

(2014) 08 MAD CK 0297**Madras High Court****Case No:** Tax Case (Appeal) No. 28 of 2014

Appadurai Vijayaraghavan

APPELLANT

Vs

Joint Commissioner of Income
Tax

RESPONDENT

Date of Decision: Aug. 12, 2014**Acts Referred:**

- Income Tax Act, 1961 - Section 143(1), 148, 2(47), 48, 50C
- Wealth Tax Act, 1957 - Section 16A, 23A, 24, 34AA, 35

Citation: (2015) 275 CTR 565 : (2014) 369 ITR 486**Hon'ble Judges:** R. Sudhakar, J; G.M. Akbar Ali, J**Bench:** Division Bench**Judgement**

G.M. Akbar Ali, J.

This tax case (appeal) is filed at the instance of the assessee as against the order of the Income-tax Appellate Tribunal confirming the order of the Assessing Officer and the Commissioner of Income-tax (Appeals) that the evidentiary value of the registered document is more than that of unregistered document and the provisions of section 50C of the Income-tax Act shall be applicable. The brief facts are as follows:

"On October 27, 2001, the assessee entered into two sale agreements with one Smt. G. Rajamani and Shri V.R. Govindasamy to sell the property for a total consideration of Rs. 1,70,41,261 divided as Rs. 85,41,261 for the sale to V.R. Govindasamy and Rs. 85,00,000 for the sale to Smt. G. Rajamani. The total land measuring 9,420 sq. ft. together with building thereon at Arumbakkam, Chennai, was given as collateral security for the loan raised from SIPCOT. It is stated in the sale agreement that since the original title deeds were deposited with SIPCOT, the sale deeds shall be executed after the release of original title deeds. From March 22, 2002, to July 28, 2002, a sum of Rs. 21 lakhs has been given to the assessee by the intending

purchaser, V.R. Govindasamy, towards part of the advance sale consideration. On January 5, 2005, Catholic Syrian Bank took over the security for recalling the loan. Thereafter, on May 16, 2006, a further payment of Rs. 56 lakhs was made to the assessee towards balance sale consideration. On May 17, 2006, sale deeds were executed by the assessee in favour of the abovesaid purchasers. In the meanwhile, on April 1, 2003, section 50C of the Income-tax Act was introduced from the assessment year 2003-04. The assessee filed his return of income on March 31, 2008, for the assessment year 2007-08 admitting a total income of Rs. 12,72,019 and the same was processed under section 143(1) of the Income-tax Act. Thereafter, the case was reopened under section 148 of the Income-tax Act and notice under section 148 of the Income-tax Act was issued for the following reasons:

"During the course of assessment proceedings in the case of one Smt. G. Rajamani for the assessment year 2007-08 (assessed in Salary Ward V(4), it came to light that the said Smt. G. Rajamani had purchased immovable property from the assessee for an apparent consideration of Rs. 85,00,000. However, the registering authority had valued the said property at Rs. 1,60,00,000 for stamp duty purposes. Smt. G. Rajamani had also stated that her husband had also purchased the other half of the property for a similar consideration. Thus, the total sale consideration for the purpose of section 50C comes to Rs. 3,20,00,000. However, the assessee has not shown any capital gains in his return of income filed for the assessment year 2007-08."

2. In response to the notice, and during the course of the proceedings, the assessee replied as follows:

"The assessee who is the managing director of M/s. AVRN Hotels Pvt. Ltd. had borrowed a loan from SIPCOT for the purpose of the hotel project on the security of hotel property and also the property at No. 112A, Ashok Nagar, Chennai-600 106, were deposited with SIPCOT in 1999. The company had faced a financial crisis to complete the project since the loan sanctioned by SIPCOT was Rs. 650 lakhs where as the loan applied was 750 lakhs. This forced me to enter into a distress sale of the said property on October 27, 2011 (i.e., in the financial year 2001-02 relevant to the assessment year 2002-03) with Mr. V.R. Govindasamy and his wife, Mrs. G. Rajamani, for a total sale consideration of Rs. 1,70,41,261 (Rs. 85,41,261 and Rs. 85,00,000 respectively).

Clause No. 2 of the said sale agreements clearly states that the property is given collateral security for the loans raised from SIPCOT and, hence, the original title deeds are deposited with SIPCOT and the sale deeds shall be executed soon after the release of the original title deeds.

