IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	12.02.2021
Pronounced On	19.02.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.14716 of 2016 & 1613 of 2017
and
W.M.P.Nos.12861 & 12862 of 2016 and
W.M.P.Nos.1575 & 1576 of 2017

(Through Video Conferencing)

Smt. Rajeswari Iyer,
Rep. by Power of Attorney,
Smt. Sumithra Ravichandran.
33,53rd Street, Ashok Nagar,
Chennai -83 ..Petitioner in WP.No.14716 of 2016

Smt.Rajeswari Iyer,
D/o.Balasubramanian,
33/16, Second Main Road,
R.A.Puram, Chennai -28. ..Petitioner in WP.No.1613 of 2017

Vs.

1.The Income Tax Officer,
(International Taxation)-1 (2),
7th Floor, Annexe Building,
Aayakar Bhawan,
121, Mahatma Gandhi Road,
Nugambakkam, Chennai 600 034.

2.The District Valuation Officer,
Valuation Cell, Income Tax Department,
5th Floor, Kannammai Building,
611, Anna Salai,
Chennai - 600 006. ... Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in PAN No. ACEP17246J dated 31.03.2016 relating to the Assessment Year 2013-2014 and in PAN No. ACEP17246J dated 30.12.2016 relating to the Assessment Year 2014-2015 on the files of the 1st respondent and quash the same.

For Petitioner : Mr.M.P.Senthil Kumar
in both W.Ps.

For Respondent : Mr.Prabhu Mukunth Arunkumar
for M/s.Hema Muralikrishnan
Senior Standing Counsel in both W.Ps.

C O M M O N   O R D E R

By this common order, both the writ petitions are being disposed of.

2. In these Writ Petitions, the petitioner has challenged the impugned assessment orders dated 31.03.2016 and 30.12.2016 passed by the first respondent for the Assessment Year 2013-2014 and for the Assessment Year 2014-15 respectively.

3. By the impugned orders, income from long-term capital of the petitioner from the sale of property has been re-computed and accordingly the petitioner has been called upon to pay the differential taxes.

4. The petitioner along with her sister sold a property which sale was apparently negotiated by their father during his lifetime. However, before the sale could be completed, their father passed away on 15.01.2012 and therefore the buyers negotiated the sale price with the petitioner and concluded the sale in respect of two parcels of land in Varadharajapuram Village, Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu and in Kundrathur Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu to two different buyers.

5. A dispute arose as to the value declared by the petitioner and the income tax returns for the purpose of computation of long-term capital gains. Under these circumstances, a reference was made under Section 55A read with Section 50C of the Income Tax Act, 1961 for valuation by the second respondent District Valuation Officer, Valuation Cell, Income Tax Department.

6. In respect of the land in Varadharajapuram Village, Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu, the second respondent gave a Preliminary Valuation Report dated 24.03.2016 on reference under Section 55A of the Income Tax Act, 1961. The petitioner asked for time for giving her objection to the report and therefore time was extended up to 20.04.2016 vide communication dated 31.03.2016.

7. Two reports were given in respect of two parcels of land sold to two different buyers, namely M/s.Tatia Development Private Limited and to Mr.S.Dhansekharen and Mrs.D. Sasirekha in Varadharajapuram Village, Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu. The first respondent proceeded to complete the assessment vide impugned order dated 31.03.2016 for the Assessment Year 2013-2014 based on the preliminary report of the second respondent as the time for completing the assessment was expiring on 31.03.2016 for the Assessment Year 2013-14.

8. In respect of the lands in Kundrathur Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu, which were sold to Mr.S.Dhansekharen and Mrs.D.Sasirekha pursuant to two unregistered sale agreements both dated 13.12.2013, though a reference was made to the second respondent under Section 55A read with Section 50C of the Income Tax Act, 1961, the first respondent proceeded to pass the impugned assessment order dated 30.12.2016 for the Assessment Year 2014-15 under Section 143(3) of the Income Tax Act, 1961 as the time for passing the assessment order was also expiring on 30.12.2016. The petitioner had also sold another property in Ashok Nagar, Chennai.

9. These orders are challenged by the petitioner primarily on the ground that the sale price was negotiated by the petitioner’s father with the respective buyers during his lifetime on 11.01.2012 and that their late father had received a sum of Rs.50 lakhs for the proposed sale of the land in Varadharajapuram Village, Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu and a sum of Rs.1.3 crores from the respective buyers in respect of the land in Kundrathur Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu.

10. It is submitted that before the petitioner’s father could complete the sale during his lifetime, unfortunately he died on 15.01.2012. After his death, the petitioner along with her sister, entered into a formal sale agreement dated 28.06.2012 and 03.08.2012 in respect of Varadharajapuram Village, Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu with the two buyers and thereafter completed the formalities for the sale. Copies of the sale deed have not been filed for the purpose of writ petitions.

11. Similarly, for the other properties in Kundrathur Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu, which were sold to Mr.S.Dhansekharen and Mrs.D.Sasirekha pursuant to two sale agreements both dated 13.12.2012, the agreement was signed by the petitioner in her capacity.

12. Though it was argued that the property belonged to the petitioner’s father who died on 15.01.2012, the sale agreements dated 28.06.2012 and 03.08.2012 in respect of Varadharajapuram Village, Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu with the two buyers indicate that the petitioner and her sister had executed a deed of general power of attorney in favour of the first buyer sometime in 2012.

