IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No. 538 of 2009

The Commissioner of Income-tax-I
Coimbatore   Appellant / Appellant

Vs.

M/s.The Nanco Rubber & Plastics Limited.,
147, Thadagam Road, Velandipalayam
Coimbatore - 641 025.
PAN AAACT9091 M   Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 30.07.2008 made in ITA No.42/Mds/2007 against the order of the Commissioner of Income Tax,(Appeals)-1, Coimbatore dated 26/10/2006 made in Appeal NO.358/05-06 against the order of the Assistant Commissioner of Income Tax, Company Circle-1(3), Coimbatore, dated 09/11/2005 and made in PAN/GIR.NO.AAACT 9091M/ T-17 for the Assessment year 2003-04.

For Appellant : Mr. T.R.Senthilkumar
M/s. K.G.Usha Rani
Senior Standing Counsel

For Respondent : Mr. M.P.Senthil Kumar
for M/s. Philip George

J U D G M E N T

(Delivered by DR.VINEET KOTHARI, J)

The Revenue has filed this Appeal under Section 260-A of the Act raising the following purported substantial questions of law arising from the order of the learned Income Tax Appellate Tribunal dated 30.07.2008 for the Assessment Year 2003-2004, whereby the learned Tribunal dismissed the Revenue's Appeal and upheld the order passed by the learned CIT (Appeals). The relevant findings of the learned CIT (Appeals) are quoted below for ready reference:-

> "4. Income from Long Term Capital Gains"
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> 4.1 During the financial year relevant to A.y. 2003-04, the lands to the extent of 1,59,595 sq.ft., on 366 and 3/8 cents situated at Telugupalayam Village was acquired by Appropriate Authority of the Income Tax Department at Chennai on 11.03.2002 on payment of Rs.4,59,35,168. These lands had originally cost the appellant a sum of Rs.41,085 a long time back. In accordance with the provisions of the I.T.Act, 1961, the appellant was entitled to adopt the fair market value (FMV) as on 1.4.1981 for the purposes of computation of capital gains. The appellant in its return of income filed has shown the FMV of these lands at Rs.1,20,00,375 as on 1.4.1981. In doing so, it has relied upon the report of an approved valuer for support. On indexation of this FMV as on 1.4.81, the appellant has arrived at the indexed cost of Rs.5,40,43,976 and returned a capital loss of Rs.59,69,832. The Assessing Officer considered the FMV adopted by the appellant to be excessive and called for the guideline value from the District Registrar, Coimbatore. The Assessing Officer also called upon the appellant to give comparable sale instances in support of the report of the approved valuer, which the appellant could not. In the absence of supporting evidences, the Assessing Officer proceeded to determine the FMV as on 1.4.81 based on the guideline values obtained from the District Registrar. Accordingly, she arrived at the Long Term Capital Gains of Rs.4,53,27,865.
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> 4.2 The appellant has challenged the values adopted by the Assessing Officer on the ground that the rates adopted are based on properties which are not comparable to the property of the appellant. During the

course of hearing of this appeal, the appellant has also submitted evidence in respect of a sale of a property in Sanganur Village wherein the sale value in 1981 comes to Rs.8,956 and Rs.9,009 per cent. These lands, according to the appellant, are located in the interior and whereas the lands belonging to the appellant are on the main road and are also large in dimension and size. It was further submitted that land situated at the main road should be given higher value than the one situated in the interior.

4.3 The appellant has adopted a total sum of Rs.1,20,90,375 for an area of 366 and 3/8 cents of land as FMV as on 1.4.81. The Assessing Officer has determined the FMV of the land as on 1.4.81 at Rs.1,35,862. The appellant has supported its valuation by a report of a registered valuer which states that the value as on 1.4.81 to be Rs.33,000 per cent. The Assessing Officer has stated that her valuation is as per enquiries made with and the rates obtained from the Sub-Registrar's office. The Assessing Officer has adopted the rate per acre for various portions of land. She has taken Rs.60,000 per acre for about 86 ½ cents of land, for the rest, she has adopted Rs.30,000 per acre. The Assessing Officer then arrived at the FMV of Rs.333 for each cent of land as against the rate of Rs.33,000 for each cent of land adopted by the appellant. Thus, there is a huge difference in valuation of FMV as on 1.4.81. During the course of assessment proceedings, the registered valuer was examined and the Assessing Officer has made attempts to impeach the valuation of the said registered valuer.

4.4. The appellant has also given evidence of sale instances of two other properties. One of the transaction was on 26.12.81 and the other on 30.5.81. The rate per square feet are at Rs.8,996 and Rs.9,009 respectively. The rate has been increased in respect of one property. Copies of Registered documents have been placed on record. These transactions are near the relevant date, being 1.4.81. The appellant also submits that in view of the large dimension and size of the property and also as the property is on the main road, while the comparable cases are that of interior lands, it may be safely construed that we need to make it at least three times to arrive at the value of the property on the main road and also taking into effect the large dimension of the property. The appellant also submits that it is the FMV of the property that requires to be adopted and not the guideline value as per the Sub-Registrar which is only the minimum value at which a property could be registered. It is only guideline under and for the purposes of Stamp Act and should not be taken note of under Income Tax Act, 1961. Further, the valuation on the date of acquisition of the property by the Appropriate Authority of the Income Tax Department has been taken at Rs.2,39,000 to Rs.2,92,000 for each cent of land. Hence, it was pleaded that without prejudice to their submissions that the valuation of FMV as on 1.4.81 has to be taken at Rs.33,000 for each cent of land, a reasonable amount may be considered in place of the amount of Rs.333 per cent of land adopted by the Assessing Officer which is abnormally low.

