

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 3184/Mds/2016  
निर्धारण वर्ष /Assessment year : 2010-2011.

M. Lakshmi Priya,  
No.16, Mandaveli Street,  
Mandaveli,  
Chennai 600 028.

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

[PAN ACFPL 4790D]

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. A.S. Sriraman, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Shri. S. Nethrapal, IRS, JCUT.

सुनवाई की तारीख/Date of Hearing : 30-05-2017  
घोषणा की तारीख /Date of Pronouncement : 31-05-2017

**आदेश / ORDER**

Grounds taken by the assessee in this appeal against an order dated 27.09.2016 of Id. Commissioner of Income Tax (Appeals)-2, Chennai are reproduced hereunder:-

*1. The order of The Commissioner of Income Tax (Appeals) 2, Chennai dated 27.09.2016 in I.T.A.No.252/CIT(A)-2/2013-14 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*

*2. The CIT (Appeals) erred in confirming the assessment of the surplus from the sale of capital asset under the head income from capital gains as against reporting of such surplus under the head income from business in the computation of taxable total income without assigning proper reasons and justification.*

*3. The CIT (Appeals) failed to appreciate that the presumption of such sale as sale of investment on the misreading of facts and accounting entries which according to the appellant were not decisive was wholly unjustified and went wrong in recording the findings in this regard in pages 8 - 10 of the impugned order without assigning proper reasons and justification..*

*4. The CIT (Appeals) failed to appreciate that there was no contradicting stand taken by the appellant while fortifying her return of income and ought to have appreciated that the complexities in keeping the asset were wrongly presumed for determination the nature of sale, thereby vitiating the findings recorded in relation thereto.*

*5. The CIT (Appeals) failed to appreciate that even the computation of Long Term Capital Gains was wrong, erroneous, unjustified, incorrect and not sustainable in law and ought to have appreciated that the mechanical application of the provisions of section 50C of the Act was wholly unjustified especially in view of completely overlooking the depressing factors.*

*6. The CIT (Appeals) failed to appreciate that the findings in paragraph No.7.1 of the impugned order were not correct and that the valuation report relied upon to consider the issues relating to the quantification of the sale consideration in the computation of the Long Term*

*Capital Gains was factually not correct in estimating such value for adoption, thereby vitiating the findings recorded in relation thereto.*

*7. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.*

2. Facts apropos are that assessee an individual, had filed her return of income for the impugned assessment year disclosing income of ₹11,60,400/-. During the relevant previous year assessee had sold a plot with address No.A2, AGS Office Staff Co-Operative Building Society, Kottivakkam on 25.06.2009 alongwith two other persons for an apparent consideration of ₹60,00,000/-. Assessee treated the profits arising on the sale of the above property as business income. She also filed a profit and loss account alongwith her return showing such income. Ld. Assessing Officer on verification found that assessee got rights to the subject property through an agreement dated 15.06.2006, whereby she had agreed to purchase 1/3rd of undivided share therein. Assessee had paid ₹13,00,000/- and taken possession. In the balance sheet filed alongwith return of income for the assessment year 2007-2008, assessee had shown her share in this land at Kottivakkam as a capital asset and not as stock in trade. In subsequent years also, the same position continued upto and including

assessment year 2009-2010. As per Id. Assessing Officer, the only source of income for the assessee were share income from two firms called M/s. Jayam Foundations and M/s. M.R. Foundations, remuneration from M/s. Jayam Foundations and interest income. Ld. Assessing Officer came to a conclusion that assessee was not engaged in any business activity of her own. As per Id. Assessing Officer assessee had during the relevant previous year treated this land as a part of her opening stock and claimed the surplus on sale as business income. Ld. Assessing Officer refused to accept this change and held that the proceeds arising on sale of the land could be considered only as capital gains.

**3.** While computing capital gains, Id. Assessing Officer applied Sec.50C of the Income Tax Act, 1961 (in short "the Act"). Ld. Assessing Officer noted that market value of the property as adopted by the Registration Department on the date of sale was ₹1,29,60,000/. Since assessee objected to this valuation, the matter was referred to the Valuation Officer by the Id. Assessing Officer. Before the valuation officer, it was argued by the assessee that the land was situated within Coastal Regulation Zone and no construction was possible. Further, as per the assessee the land was earlier fraudulently sold by the erstwhile sellers to some other persons also and assessee had to

cancel such fraudulent sale deeds of the former seller. Further, contention of the assessee was that there was a graveyard very near to the subject property. According to her all these facts considerably depressed the market value of the property. Ld. Valuation Officer after considering the objection of the assessee estimated the market value at ₹97,20,000/-. 1/3rd share of the assessee came to ₹32,40,000/-. Ld. Assessing Officer computed the long term capital gains considering the above value of ₹32,40,000/- as the full value of the consideration. He assessed a long term capital gain of ₹16,13,930/- after allowing indexation.

4. Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). First contention of the assessee before Id. Commissioner of Income Tax (Appeals) was that the surplus should be treated as business income. According to assessee she had started a business of real estate during the relevant previous year. Further, as per the assessee purchase itself was through execution of a power of attorney and the property was never registered in her name. In any case as per the assessee, there were number of legal impediments faced by her with regard to the subject property and the Valuation Officer had given only a marginal discount of 15%. Ld. Commissioner of Income Tax (Appeals) however, rejected

the above contention and confirmed the additions made by the Assessing Officer.

5. Now before me, Id. Authorised Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that book entries should not be taken as decisive for ascertaining the intention of the assessee. As per Id. Authorised Representative various complexities, faced by the assessee which was brought out in valuation report, clearly supported her argument that the surplus should be treated as business income. Alternatively, Id. Authorised Representative submitted that the subject land was situated within 300 meters from the high tide line under the Coastal Regulation Zone and no construction was possible. Further, as per Id. Authorised Representative the seller who had executed PAO in favour of the assessee had resold the land fraudulently to some other persons and assessee faced considerable difficulty in getting such fraudulent sale cancelled. As per Id. Authorised Representative these factors depressed the value of the subject property. Apart from that according to Id. Authorised Representative, there was a burial yard very near to the subject property and marketing of the property was very difficult. Thus, according to him, the discount of 15% given by the District Valuation Officer for disadvantageous location and 5% for

legal complexities was insufficient. In his opinion, atleast 40% discount was necessary considering the adverse circumstances.

**6.** Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

**7.** I have considered the rival contentions and perused the orders of the authorities below. In so far as treatment of surplus under the head capital gains is concerned, I am of the opinion that assessee herself having shown the land as a capital asset in her Balance Sheet, since assessment year 2007-2008 there was every reason for the lower authorities to consider the gain as not something arising from any business activity. Assessee herself was not doing any business activity during the relevant previous year, apart from being a partner of two firms. Even in the profit and loss accounts filed by the assessee along with her returns assessment years 2007-08, 2008-09 and 2009-2010, the land was not shown as stock in trade. Hence in my opinion the asset was rightly treated as capital asset and gains rightly considered under the head income from capital gains.

**8.** Coming to the aspect of valuation done by the lower authorities the relevant part of the Valuation Officer's observation is reproduced hereunder:-

*"This is a vacant Land situated at about 200 metres away from the main Last Coast Road (ECR), and also situated only about 300 metres from the High Tide Line thus said to be coming under the Coastal Regulation Zone which restricts the construction activities. Hence, in the normal course, no plan approval can be obtained from the CMDA Authorities and hence, Corporation Sewage & Water supply connection are not available. The road leading to the site from the ECR is only about 20'-0" wide. The subject property is situated near a grave yard which is about 200 metres away.*

*According to the documents furnished by the Assessee, there were fraudulent attempts by the Vendor of the Land (from whom the Assessee have purchased this property during 1999) to sell a part of this same land again to Shri. A. Annamalai, who in turn have sold that part to two persons namely Mrs. S. Sunitha & to Shri. P. Preetham. These transactions were actually registered in SRO, A dyar, Chennai-20) through' Sale Deed Document Nos. 1801 of 2005, No.388 of 2006 & No.389 of 2006 copies of which are furnished to this office as proof. Also, in the subject property's Sale Deed Document No.1435 of 2009, dated: 19. 05. 2009 also, this fact is mentioned in Page No.6 of the document. According to the Assessee, with great amount of litigation and persuasion, sale deeds fraudulently executed in favour of other parties were cancelled vide cancellation Deed Document No.421, 422 & 423 of 2007 in the office of the SRO,Adyar, Chennai-20. The Assessee has furnished the copies of those Cancellation Deed documents also to this office as proof.*

*According to the Assessee, as the prudent buyers were very reluctant to purchase the subject property after these fraudulent exercises explained above were exposed, the Assessee was compelled to sell this land as a distress sale at a price which was much below the market price. Also, according to the Assessee, they were forced to spend lot of amount to come out of the problems detailed above.*

*The facts explained above clearly establishes the disadvantageous factors attached to this property. After applying the various factors applicable to the advantageous/disadvantageous position of the property, the Fair Market Value of the property has been arrived as detailed below:*

Market rate of Land as on 25.06.2009 (as certified by SRO/Adyar) =Rs.1800sqft.

Less for:  
 Disadvantageous location and situation of the property situated far away from the main East Coast Road (ECR), i.e., about 200 metres away from the main road, plan approval from the CMOA is not permitted as this property is situated within 300 metres from the High Tide Line and thus coming under the Coastal Regulation Zone which restricts the construction activities. Corporation Sewage connection and Water supply connection are not available. Front side road is only about 20'-0" wide A Graveyard is also situated nearby @ 15% of basic land rate i.e., on Rs.1800/-

= (-) ₹270/-

2. Fraudulent sale deeds explained above led to the distress sale as prudent buyers were very reluctant to purchase the subject property involved in any fraudulent exercises.

= (-) ₹90/-

Net rate

-----  
 = ₹1440/-  
 per sq.ft  
 -----

Land area =7200 sqft. @ ₹1440/- per sqft = ₹1,03,68,000/-"

Assessee, when a proposal on the above lines was put to her by the District Valuation Officer, filed further objection and the Valuation Officer had given another 5% reduction, in addition to what has been mentioned above. When no construction was possible on the subject land, since it was located within Coastal Regulation Zone and also

considering the other complexities highlighted by the assessee, I am of the opinion that a total 30% of discount on basic land rates is appropriate. I therefore direct the Id. Assessing Officer to give a discount of 30% of basic land rate in lieu of the discount given by the DVO, for arriving at the full value of the consideration and recompute the capital gains. Ordered accordingly.

9. In the result, appeal of the assessee is treated as partly allowed for statistical purpose.

Order pronounced on Wednesday, the 31<sup>st</sup> day of May, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 31st May, 2017

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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