

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI V DURGA RAO, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1466/Chny/2019
निर्धारण वर्ष /Assessment Year: 2013-14

Smt. Krishnamurthy Kanchana,
49/1, Sathya Sai Decors,
Appu Street, Mylapore,
Chennai-600 004.
[PAN: AJAPK 3867C]
(अपीलार्थी/Appellant)

Vs. The Income Tax Officer,
Non-Corporate Ward-1(4),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri T. Banusekar, C.A
प्रत्यर्थी की ओर से /Respondent by : Mrs. R. Anita, JCIT
सुनवाई की तारीख/Date of Hearing : 10.03.2021
घोषणा की तारीख /Date of Pronouncement : 21.04.2021

आदेश / ORDER

PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-2, Chennai, in ITA No.93/2016-17 dated 05.02.2019 for the assessment year 2013-14.

2. Smt. Krishnamurthy Kanchana, the assessee, is an interior decorator having branch offices at Madurai and Coimbatore besides Chennai. While making the assessment for the A.Y 2013-14, based on the annual information return particulars, the A.O found that the assessee has sold a property for Rs. 70,00,000/- and has not offered any

capital gain. The assessee explained that the profit on sale of property was credited to contract receipts, which is included in the total contract receipts shown in the P & L account. The A.O did not accept the explanation and computed the short term capital gain. While doing so, the developmental cost claimed by the assessee was disallowed by the A.O for want of evidence. Further, the A.O found that the assessee has incurred expenditure by way of cash on various occasions and accordingly made a disallowance u/s. 40A(3) of the Income Tax Act, 1961 (in short 'the Act'). Aggrieved, the assessee filed an appeal before the CIT(A). Before the Ld. CIT(A), the assessee has submitted copies of bills and vouchers in support of developmental cost claimed by her. The Ld. CIT(A) held that the assessee did not admit short term capital gain. Since, the description of the property in the purchase deed dated 03.08.2011 and the sale deed dated 01.02.2013 remained the same, he agreed with the A.O that there is no developmental work whatsoever was undertaken by the assessee. However, he found that the A.O erred in not invoking the provisions of s. 50C of the Act and hence, issued a notice to the assessee as to why the assessment should not be enhanced and after considering the assessee's explanation, directed the AO to re-compute short term capital gain adopting the value determined by the stamp valuation authority as the full value of consideration. With regard to the disallowance u/s. 40A(3) of the Act, since the assessee has failed

to furnish the evidence towards business expediency etc. the Ld. CIT(A) sustained the disallowances made by the A.O. Aggrieved, the assessee filed this appeal.

3. The case was heard through video conferencing. The Ld. A.R invited our attention at Pg. 7 of his paper book and submitted that on 02.02.2013, Rs. 10,54,660/- has been included in the ledger account of the contract work. Thus, it was submitted that the short term capital gain from the sale of property situated in Madurai was inadvertently included to the contract receipts shown in the P & L Account. The Ld. CIT(A) without appreciating the fact upheld the addition which amounts to double addition of the same sum. With regard to the disallowance towards development cost incurred by the assessee, inviting our attention to the copies of payments and vouchers in paper book Pg. 89 to 164, the Ld. A.R submitted that these details were furnished before the Ld. CIT(A) and the Ld. CIT(A) failed to appreciate the evidences produced towards development expenditure and dismissed the appeal without appreciation. The Ld. AR further submitted that the property sold was a business asset and the Ld. CIT(A) erred in enhancing the assessment by invoking provisions of s. 50C of the Act. Inviting our attention to pages 3 & 4 of the assessment order, the Ld. AR submitted that the A.O had adopted two different figures at Rs. 42,60,000/- & Rs.

40,08,100/- towards cost of land without giving any reason. On the disallowances made u/s. 40A(3) of the Act, the Ld. A.R submitted that such disallowances can be made when an expenditure is made by way of cash on each occasion exceeds Rs. 20,000/-. The Ld. A.R inviting our attention to the Pg. 5 of the assessment order and submitted that the A.O made disallowances of Rs. 20,000/- on various occasions which is not correct as it has not exceeded Rs. 20,000/- on each occasion. Further, the Ld. CIT(A) failed in appreciating the fact that the assessee had to incur cash expenditure due to commercial expediency and due to stringent deadline and hence, provisions of s. 40A(3) of the Act r/w. Rule 6DD of the Income Tax Rules, 1962 are not invocable in the facts and circumstances of the case. Therefore, the Ld. AR submitted that the assessee's appeal may be allowed.

4. Per contra, the Ld. DR submitted that admittedly the assessee is an interior decorator. The assessee has not established that she is buying and selling of land therefore, levy of short term capital gain is in order. Since, the assessee has not established the other claims, she supported the orders of the lower authorities.

5. We heard the rival contentions, and gone through relevant material. It is clear from the assessment order that the assessee explained that the gain on sale of property was inadvertently included in the total

contract receipts. However, the A.O without examining the assessee's contentions with reference to the accounts and other facts and circumstances, merely proceeded to determine short term capital gain. As pointed out by the Ld. A.R, the A.O has adopted two different figures towards cost of the land without giving any reason. Though the assessee has not substantiated the cost of development before the A.O, but, has filed certain material before the Ld. CIT(A) which was not examined by the Ld. CIT(A). As pointed out by the Ld. D.R, the nature, facts and circumstances associated with the impugned asset has also not been examined. Considering the facts and circumstances, we deem it fit to remit the issues related to the short term capital gain back to the A.O for fresh examination and due decision. The assessee shall lay relevant material in support of her contentions before the A.O and comply with the requirements of the A.O in accordance with law. The A.O shall due examination and after affording due opportunity to the assessee shall decide these issues in accordance with law. On the issue of disallowances u/s. 40A(3) of the Act, though the assessee pleaded that there was business expediency etc., the assessee has not taken any such stand before the A.O nor filed any particulars in support of its contention before the Ld. CIT(A) therefore, we do not find any merit on such stand. However, the Ld. A.R's submission that disallowances u/s. 40A(3) of the Act can be made when an expenditure is made by way of

cash on each occasion exceeds Rs. 20,000/- find merits. Therefore, we direct the A.O to delete those disallowances which do not exceed Rs. 20,000/- on each occasion under each head.

6. In the result, the appeal filed by the assessee is treated as partly allowed.

Order pronounced on the day of 21st April, 2021 in Chennai.

Sd/-
(वी दुर्गा राव)
(V DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(एस. जयरामन)
(S. JAYARAMAN)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai, दिनांक/Dated: 21st April, 2021.
EDN, Sr. P.S

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