

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' 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.2120/Chny/2018  
निर्धारण वर्ष/Assessment Year: 2012-13

Shri M.A.M.R. Muthiah,  
L/H of Late Dr. M.A.M. Ramaswamy,  
Chettinad House, Rajah Annamalai  
Puram, Chennai 600 028.  
**[PAN: AAJPR4449M]**

Vs. The Assistant Commissioner of  
Income Tax,  
Corporate Circle 1(2),  
Chennai.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No.2284/Chny/2018  
निर्धारण वर्ष/Assessment Year: 2012-13

The Assistant Commissioner of  
Income Tax,  
Central Circle 3(2),  
Chennai.

Vs. Late (Shri) M.A.M. Ramaswamy,  
(Now Represented by L/H Shri M.A.M.R.  
Muthiah, Chettinad House, Rajah  
Annamalai Puram, Chennai 600 028.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

Assessee by : Shri S. Sridhar, Advocate  
Department by : Shri V. Justin, Addl. CIT

सुनवाई की तारीख/ Date of hearing : 20.06.2022  
घोषणा की तारीख /Date of Pronouncement : 03.08.2022

### आदेश /ORDER

#### PER V. DURGA RAO, JUDICIAL MEMBER:

Both the cross appeals filed by the assessee as well as Revenue are directed against the order of the Id. Commissioner of Income Tax (Appeals) 4, Chennai, dated 07.05.2018 relevant to the assessment

year 2012-13. First, we shall take up the appeal of the Revenue for adjudication. The Department has raised the following grounds:

“1. *The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.*

2. *The Id. CIT(A) erred in holding that the land comprised in the project "RMT Phase II (Rani Meiyammal Towers)" is a capital asset and the gain out of the sale of the same should be treated as capital gains.*

2.1 *The Id. CIT(A) ought to have appreciated that the assessee's treatment of bifurcating the sale proceeds of Project RMT-I (Profits on sale of land offered under LTCG and the profits on sale of flats offered as business profits) were accepted since the land comprised in Project RMT I were inherited by the assessee.*

2.3 *The Id. CIT(A) failed to appreciate that unlike project RMT-I, in respect of RMT-II, the land and semi-finished building was acquired and though the scheme of arrangement is titled as partition, going by the facts of the case, the channel by which categorized as partition.*

2.4 *The Id. CIT(A) ought to have appreciated the fact that as per the final accounts of the assessee, the land together with the building acquired in semi-finished state were included in the value of closing stock and the assessee did not exhibit the land as a capital asset and only the building stock as stock in trade.*

2.5 *The Id. CIT(A) ought to have appreciated that consistency is one of the important aspects of taxation and ought to have held that the assessee is not free to alter the nature and characteristics of the asset as it would suit him year after year.*

2.6 *The income earned through the Project RMT-II is business income including gain on sale of undivided share of land. Hence, the question of computation of capital gains is out of place.*

3. *For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.”*

2. Brief facts of the case are that the assessee filed the Return of income for the assessment year 2012-13 on 25.3.2013 admitting a

total income of ₹.22,62,31,810/-. The case was selected for scrutiny and notice under section 143(2) of the Income Tax Act, 1961 ["Act" in short] dated 19.08.2013 was duly served on the assessee on 26.08.2013. Further, notice under section 142(1) of the Act with a detailed questionnaire was issued on 3.6.2014. After considering the submissions and details furnished by the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 27.03.2015.

2.1 With regard to the sale of land treated as business profits by the assessee, in the assessment order, the Assessing Officer has observed that during the year, assessee had sold undivided share of land corresponding to its flats constructed at Rani Meiyammai Towers Phase II and declared the profit from the sale of undivided share of land under the head 'long term capital gain'. However, it is stated that the land is a current asset of the assessee and not a capital asset. Therefore, sale of land is a business profit of the assessee and is not a capital gain. Accordingly the assessee was requested to clarify why the income from sale of land should not be treated as Business Income.

