

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.950-952/Chny/2020
निर्धारण वर्ष /Assessment Years: 2005-06 to 2007-08

Smt.Susheela L/H of T.R.V.Selvaraj, v. The Income Tax Officer,
No.65, Kumbakonam Road, Ward-1(4),
Panruti-607 106. Cuddalore.
[PAN: AUGPS 3727 E]
(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mrs.N.V.Lakshmi, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.Hema Bhupal, JCIT
सुनवाई की तारीख/Date of Hearing : 25.07.2022
घोषणा की तारीख /Date of Pronouncement : 25.07.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These three appeals filed by the assessee are directed against common order passed by the Commissioner of Income Tax (Appeals), Puducherry, dated 13.03.2020 and pertains to assessment years 2005-06 to 2007-08. Since, the facts are identical and issues are common, for the sake of convenience, these appeals are being heard together and disposed off, by this consolidated order.

2. At the outset, we find that there is a delay of 195 days in appeals filed by the assessee. During the course of hearing, when defect was brought to the notice of the learned AR present, he has submitted that

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delay in filing of appeals are mainly due to lockdown imposed by the Govt. on account of spread of Covid-19 infections and in view of the Hon'ble Supreme Court ***suo motu*** Writ Petition No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court, then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

3. The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

4. Having heard both sides and considered reasons given by the learned AR, we find that the Hon'ble Supreme Court in ***suo motu*** Writ Petition No.3 of 2020, has extended limitation applicable to all proceedings in respect of Courts and Tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court extending limitation period applicable for all proceedings before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeals filed by the assessee.

5. The assessee has, more or less, raised common grounds of appeal for all the three assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2005-06, are re-produced as under:

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- 1. The order of the learned Commissioner of Income Tax (Appeals) - Puducherry ['CIT (A)'] is contrary to the facts and circumstances of the case and against the principles of equity and natural justice.*
- 2. The learned CIT (A) erred in upholding the order of the Assessing Officer making additions based on mere assumptions and surmises without considering the sale deeds and documentary evidence produced by the Appellant.*
- 3. The learned CIT(A) erred upholding the order of the assessing officer, assessing the entire sale value of Rs.63,36,957 as capital gains solely relying upon sworn statements by the buyers without any corroborative evidence in support of the same.*
- 4. The CIT(A) erred in upholding the value of 92.33 adopted by the assessing officer for both approved and unapproved plots. The CIT (A) failed to appreciate that the value is arbitrary and without any basis. The CIT (A) erred in upholding the said valuation of the assessing officer as scientific.*
- 5. The CIT (A) ought to have appreciated that the appellant had computed the capital gains on the basis of value fixed by the Divisional Registrar, Cuddalore at Rs.42 per sq ft.*
- 6. The CIT(A) erred in not following the rate fixed by the competent authority for computing the capital gains and upheld the order of the assessing officer based on statements of three buyers, which were without any corroborative evidence.*
- 7. The CIT(A) failed to appreciate that market value as given by the competent authority can only be substituted even as per the provisions of section 50C of the Act.*
- 8. The learned CIT(A) erred in not providing sufficient opportunity to cross examine the buyers and the same is in violation of principles of natural justice and bad in law.*
- 9. The appellant craves the leave of the Hon'ble Tribunal to adduce additional grounds in support its contentions before and during the course of hearing of this appeal.*

6. The brief facts of the case are that the assessee is an individual derived income from partnership firm and capital gains filed his return of income for the AYs 2005-06 to 2007-08 u/s.139(1) of the Act. A survey u/s.133A of the Act, was conducted, on 09.01.2008. During the course of survey, it was noticed that the assessee had converted his capital asset measuring 12.29 acres of land into stock in trade and started selling the same as housing plots after obtaining necessary permissions from the concerned authorities. The assessee had admitted income under the head 'capital gains'. During the survey, it was observed that the assessee had admitted different rates from different parties, however, when enquiry was conducted with the buyers, there is a difference between the rate admitted

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by the assessee and rate paid by them. Therefore, the AO on the basis of information collected during the course of survey, coupled with statement recorded from the buyers, made addition on the basis of total area of plots sold during the relevant assessment period @ Rs.92.33/- per sq.ft. and made addition of Rs.37,84,129/- to total income.

7. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in their appellate order dated 13.03.2020 confirmed the addition made by the AO towards difference in sale price for all three plots. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

8. The Ld.AR for the assessee submitted that these issues are covered by the decision of ITAT in the assessee's own case for the AYs 2002-03 to 2004-05, wherein under identical circumstances, the issue has been set aside to the file of the AO to ascertain the exact amount of sale consideration realized by the assessee for sale of plots. Therefore, for these years also, the issue may be set aside to the file of the AO to re-consider the issue.

9. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that evidences collected during the course of survey coupled with statement recorded from the buyers clearly indicate suppression of sales revenue from sale of plots and on that basis, the AO has made addition and thus, there is no reason to set aside the appeals to the file of the AO.

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10. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that an identical issue had been considered by the Tribunal in ITA Nos.570, 571 & 572/Mds/2011 for the AYs 2002-03 to 2004-05, where under identical set of facts, the issue has been set aside to the file of the AO to re-appraise computation of capital gains and business income derived from conversion of capital asset into stock in trade and selling them in different financial years. The relevant findings of the Tribunal are as under:

".....12. We have perused the orders and heard the rival submissions. The total area of land, as per the A.O., converted by the assessee from capital asset to stock-in-trade, was 12.29 acres. Assessing Officer had observed that out of such 12.29 acres, 7.15 acres were approved by the town planning authorities for selling as plots. Once a capital asset is converted to stock-in-trade and such a conversion is accepted, the method of computing capital gains is given in Section 45(2) of the Act which is reproduced hereunder:-

"Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset."

The Act has laid down a clear methodology for assessment where there has been conversion of capital asset into stock-in-trade. The methodology prescribed mandates that when such a stock-in-trade is sold, the fair market value on the date of conversion should be considered to be full value of consideration for the purpose of computing capital gains. Anything in addition to that, received on such sale, will be income under the head "business". Both the A.O. as well as Id. CIT(Appeals) had not considered this provision despite clear admission that there was a conversion of capital asset into stock-in-trade. Further, assessee had filed affidavits of a number of buyers who were not examined by the Assessing Officer. In such affidavits, it has been confirmed that no money in excess of what was stated in the registered transfer deeds, were paid. Though for assessment years 2003-04 and 2004-05, Assessing Officer had mentioned that he had summoned all the buyers, nothing has been mentioned who all had appeared and why cross-examination was allowed only for a few. As to the question whether deponents intimated their employers regarding the purchase transaction, in our opinion, this is irrelevant for the purpose of computation of the income of the assessee. Nevertheless, in the facts and circumstances, we are of the opinion that the computation of capital gains for respective years requires a re-look. As already mentioned, assessee had claimed business loss for assessment years 2002-03 and 2003-04 and profits under

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the head "business" for assessment year 2004-05. At least for assessment year 2002-03, Assessing Officer had noted that the loss resulted out of the claim of land development expenses and Electricity Board service tax. Therefore, a re-appraisal of whole computation is required and income of the assessee should be correctly computed in accordance with mandate in the Act. We, therefore, set aside the orders of authorities below and remit the issue of computation of income of the assessee under the head "capital gains" and under the head "business income" back to the A.O. for consideration afresh in accordance with law. Assessing Officer has to give a fair chance to the assessee for cross-examinations of the parties. Assessing Officer shall examine all aspects de novo and make fresh assessments and proceed in accordance with law.

13. In the result, appeals filed by the assessee for all the years are allowed for statistical purposes....".

11. In this view of the matter and by following the decision of the ITAT, Chennai, in the assessee's own case for the earlier assessment years, we set aside the appeals filed by the assessee for the AYs 2005-06 to 2007-08 to the file of the AO and direct the AO to re-consider the issue in light of directions given by the Tribunal for the AYs 2002-03 to 2004-05 and decide the issue for the impugned assessment years.

12. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on the 25th day of July, 2022, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 25th July, 2022.
TLN

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