

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री रमित कोचर, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No.2129/Chny/2019

निर्धारण वर्ष /Assessment Year: 2016-17

Shri Palaniappan Lakshumanan
Chettiar,
3/181, Gangai Amman Koil Street,
Mettupalayam-600 077.

v. The Asst. Commissioner of
Income Tax,
Non-Corporate Circle-8(1),
Chennai-600 034.

[PAN: ADNPC 4871 F]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.M.Narayanan, Retd. ACIT

प्रत्यर्थी की ओर से /Respondent by

: Ms.R.Anitha, JCIT

सुनवाई की तारीख/Date of Hearing

: 13.11.2019

घोषणा की तारीख /Date of Pronouncement

: 10.02.2020

आदेश / O R D E R

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee is directed against Appellate Order dated 20.05.2019 passed by learned Commissioner of Income Tax (Appeals)-9, Chennai (hereinafter called "the CIT(A)"), in ITA No.39/CIT(A)-9/2018-19 for assessment Year (ay) 2016-17, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 28.12.2018 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The short issue agitated before tribunal by assessee is with respect to additions being made by authorities below on account of difference between sale consideration of property purchased by assessee and the guideline value of the said property for stamp duty purposes, by invoking provisions of Section 56(2)(vii) of the 1961 Act. Briefly stated facts of the case are that assessee is in business of hiring/ leasing of heavy duty cranes and other equipment's under a proprietary concern namely M/s.Sundaram Movers. The case of the assessee was selected for framing scrutiny assessment through CASS. During the course of assessment proceedings conducted by AO u/s 143(3) read with Section 143(2) of the 1961 Act, the AO observed that during previous year relevant to impugned assessment year 2016-17, the assessee had purchased vacant lands at Thamal II Village, Kancheepuram Taluk, Kancheepuram District, Tamil Nadu admeasuring 7 acres 98 cents , vide registered sale deed dated 15.07.2015(Doc. No. 1164/205) for total consideration of Rs. 3,51,12,000/-. The AO observed that guideline value of aforesaid property was Rs.3,64,15,000/-. The AO invoked provisions of Sec.56(2)(vii) of the 1961 Act and observed that guideline value of the said property of Rs. 3,64,15,000/- is required to be adopted as the value for which aforesaid property has been acquired by the assessee and the differential between guideline value and sale consideration is to be brought to tax under the provisions of Section 56(2)(vii) of the 1961 Act .

The assessee submitted before AO that guideline value of the aforesaid property on 15.07.2015 was Rs. 3,64,15,000/- which was later revised downward by State Government on 09.06.2017 to Rs. 2,43,98,050/- . It was submitted that differential between guideline value on the date of sale and the sale consideration was only Rs. 13,03,000/- , which is less than 5%. The assessee also submitted before AO that amendment has taken place by Finance Act, 2018 , wherein there could be a difference up-to 5% between guideline value and the sale consideration which shall not be treated as income under deeming fiction of Section 56(2) of the 1961 Act. The assessee also requested AO to refer the matter to valuation cell to find out the correct value of the property.

1.2 The AO observed that the assessee has claimed that there was subsequently reduction in the guideline value by State Government for stamp duty purposes, but AO was of the view that provisions of the 1961 Act has to be applied and hence guideline value on the date of registration shall prevail . The AO was also of the view that amendment in Section 50C and 56(2) of the 1961 Act were a subsequent event and was not applicable on the date of registration /transfer in the instant case. Further, it was observed that stamp duty authorities revised guideline value subsequently while guideline value on the date of transfer is to be applied. The AO referred the matter to valuation cell for valuing the property as on 15.07.2015 and the variation ,if any resulting from the reference will be adopted and assessment will be revised u/s 154 as provided u/s 155(15)

of the 1961 Act. Since the valuation report was not received by the AO on the date of framing scrutiny assessment, the AO made additions to the tune of Rs. 13,03,000/- in the hands of the assessee, vide assessment order dated 28.12.2018 passed by AO u/s 143(3) of the 1961 Act.

2.1 Aggrieved by an assessment framed by the AO u/s 143(3) of the 1961 Act, the assessee filed first appeal with learned CIT(A), which appeal filed by assessee was dismissed by Ld.CIT(A) who was pleased to confirm the additions as were made by the AO keeping in view the provisions of Sec. 56(2)(vii) of the Act. The contention of the assessee that amendment to Sec. 56(2) made by Finance Act, 2018 w.e.f. 01.04.2019 should be treated as retrospective was rejected by Ld.CIT(A) and additions stood confirmed by learned CIT(A) , vide appellate order dated 20.05.2019 passed by learned CIT(A).