Clause No. 7 of the said sale agreements says that the possession of the property is handed over to the purchasers on the date of the sale agreements.

The registration of sale deeds was delayed up to 2006 and finally registered on May 17, 2006, by receiving the balance sale consideration since the title deeds were procured only in 2006 from Catholic Syrian Bank."

3. After examination of the details filed by the assessee and the facts and circumstances of the case, the Assessing Officer rejected the explanation given by the assessee for the following reasons:

"(i) The agreement relied by the assessee is not a registered document.

(ii) The value agreed as per the registered sale deeds dated May 17, 2006, amounts to Rs. 1,70,41,261 (85,41,261+85,00,000) whereas the value assessed by the stamp authorities works out to be."

4. The Assessing Officer found that the value assessed by the stamp valuation authorities as follows:

5. The Assessing Officer found that the assessee did not hand over possession in favour of the purchasers on the date of alleged agreement of sale and only on the date of registration of sale deeds, the possession was handed over and both the parties to the sale agreement did not perform full part of the agreement prior to the date of registration and, therefore, the Assessing Officer determined capital gains escaped assessment as follows:

6. Aggrieved by this order, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals), who confirmed the addition of Rs. 1,57,22,427 made by the Assessing Officer. As against which, the assessee went on further appeal before the Income-tax Appellate Tribunal. The Tribunal considered section 50C of the Income-tax Act, which was introduced in the year 2003 and found that the assessee was not able to show that the transaction was completed before coming into force of section 50C of the Income-tax Act nor the assessee was placed on record any reliable evidence to prove that the possession of the property in question had been handed over to the vendees at the time of execution of the sale agreements. Accordingly, the Tribunal, while dismissing the appeal filed by the assessee confirming the order of the Commissioner of Income-tax (Appeals), held as follows:

"Evidentiary value of registered document is more than that of unregistered document, therefore, higher degree of reliance has to be placed on the contents of the registered sale deed over the sale agreement which is unregistered. In view of the facts and circumstances of the case, we are of the view that the provisions of section 50C shall be applicable on the transactions with respect of sale of land and building. The order of the Commissioner of Income-tax (Appeals) is upheld and the appeal of the assessee is dismissed being devoid of merits."

7. Aggrieved by the said order of the Tribunal, the assessee is before this court raising the following substantial question of law:

"1. Whether the Appellate Tribunal is correct in law in sustaining the assessment of long-term capital gains in the assessment year 2007-08 relating to the transfer of the capital asset based on the sale deeds dated May 17, 2006, as against the plea for reckoning of the transfer for the purpose of assessment in the assessment year 2002-03 based on the sale agreements dated October 27, 2001, read with provisions in section 2(47) of the Act, defining the term "transfer" in the Act?

2. Whether the Appellate Tribunal is correct in law in sustaining the assessment of long-term capital gains in the assessment year under consideration on the application of section 50C of the Act which provisions were incorporated in the statute with effect from the assessment year 2003-04 even though the rejection of the plea for reckoning the transfer on the factual matrix of the case read with the legal position with regard to the part performance theory relating to the assessment year 2002-03?

3. Whether the Appellate Tribunal is correct in law in not considering the provisions in section 50C(2) of the Act in any event with a view to determine the fair market value of the capital asset transferred in view of the depressing factors with a view to substitute such value as the sale consideration for the apparent/stated consideration for computing the long-term capital gains under section 48 of the Act in the event of computation of long-term capital gains for assessment in the assessment year 2002-03?"

8. Learned counsel appearing for the appellant submits that even though the appellant has raised the above three substantial questions of law, the appeal is restricted to the third substantial question of law alone.

9. Heard learned counsel appearing for the appellant and perused the materials placed before this court.

10. The issue involved in this appeal revolves around section 50C of the Income-tax Act, which came into force from April 1, 2003, reads as follows:

"50C. Special provision for full value of consideration in certain cases.--(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) Without prejudice to the provisions of sub-section (1), where-

(a) the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, subsection (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act."

11. Admittedly, the facts are not in dispute. The sale agreement was entered into in the year 2001 and the sale was completed only in the year 2006. There is no dispute in so far as the decision taken by the Commissioner of Income-tax (Appeals) or by the Tribunal that the provisions of section 50C of the Income-tax Act would be applicable to the transaction in question. The only issue which arise for consideration is whether in terms of subsection (2) of section 50C, the claim of the assessee that the valuation adopted by them should be accepted or not. We find from the assessment order that when the proceedings were reopened pursuant to the notice issued under section 148 of the Income-tax Act dated September 27, 2010, there had been certain exchange of correspondences between the assessee and the Department. The value adopted by the valuation authority in the year 2006 was much higher than the sale consideration adopted by the assessee in the year 2001 and, therefore, there resulted in the computation of capital gains on such transaction in terms of section 50C(1) of the Income-tax Act as determined by the stamp valuation authorities. This, according to the assessee, was not correct in view of the various factors like the liability to discharge the SIPCOT loan and taking over by the Catholic Syrian Bank, the sale of the property in distress to get over the liabilities as above. Therefore, the assessee had adopted the market value for the sale of property in question. The assessee had objected to the valuation adopted by the income-tax authorities by making a claim in the form of objections and that had already been extracted supra. The very specific stand taken by the assessee is that on the basis of the various financial difficulties expressed; there was a distress sale and, therefore, the computation of capital gains is not correct and the plea is that the Assessing Officer should have referred the matter to the Valuation Officer for valuation of the capital asset in terms of sub-section (2) of section 50C of the Income-tax Act.

12. In this regard, reliance has been placed on the decision of this court in the case of S. Muthuraja Vs. Commissioner of Income Tax , wherein this court had an occasion to consider a case of distress sale and held that when an objection is made by the assessee to the Assessing Officer with regard to the adoption of market value under section 50C(1) of the Income-tax Act, the Assessing Officer ought to have

referred the valuation of the capital asset to the Valuation Officer and remitted the matter back to the Assessing Officer to work out the capital gains by invoking the provisions of section 50C(2) of the Act. While remanding the matter to the Assessing Officer, this court further held as follows (pages 484 and 485):

"It is seen from the records filed before this court that the assessee objected to the Assessing Officer adopting the guideline value relating to the property sold for the sale consideration of Rs. 25,60,000 as against the guideline value adopted by the Assessing Officer at Rs. 39,63,900. In the objection letter filed by the assessee on December 15, 2011, the assessee specifically pointed out that the sale was more in the nature of distress sale and requested to confirm the actual sale consideration for the purpose of working out capital gains. The Assessing Officer rejected the claim under section 50C of the Income-tax Act, 1961 (hereinafter called as "the Act") for the purpose of working out long-term capital gains....

As rightly contended by the learned counsel for the assessee, when specific objection was made by the assessee as to the Assessing Officer adopting the market value under section 50C(2) of the Act, the Assessing Officer ought to have referred the valuation of the capital asset to the Valuation Officer, whereas the authorities below referred to section 50C(1) of the Act alone without advertizing to section 50C(2) of the Act.

A reading of the order of the Assessing Officer shows that having found such an objection, the Assessing Officer committed serious error in not advertizing to section 50C(2) of the Act, the error proceeded throughout before every appellate forum, we do not find any justification in the order of the income-tax Appellate Tribunal taking the view that there is nothing on record to show that the assessee had disputed the sale consideration of Rs. 39,63,900 adopted for the purpose of stamp duty for the purposes of working out capital gains. In such view of the matter, the matter is restored to the files of the Assessing Officer to work out capital gains by invoking section 50C(2) of the Act."

13. We find that in the present case, a claim has been made by the assessee and that was recorded by the Assessing Officer and, therefore, the provision of section 50C(2) of the Income-tax Act gets attracted. Even though the assessee had made an objection for invoking section 50C(1), the Assessing Officer had not referred the valuation to the Valuation Officer as per section 50C(2) of the Income-tax Act. Without doing so, the Assessing Officer had estimated the capital gains tax, which was confirmed by the Tribunal. In the Webster Dictionary, the meaning to the word "claim" is given as "assert". Hence, mere assertion by the assessee is suffice. Hence, while upholding the reasoning of the Tribunal in so far as section 50C of the Income-tax Act, we are of the view that the assessee has made out a case for consideration as claimed in terms of sub-section (2) of section 50C, which has not been done. Therefore, following the abovesaid decision of this court in the case of S. Muthuraja Vs. Commissioner of Income Tax , the order of the Tribunal stands set

aside and the matter is restored to the files of the Assessing Officer to work out the capital gains by invoking section 50C(2) of the Income-tax Act.

The appeal stands disposed of accordingly. No costs.