

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. 719/Mds/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Income Tax Officer,
Ward-2,
Income Tax Office, Ooty.

v. M/s Gurensey Estates,
'Coonoor Tea Estate'
Belmont Road, Springfield Post,
Coonoor, The Nilgiris – 643 104.

(अपीलार्थी/Appellant)

PAN : AABFE 7856 R

(प्रत्यर्थी/Respondent)

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

प्रत्यर्थी की ओर से/Respondent by : Shri G. Sarangan, Sr. Advocate

सुनवाई की तारीख/Date of Hearing : 31.05.2016

घोषणा की तारीख/Date of Pronouncement : 17.06.2016

आदेश /O R D E R

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – 3, Coimbatore, dated 15.12.2015 and pertains to assessment year 2012-13.

2. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that one of the partners of the assessee-firm brought in

three acres of agricultural land as stock-in-trade. In fact, the partner brought the land at the cost of ₹2 Crores per acre. The Assessing Officer estimated the value of the land at ₹1.70 Crores per acre and found that the assessee had incurred an expenditure of ₹30 lakhs per acre. Accordingly, for three acres of land, the excess expenditure incurred by the assessee-firm was ₹90,00,000/-. This was disallowed by the Assessing Officer under Section 40A(2)(a) of the Income-tax Act, 1961 (in short 'the Act'). The Ld. D.R. pointed out that when the assessee made the payment to one of the partners, the payment made over and above the market rate has to be construed as in violation of Section 40A(2)(a) of the Act. Therefore, according to the Ld. D.R., the Assessing Officer has rightly found that ₹90,00,000/- was paid over and above the fair market value of the land, hence, the same was disallowed under Section 40A(2)(a) of the Act.

3. On the contrary, Shri G. Sarangan, Ld. Sr. counsel for the assessee, submitted that the assessee-firm has not incurred any expenditure at all for the purpose of disallowance under Section 40A(2)(a) of the Act. According to the Ld. Sr. counsel, The partnership firm was, in fact, constituted on 10.12.1999. One of the

partners M/s Coonor Investments Ltd. brought in common stock of the firm to the extent of 3.50 acres of land as its share capital. The firm was reconstituted on 10.12.2003. One of the partners M/s Sua Finance and Investments Ltd. contributed 3.50 acres of land towards capital of the firm. The Ld. Sr. counsel further submitted that the total area of the land brought into the firm as capital was 7 acres of land and opening stock of the land as on the beginning of the financial year, i.e. 01.04.2011 was 3.93 acres of land and the same was valued at ₹1,57,27,098/-. During the year under consideration, M/s Sua Finance and Investments Ltd. has brought in 3 acres of land as additional capital contribution which was valued at ₹6 Crores. In other words, the 3 acres of land brought in as additional capital contribution was valued at ₹2 Crores per acre. The value of the land brought in by M/s Sua Finance and Investments Ltd. was credited in the partner's account. According to the Ld. Sr. counsel, the assessee has not claimed any expenditure at all in the computation of income. The value of the land brought in by one of the partners was credited in the partner's capital account.

4. Referring to Section 40A(2)(a) of the Act, the Ld. Sr. counsel of the assessee submitted that this Section may be applicable when the assessee incurs an expenditure in respect of which the payment has been or is to be made to any person. In this case, no payment was made at any point of time. The assessee was also not required to make any payment towards the cost of the land. What was brought in by the partner is the capital contribution to assessee-firm for carrying out the business. Therefore, according to the Ld. Sr. counsel, the provisions of Section 40A(2)(a) of the Act is not applicable at all. Moreover, the payment is not with regard to value of goods, services or facilities. In this case, the landed property cannot be construed as goods, service or facility. Therefore, according to the Ld. Sr. counsel, the provisions of Section 40A(2)(a) of the Act is not applicable at all.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee-firm was, in fact, originally constituted on 10.12.1999 and it was reconstituted on 10.12.2003. During the year under consideration, one of the partners, namely, M/s Sua Finance and Investments Limited brought in 3 acres of land as additional capital contribution.

A supplementary partnership deed was also executed on 20.10.2011. The additional capital contribution by way of 3 acres of land brought in by M/s Sua Finance and Investments Limited was valued at ₹2 Crores per acre and the same was credited in the partner's capital account. Therefore, it is obvious that what was brought into the firm was land by way of capital contribution by one of the partners and there is no expenditure incurred by the assessee. It is a capital for the purpose of carrying on the business of partnership firm. Therefore, as rightly submitted by the Ld. Sr. counsel of the assessee, the provisions of Section 40A(2)(a) of the Act may not be applicable in respect of the capital brought in by one of the partners.

6. Moreover, the assessee-firm / the partners valued the land at fair market value at ₹2 Crores per acre. The Assessing Officer valued the same at ₹1.70 Crores. The difference between the valuation made by the assessee/ partners and the Assessing Officer is ₹30 lakhs per acre. This Tribunal is of the considered opinion that when the fair market value of a land was estimated, no valuer could estimate the fair market value at a particular figure. The valuation is always bound to differ between one individual to another. This

Tribunal is of the considered opinion that when the Assessing Officer valued the land at ₹1.70 Crores per acre and the assessee has valued the same at ₹2 Crores per acre, the difference is only ₹30 lakhs. This difference in valuation of fair market value cannot be considered for disallowance under Section 40A(2)(a) of the Act. This Tribunal is of the considered opinion that it is nobody's case that the assessee has paid any money for taking the landed property in the books of account of the assessee-firm. In fact, it was brought in by one of the partners and the same was credited in the books of the assessee as additional capital contribution by the partner. Therefore, the provisions of Section 40A(2)(a) of the Act may not be applicable to the facts of the case. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 17th June, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 17th June, 2016.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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