

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2492/CHNY/2019

निर्धारण वर्ष/Assessment Year: 2010-11

**Late Smt. Nirmala
Venkatapathy,
Rep. by Legal Heir, Smt. Uma
Venkatachalam**
No.12, Jawahar Road,
Chockkikulam,
Madurai – 625 002.

The Income Tax Officer,
Vs. Ward II(1),
Madurai.

PAN: AGCPN 9068P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri N.Arjun Raj, CA (Amicus Curie)
प्रत्यर्थी की ओर से/Respondent by : Shri R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing : 06.02.2024

घोषणा की तारीख/Date of Pronouncement : 09.02.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-2, Madurai in ITA No.010/2013-14 dated 08.08.2019. The assessment was framed by the Income Tax Officer, Ward-II(1), Madurai for the assessment year 2010-11 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 14.03.2013.

2. The first issue on merits is as regards to assessment of capital gains.

3. Brief facts are that the assessee was the owner of 1/3rd of vacant land measuring 4840 sq.ft., located at old Door No.11/New Door No.44, Letangs Road, Purasawalkam, Chennai. The assessee declared capital loss in the return of income filed on 01.07.2010 for the assessment year 2010-11 of Rs.87,57,468/- on sale of above property for a total sale consideration (for her 1/3rd share) of Rs.41,94,664/- on 03.10.2009. The AO noted that he assessee has adopted cost of acquisition as on 01.04.1981 at Rs.21,58,689/ and hence, the AO issued notice u/s.148 of the Act on 29.03.2012 by recording reasons by assuming jurisdiction u/s.147 of the Act on account of inflation of cost of acquisition which resulted in capital loss and accordingly, escapement of income. According to AO, the fair market value of this land as on 01.04.1981 is @ Rs.14.6 per sq.ft., and the cost of acquisition as on 01.04.1981 was estimated being fair market value at Rs.70,664/-. The assessee's share of 1/3rd was to be adopted at Rs.23,554/-. The AO referred the cost of acquisition of property as on 01.04.1981 to the DVO, Chennai u/s.142A of the Act vide letter dated 26.10.2012. The DVO, Chennai sent a valuation report dated 05.12.2012 estimating the cost of

acquisition of property as on 01.04.1981 at Rs.27,000/-. The AO noted that the cost of acquisition is adopted as Rs.27,000/- but assessee's liability to be paid as per the partition deed during assessment year 2008 is Rs.17.50 lakhs, which is already received by her and hence, he has not allowed any deduction. The AO computed the sale consideration and capital gains at Rs.40,32,664/- as under:-

1.	<i>Sale consideration on 03.10.2009</i>	<i>Rs.41,94,664</i>
2.	<i>Value as on 1.4.1981</i>	<i>Rs.27,000/-</i>
3.	<i>Indexed cost of Acquisition 27,000 x 600 /100</i>	<i>Rs.1,62,000</i>
4.	<i>Capital gain 41,94,664 – 1,62,000</i>	<i>Rs.40,32,664</i>

Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the action of the AO by observing in para 5 as under:-

5. I have considered the assessment order and the submissions made by the authorised representative. The issue has been discussed elaborately in the foregoing paragraphs. In my considered opinion, the Assessing Officer has correctly adopted the value of the property determined by the DVO which has been used for the purpose of computation of capital gains. The appellant has taken an extraordinarily high value of the property as on 01.04.1981 at Rs.21,08,688/- as against the determined value of Rs.27,000/-. The value taken by the appellant is completely ridiculous, had no basis and was 7710% higher than the value determined by the DVO. The appellant had been caught on wrong footing by the Assessing Officer. It is trite law that the law passed by the legislature has to be given an constructive interpretation in a manner to achieve the purpose for which the legislation has been made and not in a manner to defeat the basic purpose of legislation. If the argument of the appellant ought to be accepted

then the provisions for the purpose of computation of capital gains as contained under the Income Tax Act will fail and there will be cases of rampant evasion of capital gains. In my considered view, I hold that the provisions of the Act should be given a purposive construction was so as not to defeat the purpose for which it has been enacted. In view of the matter, I hold that the Assessing Officer has correctly computed the capital gains in case of the appellant and the assessment order does not require any interference. Accordingly, all the grounds taken by the appellant are dismissed.

Aggrieved, assessee is in appeal before the Tribunal.