Vide letter dated 15.12.2014, the assessee made the following submission,

*“Rajah Sir Annamalai Chettiar of Chettinad, my paternal grandfather under his will dated 4.3.1948 bequeathed the land in RS No.4288/2 in favour of his son Dr. Rajah Sir M A Muthiah Chettiar who is my father. Dr. Rajah Sir M A Muthiah Chettiar died on 12.5.1984 and on his death the land in RS No. 4288/2 in which Rani Meyyammai Towers - Phase I & II have been put up devolved on me and on my brother's family. My brother Kumararajah M A Muthiah Chettiar died on 24.01.1970 and therefore his interest devolved on his wife Kumararani Smt. Dr. Meena Muthiah and his adopted son Mr. M A M M Annamalai. A partition deed dated 15.11.2006 was entered into between us for the said land, by virtue of this partition deed, on the portion of the land allotted on partition, Rani Meyyammai Towers - Phase I and Phase II were put up by me in the form of flats and sold them to third parties. By virtue of this partition of ancestral properties viz. land in RS No.4288/2 in which Rani Meyyammai Towers Phase I & II have been put up, I completed the project and sold the undivided share of land to the flat owners and also entered construction agreements for the flats, and after completing the flats, I sold the constructed portion also.*

*The claim in this assessment is that the gain on sale of undivided share of land attributable to each flat sold by registered deed should be considered as long term capital gain and the profits attributable to construction of the flats should be treated as business profit thus bifurcating the profits on sale of flats as Long term Capital Gain and Profits of construction business. This view has been followed and accepted for the sale of Rani Meyyammai Towers - Phase I and similar treatment should be given for sale of flats of Rani Meyyammai Towers - Phase II. Even though for the assessment year 2011-12 the Assessing Authority treated the gain on sale of land as business profit, my appeal for earlier assessments has been accepted by CIT(A)”.*

2.2 After considering the submissions of the assessee and relying on various decisions, the Assessing Officer has observed that the assessee has utilised the land with an intention of realizing the profit out of it and not with an intention of enjoying the property by itself. Thus, the intention is that of to utilize the said land for construction of

the flats in the course of business activity and not for the exploitation of its own assets. Hence, sale of land is not an incidental activity but, the main business activity of the assessee. Hence, it is nothing but an 'adventure in nature of trade', the profit out of which is to be assessed under the head 'Business income'. In view of the above, the Assessing Officer has held that the land was held by the assessee only as a trading asset and therefore, the profit out of sale land amounting to ₹.2,16,94,498/- was treated as "Income from Business". On appeal, by distinguishing the decisions relied on by the Assessing Officer and by following the order of the Id. CIT(A) for the assessment year 2008-09, the Id. CIT(A) allowed the appeal in favour of the assessee by treating the profits on sale of UDS as LTCG.

3. Aggrieved, the Revenue is in appeal before the Tribunal.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against the treatment of business profit on sale of land, by following the appellate order for the assessment year 2008-09, the Id. CIT(A) has held that the profits on sale of UDS is a long term capital gains. Against the above decision of the Id. CIT(A) for the assessment year 2008-09,

the Department preferred further appeal by raising identical grounds before the ITAT and vide order dated 11.01.2019 in I.T.A. Nos. 424 & 425/Chny/2014, 1494/Chny/2012 and 1442/Chny/2015 for the assessment years 2009-10 & 2010-11, 2008-09 & 2011-12, the Coordinate Benches of the Tribunal has observed and held as under:

*“5. In the assessments made for assessment years 2009-10, 2010- 11 & 2011-12, the AO continued to assess income derived from the land of project RMT-II as business income, as he has done in for assessment year 2008-09. Aggrieved against those orders, the assessee filed appeals before the CIT(A). The CIT(A) following his decision made in assessment year 2008-09, allowed the assessee’s appeals. Aggrieved against those orders, the Revenue filed appeals for all these assessment years on the common grounds and hence the common grounds filed for ITA 425/2014 is extracted as under:*

*“1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.*

*2.1 The CIT(A) erred in holding that the land comprised in the project ‘RMT Phase II’ is a capital asset and the gain out of the sale of the same should be treated as capital gains.*

*2.2. The CIT(A) ought to have appreciated that the assessee’s treatment of bifurcating the sale proceeds of project RMT I , (profits of sale of land offered under LTCG and the profits on sale of flats offered as business profits) were accepted since the land comprised in project RMT I were inherited by the assessee.*

*2.3 The CIT(A) failed to appreciate that unlike project RMT I, in respect of RMT II, the land and semi4inished building was acquired at a cost of about Rs.82 crores and though the scheme of arrangement is titled as partition, going by the facts of the case, the channel by which the assessee acquired the property cannot in any way categorized as partition.*

*2.4. The CIT(A) ought to have appreciated that when the mode of acquiring the property could not be termed as partition, it does not fall under the exclusions provided in sec.49(1) and therefore, the cost of previous owner or the value as at 1.4.1981 cannot determine the cost for the present owner, i.e., the assessee.*

