

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER

I.T.A. No.519 /Coch/2019
Assessment Year : 1995-96

Smt. Catherine Thomas, Wife of L/H of Late K.T. Thomas, 1-C, Amber Park, Cannon Shed Road, Kochi-682 011. [PAN: ABKPT 7828G]	Vs.	The Assistant Commissioner of Income-tax, Circle-1(1), Kozhikode.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Smt. Nisha John, Adv.
Revenue by	Shri Mritunjaya Sharma, Sr. DR

Date of hearing	27/01/2020
Date of pronouncement	03/02/2020

ORDER

Per GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the CIT(A), Kozhikode dated 20/06/2019. The relevant assessment year is 1995-96.

2. The solitary issue that was argued is with regard to adoption of fair market value (FMV) as on 1.4.1981 for computation of long term capital gains (LTCG).

3. Briefly stated, the facts of the case are as follows:

The assessee is wife and legal heir of late Shri K.T. Thomas. Shri K.T. Thomas had sold land measuring 124 cents on the main Mavoor Road on 03/02/1995. The land was purchased by Late Shri K.T. Thomas in the year 1961. While computing the long term capital gains on sale of the said property, the assessee calculated fair market value (FMV) as on 01/04/1981 at Rs.14,50,000/- for the entire 124 cents of land. The Assessing Officer re-computed the long term capital gains by adopting the FMV as on 01/04/1981 at Rs. 5,00,000/-. On appeal, the CIT(A) enhanced this value to Rs.7,00,000/-. On further appeal to the ITAT, the assessee had produced valuation report by an approved valuer. Thereupon, the ITAT restored the issue to the file of the Assessing Officer with a direction that AO should take into consideration the valuation report submitted by assessee and decide the FMV as on 01/04/1981 afresh. The directions of the ITAT read as follows: (Para 19 of the order of ITAT in ITA Nos.327 & 331/Coch/2005 – Assessment Years 1989-90 & 1995-96 dated 19-11-2007)

"19. Now, the issue involved is in respect of the valuation of the land as on 1-4-1981 and this issue is in the asst. year 1995-96. As the additional evidence which is the copy of the valuation report in respect of the assessee's land and which was not before the AO, we consider it fit to restore this issue to the file of the AO with a direction that he should take into consideration the copy of the valuation report by Shri P.K. Govindan dated 15-04-1981 and decide the same afresh. We make it clear that the AO is at liberty to take his own decision and we do not express anything on this issue. We, therefore, restore this issue with the above direction to the file of the AO."

Subsequent to the remand by ITAT, the Assessing Officer proposed to value the land at Rs.7500/- per cent, taking into account the additional evidence filed by the assessee. Accordingly, the FMV as on 01/04/1981 was proposed at Rs.9,30,000/-. However, the assessee did not accept the said proposal of the Assessing Officer. The assessee filed computation as per which FMV should be Rs.12,31,505/- as on 01/04/1981. Since there was no consensus on the FMV to be adopted as on 01/04/1981, the Assessing Officer referred the matter to the Valuation Officer of the Income Tax Department. The Valuation Officer submitted his report on 23.03.2009, valuing the property as on 01/04/1981 at Rs.5,33,800/- (which included the cost incurred for improvement of the property). On receipt of DVO's report, the Assessing Officer calculated the long term capital gains by adopting the sum of Rs.5,33,800/- as FMV as on 01/04/1981.

4. Aggrieved by the order of the Assessing Officer, the assessee preferred appeal before the first appellate authority. The CIT(A) enhanced the FMV as on 01/04/1981 to Rs.6,00,000/- instead of Rs.5,33,800/- adopted by the Assessing Officer. The CIT(A) enhanced the FMV as on 01/04/1981 by increasing valuation of trees as cost of improvement by Rs.66,200/- , thereby adopting the FMV as on 01/04/1981 at Rs. 6 lakhs instead of Rs.5,33,800/- adopted by the Assessing Officer.

5. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The Ld. AR has filed a paper book enclosing valuation reports, sale instances relied on by the assessee, copy of the order of the Tribunal in the earlier round of litigation etc. The Ld. AR submitted that the CIT(A) was wrong in holding that the finding of the Valuation Officer that land rate fixed in the state as required under section 28A of the Kerala Stamp act, 1959 on 30/01/1989 is correct. It was submitted that no such notification was produced by the Valuation Officer or the Assessing Officer nor was the notification number mentioned. If at all anything is to be ascertained from such a notification it is only the minimum value of land for registration purpose. It was further submitted that the DVO's valuation for arriving at FMV as on 01/04/1981 by taking into account the value fixed in the year 1989 and adopting reverse indexation is against the provisions of law. It was further submitted that the CIT(A) erred in not considering the Document No. 430 of 1981 of Chevayur SRO which showed land value of Rs.9000/- per cent and also the judgment of Sub Court Kozhikode in LAR 72/1987, wherein the Court had fixed land value at Rs.8000/- per cent in 1982 which was upheld by the Hon'ble Kerala High Court in LAA 281 of 1992.

5.1 The Ld. DR on the other hand submitted that the valuation by the Department Valuer is reliable. It was submitted that the land rate was adopted by the Department Valuer on the basis of sale instances and the land value fixed

by the Kerala Government. It was further contended that the objections raised by the assessee before the DVO had been considered and found not valid. It was stated that value adopted by the Department Valuer at Rs.3500 per cent is correct and needs to be taken as FMV as on 01/04/1981.

6. I have heard the rival submissions and perused the material on record. In the earlier round of litigation, the FMV as on 01/04/1981 was increased by the CIT(A) to Rs.7 lakhs from Rs.5 lakhs adopted by the Assessing Officer. Now the present FMV as on 01/04/1981 fixed by the CIT(A) is Rs.6 lakhs. Therefore, the assessee is in a worse position on account of remand by the ITAT to the AO. The value fixed by the Department Valuer at Rs.3500/- per cent is primarily based on minimum value fixed by Government of Kerala in the year 1989. The DVO by reverse indexation method arrived at the FMV as on 01/04/1981 at Rs.3500/- which is the minimum value of the land for registration purpose. The FMV adopted by the registered valuer does not distinguish between the lands which are on the main road and the lands which are in the interior. The valuation is for the entire block as a whole. Normally the fixation of minimum value of land is way below the FMV. A Document No. 430 of 1981 of SRO, Chevayur was produced before the DVO. This document shows the value of land at Rs.9000/- per cent. The assessee has also produced the judgment of Sub Court Kozhikode in LAR 72/1987, wherein the Court had fixed land value at Rs.8000/- per cent in 1982 and the Hon'ble Kerala High Court in LAA 281 of 1992

had upheld the valuation of Rs 8000 per cent. Therefore, the valuation report submitted by the DVO cannot be taken as totally correct. The valuation report submitted by the assessee before the ITAT which was placed before the Assessing Officer takes into account the total value of land plus cost of improvement at Rs.9,30,000/- as on 01/04/1981. The Ld. AR has conceded that the same may be adopted. The Assessing Officer in his order dated 27/03/2009 (subsequent to the remand by the ITAT) had proposed the FMV as on 01/04/1981 at Rs.9,30,000/- which was objected by the assessee then. Taking into account, that the AO had initially proposed adoption of Rs.9,30,000/- as FMV as on 1-4-1981 and considering that this is very old case, I am inclined to adopt the sum of Rs.9,30,000/- as FMV as on 01/04/1981. The sum of Rs.9,30,000/- will include cost of improvement such as compound wall, two wells, fruit bearing trees etc. Therefore, the FMV adopted as on 01/04/1981 will be Rs.9,30,000/- instead of Rs.6 lakhs adopted by the CIT(A) for the purpose of computation of LTCG. It is ordered accordingly.

7. In the result, the appeal of the assessee is partly allowed as indicated above..

Pronounced in the open court on 03 -02-2020.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 3rd February, 2020

GJ

Copy to:

1. Smt. Catherine Thomas, Wife of L/H of Late K.T. Thomas, 1-C, Amber Park, Cannon Shed Road, Kochi-682 011.
2. The Assistant Commissioner of Income-tax, Circle-1(1), Kozhikode.
3. The Commissioner of Income-tax(Appeals), Kozhikode.
4. The Commissioner of Income-tax, Kozhikode.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)

I.T.A.T., Cochin