

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य केसमक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND
SHRI G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.1925, 1926, 1927, 1928 & 1929/Mds/2016

निर्धारण वर्ष / Assessment Years : 2007-08 to 2011-12

The Deputy Commissioner of
Income Tax,
Corporate Circle – 2(2),
Chennai - 600 034.

v. Shri T.S. Narayanaswamy,
No.4, A & B Coral,
8/22, Rahaviah Road,
T. Nagar, Chennai - 600 017.

(अपीलार्थी/Appellant)

PAN : AVMPS 1049 N
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri K. Balasubramanian, Advocate

सुनवाई की तारीख/Date of Hearing : 14.09.2016

घोषणा की तारीख/Date of Pronouncement : 26.09.2016

आदेश /O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

Revenue has filed these appeals against the similar orders of the Commissioner of Income Tax (Appeals)-11, Chennai. Since similar facts and circumstances exist in these appeals, for the sake of convenience, we take up the facts narrated for assessment year 2008-09 in I.T.A. No.1926/Mds/2016.

2. The grounds raised by the Revenue are as under:-

“2.1 The CIT(A) erred in allowing 95% of the expenditure as business expenditure without verifying the claim.

2.2 The CIT(A) erred in allowing the additional expenses claimed by the assessee when the same were not claimed in the revised return also.

2.3 The CIT(A) failed to appreciate the Hon'ble Supreme Court's decision in the case of M/s Goetz India wherein it has been held that the fresh claim before the AO can be made only by filing a revised return and not otherwise.

2.4 The CIT(A) ought to have afforded an opportunity to the AO under Rule 46A while admitting the additional expenditure claimed by the assessee.

2.5 The CIT(A) ought to have appreciated that the bills and vouchers produced before the AO were mostly self-generated and hence the AO disallowed the expenditure claimed by the assessee.

2.6 The CIT(A) in following the AO's allowance at 95% of the expenditure for the A.Y. 2013-14 as yardstick, for the assessment year also.”

3. The assessee, who is in the business of development of plots and also Director of M/s Unicard Marketing Pvt. Ltd., filed return of income on 12.04.2009 with total income of ₹9,59,240/-, including agricultural income of ₹1,00,000/-. The return of income was processed under Section 143(1) of the Income-tax Act, 1961 (in short "the Act"). Subsequently, the Revenue has found that the assessee has converted the agricultural land held by him and developed plots and sold it. This fact was not brought on record

and no capital gain was reflected in the computation of income. Notice under Section 148 of the Act was issued. In compliance to the notice, the assessee filed a revised return on 28.04.2014 declaring a total income of ₹16,46,380/-, including agricultural income. In the assessment proceeding, the Ld. AR of the assessee filed details as called for by the Assessing Officer and also the Ld. AO provided reasons for reopening of assessment and after examining the details and the facts and submissions of the Ld. AR, the Assessing Officer noticed that in the financial year 2007-08, the assessee has declared a capital gain on sale of land at ₹85,50,779/- and claimed as exempt. It was submitted that the assessee has obtained the land from Saravambakkam Panchayat Union and obtained approval for housing sites. The assessee has also submitted details on this issue.

4. The contention of the Ld. AR was that the assessee's case falls within the provisions of Section 45(2) of the Act and treated the value of land as stock-in-trade. The Assessing Officer had rejected on the ground that there is no evidence produced that the agricultural land was converted into stock-in-trade nor did the assessee produce any financial statement to substantiate the claim. As per the assessee's submissions, the land was purchased with an

intention of investment and such land was purchased during different years. The assessee has claimed the land as stock-in-trade and filed the details of agricultural land and details of sale claiming the same as business income. The assessee has incurred development and other expenses in connection with the business of plots. But, after going through the details of expenditure and verification of the facts, the Ld. AO is of the opinion that the strategy adopted by the assessee to treat as per the provisions of Section 45(2) of the Act cannot be accepted. Basically the intention of the assessee was to purchase the land and sell later for profit. The business expenditure and development expenditure claimed by the assessee were not supported with vouchers and there is a doubt on the genuineness of the vouchers. Therefore, the Ld. AO is of the opinion that the expenditure claimed by the assessee cannot be allowed. With this finding, the Ld. AO by relying on the decision of Apex Court in *Goetz India v. CIT* (284 ITR 323), held that the claim before the Assessing Officer can be made only by revised return and not otherwise. So, considering these facts, the stand of the assessee to consider it as long term capital gain on sale of land cannot be accepted and therefore, the consideration received on sale of agricultural land by developing into plots at ₹85,50,779/- was

brought to tax and order under Section 143 r.w.s. 147 of the Act dated 25.02.2015 was passed.

