

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3105/Mds/2014

निर्धारण वर्ष / Assessment Year : 2002-03

Shri K. Ramalingam (HUF),
No.135-A, Kennedy Nagar,
Suramangalam,
Salem – 636 005.

v. The Income Tax Officer,
Ward – I(3),
No.3, Gandhi Road,
Salem – 636 007.

PAN : AAHHK 3619 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Sh. S. Das Gupta, JCIT

सुनवाई की तारीख/Date of Hearing : 06.04.2015

घोषणा की तारीख/Date of Pronouncement : 10.04.2015

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), Salem, dated 28.11.2014 and pertains to assessment year 2002-03.

2. The first issue arises for consideration is addition of ₹2,35,745/- under Section 68 of the Income-tax Act, 1961 (in short 'the Act').

2. Shri G. Baskar, Ld. counsel for the assessee, submitted that the Assessing Officer made an addition of ₹2,35,745/- on the ground that profit on sale of land relating to assessment years 1996-97 and 1997-98 was not brought to the notice of the Department by way of filing return of income. The fact remains that the land was sold during the assessment years 1996-97 and 1997-98. Therefore, if at all any addition to be made, it could be made only for those assessment years. Just because of the failure of the assessee not bringing to the notice of the Department, there cannot be any addition for the year under consideration. According to Ld. counsel, both the lower authorities admitted that the income of ₹2,35,745/- was earned during the assessment years 1996-97 and 1997-98. Therefore, there cannot be any addition for the year under consideration.

3. On the contrary, Shri S. Das Gupta, Ld. Departmental Representative, submitted that the assessee claimed that he earned the income of ₹2,35,745/- on sale of land during the assessment

years 1996-97 and 1997-98. However, it was brought to the capital account during the year under consideration. Therefore, according to Ld. D.R., the provisions of Section 68 of the Act would come into operation. Since the amount was credited in the assessment year under consideration as capital, it is for the assessee to explain how the amount came into his hands.

4. We have considered the rival submissions on either side and perused the relevant material on record. Both the authorities below admitted that the assessee earned ₹2,35,745/- on sale of land during the assessment years 1996-97 and 1997-98. The only contention of the Department is that the amount of ₹2,35,745/- was brought into the capital account during the assessment year 2002-03. The fact remains that the profit was earned during the assessment years 1996-97 and 1997-98. Therefore, this Tribunal is of considered opinion that there cannot be any addition for the year under consideration. Addition under Section 68 of the Act could be made only in case the assessee could not explain the nature and source of income. In this case, the nature and source of income have been satisfactorily explained by the assessee that the sum was earned during the assessment years 1996-97 and 1997-98. Therefore, this Tribunal is of considered opinion that there cannot

be any addition of ₹2,35,745/- during the year under consideration. Accordingly, the orders of the lower authorities are set aside and the addition of ₹2,35,745/- is deleted.

5. The next ground of appeal is with regard to addition of ₹1,26,000/- being the agricultural income.

6. Shri G. Baskar, Ld.counsel for the assessee, submitted that the assessee claimed agricultural income of ₹87,000/- in the revised total income as against ₹95,000/- claimed in the original return. During the assessment proceedings, on the basis of the report of the Inspector of Income Tax, the Assessing Officer accepted the agricultural income to the extent of ₹45,000/- from Vellakkalpatty land. However, agricultural income from Murugaipadi land was rejected. According to Ld. counsel, if the Assessing Officer disbelieves the income from Murugaipadi land, then the total addition can be made only to the extent of ₹42,000/-. The Assessing Officer by taking into consideration the agricultural income claimed during the earlier assessment years 2000-01 and 2001-02, made addition of ₹84,000/- for the year under consideration. According to Ld. counsel, at the best an addition of ₹42,000/- can be made and definitely not ₹1,26,000/-.

7. On the contrary, Shri S. Das Gupta, the Ld. D.R. submitted that the Inspector of Income Tax visited the agricultural land and found that Murugaipadi land did not have water facility and it is not fit for agricultural activities. Therefore, the Assessing Officer has rightly disallowed the claim of the assessee.

8. We have considered the rival submissions on either side and perused the relevant material on record. Admittedly, the assessee claimed agricultural income of ₹87,000/- in the revised return. The Assessing Officer accepted the agricultural income from Vellakkalpatty land to the extent of ₹45,000/-,. Therefore, what is disputed is only ₹42,000/- from Murugaipadi land. The Inspector of Income Tax inspected the land only after two years from the date of cultivation. The cultivation could have been proved otherwise by the assessee by filing copies of the Village Account, namely, the Adangal (Village Account No.2). However, the assessee could not file any document either before the lower authorities or before this Tribunal. Therefore, this Tribunal has no other alternative to confirm the addition of ₹42,000/-. However, this Tribunal could not confirm the addition to the extent of ₹84,000/-, which was disallowed in the earlier assessment years 2000-01 and 2001-02. If at all there was any disallowance for the assessment years 2000-01 and 2001-02,

the same could be made only during those years and definitely not in the year under consideration, namely, 2002-03. Therefore, the order of the lower authority is modified and the Assessing Officer is directed to add only ₹42,000/-, which was claimed as agricultural income.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 10th April, 2015 at Chennai.

Sd/-
(A.Mohan Alankamony)
(ए. मोहन अलंकामणी)
लेखा सदस्य/Accountant Member

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

चेन्नई/Chennai,
दिनांक/Dated, the 10th April, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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