

आयकर अपीलीय अधिकरण, “ए” न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL ‘A’ BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

I.T.A.Nos.3112 and 3116/Chny/2017
निर्धारण वर्ष/**Assessment Years:2009-10 & 2008-09**

Shri Surendra Kumar Nahar,
No. 20/16, Erulappan Street,
Sowcarpet, Chennai 600 079.

The Income Tax Officer,
Vs. Business Ward XII(3),
Chennai 600 006.

[PAN:AASPS6167Q]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	: Shri D. Anand, Advocate
प्रत्यर्थी की ओर से/Respondent by	: Shri AR.V. Sreenivasan, JCIT
सुनवाई की तारीख/ Date of hearing	: 25.10.2018
घोषणा की तारीख /Date of Pronouncement	: 31.10.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

Both the appeals filed by the same assessee are directed against the order of the Id. Commissioner of Income Tax (Appeals) 5, Chennai dated 11.10.2017 relevant to the assessment year 2009-10 passed against quantum addition under section 143(3) of the Income Tax Act, 1961 [“Act” in short] and the other appeal is passed under section 271(1)(c) of the Act towards levy of penalty relevant to the assessment year 2008-09 vide order dated 12.10.2017. The only effective ground raised in the appeal of the

assessee against quantum addition is that the Id. CIT(A) erred in passing ex-parte order without giving sufficient opportunity despite filing adjournment petition. Besides challenging levy of penalty for the assessment year 2008-09, the Id. Counsel for the assessee has prayed for giving one more opportunity of being heard to the assessee.

I.T.A. No. 3112/Chny/2017 [AY: 2009-10]

2. Brief facts of the case are that the assessee filed his return of income for the assessment year 2009-10 on 31.07.2009 admitting a total income of ₹.2,73,550/-. The return filed by the assessee was selected for scrutiny under CASS and accordingly against the statutory notices, the assessee filed the details. From AIR information, the Assessing Officer observed that the assessee has made a transaction in immovable property for the value of ₹.60,00,000/-, which was registered with Sub-Registrar, Triplicane. After considering the submissions and verifying the details furnished by the assessee, the Assessing Officer observed that the sale consideration of ₹.60 lakhs received by the seller (Principals) was required to be brought to tax as long term capital gains and the share of the assessee from the same works out to ₹.12,00,000/- (20%). Accordingly, the Assessing Officer added this amount as capital gains income to the total income admitted by the assessee.

3. The assessee carried the matter in appeal before the Id. CIT(A). Despite sufficient opportunities were given, none appeared on behalf of the assessee and therefore, after considering the facts of the case, the Id. CIT(A) confirmed the addition towards long term capital gains.

4. On being aggrieved, the assessee is in appeal before the Tribunal. By referring to the grounds of appeal, the Id. Counsel for the assessee has submitted that no meaningful opportunity was given to the assessee and prayed that one more opportunity of being heard to the assessee may kindly be given for presenting his case before the Id. CIT(A). On the other hand, the Id. DR vehemently argued that sufficient opportunities were given to the assessee and no more opportunity to the assessee is unwarranted.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. A property measuring 5580 sq.ft. (two grounds, 780 sq.ft.) situated at No. 37, Whites Road, Royapettah, Chennai 14 was owned by Shri N. Shanthilal Nahar, HUF and later shared with seven other family members through a memorandum of agreement dated 11.06.2007. The share of the assessee was 20% as per the said agreement. Subsequently, all the eight persons had executed a GPS on 22.10.2001 in favour of one Shri T. Vijayaragavan, 2, Chari Street, T. Nagar, Chennai for the development of fourth floor of the above property to an extent of 3678 sq.ft. Further, these eight members have entered into

construction agreements with Shri. T. Vijayaraghavan and three others whereby, 25% of constructed area and 25% of proportionate undivided share of land (UDS) in the proposed construction was to be sold to each of the four parties. The total consideration would work out to ₹.30,00,000/- (₹.15,00,000/- towards land and ₹.15,00,000/- towards built-up area). However, the actual consideration claimed to have been received by the assessee from the above transaction was ₹.1,50,000/- only and more over the same was not offered to tax in the assessment year 2002-03.

5.1 Later, the power of attorney holder, Shri T. Vijayaraghavan is said to have executed sale deed for the above 25% of UDS and constructed area of 3678 sq.ft on 04.07.2008 for a consideration of Rs.60 lakhs through document No.825/2008 registered with the sub-Registrar, Triplicane, Chennai. A copy of the relevant sale deed was also furnished. On verification of the sale deed dated 04.07.2008, the Assessing Officer observed that Shri. Vijayaraghavan has executed the sale deed as Power of Attorney holder by virtue of the deed of General Power dated 12.06.2008 registered as document No.470/2008 on the file of the District Registrar, Chennai - South. The Assessing Officer addressed to Shri T. Vijayaraghan on 13.12.2011 requiring him to furnish the details of the above property transaction and as to whether the sale consideration of ₹.60 lakhs had been admitted by him in his return for Asst. year 2009-10. In his reply dated

19.12.2011, Shri. T.Vijayaraghavan stated that no sale deed was registered in his name by the assessee and was given only a power of attorney. He further submitted that he acted only in that limited capacity in the transaction. They participated in the entire process of getting a buyer, fixing the price and finalising the sale deed. The fact that the subject property was standing in the name of the above mentioned persons before the sale and now in the name of the buyer clearly shows that the GPA holder or his family members never purchased the property. From the above, it would appear that the deed has been executed by the said Shri T. Vijayaraghavan merely in his capacity as a Power of Attorney holder and it is, therefore clear that the sale consideration as received and must be duly admitted by the Principals/ Owners viz. Shri. Shanthilal Nahar and seven others including the assessee, Shri Surendra Kumar Nahar. Since the sale consideration of ₹.60 lakhs received by the seller (Principals) was required to be brought to tax as long term capital gains and the share of the assessee from the same works out to ₹.12 lakhs (20%), which was brought to tax in the assessment. On appeal, there was no representation from assessee's side and therefore, the Id. CIT(A) confirmed the assessment.

5.2 In the grounds of appeal, the assessee has submitted that no meaningful opportunity was given to the assessee and therefore, the Id. Counsel for the assessee prayed that one more opportunity of being heard

to the assessee may kindly be given for presenting his case before the Id. CIT(A). Under the above facts and circumstances, to meet the ends of natural justices, we are of the considered opinion that the assessee should be given one more opportunity to present his case before the Id. CIT(A). Accordingly, we remit the matter back to the file of the Id. CIT(A) to consider the submissions as may be furnished by the assessee and decide the issue afresh in accordance with law. Thus, the ground raised by the assessee is allowed for statistical purposes.

I.T.A. No. 3116/Chny/2017[AY: 2008-09]

6. Against the penalty order, the facts are that the assessee filed his return of income on 31.07.2008 admitting a total income of ₹.1,59,750/-. The Assessing Officer completed the scrutiny assessment under section 143(3) of the Act by determining the total assessed income at ₹.10,51,700/-. As per the information in the AIR, the assessee had sold an immovable property for ₹.45,44,000/- on 10.12.2007. However, this transaction was not found reported in the return of income filed by the assessee. During the course of scrutiny proceedings, the assessee's representative was queried with regard to the above transaction in immovable property whereupon she filed a letter dated 22.01.2010 furnishing details of the transaction. It was found that the property sold viz., land of 640 sq.ft. at No.37, (old No.38B), Whites Road, Royapettah, Chennai-14 was part of the land and building bequeathed by

the assessee's father-in-law as Karta of HUF to the various members of the HUF. The respective shares of the members of the HUF are said to have been specifically defined in a Memorandum of Agreement dated 11.01.1987. The rest of the property was stated to have been sold between 1994 and 2000 and the capital gains reported and taxes paid. It was also claimed that the share of the assessee in the property was 20% and that the total consideration received from the sale was only ₹.10,00,000/- as documented though the guideline value was ₹.45,44,000/- and stamp duty had also been paid on the said guideline value. Later, in his letter dated 06.12.2010, the AR furnished the computation of Capital Gains accruing to the assessee from the above sale of land and arrived at a capital gains income of ₹.1,83,147/-. However, the Assessing Officer completed the assessment by adopting the guideline value of ₹.45,44,000/- as provided in Section 50C of the Act and as the assessee's share worked out to ₹.9,08,800/-(20%), capital gains of ₹.8,91,947/- was added to the income returned by the assessee. Tax on the same works out to ₹.1,83,741/-.

6.1 A notice under section 274 r.w.s 271 of the Act dated 14.12.2010 was issued to the assessee requiring the assessee to show cause as to why a penalty should not be levied in his case for concealment of the particulars of his income and furnishing inaccurate income particulars. Further, a letter dated 03.05.2011 was issued to the assessee offering him a fresh

opportunity to make his submissions, if any, with regard to the penalty notice issued. The assessee submitted a letter dated 12.05.2011 and stated that she has neither suppressed any facts nor wilfully evaded any tax and requested to drop the penalty proceedings. After considering the submissions of the assessee, the Assessing Officer observed that whatever be the quantum of income, it was incumbent upon the assessee to disclose fully and completely the particulars of his income earned during the relevant year. Since, the assessee has not admitted the transaction in the return of income filed by him, the Assessing Officer levied the penalty of ₹.1,83,741/- under section 271(1)(c) of the Act.

6.2 The assessee carried the matter in appeal before the Id. CIT(A). Despite opportunities given, none appeared on behalf of the assessee. Accordingly, after considering the facts of the case, the Id. CIT(A) confirmed the penalty levied under section 271(1)(c) of the Act.

6.3 On being aggrieved, the assessee is in appeal before the Tribunal and by referring to the grounds of appeal, the Id. Counsel for the assessee contended that the assessee had been taxed on an income which she did not receive it and to levy of penalty on that deemed income was unjust, unfair and unwarranted. The Id. Counsel for the assessee prayed that one more opportunity may be given to the assessee to present his case before the Id. CIT(A).

6.4 On the other hand, the Id. DR vehemently argued that sufficient opportunities were given to the assessee and no more opportunity to the assessee is unwarranted.

6.5 We have heard the rival contentions. Since there was no representation from assessee's side during the course of appellate proceedings against levy of penalty, after considering the facts of the case, the Id. CIT(A) passed ex-parte order by confirming levy of penalty under section 271(1)(c) of the Act. The Id. Counsel for the assessee has submitted that due to the reasons beyond his control, the assessee could not present his case before the Id. CIT(A) and therefore, prayed that one more opportunity of being heard to the assessee may kindly be given for presenting his case before the Id. CIT(A). Under the above facts and circumstances and to meet the ends of natural justice, we are of the considered opinion that the assessee should be given one more opportunity to present his case before the Id. CIT(A). Accordingly, we remit the matter back to the file of the Id. CIT(A) to consider the submissions as may be furnished by the assessee and decide the issue afresh in accordance with law. If the assessee has not availed the opportunity to present his case, then, the penalty levied under section 271(1)(c) of the Act and confirmed by the Id. CIT(A) stands sustained. Thus, the ground raised by the assessee is allowed for statistical purposes.

7. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced on the 31st October, 2018 at Chennai.

Sd/-
(S. JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 31.10.2018

Vm/-

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.