5. Aggrieved, the assessee has filed appeal before the CIT(Appeals). In the appellate proceeding, the Ld. AR argued with grounds, explained with facts and also reiterated the submissions made in the assessment proceeding along with evidence that the assessee's claim of capital gain was not considered and the total income was treated as business income. Further the Ld. AO has denied the claim of expenditure. In the course of appellate proceeding, the Ld. AR submitted that the contention of the assessee was not considered in view of the provisions of Section 45(2) of the Act, but, if the income is treated as business income, the expenses in connection the business are to be allowed. Further the assessee, apart from the above submissions, submitted alternative plea on 28.03.2016 and the same was referred by the Ld. CIT(Appeals) in his order at 5.3.1, which reads as follows:-

“Without prejudice to our appeal we pray for an alternative submissions to consider the expenses claimed by the assessee in the Revised Return of income of `22,53,779/- and additional expenditure of `42,18,885/- incurred for the development and sale of the property pertaining to the income claimed as exempted as Business Expenditure which were not originally claimed in the return. It is the right of the assessee to claim the genuine expenditures as provided

in the Act incurred in earning the income the details of which are enclosed against the income to compute the taxable income. The rights of the assessee cannot be denied only on the ground that that the same were not claimed in the original return filed by the assessee which will result in erroneous computation of the taxable income. We pray to the Hon. Commissioner to consider this alternative plea and allow the expenditure against the income and oblige.”

The Ld. CIT(Appeals) considered the submissions made on 28.03.2016 and also the claim made by the assessee for additional expenditure of ₹42,18,885/- and similarly for other assessment years, the Ld. CIT(Appeals) considered the findings of the Ld. AO and submissions of the assessee and judicial decisions, is of the opinion that the income on sale of plots is a business income, the expenses in relating to earning of business income has to be allowed as claimed in the appellate proceeding and also relied on the assessment order of the assessee for subsequent assessment year 2013-14. The Ld. CIT(Appeals) having perused the assessee's submissions and also the stand of the Ld. AO, where the Assessing Officer has allowed 95% of the assessee's claim of expenditure and with his finding, the Ld. CIT(Appeals) directed the Assessing Officer to assess the sale proceeds from the land as business income and allow 95% of business expenditure. The Ld. CIT(Appeals) also directed the Assessing Officer to recomputed the

assessee's income as per the annexures giving effect to his order and also supported with the decisions of the jurisdictional High Court in the case of Ramco Cements Ltd. v. CIT (373 ITR 146) and partly allowed the appeal.

6. Aggrieved, the Revenue has filed the appeals before the Tribunal. Before us, the Ld. Departmental Representative submitted that the order of the CIT(Appeals) is erred in law and the CIT(Appeals) has directed the Assessing Officer to allow 95% of expenditure as business expenditure without verifying the claim and also the assessee has not claimed this additional expenditure in the revised return. Further, most of the bills and vouchers produced before the Assessing Officer were mostly self-generated and the Assessing Officer having not satisfied with the claim of the assessee, has not allowed the claim. The Ld. CIT(Appeals) following the assessment order of the assessee pertaining to assessment year 2013-14 as the base, is not an acceptable proposition and in the appellate proceeding, when the assessee has claimed the additional expenditure as referred in the order, the Ld. CIT(Appeals) has not called for the comments or remand report from the Assessing Officer. The Assessing Officer was not provided an opportunity to verify the genuineness of the claim of the

assessee as the same was not available during the assessment proceeding. The Ld. D.R. prayed for setting aside the order of the CIT(Appeals) and restore the order of the lower authority.

7. Per contra, the Ld. AR of the assessee relied on the observations and findings made by the CIT(Appeals) and supported with judicial decisions and opposed to the grounds raised by the Revenue.

8. We have heard the rival submissions, perused the material available on record and the judicial decisions cited. The main contention of the Revenue is that the CIT(Appeals) has erred in directing the Assessing Officer to allow the claim of business expenditure being 95% irrespective of the fact that the assessee has not made any claim in the revised return and also the expenditure was not verified. Further the provisions of Rule 46A of the Income-tax Rules, 1962 were violated as the fresh evidence was filed in the appellate proceeding and no remand report was called for. On the other hand, the Ld. AR of the assessee argued that the provisions of Section 45(2) of the Act are applicable and business expenditure has to be allowed irrespective of the fact that the same was not claimed. We perused the assessment order and

there is no reference to these additional expenditure claimed by the assessee in the appellate proceeding. Therefore, this claim for allowing the deduction is based on the subsequent year's assessment order of the AO, whereas in the earlier assessment order, the AO was deprived to verify and examine the genuineness of expenditure. So, considering the apparent facts, in the interest of justice, we are of the opinion that the claim of additional expenditure by the assessee in the appellate proceeding is in the nature of additional evidence and the Assessing Officer should be provided adequate opportunity to verify and allow the claim. Therefore, we set aside the order of the CIT(Appeals) and remit the disputed issue to the file of the Assessing Officer for verifying the claim and genuineness. Further, the assessee should be provided opportunity to make submissions in respect of such claim.

9. Since the facts and grounds raised by the Revenue in other appeals for other assessment years 2007-08, 2009-10, 2010-11 & 2011-12 are also similar, other appeals of the assessee are also remitted back to the Assessing Officer with above direction.

10. In the result, all the appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced on 26th September, 2016 at Chennai.

sd/-
(चंद्र पूजारी)
(Chandra Poojari)
लेखा सदस्य/Accountant Member

sd/-
(जी. पवन कुमार)
(G. Pavan Kumar)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 26th September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-11, Chennai-34
4. Principal CIT-3, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.