

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

श्री महावीर 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.: **1318/CHNY/2024**

निर्धारण वर्ष/Assessment Year: 2015-16

Smt. Miho Kikuchi,
No.25, Chengam Road,
Fourth Street,
Thiruvannamalai – 606 601.

**The Principal Commissioner
of Income Tax-8,**
Chennai.

PAN: BDEPM 5316B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Quadir Hoseyn, Advocate &
Dr. L. Natarajan, CA
प्रत्यर्थी की ओर से/Respondent by : Shri Nilay, Baran Som, CIT
सुनवाई की तारीख/Date of Hearing : 24.07.2024
घोषणा की तारीख/Date of Pronouncement : 26.07.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the revision order passed by the Principal Commissioner of Income Tax, Chennai -8 in Order No.ITBA/REV/F/REV5/2023-24/1063189420 (1) dated 22.03.2024. The assessment was framed by the Addl./Joint/Deputy/Asst. Commissioner of Income Tax/Income Tax Officer, National Faceless Assessment Centre, Delhi for the

assessment year 2015-16 u/s.147 r.w.s 144B of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.03.2022.

2. The only issue in this appeal of assessee is against the revision order passed by PCIT u/s.263 of the Act revising the assessment framed by AO of National Faceless Assessment Centre vide order dated 27.03.2022 u/s.147 r.w.s 144B of the Act. For this assessee has raised various grounds which are factual, argumentative and exhaustive and hence, need not be reproduced.

3. The brief facts are that the assessee is an individual and Japanese nationality by birth and is a resident of India for the relevant assessment year 2015-16 relevant to financial year 2014-15. The assessee sold property to one Shri Murugan for a consideration of Rs.79,00,000/- vide sale deed dated 19.03.2015 registered at SRO, Tiruvannamalai. The AO noted on verification of sale deed that the purchaser has paid deficit stamp duty of Rs.19,32,000/- and accordingly, he estimated the market value of the property fixed at Rs.3.55 crores According to AO, the difference amount of Rs.2.76 crores need to be brought to tax u/s.50C of the Act. Accordingly, assessment was reopened by issuing notice u/s.148 of the Act dated 30.03.201. In response to the notice, the

assessee explained and returned income was accepted. There is no addition on account of differential amount of Rs.2.76 crores.

4. Subsequently, the PCIT noted the facts and also noted that the assessee has sold property to Shri Murugan for a consideration of Rs.79 lakhs as against the guideline value determined for the purchase of property at Rs.3.55 crores. According to PCIT, the AO failed to examine the issue of resultant capital gain and could not bring the resultant capital gain in the assessment order. Accordingly show-cause notice dated 22.12.2023 was issued. In response to show-cause notice, the assessee filed copy of statement of total income, copy of sale deed, agreement for sale, bank account statement reflecting the transactions carried out, copy obtained under RTI Act from the SRO, Tiruvannamalai reflecting the guideline value of the property as on 01.04.2012, 23.01.2013 and as on 29.11.2014. The assessee contended before the PCIT that it was argued before the AO and even now it was contended that the sale agreement was executed on 10.10.2014 and as per first and second proviso to section 50C(1) of the Act as inserted in the Act by the Finance Act, 2016 w.e.f. 01.04.2017 and Finance (No.2) Act, 2019 w.e.f. 01.04.2020 has retrospective effect and the guideline value has to be taken as on the date of execution of agreement for sale

i.e., dated 10.10.2024. The PCIT noted that the newly inserted proviso is only prospective and the agreement for sale was executed before the effective date of the proviso. Hence, he directed the AO by revising the assessment that the issue of capital gain is to be examined in the light of the provisions of section 50C taking into consideration of guideline value as on the date of registration of the property and he also noted that prevailing guideline value as on the date of registration of the property was Rs.5000/- per sq.ft. He directed the AO accordingly in para 4.7 as under:-

“4.7 Here it would be pertinent to refer to clause (a) & (b) of Explanation 2 u/s 263 which reads as under:

Explanation 2 - For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing officer, as the case may be] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner, -

1. the order is passed without making inquiries or verification which should have been made:
2. the order is passed allowing any relief without inquiring into the claim

In the case under consideration, the stamp value is greater than the actual sale consideration received by the assessee. Therefore, the valuation made by the stamp valuation authority shall be deemed to be taken for full value of consideration for computing the resultant capital gain. It is evident that the prevailing Guideline Value as on date of registration of the property was @Rs.5,000/- and therefore, this value should have been taken into consideration by the Assessing Officer while concluding the Assessment Order.

5. In view of the above facts of the case and above judicial pronouncement and provisions of the Income tax Act, 1961, I am of the opinion that the Assessing Officer has passed the assessment order in a manner which is erroneous in so far as prejudicial to the interests of revenue. Accordingly, the assessment order dated 27.03.2022 is set aside and the issue is remitted back to the file of Assessing Officer with a direction to examine the taxability of Capital Gain in the light of provision of section 50C taking into consideration of Guideline Value as on the date of Registration of the property and pass the order in accordance with law after giving sufficient opportunities to the assessee.”

Aggrieved, assessee came in appeal before the Tribunal.

5. The Id.counsel for the assessee before us made only submission that the guideline value is to be taken on the date of agreement for sale which was executed on 10.10.2014 and not on the date of registration / execution of sale deed, which is dated 19.03.2015. The Id.counsel produced one copy of SRO, Tiruvannamalai guideline value and according to him, the guideline value is Rs.800/- per sq.ft in regard to this property. On this, the Id. CIT-DR stated that the guideline value is confusing and it does not give, it is for which division. Hence, he requested that matter be restored back to the file of the AO by upholding the order of the PCIT revising the assessment.