3.0 Aggrieved by an appellate order dated 20.05.2019 passed by learned CIT(A), the assessee has filed an appeal before tribunal. The Ld. Counsel for assessee submitted before the Bench that difference in the guideline value as on the date of registration of property and actual sale consideration was Rs. 13,03,000/-, which is less than 5%. It was submitted that Sec. 56(2) was amended by Finance Act, 2018 w.e.f. 01.04.2019, wherein, in the cases where difference between the guideline value and actual sale consideration is upto 5% , the same shall be ignored

and no addition can be made to the income of the assessee by invoking deeming fiction created owing to differential between sale consideration and guideline value. It was submitted that this amendment was made to rationalize provisions of Sec.50C of the 1961 Act with a view to reduce hardship to buyers and sellers of real estate , and accordingly no addition should be made in the hands of the assessee. It was submitted that matter was referred by AO to valuation cell but no valuation report has been received. It was also submitted that guideline value was subsequently reduced by Government itself. The Ld.DR on the other hand submitted that amendment to Sec.50C shall apply prospectively from 01.04.2019.

4. We have considered rival contentions and perused material on record. We have observed that assessee is in the business of hiring/ leasing out of heavy duty cranes and other equipment's under proprietary concern namely M/s.Sundaram Movers. The assessee purchased vacant land admeasuring 7 acres 98 cents at Thamal II Village, Kancheepuram Taluk, Kancheepuram District, Tamil Nadu , vide registered sale deed dated 15.07.2015 for a total consideration of Rs. 3,51,12,000/- (vide registered Document No.1164/2015),while guideline value of the property fixed by State Government for stamp duty purposes was Rs. 3,64,15,000/- as on 15.07.2015. The said guideline value was later reduced on 09.06.2017 by

State Government itself to Rs.2,43,98,050/- on 09.06.2017 , as claimed by assessee before both the authorities below and none of the authorities disputed this contention of the assessee and even before us it is not agitated by learned DR. The differential in the guideline value vis-à-vis actual sale consideration was only Rs. 13,03,000/- when the sale transaction took place in 2015, which is around 3.711% which is less than 5%. The assessee had objected to guideline value being adopted by the AO for the purposes of Section 56(2)(vii) of the 1961 Act. The AO referred the matter to valuation cell for determining the value of the said property as on 15.07.2015 for the purposes of computing income u/s 56(2)(vii), but the valuation report was not received and the assessment was framed by the AO stating that the said assessment will be later amended after receipt of valuation report by invoking provisions of Section 154 and 155(15) of the 1961 Act. Even before us, the Revenue has not produced the said valuation report while it was incumbent on revenue to have produced said report. Evidence which could be produced but which are withheld , the presumption will be drawn against person who is in position to produce the evidence but who withheld the same. Sec. 56(2)(vii) is a deeming provision, which creates an artificial fiction by deeming income in the hands of the buyer of immovable property, where the value of sale consideration of immovable property is less than guideline value by more than Rs.50,000/-, then the guideline value has to be taken as the value of property for bringing to tax income u/s 56(2)(vii) of the 1961 Act under

the head 'Income from other sources' in the hand of buyer of the party. Later on with a view to minimize hardship in real estate transactions in the hands of the buyer and seller, amendments were brought in by Finance Act, 2018 w.e.f. 01.04.2019 applicable from ay: 2019-20 in Section 50C and 56(2), wherein in case the differential between guideline value fixed by State Government for stamp duty purposes and actual sale consideration is upto 5% , then the same shall not be deemed to be income for the purposes of Section 56(2) and also for Section 50C of the 1961 Act. No doubt Section 56(2)(vii) is a deeming Section and artificial fiction is created wherein in case of differential between the guideline value and sale consideration exceeding Rs. 50,000, the same shall be deemed to be income in the hands of purchaser and there is no doubt the deeming section has to be given full play but the law cannot be allowed to operate in vaccum de-horse ground realities . It has to operate within the realm of realities otherwise, there will be absurdities leading to perversities which no Court will be part of accepting such absurdities/perversities. The State Government who is empowered to deal with local property matters have realized that market value of the properties have fallen and guideline value was brought down in tune with realities in real estate declining market values and guideline value of this property was reduced to Rs. 2.44 crores as on 09.06.2017. In the instant case before us, the differential between sale consideration and guideline value is meager 3.711% which is less than 5% when the sale transaction took place in 2015. The Finance Act, 2018 made amendments in Section

