

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2017

CORAM :

The Hon'ble MR.JUSTICE RAJIV SHAKDHER

AND

The Hon'ble MR.JUSTICE R.SURESH KUMAR

T.C. (A) No.171 of 2017

The Commissioner of Income tax,
Chennai. ... Appellant

-vs-

K.A.Fathima ... Respondent

Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 06.09.2016 passed in I.T.A.No.1698/Mds/2013.against the order of the commissioner of Income Tax (Appeals)-VI, 121, Mahatma Gandhi Road, Chennai, vide order dt.29.04.2013 in ITA.No.343/2011-12 for the Assessment year 2009-2010 against the order of the Assistant Commissioner of Income tax, Circle I, Chennai, vide order dt.29.12.2011 made in PAN/GIR. AAEPF1462D for the Assessment year 2009/2010.

For Appellant : Mr.T.Ravi Kumar
For Respondents : Mr.M.P.Senthil Kumar

J U D G M E N T

(Judgment of the Court was delivered by Rajiv Shakdher, J.)

1. This is an appeal preferred under Section 260A of the Income Tax Act, 1961 (in short 'the Act'), by the Revenue, against the judgment of the Income Tax Appellate Tribunal (in short 'the Tribunal'), dated 06.09.2016.

2.The issue, which came up for consideration before the Tribunal was as to whether the indexed cost of acquisition calculated by the Assessee, which was pegged at Rs.1,20,03,750/-, by adopting the fair market value of the land and building as on 01.04.1981, at Rs.20,62,500/-, was correct or

not.

3. In order to adjudicate upon the present appeal, the following facts are required to be noticed:

3.1. The Assessee had filed her income-tax return for the Assessment Year (AY) 2009-2010, on 01.08.2009 wherein, she admitted a total income amounting to Rs.1,00,38,686/-. The return was processed under Section 143 (1) of the Act. The Assessee's case was picked up for scrutiny and accordingly, notices were issued to her under Section 143 (2) and 142 (1) of the Act. In response to the said notices, the Assessee, via its authorised representative, appeared before the Assessing Officer and filed requisite details, which included bank statements, etc.

3.2. In the return, the Assessee had disclosed income under the head 'Capital Gains' to the extent of Rs.93,57,975/-. The said income was generated on account of transfer and/or sale of an immovable property situate at 10/47, Sarangapani Street, T.Nagar, Chennai 600 017 (in short 'the subject property'), admeasuring 2.75 grounds, which is, approximately, equivalent to 6600 sq.ft.

3.3. The Assessee, in the course of the proceedings held before the Assessing Officer, had disclosed that she had purchased the subject property (at the relevant point in time, admeasuring 4 grounds along with superstructure) via a registered sale deed dated 23.01.1976, at a cumulative cost of Rs.1,86,607/-. The said purchase consideration included the cost of the land and the superstructure amounting to Rs.1,67,000/-, as also moneys expended towards stamp and registration fee amounting to Rs.22,607/-.

3.4. Notably, the Assessee, in calculating the capital gains, factored in the fair market value of both the subject land (admeasuring 2.75 grounds) and the fixtures and fittings, woods, fixed ornaments and the debris of the superstructure, i.e., the building, which was demolished in 1983.

3.5. In so far as the fair market value of the land was concerned, it was calculated based on what it would be in 1981, and accordingly, was pegged at Rs.5,00,000/- per ground; the cumulative value being Rs.13,75,000/-. In so far as fixtures and fittings and what remained of the building was concerned, the fair market value was calculated, as on 01.04.1981, and was pegged at Rs.6,87,500/- (46% of Rs.15,00,000/-, which was arrived at based on the construction contract dated 23.02.1983).

3.6. The per ground cumulative value of both the land and fixtures and fittings and the debris would, approximately, by

this calculation come to Rs.7,50,000/- per ground, which is what is noted by the Assessing Officer. The cumulative fair market value of land, fixtures, fitting and debris was crystallised at Rs.20,62,500/-. The Assessing Officer, however, was not satisfied, though, and therefore, called for an explanation in the matter.

3.7. The Assessing Officer, on his part, as the record would show, issued summons under Section 133 (6) of the Act to the Sub-Registrar, T.Nagar, Chennai, on 16.11.2011, seeking the following information:

- (i) Guideline value of the property as on 01.04.1981;
- (ii) Attested copy of the Annexure 1A of the subject property. To be noted, Annexure 1A was comprised of the description of the subject property:

3.8. In response to the aforesaid summons, the Sub-Registrar, T.Nagar, furnished the guideline value as on 01.04.1981 qua the area in issue, as Rs.27,000/- per ground. Accordingly, the Assessing Officer adopted the guideline value of Rs.27,000/- per ground to arrive at the indexed cost of acquisition. Adopting the said value, the Assessing Officer pegged the indexed cost of acquisition and improvement at Rs.1,63,10,615/-.

3.9. Thus, based on this indexed cost of acquisition, the Assessing Officer calculated the long term capital gain as follows:

Sale consideration received	=	Rs.6,00,00,000
LESS: Indexed cost of acquisition & improvement	=	Rs.1,63,10,615
Long Term Capital Gain		Rs.4,36,89,385
Deduction u/s 54 claimed		Rs.2,31,03,175
Taxable Long Term Capital Gain		Rs.2,05,86,210

4. As indicated above, the long term capital gain, which the Assessee had arrived at, was a sum of Rs.93,57,975/-. It is in view of the aforesaid that, after factoring in surcharge, education cess, interests and taxes paid, a demand in a sum of Rs.34,00,813/- was raised against the Assessee. Furthermore, notice for penalty proceedings was also issued.

4.1. The Assessee, being aggrieved, carried the matter in appeal to the Commissioner of Income-tax (Appeals) (in short

'CIT (A)'). The CIT (A) agreed with the Assessee, and accordingly, reversed the view taken by the Assessing Officer. The operative directions of the CIT (A) are contained in paragraphs 15 and 16 of the order passed by him, in that regard, which is dated 29.04.2013:

''..... 15. I have considered the material facts that have been accepted in both the sale agreements contested before the respective Hon'ble Courts. These properties in dispute were located in Cathedral Road and Pantheon Road, away from the assessee's property. However, the area T.Nagar was a central location by the year 1981 and it is not a peripheral area by any standard. It is acceptable that the properties in Cathedral Road and Pantheon Road were in commercial area and accordingly the assessee has given a discount to the value and adopted Rs.5 lakhs as FMV per ground as on 1.4.1981. Thus, based upon the similar, nearer and comparable properties and the localities, the FMV of the land adopted by the appellant as on 1.4.1981 is found to be reasonable and acceptable as supported by the said sale agreements admitted as additional evidences.

16. Coming to the FMV of the building concerned, it is seen from the assessment order that the AO has accepted the admission of the assessee that the remains of the building when demolished have fetched Rs.15 lakhs in the year 1982 and also accepted by the 'construction contract' dated 23.2.1983 while calculating indexed cost of improvement. Thus, it cannot be stated that the building before demolition which has fetched Rs.15 lakhs on demolition could not be less than that value on 1.4.1981 whereas the assessee has adopted 46% of Rs.15 lakhs at Rs.6,87,500/- and this is found to be a reasonable and acceptable. Accordingly, the contention of the appellant in adopting FMV of the land and building as on 1.4.1981 is directed to be taken into consideration for reworking the index cost and capital gains.''

4.2. Dissatisfied with the conclusion reached by the CIT (A), the Revenue carried the matter in appeal to the Tribunal. The Tribunal rejected the appeal of the Revenue.

4.3. The moot question, as indicated above, which confronted the Tribunal was : as to whether the Assessing Officer could substitute the guideline value provided to him, by the Sub-Registrar, as the market value. As indicated hereinabove, the Sub-Registrar had provided to the Assessing Officer the

guideline value of Rs.27,000/- per ground as on 1.4.1981, qua the subject area.

4.4. As against this, the Assessee had provided relevant material in the form of agreement for sale qua similar and comparable properties. The Assessee provided details of the agreement for sale qua properties located at the Cathedral Road and Pantheon Road, Egmore, Chennai. The reference to the documents and materials provided by the Assessee finds mentioned in paragraph 8 of the CIT (A)'s order. A perusal of the said details would show that even though the per ground rate of the property located in Cathedral Road was Rs.6,83,333/-, the Assessee had pared it down to Rs.5,00,000/-. To be noted, the Cathedral Road property is only 1.5 kms. away from the subject property.

5. Being aggrieved by the judgment of the Tribunal, the Revenue has filed the present appeal before this Court.

6. Mr. Ravi, learned counsel for the Revenue, has argued before us that the finding of the Tribunal is perverse. It is the submission of the learned counsel for the Revenue that the property located at Cathedral Road admeasures 12 grounds as against the subject property which admeasured, only, 2.75 grounds. Therefore, the learned counsel submits that the rate per ground was not comparable.

7. Pertinently, the fact that both the subject property, which is located in T. Nagar, and the, one, which is located in Cathedral Road were in an area, where commercial activity was and is being carried out is not disputed before us. In our opinion, one can take judicial notice of the fact that, ordinarily, the per ground price of a property, which has a smaller area, would be greater, in comparison to that, which has larger area. Therefore, the argument of Mr. Ravi Kumar, that, since, the Cathedral Road property had a larger area as against that of the subject property and hence, ought not to be used as a measure, has no weight.

7.1. Furthermore, as noticed above, the assessee himself has discounted the per ground rate of the Cathedral property which was calculated at Rs.6,83,333/- per ground to Rs.5,00,000/- per ground. In addition to this fact, as has been noted by us in the course of narration of events, the value of the building as obtaining in 1983 was also pared down to Rs.6,87,500/- (i.e. 46% of Rs.15,00,000/- which was arrived at based on the construction contract dated 23.02.1983).

8. Therefore, given the circumstances that concurrent finding of facts have been returned by both the CIT (A) and the

Tribunal, we are not inclined to interfere with the impugned judgment.

9. In our view, there can be no doubt that the Assessing Officer could not have substituted the guideline value for the fair market value, as has been rightly observed by the Tribunal in the impugned judgment. The guideline value is only, one of the indicators to arrive at the fair market value of a given property. The Assessing Officer, in our opinion, asked the wrong question by calling upon the Sub-Registrar, T.Nagar, to supply him the guideline value of the subject area as on 1.4.1981. What the Assessing Officer ought to have done was to ask for, perhaps, the sale deeds of property transactions carried out in the subject area in respect of similarly circumstanced properties.

9.1. As against this, the Assessee, on her part, discharged the onus and therefore, no fault can be found with her conduct in proceeding with the matter.

9.2. The authorities below, i.e. the Tribunal and the CIT (A), in our view, have, correctly, appreciated the evidence produced before them. They have, accordingly, returned the findings of fact and therefore, in our opinion, no question of law, much less, a substantial question of law arises for our consideration.

10. The Tax Case (Appeal) is, accordingly, dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

sra
To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
''D'' Bench, Chennai.

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2.The Commissioner of Income-tax
(Appeals)-VI, 121, Mahatma Gandhi Road,
Chennai 600 034.

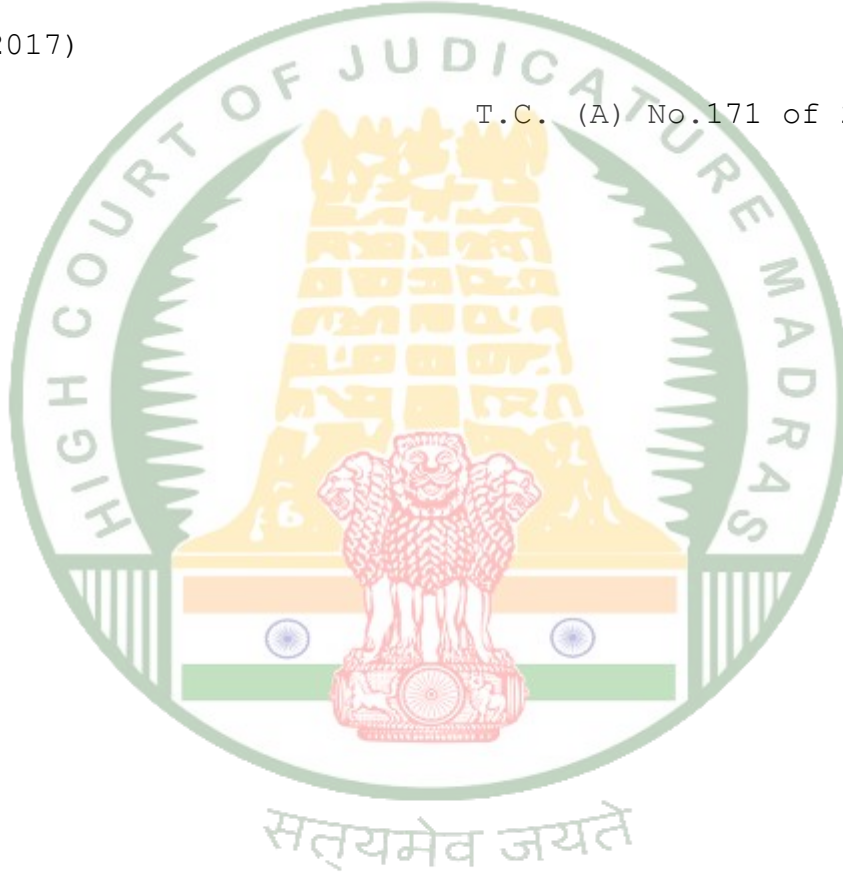
3.The Assistant Commissioner of Income Tax,
Circle-I, Chennai-34.

+lcc to Mr.T. Ravi Kumar, Advocate, S.R.No.15223

+lcc to Mr.G. Baskar, Advocate, S.R.No.14844

rv(CO)
md(05/04/2017)

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