

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2203/Mds/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Shri P. Gunasekaran,
C/o Shri P. Rajasekaran, CA,
Post Box No.3, No.4,
National Theatre Buildings,
West Tambaram,
Chennai – 45.

v. The Income Tax Officer,
Salary Ward – III (1),
Chennai.

PAN : AFDPG9543A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri P. Rajasekaran, CA

प्रत्यर्थी की ओर से/Respondent by : Shri B. Sahadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 05.01.2017

घोषणा की तारीख/Date of Pronouncement : 31.01.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 9, Chennai dated 18.03.2016 and pertains to the assessment year 2010-11.

2. Shri P. Rajasekaran, the Ld. representative for the assessee submitted that the only issue arises for consideration is cash deposit of ₹16,13,000/- with the Corporation Bank, Mount Road Branch. According to the Ld. representative, the assessee sold a flat at Chepauk for ₹18,55,000/- on 26.08.2009. However, the sale consideration disclosed in the sale deed was ₹5,50,000/-. The assessee has deposited the balance amount of ₹16,13,000/- in the bank account. Referring to the order of this Tribunal in the case of Shri R.Anantha Padmanaban v Income Tax Officer in ITA No.10/Mds/2013, the Ld. representative submitted that the consideration received by the assessee when compared to the market value is very fair. The proximity between the date of sale and the date on which the deposit was made in the bank all put together, shows that the assessee has received in fact ₹16,13,000/. In view of this decision of the co-ordinate bench of this Tribunal, according to the Ld. representative, the addition made by the Assessing Officer on the deposit made in the bank account cannot be treated as unexplained income of the assessee.

3. On the contrary, Shri B. Sahadevan, the Ld. Departmental Representative submitted that the purchaser of the property from

the assessee, claims that he paid only ₹5,50,000/-. In fact, the purchaser was examined by the Assessing Officer and the purchaser has denied the claim of the assessee that he paid ₹16,13,000/- over and above the sale consideration disclosed in the sale deed.

4. On a query from the bench, whether the copies of the said statement recorded from the purchaser was given to the assessee and the opportunity was given to the assessee for cross examination, the Ld. representative submitted that there was no reference about furnishing the copies of the statement recorded from the purchaser and having given an opportunity to the assessee for cross examination of the purchaser in the assessment order. The Ld. representative submitted that therefore an opportunity may be given to the assessee for cross examination of the purchaser.

5. We have considered the rival submissions on either side and perused the material available on record. The assessee claims that the sale consideration disclosed in the sale deed was ₹5,50,000/- and over and above he received a sum of ₹16,13,000/-. Therefore, the total consideration comes to ₹21,63,000/-. Placing reliance on

the order of this Tribunal in the case of Shri R. Ananda Padmanaban (*supra*), the assessee claims that the deposit was made on the date close to the date of execution of sale deed and the assessee has no other source of income other than salary from LIC. If that is so, what was the actual sale consideration paid by the purchaser has to be examined. It is also to be examined the source for paying ₹18,55,000/- to the assessee. When the Assessing Officer accepted the statement of the purchaser that he paid only ₹5,50,000/- to the assessee, she has taken no steps to counter verify the statement made by the assessee that he received ₹18,55,000/- from the purchaser. Therefore, this Tribunal is of the considered opinion that the Assessing Officer ought to have furnished the copy of the statement recorded from the purchaser apart from examining the source of the assessee for making deposit in the bank especially when the assessee claims that he has no other source other than salary from LIC.

6. In view of the above, the orders of the lower authorities are set aside and the entire issue of capital gain is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh after furnishing the copy of the

statement recorded from the purchaser and also providing an opportunity to the assessee to cross examine the purchaser. The Assessing Officer also bring on record, the source of the assessee and the purchaser. Thereafter the Assessing Officer shall decide the matter afresh in accordance with law after giving reasonable opportunity to the assessee.

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

Order pronounced on 31st January, 2017 at Chennai.

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. Sunder Singh)
लेखा सदस्य/Accountant Member

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 31st January, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-9, Chennai
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.