IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.13339 of 2020 and
WMP.No.16477 of 2020

M/s.T.S.Hajee Moosa & Co.,
Represented By its Partner Faheem Moosa
No.33, Godown Street,
Chennai-600 001. ...Petitioner

Vs.

1.The Commissioner of Income Tax-8,
BSNL Building (Tower II),
Greams Road,
Chennai-600 006.

2.The Assistant Commissioner of Income Tax,
Non-Corporate Circle - 12,
BSNL Building (Tower II),
Greams Road, Chennai-600 006.

3.The Assistant Valuation Officer, Unit-II,
Valuation Cell, Income Tax Department,
Chennai-600 034. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling for the records relating to the impugned assessment order of the 2nd respondent passed under section 143(3) for the assessment Year 2015-16 in NCC-12(1)/AAAFT4462D/2020-21 dated 05.08.2020, issued based on the report of the 3rd Respondent in F.No.AVO-II/CHE/CG (04)/2019-20, dated 04.02.2020 and quash the same as without jurisdiction, beyond provision of law and the direction of the Tribunal order passed in I.T.A.No.2686/CHNY/2018 dated 06.09.2019 and to pass further order after affording due opportunity in accordance with law.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The petitioner had been assessed for Assessment Year (AY) 2015-16 in terms of the provisions of the Income Tax Act, 1961 by an order dated 29.12.2017, passed under Section 143(3) of the Act. The issue that arose in the course of assessment was the valuation of the property sold by the petitioner at Plot No.33 & 34 (NP), Alandur Hamlet, Adyar Village, Guindy (property in question) and the capital gains that would arise from the sale transactions, the cost of acquisition specifically.

2.The order of assessment proceeded on the basis that the indexed cost of acquisition would be in the region of Rs.37 lakhs (approx.), as against which the petitioner went on first appeal and thereafter before the Income Tax Appellate Tribunal (Tribunal) in second appeal. By order dated 06.09.2019, the Tribunal set aside the assessment and remanded the matter to the Assessing Officer in the following terms:

> '4. We heard the rival submissions. In the judgment of the Supreme Court referred to above, while considering the issue as to whether the land purchased has been undervalued or not, the Supreme Court observed that the guideline value has relevance only in the context of section 47A of the Indian Stamp Act (as amended by T.N. Act 24 of 1967) which provides for dealing with instruments of conveyance which are undervalued. Guideline value will only afford a prima facie basis to ascertain the true or correct market value. Guideline value is not sacrosanct, but only a factor to be taken note of if at all available in respect of an area in which the property transferred lies. When the assessee relies on the Registered Valuer's report and if Assessing Officer is not satisfied about such claim then, the AO should have referred the matter to the DVO to ascertain the fair market value. Therefore, we deem it fit to remit this issue back to the AO who shall refer the matter to DVO and proceed to determine the issue in accordance with law. The assessee's corresponding grounds of the appeal are treated as allowed for statistical purpose.'

3.The Tribunal refers to the report of an approved valuer, to the effect that the indexed cost of acquisition of the property in question as on 1981, was Rs.48 crores (approx.).

4.Therefore, there is a serious dispute/difference between the cost of acquisition as arrived at by the Assessing Officer and as computed by the assessee/petitioner. Perhaps, it was bearing this gap in mind, that the Tribunal conciously chose to refer the matter to the District Valuation Officer to ascertain fair market value as on 01.04.1981. We cannot thus assume that the reference to District Valuation Officer was casual, intending merely that the matter be valued by any authority, in the Valuation Department, as the revenue would have me believe.

5.On remand, a reference was made by the Assessing Officer to the Valuation Department and the matter was referred internally to the Assistant Valuation Officer (AVO), An objection was raised by the petitioner to a notice issued to him by the AVO, stating that the proper authority to have embarked on the exercise of valuation would be the District Valuation Officer (DVO) and not the AVO in terms of the order of Tribunal. This objection has been rejected by the AVO, who proceeded on the reference, on merits.

6.An order dated 04.02.2020 under Section 16A(5) of the Wealth Tax Act, 1957 read with Section 55A of the Act has been passed valuing the property in question that has been taken note of by the Assessing Authority in passing the impugned order dated 05.08.2020 giving effect to the order of the Tribunal.

