(1994) 11 MAD CK 0072

In the Madras High Court

Case No : Tax Case No. 342 of 1982 (Reference No. 242 of 1982)

Commissioner of Income Tax APPELLANT

Vs

A.S. Jayakumar RESPONDENT

Date of Decision : 09-11-1994

Acts Referred:
Income Tax Act, 1961 — Section 52(2)

Citation : (1995) 215 ITR 422

Hon'ble Judges : R. Jayasimha Babu, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant;

Judgement

Thanikkachalam J.

1. As directed by this court, the Income Tax Appellate Tribunal referred the following question for our opinion :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding and had valid materials to hold that there

was no justification to raise the value of the property to Rs. 2,10,000 and the sale price of Rs. 1,35,000 would itself be reasonable and should be

adopted while computing the capital gains ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the provisions of section 52(2) of the

Income Tax Act, 1961, could not be invoked in the assessee''s case for adopting the fair market value of the property transferred for computing

the capital gains ?

2. The assessee sold the property belonging to him bearing door No. 142-C Penderghast Road, Secunderabad, on October 18, 1973, for a sum

of Rs. 1,35,000. By invoking the provisions of section 52(2) of the Income Tax Act, 1961, the Income Tax Officer determined the fair market

value of the property at Rs. 2,10,000. The Income Tax Officer relied on the estate duty order dated March 25, 1963, of the late Sri A. H.

Srinivasa Rao, who died on February 27, 1961. On appeal, the Appellate Assistant Commissioner upheld the determination of the fair market

value at Rs. 2,10,000. Aggrieved, the assessee filed an appeal before the Appellate Tribunal. The Appellate Tribunal held that inasmuch as there

was no proof that extra consideration passed between the parties, section 52(2) of the Act cannot be invoked. To come to this conclusion, the

Tribunal relied on the decision of this court in ADDITIONAL COMMISSIONER OF Income Tax, MADRAS Vs. P. S. KUPPUSWAMY

AND OTHERS., .

3. Before this court learned standing counsel for the Department submitted that the fair market value determined by the Assessing Officer is correct

since the assessee failed to disclose the correct market value of the property sold on October 18, 1973. The interpretation of section 52(2) of the

Act came up for consideration before the Supreme Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, , wherein the

Supreme Court held that unless there is proof for extra consideration paid by the purchaser over and above what is stated in the sale deed, section

52(2) of the Act cannot be invoked. In view of the abovesaid decision of the Supreme Court, the order passed by the Tribunal in determining the

fair market value as disclosed by the assessee at Rs. 1,35,000 appears to be in order. Accordingly, we answer both the questions referred to us in

the affirmative and against the Department. No costs.

