

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM :

The Hon'ble Dr.JUSTICE VINEETH KOTHARI

AND

The Hon'ble Mr.JUSTICE C.V.KARTHIKEYAN

T.C. Nos.735 to 737 of 2009

Vallikannu Nagarajan .. Appellant in TCA.735/09
Sivagami Roja Muthiah .. Appellant in TCAs.736 and
737/09

-vs-

The Deputy Commissioner of
Income Tax, Special Range-I,
Madurai 625 002. .. Respondent in all TCAs.

Appeal filed under Section 260 A of the Income Tax Act, 1961, against the order passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, dated 23.09.2005 made in I.T.A.Nos.1171 to 1173/Mds/2000 for the Assessment Years 1995-96 and 1996-97 against the Appellate order of the Commissioner of Income Tax(Appeals)VIII, Chennai-600 034 dated 31/03/2000 and made in I.T.A.NO.1056/98-99, 1058/98-99 and 241/99-2000; and against the Assessment order passed in Assistant Commissioner of Income Tax, Company Circle-I, Madurai and made in PAN/GIR.NO.705-V, dt.30/03/1998 for the Assessment year 1995-96, PAN/GIR.NO.718-S, dt.30/03/1998 for the Assessment year 1995-96; and PAN/GIR.NO.7015-S, dt.31/03/1999 for the Assessment year 1996-97.

For Appellants : Mr.M.P.Senthil Kumar

For Respondent : Mr.M.Swaminathan
Standing Counsel, assisted by
Mrs.Premalatha, Jr. Stdg. Counsel

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J U D G M E N T

(Order of the Court was made by Dr.Vineet Kothari, J.)

The Assesseees have filed the present appeals raising the substantial questions of law, arising from the order of the Income Tax Appellate Tribunal, dated 23.09.2005, whereby the learned Tribunal dismissed the Assesseees' appeals for Assessment Years 1995-96 to 1999-2000 and upheld the order passed by the Commissioner of Income Tax (Appeals) and held that for the sale of old books, part of library inherited by them as family members on the death of Shri. Late Muthiah, who expired on 04.06.1992 and which books were sold by them to the University of Chicago, USA.

2.The learned CIT (A) was justified in taking the cost of acquisition of such books at the rate of 30% of the sale value because the Assesseees had failed to prove the cost of acquisition of such books as on 01.04.1981, to provide the basis of indexation of costs as envisaged under Section 48 of the Income Tax Act, 1961. The Assessing Authority has estimated 30% of the sale value, but the CIT (A) gave partial relief and increased the estimate of costs of acquisition from 30% to 40% to compute the capital gains liability of the Assessee.

3.The questions of law, on which the present appeals were admitted by a Coordinate Bench of this Court on 29.09.2009 are quoted below for ready reference:

- "(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not appreciating that the market value of the library materials that were available as on 01.04.1981 has to be estimated and thereafter indexation as provided u/s. 48 had to be allowed on such market value, while computing the capital gains on sale of library containing antique materials ?
- (ii) Whether on the facts and in the circumstances of the case, when most of the library materials were acquired well before 01.04.1981, the Appellate Tribunal was right in holding that cost was estimated as on the date of sale and therefore the benefit provided u/s.48 of the Income Tax Act, should be deemed to have been allowed ?
- (iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not enhancing the estimated cost of acquisition of library materials ?"

4.Learned counsel for the Appellants Assessee, Mr.M.P.Senthil Kumar, urged that the Assessing Authority should have taken the cost of acquisition as on 01.04.1981 and given the indexation cost as envisaged under Section 48 of the Act. The learned counsel for the Revenue supported the impugned orders.

5.The findings of the learned Tribunal in this regard are quoted below for ready reference:

"4.The brief facts of the case are that each of the Assessee have inherited 1/3rd share in Raja Muthiah Library consisting of books, periodicals, News-papers, Clippings, Index Books and other allied materials, on the death of Mr.R.M.Raja Muthiah. These assets were sold to the University of Chicago, U.S.A. Each Assessee determined the capital gain after exercising option for fixing the cost of acquisition as on 01.4.1981 and indexng the same and applying the indexation method and ascertained the capital loss/gain and returned the income. According to the Assessing Officer, Shri Muthiah, till his death, i.e., 04.6.1992, has been collecting books and clippings to the library and applying the indexation to the assets as on 01.4.81 is not correct and the Assessee have not produced any evidence to show that the capitl asseets were acquired before 01.4.81 only. Hence, he fixed the cost of acquisition as on the date of sale at 30% of the sale value and determined capital gain. He observed that all the benefits as provided under sec.48 of the Act had been deemed to have been allowed as he has considered 30% of the sale prices as cosst of acquisition as on the date of sale. Aggrieved, all these Assessee went in appeal before the CIT (Appeals).

