IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

ITA.No. 23 of 2014 ()

AGAINST THE ORDER IN ITA 76/COCH/2012 of I.T.A.TRIBUNAL,COCHIN BENCH DATED 31-07-2013.

APPELLANT(S)/APPELLANT/REVENUE:

THE COMMISSIONER OF INCOME TAX,
THIRUVANANTHAPURAM.

BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT(S)/RESPONDENT/ASSESSEE:

SRI G.RAJU,
“KARTHIKA”, TC 30/349(2) KGRA-441, KALLUMOODU,
ANAYARA P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.S.ARUN RAJ

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 20-07-2015, ALONG WITH ITA. NO. 29/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

I.T.A. NO.23 OF 2014

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE-A	TRUE COPY OF THE ORDER OF THE ASSESSING OFFICER U/S. 143 (3) DATED 31.12.2009.
ANNEXURE-B	TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APEALS) DATED 28.12.2011.
ANNEXURE-C	CERTIFIED COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 31.07.2013 AND PHOTOCOPY OF THE SAME.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

I.T.A.Nos.23 & 29 of 2014
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Dated this the 20th day of July, 2015

JUDGMENT

Antony Dominic, J.

These appeals are filed by the Revenue, challenging the orders of the Income Tax Appellate Tribunal, Cochin Bench, dismissing I.T. Appeal Nos.76 & 77 of 2012 filed by it.

2. The facts that are relevant to be noted are that the Respondents herein sold two parcels of land which were acquired prior to 01.04.1981. Rejecting their claims regarding the fair market value and indexed value of improvement, the Assessing Officer completed the assessments. In the assessment orders, the fair market value of the land was fixed and the indexed cost of improvements was also fixed by the Assessing Officer. On that basis, tax was levied on capital gains.

3. Appeals were filed by the assessee before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) disposed of the appeals fixing the land

value at Rs.12,000/- per cent, in the case of Respondent in I.T.A.No.23 of 2014 and Rs.11,000/- per cent, in the case of the Respondent in I.T.A.No.29 of 2014. So far as indexed value of improvements is concerned, referring to the judgment of the Madras High Court in ***'Sarojini Ramaswami v. Assistant Commissioner of Income-Tax'*** [(2007) 291 ITR 308 (Mad)], the Commissioner of (Appeals) ordered that 60% of the amount claimed be allowed. Revenue challenged these orders in appeals filed before the Tribunal. The appeals were considered along with the Cross Objections filed by the assessees. By the common order impugned herein, the appeals were dismissed. It is aggrieved by these orders, the Revenue has filed these appeals.

4. In so far as the fair value fixed by the Commissioner of (Appeals) is concerned, the Tribunal has confirmed the same in paragraph 5, by holding thus:

> *"5. We have considered the rival submissions on either side and also perused the material available on record. The assessing officer mainly placed reliance in respect of the land acquired by the government in the case of CPN Brothers. The CIT(A), placing reliance on the order of this Tribunal in the case of M Anil (supra) fixed the market value at Rs.12,000/- and Rs.11,000/-*

respectively. It is not the case of the department that the land which was subject matter of appeal before the Tribunal in the case of M. Anil (supra) was not in the same vicinity. When the Tribunal considered the fair market value of the land in the same vicinity in the case of M Anil (supra) and fixed the fair market value at Rs.12,000/-. This Tribunal is of the considered opinion that the CIT(A) has rightly placed reliance on the order of this Tribunal. So long as there is no dispute that the land in the case of M Anil (supra) also lies in the same vicinity, this Tribunal is of the considered opinion that the CIT(A) has rightly placed reliance on the decision of this Tribunal in the case of M. Anil (supra). Therefore, the CIT(A) was justified in fixing the fair market value at Rs.12,000/- and Rs.11,000/- respectively."

5. A reading of this order shows that for fixing the land value, the basis adopted by the Commissioner (Appeals) and the Tribunal itself, is the Tribunal's own order referred to in paragraph 5 of the order. When such an order is passed by the Commissioner (Appeals) and in view of the proximity of the lands involved, the Tribunal only could have confirmed the orders. Therefore, we do not find any illegality in the order of the Tribunal to the extent it has confirmed the fair value of the land fixed by the Commissioner (Appeals) and confirmed by the Tribunal.

6. In so far as the indexed value of improvements is

concerned, reading of the order of the Commissioner (Appeals) and paragraph 7 of the order of the Tribunal shows that 60% of the amount claimed by the assessees was allowed entirely referring to the judgment of the Madras High Court in ***Sarojini's*** case (supra). We have gone through the judgment and we find from that judgment, that the Assessing Officer had allowed Rs.3,00,000/- towards cost of improvements and that without any materials, the Commissioner (Appeals) enhanced it to Rs.5,00,000/-. When the matter reached the Tribunal, holding that the Commissioner (Appeals) increased the cost of improvements without any materials, the Tribunal restored the order of the Assessing Officer. In the further appeal that was filed, the High Court confirmed the order of the Tribunal. These facts which are evident from the judgment in ***Sarojini's case*** *(supra)* shows that the case was decided entirely relying on the facts of the case and this judgment did not lay down any general principle that any particular percentage, much less 60% of the claim, should be allowed towards cost of improvements, in all cases.

7. On the other hand, according to us, the entitlement of the assessee for cost of improvement would depend entirely

on the materials that are produced by the assessee to substantiate its claim. The order passsed by the Commissioner shows that the assessees had produced certain materials. However, neither the Commissioner, nor the Tribunal, has made any reference to these materials and decided the cases entirely relying on the decision of the Madras High Court. This approach of the Tribunal cannot be sustained and therefore the order of the Tribunal to the extent it has confirmed the order of the Commissioner of (Appeals) on the claim of indexed cost of improvements cannot be sustained and is set aside.

8. These appeals will stand remitted to the Tribunal, which shall re-consider the claim of the assessees for indexed cost of improvements and shall decide the issue with reference to the materials on record and after affording an opportunity of hearing.

These appeals are disposed of accordingly.

Sd/-
ANTONY DOMINIC
JUDGE
Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

St/- P.S. to Judge