50C and 56 of the 1961 Act and extract of budget speech and notes on clauses are reproduced hereunder:

"Incentive for real estate

149. *Currently, while taxing income from capital gains, business profits and other sources in respect of transactions in immovable property, the consideration or circle rate value, whichever is higher, is adopted and the difference is counted as income both in the hands of the purchaser and seller. Sometimes, this variation can occur in respect of different properties in the same area because of a variety of factors including shape of the plot and location. In order to **minimize hardship** in real estate transaction, I propose to provide that no adjustment shall be made in a case where the circle rate value does not exceed 5% of the consideration."*

The Notes on clauses to Finance Bill, 2018 reads as under:

"Clause 19 of the Bill seeks to amend section 50C of the Income-tax Act relating to special provision for full value of consideration in certain cases. The said section provides that in case of transfer of a capital asset being land or building or both, the value adopted or assessed or assessable by the stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer shall be taken as the full value of consideration for the purposes of computation of Capital gains if the same is more than the full value of consideration.

It is proposed to insert a proviso to sub-section (1) of the said section so as to provide that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

This amendment will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-2020 and subsequent years."

"Clause 21 of the Bill seeks to amend section 56 of the Income-tax Act relating to income from other sources.

Clause (x) of sub-section (2) of the said section, inter alia, provides that where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017, any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of

such property as exceeds such consideration shall be charged to tax under the head "Income from other sources".

It is proposed to amend the said clause of sub-section (2) of the said section so as to provide that where any person receives any immovable property for a consideration, the stamp duty value of the property as exceeds such consideration, if the amount of such excess is more than fifty thousand rupees or the amount equal to five per cent of the consideration, whichever is higher, shall be charged to tax under the head "Income from other sources".

This amendment will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-2020 and subsequent years."

Thus, as could be seen simultaneous amendments were made in the 1961 Act by amending provisions of Section 50C and 56(2) of the 1961 Act by Finance Act, 2018 w.e.f. 01.04.2019 which are applicable from ay: 2019-20 with a view to minimize hardship to buyers and sellers in real estate transactions and where the differential is up to 5% between the guideline value and the actual sale consideration, the said differential shall not be deemed as income under the deeming fiction of Section 50C and 56(2) of the 1961 Act. The aforesaid amendment was made w.e.f. 01.04.2019 and shall be applicable effective from ay: 2019-20. However we note that this amendment was to minimize hardship faced by buyers and sellers in real estate transaction wherein the law makers have taken note of the hardships faced by buyers and sellers in real estate transactions and suitably amended the law to meet with ground realities. The State Government has also noted the hardships faced by parties in real estate transactions and brought down the guideline value in 2017. In the instant case before us, firstly the differential is only 3.711% which is

less than 5% and there cannot be precision in all the cases that consideration should be same or higher than guideline value as there are several factors which determine the actual sale consideration , secondly the assessee challenged guideline value being adopted by the AO for the purposes of Section 56(2)(vii) of the 1961 Act and matter was referred by AO to valuation cell but report of the DVO is not brought on record by Revenue even before us while it was incumbent on revenue to bring on record report of DVO, thirdly the State Government has itself reduced the guideline value in 2017 which is indicator of the fact that the market value of the property was lower than guideline value which aspect is taken note by State Government and amendments were made in guideline value in tune with market price albeit in 2017 while we are presently seized of ay: 2016-17 , fourthly amendments were made by Finance Act,2018 in Section 56(2) where in differential upto 5% was allowed and no additions be made under deeming fiction of Section 56(2) of the 1961 Act albeit it is applicable from ay: 2019-20 onwards and fifthly no incriminating evidence is brought on record by Revenue which could evidence that assessee in fact paid higher sale consideration than the actual sale consideration recorded in registered sale document albeit we are aware that Section 56(2) is deeming section and Revenue is not obligated to bring on record any incriminating material in such circumstances to prove that actual sale consideration paid by tax-payer is higher than that recorded in sale document , thus keeping in view cumulative effect of our aforesaid reasonings , we delete the additions as were made by the AO which was

later confirmed by learned CIT(A) as we are of the view that law cannot operate in vacuum de-horse ground realities which under the surrounding circumstances in the instant case lead to one and only one irresistible conclusion that the additions as were made by authorities below are not sustainable in the eye of law. We order accordingly.

5. In the result, the appeal filed by assessee in ITA No.2129/Chny/2019 for ay: 2016-17 is allowed.

Order pronounced on the 10th day of February, 2020 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 10th February, 2020.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF