

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI,
CAMP AT COIMBATORE

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.3466/CHNY/2018

(निर्धारण वर्ष / Assessment Year: 2013-2014)

Shri. P. Murugesan,
No.36, Thalavapalayam,
Karur 639 113.

Vs The Income Tax Officer,
Ward-1 and Admn,
Karur 639 001.

(PAN: AKFPM 3847G)

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by

: Smt G. Vardini Karthik, Adv

प्रत्यर्थीकीओरसे/Respondent by

: Shri J. Pavitran Kumar, JCIT.

सुनवाईकीतारीख/Date of hearing

: 07.02.2020

घोषणाकीतारीख /Date of Pronouncement

: 07.02.2020

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order passed by the Commissioner of Income Tax-1 (in short 'the CIT) Trichy, dated 05.10.2018 and pertains to the assessment year 2013-2014.

2. Smt G. Vardini Karthik, the Ld. Counsel for the assessee submitted that the assessee inherited the property on the death of his wife

alongwith two of his Children. Referring to Section 15 of Hindu Succession Act, Ld. Counsel for the assessee submitted that assessee is entitled only for 1/3rd right of the property. Therefore, he is liable to pay only 1/3rd of the tax demand. However, the entire capital gains was assessed in assessee's hand and therefore Ld. Counsel for the assessee submitted that it may be restricted to 1/3rd of the capital gains. Referring to the improvement made in the property, the Ld. Counsel submitted that there is no material proof to suggest that any improvement was made. However, in fact the assessee incurred expenditure for improving the property. Therefore, the cost of improvement be allowed for computing the capital gains.

3. On the contrary, Shri Pavitran Kumar, the Ld. Departmental Representative submitted that the assessee offered the entire capital gains for taxation. However in the assessment proceedings, the assessee claimed that he is liable only for 1/3rd of the capital gains. Therefore, the Assessing Officer rejected the claim of the assessee and assessed the entire capital gains on his hands. As far as the improvement is concerned, there is no material filed by the assessee, hence the Assessing Officer as well as the CIT(A) rejected the claim of the assessee.

4. Having heard the Id. counsel for the assessee and the Id. DR, this Tribunal is of the considered opinion that under the Hindu succession

Act, the assessee inherited property along with his two children. Therefore, the right of the assessee over the property is 1/3rd. Hence, the assessee is liable to pay capital gain only to the extent of his right in the property. In view of the above legal position, this Tribunal is of the considered opinion that the assessment has to be restricted only to the extent of 1/3rd of the capital gain arises out of the sale of the property. As far as improvement is concerned, admittedly there is no material filed either before the assessing officer or before the CIT(A) and no material is also filed before this Tribunal. Therefore, this tribunal is unable to uphold the claim of the assessee. Accordingly, the order of the assessing officer as confirmed by CIT(A) is modified and the assessing officer is directed to assess only 1/3rd of the capital gain in the hands of the assessee.

5. In the result, the appeal filed by the assessee in ITA No.3466/Chny/2018 for assessment year 2013-2014 is partly allowed.

Order pronounced in the court on 7th February, 2020 at Camp at Coimbatore.

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखासदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिकसदस्य/Judicial Member

Coimbatore

दिनांक/Dated, the 7th February, 2020.

KV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |