
(2014) 09 MAD CK 0123

In the Madras High Court

Case No : Tax Case (A) Nos. 118 and 119 of 2014 and M.P. No. 1 of 2014

S.H. Syed Sultan

APPELLANT

Vs

The Income Tax Officer

RESPONDENT

Date of Decision : 08-09-2014

Acts Referred:

Citation : (2014) 09 MAD CK 0123

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J

Bench : Division Bench

Judgement

R. Sudhakar, J.—The above Tax Case (Appeals) are filed at the instance of the assessee as against the orders of the Income Tax Appellate Tribunal for the assessment years 2009-10 and 2011-12 raising the following substantial questions of law:

"a) Whether the Income Tax Appellate Tribunal is correct in adopting fair market value at Rs. 5,000/- per cent only on assumption and without evidence?

b) Whether the Income Tax Appellate Tribunal is correct in holding that there was no sale transaction nearer to assessee's property by not considering the documentary evidences produced by the assessee?"

2. The brief facts are as follows:

On 02.02.1981, the appellant assessee inherited 51 cents of land situated at S.F. No. 141 (Part) Palakkad Pollachi Main Road, Kurichi Village, Coimbatore. On 16.09.2008, the appellant sold 20 cents of land out of 51 cents to one Hasan Kutty at the rate of Rs. 3.75 lakhs per cent, totaling to Rs. 75.00 lakhs. The assessee filed return of income for the assessment year 2009-10 declaring total income at Rs. 9,70,480/- after making a claim of Rs. 65,18,524/- as deduction against the column Deduction 54/54B/54D/54EC/54F/54G/54GA of the Income Tax Act. On 13.4.2010, again the appellant sold the remaining 30.72 cents to the same Hasan Kutty at the rate of Rs. 3.75 lakhs per cent, totalling to Rs.

1,15,20,000/- . For the assessment year 2011-2012, the assessee filed return of income declaring total income of Rs. 6,64,747/- after claiming indexed cost of acquisition at Rs. 1,03,55,253/- and expenditure on transfer at Rs. 5,00,000/-.

3. For the assessment year 2009-10, the assessee was asked to produce the copy of the sale deeds and evidence for claim of deduction of Rs. 65,18,524/- . In response to the notice issued by the authority, the assessee produced a letter dated 14.10.2010 of the Sub-Registrar, Coimbatore showing the guideline value as of 01.04.1981 at Rs. 300/- per cent for S.F. No. 141/12. Time was given to the assessee for furnishing objections till 24.10.2011, since there was no objection or any evidence for the claim of deduction as above was filed.

4. Since the assessee did not file any objection, the Assessing Officer determined fair market value as per the guideline value as on 01.04.1981, namely, period of inheritance of the property by the assessee, at Rs. 300/- per cent and allowed the deduction as therein.

5. For the assessment year 2010-11, the assessee was asked to furnish the computation of Long Term Capital Gains and evidence for claim of expenditure on transfer. The assessee had produced a copy of the computation statement, wherein the assessee had adopted the fair market value at Rs. 47,410/- per cent as on 1.4.1981 for the calculation of the indexed cost of acquisition of the property sold. In support of this, the assessee furnished a copy of the document executed by one Mrs. Johara Banu in favour of Mr. R. Dhandabani in the District Registrar's Office at Coimbatore on 12.9.1983. The Assessing Officer after perusing the documents came to the conclusion that the document produced by the assessee for adopting the fair market value is in respect of the property situated in different locality. Hence, the Assessing Officer adopted the value of Rs. 300/- per cent as per the details available in Sub-Registrar's record as on 1.4.1981, as against the value of Rs. 47,410/- adopted by the assessee.

6. Aggrieved by the orders of the Assessing Officer, the assessee filed appeals before the Commissioner of Income Tax (Appeals). For the assessment year 2009-10, the assessee produced a copy of the document showing the sale of property on 14.12.1984 in respect of S.F. No. 165/1, Kuruchi Village. On consideration of the sale deeds, the Commissioner of Income Tax (Appeals), for the assessment year 2009-10 held as follows:

"6.2. I have perused the submissions made by the appellant and the order of the Assessing Officer. The Assessing Officer has taken the guide line value as per the Sub-Registrar's office as the value of the property on 1.4.1981 for SF No. 141/1. The Assessing Officer has given an opportunity to the assessee to furnish his objections, if any, regarding adoption of the guide line value as on 1.4.1981 at Rs. 300/- per cent. However, the assessee has not bothered to state his objections before the Assessing Officer. During the course of appellate proceedings, the appellant filed a document showing the sale of property on 14.12.1984 in SF No. 165/1 at Kurichi village. The appellant submitted that the

guide line value was fixed at Rs. 23,985/- for 1303 sq. ft. In the submission made, the appellant stated that the fair market value would be more than the guide line value at least 5 to 7 times in those days. The appellant requested that the fair market value as on 1.4.1981 should be adopted at least Rs. 30,000/- to Rs. 40,000/- per cent. The submission made by the appellant is very vague without any basis. In his own submissions, the appellant submitted that the fair market value would be more than the guideline value at least by 5 to 7 times. Taking these into consideration, the property sold by him on 16.09.2008, the guide line value was Rs. 56,68,000/- whereas the sale value was Rs. 75 lacs. Taking all these factors into consideration, the Assessing Officer is directed to adopt the fair market value at Rs. 1,200/- per cent. This ground of appeal is partly allowed."

7. For the assessment year 2011-12, the Commissioner of Income Tax (Appeals) following the order in the case of the appellant for the assessment year 2009-10, determined the fair market value at Rs. 1,200/- per cent.

8. Aggrieved by the said orders, the assessee preferred further appeals before the Income Tax Appellate Tribunal.

9. The Tribunal, taking note of the original claim made by the assessee, the fair market value determined by the Assessing Officer, Commissioner of Income Tax (Appeals) and the plea of the assessee with regard to the fair market value of the land, determined the same at Rs. 5,000/- per cent. The Tribunal, while disposing of the appeal, held as follows:

"13. We have heard both sides, perused the materials on record and gone through the orders of the authorities below. We find that in this case, the assessee had inherited the property, which was acquired before 01.04.1981. We also find from the assessment order that the assessee had entered into an agreement with Mr. Hasan Kutty of Palghat for the sale of his 51 cents of ancestral property at Aathupalam, Coimbatore. On 16.09.2008, out of the 51 cents of land at Aathupalam, 20 cents was sold to Mr. Hasan Kutty at the rate of Rs. 3.75 lakhs per cent but the transaction was registered for a value of only Rs. 38,00,000/- while the balance was received as on money in cash. Further, it was stated by the assessee that the balance 31 cents of land was also sold to him at the same rate of Rs. 3.75 lakhs in April, 2010. It has been stated that the difference between the registered amount and the amount agreed upon as per agreement was received in cash prior to the registration and ultimately declared the total sale price of Rs. 75.00 lakhs. According to the assessee, the fair market value for the purpose of calculation of cost of indexation as on 01.04.1981 should be at Rs. 30,000/- to Rs. 40,000/- per cent. However, the Assessing Office has adopted the guideline value as fair market value of the property at Rs. 300/- per cents in the absence of any evidence furnished by the assessee, whereas the Id. CIT (Appeals), after considering the submissions of the assessee, has enhanced fair market value at Rs. 1,200/- per cents. There was no sale transaction nearer to assessee's property. Keeping in view of the facts and

circumstances, we direct the Assessing Officer to adopt the fair market value at Rs. 5,000/- per cent and the ground raised on this issue is partly allowed for statistical purpose."

10. Aggrieved by the order of the Tribunal, the assessee is before this Court by filing the present Tax Case (Appeals).

11. Heard learned counsel appearing for the assessee and the learned standing counsel appearing for the Revenue and perused the materials placed before this Court.

12. Normally, we would expect the Revenue to challenge the order of the Tribunal on the fair market value. But in this case, the assessee apparently is stretching his claim further before this Court and has chosen to file these appeals, which we find as not justified. There is absolutely no basis for the claim made by the assessee for determining the fair market value. The documents produced before the Assessing Officer clearly shows that the guideline value as on 01.04.1981 is Rs. 300/- per cent; before the Commissioner (Appeals), the document of the year 1984 was submitted and based on that the Commissioner of Income Tax (Appeals) fixed the fair market value at Rs. 1,200 per cent. The Tribunal has fixed the same at Rs. 5,000/- per cent, however, without any discussion. We find that the document dated 14.2.1984 in respect of S.F. No. 165/1 at Kurichi Village correctly shows the fair market value at Rs. 8,393/- and the Tribunal after allowing certain deductions for the three year period, i.e., the difference between the date of acquisition by the assessee, namely, 02.02.1981 and till the date of the noted document, to come to a conclusion that Rs. 5,000/- should be fair market price. We find that such a determination by the Tribunal does not warrant any further modification or interference.

13. Accordingly, we find no question of law much less any substantial question of law arises for consideration in the above appeals. Hence, both the Tax Case (Appeals) stand dismissed. No costs. Consequently, M.P. No. 1 of 2014 is closed.