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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Oct-09-2006

Judge : P Kumar, R Yadav

Appellant : Devidayal Rolling and Refineries

Respondent : ito

Judgement :

1. The assessee is in appeal before us against the order of learned Commissioner (Appeals), VI, Mumbai dated 19-12-2002 passed for assessment year 1999-2000. The grievance of assessee relates to determination of market value as on 1-4-1981 at Rs. 25 per sq. metre as against Rs. 155 per sq. metre claimed by the assessee on the basis of the valuers report for the purpose of computing the capital gain on sale of land. The second grievance, which is inter connected is disallowance of expenses of Rs. 14,25,840 incurred on the capital asset sold by the assessee while computing the capital gain.

2. The brief facts on both the issues as noticed by the learned Assessing Officer in the assessment order read as under: During the relevant previous year, the assessee-company has sold freehold land admeasuring 19400.04 sq.mt. bearing Survey No. 189, Hissa No. 1/1 part, 190 part, 192(l) part, 194(5) of village Majiwade, Taluka & Distt. Thane, situated within the limits of Thane Municipal Corporation. Since the above property was purchased by the company prior to 1-4-1981, assessee has adopted market value as on 1-4-1981 for working out Indexed cost of acquisition. Assessee has taken market value as on 1-4-1981 at

Rs. 30,07,000 on the basis of Registered Valuer's Report (Report No. 226/VAL/99 dated 19-2-1999) copy of which is filed along with the return of income. On going through the report, it is noticed that while making valuation report the valuer relied upon Developed land (assessed as developed land) in Wagle Industrial Estate, Thane, since no instances of sale of property were available during the period 1979 to 1981 in the said vicinity. The valuer, therefore, adopted Rs. 155 per sq.mt. as rate for the valuation of the land and accordingly worked out Rs. 30,07,000 as fair market value as on 1-4-1981. The valuation report is not acceptable in view of the matters discussed below.

Assessee while computing Long-Term Capital Gain has deducted following two amounts under the head "Expenses incurred in connection with the sale.

(i) Betterment charges paid to Thane Municipal Corporation Rs. 7,25,440.

(ii) Professional fees paid to Shivaji Patil, Architect and other development expenses Rs. 7,00,400.

In this connection, assessee vide this office letter dated 1-1-2002 and order sheet entry dated 5-2-2002 was asked to furnish details of these expenses along with the evidence for the payment made, but the assessee has not furnished any evidence in respect of expenses incurred.

Assessee has not filed any details in respect of other development expenses claimed. It is also not clarified by the assessee that the expenses incurred were for the development of land which is sold as the total area of the land is 92,111 sq.yards. Hence expenses incurred in connection with the sale are disallowed.

The value of the adjacent land in 1974 as per agreement placed in the file is at the rate of 5.25 per sq.mt. The value of the land in 1974 was only 5.25 per sq.mt., so the value of the land cannot be Rs. 155 persq.mt. on 1-4-1981 as indicated in the valuation report dated 19-2-1999 of N.N. Malye & Associates. Even if it is considered that the value of land was doubled in the next 7 years, the same works out to Rs. 10.50 per sq.mt. Considering that the value of land, from 1974 increased by 4 times during 7 years in Thane which in 1981 was not industrially

developed and also on account of the fact that the sale was not effected in that area during 1979 to 1981, it can reasonably be estimated that, the value of the land as on 1-4-1981 was n& more than Rs. 25 per sq.mt. So the cost of the land 19400 sq.mt. in 1981 can be estimated at the rate of Rs. 25 per sq.mt. i.e., at Rs. 4,85,000 and the indexed cost comes to Rs. 17,02,350 for the purpose of working out Long-Term Capital Gains.

3. With the assistance of learned representatives we have gone through the record carefully. The learned first appellate authority has upheld the order of assessing officer on the ground that assessee failed to produce Registered Valuer for examination before him. In the absence of the Registered Valuer he did not put reliance upon his report.

Similarly while denying the expenses incurred by the assessee on development of the capital asset he observed that assessee failed to furnish the supportive details of expenses. In our opinion the Registered Valuers are being granted licence under Income Tax Act for preparing such reports. The report of a registered valuer pointing out valuation of capital asset is an expression of opinion of an expert.

His report can be out rightly rejected if it is established that it is not a genuine report. Otherwise his report deserves to be considered while evaluating the other evidence available on record. The absence of the Registered Valuer can be one circumstance which can persuade a quasi-judicial authority to draw an adverse inference against the report. The Learned Commissioner (Appeals) instead of disbelieving the report ought to have pointed out the specific defect in the report. It appears that the learned first appellate authority emphasized on the fact that failure of the assessee to produce the registered valuer along with supporting material considered by him in arriving at the valuation made at Rs. 155 per sq.mt. is sufficient for discarding this valuation report. In our opinion learned first appellate authority has not appreciated the facts and circumstances in a proper way. Had there not been any material then he ought to have called for a remand report from the assessing officer. Against this valuation report there is no documentary evidence in the possession of assessing officer which can exhibit the fair valuation as on 1-4-1981 of the disputed land.

Therefore, taking into consideration all the facts and circumstances we deem it appropriate to restore this issue to the file of assessing officer for readjudication. The learned Assessing Officer shall conduct a proper enquiry and bring sufficient material on record i.e., the sale deed of the surrounding land or other potential factor influencing the fair market value of the land as on 1-4-1981. As far as the other grounds are concerned i.e., disallowance of expenses on development of this land, we find that the details submitted by the assessee have not been properly looked into, therefore, we set aside this issue also to the file of assessing officer for readjudication. The charging of interest under Section 234 would be consequential.

4. In the result, the appeal of the assessee is allowed for statistical purpose.

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