5. As none is present from assessee's side, we have requested Shri N. Arjun Raj, CA to represent as Amicus Curie in this case and explain the factual and legal position. He drew our attention to the computation of capital gain / loss declared by assessee which is as under:-

1.	<i>Value of the property as on 08.02.1952 is taken as</i>	<i>50,000/-</i>
2.	<i>Sale consideration on 03.09.2009</i>	<i>41,94,664/-</i>
3.	<i>Increase in value during 57 years</i>	<i>41,44,664/-</i>
4.	<i>Increase in value for one year</i>	<i>72,713/-</i>
5.	<i>Increase in value for 29 years i.e., from 1.4.1981</i>	<i>21,08,688/-</i>
6.	<i>Value as on 1.4.1981</i>	<i>21,58,689/-</i>
7.	<i>Indexed cost of Acquisition 2158688*600/100</i>	<i>1,29,52,132/-</i>
8.	<i>Capital Loss 1,299,52,132 – 41,94,664</i>	<i>87,57,468/-</i>

He pointed out that only disputed amount is the value declared by assessee as on 01.04.1981 at Rs.21,58,689/-, which is under dispute. The Id.counsel for the assessee stated that the AO has

referred the matter to DVO and also considered the guideline value of the property as on 01.04.1981 obtained from Sub-Registrar, Purasawalkam, Chennai wherein this land was valued @ Rs.14.6 per sq.ft., as on 01.04.1981 and valued the land at Rs.70,664/-. According to AO, the share of assessee i.e., 1/3rd share comes to Rs.23,554/-. He referred that the DVO vide his report dated 05.12.2012 has estimated the fair market value / cost of acquisition as on 01.04.1981 at Rs.27,000/- her 1/3 share. He relied on the decision of Hon'ble Bombay High Court in the case of CIT vs. Puja Prints reported in [2014] 360 ITR 697 and stated that the reference to DVO can be made only when the value adopted by the assessee is less than the fair market value and once value adopted by the assessee is much more than the fair market value, reference to DVO could not be made. He also referred to another decision of Hon'ble Gauhati High Court in the case of ITO vs. Gita Rani Banik reported in [2001] 251 ITR 712 and the decision of Hon'ble Bombay High Court in the case of CIT vs. Daulal Mohta (HUF) reported in [2014] 360 ITR 680.

6. The Id.counsel for the assessee also referred to the amendment made in section 55A(a) of the Act by the Finance Act, 2012 which is made effective from 01.07.2012 and the Parliament has not given

retrospective effect to the amendment. Therefore, the amendment will not apply to the present assessment year i.e., 2010-11. He stated that this issue is also dismissed by the Hon'ble Bombay High Court in the case of Puja Prints, *supra*.

7. On the other hand, the Id. Senior DR Shri P. Sajit Kumar made argument that there is no basis for the fair market value taken by the assessee as on 01.04.1981 at Rs.21,08,688/-. According to him, there should be a reasonable basis or some evidence for the fair market value of this property as claimed by assessee. He also made submission that the fair market value of property as on 01.04.1981 cannot be more than the sale consideration received by the assessee at Rs.41,94,664/-. He referred to the provisions of section 55A of the Act, that reference has to be made to DVO for the purpose of valuation and he rightly estimated the fair market value of the property.

8. We have heard rival contentions and gone through the facts and circumstances of the case. Admitted facts are that the assessee's sale consideration for her 1/3rd share is Rs.41,91,664/-. As per assessee's computation of capital gains / loss, the value taken for property as on 01.04.1981 is Rs.21,58,689/-. Admittedly,

the assessee has declared the fair market value as on 01.04.1981 at Rs.21,58,689/- which is higher than the estimate made by the DVO as well as estimated by the AO while framing assessment and estimating at Rs.70,664/-. This issue has been examined by the Hon'ble Bombay High Court in the case of Puja Prints, *supra* and framed the following two questions:-

(a) Whether on the facts and in the circumstances of the case and in law, the ITAT was right in holding that the reference made by the AO to the valuation officer per se is bad in law? Further, whether the ITAT was justified in observing that the reference to the DVO u/s. 55A of the IT Act 1961 is to be made when the value of the property disclosed by the assessee is less than the fair value and not vice versa thereby ignoring the provisions of section 55A(b)(ii) of the Act 1961 and paragraphs 26 to 28 of circular No.96 dated 25.11.1972 of the Central Board of Direct Taxes?

(b) Whether on the facts and in the circumstances of the case and in law, the ITAT was right in directing the AO to accept the valuation given by the respondent as the Fair Market Value on the basis of the registered valuer's report and workout capital gain?

