

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिकसदस्यकेसमक्ष

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

आयकर अपील सं./I.T.A. Nos.776, 777 & 778/Mds/2016.

निर्धारण वर्ष /Assessment years : 2008-09, 2009-2010 & 2010-2011

Shri. Nishank Sakaria,  
No.16, Kesava Iyer Street,  
Park Town,  
Chennai 600 003.

**Vs.** The Assistant Commissioner  
of Income Tax,  
Non Corporate Circle -5  
(Erstwhile Business Circle -XI)  
Chennai 600 006.

**[PAN AEFPN 8248A]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Dr. Anitha Sumanth, Advocate  
: Shri. P. Radhakrishnan, IRS, JCIT

सुनवाई की तारीख/Date of Hearing : 31-05-2016  
घोषणा की तारीख /Date of Pronouncement : 09-06-2016

**आदेश / O R D E R**

**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

The appeals filed by the assessee are directed against different orders of the Commissioner of Income-tax (Appeals)-5, Chennai for the above assessment years passed u/s.143(3) r.w.s. 263 and 250 of the Income Tax Act, 1961 dated 29.01.2016 (herein after

referred to as 'the Act'). Since the issue in these three appeals are common in nature, hence these appeals are combined, heard together, and disposed of by a common order for the sake of convenience, we consider the facts as narrated in ITA No.776/Mds/2016 of assessment year 2008-09 for adjudication.

**2. The grounds of appeal raised by the assessee are under:-**

*"(i) The Commissioner of Income-tax (Appeals) erred in passing orders dated 29.1.2016 confirming the additions/disallowances effected by the Assessing Officer. The grounds raised and submissions have been omitted to be considered and the appeal liable to be allowed in full.*

*(ii) The impugned order dated 29.1.2016 is in gross violation of the principles of natural justice as it had been passed while the Appeal had been posted for further hearing on a later date, before the Appellant had an opportunity to conclude the submissions.*

*(iii) The Commissioner of Income-tax (Appeals) erred in passing the impugned order without furnishing to the Appellant, all materials relied upon in framing of order of assessment, allegedly collected while the investigations were conducted, particularly when adverse inference is taken on the basis of the documents.*

*(iv) The Order of the Commissioner of Income Tax (Appeals) is In gross violation of principles of natural justice, considering that, at the hearing on 27.1.16 the matter was heard in part and posted and adjourned to 4.2.16 for filing evidences and written submissions. It had been specifically noted that the period of twelve weeks granted by the Hon'ble High Court in W.P. No. 34092 of 2015 vide order dated 27.10.2015 for disposal of the appeals extended till the first week of March, 2016. Notwithstanding the aforesaid position, the Commissioner (Appeals) passes the impugned order in haste, without application of mind and in violation of the principles of natural justice. The impugned order is thus factually and legally erroneous and liable to cancelled in full.*

(v) *The Commissioner of Income-tax (Appeals) erred in not adjudicating and accepting the plea of the appellant relating to assumption of jurisdiction u/s 148 of the Act. The proceedings are wholly contrary to law and in violation of the principles and procedure laid down by the Supreme Court in the matter of GKN Driveshafts.*

(vi) *The Commissioner of Income-tax (Appeals) erred in confirming the addition of an amount of Rs. 2,66,24,500/- allegedly representing profits derived on sale of land at Madhurantakam. The addition is wholly erroneous and liable to be cancelled in full.*

(vii) *The Commissioner of Income-tax (Appeals) erred in confirming the addition of an amount of Rs. 14,40,000/- stated to be the profits on sale of land at Thirukkazhukundram. In fact, the addition includes sale proceeds of land that belongs to third parties and thus the addition has thus been made arbitrarily and without application of mind.*

(viii) *The Commissioner of Income-tax (Appeals) ought to have noted that the appellant was never engaged in the business of purchase and sale of land and the order of assessment makes unsubstantiated assumptions and presumptions in this regard. The consideration received relates to the sale of agricultural land that is wholly exempt u/s 2(14) of the Act from the levy of tax”.*

