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W.A.(MD)NO.712 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.A.(MD)No.712 of 2022 AND

C.M.P.(MD)No.5976 of 2022

1. Samuel (died)
2. S.Jeyanthi
3. S.John Issac Stein
4. S.Stella Vedavalli

(Appellants 2 to 4 / LR's of the deceased sole
appellant are substituted vide order dated 11.03.2025
made in C.M.P.(MD)No.3949 of 2025)

... Appellants

Vs.

1. The Central Board of Direct Taxes,
Rep. by its Chairperson,
Department of Revenue – Ministry of Finance,
Government of India,
New Delhi.
2. The Additional / Joint/ Deputy/ Assistant Commissioner
of Income Tax / Income Tax Officer,
National e-assessment Center,
Delhi.
3. The Income Tax Officer,
Ward-4,
Tirunelveli.

... Respondents/ Respondents



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 07.04.2022 on the file of this Court in W.P. (MD)No.19814 of 2021.

For Appellant : Mr.M.P.Senthil

For Respondents : Mr.J.Parekh Kumar

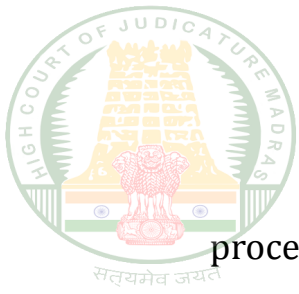
* * *

J U D G M E N T

(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

Heard both sides.

2. A piece of land measuring 101 cents in survey Nos.745/1 and 746/1, 27th Ward, Kulavanigarpuram Village, Tirunelveli District belonged to one Stella Vedavalli, W/o.John Isaac Pandian. Stella Vedavalli passed away and the said property devolved on her six children, namely, Beula, Samuel, Daniel Jeyakumar, Sudhakar, Aldrin and Vimala. Beula, Daniel Jeyakumar, Sudhakar, Aldrin and Vimala jointly executed a power of attorney deed dated 18.09.2001 in favour of Samuel authorising him to sell the property and receive the sale



proceeds. Acting on the said power of attorney deed, Samuel executed sale deed dated 26.02.2007 in favour of Palanikumar. According to the terms of the sale deed, the property was sold for a sum of Rs.15 Lakhs. Samuel however did not file any Income Tax return.

3. The Income Tax Department issued notice to Samuel under Section 148 of the Income Tax Act proposing to reassess the tax liability of Samuel for the assessment year 2007-2008. Samuel successfully challenged the said proceedings. There were quite a few legal proceedings between the assessee and the department. Suffice to say, I.T.A.No.288/CHNY/2019 filed by Samuel was allowed by the Income Tax Appellate Tribunal vide order dated 08.08.2019 in the following terms:-

“4. The brief facts of the case are as under:-

The appellant is an individual engaged in the business of real estate brokerage. The original return of income for the AY 2007-08 was not filed by the assessee. However, the Assessing Officer based on information that assessee sold 101 cents of land at survey No.745/1 and 746/1,



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27th Ward, Kulavanikarpuram Village, Tirunelveli District, whose guideline value was Rs. 55,37,300/- issued notice u/s.148 of the Act on 24.06.2009 and even the assessee had not responded to the above notice. Therefore, the assessment was completed by the Income Tax Officer, Ward I(4), Tirunelveli (hereinafter called "Assessing Officer") vide order dated 30.12.2010 passed u/s.144 of the Income Tax Act, 1961(for short 'the Act') assessing long term capital gains on sale of land at Kulavanikarpuram Village, Tirunelveli District at Rs.55,17,360/- and also income from real estate brokerage of Rs.1,61,410/-.

5. Being aggrieved, an appeal was preferred before the Id. CIT(A), who vide impugned order had confirmed the addition on account of long term capital gains, however, deleted the addition on real estate brokerage. Despite notice, none appeared on behalf of the assessee, the Id.CIT(A) disposed the appeal on merits.