7.The main contention urged by the petitioner is that the proper authority to have valued the property in question would have been the DVO and not the AVO, and hence the jurisdiction assumed by the AVO is incorrect and improper.

8.Per contra, learned Senior Standing Counsel would rely on Rule 3(a) of the Welath Tax Act, 1957, setting out the bifurcation of officers for the purpose of valuation. Rule 3(a) reads as follows:

> '3A-Regional Valuation Officers shall exercise, within such areas as the Board may direct, general supervision over the work of District Valuation Officers, Valuation Officers and Assistant Valuation Officers.
>
> (2)District Valuation Officers, Valuation Officers and Assistant Valuation Officers shall perform the functions of a Valuation Officer in respect of such areas and in relation to such classes of assets as the Board may direct.

(3) Where under any directions issued under sub-rule (2), the functions of a Valuation Officer in relation to any class of assets, being buildings or lands or any rights in buildings or lands, in respect of any area have been assigned to a District Valuation Officer, Valuation Officer and an Assistant Valuation Officer, such functions shall be performed by the District Valuation Officer, the Valuation Officer or, as the case may be, the Assistant Valuation Officer as provided hereunder:-

(i) if the value of the asset as declared in the return made by the assessee under section 14 or section 15 exceeds Rs.300 lakhs or if the asset is not disclosed or the value of the asset is not declared in such return or no such return has been made and the value of the asset, in the opinion of the Assessing Officer, exceeds the aforesaid amount, the functions shall be performed by the District Valuation Officer;

(ii) if the value of the asset as declared in the return made by the assessee under section 14 or section 15 exceeds Rs.40 lakhs but does not exceed Rs.300 lakhs or if the asset is not declared in such return or no such return has been made and the value of the asset, in the opinion of the Assessing Officer, falls within the aforesaid limits, the functions shall be performed by the Valuation Officer; and

(iii) if the value of the asset as declared in the return made by the assessee under section 14 or section 15 does not exceed Rs.40 lakhs, or if the asset is not disclosed or the value of the asset is not declared in such return or no such return has been made and the value of the asset, in the opinion of the Assessing Officer, does not exeed the aforesaid amount, the functions shall be performed by the Assistant Valuation Officer:'

Thus according to her, since the petitioner in this case had not filed a return, Section 3A(3)(iii) would apply and hence, the jurisdiction assumed by the AVO was proper. She points out that the valuation as per the AVO was between Rs.35 to Rs.40 lakhs and hence jurisdiction has been assumed validly.

9.As noted by me earlier, there is large gap between the values, as relied upon by the petitioner and as computed by the Assessing Authority. Rule 3(a) must take note of the intendment of the Rule seeks to appoint officers in line with the value of the property itself. Thus the pecuniary limit fixed for the officer is based on the valuation of the property by the assessee in question. The higher value, the more senior the officer. The petitioner in this case has relied on a valuation report of an approved valuer valuing the property at Rs.48 crores (approx.) and the mere fact that no return has been filed setting out a value for the property in question, would in my view not, be material. The clear directions of the Tribunal can also not be ignored by the officer and for this purpose, I draw support from the judgment of the Supreme Court in the case of Union of India vs. Kamalakshi Finance Corporation Ltd. (55 ELT 433).

10.The impugned order as well as the valuation by the AVO are set aside. The exercise of valuation shall be undertaken by the District Valuation Officer after hearing the petitioner and orders shall be passed within a period of six (6) weeks from today. Effect shall be given to the order of Tribunal within a period of four (4) weeks from date of valuation report by the District Valuation Officer. This writ petition is allowed. Connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vs
To

1.The Commissioner of Income Tax-8,
BSNL Building (Tower II),
Greams Road,
Chennai-600 006.

2.The Assistant Commissioner of Income Tax,
Non-Corporate Circle - 12,
BSNL Building (Tower II),
Greams Road, Chennai-600 006.

3.The Assistant Valuation Officer, Unit-II,
Valuation Cell, Income Tax Department,
Chennai-600 034.

+1 CC to Mr.K. Chozhan, Advocate sr 22565.
+1 CC to Mrs. Hema Muralikrishnan, Advocate sr 24628.

W.P. No.13339 of 2020 and
WMP.No.16477 of 2020

PA(CO)
SP(29/06/2021)