4.5 I have carefully considered all the submissions and there is no doubt that when sale instances are to be considered for the purposes of adopting a comparable rate, the properties should also be comparable. The ratio of an incomparable property cannot be adopted and such adoption would be unjust. The sale instances given by the appellant in the course of appellate proceedings are certainly comparable, as the locations of these properties are comparable to that of the appellant's property. The appellant has however contended that in view of its larger size and main road location, the FMV as on 1.4.81 be taken at Rs.33,000 for each cent of land as against the amount in the instances provided at Rs.8,996 and Rs.9,009 at Sanganoor Village.

4.6. After considering all the facts

and circumstances and the evidences put forward on the issue, I am not inclined to accept that the FMV of the property to be adopted as on 1.4.81 should be taken at Rs.33,000 for each cent of land. This argument of the appellant cannot be accepted totally. At the same time, the Assessing Officer also was not correct in adopting the amount as on 1.4.81 at Rs.333 per cent, which seems to be very low on the facts of this case. The comparable instances data clearly indicate that the value of land as on 1.4.81 can be at Rs.8,996 or Rs.9,009 per cent as per the instances provided by the appellant itself. However, given weightage to the large area of property and the fact that its location is on the main road, an increase of a bout 10% may be considered and the property value would be approximately Rs.9,900 per cent. Thus, taking into account all relevant factors, I hereby determine the FMV for each cent at Rs.9,900 as on 1.4.81 and the Assessing Officer is hereby directed to adopt the same and compute the capital gains from the sale of the said property."

2. The learned Tribunal affirmed the findings of the learned CIT (Appeals) with the following observations:-

"5.1 The explanation to Section 73 clearly states that it shall be speculation business in respect of a company other than a company whose gross total income consists mainly of income which is chargeable to tax under the head 'interest on securities, income from house property, capital gains or income from other sources'. As regards the issue of set off of loss against the income from capital gains is concerned, it is clear from a plain reading of the explanation given to Section 73, clearly indicates that where the gross total income of a company consists mainly of income which is chargeable to tax under the had "capital gains" and if any part of the business of such company consists in the purchase and sale of shares of other companies, then such a company shall not be deemed to be carrying on a speculative business. The reasoning of the Hon'ble

Calcutta High Court in the case cited at supra (261 ITR 473) supports such a view.

5.2 I accept and am in agreement with the submissions of the appellant here that the Assessing Officer was not correct in not setting off the loss from purchase and sale of shares, as by her own order, the income from capital gains is the main source of income of the appellant and the exemption provided in explanation to Section 73 would apply. Once the main source of income is held to be from either capital gains, house property or other sources, then the exemption as per explanation to section 73 springs up and the appellant would be entitled to relief as provided therein. Admittedly, it is a matter of record and not disputed that as per the Assessing Officer's order, the income from capital gains has been computed at Rs.4,53,27,865 which is more than the loss from business of purchase and sale of shares, and thus the gross total income of the appellant company consists mainly of income from capital gains.

5.3 However, in view of the findings and facts of the present case, the Assessing Officer has to rework the capital gains by adopting the FMV for each cent of land as on 1.4.81 at Rs.9,900 and if the "capital gains" as arrived at exceeds the amount of loss from purchase and sale of shares, the income from capital gains would become the main source of income and therefore, the loss from purchase and sale of shares would be allowed to be set off against such capital gains. On the contrary, if the income from capital gains is less than the loss incurred from the business of purchase and sale of shares, then loss from purchase and sale of shares would be deemed as loss from speculative business and the same cannot be set off against the income from capital gains. The Assessing Officer is directed to rework the computation of appellant's income as directed above."

3. The learned counsel for the Appellant/Revenue submitted that the learned CIT (Appeals) was not justified in adopting the fair market value on the basis of two comparable instances of sale deeds produced by the Assessee which indicated that the

sale price were Rs.8,956/- and Rs.9,009/- per sq.ft, respectively, whereas the Sub Registrar had given the valuation only at Rs.333/- per cent of the land in question. The Assessee however claimed the fair market value as on 01.04.1981 at Rs.33,000/- and with the cost indexation claimed a capital loss 59,69,832/-.

4. On the other hand, the learned counsel for the Assessee supported the impugned order.

5. Having heard the learned counsel for the parties, we are of the opinion that no substantial question of law arises in the present Appeal filed by the Revenue and we hold that the findings of fact arrived at by both the Appellate Authorities below are based on relevant and cogent materials before them. Since both the sale deeds of comparable cases were produced by the Assessee before the CIT (Appeals), who had opportunity to compare the location and area of land involved in the said comparable cases, the findings of fact arrived by him on that basis cannot be said to be perverse. It cannot also be said to be perverse merely because the survey numbers are not discussed in the orders passed by the Appellate Authorities.

6. Since the two documents were on the record of the Appellate Authority, in our opinion the said authority rightly held that the value depends upon several factors like area of the property, location and proximity of the area, comparative factors like instances of sale, guideline value etc. Since all these relevant factors were taken into account by the Appellate Authorities below, we do not find any perversity in those orders and therefore, the same does not give rise to any substantial question of law requiring our further consideration under Section 260-A of the Act or interference. Therefore, the Appeal of the Revenue is found to be devoid of merits and is liable to be dismissed.

7. Accordingly, the Appeal of the Revenue is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

TO:

1.The Commissioner of Income Tax-I,
Coimbatore.

2.The Income Tax Appellate Tribunal,
Madras "A"Bench, Chennai.

3.The Commissioner of Income Tax,
(Appeals)-1, Coimbatore.

4.The Assistant Commissioner of Income Tax,
Company Circle-1(3), Coimbatore.

+1cc to M/s. Philip George, Advocate sr.no.23979

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