

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

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं
श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1746/Mds/2016
निर्धारण वर्ष /Assessment Year: 2009-10

Shri D.Sharathram (HUF),
No.30 (Old No.45),
Kamaraj Road,
Red Fields,
Coimbatore-641 018.

Vs. The Income Tax Officer,
Non-Corporate Ward-1(1),
Coimbatore.

[PAN: AABHD 5949 N]
(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr.A.Dhananjayan, CA
प्रत्यर्थी की ओर से /Respondent by	:	Mr.S.Bharath, CIT
सुनवाई की तारीख/Date of Hearing	:	28.11.2017
घोषणा की तारीख /Date of Pronouncement	:	28.11.2017

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA No.1746/Mds/2016 is an appeal filed by the assessee against the Order of the Commissioner of Income Tax (Appeals)-2, Coimbatore, in ITA No.378/14-15 dated 30.03.2016 for the AY 2009-10.

2. Shri S.Bharath, CIT, represented on behalf of the Revenue and Shri A.Dhananjayan, CA, represented on behalf of the assessee.

3. It was submitted by the Ld.AR that the assessee had sold 6.418 acres jointly with the Kartha's mother vide three Sale Deeds dated 16.03.2009. The said Sale Deeds were, in fact, Joint Development Agreements with M/s.Rithwik Infopark Pvt. Ltd., M/s.Hanudev Infopark Pvt. Ltd., and M/s.Rithwik Infrastructure Pvt. Ltd. As the development work as per the development agreements had not been completed, the assessee had not disclosed the capital gains. It was a submission that the AO had brought to tax, the consideration mentioned in the Sale Deeds to tax under the head 'long term capital gains'. It was a submission that as the Joint Development Agreements had not been operated upon and on account of the consequent litigation, the matter was referred to the Arbitral Tribunal appointed by the Hon'ble Jurisdictional High Court of Madras. It was a submission that Arbitral Award was passed in June, 2017 wherein in point No.10 at Page No.52, it has been mentioned that the Sale Deeds dated 16.03.2009 were held as void, and the Claimant has been entitled to compensation on account of the breach of the terms of the Joint Development Agreements. The Ld.AR placed before us a copy of the Arbitral Award in Arbitration OP No.1/2016 dated 08.06.2017. It was a submission that as the Sale Deeds had been cancelled, the consequential assessment of the long term capital gains was liable to be deleted.

4. In reply, the Ld.DR submitted that the Arbitral Award was not placed before the AO. It was a submission that the issue could be restored to the file of the AO for re-adjudication after examination of the Arbitral Award.

5. We have considered the rival submissions. As it is noticed that the Arbitral Award has been passed only on 08.06.2017 and in the said Arbitral Award, the Sale Deeds dated 16.03.2009 has been held to be void, in the interest of natural justice, we are of the view that the issue of the levy of capital gains is liable to be restored to the file of the AO for re-adjudication after considering the Arbitral Award and we do so.

6. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on November 28, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: November 28, 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