

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.: **2960 & 2961/CHNY/2018**
निर्धारण वर्ष /Assessment Year: 2015-16

The Income Tax Officer,
Non-Corporate Ward 13(3),
Chennai.

Shri R. Jayakumar,
v. 14, New Vinayagar Street,
Nanganallur,
Chennai -600 061.

(अपीलार्थी/Appellant)

PAN: AFNPJ 6563R
(प्रत्यर्थी/Respondent)

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

: Shri AR. V. Sreenivasan, Addl. CIT
: Smt. R. Sridevi, Advocate

सुनवाई की तारीख/Date of Hearing

: 05.04.2022

घोषणा की तारीख/Date of Pronouncement

: 11.04.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

These appeals by the Revenue are arising out of the common order of the learned Commissioner of Income Tax -14, Chennai in ITA No.100 & 88/CIT(A)-14/2017-18 dated 30.07.2018. The assessments was framed by the ITO, Non-Corporate Ward 13(3), Chennai for the assessment years 2015-16 u/s.143(3) of the Income Tax Act, 1961

(hereinafter 'the Act') vide order dated 29.12.2016. In ITA No.2961 of 2018, the impugned order of the AO is passed u/s.154 of the Act, rejecting rectification u/s.154 of the Act vide order dated 06.02.2018

ITA 2960/CHNY/2018

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by the AO on account of long term capital gains to the extent of Rs.7,36,02,980/-

3. Briefly stated facts are that the assessee has claimed deduction u/s.54 of the Act for an amount of Rs.6,97,60,030/- on long term capital gain of Rs.6,89,39,241/-. The AO noted in his assessment order that as per information from AIR, the assessee has sold an immovable property (vacant land) at NSN Garden, 50 Feet Road, Voltas Colony, Nanganallur, Chennai - 600 061, admeasuring 16400 sq.ft., comprised in survey No.57/1(part), 59/1.59/2 and 58/3B (part) assigned Town Survey No.85/1, Block No.16 situated at Thalakan cherry Village, Alandur Taluk, Kancheepuram District for a consideration of Rs.7,38,00,000/- to M/s. Vetrivel Minerals on 08.08.2014 vide sale deed No.3228 of 2014 registered with SRO, Alandur. The assessee has invested the above sale consideration in the following properties:-

1.	Purchase of land at Minjur	29/09/2014	89,21,060
2.	Purchase of land at Pallavakkam	20/10/2014	75,22,000
3.	Purchase of Property at Ullagaram	21/09/2014	1,01,17,470
4.	Purchase of Residential House at Nanganallur	12/09/2015	4,41,00,000

The above sold land by the assessee was acquired through a release deed dated 19.02.2010 vide deed No.536/10 and the extent of land that was released was 16400 sq.ft. The value of the property released is Rs.30 lakhs as per release deed. The assessee in the return of income claimed exemption of long term capital gain u/s.54 of the Act to the extent of Rs.7,46,20,789/- and subsequently vide letter dated 13.09.2017 withdrew all claims u/s.54 of the Act, but restricted the claim only to the house property in which investment was made to the tune of Rs.4,31,99,500/-, purchase of residential house at Nanganallur dated 12.09.2015. The AO noted that the sale has taken place on 08.08.2014 and the assessee has neither deposited the unutilized sale proceeds in the capital gain account scheme nor made investment in new assets i.e., purchase of house property before the due date of filing of return i.e., on or before 07.09.2015, whereas the assessee has purchased a residential house only on 12.09.2015 / 16.09.2015. The AO has not allowed the claim of deduction u/s.54F of the Act in regard to long term

capital gain invested in purchase of residential house by observing in para 14 as under:-

“14. The assessee’s claim of deduction u/s.54 / 54F is not an allowable deduction for the reasons summarized below:

(a) The assessee has failed to deposit the un-appropriated capital gains in the capital gains account within the due date of filing of return of income u/s.139(1).

(b) The assessee has purchased /constructed 2 residential houses and one shop (commercial building) in his name and 3 residential houses in the name of his wife out of the sale proceeds. All the properties are assessed as separate residential /commercial units by the Municipality Authorities. Hence, the assessee failed to satisfy the conditions in Proviso (a)(ii) & (iii) to section 54F(1) of the Income Tax Act, 1961.”