13. The agreement has certain blanks which have not been filled up. Similarly, in respect of the second parcel of land sold to Mr.S.Dhansekharen and Mrs.D.Sasirekha in Varadharajapuram Village, Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu the sale agreement was directly negotiated by the petitioner herself with the buyers.

14. The two other parcels of land in Kundrathur Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu, which were sold to Mr.S.Dhansekharen and Mrs.D.Sasirekha vide two separate sale agreements both dated 13.12.2013 again were negotiated by the petitioner herself.

15. In these writ petitions, it is the contention of the petitioner that the respondents ought not to have adopted the higher value as the price of the land in 2012 had increased manifold time and that the sale price was negotiated by the petitioner’s father during his lifetime in 2010.

16. In support of the present writ petitions, learned counsel for the petitioner has relied upon the bank statements of petitioner’s father for the period between 2010 to 2011, to substantiate the receipt of Rs.50 lakhs as advance. Then it was for the petitioner also relied on the following case laws in support of the above writ petitions:-

i. Commissioner of Income Tax Vs. Vammudi Amarendran 120 taxmann.com 171 (Madras-High Court).
ii. Radhakishan Kungwani Vs. Income Tax Officer, 120 taxmann.com 2016 (T).

17. The impugned orders are sought to be defended by the respondents on the ground that the petitioner has an alternate remedy by way of an appeal against respective orders before the Commissioner of Income Tax (Appeals) under Section 246 of the Income Tax Act, 1961. It is further submitted that there are no records to substantiate that there was any previous sale agreement with the buyers in 2010 and a mere confirmation of the existence of a previous agreement by the buyers was not sufficient. If such agreement was entered into, these aspects ought to have been reflected in the corresponding returns for the Assessment Year 2011-12, whereas, the petitioner had offered long term capital gain only in the year 2013-14.

18. I have considered the arguments advanced by the learned counsel for the petitioner and the learned standing counsel for the respondents.

19. All these agreements are unregistered agreements. Though it is the case of the petitioner that the sales of the properties were negotiated by her father during his lifetime and had received an advance of Rs.50 lakhs in respect of the first property in Varadharajapuram Village, Sriperumbadur Taluk, Kancheepuram District, Tamil Nadu from M/s.Tatia Development Private Limited on various dates and manifold increase in the guideline value by the Registration Department in 2012 cannot be the basis to countermand the value adopted in the sale agreement. It is therefore submitted that the higher value adopted was liable to be quashed.

20. Such submission cannot be entertained in absence of any document particularly in absence of documents to substantiate that there was a concluded sale agreement in respect of these properties by the petitioner’s father during his lifetime. The petitioner’s father may also have had independent transactions and merely by looking at banking transactions in the Bank Passbook, one cannot determine existence of any concluded sale agreement. Therefore, it cannot be construed that the banking transactions of the petitioner’s father pertain to the properties which were subject matter of the sale agreements. Further, under Section 17(1)(g) of the Registration Act, 1908, an agreement for sale of immovable property has to be mandatorily registered.

21. There are several disputed questions of fact which in my considered view are best left open to be decided by the authorities under the hierarchy of the Income Tax Act, 1961. Since none of the agreements which have been produced by the petitioner are registered documents, this Court cannot conclude that the value adopted by the petitioner reflected the correct value for the purpose of payment of stamp duty. Therefore, even otherwise, based on the sale agreements enclosed by the petitioner, no relief can be granted to the petitioner in these writ petitions.

22. The petitioner has an alternate and efficacious remedy by way of an appeal against the respective assessment orders before the Commissioner of Income Tax (Appeals). Therefore, I do not find any reasons to interfere with the impugned orders. Under these circumstances, there is no merit in these writ petitions.

23. The petitioner is however given a liberty to file a statutory appeal against respective assessment orders before the Commissioner of Income Tax (Appeals), within a period of thirty days from date of receipt of a copy of this order. Though certain observations have been made touching on the merits of the case, it is made clear that the Commissioner of Income Tax (Appeals) shall dispose the appeal to be filed by the petitioner on merits uninfluenced by any observations contained herein.

24. Pending disposal of the writ petitions, no such recovery proceedings have been initiated. Since the petitioner has enjoyed the benefit of protection during the pendency of these writ petitions, such protection shall be continued up to the disposal of the appeal by the Commissioner of Income Tax (Appeals) if the petitioner files appeals before the Commissioner of Income Tax (Appeals) within the specified time herein. If the petitioner fails to file appeal, the protection shall stand automatically vacated after the expiry of time given to the petitioner to file appeals.

25. These Writ petitions stand disposed of with the above observation. No cost. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CS.II)

/True Copy/

Sub Assistant Registrar

To

1.The Income Tax Officer, (International Taxation)-1 (2),
7th Floor, Annexe Building,
Aayakar Bhawan, 121, Mahatma Gandhi Road,
Nugambakkam, Chennai 600 034.

2.The District Valuation Officer,
Valuation Cell, Income Tax Department,
5th Floor, Kannammai Building,
611, Anna Salai, Chennai - 600 006.

3.The Commissioner of Income Tax Appeals, Chennai.

+2cc to M/s.G.Baskar, Advocate SR.NOS..9823 & 9824
+2cc to M/s.Hemamuralikrishnan, Advocate SR.NOS..9791 & 10394

AKM/17.03.21/6P- 8C/

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