

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.02.2017

CORAM

**THE HON'BLE MR.JUSTICE HULUVADI G. RAMESH
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH**

T.C(A) NO. 841 OF 2016

S.P.Balasubramaniam

.. Appellant

- vs -

Assistant Commissioner of Income Tax

Media Circle I

No.112, Uttamar Gandhi Salai

Chennai 600 034.

.. Respondent

Tax Case Appeal filed under Sec. 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 18.07.2011 in ITA No. 638/Mds/2011.

For Appellant : Mr. J.Balachander

For Respondent : Mr. M.Swaminathan

JUDGMENT**(DELIVERED BY DR.ANITA SUMANTH, J.)**

This appeal comes to us at the instance of the assessee raising the following three substantial questions of law:-

i) Whether on the facts and circumstances of the case, the Honourable Income Tax Appellate Tribunal was right in law in holding that the apparent consideration stated in the sale deed is to be taken as cost of acquisition when the actual consideration paid is Rs.46,00,000/= (Rupees Forty Six Lakhs only) in terms of the earlier agreement of sale for the purpose of computing capital gains for the Assessment Year 2007-2008?

ii) Whether on the facts and circumstances of the case the Honourable Income Tax Appellate Tribunal was right in law in taking into consideration only the apparent consideration stated in the sale deed and not the actual consideration paid by the appellant assessee to the vendors for purchasing the property for the purpose of computing capital gains for the

assessment year 2007-2008?

iii) Whether on the facts and circumstances of the case, the order of the Honourable Appellate Tribunal is vitiated on account of non consideration of the material evidence which are necessary for computing the cost of acquisition?'

2. The assessee is an individual and had entered into an agreement on 11.10.2003 for the purchase of a property. The consideration set forth in the agreement for sale is an amount of Rs.46,00,000/- (Rupees Forty Six Lakhs only). Thereafter, and after negotiation, the consideration finally agreed upon by the parties as reflected in the sale deed was a sum of Rs.24,00,000/- (Rupees Twenty Four Lakhs only) as against the consideration of Rs.46,00,000/- agreed upon earlier. The stamp duty was enhanced at the time of registration on the basis of the prevailing guideline value and the appellant duly remitted the differential duty computed.

3. The property was sold by the assessee in the financial year relevant to assessment year 2007-2008. The sale resulted in capital

gains and in the computation thereof, the cost of acquisition of the property was adopted by the assessee at a figure of Rs.46,00,000/- . The assessing officer was of the view that the cost of acquisition was an amount of Rs.24,00,000/-, as stated in the registered deed of sale. Despite objections by the assessee, the assessment was completed computing the capital gains in the manner proposed by the officer.

4. An appeal was filed before the Commissioner of Income Tax (Appeals) ('CIT(A)') who, after detailed consideration of the matter, allowed the same. The CIT(A) applied the principle contained in section 50C of the Act that enabled the assessing officer to substitute the guideline value in place of the consideration adopted by the parties in the computation of capital gain. Since the assessee had paid the stamp duty on the differential cost computed by the registering authority on the basis of guideline value of the property, the CIT(A) was of the view that the consideration relatable to the stamp duty paid was liable to be adopted as the deemed cost of acquisition. The Revenue filed an appeal before the Income Tax

Appellate Tribunal, which, after hearing the counsel on behalf of the Revenue, the assessee not being represented, restored the order of assessment, only modifying the same to state that the consideration of Rs.24,00,000/- would be enhanced to the extent of additional stamp duty paid at the time of registration of sale deed. The assessee is in appeal against the aforesaid order.

5. Before us, Mr.Balachander, learned counsel appearing on behalf of the appellant/assessee would state that crucial details and facts have not been taken into account, in so far as the Tribunal proceeded to hear the matter *exparte*. He went on to emphasise that the consideration paid by the assessee at the time of purchase in the year 2003 was, in fact, a sum of Rs.46,00,000/-, as would be evident from the transfer of the amount through banking channels as well as the fact that the amount has been offered to tax in the hands of the vendors. Per contra, Mr.Swaminathan, learned counsel appearing for the Revenue would point out factual discrepancies between the numbers on the cheques and the demand drafts as well as between the amounts stated to have been

paid as sale consideration and the amounts offered to tax by the vendors in their respective income tax returns.

6. Before advertizing to the facts, we deal with the legal issue raised. The short point is whether the sale consideration to be adopted is the 'apparent' consideration as reflected in the registered deed of sale or the 'actual' consideration said to have been paid by the assessee and reflected in the agreement of sale. We are of the view that what is apparent need not be real and it requires an exercise in determination, after taking into account all relevant factors, to arrive at the actual/real consideration. In the present case, we find that the Tribunal, the final fact finding authority, has proceeded on the notion that the consideration, as reflected in the deed of sale, is the only parameter to be taken into consideration. While we agree that this would be one important factor, there are other parameters to be looked into before determining the actual consideration paid.

7. The Tribunal notes, in para 7 that additional stamp duty

has been paid by the appellant at the time of registration. However, the tribunal declines to substitute the sale value as per the registered sale deed, being Rs,25,52,,820/- with the amount stated to be paid by the appellant, being Rs.49,82,300/- stating that the apparent consideration paid by the assessee cannot be substituted by the deemed value determined for the purpose of stamp duty. We are in agreement with this finding. The computation of capital gains has to be effected on the sale consideration actually received and not a notional or deemed amount. The CIT(A) had proceeded to adopt a notional amount relatable to the stamp duty paid as being the sale consideration, merely by application of section 50 C of the Act. The provisions of section 50C have been inserted to provide for a situation where there is an understatement of sale/purchase consideration as compared to the guideline value. The substitution of the guideline value for the alleged understated sale consideration is not absolute but subject to the provisions of section 50C(2) which provide a window of opportunity to the assessee to establish why the deeming provision is not applicable and why and on what basis the actual consideration paid is to be determined. The purpose of

such opportunity is evidently to ensure that the real and actual consideration paid is determined and brought to tax and such opportunity has to be extended in all situations where there is a dispute relating to the determination of consideration.

8. The Tribunal, while rightly holding that the deeming provisions of section 50C are not applicable to a situation like the present one, erred in not taking into account various factors relevant to arrive at a proper determination of the actual consideration paid. This is on account of the fact that the assessee did not appear for the hearing and the matter was heard by the Tribunal *ex parte*, *qua* the assessee. We have noticed that the assessee has nowhere explained why the sale deed was registered when, according to him, the consideration contained therein was not the actual sale consideration agreed upon, nor why an Addendum was not executed by the parties correcting the mistake in sale consideration, once the error was noticed. This, and all other relevant facts relating to the matter, require thorough examination to arrive at the actual consideration paid. In order to ensure that the

matter is considered in the proper perspective and all relevant details are taken into account, we deem it fit to remit the issue to the file of the Assessing Officer to be considered and adjudicated upon *de novo*. The assessing officer shall afford adequate opportunity to the assessee to furnish all particulars as may be necessary to arrive at the real and actual price paid by the assessee for acquisition of the property.

9. Substantial questions of law (i) and (ii) are decided in the above terms and substantial question of law (iii) is allowed in favour of the assessee by way of remand. The appeal is partly allowed. In the circumstances of the case, there shall be no order as to costs.

(H.G.R.J.) (A.S.M.J.)

01.02.2017

Index : Yes / No

Internet : Yes / No

GLN/MSR

To

Assistant Commissioner of Income Tax

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AND
ANITA SUMANTH, J.

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