6. We have heard rival contentions and gone through facts and circumstances of the case. First of all, we have gone through the

first and second proviso of section 50C of the Act as inserted by Finance Act, 2016 w.e.f. 01.04.2017 and by Finance (No.2) Act, 2019 w.e.f. 01.04.2020, which reads as under:-

“50C.....

.....

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of the agreement for transfer.

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and ten percent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.”

As pointed out by Id.counsel for the assessee that this issue stands covered in favour of assessee by the decision of Hon’ble Madras High Court in the case of CIT vs. Shri Vummudi Amarendran in T.C.A No.329 of 2020, order dated 28.09.2020, wherein the Hon’ble Madras High Court has considered this issue and held that the proviso of section 50C(1) is retrospective from the date when the proviso came into existence. The Hon’ble High Court in para 10, 11 & 12 held as under:-

10. Reading of the above proviso would show that the legislature took note of the fact that there are several occasions where the Agreements are entered into between a willing vendor and willing purchaser on an agreed sale consideration, the Agreement is reduced into writing and in many a cases a substantive portion of the sale consideration is given to the vendor as advance on the date of execution of the Agreement. There are other types

of transaction where the vendor executes Power of Attorney in favour of the intending purchaser empowering him to sell the property at any time he proposes to do so. In fact this was also a subject matter of consideration, when the legislature thought to introduce the amendment to Section 50C of the Act. There may be cases where the sale consideration will be taken as deferred payment subject to certain contingencies. However the case on hand is very straight forward case, where there is an Agreement for Sale, agreeing to sell the property at Rs.19 Crores and a sum of Rs.6 Crores has been received as advance sale consideration. The proviso to Section 50C(1) of the Act deals with cases where the date of the agreement, fixing the amount of consideration and the date of registration for the transfer of the capital assets are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer. Thus an amendment by insertion of proviso seeks to relieve the assessee from undue hardship.

11. The Hon'ble Supreme Court in Commissioner of Income Tax, Kolkata Vs. Calcutta Export Company [2018 (404) ITR 654(SC)], considered the question as to whether the amendment made by the Finance Act 2010 to Proviso of Section 40(a)(ia) of the Act is curative in nature and it has to given retrospective operation from the date of insertion of the said proviso i.e., with effect from Assessment Year 2005~06. It was pointed out that the purpose of the amendment made by the Finance Act 2010 is to solve the anomalies with the instrument of Section 40(a)(ia) of the Act, caused to the bona fide tax payer. It was further held that the amendment even if not given any operation retrospectively, may not materially to be of consequence to the Revenue when the tax rates are stable and uniform or in cases of big assesses having substantial turnover and equally huge expenses and necessary cushion to absorb the effect; however a marginal and medium tax payer who work at low gross product rate and when expenditure becomes subject matter of an order under Section 40(a)(ia) is substantial, can suffer severe adverse consequence if the amendment made in 2010 is not given retrospective operation i.e., from the date of substitution of the provision. Thus, the amendment made by the Finance Act 2010 being curative in nature was held to be retrospective in operation. In the above decision, the Hon'ble Supreme Court took note of the fact that the statutory amendment was being made to remove undue hardship to the assessee or held to be retrospective.

12. *The Hon'ble Supreme Court in Kolkata Export Company took note of the earlier decisions on the same issue in the case of Allied Motors Private Limited Vs. CIT [1997 (224) ITR 677 (SC)], Whirlpool of India Limited Vs. CIT, New Delhi [2000 (245) ITR 3], CIT Vs. Amrid Banaspati Company Limited [2002 (255) ITR 114] and CIT vs. Alom Enterprises [2009 (319) ITR 306] and held that the new proviso should be given retrospective effect from the insertion on the ground that the proviso was added to remedy unintended consequences and supply an obvious omission. The proviso ensured reasonable interpretation and retrospective effect would serve the object behind the enactment. Thus by taking note of the above decisions, we have no hesitation to hold that the proviso to Section 50C(1) of the Act should be taken to be retrospective from the date when the proviso exists. The CIT(A) while allowing the assessee-s appeal vide order dated 25.07.2019, took note of the submissions made by the assessee wherein they placed reliance on the decision of the Ahmadabad Bench of the Tribunal in the case of Dharamshi bhai Sonani Vs. ACIT [2016 75 taxmann.com 141 (Ahmedabad~ Trib)]; order of the Delhi Bench of the ITAT in the case of Income Tax officer Vs. Modipon Limited [2015 (57) taxmann.com 360 (Delhi Tribunal)].*

6.1 We have gone through the judgment of Hon'ble Madras High Court in the case of Shri Vummudi Amarendran, *supra*, and noted that the proviso is retrospective and applies to the facts of the present case. We, after hearing both the sides are of the view that the guideline value in this case is to be adopted as on the date of agreement for sale i.e., 10.10.2014. Since the clear guideline values are not available before us, whether it is Rs.5000/- per sq.ft., or Rs.800/- per sq.ft., in respect to the property, it needs verification. The AO will write to the SRO, Tiruvannamalai and obtain the correct guideline value as on 10.10.2014 in respect to this property and accordingly, assess the capital gain. The assessee is also free to

adduce any evidence in regard to this before the AO. Needless to say, the AO will provide opportunity of being heard to the assessee before finalizing the assessment. Accordingly, the revision order is upheld but subject to above directions.

7. In the result, the appeal filed by the assessee is dismissed subject to above direction and modification in the order.

Order pronounced in the open court on 26th July, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 26th July, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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