

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.2923/Chny/2019
निर्धारण वर्ष/Assessment Year: 2016-17

&

C.O. No. 01/Chny/2022 [in I.T.A. No.2923/Chny/2019]

The Deputy Commissioner of
Income Tax, Corporate Circle 2(2),
Room No. 512, 5th Floor, Wanaparthy
Block 121, M.G. Road,
Chennai – 600 034.

Vs. Shri Balu Jayaraman,
No. 8, OP Raman Street,
Gandhi Nagar, Avadi,
Chennai 600 054.
[PAN: AACPJ8700C]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent/Cross Objector)

Department by : Shri Sajit Kumar, JCIT
Assessee by : Shri J. Prabhakar, F.C.A.

सुनवाई की तारीख/ Date of hearing : 24.05.2022
घोषणा की तारीख /Date of Pronouncement : 08.06.2022

आदेश /ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

The appeal filed by the Revenue and the Cross Objection filed by the assessee are directed against the order of the Id. Commissioner of Income Tax (Appeals) 6, Chennai, dated 11.07.2019 relevant to the assessment year 2016-17. Besides, challenging the grounds on merits, the Revenue has raised a specific ground that the Id. CIT(A) has omitted to call for remand report under Rule 46A of Income Tax Rules 1962, when the assessee furnished details/fresh evidence in support of its claim

during the appellate proceeding, on which the Id. CIT(A) relied on the same and allowed the ground of the assessee.

2. Brief facts of the case are that the assessee filed his return of income for the assessment year 2016-17 on 29.03.2018 declaring a total income of ₹.70,21,250/-. The case was selected for scrutiny and notice under section 143(2) of the Income Tax Act, 1961 ["Act" in short] dated 21.08.2018 was issued and duly served on the assessee. After considering the details and document furnished, the Assessing Officer has completed the assessment under section 143(3) of the Act dated by assessing total income of the assessee at ₹.4,14,17,813/- after taxing short term capital gain of ₹.1,15,58,644/- and long term capital gain of ₹.2,28,34,135/- by rejecting assessee's claim of exemption on sale of agricultural lands. On appeal, the Id. CIT(A) deleted both the short term capital gain and long term capital gain and allowed the appeal of the assessee.

3. Aggrieved, the Revenue is in appeal before the Tribunal. By referring to the grounds of appeal, the Id. DR has submitted that without calling for remand report from the Assessing Officer, the Id. CIT(A) accepted fresh evidences in support of assessee's claim and by relying

upon the same, the Id. CIT(A) has allowed the grounds raised by the assessee is in violation of Rule 46A of the Income Tax Rules and prayed for remitting the matter back to the file of the Assessing Officer for fresh adjudication.

4. On the other hand, the Id. Counsel for the assessee strongly supported the order passed by the Id. CIT(A) and also the assessee has filed Cross Objection in lieu thereof.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessee owned 13.60 acres of agricultural lands located at Vallam Village, Sriperumbudur Taluk, Kancheepuram Dt. These lands were acquired in May, 2015 for a total consideration of ₹.7,94,86,356/-. However, within a span of just three months, the assessee sold these lands for a consideration of ₹.9,10,45,000 on 03.08.2015. The assessee claimed that the lands under consideration of transfer are agricultural lands and thus, the sale proceeds are not exigible to capital gains tax. However, the Assessing Officer rejected the assessee's claims and brought the sale proceeds to tax as short term capital gains by holding that the assessee's transaction is 'adventure in the nature of trade'.

5.1 Similarly, the assessee sold his 8.40 acres of agricultural lands located Vallam Village, Sriperumbudur Taluk, Kancheepuram Dt for ₹.3,19,20,000/- and claimed the same as exempt from tax being sale of agricultural lands. The Assessing Officer observed that the property under sale was 'residential plot' as per sale deed and not agricultural lands as claimed by the assessee and held that the assessee is not eligible for exemption under the name of agricultural lands and brought the sale proceeds to long term capital gains tax.

5.2 On appeal, after considering the submissions of the assessee and fresh evidences produced before the Id. CIT(A), the Id. CIT(A) deleted both the short term capital gains tax and long term capital gains tax. The contention of the Department is that without calling for remand report from the Assessing Officer, accepting the fresh evidences/details in support of the claims of the assessee by the Id. CIT(A) is in violation of Rule 46A of the Income Tax Rules and pleaded that the Assessing Officer should be given an opportunity to examine and verify the details/fresh evidences produced during the course of appellate proceedings. In view of the above facts and circumstances, we set aside the order of the Id. CIT(A) and remit the matter back to the file of the Assessing Officer to examine adjudicate the issues afresh in accordance with law by affording sufficient

opportunities of being heard to the assessee. The assessee is also directed to produce all the evidences and details before the Assessing Officer for examination. Thus, the ground raised by the Revenue is allowed for statistical purposes.

6. Since we have set aside the order of the Id. CIT(A) and remitted the matter back to the file of the Assessing Officer, the Cross Objection filed by the assessee became infructuous and accordingly dismissed.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes and the Cross Objection filed by the assessee is dismissed.

Order pronounced on the 08th June, 2022 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, the 08.06.2022

Vm/-

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.