

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.287/Kol/2013
Assessment Year: 2005-06

Sri Arijit Chakraborty.....Appellant
14/1, Beharilal Chakraborty Lane,
Howrah-711101.
[PAN: AAETPC6433L]

vs.

ITO, Ward-46(1), Kolkata Respondent

I.T.A. No.404/Kol/2013
Assessment Year: 2005-06

ITO, Ward-46(1), Kolkata Respondent

vs.

Sri Arijit Chakraborty Appellant
14/1, Beharilal Chakraborty Lane,
Howrah-711101.
[PAN: AAETPC6433L]

Appearances by:

Shri Souvik Guha, AR, appeared on behalf of the assessee .

Shri B. K. Singh, JCIT-Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : January 31, 2024

Date of pronouncing the order : January 31, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The captioned are two appeals, one appeal has been preferred by the assessee and the other has been preferred by the revenue against the order dated 29.10.2012 of the Commissioner of Income Tax (Appeals)-XXX, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. This is a case relating to the computation of capital gains and the tax thereupon relating to the sale of property made by the assessee in the F.Y 2004-05. The matter was referred by the Assessing Officer to the Departmental Valuation Officer who estimated the cost of the market price of the property at the time of sale transaction at Rs.73,26,350/-. However, the assessee had sold the property at Rs.30,00,000/- only. On being asked to explain in this respect, the assessee had submitted that the property, in question, was a cinema hall and certain members of political party were preventing the assessee from peaceful use and enjoyment of the said property. The assessee, therefore, to get rid of the continuous harassment and day to day problems, had made distressed sale of the property at Rs.30,00,000/-. However, the said contention of the assessee did not find favour with the Income Tax authorities and even before this Tribunal. The assessee thereafter filed an appeal before the Hon'ble High Court. The Hon'ble High Court vide order dated April 1, 2019 had remanded back the matter to the Tribunal with a direction that to examine this issue in the light of the evidences, if any, furnished by the assessee as to whether a prudent seller dealing at arms' length with a prudent buyer in ordinary market conditions, in relation to a property similarly situated in the same area, would have got, about Rs.30 lakhs only by its sale or a much higher price determined to be Rs.72 lakhs or so by the valuation officer. The Hon'ble High Court observed that in this respect more evidence was required to be furnished by the assessee for coming to the conclusion on this point. The Hon'ble High Court, therefore, set aside the matter back to this Tribunal to consider the valuation aspect in accordance with law by a reasoned order within one year from the date of communication of the order.

3. We have heard the rival contentions and gone through the record. The ld. counsel for the assessee has produced on record a paper-book containing several documents which show that the assessee was prevented from peaceful use and enjoyment of his property by certain persons/members of political party. In this respect, the assessee has placed many copies of complaints made to various authorities including Police Authorities and District Administration. The assessee has also placed on file the copies of the newspaper clippings, whereby, it is demonstrated that the assessee was prevented from peaceful use and enjoyment of his cinema hall. Even the employees of the cinema hall were in hand in glove with the agitators and the assessee faced several problems. The problems of the assessee continued over the years and the assessee during the period has made sincere efforts by approaching to the different authorities and requested them to stop the agitators from preventing the assessee from peaceful enjoyment of his property and running the cinema hall. After making entire efforts, when the administration failed to help the assessee, the assessee, under the circumstances, to get rid of the problem, sold the property at a lower rate. We are, therefore, convinced that the assessee as a prudent seller to get rid of the long time and continuous harassment due to interruption and obstacles of miscreants in peaceful use and enjoyment of the property, has made a distress sale of the property at Rs.30,00,000/-. We, therefore, do not find justification on the part of the Income Tax Authorities in computing the capital gains by adopting the sale value as per the value estimated by the Departmental Valuation Officer. The appeal of the assessee is, therefore, allowed on this issue and the addition made by the Assessing Officer in respect of capital gains by adopting the value of the property as per the DVO report is ordered to be deleted.

4. At this stage, it is pointed out to us that only the assessee had gone in appeal before the Hon'ble High Court contesting the addition on account of capital gains on sale of property, however, the other issue relating to the cost of acquisition etc. was already decided by the Tribunal in favour of the assessee and against the revenue and the appeal of the revenue on the said issue has been dismissed by the Tribunal. However, after the receipt of the order of the Hon'ble High Court, the Registry inadvertently along with the appeal of the assessee has also restored the appeal of the revenue. Since, the issue taken in the appeal of the revenue has already attained finality, therefore, the restoration of the appeal of the revenue by the Registry being incorrect, the appeal of the revenue being already dismissed vide order dated 13.04.2016 of this Tribunal, the appeal of the revenue is, therefore, dismissed as infructuous.

5. In the result, the appeal of the assessee stands allowed, whereas, the appeal of the revenue stands dismissed.

Kolkata, the 31st January, 2024.

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]

लेखा सदस्य/Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 31.01.2024.

RS

Copy of the order forwarded to:

1. Sri Arijit Chakraborty
2. ITO, Ward-46(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

I.T.A. No.287/Kol/2023 & I.T.A. No.404/Kol/2013
Assessment Year: 2005-06
Sri Arijit Chakraborty

//True copy//

By order

Assistant Registrar, Kolkata Benches