

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

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.271/Chny/2020
निर्धारण वर्ष /Assessment Year: 2014-15

Smt. Renu Agarwal,
No.17/12, Omkar Apartments,
Rajaratnam Street, Kilpauk,
Chennai – 600 010.

[PAN: AACPA 7597C]
(अपीलार्थी/Appellant)

The Income Tax Officer,
Non Corporate Ward-10(5)
Chennai.

Vs.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr. J. Prabhakar, C.A
: Mr. G. Srinivasa Rao, CIT

सुनवाई की तारीख/Date of Hearing

: 24.06.2021

घोषणा की तारीख /Date of Pronouncement

: 27.07.2021

आदेश / ORDER

PER SHRI V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the learned Principal Commissioner of Income Tax-3, Chennai in C No.3033(13)/PCIT-3/2018-19 dated 22.03.2019 relevant to the Assessment Year 2014-15.

2. There is a delay of 250 days in filing the appeal, for which, the assessee has filed affidavit for condonation of delay, wherein he has submitted reasons as under:

“2. Your Petitioner on receipt of the aforesaid order on 30/3/2019 approached her auditor who advised that the matter being set aside, proper explanations can be rendered before the Assessing Officer with the aid of Collaborative proof already in department's record.

3. In view of the advice given, your Petitioner did not pursue the matter so as to await the opportunity before the Assessing Officer in set aside proceedings.

4. The Assessing Officer took up the reassessment and without verifying the endorsement on the registered land document as to whether any excess stamp duty was collected, obtained information on alleged guideline value unilaterally from the SRO and made huge additions without opportunity to the appellant, vide order dated 30/12/2019.

5. On receipt of the consequential order, the appellant was legally advised that an appeal against the same may not favour the petitioner since no appeal consequent to a CIT's direction under section 263 can be decided by the first appellate authority contrary to the directions if it travel into the merits of the claim in original assessment and remedy lies only by assailing the directions of the CIT's order under section 263.

6. The tax consultant who perused the order of CIT under section 263 well as the consequential order thereto opined that there are factual and legal flaws in the approach of the CIT to treat the land sold as business asset, merely on the basis of disclosure per-se in the balance sheet, without ex-facie revealing the nature of business activity being carried thereon, especially it being classified as agricultural lands.

7. In view of the above, your appellant's failure to question the vires of proceedings under section 263 is on account of genuine advise of the petitioner's auditor to await the hearing before the Assessing Officer and she could not contemplate that the consequent assessment will be a one sided and jaundiced version on improper verification of admitted facts at the threshold during regular assessment.

8. The reason for delay in filing the appeal against the order under section 263 as explained hereinabove being reasonable and genuine, the delay in filing the appeal may kindly be condoned and the appeal be admitted on record for disposal on merits of the case.

9. There is a delay of 250 days in filing the appeal which ought to have been filed on or before 30/5/2019, considering the date of receipt of order on 31/3/2019.

10. An affidavit in support of the delay in filing the appeal is enclosed along with this petition.

11. The Hon'ble ITAT may be pleased to condone the delay of 2-52)days in filing the appeal against order under section 263 dated 22/3/2019, by admitting the appeal on record and disposing the case on merits of the issues involved.”

3. From the above, it is clear that there is a delay in filing of the appeal on the basis of wrong advice given by the Chartered Accountant. In our opinion, in the affidavit the assessee is able to explain that there is a sufficient cause to condone the delay. Accordingly, the delay is condoned.

4. So far as the merits of the case is concerned, the Ld. Principal Commissioner of Income Tax (hereafter 'PCIT') while exercising the powers conferred on him by s. 263 of the Income Tax Act, 1961 (hereafter 'the Act') passed order dated 22.03.2019 directed the A.O to re-do the assessment.

5. The Ld. PCIT invoked s. 263 of the Act on two grounds. The first ground is that as per the profit and loss account for assessment year 2014-15 an amount of Rs. 5,68,85,940/- has been admitted as business profit on sale of land at Nallur. On perusal of the deed in document No.14320/2013 dated 02.12.2013, it is seen that the property valued at Rs. 6,81,69,559/- as per the SRO value. Hence, the value of consideration received on transfer of business asset is less than the value adopted by the SRO for the purpose of stamp duty, which is not in accordance with the provisions of s.43CA of the Act is at Rs. 2,50,05,694/- which failed to bring to tax. Failure to assess this has rendered the assessment is erroneous and prejudicial to the interests

of revenue. Before the A.O, it was submitted by the assessee that the sale price is Rs. 6,81,69,559/- less cost price is at Rs. 1,12,83,619/- and profit on sale of land is at Rs. 5,68,85,940/- and the same is offered for taxation and therefore, the provisions of s.43CA of the Act will not apply.

6. The second ground is that the assessee has claimed exemption u/s. 54 of the Act at Rs. 85,10,946/- by showing investment of Rs. 1,37,61,744/- on flat in M/s. Metrozone Project P. Ltd. The A.O has noted that the ledger account of M/s. Metrozone Project P. Ltd. shows that a sum of Rs. 1,09,47,655/- have been paid towards the flat and sale agreement dated 30.10.2012 shows that the flat has been jointly allotted. The A.O ought to have considered only 50% of investment amount as recorded in the ledger for deduction u/s. 54F of the Act. The excess exemption allowed u/s. 54F of the Act has rendered the assessment is erroneous and prejudicial to the interests of revenue. On this ground, the assessee has submitted that the amount has entirely paid by the assessee but the assessee being an old aged woman for precautionary measure her daughter Navita Bihani name was added in the agreement.

7. The Ld. PCIT after considering the explanation of the assessee, he came to the conclusion that the A.O has not examined profit on sale

of land at Nallur declared by the assessee and also the claim of the assessee u/s. 54F of the Act without examining the details simply passed the assessment order dated 30.12.2019 which is erroneous and prejudicial to the interests of the revenue.

8. Before us, the counsel for the assessee has submitted that the A.O has examined all the details filed by the assessee. Accordingly, the assessment has completed u/s. 143(3) of the Act on 30.12.2019. Hence, the order passed by the Ld. PCIT is to be cancelled. He further submitted that the order passed by the A.O as neither erroneous nor prejudicial to the interests of the revenue therefore, the order passed by the A.O has to be sustained.

9. On the other hand, the Id. D.R has submitted that the A.O without examining the issues simply passed the assessment order which is erroneous or prejudicial to the interests of the revenue.

10. We have heard both the sides through video conferencing, perused the materials available on record and gone through the orders of the authorities below.

11. In this case, the A.O has completed assessment u/s. 143(3) of the Act dated 30.12.2019. The same was taken up by the Ld. PCIT for examination u/s. 263 of the Act and found that the A.O has not

examined in respect of business profits on sale of land at Nallur, which is erroneous and prejudicial to the interests of revenue. He has also pointed out that the claim of assessee u/s. 54F of the Act is fully allowed, where only 50% has to be allowed. We have gone through the order of the Ld. PCIT, we found that there are two issues as pointed out by the Ld. PCIT. In our opinion, the A.O has not made any enquiry/investigation to complete the assessment u/s. 143(3) of the Act. Thus, the Ld. PCIT rightly set aside the order passed by the A.O and directed the A.O to pass fresh assessment order in accordance with law. Hence, we find that no interference is called for in this case. Accordingly, we dismiss the appeal filed by the assessee.

12. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 27th July, 2021 in Chennai.

Sd/-

(एस. जयरामन)

(S. JAYARAMAN)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai, दिनांक/Dated: 27th July, 2021.

EDN/-

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

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