6. Being aggrieved by the order of the Id.CIT(A), the appellant is in appeal before us in the present appeal. It is submitted before us that none appeared before the lower authorities due to ailment of assessee's daughter. Therefore, the



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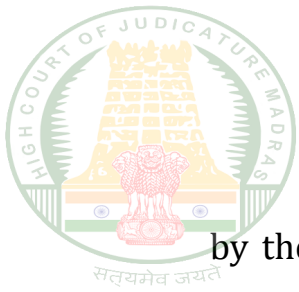
matter may be remitted back to the file of the Assessing Officer for denovo assessment.

7. On the other hand, Id.Departmental Representative did not raise any serous objection.

8. We heard the rival submissions and perused the material on record. In the circumstances mentioned above, we are of the considered opinion that it is a fit case to be remitted back to the file of the Assessing Officer for denovo assessment after affording due opportunity of hearing to the appellant. Hence, appeal filed by the assessee is partly allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.”

4. Following the said remand order, the Assistant Commissioner of Income Tax, National Faceless Assessment Centre, New Delhi issued notice under sub-section (1) of Section 142 of the Income Tax Act, calling upon the assessee to furnish the accounts / documents electronically. In response thereto, the assessee submitted his reply on 21.08.2021. The acknowledgement generated



by the Income Tax Department has been enclosed at page No.53 of the typed set of papers. Thereafter, a draft assessment order was prepared and furnished to the assessee along with show cause notice dated 13.09.2021. In response thereto, the assessee sought opportunity to cross examine the purchaser Thiru.V.Palanikumar and also his siblings (co-sharers of the assessee). The grievance of the assessee is that without complying with the said request, the assessment order dated 27.09.2021 came to be passed determining the long term capital gain at Rs.55,17,360/- and fastening the tax liability of Rs.11,03,472/- on Samuel. This was apart from the penalty and interest imposable on the assessee. Challenging the same, Samuel filed W.P.(MD)No.19814 of 2021. The learned single Judge vide order dated 07.04.2022 dismissed the writ petition in the following terms:-

“14. Earlier, the petitioner suffered an assessment order, dated 30.12.2010. Aggrieved by the same, the petitioner had preferred an appeal before the Commissioner of Income Tax Appeals in I.T.A.No.160/2010-11, which came to be dismissed by the Appellate Tribunal by an order, dated 27.08.2014. The petitioner failed to participate in



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the proceedings before the Commissioner of Income Tax Appeals despite having filed the appeal. It is in this back ground, the Appellate Tribunal granted a fresh opportunity to the petitioner by setting aside the order and remitted the case back to the Assessing Officer to pass a fresh order by its order, dated 08.08.2019 in I.T.A No. 288/CHNY/2019.

15. The petitioner in this case had not filed a return under Section 139 of the Income Tax Act in time. Under these circumstances, the petitioner was issued with a notice under Section 148 of the Income Tax Act, which culminated in an assessment order, dated 30.12.2010. The said assessment order was passed under Section 144 of the Income Tax Act, 1961.

16. The dispute in this present case pertains to sale of 110 cents of land out of total extent of 8.59 acres. It is the specific case of the petitioner that though the sale deed, dated 26.02.2007 declares a sale consideration as Rs.15,00,000/-, receipt of such confirmed in the said sale deed, the petitioner has not received a single penny from the buyer. That apart, it is submitted that the petitioner was not the sole owner of the property but a co-owner along with the sibling and that tax if can be



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demanded only on the proportionate value. Even as per the petitioner, the petitioner has not received any consideration from his buyer, namely, V.Palanikumar. Therefore, the petitioner's demand for cross-examination of his sibling is an exercise in futility. In the remand report that they had categorically stated that they had given up their rights and it is the petitioner who sold the land to V.Palanikumar after given their power in his favour. Thus, no useful purpose will be served by summoning his siblings for cross-examination.

17. Therefore, I do not find any merit in the arguments advanced by the learned counsel for the petitioner that there was a violation of principles of natural justice as no cross-examination was not allowed to cross-examine the petitioner's siblings. As the far as the cross-examination of the buyer, V.Palanikumar is concerned, in my view, it was also irrelevant as documents namely sale deed speak for itself. Whatever, the sale consideration declared in the sale deed, dated 26.02.2007 is of no relevant. The value that has to be determined under Section 50 C of the Income Tax Act. If the guideline value is more than the value declared in the document, then guideline value is relevant for payment of tax. Whether the petitioner has received the aforesaid



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amount is of no consequence. As long as a sale was effected the petitioner is bound by Section 50 C of the Income Tax Act.

