessment Year: 2007-08

Balasubramanian Adityan,  
Legal Heir of Dr. B. Sivanthi Adityan,  
No. 6, E.V.K. Sampath Road,  
Vepery, Chennai 600 007.

Vs. The Deputy Commissioner of  
Income Tax,  
Corporate Circle 6(2),  
Chennai 600 034.

**[PAN:AAMPA7576R]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri V.S. Jayakumar, Sr. Advocate for  
Shri PMN Bhagavath Krishnan, Adv.  
प्रत्यर्थी की ओर से/Respondent by : Shri Clement Ramesh Kumar, CIT  
सुनवाई की तारीख/ Date of hearing : 19.07.2023  
घोषणा की तारीख /Date of Pronouncement : 30.08.2023

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 15, Chennai, dated 28.02.2018 relevant to the assessment year 2007-08. In the appeal, the assessee has raised following grounds:

1. *The order of the Commissioner of Income Tax Appeals is contrary to law and facts of the case.*
2. Reassessment made us 147:
  - (i) *The Commissioner of Income Tax Appeals erred in confirming the reassessment made u/s 147 of the Income tax Act. 1961.*

- (ii) *The Commissioner of Income Tax Appeals failed to note that the reassessment has been made without adhering to the provisions off Sec 159 of the Income tax Act. 1961.*
  - (iii) *The Commissioner of Income Tax Appeals had erred in relying on the order of the Hon'ble ITAT, Chennai in the case of another joint owner M/s Gay Travels Pvt. Ltd. to justify the validity of reassessment made on the appellant, which is inapplicable to the facts of the case., The Commissioner of Income Tax Appeals failed to note that the in the facts of the appellant's case the original notice was served on the dead person.*
3. *Merits of the case: valuation for the purpose of levy of capital gains tax:*
- (i) *The Commissioner of Income Tax Appeals had erred in confirming the rate of Rs.1705 per sq. ft based on construction cost as appearing in the books of the builder, ignoring the earlier directions from the order of the Tribunal in ITA No 254/Mds/2016 dated 19.4.2017 B Bench, where n the ITAT had directed the AO to value the land on comparable sale value basis. There is no mention of the building value on the said direction of the ITAT.*
  - (ii) *The Commissioner of Income Tax Appeals had erred in ignoring the land area of 90779 sq. ft sold by the Appellant, which is the crucial fact as appearing in the entire proceeding, instead he has wrongly confirmed the calculation made by the assessing officer in the impugned proceedings.*
  - (iii) *The Commissioner of Income Tax Appeals had erred in confirming the value of land sold by adopting the building area of 157345 sq. ft. instead of 90779 sq. ft. sold.*
4. *The appellant craves leave to adduce additional grounds of appeal at the time of hearing.*

2. Brief facts of the case are that, it is second round of litigation. The Assessing Officer has completed the original assessment under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 ["Act" in short] dated 30.03.2015, wherein, the capital gain accrued from transfer of property by

the assessee along with others to M/s. RMZ Infotech Pvt. Ltd. was assessed to tax, among others. On appeal, the Id. CIT(A) confirmed the assessment order. The assessee carried the matter in appeal before the ITAT. Vide order in I.T.A. No. 2545/Mds/2016 dated 19.04.2017, the ITAT remitted the matter back to the file of the Assessing Officer by observing as under:

6. *Now, the contention of the ld. A.R is that Sec.50C(2) of the Act is a beneficial provision and whenever the assessee is objected the Guide Line value (GLV) mentioned in the sale deed for the purpose of adopting the sale consideration, it is required to refer the matter to the DVO to ascertain the Fair Market Value (FMV) as on the date of transfer, which was not considered by the AO and requested that the issue may be remitted back to the file of AO with a direction to refer the matter to DVO and the ld. A.R has not pressed any other grounds raised before us.*

7. *On the other hand, ld. D.R relied on the order of lower authorities.*

8. *We have heard both the parties and perused the material on record. In our opinion, GLV cannot be considered as FMV of the capital assets said to be transferred and it is only a value fixed by the State Authority for the purpose of registration. Further, we also make it clear that the DVO/AO has to bring on record comparable cases of sales taken place in the same location during the relevant point of time and compared the same with the assessee's case, then he has to fix the possible sales consideration and the Sec. 50C(2) is the beneficial provision should be made available to the assessee, when the assessee specifically requested for the same.*

8.1 *To this effect, we place reliance in the judgement of Jurisdictional High Court in the case of APPADURAI VIDAYARAGHAVAN reported in [2014] 369 ITR 486 (Mad) wherein held that any objection made by the assessee to AO is with regard to adoption of GLV of property u/s. 50C(1) of the Act, the AO ought to have referred the valuation of capital asset to valuation cell and mere*

*assertion by the assessee in this respect will suffice. In view of the jurisdictional High Court judgment cited supra, we are inclined to remit the matter in dispute to the file of AO for re-fixation of the sales consideration of the said property to be transferred by the assessee.*

*8.2 Further, no evidence regarding substantive assessments in the case of other parties were brought to our notice by either party, we are not in a position to express any opinion regarding ground No. 6 raised by the assessee. More so, we cannot deal with the assessee, who are not before us.*

*9. In the result, the appeal of the assessee is partly allowed for statistical purposes.*

3. In pursuance to the directions of the ITAT, the Assessing Officer issued hearing letter on 25.07.2017. After considering the submissions of the assessee, the Assessing Officer has completed the assessment under section 254 r.w.s. 143(3) r.w.s. 147 of the Act dated 17.10.2017 by reducing the income of the assessee at ₹.27,09,90,000/- from the originally assessed income as per order under section 143(3) of the Act at ₹.32,46,65,175/-. On appeal, the Id. CIT(A) confirmed the addition and dismissed the ground raised by the assessee.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that in the first round of litigation, the ITAT has observed that the guideline value cannot be considered as FMV of the capital assets said to be transferred and it is only a value fixed by the State Authority for the purpose of registration. Accordingly, the Tribunal has directed that the DVO/AO has to bring on

record comparable cases of sales taken place in the same location during the relevant point of time and compared the same with the assessee's case, then he has to fix the possible sales consideration and the section 50C(2) of the Act is the beneficial provision should be made available to the assessee, when the assessee specifically requested for the same. It was further submission that in the second round of litigation, the assessee has requested the Assessing Officer to refer the matter to DVO for valuation of FMV. In spite of specific request, the Assessing Officer has not referred the matter to DVO.

5. On the other hand, the Id. DR has submitted that no reference to DVO is required in this case for the reason that the cost of construction was admitted by the developer is the FMV of the property. Therefore, the Assessing Officer as well as the Id. CIT(A) has correctly decided the issue.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The only issue involved in this appeal is to ascertain FMV of the property for the purpose of determining capital gains. In this context, it is relevant to note that in the first round of litigation, the Tribunal has already considered the issue

in ITA No. 2545/Mds/2016 for the assessment year 2007-08 vide order dated 19.04.2017 and held as under:

*“8. We have heard both the parties and perused the material on record. In our opinion, GLV cannot be considered as FMV of the capital assets said to be transferred and it is only a value fixed by the state authority for the purpose of registration. Further, we also make it clear that the DVO/AO has to bring on record comparable cases of sales taken place in the same with assessee's case, then he has to fix the possible sales consideration and the Sec. 50C(2) is the beneficial provision should be made available to the assessee specifically requested for the same.*

*8.1. To the effect, we place reliance in the judgment of jurisdictional High Court in the case of APPADURAI VIJAYARAGHAVAN reported in (2014) 369 ITR 486 (Mad) wherein held that any objection made by the assessee to AO is with regard to adoption of GLV of property u/s. 50C(1) of the Act, the AO ought to have referred the valuation of capital asset to valuation cell and mere assertion by the assessee in this respect will suffice. In view of the jurisdictional High Court judgment cited supra, we are inclined to remit the matter in dispute to the file of AO for re-fixation of the sales consideration of the said property to be transferred by the assessee.*

6.1 In the second round of litigation, the assessee has raised an objection before the Assessing Officer that the matter may be referred to DVO to ascertain FMV. However, the Assessing Officer has not considered the request of the assessee and concluded the assessment by determining the cost of construction, as admitted by the builder, as FMV and worked out the STCG. Before us, the Id. Counsel for the assessee has submitted that once there is an objection by the assessee to ascertain the FMV and requested for reference to DVO, the Assessing Officer has to refer the matter to DVO to ascertain the FMV. In this context, we find that in the first round of litigation, the ITAT has directed

the Assessing Officer to refer the matter to DVO though not specifically mentioned, but it was stated as “..... Further, we also make it clear that the DVO/AO has to bring on record.....”. In the present proceedings, by considering the entire facts and circumstances of the case and also the view expressed by the ITAT earlier and in the interest of justice, we are of the opinion that the Assessing Officer ought to have been referred the matter to DVO to ascertain the FMV. Therefore, we set aside the order of the Id. CIT(A) and direct the Assessing Officer to refer the matter to the DVO to ascertain the FMV and thereafter, decide the issue in accordance with law by affording an opportunity of being heard to the assessee.

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

Order pronounced on 30<sup>th</sup> August, 2023 at Chennai.

Sd/-  
(MANJUNATHA, G.)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 30.08.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,  
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.