

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 No.: 44/CHNY/2022

निर्धारण वर्ष /Assessment Year: 2016-17

Smt. A. Thiripurasundari,
No.1/34, Pillayar Koil Street,
Ayyappanthangal,
Chennai – 600 056.

The ACIT,
vs. Central Circle 3(1),
Chennai.

PAN: AAAPT 7094H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 11.07.2022

घोषणा की तारीख/Date of Pronouncement

: 13.07.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-18, Chennai, in ITA No.213/CIT(A)-18/2018-19, order dated 30.11.2011. The assessment was framed by the ACIT, Central Circle -3(1), Chennai for the assessment year 2016-17 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 15.12.2018.

2. At the outset, the Id.counsel for the assessee stated that the CIT(A) has not gone in to the evidences filed before him vide acknowledgement No.872269461221121 and hence, violated the principles of natural justice. The Id.counsel for the assessee took us through the Ground No.5, which reads as under:-

5. The CIT(Appeals) failed to appreciate that the written submissions filed electronically vide Ack No.872269461221121 in support of the grounds raised before him was completely overlooked and brushed aside thereby grossly violating the principles of legitimate expectation.

2.1 The Id.counsel for the assessee took us also through the Ground No.2, that the CIT(A) passed ex-parte order without providing reasonable opportunity of being heard and the relevant Ground No.2 reads as under:-

2. The CIT(Appeals) erred in passing the order ex-parte and ought to have appreciated that any order passed in violation of principles of natural justice should be reckoned as nullity in law.

2.2 The Id.counsel for the assessee took us through the order of CIT(A) and stated the complete details were filed by assessee before AO as well as before CIT(A) and CIT(A) in particular has not gone into the details. The Id.counsel explained the facts that the issue is sale of land. The assessee owns the land admeasuring an extent of 4 acres i.e., 1.625 hectares at Paraniputhur Village, Sriperumbudur, Kancheepuram District which was purchased by the assessee from Shri G. Santhanam on 24.03.2006 vide Doc.

No.2963/06 registered in SRO, Kundrathur. This land is notified by Survey Nos.168, 170/1, 171, 172, 141/2B, 163/1 & 165. The assessee also purchased another plot at Survey Nos.163/2 admeasuring 97 cents at Paraniputhur Village, Sriperumbudur, Kancheepuram District from Shri K. Sundaram on 17.03.2006 vide Doc. No.3085/06 registered in SRO, Kundrathur. The Id.counsel stated that these lands were purchased in March, 2006 and sold to Mata Amritanandamayi Math on 23.03.2016 in the land bearing survey No.141/2B, 163/1, 163/2 & 165 admeasuring 2.28 acres. The assessee has sold two properties and the AO in his assessment order noted the facts as under:-

A. Thiripurasundari F.Y. 2015-16								
	Sale Consideration		Area	Total Sale Consideration	Sale / sqft	Purchase Cost	Cost/ Sqft	Profit / loss (Rs.)
Paraniputhur Village	10,09,58,250	Sqft	98,868	10,09,58,250	1021	74,55,760	75	9,35,02,490
Thirupachur Village	16,34,200	Sqft	5,114	1634200	320	15,44,583	302	89,615
Total Sales	10,25,92,450			10,25,92,450		90,00,345		9,35,92,105

The AO assessed the surplus arising out of sale of these lands as business profit as against the claim of assessee as long term capital gains. The entire premise of the AO as well as that of the CIT(A) was that the assessee has treated these assets in the balance sheet

as stock-in-trade i.e., inventories – finished goods/traded goods and was never shown under the head investments.

2.1 Now, the assessee only requested that matter may be restored back to the file of the CIT(A) to consider the submissions and evidences submitted electronically vide acknowledgement No. 872269461221121.

3. When these facts were confronted to Id. Senior DR, he opposed setting aside of the matter and stated that matter can be examined at the level of the Tribunal and can be decided. But, he could not controvert the fact that the order of CIT(A) is ex-parte and he has not considered the written submissions filed electronically vide Ack. No. 872269461221121 and the evidences filed along with the same.

4. After hearing rival contentions, we noted that the CIT(A)'s order is ex-parte and the CIT(A) has not considered the written submissions filed by the assessee along with evidences. The CIT(A) fixed this appeal for 3 to 4 times on various dates but assessee's written submissions along with evidences were never considered. Hence, in the interest of natural justice, we set aside the order of

CIT(A) and remand the matter back to his file for fresh consideration of the evidences and written submissions filed by the assessee. The CIT(A) will also provide reasonable opportunity of being heard to the assessee.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13th July, 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 13th July, 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. |