**3.** The Brief facts of the case is that the assessee is in the business of money lending and filed return of income on 28.07.208 declaring total income of ₹70,77,380/-. The assessee alongwith others have purchased agricultural lands and sold to a associate company and claimed exemption of capital gains. The Id. Assessing Officer considered the facts, land records and sale transaction of land has a reason to believe that there is a escapement of income and issued notice u/s.148 of the Act and the assessee filed letter to treat the original return filed in compliance to re-assessment notice. Further

notice u/s.143(2) of the Act was issued. Due to change of jurisdiction of the case the Id. Assessing Officer issued notices u/s.143(2) and 142(1) of the Act. The Id. Authorised Representative of assessee appeared from time to time and submitted details/documents in the re-assessment proceedings. The Id. Assessing Officer considered the submissions, evidence and Encumbrance Certificates (EC) and discussed elaborately in assessment order and observed the profit on sale of land is taxable and relied on the statements recorded and voluminous materials and completed assessment u/s.143(3) r.w.s 147 of the Act on 27.03.2015 with undisclosed profit of ₹2,66,24,500/- on sale of land located at Madhurantakkam, and ₹14,40,000/- profit on sale of land at Thirukuzhikundram. Aggrieved by the addition, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

**4.** In the appellate proceedings, the Id. Authorised Representative challenged the reopening of assessment and additions of profit on sale of land. The Id. Assessing Officer has also taxed income in the hands of the assessee in respect of survey nos which does not belong to him and the assessee was never engaged in the business of purchase and sale of land or development of housing plots. The Id Commissioner of Income Tax (Appeals) on the date of

hearing on 21.01.2016 considered the statement and submissions of Id. Authorised Representative that assessee never engaged in the business of real estate and prime facie no material with Id. Assessing Officer for reassessment proceedings. Further the lands sold are agricultural lands as per relevant records. The Id. Assessing Officer not provided opportunity to examine the correctness of evidence against the assessee requested three weeks time. The Id. Commissioner of Income Tax (Appeals) mentioned that the Hon'ble High Court of Madras disposed off the Writ Petition filed by the assessee stating that "The appellate authority is directed to dispose off the appeals for the above said assessment years within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner is also directed to participate in the appeal proceedings without seeking for unnecessary adjournments" and posted the case for hearing on 27.01.2016. On the date of hearing, the Id. Authorised Representative requested time upto 04.02.2016 to file written submissions. The request for Adjournment was not granted to the assessee as the appeal has to be disposed of within stipulated period fixed by the Hon'ble High Court. The Id. Commissioner of Income Tax (Appeals) relied on the grounds of appeal, written submissions, findings of the Assessing Officer and material on records and

discussed exhaustively on facts at page 5 to 18 of his order and dismissed the appeal. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee assailed an appeal before Tribunal.

**5.** Before us, the Id. Authorised Representative argued on the violation of principles of natural justice by Id. Commissioner of Income Tax (Appeals) in not providing adequate opportunity of hearing and passing the order without considering the realistic factual information. The Id. Authorised Representative submitted that During the pendency of appeal, the assessee approached Hon'ble High Court of Madras challenging the recovery proceedings of demand by Income Tax authority by filing writ petition and Hon'ble High Court of Madras stayed the recovery of disputed demand and directed the Commissioner of Income Tax (Appeals) to dispose off the appeal within a period of twelve weeks from the date of receipt of order passed on 27.10.2015. The Id. Commissioner of Income Tax (Appeals) as per directions of Court, clubbed the appeals of three assessment years 2008-09, 2009-2010 and 2010-2011 and posted the case for hearing on 21.01.2016 and again case was posted on 27.01.2016 as per request of Id. Authorised Representative. On said date the Id. Authorised Representative requested time for filing evidences, written submissions and pleaded to post the case on

