

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

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER, AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.343 & 344/Mds/2017
निर्धारण वर्ष /Assessment Years: 2012-13 & 2013-14

The Asst. Commissioner of Income –
Tax, Circle-2,
No.15, Gandhiji Road,
Erode-638 001.

Vs. M/s.B.Rangaswamy Naidu –
Orchards Pvt. Ltd.,
No.14, Puliakulam Road,
Coimbatore. (Now
amalgamated with
M/s.Gestione Consulting –
India Pvt. Ltd.,
No.14, Vathiyar Thottam,
Rambaiyalur,
Chikkarasampalayam,
Sathyamangalam – 638 401).
[PAN: AABCB 2447 E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**CO No.44/Mds/2017 (in ITA No. 343/Mds/2017) &
CO No.45/Mds/2017 (in ITA No.344/Mds/2017)**
निर्धारण वर्ष /Assessment Years: 2012-13 & 2013-14

M/s.B.Rangaswamy Naidu –
Orchards Pvt. Ltd.,
No.14, Puliakulam Road,
Coimbatore. (Now amalgamated with
M/s.Gestione Consulting –
India Pvt. Ltd.,
No.14, Vathiyar Thottam,
Rambaiyalur, Chikkarasampalayam,
Sathyamangalam – 638 401).

Vs. The Asst. Commissioner of –
Income Tax,
Circle-2,
No.15, Gandhiji Road,
Erode-638 001.

[PAN: AABCB 2447 E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

:- 2 -:

Assessee by : Shri S.Sridhar, Adv.
Department by : Smt. R. Rajeswari, JCIT
सुनवाई की तारीख/Date of Hearing : 13.07.2017
घोषणा की तारीख /Date of Pronouncement : 13.07.2017

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA No.343/Mds/2017 is an appeal filed by the Revenue against the Order of Commissioner of Income Tax (Appeals)-3, Coimbatore, in ITA No.191/16-17 dated 18.11.2016 for the AY 2012-13 & ITA No.344/Mds/2017 is an appeal filed by the Revenue against the Order of Commissioner of Income Tax (Appeals)-3, Coimbatore, in ITA No.192/16-17 dated 18.11.2016 for the AY 2013-14 and CO No.44/Mds/2017 is a Cross-Objection filed by the assessee in ITA No.343/Mds/2017 for the AY 2012-13 & CO No.45/Mds/2017 is a Cross-Objection filed by the assessee in ITA No.344/Mds/2017 for the AY 2013-14.

2. Smt. R. Rajeswari, JCIT, represented on behalf of the Revenue and Shri S.Sridhar, Adv., represented on behalf of the assessee.

3. As the issues in both the appeals are identical and relating to the same assessee, for the sake of convenience, the same are heard together and being disposed off in this common order.

:- 3 -:

4. It was submitted by the Ld.DR that the assessee is a domestic company which is doing real estate business. It was a submission that the assessee had acquired a land measuring 33.64 acres at Kuruchi Village under an auction sale from the Defence Department of Government of India long ago. The assessee had entered into agreement for sale of this property with certain parties on different occasions, but transactions had not gone through on account of defects in the title deed. It was a submission that the assessee had entered into agreement with M/s.Gestione Consulting India Pvt. Ltd. (in short "M/s.GCIPL"). The process adopted was of M/s.GCIPL taking over the appellant company and consequently acquiring the said 33.64 acres of land. The agreement was for a consideration nearly Rs.8.5 Cr. However, as there was an agreement entered into by the assessee company earlier with one Smt.P.Thillaikarasi for a consideration of Rs.5.5 Cr. and as the assessee had received a better offer from M/s.GCIPL, the assessee had paid an amount of Rs.3.00 Cr. to Smt.P.Thillaikarasi for removing the encumbrance created by the agreement with Smt.P.Thillaikarasi. It was a submission that similarly an amount of Rs.2.75 Cr. was paid to Mr.Vikram Mohan by the original shareholders of the assessee company being Mr.K.Rajesh and Smt.Srivalli. It was a submission that for the purpose of returning the original title, Mr.Vikram Mohan was paid Rs.2.75 Cr. It was a further submission that similarly Rs.2.74 Cr. each was paid to

: - 4 - :

Mr.K.Rajesh and Smt.Srivalli, the outgoing shareholder so as to get the title clear. It was a submission that subsequently the assessee had incurred nearly Rs.8.50 Cr for bringing, the said land developed and ready for sale. It was submitted by the Ld.DR that as the lands were always properties of the assessee company and the payment to Smt.P.Thillaikarasi, could not be allowed as cost of improvement as the payment was made by M/s.GCIPL. It was a further submission that similarly in respect of the other expenses incurred in respect of the said 33.64 acres of land. It was a submission that the Ld.CIT(A) had allowed the expenditure claimed to be treated as the cost of the development of the land. It was a submission that the order of the Ld.CIT(A) liable to be reversed.

5. In reply, the Ld.AR submitted that 33.64 acres of land was the main asset in the hands of the assessee company. The said property suffered from various defects in its title. The assessee company had been attempting to sell the said land and the sale was not going through for a quite long time. Subsequently, M/s.GCIPL came forward to acquire the land. For the purpose of acquiring the said land, the modus operandi adopted by M/s.GCIPL was to take over the assessee company as 100% subsidiary. It was a submission that the takeover to be successful in so far as getting the possession of the said 33.64 acres of land, the

:- 5 -:

agreement with Smt.P.Thillaikarasi had to be cancelled. This had cost the assessee Rs.3.00 Cr. It was a further submission that for the purpose of purchasing the said land by takeover of the assessee company, the existing two shareholders had to be brought out. Consequently, the assessee had to pay Rs.2.74 Cr. each. It was a further submission that when the agreement for the sale of the said land had been entered into by the assessee, the original documents in respect of the said land had been kept in escrow with Mr.Vikram Mohan. It was a submission that as the original documents of the assessee company had been kept with Mr.Vikram Mohan by the outgoing shareholders, M/s.GCIPL had to pay Mr.Vikram Mohan Rs.2.74 Cr. to get the original title deed back in the hands of the assessee. It was a submission that what had actually happened was that M/s.GCIPL had by taking over the assessee company had acquired 33.64 acres of land. The land continued to be held in the name of the assessee company but the title deed of the said land had been so widely encumbered that the same could be rectified and recovered only by incurring substantial expenses which the new shareholders had to incur. It was a submission that the assessee company under the management of the new shareholders are selling the said land in piecemeal after development and now offering the profit to tax also. It was a submission that without incurring these expenditures, the assessee would never have had a clear title in respect of the said land.

:- 6 -:

It was a further submission that the Ld.CIT(A) had appreciated the facts and had also in Para No.5.4 of his order for the AY 2012-13 has held that the payments received by each of those persons are liable to be assessed and brought to tax in their respective hands under various heads. It was a submission that this finding of the Ld.CIT(A) has also not been challenged by the Revenue. It was a submission that the orders of the Ld.CIT(A) was liable to be upheld.

6. We have considered the rival submissions. A perusal of the order of the Ld.CIT(A) for the AY 2012-13, more specifically in Para No.5.1 gives the summarized facts in the assessee's case. The AO has not challenged the genuineness of the payments. The Ld.CIT(A) has specifically recognized this fact and has also recognized the fact that the liability in respect of the said land had been incurred by the erstwhile Directors of the assessee company. The assessee admittedly has incurred this expenditure clearly for protecting the title and the title deeds of the said land. The Ld.CIT(A) has categorically given finding that the intention emerging from the factum of such huge expenditures is for securing the title of the land for selling it for profit. These facts as recorded by the Ld.CIT(A) have not been disapproved by the Revenue. The AO disallowed the said expenditure by holding that the land was already the assessee company property would not suffice in so far as having possession of the

:- 7 -:

immovable property is one thing but having a clear title more so an unencumbered title in respect of the said immovable property is what increases the value of the property. The expenditure incurred by the assessee is clearly for extinguishing third party rights and clearing of getting proper and clear title of the immovable property. This being so, as the Revenue has not been able to dislodge any of the findings of the facts as arrived at by the Ld.CIT(A), we find no good reason to interfere with the order of the Ld.CIT(A). In these circumstances, the appeal filed by the Revenue stands dismissed.

7. At the time of hearing, the Ld.AR submitted that he did not wish to press the Cross-Objections as there were only in support of the order of the Ld.CIT(A). Consequently, the Cross-Objection filed by the assessee stands dismissed as not pressed.

8. In the result, the appeals filed by the Revenue and the Cross-Objections filed by the assessee stands dismissed.

Order pronounced in the Open Court on July 13, 2017, at Chennai.

Sd/-
(ए. मोहन अलंकामणी)
(A. MOHAN ALANKAMONY)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

:- 8 -:

चेन्नई/Chennai,

दिनांक/Dated: July 13, 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