

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 114/Chny/2022
निर्धारण वर्ष/Assessment Year:2011-12

Shri R. Yuvaraj,
New No. 1/227, Old No. 1/206,
Bajanai Koil Street, Medavakkam,
Chennai 600 100.

Vs. The Income Tax Officer,
Non Corporate Ward 22(5),
Chennai.

[PAN:AHBPY9547N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri R.S. Balaji, Advocate &
Shri B. Sakthivel, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT
सुनवाई की तारीख/ Date of hearing : 28.11.2022
घोषणा की तारीख /Date of Pronouncement : 30.11.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 10, Chennai dated 05.03.2020 relevant to the assessment year 2011-12.

2. The appeal filed by the assessee is delayed by 639 days in filing the appeal before the Tribunal. The assessee has filed condonation petition in the form of an affidavit explaining the delay was due to

outbreak of COVID-19 pandemic. The Id. DR fairly conceded the submissions of the Id. Counsel. Accordingly, the delay is condoned and admitted the appeal for adjudication.

3. Brief facts of the case are that the assessee filed his return of income for the assessment year 2011-12 on 12.01.2012 admitting income of ₹.2,58,233/-. After following due procedure, the assessment was completed under section 143(3) of the Income Tax Act, 1961 ["Act" in short] on 27.02.2014 assessing income from business at ₹.41,53,783 treating the cash deposits of ₹.39,18,500/- found in SB account as business income of the assessee and income from other sources was assessed at ₹.60,077/-. Against the assessment order, the assessee preferred an appeal before the Id. CIT(A).

4. Meanwhile, the Id. PCIT, after examining the records, passed revision order under section 263 of the Act dated 30.03.2016 by observing that the Assessing Officer has omitted to cause necessary enquiries and examine the facts of the issues raised in the show cause notice dated 21.03.2016 and the omissions are erroneous and prejudicial to the interest of Revenue. Accordingly, the Id. PCIT set aside the assessment order and directed the Assessing Officer for de novo consideration and passing of necessary order in accordance with law.

Accordingly, by issuing notices under section 143(2) and under section 142(1) of the Act and considering the submissions of the assessee, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 263 of the Act dated 05.12.2016 by assessing the total income of the assessee at ₹.1,22,82,577/- after making addition towards long term capital gain at ₹.70,22,500/- and income from other sources – interest income at ₹.60,077/- and unexplained cash deposits of ₹.52,00,000/-. On appeal, the Id. CIT(A) partly allowed the appeal of the assessee.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessee has sold the vacant land measuring 1 acre 18 cents (51401 sq. Ft.) situated at survey No. 56/57/1A1B, 57/1B, Jalladianpet, Sholinganallur Taluk along with his brother Shri R. Chandrasekaran on 18.11.2010 for a sale consideration of ₹.1,54,21,000/-. In this entire transaction, the assessee's legal entitlement of 50% share comes to ₹.77,10,500/-. It was further submission that the Assessing Officer has observed that there is excess sale consideration to the extent of ₹.1.04 crores over and above the sale consideration recorded in the sale deed. The Id. Counsel has submitted that there is no evidence of excess receipt over and above the actual sale consideration and moreover, the assessee was not allowed for cross

examination and prayed that the issue may be remitted back to the Assessing Officer for fresh consideration.

6. On the other hand, the Id. DR relied on the orders of authorities below.

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the assessment order, the Assessing Officer asked the assessee to prove the source of the additional amount of ₹.52 lakhs found deposited in his savings bank account with Andhra Bank, Medavakkam. Since the assessee has not furnished any evidence for having received money from the purchaser Shri Parthasarathy, the Assessing Officer treated the cash deposit of ₹.52 lakhs as unexplained cash deposit and brought to tax. On appeal, the Id. CIT(A) confirmed the addition.

8. On perusal of the assessment order, we find that in the sworn statement, it was stated by the assessee that the total sale consideration was ₹.2.58 crores against the sale consideration mentioned in the sale deed of ₹.1.54 crores. We also find that the Assessing Officer has summoned the purchaser Shri D. Parthasarathy and recorded his statement, which reveals that the purchaser has paid only ₹.1,54,21,000/-

only as recorded in the sale deed and not the amount admitted by the assessee of ₹.2.58 crores. However, we find that the assessee was not given an opportunity to cross examine the purchaser. Accordingly, we set aside the orders of authorities below and remit the matter back to the file of the Assessing Officer to reconsider and decide the issue afresh in accordance with law by affording an opportunity to the assessee for cross examination of the purchaser before the Assessing Officer.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 30th November, 2022 in Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 30.11.2022

Vm/-

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.