

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

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

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

आयकर अपील सं./ITA No.3028/Mds/2016
निर्धारण वर्ष /Assessment Year: 2012-13

Mr. Durai Sathyamurthy,
37, Old No.44,
Subramaniyan Street,
Abhiramapuram,
Chennai-600 018.

Vs. The Dy. Commissioner of
Income Tax,
Corporate Circle-6(2),
Chennai-600 034.

[PAN: AAMPS 6003 R]

(अपीलार्थी/ **Appellant**)

(प्रत्यर्थी/ **Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Mr.V.S.Jayakumar, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr.Supriyo Pal, JCIT

सुनवाई की तारीख/Date of Hearing

: 23.01.2017

घोषणा की तारीख /Date of Pronouncement

: 09.03.2017

आदेश / O R D E R

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the Order dated 29.08.2016 of Commissioner of Income Tax (Appeals)-15, Chennai, in ITA No.153/CIT(A)-15/2015-16 for the AY 2012-13 and raised the following grounds:

1. *The order of the CIT(A) is contrary to the law, facts and circumstances of the case.*
2. *The CIT(A) erred in confirming the order of the DCIT in sustaining the addition of Rs.25.00 lakhs being the land development cost claimed by the appellant while computing the capital gains.*
3. *The lower authorities erred in ignoring the contents of the Memorandum of Understanding for development of land which was relied on by the Appellant to justify the incurring of the expenditure in question.*
4. *The lower authorities failed to note that the Memorandum of Understanding in question carried the PAN No. of the power agent and from that, it could be ascertained by the tax authorities that the MOU was signed by a person who is traceable and that the MOU is not an invalid document.*
5. *The CIT(A) failed to note the various arguments advanced by the Appellant to justify his claim.*
6. *The Appellant submits that the addition is not sustainable in law.*
7. *The Appellant craves leave to adduce additional grounds of appeal at the time of hearing.*

2.0 During the appeal hearing the assessee has filed additional grounds of appeal on 23.01.2017 for carry forward of capital loss. After hearing both the parties the additional grounds of appeals are admitted.

2.1 All the grounds of appeal are related to the addition of Rs.25 lakhs being land development cost. The assessee has filed the return of income declaring total income of Rs.60,59,744/- on 14.09.2012. This case was selected for scrutiny and notices were issued by the AO u/s.143(2) and during the pendency of scrutiny the AO conducted survey u/s.133A. The assessee filed the revised return of income on 29.03.2014 revising the total income to Rs.52,66,950/-. During the survey, it was noticed by the AO that a sum of Rs.25.00 lakhs was claimed as deduction being the development cost while computing the capital gains. The assessee sold the property of land located at No.36, Muttukadu Village, Chengalpet Taluk,

Kancheepuram District for consideration of Rs.90 lakhs and claimed the deduction of Rs.61.00 lakhs towards the cost of the land. Subsequently, a claim was made by the assessee for deduction of Rs.25.00 lakhs as development cost and the assessee has furnished a Memorandum with the Vendor for development cost. As per the MoU, the Vendor has to construct the compound wall raising the level of plot to road level and grill gate, etc. The MoU was undated and in the last paragraph of the same MoU, AO noticed that the works mentioned in the MoU were already completed and inspected by the assessee. Therefore, the AO was of the view that the assessee has purchased the developed land and no development cost was incurred subsequent to purchase of land and accordingly rejected the claim and made the addition of Rs.25.00 lakhs to the returned income.

3.0 Aggrieved by the order of the AO, the assessee went on appeal before the Ld.CIT(A) and the Ld.CIT(A) confirmed the addition made by the AO and held that there was no evidence to prove that the assessee has made any development to the impugned land. Aggrieved by the order of the Ld.CIT(A), the assessee filed appeal before this Tribunal and reiterated the submissions made before the CIT(A) and requested for admission of additional grounds.

4.0 We heard the rival submissions and perused the material placed on record.

The assessee has claimed the development cost of Rs.25.00 lakhs, subsequent to filing the return of income. According to the assessee, the expenditure was incurred for the purpose of improvement of land i.e for raising the level of plot and constructing the compound wall and gate etc.. However it was noticed by the AO from the purchase deed that the above works in MOU were already completed at the time of entering into the MoU and agreement was only make believe agreement and no further expenditure was incurred by the assessee after the purchase of the land and the agreement was executed only for the purpose of evading the capital gains tax. The assessee has not submitted any evidence to prove that subsequent to the purchase of the land the assessee has made any improvement or development and the payment to the Vendor also was not paid by cheque. It is the duty of the assessee to prove with the documentary evidence that the assessee has made improvements to the land subsequent to the purchase. The MoU produced by the assessee was undated and unregistered. The payment was also not made by cheque and hence we are unable to accept the MoU without supporting documents as valid evidence. Since, the assessee has failed to establish that the assessee has made any improvements to the land subsequent to purchase, we do not find any infirmity in the order of the Ld.CIT(A) and the

Ld.CIT(A) order is upheld and the grounds of appeal in Ground Nos. 1 to 7 are dismissed.

5.0 The assessee has raised the following additional grounds of appeal:

- a. *The Lower Authorities erred in not considering the claim of carry forward capital loss stated in the revised return filed by the assessee before the AO. The AO has not even mentioned the filing of the revised return in the Assessment Order passed u/s. 143(3) dated 24.03.2015.*
- b. *The Lower Authorities having noticed that the issue relating to the development cost amounting to Rs.25.00 lakhs is forming part of his share of 50% capital loss claimed by the Appellant, added Rs.25.00 lakhs but did not allow the carry forward of the capital loss claimed in the revised return of income.*

6.0 Additional grounds of appeal are related to the carry forward of capital loss and disallowance of whole amount in the hands of the assessee instead of 50% being the assessee was 50% shareholder. The assessee assailed the ground relating to carry forward of loss before the Ld.CIT(A) but the Ld.CIT(A) has not adjudicated this ground. We have gone through the grounds of appeal filed before the Ld.CIT(A) and in Ground No.4 in Form No.35, the assessee has raised the issue relating to carry forward of capital loss and the Ld.CIT(A) did not adjudicate the ground. Therefore, we remit the matter back to the file of Ld.CIT(A) to adjudicate the grounds relating to carry forward of capital loss and restriction of disallowance to 50% of Rs.25.00 lakhs as per law. The additional grounds relating to carry forward of capital loss and restriction of disallowance to 50% is allowed for statistical purposes.

7.0 In the result, the appeal of the assessee is **partly allowed**.

Order pronounced in the Open Court on 9th March, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 9th March, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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