18. Further, argument that value has to be redetermined under Section 50 C (2) was taken up for the first time. It is evident that the petitioner is dragging on the proceedings to stall recovery of the tax amount. I do not find any merit in this writ petition. Therefore, the writ petition stands dismissed. I however give liberty to the petitioner to file a statutory appeal within a period of thirty days from the date of receipt of a copy of this order. If such an appeal is filed within such time, the petitioner's appeal shall be numbered and disposed on merits. The appellate authority shall examine the case independently uninfluenced by any operation in this order touching on the merits. Needless to state that before orders are passed, the petitioner shall be heard. No costs. Consequently, the connected Miscellaneous Petitions are closed."

5. Challenging the same, Samuel filed this writ appeal. During the pendency of the writ appeal, Samuel passed away and his legal heirs have come on record.



6. The learned counsel for the appellants reiterated all the contentions set out in the memorandum of grounds of appeal and called upon this Court to set aside the impugned order and remand the matter to the file of the assessing authority.

7. Per contra, the learned Standing counsel for the department submitted that the learned single Judge had assigned convincing reasons for negating the contentions advanced by the assessee and that interference is not warranted.

8. We carefully considered the materials on record.

9. We had already extracted the order passed by the Income Tax Appellate Tribunal. The Appellate Tribunal had remitted the matter to the file of the assessing officer for de novo assessment after affording due opportunity of hearing to the appellant. The expression “de novo assessment” had been explained by the Hon'ble Division Bench of the Delhi High Court in the decision reported in **(2021) 125 taxmann.com 262(Delhi) (Principal Commissioner of Income Tax-4 V. Headstrong Services India (P) Ltd.,)**. The judgment



authored by THE HON'BLE MR.JUSTICE MANMOHAN (as His

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Lordship then was) held that once the ITAT directed the assessing officer to decide the matter de novo, it meant that a new hearing of the matter had to be conducted, as if the original hearing had not taken place, consequently, the assessing officer had to decide the matter in accordance with the procedure mentioned in the statute.

10. A mere look at the impugned order would show that the assessing officer had taken into account the materials gathered on the earlier occasion. Though the assessing officer was expected to proceed on the premise that the slate was wiped clean, such an approach was not adopted. The learned counsel for the appellants draws our attention to Section 144B (6)(vii) and (viii) of the Income Tax Act, 1961. It reads as follows:-

“144B. ...

(6)For the purposes of faceless assessment-

...

(vii) in a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a notice calling upon him



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to show cause as to why the assessment should not be completed as per such income or loss determination proposal, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority of the relevant unit;

(viii) where the request for personal hearing has been received, the income-tax authority of relevant unit shall allow such hearing, through National Faceless Assessment Centre, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board;”

The acknowledgement generated by the department itself indicates that the assessee had requested the authority to grant hearing through video conference before passing any order. Admittedly, the assessing officer had not granted any opportunity of personal hearing to the assessee.



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11. As per the statutory provision and as per the order of the Income Tax Appellate Tribunal, due opportunity of hearing should have been given to the assessee. Admittedly, such an opportunity of hearing was not given to the assessee.

12. The learned single Judge had not taken note of these twin aspects. In this view of the matter, the order impugned in this writ appeal is set aside.

13. We, however, hold that the sale consideration declared in the sale deed dated 26.02.2007 is not relevant and that the value has to be determined under Section 50-C of the Income Tax Act. If the guideline value is more than the value declared in the document, then guideline alone is relevant for payment of tax. What the executant of the sale deed received is of no consequence. Though the petitioner is bound by the valuation made by the department in terms of Section 50-C of the Act, he is entitled to be heard on the question of his share of tax liability. This is because Samuel was not the exclusive owner of the property.



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14. The matter is remitted to the file of the assessing officer who has to act as per law. This writ appeal is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (M.JOTHIRAMAN, J.)
25th March 2025

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AND

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