

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री रमित कोचर, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.43/Chny/2013

निर्धारण वर्ष / **Assessment Year: 2008-09**

Smt. Saheera Banu,
150/7A-D-1, Mega Star Theatre,
Salai Road,
Woraiyur,
Trichy-620 018.

v. The Income Tax Officer,
City Ward-III (1),
44, Williams Road,
Trichy-620 001

[PAN: AQDPS 8154 L]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Mr.N.Arjun Raj, CA

प्रत्यर्थी की ओर से /Respondent by

: Ms.R.Anitha, JCIT

सुनवाई की तारीख/Date of Hearing

: 04.11.2019

घोषणा की तारीख /Date of Pronouncement

: 23.01.2020

आदेश / O R D E R

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee is directed against appellate order dated 19.11.2012 passed by learned Commissioner of Income Tax (Appeals), Tiruchirapalli (hereinafter called "the CIT(A)"), in ITA No.306/2010-11 for assessment Year (ay) 2008-09, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 28.12.2010 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

- "1. The order of the Commissioner of Income Tax (Appeals) is contrary to law, weight of evidence and circumstances of the case.*
- 2. The Commissioner of Income Tax (Appeals) failed to appreciate that the purported sale deed is a sham document and has no legal value.*
- 3. The Commissioner of Income Tax (Appeals) failed to appreciate that the consideration that is essential for any contract has not passed between the parties to the contract.*
- 4. The Commissioner of Income Tax (Appeals) failed to appreciate that the pronote mentioned in the sale deed had never been executed.*
- 5. The Commissioner of Income Tax (Appeals) failed to appreciate that the parties had jointly executed a document annulling the sale.*
- 6. The Commissioner of Income Tax (Appeals) failed to appreciate that a document must be interpreted taking in to consideration the whole set of facts surrounding the transaction.*
- 7. The Commissioner of Income Tax (Appeals) ought to have appreciated that the alternate contention that the transaction is not a sale but only a gift.*
- 8. In any event the order of Commissioner of Income Tax (Appeals) is highly unjust and acts as a great hardship on the appellant.*
- 9. The appellant craves leave for raising further grounds at the time of hearing."*

3. The brief facts of the case are that assessee is in business of running cinema theatre. The only effective ground raised by assessee in this appeal with tribunal is with respect to chargeability to tax of long term capital gains earned by assessee on sale of land to her husband , which was not disclosed by assessee in return of income filed with Revenue. The assessee was owner of 1.445 acres of land which was purchased by

assessee on 18.11.1998 from one Mr. A Irudayam Antony situated at 50, Devadanam Village which falls within Trichy Municipal Corporation Limits and is not an agricultural land within meaning of Section 2(14)(iii) of the 1961 Act .The AO observed during the course of assessment proceedings conducted u/s 143(3) read with Section 143(2) of the 1961 Act that assessee has transferred 25 ½ cents of land to her husband for an total consideration of Rs. 33,43,000/- , as per registered sale document no. 1065/2007 dated 02.04.2007 registered in the office of the Joint III Sub Registry, Trichy. The AO observed that said land sold lies within Turucirappalli Municipal Corporation limits and is not an agricultural land under provisions of Section 2(14)(iii) of the 1961 Act. The AO observed from registered document that part of the consideration of Rs. 5,43,000/- was paid by cheque by husband of the assessee and for remaining amount an promissory note of Rs. 28,00,000/- was executed by buyer, husband of assessee in favour of the assessee. The AO observed that assessee did not declare long term capital gains arising from sale of said land in return of income filed with Revenue and further, it was observed by AO that guideline value of said property was Rs. 48,99,520/- as fixed by Joint III Sub Registry, Trichy. Thus, the AO by applying provisions of Section 50C of the 1961 Act computed long term capital gains on sale of said land which was computed by AO at Rs. 47,72,821/- and brought to tax while framing an assessment u/s 143(3) of the 1961 Act. This transaction of transfer of 25 ½ cents of land by assessee to her husband is

subject matter of dispute between rival parties at the first appellate level before learned CIT(A) as well before tribunal.

3.2 The AO further observed that assessee also sold 5 cents of land for a sum of Rs. 6,56,000/- as per registered document no. 956/2007 dated 19.04.2007 and the assessee had not declared long term capital gains on this transaction also in return of income filed with Revenue , which led AO to also bring to tax LTCG to the tune of Rs. 6,47,697/- on this sale transaction after invoking provisions of Section 50C of the 1961 Act, while framing assessment u/s 143(3) of the 1961 Act. The assessee did not raised any dispute at higher appellate platforms with respect to this action of the AO in bringing to tax long term capital gains on sale of 5 cents of land and thus the matter rested at peace there it self with the action of the AO in bringing to tax long term capital gains earned by assessee on the sale of this land while framing assessment u/s 143(3) of the 1961 Act.

3.3 The AO further observed that Government has compulsorily acquired 40.5 cents of land for Rs. 1,01,455/- and long term capital gains arising on this transaction was also not offered to tax by assessee which led AO to bring to tax long term capital gains earned by assessee to tax to the tune of Rs. 10,378/- . The AO however did not invoke provisions of Section 50C of the 1961 Act while bringing to tax long term capital gains on compulsory acquisition of land by Government . This matter also rested at peace as the assessee did not raise any dispute at higher appellate levels.

The AO framed assessment vide assessment order dated 28.12.2010 passed by AO u/s 143(3) of the 1961 Act.

3.4 The assessee being aggrieved by an assessment framed by the AO filed first appeal with learned CIT(A) and the dispute raised by assessee before learned CIT(A) was only with respect to transaction of transfer of 25 ½ cents of land for a purported consideration of Rs. 33,43,000/- to her husband . There is no dispute raised by assessee with respect to two other transfer for sale / compulsory acquisition entered into by assessee during the year under consideration, as elaborated by us above in preceding para's of this order. The assessee contended before learned CIT(A) that sale consideration of Rs. 33,43,000/- as is recorded in registered sale deed was never received by assessee in full and only Rs. 5,43,000/- was received by assessee and rest of the money to the tune of Rs. 28,00,000/- for which pronote was stated to be issued by her husband in favour of the assessee was never received by assessee and hence in the absence of consideration, the contract is void ab initio and has no legal consequences. The assessee contended that once contract is void ab initio then in that case there is no transfer as is contemplated u/s 2(47) of the 1961 Act. The assessee also contended that assessee has abrogated the purported sale by means of Varthamanam Deed . The assessee also contended that even payment of Rs. 5,43,000/- received by her was also returned to her husband, the buyer of the said land. The assessee also contended that it is a transaction between husband and wife and hence be

viewed as gift and no capital gain will arise which could be brought to tax. The Ld.CIT(A) disbelieved the contentions of assessee as property was conveyed through a registered sale deed and Sec.50C was also invoked to come to the conclusion that the AO has rightly added long term capital gains arising on transfer of said land of 25 ½ cents to the income of the assessee, vide appellate order dated 19.11.2012.

3.5 The assessee being aggrieved by an aforesaid appellate order passed by learned CIT(A) has filed an second appeal with tribunal. It is submitted before tribunal that property was transferred(sale) by wife(assessee) in favour of her husband for a purported consideration of Rs. 33,43,000/- . It was submitted that said transfer(sale) of property was by registered sale deed. It was submitted that consideration stated in the said sale deed was to the tune of Rs. 33,43,000/- out of which only Rs. 5,43,000/- was received by assessee and for balance amount of stated consideration , an pronote of Rs. 28 lacs was issued by husband of assessee in favour of assessee. It was submitted that admittedly registered sale deed was executed by assessee(wife) in favour of her husband. It was submitted that Section 50C was invoked by AO which is not a subject matter of challenge. The only contention raised is that this sale deed executed by assessee in favour of her husband was merely a sham transaction and said balance consideration of Rs. 28 lacs which was to be discharged by husband by way of execution of pronote in favour of the assessee was never realized by assessee . Further, it is claimed that the said amount of

part consideration of Rs. 5,43,000/- received at the time of said sale was also repaid by assessee to her husband through banking channel . The assessee has placed on record copy of affidavit dated 18th December 2010 to contend that this sale was a sham transaction . The copy of bank statement of Tamilnad Mercantile Bank Limited , Branch Tiruchirapalli bearing bank account number 09100050053204 in the name of assessee is also enclosed, to contend that an amount of Rs. 5,43,000/- so received on 03.04.2007 from husband of the assessee was refunded on 02.05.2007 to husband . The copy of Vardhamanam Deed (along with English version) which is an unregistered document is also enclosed and is placed on record in file, in which both the assessee and her husband has stated that this property will be considered to be family property and in future to be claimed by children of the assessee and her husband. It is claimed that there was a proposal to take over/acquire said land by Government (Trichy Corporation for setting up of integrated bus stand) and hence this sale transaction was entered into merely to reflect true value of land so that compensation at market rate be obtained from Government against compulsory acquisition of the said land. The assessee has also brought on record one news paper clipping published in Dinathanthi, Trichy Edition dated 30.03.2007 (alongwith English version) to show that this land was under acquisition by Trichy Corporation for setting up of integrated Bus Stand. The assessee has also placed on record announcement of enquiry by District Collector, Tiruchirappalli , dated 07.12.2007 with respect to appeal filed for additional compensation with respect to this property,

wherein, the assessee is mentioned at Sl.No.10 as one of the petitioner. The assessee has also placed on record an arbitration judgment on appeal by Trichirappalli District Collector and Arbitrator, National Highways(Land Acquisition) dated 27.08.2007 in which assessee is stated to be one of the petitioner at S.No. 10. In this judgment it is stated that assessee has appeared during course of enquiry for fixing of compensation and claim for compensation on compulsory acquisition by Government is made @ Rs. 750 per square feet for land to be acquired by Government (S.F.No. 2597- 1537 square meters wet land and S.F. No. 2600-wet land -110 square meters) and her claim for compensation was kept in abeyance and not released. Since the compensation was not released and hence her appeal for higher compensation was held to be not maintainable by District Collector. The assessee has also filed sale deed (along with English version) vide document no. 1065/2007 executed by her in favour of her husband . The assessee has also enclosed registered settlement deed dated 12.05.2014 wherein her husband has settled this property in favour of the assessee. The assessee has filed some of the documents in loose form while some documents are filed in paper book. These documents are placed in file. Even for documents filed in paper book, no proper certification is made as to which of these documents were filed before AO and/or learned CIT(A). Some of the documents are even executed post appellate order passed by learned CIT(A) and are in the form of additional evidences filed for the first time before tribunal. The Ld.Counsel for the assessee has pleaded that sale was only entered into with an object to

reflect market value of the property for claiming compensation from government as the said land was under acquisition by Trichy Corporation for setting up of integrated Bus Stand. It is prayed by learned counsel for the assessee itself that in view of peculiar factual matrix of the case and in order that evidences be verified by authorities below, the matter may be restored to the file of the AO for fresh denovo assessment on merit in accordance with law. The Ld.DR, on the other hand, submitted that registered sale deed was duly executed and property was absolutely conveyed in favour of the buyer and possession of property also handed over, the transfer is complete u/s.2(47) of the 1961 Act even if part consideration was received by assessee and assessee is liable to pay tax on long term capital gain arising on transfer of said property as transfer was complete as provided u/s 2(47) of the 1961 Act. We have considered rival contentions and perused the material on record. We have observed that assessee is in the business of running cinema theatre. We have observed that assessee was owner of 1.445 acres of land which was purchased by assessee on 18.11.1998 from one Mr. A Irudayam Antony situated at 50, Devadanam Village which falls within Trichy Municipal Corporation Limits and is not an agricultural land within meaning of Section 2(14)(iii) of the 1961 Act .The assessee has transferred 25 ½ cents of land to her husband for an total consideration of Rs. 33,43,000/-, as per registered sale document no. 1065/2007 dated 02.04.2007 registered in the office of the Joint III Sub Registry, Trichy. The said registered sale deed was executed by assessee in favour of her husband

conveying absolutely said property in favour of her husband and also possession of the said property was handed over by assessee to her husband. The assessee received part consideration of Rs. 5,43,000/- from her husband which was paid by cheque by husband of the assessee at the time of execution of sale deed and for remaining amount of consideration an promissory note of Rs. 28,00,000/- was executed by buyer, husband of assessee in favour of the assessee. The AO invoked provisions of Section 50C of the 1961 Act and applied guideline value of said property which was Rs. 48,99,520/- as fixed by Joint III Sub Registry, Trichy as the full value of consideration and computed long term capital gains on sale of said land at Rs. 47,72,821/- and brought the same to tax while framing an assessment u/s 143(3) of the 1961 Act. This action of the AO was affirmed by learned CIT(A). The case of the assessee is that she did not received entire consideration of Rs. 33.43 lacs on sale of land and the pronote of Rs. 28 lacs was never realized by her and rather she has paid back said consideration of Rs. 5.43 lacs to her husband back which was earlier received by her from her husband at the time of execution of sale deed. The assessee has produced bank statement to prove that even Rs. 5.43 lacs was repaid by her to her husband through banking channel. The copy of bank statement of Tamilnad Mercantile Bank Limited, Branch Tiruchirapalli bearing bank account number 09100050053204 in the name of assessee, to contend that an amount of Rs. 5,43,000/- so received on 03.04.2007 from husband of the assessee was refunded on 02.05.2007 to husband is also enclosed by assessee which is placed in file. Thus,

contentions are made that this entire sale transaction of 25 ½ cents of land to her husband was a sham transaction and the objective being to bring on record market value of the said land in order to get compensation from Government against acquisition of her land by Trichy Corporation for setting up integrated bus stand. The evidences to the effect that her land was under acquisition by Government is placed on record. It is also brought on record that she participated in proceedings before authorities for determination of compensation against acquired land. The assessee's land to the tune of 40.5 cents of land was compulsorily acquired by Government at a compensation of Rs. 1,01,455/- awarded by Government. The AO had brought to tax the capital gains arising on such compulsory acquisition of land by Government. The newspaper clipping , judgment by District Collector, Tricchirappalli is also brought on record to contend that acquisition proceedings were conducted by Government for acquiring land for setting up integrated bus stand. The assessee has brought on record documents such as Vardhamanam Deed, Settlement Deed and affidavit to contend that this entire sale was sham with a view to bring on record market value of said land so that compensation from Government at market value can be claimed. The guideline value of the said property is also higher as against compensation awarded by Government for compulsory acquisition of assessee property being 40.5 cents of land , as we have detailed above . The assessee has filed petition with District Collector for enhanced compensation. The details are elaborated in preceding para of this order. Certain additional evidences

are also brought on record by assessee for the first time before tribunal which are even post appellate order passed by learned CIT(A) viz. registered settlement deed dated 12.05.2014 executed by her husband settling this property in favour of assessee. The affidavit is also filed contending that the entire sale transaction of sale of 25 ½ cents of land to husband was sham transaction. These documents including additional evidences filed before tribunal including fresh contentions made by assessee before tribunal for the first time , need verification by authorities as these are fact finding exercise which requires investigation of facts to unravel truth . On the other hand the fact also remains that sale was executed by assessee vide registered sale deed wherein property was conveyed absolutely by assessee in favour of her husband and possession was also handed over by assessee in favor of her husband. Keeping in view totality of circumstances and peculiar factual matrix of the case, we are of the considered view that the assessee deserves one more opportunity and the matter need to be remitted back to the file of the AO for fresh framing of assessment denovo after considering all the explanations/evidences filed by the assessee in its defense including customary law applicable to assessee and her husband which has attained force of law and is not in conflict with specific provisions of 1961 Act and investigation of facts. We clarify that it is the assessee who is contending that sale transaction executed by her through registered sale deed in favour of her husband is a sham transaction , and thus the onus is on the assessee to prove that it was a sham transaction and it is for the assessee

to rebut the presumption that transfer was complete when registered sale deed was executed by assessee and possession handed over to husband of the assessee , by cogent evidence in de novo assessment proceedings before AO. The AO shall allow assessee to file evidences/explanations in her defense in set aside assessment proceedings which shall be admitted by the AO in the interest of substantial justice and then the issue be adjudicated on merits in accordance with law. Needless to say that the AO shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law in denovo assessment proceedings. We order accordingly.

In the result, the appeal filed by assessee in ITA No.43/Chny/2013 for ay: 2008-09 is allowed for statistical purposes.

Order pronounced on the 23rd day of January, 2020 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 23rd January, 2020.

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