

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 जयरामनलेखा सदस्य समक्

BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2664/Chny/2018

निर्धारण वर्ष/Assessment Year : 2012-13

Ms. Vasantha Rajamanickam,
B-7, 75, C.P. Ramaswamy Road,
Alwarpet,
Chennai – 600 018.

The Assistant Commissioner of
Income Tax,
Non Corporate Circle -3,
Chennai.

[PAN: AAAPR 8190G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. G. Chandrababu, Addl. CIT

सुनवाईकीतारीख/Date of Hearing

: 24.11.2020

घोषणाकीतारीख/Date of Pronouncement

: 06.01.2021

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)- 4, Chennai, in ITA No. 120/2017-18/AY 2012-13/CIT(A)-4 dated 23.07.2018 for assessment year 2012-13.

2. The assessee filed her return of income for assessment year 2012-13 and the assessment was completed u/s. 143(3) dated 02.10.2014 by accepting the returned income. Subsequently, the AO re-opened the assessment and completed the re-assessment in which the capital gains admitted by the assessee in respect of such property and assessed as such in the original assessment was re-assessed as business income. Aggrieved, the assessee filed an appeal before the CIT(A) and the Ld. CIT(A) dismissed the appeal. Aggrieved against that order, the assessee filed this appeal.

3. The case was heard through video conferencing. The Ld. AR submitted that though the assessee challenged the re-opening of the assessment, without pressing it, he would present the case on merits. The Ld. AR submitted that the assessee had purchased 15,900 sq.ft. of land at Velachery on 22.01.1996 and the property at Rayapuram was purchased in October, 1995, which was given on joint development to M/s. Vasanth Builders. The agreement entered by the assessee provided for realisation of "Service Charges" in addition to sale of UDS in land transferred by the assessee. Based on this transfer of UDS in land, the assessee had offered the income under the head business from the assessment year 1998-99 until 2001-02. Out of these flats, two flats could not find its intended buyers till financial year 31.03.2000 as the localities were not developed. Consequently, the assessee herself decided to bear the cost of construction of the unsold portions on her own. The cost of assessee's undivided share in the land and the cost of construction in these flats were recorded and

treated as fixed asset in her books for financial year 2000-01 relevant to the assessment year 2001-02. From then onwards, the corresponding rental income is admitted and assessed accordingly. The corresponding assets were admitted and assessed under Wealth Tax also. The assessee sold these flats on 24.12.2011 and admitted capital gains which was originally examined by the Assessing Officer and accepted in the scrutiny assessment. Subsequently, the Assessing Officer re-opened the assessment and treated such capital assets as business assets and assessed the income under business head. Aggrieved, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) without examining the facts and circumstances dismissed the appeal. Therefore, the Ld. AR pleaded that the assessee's appeal be allowed. Per contra, the Ld. DR submitted that the assessee purchased the land in October 1995 & on 22.01.1996 through different agreements and Power of Attorney. The corresponding sale deeds were never executed in favour of the assessee. The assessee carried out construction of residential apartments through M/s. Vasanth Builders, the assessee's firmly concern. Initially, she admitted the income under the head business. The rent realised from the remaining flats were offered and assessed under the head income from house property from assessment year 2000-01 until 2012-13. The assessee sold them on 24.12.2001 and admitted capital gains in the original return. Since the assessee did not acquire these assets and was holding them through the Power of Attorney right from the date of its acquisition, the AO has correctly treated them as business assets. On a

due consideration, the Ld. CIT(A) has correctly upheld the re-assessment. Therefore, he supported the orders of the lower authorities.

4. We heard the rival submissions and gone through the relevant material. The assessee purchased land in 1995 & 1996, given on joint development and admitted income under the head business till assessment year 2001-02 and the balance sites, flats were constructed by the assessee and she retained them under the head fixed assets. The cost of construction incurred by her were also accounted in the books of account. The assessee has been treating the impugned property as fixed assets, the income earned from them was admitted as rental income from housing property and such assets were shown in the Wealth Tax Returns filed by the assessee and assessed accordingly. During the period relevant to the assessment year 2012-13, she sold them and admitted the due capital gains in here original return, which was subjected to the scrutiny assessment and was accepted. Subsequently, the Assessing Officer re-opened the assessment, re-assessed the income already assessed under the head capital gains as business income. In the above facts and circumstances, we do not find any reasoning in the re-assessment order for changing the income from the head capital gains to the head business income. Therefore, we find merit in the assessee's submission that the AO made the re-assessment without assigning proper reasons and justification and hence it can't be upheld. We direct the AO to delete the addition made in the re-assessment order.

5. In the result, the assessee's appeal is allowed.

Order pronounced on 06th January, 2021 at Chennai.

Sd/-

(धुव्वुरुआर.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 06th January, 2021

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)
6. गार्डफाईल/GF