04.02.2016 but Id. Commissioner of Income Tax (Appeals) has not considered the request and dismissed the appeals of the assessee vide order dated 29.01.2016. Immediately, the Id. AR filed a letter addressed to Id. Commissioner of Income Tax (Appeals) on 03.02.2016 by speed post expressing gross violation of principles of natural justice and the assessee was deprived adequate opportunity of hearing. The Id. Commissioner of Income Tax (Appeals) replied through letter dated 05.02.2016 that order was passed as per the directions of Hon'ble High Court to dispose off the appeal within a period of 12 weeks from the date of receipt of High Court order. The Id. Authorised Representative emphasized that the submissions of the Commissioner of Income Tax (Appeals) are factually incorrect and twelve weeks time period extends till the 1st week of March, 2016 whereas the Id. Commissioner of Income Tax (Appeals) has hurriedly passed impugned order on 29.01.2016 and the assessee was deprived to submit the material, evidence and reply to the corroborative material against the assessee relied by the Id. Assessing Officer for assessment. The order passed by the Id. Commissioner of Income Tax (Appeals) is in gross violation of principles of natural justice, which is erroneous and Bad in law. The Id. Authorised Representative to substantiate the claim has filed typed set containing documents of

land, Agreements, sale deeds and other ownership details i.e. Patta, Chitta and Adangal etc alongwith correspondence letters of Commissioner of Income Tax (Appeals) and prayed the Tribunal to decide the appeal on merits.

**6.** Contra, Id. Departmental Representative relied on the orders of the CIT(A) and objected to the letters filed after passing of order by the Id. Commissioner of Income Tax (Appeals) and vehemently opposed to the grounds.

**7.** We heard the rival submissions, perused the material on record and typed set, documents and consider the submissions, grounds and restrict to the submissions on depriving of adequate opportunity of Hearing before Commissioner of Income Tax (Appeals). The Id. Authorised Representative reiterated the submissions in assessment proceedings and drew our attention to the page no.127 of typed set were the letter dated 03.02.2016 addressed to the Commissioner of Income Tax (Appeals)-5, Chennai explaining the genuine reasons and violation of principles of natural justice were Id. Assessing Officer has conducted investigation and collected the information which was used against the assessee in assessment and the same was not furnished to the assessee for examination or opportunity was granted to respond to the materials. Further, filed

another letter dated 04.02.2016 with preliminary written submissions on violation of principles of natural justice and furnishing of valid reply on materials relied by the Assessing Officer for adjudicate which was not supplied/provided to the assessee in the assessment proceedings. The Id. Commissioner of Income Tax (Appeals) issued letter dated 05.02.2016 explaining the case and posted for hearing on 21.01.2016 as per direction of Hon'ble High Court, the appeal has to be disposed off within a period of twelve weeks from the date of receipt of order and appeal was disposed off on 29.01.2006 relying on the grounds of appeal and submissions of the assessee. The Id. Authorised Representative submitted that the period of twelve weeks from the date of receipt of order from High Court is extended upto 1<sup>st</sup> week of March, 2016 but the Id. Commissioner of Income Tax (Appeals) has passed the order without considering adjournment request upto 4.02.2016 were the assessee wants to substantiate the case in filing reply on evidence collected by the Id. Assessing Officer and written submissions. The assessee subsequently filed explanations and written submissions on 03.02.2016 & 04.02.2016. The principle of natural justice is a concept of common law and represents higher procedural principles developed by the Courts, which every judicial, quasi-judicial and administrative agency must follow while taking any decision

adversely affecting the rights of the assessee and implies fairness, equity and equality and assessee has legal right to inspect and take copies of all relevant documents, and it is a elementary principle of Natural Justice in the Law of Taxation is that the assessee should have knowledge of the material which is being used against him which assessee can defend his case. The Department cannot rely on data collected beyond the back of the assessee and without giving an opportunity to rebut the facts. Considering the apparent facts, provisions of law and principles of natural justice, material evidences and order of Hon'ble High Court, we are of the opinion that assessee should not be deprived to present the case with complete material evidence and proper opportunity of hearing should be provided before deciding the case and we remit entire file to the Id. Commissioner of Income Tax (Appeals) to adjudicate the case on merits after providing adequate opportunity of hearing for submissions before passing the order. The assessee is also directed not seek unnecessary adjournments without genuine reasons. The appeal of the assessee is allowed for statistical purpose.

**8.** Consequently, the appeals of the assessee in ITA Nos.777 & 778/Mds/2016 for assessment years 2009-2010 and 2010-2011 are

allowed for statistical purpose.

9. In the result, the appeals of the assessee in ITA Nos. 776, 777 & 778/Mds/2016 are allowed for statistical purpose.

Order pronounced on Thursday, the 9th day of June, 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:09.06.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF