

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लक्ष्मणसदस्य का समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.674/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2012-13)

Shri V.S.Gokul 60, Sakthi Enclave, Narayana Guru Road, Saibaba Colony, Coimbatore-641 011.	बनाम/ Vs.	The Income Tax Officer Ward-2(4), Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AKJPG-1402-F		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri N.C.Ravi Krishnan, Advocate
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri ARV Sreenivasan – Ld. Addl. CIT

सुनवाईकी तारीख/ Date of Hearing	:	13/10/2021
घोषणाकी तारीख / Date of Pronouncement	:	03/11/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals)-2, Coimbatore, [CIT(A)] dated 26/02/2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s 147 of the Act on 28/12/2016. The ground read as under: -

1. The learned Commissioner of Income Tax (Appeals) has erred in law and in facts by treating a non-recurring single transaction of purchase of residential house (capital asset) as business transaction u/s 28[iv] of the I.T. Act. The learned Commissioner of Income Tax (Appeals) has failed to consider

that one time purchase of capital asset for self-occupation is not trade or adventure in the nature of trade to constitute a business transaction as defined u/s 2(13A) of the I.T. Act.

2. The learned Commissioner of Income Tax (Appeals) has erred in law and in facts by treating notional alleged profit from purchase of capital asset which ought to be considered under Income from Other sources head, wrongly as business transaction. The learned Commissioner of Income Tax (Appeals) has failed to consider that no business profit can be earned in a single transaction of purchase of capital asset of residential house.

3. The learned Commissioner of Income Tax (Appeals) has erred in law and in facts by shifting a transaction dealt by law under head other sources to business head only for the purpose of sustaining tax on such transaction, Since the Commissioner of Income Tax (Appeals) was made cognizant of the law that section 56(2)(vii)(b) of the I.T. Act was applicable only from AY 14-15 and not from AY 12-13.

As evident, the assessee is aggrieved by confirmation of certain additions u/s 28(iv). Having considered factual matrix and rival submissions, our adjudication would be as under.

2. The material facts are that during assessment proceedings, it transpired that the assessee was a partner in a partnership firm namely M/s V.R.Nachimuthu (CBE). The firm sold two flats having aggregate area of 3230 square feet to the assessee at the rate of Rs.3000/- per square feet. However, the firm sold flats to other buyers at the rate of Rs.4000/- per square feet. Therefore, Ld. AO invoking the provisions of Sec. 56(2)(vii)(b), arrived at average rate of Rs.3650/- per square feet and added the differential of Rs.20.99 Lacs to the income of the assessee as 'income from other sources'. The average rate of Rs.3650/- was the rate which was taken in the assessment of the firm.

3. During appellate proceedings, Ld. CIT(A) concurred with assessee's submissions that the additions could not be made u/s 56(2)(vii)(b)(ii) since these provisions came into existence later on and would not apply to AY 2012-13. However, there was benefit to the assessee to the extent of Rs.250/- per square feet which would be

taxable u/s 28(iv) since the benefit is from firm to a partner and accordingly, Ld. AO was directed to make addition of Rs.8.30 Lacs u/s 28(iv) of the Act. Aggrieved, the assessee is in further appeal before us.

4. Upon due consideration of factual matrix, it could be gathered that the assessee has received certain plots of land from his partnership firm at the rate of Rs.3000/- per square feet. The Ld. AO, invoking the provisions of Sec. 56(2)(vii)(b), added an amount of Rs.650/- per square feet to the income of the assessee. However, as rightly observed by Ld. CIT(A), these provisions were not applicable for the year under consideration. It could also be seen that the assessee was not engaged in any business but earning income by way of partner's salary and interest income. The property received by the assessee at a negotiated price from the firm could not have been added u/s 28(iv) for the reason that it is not in the nature of any benefit or perquisite arising from the business of the assessee. What the assessee has received is a capital asset at negotiated prices. Therefore, not convinced with the reasoning of Ld. CIT(A), we delete the impugned addition of Rs.8.30 Lacs and allow the grounds raised before us.

5. The appeal stands allowed.

Order pronounced on 3rd November, 2021

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

चेन्नई Chennai; दिनांक Dated : 03/11/2021
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, चेन्नई / DR, ITAT, Chennai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, चेन्नई / ITAT, Chennai