3.1 As regards to adoption of cost of acquisition as on 01.04.1981, the assessee claimed the indexed cost of acquisition at Rs.48,60,759/- and the AO after taking report from the Sub-Registrar, Alandur and SRO of Thalakkanchery Village, S.Nos.58/3B, 59/1 and 59/2 as on 01.04.1981, the guideline value was given at Rs.20,000/- per acre and for S.Nos.57/1 was estimated at Rs.20,000/- per ground as per his records. Accordingly, the AO adopted the cost of land as on 01.04.1981 at Rs.1,36,800/- thereby the AO computed the indexed cost of acquisition on the date of sale at Rs.1,97,020/-. The AO added the long term capital gain at Rs.7,36,02,980/- and assessed the income accordingly. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) after considering the submissions of the assessee and the issue dealt by the AO in the assessment order noted that the assessee has claimed deduction u/s.54F of the Act, in regard to only one asset. The CIT(A) also noted that the reinvestment in the new asset is well within the due date of filing of return u/s.139(4) of the Act, under which the assessee has extended time limit for filing of return of income. The CIT(A) noted that there was delay of only 9 days for registration of new asset due to certain compelling reasons because of defects in the Power of Attorney. Accordingly, he allowed the claim of assessee u/s.54F of the Act by observing in para 4.6 as under:-

“4.6 After considering the appellant’s argument with supporting documents, I am of the considered opinion that the AO has first of all misunderstood that the appellant had claimed of deduction u/s.54F for multiple assets whereas the appellant has claimed for only one residential property. Now, coming to the issue whether the appellant is entitled to claim deduction u/s.54F for the reinvestment in the new asset which was made with a delay of 9 days from the due date for filing return of income u./s.139(1) but before the due date prescribed u/s 139(4), in view of the decisions relied on by the appellant’s AR the appellant is entitled to claim deduction u/s.54F.”

4.1 In regard to claim of cost of acquisition by adopting fair market value as on 01.04.1981 and the cost of improvement during that period, the CIT(A) noted that adoption of fair market value as on 01.04.1981 is that the assessee’s father acquired this property by way of purchase deed No.1746 of 1950 registered on

26.03.1950. The CIT(A) also noted that the AO adopted the cost of acquisition of land as on 01.04.1981 at Rs.20,000/- per acre as against the same, the assessee submitted the Registered Valuers report based on guideline value, according to which the fair market value as on 01.04.1981 for the land at Nanganallur works out approx. to Rs.30,000/- per ground and accordingly indexed cost of acquisition adopted at Rs.20,99,200/-.

4.2 As regards to the cost of improvement, the CIT(A) noted that as per contractors bills, the assessee has incurred an expenditure towards refilling with soil, excavation of earth work costing to Rs.16,40,000/- and for that indexed cost of improvement works out to Rs.64,84,015/-. This was in financial year 1994-95. Similarly, as per the contractor bills, the assessee has incurred certain expenditure in financial year 2003-04 towards fencing, gating, cement, concrete block, etc., to the extent of Rs.19,00,000/- and the indexed cost comes to Rs.42,02,160/-. Similarly, as per contractor's bills, the assessee has incurred certain expenditure towards clearing bushes, labour and material supplied in financial year 2009-10, which works out to Rs.18,00,000/- and the indexed cost of the same works out to Rs.29,16,456/-. Apart from the above, the assessee also submitted that he has gifted certain

portion of land to Municipal Commissioner through a release deed in financial year 1994-95 and the cost of the land as per Municipal records is Rs.13,31,580/-. The CIT(A) treated this as indexed cost of acquisition and worked out the same at Rs.52,64,623/-. The Revenue now before us has challenged the adoption of cost of improvement as well as land gifted to Municipal Commissioner i.e., certain portion of land through release deed, the same cannot be considered as cost of improvement. The Revenue also challenged the value adopted by CIT(A) on the basis of Registered Valuer's Report as on 01.04.1981 at Rs.20,99,200/- per ground as against the cost of acquisition of land adopted by AO at Rs.20,000/- per acre. The CIT(A) allowed the claimed of assessee vide para 4.10 and 4.11 as under:-

4.10 The detailed working of Long Term Capital Gain submitted by the appellant's AR before the CIT(A) is annexed to this appeal order. The working of Long Term Capital Gain is summarized as under:-

Total Sale consideration of vacant land	:	Rs.9,38,00,000
Less: Indexed cost of acquisition	:	Rs. 20,99,200
Less: Indexed cost of improvement	:	Rs.1,88,67,255
Long Term Capital Gain	:	Rs.7,28,33,545
Less: Deduction u/s 54F	:	Rs.3,42,42,637
Taxable Long Term Capital Gain	:	Rs.3,85,90,908

4.11 I have compared the Long Term Capital Gain worked out by the AO of Rs.7,36,02,980 (without considering the appellant's claim of deduction u/s 54F) with the appellant's computation of Long Term Capital Gain of Rs.7,28,33,545/. There is a difference of Rs.7,69,435 only. I consider the appellant's computation of Long Term Capital Gain acceptable for the following reasons:-

- (a) The AO is not correct in estimating FMV as on 1.4.1981 without any basis i.e., reliable data or documentary evidence.
- (b) Since the AO has adopted cost of acquisition as on 1.4.1981, he ought to have considered the cost of improvement since that date.