*2.5. It is submitted that Dr. Meena Muthiah and her son M.A.M.M. Annamalai had computed the capital gains arising in this transfer of asset to the assessee by adopting the value of the land as at 1.4.1981 and under these facts and circumstances of the case, on the very same*

*asset, the present owner cannot once again adopt the value as on 1.4.1981 as cost, to compute his capital gains.*

*2.6 The CIT(A) ought to have appreciated the fact that as per the final accounts of the assessee, the land together with the building acquired in semi-finished state were included in the value of closing stock and the assessee did not exhibit the land as a capital asset and only the building as stock in trade.*

*2.7 The CIT(A) ought to have appreciated that consistency is one of the important aspect of taxation and ought to have held that the assessee is not free to alter the nature and characteristics of the asset as it would suit him year after year.*

*3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.”*

*6. On the issue of profits on sale of land, offered under long term capital gains in respect of RMT-II, but assessed as business profits, the Ld. DR placed his arguments on the lines of grounds of appeal extracted, supra, and relied on the orders of the AO. Per contra, the Ld. AR placed his reliance on the orders of the Ld. CIT(A). When we called for the relevant documents, both the parties could not place anything but pleaded on the orders of the lower authorities. However, both of them have agreed that this issue can be remitted back to the AO for a fresh examination. In the facts and circumstances, we deem it fit to remit this issue back to the AO for a fresh examination. The assessee shall place all the materials in its support before the AO and comply to the AO's requirements as per law. The AO is free to conduct appropriate enquiry as deemed fit, but he shall furnish adequate opportunity to the assessee on the material etc to be used against it and decide the matter in accordance with law for assessment years 2008-09 to 2011-12.”*

4.1 As has been done in the assessment year 2008-09, the Assessing Officer continued to assess the income derived from the land of project RMT-II as business income in the assessment years 2009-10 to 2011-12 including the assessment year 2012-13 under consideration. As the Coordinate Benches of the Tribunal has remitted the matter back to the file of the Assessing Officer, we also remit the matter back to the file of the Assessing Officer for fresh consideration

for the assessment year 2012-13. Thus, the ground raised by the Revenue is allowed for statistical purposes.

5. Coming to assessee's appeal, the first ground raised by the assessee is with regard to confirmation of addition of ₹.65,03,724/- towards reworking of cost of construction. In the assessment order, the Assessing Officer has observed that in Rani Meyyammal Towers - Phase II, totally 17 flats were constructed by the assessee to be sold to third parties. During the financial year 2010-11, assessee had sold 10 flats. Out of the balance of 7 flats constructed in Rani Meyyammai Towers, Phase II, 4 flats were sold during the financial year 2011-12. As per the unitwise profit & loss account submitted by the assessee, the opening stock-in-trade of the business of sale of flats of Rani Meyyammai Towers is ₹. 6,28,89,678/- and the closing stock-in-trade is ₹.0/-.

5.1 Further, the assessee has debited a total sum of ₹.86,16,810/- on account of expenses incurred towards construction of flats at Rani Meyyammai Towers, Phase II. The entire expenses have been incurred in respect of the balance flats; however, out of the total of 7 flats only 4 flats have been sold during the year. Therefore only

expenses to the extent of flat sold can be debited to the profit and loss account and the balance expenses towards the unsold flat should be taken to enhance the closing stock value in the form of work in progress. The same stand has been taken by the Department for A.Y. 2008-09 as well as determined by the Id. CIT(A) for A.Y. 2008-09 vide order in ITA No. 815/2010-11/A-III dated 05.04.2012. Thus the total expenses of ₹.86,16,810/- is divided in the ratio 4:3 and arrived at ₹. 49,23,891/- and ₹. 36,92,919/-. The proportionate expenses for 3 flats of ₹. 36,92,919/- was to be added to the closing stock.

Further, the closing stock as per the assessment order of A.Y.2011-12 dated 14.03.2014 was ₹.8,65,98,850/-. Therefore, the same was considered as opening stock as on 01.04.2011 and the cost of construction of flats sold has been worked out by the Assessing Officer and are reproduced below:

	Rs.	Rs.
Opening Stock (as per order dated 14.3.14 for AY 2011-12)		8,65,98,850
Current year expenses	86,16,810	
Less: Attributable to flats sold (8616810x4/7)	49,23,891	
Cost to be added to work in progress	36,92,919	36,92,919
		9,02,91,769
Closing Stock		3,86,96,472
Cost of construction of 4 flats		5,15,95,297

However, the cost of construction of flats sold as worked out by the assessee was ₹. 5,80,99,021/-. The difference of cost of construction adopted by the assessee (₹.5,80,99,021) and the cost of construction calculated as above (₹.5,15,95,297) is ₹.65,03,724/-. Hence the excess expenditure claimed by the assessee was disallowed and brought to tax. On appeal, the Id. CIT(A) has confirmed the disallowance made by the Assessing Officer.

5.2 On being aggrieved, the assessee is in appeal before the Tribunal.

5.3 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The difference of cost of construction adopted by the assessee (₹.5,80,99,021) and the cost of construction calculated by the Assessing Officer (₹.5,15,95,297) was ₹.65,03,724/-. On appeal, after considering the submissions of the assessee, the Id. CIT(A) has observed that the calculation carried out by the Assessing officer in the impugned assessment order, the expenditure incurred towards construction of flats has been rightly considered on proportionate basis

at ₹.49,23,891/-, whereas, the assessee has considered the entire amount of ₹.86,16,810/-, which are not in accordance with the facts of the case. Hence, the Id. CIT(A) has held that the discrepancy of ₹.15,79,833/- arrived at by the assessee is not correct and accordingly, the discrepancy of ₹.65,03,724/- worked out by the Assessing Officer was confirmed. In view of the above facts, we find no infirmity in the order passed by the Id. CIT(A) on this issue and accordingly, the ground raised by the assessee is dismissed.

6. The next ground raised in the appeal of the assessee relates to disallowance made under section 14A r.w. Rule 8D for ₹.24,00,193/-. From the Balance sheet submitted by the assessee for the year ended 31.03.2011, the Assessing Officer has noticed that the assessee has made investment for a sum of ₹.40,52,11,462/-. The assessee also has business expenses incurred with respect to horse breeding and racing as well as construction and sale of flats. The assessee has earned dividend income for a total sum of ₹.4,93,79,162/- and claimed exemption under section 10(3A) of the Act. The income from dividend is exempted from tax and assessee had claimed certain business expenses, however, the assessee has not admitted any expenses

attributable to the earning of exempt income. Accordingly, by applying the provisions of Rule 8D, the Assessing Officer determined the expenses attributable to earning of exempt income at ₹.25,00,193/- and brought to tax. On appeal, the Id. CIT(A) confirmed the disallowance made under section 14A of the Act.

6.1 On being aggrieved, the assessee is in appeal before the Tribunal.

6.2 We have heard the rival contentions. The assessee has earned exempt income of ₹.4,93,79,162/- being dividend income out of investment to the extent of ₹.40,52,11,462/-. The assessee has made investment in the following companies:

Company Name

Apollo Hospitals  
Chennai Computer & Software  
Chettinad Cement Corp. Ltd.  
Chettinad Clearing & Forwarding  
Chettinad Developers P. Ltd. Shares  
Chettinad Electronics  
Chettinad Publishing  
Chettinad Inland Water Trans P. Ltd.  
Chettinad Land & Building  
Chettinad Morimora - shares  
Chettinad Pharmaceuticals  
Chettinad Projects  
Chettinad Quartz P. Ltd.  
Chettinad Trucks & Equipments

Haaciendaa Infotech  
Karur KCP Packing  
Nava Bharat Feero Alloys  
Udipi Manipal  
Vijaya Commercial

6.3 Since assessee had invested huge sums in variety of shares in various companies, there would be a certain element of expenses incurred towards managing of those shares and also a time cost involved for utilizing the funds invested to realize maximum profit. Accordingly, by applying the provisions of Rule 8D, the Assessing Officer determined the expenses attributable to earning of exempt income at ₹.25,00,193/-. Before the Id. CIT(A) the assessee has submitted that in the statement of computation of total income, a sum of ₹.12,36,60,039/- had been disallowed towards personal expenditure debited to profit and loss account, which may be relatable to earning of income from investment. However, the Id. CIT(A) has observed that the provisions of section 14A of the Act contemplate those expenses which the assessee may have incurred towards the investment attributable to exempt income. Further, it was observed that the expenses of personal in nature do not fall within the ambit of section 14A of the Act. Accordingly, the Id. CIT(A) rightly confirmed the disallowance made under section 14A of the Act. Thus, we find no infirmity in the order

passed by the Id. CIT(A) on this issue. Accordingly, the ground raised by the assessee is dismissed.

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

Order pronounced on the 03<sup>rd</sup> August, 2022 at Chennai.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, the 03.08.2022

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.