

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" 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.409/Mds/2013

निर्धारण वर्ष / Assessment Year : 2005-06

M/s GWL Properties Ltd.,  
36, Rajaji Salai,  
Chennai - 600 001.

v. The Income Tax Officer(OSD),  
Company Circle II(2),  
Chennai - 600 034.

PAN : AAACM 2338 A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.79/Mds/2015

निर्धारण वर्ष / Assessment Year : 2005-06

The Deputy Commissioner  
of Income Tax,  
Corporate Circle 2(1),  
Chennai - 600 034.

v. M/s GWL Properties Ltd.  
(formerly M/s Gordon  
Woodraffee Limited),  
36, Rajaji Salai,  
Chennai - 600 001.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by : Shri Manuel Thomas, CA

Revenue by : Dr. S. Moharana, CIT

सुनवाई की तारीख/Date of Hearing : 22.04.2015

घोषणा की तारीख/Date of Pronouncement : 15.05.2015

**आदेश / O R D E R**

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

Both assessee and Revenue have filed the appeals against the respective orders of the Commissioner of Income Tax (Appeals) for assessment year 2005-06. Since both are for the same assessment year, we heard both the appeals together and disposing of by this common order.

2. First, let's take assessee's appeal in I.T.A. No.409/Mds/2013.

3. Shri Manuel Thomas, the Ld. representative for the assessee, submitted that the assessee has sold two plots at Maraimalai Nagar, Kanchipuram District during the assessment year under consideration. According to the Ld. representative, the property was sold for ₹5,58,25,000/-. However, the Sub-Registrar has valued the property at much higher amount for the purpose of stamp duty. The assessee objected to the valuation made by the registering authority. The assessee has requested the Assessing Officer to refer the matter to the Valuation Officer. However, the Assessing Officer ignored the request of the assessee and completed the assessment by taking the value adopted by the

registering authority for stamp duty purpose. Referring to Section 50C of the Income-tax Act, 1961 (in short 'the Act'), the Ld. representative submitted that when the value adopted by the registering authority is higher than the fair market value, the matter ought to have been referred to the Valuation Officer. In this case, according to the Ld. representative, it was not referred to the Valuation Officer. Therefore, the Ld. representative submitted that unless and until the matter is referred to the Valuation Officer, the assessing authority cannot take the valuation made by the registering authority for the purpose of assessment. The Ld. representative placed reliance on the judgment of Madras High Court in the case of Commissioner of Wealth-tax v. Prasad Productions (P) Ltd. (259 ITR 88).

4. On the contrary, Dr. S. Moharana, the Ld. Departmental Representative, submitted that the assessee has not raised any objection before the Assessing Officer with regard to adoption of the value taken by the Sub-Registrar for registration of property. According to the Ld. D.R., the Sub-Registrar has taken the value of the property at ₹9,73,58,800/-. However, the sale consideration shown in the sale deed is only at ₹5,58,25,000/-. Since the value taken by the Sub-Registrar for valuation of the property is more than the consideration disclosed in the sale deed, according to the Ld.

D.R., the Assessing Officer has rightly adopted the value taken by the Sub-Registrar at ₹9,73,58,800/- for the purpose of capital gains under Section 50C of the Act. Therefore, there is no infirmity in the orders of the lower authorities.

5. We have considered the rival submissions on either side and perused the relevant material on record. It is not in dispute that the assessee had sold two plots at Maraimalai Nagar, Kanchipuram District for a sale consideration of ₹5,58,25,000/-. However, the Sub-Registrar, for the purpose of registration, has taken the fair market value at ₹9,73,58,800/- and collected the stamp duty accordingly. Now the assessee claims that in view of Section 50C of the Act, when the fair market value is less than the registration value adopted by the registering authority, the matter has to be referred to the Valuation Officer to determine the fair market value.

6. We have carefully gone through the provisions of Section 50C of the Act. When the fair market value is less than the value adopted by the registering authority, Section 50C of the Act clearly says that the matter has to be referred to the Valuation Officer to determine the fair market value. In this case, both the authorities below have not referred the matter to the Valuation Officer. When the assessee shows the sale consideration at ₹5,58,25,000/- in the

sale deed, it would not be correct to say that the assessee did not object to the value adopted by the Assessing Officer at ₹9,73,58,800/-. In order to avoid dispute with registering authority and for early registration of the document, stamp duty might have been paid for the value determined by the registering authority. However, the actual sale consideration shown in the sale deed cannot be disregarded unless and until the valuation report obtained by the Assessing Officer as required under Section 50C of the Act. Therefore, this Tribunal is of the considered opinion that the matter needs to be referred to the Valuation Officer. Accordingly, we set aside the orders of the lower authorities and the Assessing Officer is directed to refer the matter to Valuation Officer. Accordingly, the matter is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue in the light of the report that would be received from the Valuation Officer and thereafter, decide the same in accordance with law after giving reasonable opportunity to the assessee.

