

आयकर अपीलिय 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 R.L. REDDY, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.40/Chny/2016  
निर्धारण वर्ष /Assessment Year: 2010-11

Shri N. Rajarajan,  
No.662, 4<sup>th</sup> Avenue,  
Anna Nagar Extension  
Chennai-600 101.

v. The Asst. Commissioner –  
of Income Tax,  
Business Circle-XIV,  
Chennai.

**[PAN: AQFPR 4579 Q]**  
**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by  
सुनवाई की तारीख/Date of Hearing  
घोषणा की तारीख/Dt. of Pronouncement

: Mr.S.Sridhar, Adv.  
: Mr.G.Chandrababu, Sr.DR  
: 23.11.2020  
: 23.12.2020

**आदेश / O R D E R**

**PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:**

This appeal arises consequent to the order of the Hon'ble jurisdictional High Court in Tax Case (Appeal) No.464 of 2017 dated 16.09.2020 for the AY 2010-11.

2. This case was heard through videoconferencing. The Ld.AR submitted that the assessee, Mr.N.Rajarajan, whose grandmother, Smt.Susila Ammal settled 3 acres of land in favour of assessee under a Settlement Deed dated 14.07.2004 out of the total land of 11.53 acres belonging to various family members. The said land was mortgaged by the

various joint owners of the property with SBI and upon default in repayments, in the proceedings before the Debts Recovery Tribunal (in short "DRT") by the Company M/s.S.Albert & Co. Ltd., which took over the partnership firm, M/s.S.Albert & Co., in which, Smt.Susila Ammal, was a partner, settled the land, in an One Time Settlement (in short "OTS") before the DRT to square up the settlement of 9.6 acres in favour of M/s.ASREC (India) Ltd., the assignee of the debt by the SBI. The land in question required to be sold and payment made to the said M/s.ASREC (India) Ltd. The assessee claimed Rs.1,06,76,905/- was part of his contribution of settlement amount of Rs.9.6 Crs. being the amount in OTS to clear up the dues. SBI, through its asset re-construction company, M/s.ASREC (India) Ltd., and therefore, claimed that said amount forms part of cost of acquisition or cost of improvement u/s.48 r.w.s.49 However, this claim was disallowed by the authorities up to the level of the Hon'ble ITAT. Therefore, the assessee filed an appeal before the Hon'ble jurisdictional High Court. The Hon'ble jurisdictional High Court in its decision in Tax Case Appeal No.464/C/2017 dated 16.09.2020 held that the contribution of the assessee to the extent of the land settled in his favour would be part of cost of acquisition or cost of improvement of the asset acquired by him as per Sections 48 & 55 of the Act. The computation of the same deserves to be gone by the Tribunal, being a fact finding body, and remitted the matter back to the ITAT to compute the cost of acquisition. In this regard, the Ld.AR inviting our attention to two sheets of paper titled as 'Allocation of Loan Settlement to SBI of 9 Cr. 60 lakhs - By sale of land at Tuticorin' and

'S. Albert & Co. and Group of Companies - Amount paid to ASREC India Ltd.' submitted that the assessee's share of selling price was Rs.2.18 Crs. and out of the total loan of Rs.9.6 Crs, the loan amount apportioned to the assessee is Rs.1.067 Crs. and pleaded the assessee's claim may be allowed. Per contra, the Ld.DR invited our attention to the relevant portion of the Assessment Order and submitted that the AO has recorded a finding that from the Sale Deed that no part of sale consideration was paid by the seller to the SBI for discharge of loan but to different persons, the property was sold in February, 2000 whereas the loan settlement took place much earlier in the year 2009 itself and therefore, no part of the sale consideration was appropriated to the loan liability of SBI by the assessee. Therefore, it is not clear from the material relied on by the assessee, which is also extracted in Table form in Page Nos.9 & 11 of the Hon'ble High Court's decision itself, as to what is the contribution of the assessee which could be considered for cost of acquisition or cost of improvement of the asset acquired by him.

3. We heard the rival submissions and gone through the relevant materials. It is clear from the Hon'ble High Court's order that the assessee's contribution to the extent of the land settled in his favour i.e. 3 acres in question would be the part of cost of acquisition or cost of improvement of the asset acquired by him as per Sections 48 & 55 of the Act. However, it is not clear from the record, how the assessee has contributed or settled the impugned sum. Therefore, we remit this issue to the AO for a fresh examination in accordance with the Hon'ble jurisdictional High Court's

decision. The assessee shall produce all original primary/secondary evidences/materials before the AO in support of his contentions so that the AO shall examine whether the assessee's contribution of Rs.1,06,96,905/- is correct or not and whether the advance of Rs.4 Crs. received from the purchaser, M/s.Martin Group dated 19.08.2009 vide Demand Draft payable to M/s.ASREC (India) Ltd., is correct fact or not, etc., and then after affording due opportunity to the assessee, compute the cost of acquisition of the property in the hands of the assessee in accordance with the decision of the Hon'ble jurisdictional High Court, supra, and redetermine the due capital gain accordingly.

4. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced on the 23<sup>rd</sup> day of December, 2020, in Chennai.

**Sd/-**  
(धुव्वुरु आर.एल. रेड्डी)  
**(DUVVURU R.L. REDDY)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**  
(एस. जयरामन)  
**(S. JAYARAMAN)**  
लेखासदस्य /**ACCOUNTANT MEMBER**

चेन्नई/Chennai,  
दिनांक/Dated: 23<sup>rd</sup> December, 2020.  
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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