

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

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

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

आयकर अपील सं./I.T.A.No.2710/Chny/2017

निर्धारण वर्ष /Assessment year :2011-12

Smt.Ramesh Shroff,
No.2-C Gee Gee Minar,
23,College Road,
Chennai 600 006.
[PAN AAMPS 8479 F]
(अपीलार्थी/Appellant)

Vs. ACIT,
Non Corporate Circle 3,
Chennai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.D.Anand,Advocate
प्रत्यर्थी की ओर से /Respondent by : Mr.AR.V.Sreenivasan,JCIT,D.R
सुनवाई की तारीख/Date of Hearing : 11-12-2018
घोषणा की तारीख /Date of Pronouncement : 13-12-2018

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER

This is an appeal filed by the assessee against the order of the Commissioner of Income-tax (Appeals)-4, Chennai in ITA No.263/2016-17/A.Y 2011-12/CIT(A)-4 dated 21.09.2017 for the assessment year 2011-12.

2. Mr.D.Anand represented on behalf of the Assessee and Mr.AR.V.Sreenivasan represented on behalf of the Revenue.

3. In this appeal, the assessee has raised the following grounds:-

"1. The order of the learned Commissioner Of Income (Appeals)-4, is wrong, illegal and is opposed to law.

2. The learned CIT(A) ought to have that the learned Assessing officer erred in re-opening the assessment which was completed under scrutiny. The said re-opening is wrong, illegal and is opposed to law and facts of the case.

3. The learned assessing officer erred in re-opening the assessment beyond without any additional tangible material to show that income has escaped assessment.

4. The learned CIT(A) ought to have seen that while filing the return for the A.Y.2011-12 the appellant had disclosed its sale of agricultural land and also disclosed that the sale proceeds of the same were utilized by the appellant along with his wife to purchase a building at Khader Nawaz Khan Road, Nungambakkam which was classified by the Chennai Corporation, in its plan approval, as residential property.

5. The learned Assessing officer erred in law in re-opening the assessment which was subjected to scrutiny and completed under section 143(3) without any fresh tangible material evidence. The learned CIT (A) ought to have seen that it is a settled proposition of law that the assessments cannot be re-opened merely based on change of opinion.

6. The learned Assessing Officer ought to have seen that the assessee has furnished full and true particulars of its income at the time of original assessment with reference to income alleged to have escaped assessment and that the assessment cannot be validly reopened under Section 147 of the Act, even within four year merely on the basis of change of opinion.

7. The learned CIT(A) erred in law in confirming the levy of capital gains tax on sale of land at Uttandi which is classified as agricultural land by the revenue department and as per the deed of purchase made by the appellant.

8. The learned CIT(A) ought to have seen that the impugned land at Uttandi is classified as agricultural lands as per revenue records and is located 8 kms away from the nearest municipal limits or corporation and that the appellant has also carried on agricultural activity . The learned CIT(A) failed to see that the appellant had claimed the income from the sale of said land as exempt since the same is not a capital asset as per the provisions of section 2(14) (iii) of the Income tax Act.

9. The learned CIT(A) erred in law in disallowing the alternate claim made by the appellant under section 54F of the Income Tax Act. The learned CIT(A) ought to have seen that the appellant had invested the entire sale proceeds for purchase as residential flats which was classified by the development control authority and by the competent authority as residential flats."

4. It was submitted by Id.A.R that ground Nos.2 to 6 of assessee's appeal was against reopening of assessment. It was submitted that Ground Nos.7 & 8 was against the action of the Id.CIT(A) in confirming the levy of capital gains in respect of sale of land at Uthandi village, which is classified as agricultural land by the Revenue Department of Tamilnadu and as per the deed of purchase. Ground No.9 was against the action of the Id.CIT(A) in denying the assessee benefit of deduction u/s.54F of the Act. It was submitted by the Id.A.R that the original assessment had been completed u/s.143(3) of the Act on 21.01.2014 wherein the issue of the assessee's claim of treating the sale of 100 cents of land by the

assessee and his wife is liable to be treated as agricultural land, has been considered and accepted by the Id. Assessing Officer. The Id.A.R drew our attention to the paper book at page No.89, which is the copy of assessment order u/s.143(3) of the Act. Further, Id.A.R drew our attention to paper book at page No.87-88, which was the reply to the query regarding the property at Uthandi village, which had been filed before the Id. Assessing Officer on 06.01.2014 in the course of original assessment . It was a submission that return of income filed by the assessee on 30.07.2011 was shown at page Nos.1 to 7 of the paper book wherein at page-5 of paper book, the computation of long term capital gains has been shown as exempt on account of the sale of agricultural land. It was a submission that the said land was purchased on two dates being 05.06.1992 & 29.03.1994 and copies of the purchase deeds were shown from page No.9 to 44 of paper book. It was a submission that the properties were purchased as agricultural land. It was a submission that on 18.01.2011, 50 Cents of the land was sold through sale deed and the balance 50 Cents was transferred by a Power of Attorney. Copies of Sale deed and Power of Attorney for sale of Uthandi land were shown at pages 45 to 85 of the paper book. It was a submission that in the sale deed also, the property has been shown only as agricultural land. It was a further submission that the assessment order in the case of assessee's wife, Smt. Seema Shroff,

has also been completed on 14.03.2014 wherein the claim of agricultural land had been accepted. The Id.A.R drew our attention to pages 101 to 103 of Paper book relating to assessment order of Seema Shroff. It was a submission that the claim in respect of sale of agricultural land in the assessee's wife case had not been disturbed. It was a submission that on the basis of Gazettee Notification shown at pages 105 to 115 of the paper book, the Id. Assessing Officer had drawn a conclusion that the property sold was within the Chennai City Municipality Corporation and consequently, it would not be treated as agricultural land. Id.A.R drew our attention to page No.105 to submit that the said Gazettee Notification was in respect of the proposal for inclusion of certain areas within the Chennai City Limits and the territorial division was to be done for next ordinary election to be held. It was a submission that the actual notification came only on 19.07.2011 much after the sale by the assessee. The Id.A.R also placed before us copy of the decision of the Co-ordinate Bench of this Tribunal in the case of Shri N.K.V.Krishna, Chennai in Ita No.1642 & 1615/Mds./2012 for assessment year 2009-10 vide order dated 26.09.2013 wherein the Co-ordinate Bench of this Tribunal has in respect of Uthandi village given a finding at para-11 of page-10, relevant portion as follows:-

"Uthandi village came within the Corporation limits by virtue of Government Order No.97 dated 19.07.2011 and this was brought to the notice of the A.O by the assessee in his letter dated 30.12.2011(placed at paper-book page 10). Revenue has also not disputed the finding of the Ld.CIT(A) that land sold was located at a distance of more than 18 Kms away from the outer limits of nearest Municipality, which was Tambaram Municipality. It was also located more than 8 Kms away from the outer limits of Chennai Corporation."

It was a submission that reopening of assessment on the basis of Gazettee Notification was clearly a change of opinion and is liable to be struck down.

5. It was a submission that on merits, the assessee has sold only agricultural land and the sale of the agricultural land cannot be treated as giving rise to capital gains assessable u/s.45 of the Act. It was a submission that even otherwise the assessee has invested the sale consideration in constructing a residential property. The Id.A.R placed before us a copy of the letter from the Executive Engineer, Zonal Office, Greater Chennai Corporation wherein it has been clarified that building plan in respect of door No.20B/58,Khader Nawaz Khan Road, Nungambakkam, Chennai was sanctioned during the year 1995 for basement, ground floor, mezzanine floor and first floor in R.S.No.58/51,Block No.12,Nungambakkam village for residential purpose and 393.70 sq.ft. for office building in the ground floor and

the said location falls in the primary residential zone as per CMDA land use map. It was a submission that the assessee having invested in the purchase of a residential property, the same was liable to be allowed in respect of the claim of deduction u/s.54F as an alternate prayer. It was a submission that Id.CIT(A) had held that the said premises was being used for commercial purposes. It was a submission that when the property was constructed as a residential house, and only 393.70 sq.ft. of the same was for office purpose or commercial portion, the assessee should not be denied the benefit of deduction u/s.54F, at least in respect of investment made in residential property. The Id.A.R drew our attention to the purchase deed dated 03.02.2011 in respect of the house property at pages 117 to 139 of the Paper book. It was the submission that the purchase document also specified the property as house in the schedule. It was a submission that just because property has been subsequently used for commercial purpose, would not disentitle the assessee to the claim of deduction u/s.54F of the Act.

5. In reply, the Id.D.R vehemently supported the Ld.CIT(A). It was submitted by Id.D.R that Gazettee Notification clearly showed the land sold to fall within the city corporation limit as on 09.11.2010. It was a submission that the sale having taken place on 18.01.2011, the property sold cannot be treated as agricultural land. It was a submission that the Tribunal had wrongly interpreted the Gazettee

Notification in the case of shri N.K.V.Krishna referred to supra. It was a submission that benefit of deduction u/s.54F cannot be granted to the assessee in so far as the property was a commercial property. It was a submission that the order of the CIT(Appeals) was liable to be upheld.

7. We have considered the rival submissions. A perusal of the letter of assessee addressed to Id. Assessing Officer dated 06.01.2014 explaining the sale of the property at Uthandi village in the course of original assessment proceedings, which culminated in the assessment order dated 21.01.2014 clearly show that the issue has been considered by the Id. Assessing Officer in the course of original assessment proceedings. The re-opening of the same done by the Id. Assessing Officer by issue of notice u/s.148 of the Act dated 27.11.2015 on the basis of the Gazettee Notification dated 09.11.2010, is nothing but a change of opinion. In fact, the Gazettee Notification dated 09.11.2010 was very much available when the original assessment order was passed u/s.143(3) of the Act on 21.01.2014. Therefore, this is not new evidence, which has come to light. The benefit available to the Department under Explanation -2 to Section 147 of the Act also would not help to the Department in so far as the claim of agricultural land is not falling under any exemptions provided in the said Explanations. Further, perusal of the decision of Co-ordinate Bench of the Tribunal in the case Shri N. K. V. Krishna referred to

supra clearly shows that the Co-ordinate Bench of this Tribunal has categorically held that Uthandi village came within the Corporation Limit by virtue of Government Order No.97 dated 19.07.2011 and not before. This Order of Tribunal still survives. Further, the assessment order in the case of assessee's wife Smt Seema Shroff and the co-owner passed u/s.143(3) of the Act on 14.03.2014 accepting the claim on sale of agricultural land remains undisturbed. This being so, clearly the reopening being on change of opinion, the same is unsustainable and consequently quashed.

8. Even on merits, what has been sold by assessee is only agricultural land in so far as the sale deed was executed on 18.01.2011 whereas the said Uthandi village has come within the Corporation limit by virtue of the Government Order No.97 dated 19.07.2011 as has already been held by the Co-ordinate Bench of the Tribunal in the case Shri N. K. V. Krishna referred to supra. In respect of an alternate claim of assessee that the assessee has also alternatively eligible of deduction u/s.54F. Admittedly, the certificate issued by Executive Engineer, Greater Chennai Corporation clearly shows that the location of the building is in primary residential zone as per CMDA land use map and the building plan has been sanctioned for residential purpose only. Obviously, the Executive Engineer, Zonal Office, Greater Chennai Corporation is a competent person to decide

on the location map in respect of the building as also the plan approval and the Executive Engineer having given a finding and being the competent authority, obviously assessee would be entitled to claim of deduction u/s.54F, though the same is liable to be restricted to the residential portion only.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 13th December, 2018, at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A.MOHAN ALANKAMONY)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 13th December, 2018.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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