

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

अपीलसं. **W.T.A.No.76/Chny/2017**

(निर्धारणवर्ष / Assessment Year: 2011-12)

Mrs.Jagannathan Sailaja Chitta 4, Old No.33, Krishna Street, T.Nagar, Chennai-600 017.	Vs	The Wealth Tax Officer International Taxation Ward-2(2), Chennai-6.
PAN: BIQPS 3751R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. B.Ramakrishnan, FCA
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. G.Johnson, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	08.09.2021
घोषणाकीतारीख /Date of Pronouncement	:	17.09.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the learned CIT-(A)-16, Chennai dated 24.08.2017 and pertains to assessment year 2011-12.

2. The assessee has raised following grounds of appeal:-

"1. For that the order of the Learned Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case.

2. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the valuation of the property at Sholinganallur for Rs.23,67,40,992/- based on the sale value of subsequent year, as against the guideline value of Rs.11,95,28,640/- on the Valuation date 31-03-2011, which is in violation of the provisions of Rule 20 of Schedule III of Section 7(1) of the Wealth tax Rules for determining the value of assets.

3. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming that the appellant is in possession of 0.8 acres of land at Bharaniputhur as against 0.4 acres claimed to be held by appellant.

4. For that the Learned Commissioner of Income Tax (Appeals) erred in relying on the findings given in ITA No.84/CIT(A)-16/AY 2009-10 wherein it was held that "Thereafter, assessee Mrs.Sailaja Chitta has purchased land at Bharaniputhur vide absolute deed dated 31.10.2008 for 0.02 acres survey no.25/1 and 25/2A and 0.38 acres survey no.26/1 measuring totally for 0.4 acres. Therefore, the appellant had 0.8 acres of land at Bharaniputhur." which is without any basis and inconsistent with the facts and circumstances of case.

5. For that the Learned Commissioner of Income Tax (Appeals) erred in making addition of Rs.24,00,000/- to the total wealth of the appellant as against the actual value of land at Bharaniputhur being Rs.16,65,675/-, for the aforesaid reasons ,without considering the encumbrance certificate and other documents filed by the appellant.

6. For that the Learned Commissioner of Income Tax (Appeals) erred in levying interest u/s 17B in consequence to the above addition."

3. The learned AR for the assessee, at the time of hearing submitted that the appeal is time barred by 28 days for which necessary petition for condonation of delay along with affidavit explaining reasons has been filed. The learned AR for the assessee submitted that above appeal could not be filed within the time limit prescribed under the Act, due to reason that the assessee is a non-resident and she was not available in India during relevant period and subject order was served in assessee's Chennai address given for communication. The

assessee immediately after noticing receipt of assessment order has taken steps to file appeal, which caused delay of 28 days, but said delay is neither intentional nor to derive any undue benefit. Therefore, the assessee submitted that delay in filing appeal may be condoned.

4. The learned DR, on the other hand, strongly opposed condonation of delay application filed by the assessee.

5. Having heard both sides and considered the petition filed by the assessee for condonation of delay, we are of the considered view that reasons given by the assessee for not filing appeal within the prescribed time limit allowed under the Act comes under reasonable cause as provided under the Act, and hence, delay in filing of appeal is condoned and appeal filed by the assessee is admitted for adjudication.

6. Brief facts of the case are that the assessee is a non-resident had not filed wealth-tax returns regularly. The assessment has been reopened u/s.17 of the Wealth Tax Act, 1957. In response to the notice issued u/s.17, the assessee has filed wealth tax return declaring net wealth of Rs.11,46,73,135/-. The Wealth Tax Officer (Assessing Officer)

has completed assessment u/s.16(3) read with section 17 of the Act, 1957, on 30.12.2016 and determined total wealth at Rs.23,92,40,992/- by adopting market value of the property at Sholinganallur at Rs.23.67 crores, land at Kundrathur at Rs.31,00,000/- and land at Bharaniputtur at Rs.24,00,000/-. The assessee challenged assessment before the learned CIT(A), but could not succeed. The learned CIT(A) dismissed appeal filed by the assessee and affirmed reasons given by the Assessing Officer to determine net wealth of Rs.23,92,40,992/-. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

7. The learned A.R for the assessee submitted that the learned CIT(A) has erred in adopting value of the property at Sholinganallur for Rs.23.67 crores, as against value adopted by the assessee at Rs.10.99 crores, without appreciating fact that value of the property should be considered as on date of valuation, but not on the basis of subsequent sale value of the property. The learned A.R for the assessee further referring to certain documents submitted that although, guideline value of property for the purpose of registration when it was sold at

Rs.23.67 crores, but as on valuation date value of the property as per guideline value is at Rs.11.95 crores. The Assessing Officer has adopted guideline value based on the value fixed by stamp duty authorities in subsequent financial year. As regards land at Bharaniputtur, the Assessing Officer has adopted value at Rs.24,00,000/- on the assumption that the assessee is owned 0.8 acres of land, but fact remains that the assessee is owned only 0.4 acres of land and market value of the land as per records is at Rs.16.65 crores. Therefore, he submitted that appeal may be set aside to the file of Assessing Officer to reconsider the issue in light of various evidences filed by the assessee to justify value adopted in wealth tax returns filed for relevant assessment year.

