

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1698/Mds/2013

निर्धारण वर्ष / Assessment Year : 2009-10

The Assistant Commissioner of
Income Tax,
Business Circle – I,
Chennai - 600 034.

(अपीलार्थी/Appellant)

v. Ms. K.A. Fathima,
No.220, Classing Retreat,
Sholinganallur, Chennai - 600 119.

PAN : AAEPF 1462 D

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Smt. E. Sulochana, JCIT

प्रत्यर्थी की ओर से/Respondent by : Dr. Anita Sumanth, Advocate

सुनवाई की तारीख/Date of Hearing : 08.06.2016

घोषणा की तारीख/Date of Pronouncement : 06.09.2016

आदेश /ORDER

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – VI, Chennai, dated 29.04.2013 and pertains to assessment year 2009-10.

2. The only issue arises for consideration is computation of capital gain.

3. Smt. E. Sulochana, the Ld. Departmental Representative, submitted that the only issue arises for consideration is determination fair market value as on 01.04.1981. According to the Ld. D.R., the assessee purchased a house property at Door No.47, Sarangapani Street, T. Nagar, Chennai, for a total consideration of ₹1,67,000/- on 23.01.1976. While computing the capital gain, the assessee computed the index cost of acquisition at ₹1,20,03,750/- by adopting the fair market value of the land and building as on 01.04.1981 at ₹20,62,500/-. According to the Ld. D.R., the assessee was placing reliance on the construction agreement said to be entered into with Shri Gopal Achari on 23.02.1983. The Assessing Officer found that the guideline value of the property as on 01.04.1981 at Sarangapani Street, T. Nagar is only ₹27,000/- per ground. The Assessing Officer accepted this guideline value for the purpose of computing the fair market value as on 01.04.1981. Accordingly, the Assessing Officer computed the capital gain. However, on appeal by the assessee, the CIT(Appeals) found that the guideline value indicates the value of property at ₹27,000/- per ground as on 01.04.1981. The CIT(Appeals) found that it was not clear whether the Sub-Registrar office was giving value of the same

property in question or of a different property. According to the Ld. D.R., the CIT(Appeals) has also placed reliance on the judgment of Apex Court in respect of properties, which are located at Cathedral Road and Pantheon Road. After observing that Cathedral Road and Pantheon Road are commercial area, the CIT(Appeals) found that the fair market value adopted by the assessee is reasonable. According to the Ld. D.R., the properties at Cathedral Road and Pantheon Road cannot be compared with the property at Sarangapani Street, T. Nagar. According to the Ld. D.R., for the purpose of comparison, the property has to be situated in the same area, therefore, the comparison made by the CIT(Appeals) is not justified.

4. Referring to the value of the building, the Ld. Departmental Representative submitted that the Assessing Officer found that the building was 38 years old and it was demolished in 1983. Therefore, according to the Ld. D.R., after allowing depreciation, the market value will be very limited as compared to the value adopted by the assessee. According to the Ld. D.R., the Assessing Officer has also found that the assessee has not valued the building separately. The assessee also did not accept the value of land and

building. However, according to the Ld. D.R., the assessee adopted the market value at ₹7,50,000/- per ground as on 01.04.1981. The CIT(Appeals), however, found that the remains of the building when demolished would have fetched ₹15 lakhs in the year 1982 and the assessee has adopted only 46% of ₹15 lakhs and this was reasonable. Therefore, according to the Ld. D.R., the CIT(Appeals) accepted the fair market value adopted by the assessee as on 01.04.1981. According to the Ld. D.R., the depreciation has to be taken into consideration while valuing the property as on 01.04.1981.

5. On the contrary, Dr. Anita Sumanth, the Ld.counsel for the assessee, submitted that the Assessing Officer simply adopted the guideline value for the purpose of adopting the fair market value. According to the Ld. counsel, guideline value is one of the factors to be taken into consideration and the guideline value may not reflect the market value. According to the Ld. counsel, what is required to be determined is the market value of the property and not the guideline value. The guideline value is only to guide the Sub-Registrar to determine the market value for the purpose of collecting stamp duty. The Assessing Officer, according to the Ld. counsel,

without making any further investigation, accepted the guideline value as fair market value. According to the Ld. counsel, the CIT(Appeals), after comparing the value of various properties, including the properties at Cathedral Road and Pantheon Road, and civil suits pending in the property, found that nearer and comparable properties and localities have to be taken into consideration for the purpose of valuing the property as on 01.04.1981. Accordingly, the CIT(Appeals) found that the value adopted by the assessee is reasonable, hence, needs to be accepted.

6. Coming to the value of the building, the Ld.counsel for the assessee submitted that the CIT(Appeals) found that the remains of the building when demolished would have fetched ₹15 lakhs in the year 1982. When the remains of the building would have fetched ₹15 lakhs, the Assessing Officer, should take entire ₹15 lakhs as market value. In fact, according to the Ld. counsel, the assessee is claiming 46% of ₹15 lakhs, which was found to be reasonable. The value of the building has to be determined on the basis of market value and not after reducing the depreciation. According to the Ld. counsel, what is required to determine is market value as on 01.04.1981 and not the book value.

7. We have considered the rival submissions on either side and perused the relevant material available on record. The only issue arises for consideration is estimation of fair market value as on 01.04.1981. For the purpose of computing the capital gain, the Assessing Officer disallowed the claim of the assessee on the basis of guideline value of Sub-Registrar. The guideline value of the Sub-Registrar was ₹27,000/- per ground as on 01.04.1981. The Assessing Officer, adopted the fair market value as on 01.04.1981 at ₹27,000/- per ground. This Tribunal is of the considered opinion that the Assessing Officer was expected to determine the fair market value as on 01.04.1981. Fair market value is nothing but a price that may be agreed between the willing purchaser and willing seller. Guideline value will not always reflect the market value. The guideline value is only to guide the Sub-Registrar to determine the market value for the purpose of collecting stamp duty. Therefore, this Tribunal is of the considered opinion that the guideline value of Sub-Registrar is one of the factors to be taken into consideration for the purpose of determining the fair market value as on 01.04.1981. Moreover, the location of the property, infrastructure facilities available around the property, public access to the property,

distance between the bus stand, railway station, airport from the property, potential for future development, proximity to the schools, colleges and other public institutions, etc. are needed to be taken into consideration for the purpose of determining the fair market value. In the case before us, the property is admittedly located at Sarangapani Street, T. Nagar, which is one of the prime areas in the city of Chennai and there are several infrastructure facilities such as railway station, bus stand, market around the locality. There are schools, institutions and business establishments are available around the locality. While taking into consideration all the facilities available in the locality, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly found that the fair market value estimated by the assessee as on 01.04.1981 is reasonable and acceptable one. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

8. Now coming to the value of the building, if the property was demolished as on 01.04.1981, it would have fetched ₹15 lakhs in respect of debris and other material used in construction. The assessee has claimed only 46% of ₹15 lakhs estimated. Therefore,

this Tribunal is of the considered opinion that the CIT(Appeals) has rightly found that the claim of the assessee is reasonable. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 6th September, 2016 at Chennai.

sd/- (ए. मोहन अलंकामणी) (A. Mohan Alankamony) लेखा सदस्य/Accountant Member	sd/- (एन.आर.एस. गणेशन) (N.R.S. Ganesan) न्यायिक सदस्य/Judicial Member
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चेन्नई/Chennai,
दिनांक/Dated, the 6th September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-VI, Chennai
4. आयकर आयुक्त/CIT-IV, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.