

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं डॉ एम एल मीना, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
Dr. M.L. MEENA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **220/CHNY/2019**
निर्धारण वर्ष /Assessment Year: 2015-16

Shri S. Rajeswaran,
No.31, (Old 14), Bharathi Salai,
First Street, Perambur,
Chennai – 600 011.

The ACIT,
v. Non-Corporate Ward 10(1),
Chennai.

PAN: AGRPR 6295H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri Anandd Babunath, FCA
: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 16.03.2022

घोषणा की तारीख/Date of Pronouncement

: 31.03.2022

आदेश /O R D E R

PER BENCH:

This appeal by the assessee is arising out of the order of Learned Commissioner of Income Tax (Appeals)-12, Chennai in ITA No.5/CIT(A)-12/2018-19 dated 31.12.2018. The assessment was framed by the ACIT, Non-corporate Ward 10(1), Chennai for the assessment year 2014-15 vide order dated 29.12.2017 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. At the outset, the Id.AR for the assessee stated that the order of CIT(A) is ex-parte and the CIT(A) has not considered the issue of claim made by assessee u/s.54F of the Act and also has not considered the issues of capital gain for property at Millers Road, Rallapadi Village property, income from house property and also cash deposits. In regard to all these issues, the AO's adjudication were simply considered by CIT(A) as under:-

9.1 The appellant has submitted that the AO had applied the restrictive provisions of Section 54F disregarding the fact that the property was settled only in favour of his father, The disallowance has been made correctly by the AO, As per section 54F(3) of the IT Act, where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub- section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred. It is clear in the appellant's case that he has not complied with the conditions specified therein by transferring the new asset before the prescribed period. The disallowance is confirmed.

11. I have examined the facts of the case. As brought out by the AO, the building has been constructed only recently and the capital gain needs to be computed separately. The AO has rightly computed the Long Term Capital Gains for land and Short Term Capital Gain (loss) for building separately. Indexation has been given for the cost of land. Brokerage claimed was not allowed in the absence of any evidence. Addition of Rs.85,45,371/- has been correctly done and the same is confirmed.

12. In this regard, no further arguments or submissions placed by the AR of the appellant. The computation of capital gains has been correctly done and the same is confirmed.

13. No submission has been filed in respect of the addition. No repair expenses can be claimed over and above the statutory deduction. No satisfactory evidences produced to show that loans were taken for the purpose of purchase/construction/improvement of the property. In the absence of the above, addition is confirmed.

14. The appellant has not given any satisfactory explanation for the above cash deposits both during assessment proceedings and the appellate proceedings. The deposit of Rs 17,00,774/- remains unexplained. Addition is confirmed.

6. No evidence has been submitted regarding any Investment made for the purpose of exemption under section 54 or section 54F of the IT Act. Therefore, no claim has been entertained during the appeal proceedings.

15. The additions made in the Assessment Order is confirmed.

In view of the above, the Id.AR stated that even the CIT(A) noted that none appeared and no further submissions were filed. The Id.AR stated that the CIT(A) has violated the principles of natural justice as the assessee has filed complete written submissions before him but were not considered. The Id.AR before us stated that the CIT(A) was keen on completing the case without providing reasonable opportunity to submit the paper book in support of grounds of appeal. The Id.AR further stated that the chartered accountant who had filed the

assessee's return of income was nonagenarian and discontinued the practice. It was difficult for the assessee to get details and particulars from the chartered accountant hence time was sought for filing details. When those records were received, the CIT(A) had disposed off the appeal of assessee upholding the order of AO. When these facts were confronted to Id. Senior DR, he agreed for adjudication on merits.

3. After hearing both the sides and going through the facts of the case, we noted that the order of CIT(A) is ex-parte and he has not considered the issues raised on merits. Hence, we set aside the order of CIT(A) and remand the matter back to his file for fresh adjudication.

4. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the court on 31st March, 2022 at Chennai.

Sd/-

(डॉ एम एल मीना)

(Dr. M.L. MEENA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 31st March, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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