5. We have heard rival contentions and gone through facts and circumstances of the case. The facts are clear that the assessee acquired this land by way of release deed dated 19.02.2010 vide deed No.536/10 and the extent of land was 16400 sq.ft. This land was acquired by assessee's father vide sale deed No.1746 of 1950 registered on 26.03.1950. The assessee sold this land for a consideration of Rs.7.38 crores on 08.08.2014 and made investments in purchase of land at Minjur, purchase of land at Palavakkam, purchase of property at Uallagaram and purchase of one residential house at Nanganallur for cost of Rs.4,41,00,000/- dated 12.09.2015. The assessee before AO as well as CIT(A) and even now before us claimed that purchase of residential house at Nanganallur was claimed as deduction u/s.54F of the Act. The assessee has invested this amount in purchase of residential house and he has not made any other claim of deduction u/s.54F of the Act. Admittedly, the assessee reinvested in the new asset within the due date of filing of return u/s.139(4) of the Act and not u/s.139(1) of the Act. It is also admitted position that there was

only a delay of 9 days for registration of new asset due to certain compelling reasons as there were defects in the power of attorney and due to that the assessee has to re-register the power of attorney and accordingly, the sale deed has to be executed. Finally, the assessee registered the sale deed of this residential house on 12.09.2015 whereas the due date for filing of return u/s.139(1) was 07.09.2015, as noted by the AO in his order. Practically there was delay of some days. We noted that this issue has been considered by Hon'ble Karnataka High Court in the case of Fathima Bi vs. ITO, ITA No.435 of 2004, dated 17.10.2008 and Hon'ble Gauhati High Court in the case of CIT vs. Rajesh Kumar Jalan, (2006) 286 ITR 274. Accordingly, we are of the view that the assessee is entitled for claim of deduction of the investments made in purchase of residential house at Nanganallur for an amount of Rs.4.41 crores and the AO will re-compute the deduction accordingly.

6. Coming to the claim of indexed cost of acquisition, the assessee has made claim as regards to expenditure incurred towards refilling with soil and evacuation of earth work, costing Rs.16.40 lakhs for the financial year 1994-95 and the indexed cost of which works out to Rs.64,84,015/-. Further in financial year 2003-04, as per contractors bills, the assessee incurred expenditure

towards fencing, gating, cement, concrete blocks, etc., to the extent of Rs.19,00,000/- and the indexed cost of improvement works out to Rs.42,02,160/-. Similarly, in financial year 2009-10, as per contractors bills, the assessee incurred expenditure towards clearing bushes, labour and material supplied which works out to Rs.18,00,000/- and the indexed cost of improvement comes to Rs.29,16,456/-, which the Revenue has not negated. Hence, we feel that these three items can be allowed. We direct the AO accordingly.

7. As regards to the claim of assessee that in financial year 1994-95, the assessee has gifted certain portion of land through a release deed to Municipal Commissioner, same should be taken as cost of improvement. The cost of said portion of land works out to Rs.13,31,580/- and assessee has claimed indexed cost of acquisition at Rs.52,64,623/-. We cannot accept the argument of assessee or the findings of CIT(A) that this indexed cost is to be allowed for the reason that the land has already been gifted by assessee to Municipal Commissioner through release deed and for that portion, the assessee is not entitled because the land is already gifted and no improvement in land is made. According to us, that cost cannot be attributed for claim of cost of improvement and

consequently indexed cost, for the purpose of Section 48 of the Act. Hence, we direct the AO to remove this amount while computing indexed cost of improvement and recomputed the capital gain accordingly.

8. In view of this, the appeal in ITA No.2960/CHNY/2018 for assessment year 2015-16 is partly allowed as indicated above.

ITA No.2961/CHNY/2018

9. The only issue in this appeal of Revenue is as regards to the order of CIT(A) allowing additional sale consideration of Rs.2 crores while computing long term capital gain as there is no evidence to support the claim of assessee. For this Revenue has raised various grounds, which are argumentative and need not be reproduced.

9. Briefly stated facts are that the relevant assessment year is 2015-16 and the assessment was framed by the AO vide order dated 29.12.2017 u/s. 143(3) of the Act. The assessee after completion of assessment and even after filing of appeal before CIT(A) i.e., during appellate proceedings before CIT(A) against the assessment order passed u/s.143(3) of the Act, moved rectification application dated 27.01.2018, whereby the assessee claimed that

he has received a sum of Rs.2 crores in cash i.e., additional sale consideration. The AO rejected the application vide order dated 06.02.2018 by observing as under:-

On going through your application for rectification u/s 154 of the IT Act, of the assessment order passed for the A.Y. 2015-16, as your case does not deserve any merits to rectify u/s 154, your application dated 28.01.2018 is hereby rejected.

10. Aggrieved assessee preferred appeal before CIT(A). The CIT(A) admitted the claim of assessee simply by stating that the assessee sold the said land for Rs.9.38 crores (initially declared sale consideration of Rs.7.38 crores + additional sale consideration admitted by the assessee of Rs.2 crores in the revised return). Thereafter the CIT(A) has always taken the sale consideration at Rs.9.38 crores but has not stated how this Rs.2 crores is sale consideration. Aggrieved, Revenue is in second appeal before Tribunal.

11. Before us, the Id. senior DR stated that the CIT(A) without any evidence considered the additional sale consideration of Rs.2 crores offered by the assessee by way of rectification application filed by assessee on 27.01.2018 before the AO. The Id.Senior DR stated that the CIT(A) has not at all considered how this additional sale consideration was received by the assessee and how this was not

considered at the time of registration of sale deed or even while filing return of income originally. Even the plea was not taken during the course of assessment proceedings as the assessment order was completed vide order dated 29.12.2017 u/s.143(3) of the Act. The assessee moved this rectification application u/s.154 of the Act on 27.01.2018 (this is visible from the stamp of the post office pasted on the application) and this application was rejected by the AO vide order dated 06.02.2018. Vide this application, the assessee has made this additional sale consideration disclosure vide para 4 of the application, which reads as under:-

4. In the above circumstances even though I instructed my authorized representatives to make a complete disclosure, I came to know only later that there was an inadvertent omission to admit the additional sale consideration of Rs.2,00,00,000/- which I received in cash and deposited in the bank account of myself and my wife Sangeetha. The said omission is now willful/deliberate and was caused by tragic circumstances stated above. I request that the said additional amount may now be included in the capital gains computation, in addition to Rs.7,38,00,000/- (recd. by cheque which I had admitted already. I had also paid self-assessment tax of Rs.65,99,730/- on 24.1.2018 on the said additional sale consideration which may kindly be given credit. I request you to kindly regularize it by initiating necessary rectification / re-assessment proceedings to include the said amount and I may also be allowed necessary reliefs allowed under the Act.

5. While going through the order of assessment for the above year, I noticed the following errors which had crept in. I humbly request you to correct the same.

11.1 The Id.Senior DR in view of the above, stated that the assessee want to claim deduction of long term capital gain on higher amount and pay lower rate of tax and accordingly he made this plea of additional sale consideration received. The Id.DR stated that the assessee has not given even the dates of deposits made in the bank account and even otherwise on jurisdiction also this is highly debatable issue, this cannot be considered while adjudicating the issue u/s.154 of the Act. He stated that u/s.154 of the Act, the scope is very limited that mistake happened from record can be rectified and not the additional claim of additional sale consideration of Rs.2 crores received in cash and whether the same is additional sale consideration or unaccounted income of the assessee. In term of this, the Id.senior DR, asked the Bench to straightaway dismiss the appeal of assessee.

12. On the other hand, the Id.counsel for the assessee could not controvert the above arguments of Id.senior DR.

13. After hearing rival contentions and going through the facts and circumstances of the case, the admitted facts are that the assessee made this claim after completion of assessment just before the date of passing of the first appellate order i.e., 24.01.2018 and

application is dated 27.01.2018, which was received in the office of ITO on 28.01.2018. We noted that the claim of additional sale consideration whether genuine or not there is no facts available on record and we find no mistake apparent from record in the order of AO and altogether this is a new claim which cannot be entertained while acting u/s.154 of the Act. The CIT(A) has completely misdirected himself on the legal situation as well as factual situation. Hence, we reverse the order of CIT(A) on this issue and uphold the rectification order passed by the AO. This appeal of Revenue is allowed.

14. In the result, the appeals filed by the Revenue in ITA No. 2960/CHNY/2018 is partly allowed and in ITA No.2961/CHNY/2018 is allowed.

Order pronounced in the court on 11th April, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 11th April, 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. |