8. The learned DR, on the other hand, strongly supporting order of the learned CIT(A) submitted that there is no error in the reasons given by authorities below to determine value of the property as per market value, because the assessee is failed to justify value adopted in wealth tax returns with necessary evidences. The learned DR further submitted that if you go through Rule 20(1) of Wealth Tax Rules, it is very clear

that for the purpose of value of any asset, other than cash, value shall be estimated to be the price, which in the opinion of the Assessing Officer, it would fetch, if sold in open market on the valuation date. In this case, there is no much difference between valuation date and date of asset sold in open market. Therefore, the Assessing Officer was right in adopting market value of the property as per sale deed and hence, there is no merit in the arguments of the assessee that the Assessing Officer is incorrect in applying market rate as per subsequent sale deed.

9. We have heard both the parties, perused material available on record and gone through orders of the authorities below. As regards property at Bharaniputtur, there is a dispute between the assessee and Assessing Officer in respect of extent of landholding. The assessee claims that he owned 0.4 acres of land, whereas the Assessing Officer has adopted 0.8 acres of land. A similar issue has been considered by the Tribunal for assessment years 2009-10 and 2010-11, where issue has been set aside to the file of Assessing Officer to ascertain date of purchase of land and extent of land held by the assessee. Even before us, the assessee has filed

necessary evidences to prove that extent of land held by the assessee is only 0.4 acres. Therefore, we set aside this issue to the file of the Assessing Officer to ascertain fact with regard to extent of land held by the assessee.

10. As regards land at Sholinganallur, the assessee has adopted value of the property at Rs.10.99 crores, whereas the Assessing Officer has adopted value of the property at Rs.23.67 crores. The Assessing Officer has considered market value of the property on the basis of subsequent sale of property by the assessee on 28.04.2011 i.e. after 28 days of valuation date, as per which property has been sold for a consideration of Rs.21.06 crores. Further, guideline value of the property as per registered document was at Rs.23.67 crores. Therefore, the Assessing Officer has adopted guideline value of the property as fair market value for the purpose of valuation of asset. The assessee claims that fair market value of the property determined in subsequent financial year cannot be adopted as value of the property. The assessee further claims that as per guideline value fixed by the State Government authorities, value of the property is at Rs.11.95 crores.

11. We have gone through reasons given by the Assessing Officer in light of various evidences filed by the assessee and we ourselves do not in agreement with the arguments of the learned AR for the reason that although, the learned AR for the assessee has referred to certain website information regarding guideline value of the property as on valuation date, but there is no clarity on the value determined by the authorities for the purpose of payment of stamp duty. We further noted that the assessee has sold property just 28 days after date of valuation of asset for consideration of Rs.21.06 crores and market value of the property as per guideline value was Rs.23.67 crores. Therefore, when market value of the property just after 28 days was at Rs.23.67 crores, then it is very difficult for us to accept arguments of the assessee that guideline value of the property as on 31.03.2011, i.e. valuation date was at Rs.10.99 crores and more particularly, when the assessee has failed to demonstrate said valuation with necessary evidences. Moreover, as per Rule 20(1) of Wealth Tax Rules, 1957, it is very clear that for the purpose of value of any asset, other than cash, value shall be estimated to be the price which in the opinion of the Assessing Officer, it would

fetch, if sold in open market on the valuation date. If you go by Rules 20(1), value of the property should be estimated to be price of the property, if sold in the open market. In this case, the assessee has sold property on 28.04.2011, just after 28 days from the date of valuation and thus, estimated price of the property as on valuation date shall be at least value derived by the assessee from sale of property. Therefore, we are of the considered view that there is no merit in the arguments of the assessee that value of the property as on valuation date is at Rs.10.99 crores. However, fact remains that when the rules prescribed for determining value on the basis of fair market value, the Assessing Officer has adopted guideline value prescribed for payment of stamp duty. In our considered view, guideline value fixed by stamp duty authorities is not relevant to decide value of any asset, other than cash, as on valuation date. Hence, we direct the Assessing Officer to adopt market value of the property as on valuation date at Rs.21.06 crores, which is the price derived by the assessee from open market when the property was sold in the month of April, 2011.

12. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 17th September, 2021

Sd/-

(वी.दुर्गा राव)

(V.Durga Rao)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 17th September, 2021

DS

Sd/-

(जी.मंजुनाथ)

(G.Manjunatha)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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