These two questions have been answered by the Hon'ble Bombay High Court as under:-

Regarding Questions (a) and (b):-

6 We have considered the rival submissions. We find that the impugned order dated 18 February, 2011 allowing the respondent-

assessee's appeal holding that no reference to the Departmental Valuation Officer can be made under Section 55A of the Act, only follows the decision of this Court in the matter of Daulal Mohta HUF (supra). The revenue has not been able to point out how the aforesaid decision is inapplicable to the present facts nor has the revenue pointed out that the decision in Daulal Mohta HUF (supra) has not been accepted by the revenue. On the aforesaid

ground alone, this appeal need not be entertained. However, as submissions were made on merits, we have independently examined the same.

7 We find that Section 55A(a) of the Act very clearly at the relevant time provided that a reference could be made to the Departmental Valuation Officer only when the value adopted by the assessee was less than the fair market value. In the present case, it is an undisputed position that the value adopted by the respondent-assessee of the property at Rs.35.99 lakhs was much more than the fair market value of Rs.6.68 lakhs even as determined by the Departmental Valuation Officer. In fact, the Assessing Officer referred the issue of valuation to the Departmental Valuation Officer only because in his view the valuation of the property as on 1981 as made by the respondent-assessee was higher than the fair market value. In the aforesaid circumstances, the invocation of Section 55A(a) of the Act is not justified.

8 The contention of the revenue that in view of the amendment to Section 55A(a) of the Act in 2012 by which the words "is less than the fair market value" is substituted by the words "is at variance with its fair market value" is clarifactory and should be given retrospective effect. This submission is in face of the fact that the 2012 amendment was made effective only from 1 July 2012. The Parliament has not given retrospective effect to the amendment. Therefore, the law to be applied in the present case is Section 55A(a) of the Act as existing during the period relevant to the Assessment Year 2006-07. At the relevant time, very clearly reference could be made to Departmental Valuation Officer only if the value declared by the assessee is in the opinion of Assessing Officer less than its fair market value.

9 The contention of the revenue that the reference to the Departmental Valuation Officer by the Assessing Officer is sustainable in view of Section 55A(a) (ii) of the Act is not acceptable. This is for the reason that Section 55A(b) of the Act very clearly states that it would apply in any other case i.e. a case not covered by Section 55A(a) of the Act. In this case, it is an undisputable position that the issue is covered by Section 55A(a) of the Act. Therefore, resort cannot be had to the residuary clause provided in Section 55A(b)(ii) of the Act. In view of the above, the CBDT Circular dated 25 November 1972 can have no application in the face of the clear position in law. This is so as the understanding of the statutory provisions by the revenue as found in Circular issued by the CBDT is not binding upon the assessee and it is open to an assessee to contend to the contrary.

10. *The contention of the Revenue that the Assessing Officer is entitled to refer the issue of valuation of the property to the Departmental Valuation Officer in exercise of its power under Sections 131, 133(6) and 142(2) of the Act is entirely based upon the decision of the Guwahati High Court in Smt. Amiya Bala Paul (supra). However, the Apex Court in Smt. Amiya Bala Paul (supra) has reversed the decision of the Guwahati High Court and held that if the power to refer any dispute with regard to the valuation of the property was already available under Sections 131(1), 136(6) and 142(2) of the Act, there was no need to specifically empower the Assessing Officer to do so in circumstances specified under Section 55A of the Act. It further held that when a specific provision under which the reference can be made to the Departmental Valuation Officer is available, there is no occasion for the Assessing Officer to invoke the general powers of enquiry.*

In view of the above and particularly in view of clear provisions of law as existing during the period relevant to Assessment Year 2006-07, we are of the view that questions (a) and (b) do not raise any substantial question of law.

8.1 Further, the amendment brought out by the Finance Act, 2012 w.e.f. 01.07.2012 in section 55A(a) of the Act, wherein in place of "is less than its fair market value" the substituted words are "is at variance with its fair market value". The relevant provision reads as under:-

55A. Reference to Valuation Officer.—With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Assessing Officer may refer the valuation of capital asset to a Valuation Officer—

(a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of opinion that the value so claimed is at variance with its fair market value

From the above provision, it is clear that where value of capital assets shown by the assessee being less than its fair market value,

reference can only be made to DVO in that condition, but in case the value of capital asset shown is more than fair market value, reference cannot be made as held by Hon'ble Bombay High Court in the case of Daulal Mohta (HUF), *supra*. In the present case, the assessee has declared value as on 01.04.1981 at Rs.21,58,689/- and hence, the value determined by the DVO is less than that at Rs.27,000/- and hence, the value adopted by the DVO cannot be taken for computing fair market value. Hence, we allow this issue of assessee's appeal and reverse the orders of lower authorities on this issue.

9. The next issue raised by the assessee is on jurisdictional ground, which is not argued and hence, dismissed.

10. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court on 9th February, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 9th February, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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