7. The next ground of appeal is with regard to allowability of TDS to the extent of ₹3,83,236/-.

8. Shri Manuel Thomas, the Ld. representative for the assessee, submitted that the assessee has filed five TDS

certificates aggregating to ₹3,83,236/-. The Ld. representative submitted that the same was not claimed in the return of income. According to the Ld. representative, the TDS certificates filed before the lower authorities to the extent of ₹3,83,236/- have to be considered.

9. On the contrary, Dr. S. Moharana, the Ld. D.R. submitted that the assessee had not filed the TDS certificates along with return of income and no certificate was filed before the CIT(Appeals). Therefore, it was not considered by the Assessing Officer and the CIT(Appeals) also has not considered the same.

10. We have considered the rival submissions on either side and perused the relevant material on record. From the grounds of appeal extracted by the CIT(Appeals) it appears that the assessee has raised this ground as Ground No.10 in the grounds of appeal. However, the CIT(Appeals) has not discussed the same in the appellate order. In other words, the ground relating to TDS certificates to the extent of ₹3,83,236/- was not disposed of by the CIT(Appeals). This Tribunal is of the considered opinion that when the tax was deducted at source as per the scheme of the Income-tax Act, the Assessing Officer is bound to give credit for the tax deducted at source, otherwise, the very purpose of deducting tax

would be defeated. Therefore, this Tribunal is of the considered opinion that the Assessing Officer shall reconsider the issue after verifying the TDS certificates that were said to be filed by the assessee. Accordingly, the matter is remitted back to the file of the Assessing Officer. The Assessing Officer shall verify all the TDS certificates filed by the assessee and give credit in respect of the tax deducted at source.

11. Now coming to the Revenue's appeal, the only issue arises for consideration is assessability of surplus on the sale of land.

12. Dr. S. Moharana, the Ld. D.R. submitted that the Assessing Officer reopened the assessment by issuing notice under Section 148 of the Act. According to the Ld. D.R., the assessee claims the profit on sale of the land under the head "capital gains". However, this issue had not been decided in the original assessment. Therefore, the Assessing Officer reopened the assessment and treated the profit on sale of the land as business income. However, the CIT(Appeals) by following the order of this Tribunal in the assessee's own case for assessment year 2004-05, directed the Assessing Officer to assess the surplus on sale of the land under the head "capital gains". According to the Ld. D.R., the Revenue has already filed an appeal before the High Court against the order

of this Tribunal for assessment year 2004-05 in the assessee's own case. Therefore, the CIT(Appeals) is not right in allowing the claim of the assessee.

13. On the contrary, Shri Manuel Thomas, the Ld. representative submitted that for the assessment year 2004-05, the Assessing Officer had treated the profit on sale of land as business income. On appeal by the assessee, the CIT(Appeals) considered the same as capital gain and that was confirmed by this Tribunal. Therefore, according to the Ld. representative, the profit on sale of lands has to be assessed only as capital gain and not as business income. Mere pending of appeal before the High Court cannot be a reason to take different view on the issue.

14. We have considered the rival submissions on either side and perused the relevant material on record. In the original assessment, the assessee's claim of capital gain was accepted by the Assessing Officer without any discussion. The assessee also filed appeal before the CIT(Appeals) against the order of the original assessment. During the pendency of disposal of the appeal, the Assessing Officer reopened the assessment by issuing notice under Section 148 and treated the profit on sale of the land as business income. The CIT(Appeals), by following his own order for

assessment year 2004-05 in the assessee's own case, directed the Assessing Officer to treat the profit on sale of the lands as capital gain. The Tribunal also confirmed the order of the CIT(Appeals) for assessment year 2004-05 to assess the surplus on the sale of the lands under the head "capital gains". The only objection of the Revenue before this Tribunal is that an appeal was filed against the order of the Tribunal before the High Court. It is not the case of the Revenue that the order of the Tribunal was stayed by the High Court for assessment year 2004-05. In those circumstances, the mere pendency of appeal before the High Court cannot be a reason to take a different view. Therefore, by following the order of this Tribunal for assessment year 2004-05 in the assessee's own case in I.T.A. No. 1155/Mds/2010 dated 8.12.2010, the CIT(Appeals) has rightly directed the Assessing Officer to assess the surplus on the sale of lands under the head "capital gains". We do not find any infirmity in the order of the CIT(Appeals) and accordingly confirm the same.

15. In the result, assessee's appeal in I.T.A. No.409/Mds/2013 is allowed for statistical purposes and the appeal of the Revenue in I.T.A. No.79/Mds/2015 is dismissed.

Order pronounced on 15<sup>th</sup> May, 2015 at Chennai.

sd/-  
(A.Mohan Alankamony)  
(ए. मोहन अलंकामणी)  
लेखा सदस्य/Accountant Member

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

चेन्नई/Chennai,  
दिनांक/Dated, the 15<sup>th</sup> May, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-I, Coimbatore
4. आयकर आयुक्त (अपील)/CIT(A)-II, Chennai
5. आयकर आयुक्त/CIT-I(Judl.), Coimbatore
6. आयकर आयुक्त/CIT-II, Chennai
7. विभागीय प्रतिनिधि/DR
8. गार्ड फाईल/GF.