5.Even before the CIT (Appeals), the Assessee have not produced any specific material to show the cost of acquisition of these capital assets as on 01.4.81 and they have not also maintained any accounts or any other material to determine the cost of acquisition as on 01.4.81. Hence, the CIT (Appeals) has estimated the cost of acquisition as the date of sale at 40% and held that this 40% of the sale value as the cost of acquisition would give all benefits provided under sec.48 of the I.T. Act. Further aggrieved, the Assessee are in appeal before us.

6.The learned Counsel for the Assessee before us submitted that Shri Raja Muthiah died on 04.6.1992 and practically it would not have been possible for him to collect any books or material for the library at the old age, especially after 01.4.1981. Hence, the

Assesseees have presumed that these assets were acquired before 01.4.81 and the cost as on 1.4.81 was subjected to indexation as per sec.48 of the Act. The lower authorities have not considered the same which is against the law.

7. On the other hand, the learned Departmental Representative submitted that the Assessing Officer has not considered the value adopted by the Assessee as on 01.4.81. Hence indexation of cost has not been done by the Assessing Officer. The reason for not considering the cost fixed by the Assessee as on 1.4.81 was that the Assesseees have not produced any specific material to show the cost incurred by the Assesseees on acquisition of these capital assets and value of these assets as on 01.4.81. The value fixed by the Assesseees as on 01.4.81 is not based on any material evidence and there was no record to support the cost determined by the Assesseees. Hence, the Assessing Officer adopted 30% of the sale price as cost price. He further argued that the CIT (Appeals) was very lenient to increase the same to the extent of 40% of the sale value as cost of acquisition as on the date of sale. Once 40% sale value is taken as the cost of acquisition as on the date of sale, there is no question of applying the cost of index to this value. Therefore, he strongly supported the order of the CIT (Appeals).

8. We have heard the rival submissions and perused the material on record. Admittedly, the Assesseees have not produced any record to show that the cost of acquisition of the assets as on 01.4.81. The value fixed by the Assesseees as on 01.04.81 is only on estimation basis. Hence, the authorities below have rejected this valuation and fixed the value of cost of acquisition of these assets on the date of sale and not as on 01.04.81. When the CIT (Appeals) has fixed the cost of acquisition as on the date of sale, the question of indexing does not arise. The term 'Indexed cost of acquisition' has been defined in clause (iii) of Explanation to Sec.48 as under:-

"Indexed cost of acquisition" means as amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index to the first year in which the asset was held by the Assessee or for the year beginning on the 1st day of April, 1981, whichever is later."

In the present case, the cost was determined by the Departmental authorities as on the date of sale and not as on 01.04.81. Hence, the question of indexation does not arise and the benefit provided under Sec.48 of the I.T. Act should be deemed to have been allowed. Regarding the estimation by the CIT (Appeals), the Revenue has no alternative other than estimating the cost of acquisition in the absence any material for that purpose made available before them. The basis on which the CIT (Appeals) has valued the assets is very reasonable and is not assailable as unrealistic or totally opposed to cosmetic enemies. Further, in our opinion, it is not correct to make one more estimation against the estimation done by the CIT (Appeals). For the purpose we rely on the judgment of the Hon'ble Punjab and Haryana High Court in the case of Prakash v CIT ITR 642, wherein it was held that:-

"In the facts and circumstances of the case some element of estimate was unavoidable. In the appellate jurisdiction the court normally does not interfere by substituting its own estimate in place of that of the lower authorities unless it is shown that the estimate of the lower authorities could not possibly be reached."

It is worthwhile to mention that the SLP filed by the Assessee against the above judgment of the P&H Court was duly dismissed by the Hon'ble Supreme Court. In the above circumstances, we find no infirmity in the order of the (CIT Appeals) and the same is accordingly confirmed. The ground taken by the Assessee is rejected."

6. Having heard the learned counsel for the Appellants Assessee and upon perusal of the orders passed by the authorities below, we are satisfied that in fact, no substantial question of law arises in the present case, since the Assessee failed to adduce any evidence or material to establish the cost of acquisition of the books in question, which they simply inherited on the death of the owner, Late Mr. Muthiah, on 04.06.1992 and sold away such books to the University of Chicago, USA. In the absence of cost of acquisition as on 01.04.1981 having been established by the Assessee, the authorities were naturally unable to give the benefit of indexation of cost in the present facts. Therefore, such findings of facts on the basis of estimate nonetheless remain as findings of facts only and do not give rise to any substantial question of law requiring interference under Section 260A of the Act.

Therefore, we do not find any substance in the present appeals filed by the Assesseees and the same are liable to be dismissed. The same are, accordingly dismissed and the questions of law framed above are answered against the Assessee and in favour of Revenue. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sra

To

- 1.The Registrar,
Income Tax Appellate Tribunal,
"C" Bench, Chennai.
- 2.The Commissioner of Income Tax
(Appeals)-VII, Chennai.
- 3.The Asst. Commissioner of Income Tax,
Company Circle-I, Madurai.
- 4.The Deputy Commissioner Of Income-Tax,
Special Range-I,
Madurai-625 002.

+1cc to Mr.Philip George, Advocate sr.no.21929
+1cc to Mr.M.Swaminathan, Advocate sr.no.21433

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