

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.877/Mds/2016

निर्धारण वर्ष / Assessment Year : 2007-08

Shri Bharathram,
Shri T.N. Seetharaman,
Advocate,
#384 (Old No.196), Lloyds Road,
Chennai - 600 086.

v. The Income Tax Officer,
Non Corporate Ward 3(1),
Chennai - 600 034.

PAN : AAQPB 3251 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri T.N. Seetharaman, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri Shiva Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing : 24.10.2016

घोषणा की तारीख/Date of Pronouncement : 23.11.2016

आदेश / O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-4, Chennai, dated 01.01.2016 and pertains to assessment year 2007-08.

2. The only issue arises for consideration is determination of capital gain on transfer of property.

3. Shri T.N. Seetharaman, the Ld.counsel for the assessee, submitted that the assessee sold residential plot in 'Dev Regency', Door No.6, First Main Road, Gandhinagar, Adyar, Chennai, for ₹19,59,737/-. The Assessing Officer by applying the provisions of Section 50C of the Income-tax Act, 1961 (in short 'the Act'), considered the sale consideration at ₹31,29,000/-. This is the value adopted by the stamp valuation authority.

4. Referring to the provisions of Section 50C(2) of the Act, the Ld.counsel for the assessee submitted that when the assessee claimed that the sale consideration was less than the guideline value prescribed by the State registration authorities, it is incumbent upon the Assessing Officer to refer the matter to the Valuation Officer. The Assessing Officer himself adopted the value determined by the stamp authorities for registration. Therefore, the Ld.counsel submitted that the matter may be remitted back to the file of the Assessing Officer for referring to Valuation Officer and thereafter decide in accordance with law.

5. On the contrary, Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that Section 50C of the Act is mandatory. Since the assessee claimed that the sale consideration is less than the value adopted by the stamp authorities, the Assessing Officer by applying provisions of Section 50C of the Act found that the sale consideration was ₹31,29,000/-. Therefore, the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

6. We have considered the rival submissions on either side and perused the relevant material available on record. We have carefully gone through the provisions of Section 50C of the Act. Sub-section (2) of Section 50C of the Act clearly says that when the assessee claims that the sale consideration was less than the value adopted by stamp authorities for the purpose of registration, the assessing authority may refer the matter to the Valuation Officer and determine the market value. In the case before us, the assessee consistently claims before the Assessing Officer that the property was sold for consideration less than the value determined by the stamp authorities for registration. Therefore, this Tribunal is of the considered opinion that in view of the mandatory requirement

of Section 50C(2) of the Act, the Assessing Officer ought to have referred the matter to the Valuation Officer.

7. The guideline value or the stamp value determined by the Registration authorities cannot always represent the fair market value. The fair market value is nothing but a price that may be agreed between the willing purchaser and willing seller. Therefore, in view of the specific provision in the Income-tax Act, this Tribunal is of the considered opinion that the matter has to be referred to the Valuation Officer as required under Section 50C(2) of the Act. Since such an exercise was not done by the Assessing Officer, this Tribunal is of the considered opinion that the matter needs to be reconsidered. Accordingly, the orders of the authorities below are set aside and the issue of determination of value for the purpose of computation of capital gain is remitted back to the file of the Assessing Officer. The Assessing Officer shall refer the matter to the Valuation Officer as required under Section 50C(2) of the Act. On receipt of report of the Valuation Officer, the Assessing Officer shall furnish a copy of the same to the assessee and the assessee shall be given an opportunity to file his objection, if any. Thereafter the Assessing Officer, after taking into consideration of the report of

the Valuation Officer and the objection, if any, from the assessee, has to decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

8. With the above observation, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 23rd November, 2016 at Chennai.

sd/-
(डि.एस. सुन्दर सिंह)
(D.S. Sunder Singh)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 23rd November, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-4, Chennai-34
4. Principal CIT-5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.