

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 572/Chny/2022
निर्धारण वर्ष/**Assessment Year:2016-17**

Shri Kandasamy Velayudam,
Flat No. 25/29, Sakthi Srinivasan Salai,
Kumaran Kudil, Thoraipakkam,
Chennai 600 097.

Vs. The Income Tax Officer,
Corporate Ward 6(1),
Chennai.

[PAN:AEMPV6412K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Mrs. Sree Lakshmi Valli, Advocate
: Shri I. Dinesh, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 25.08.2022
घोषणा की तारीख /Date of Pronouncement : 30.08.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 18, Chennai, dated 21.06.2022 relevant to the assessment year 2016-17.

2. Brief facts of the case are that the assessee filed his return of income for the assessment year 2016-17 on 17.10.2016 admitting an income of ₹.41,93,970/-. After following due procedure, the Assessing

Officer has completed the assessment under section 143(3) of the Income Tax Act, 1961 ["Act" in short] dated 30.12.2018 by assessing total income of the assessee at ₹.46,43,569/- after making various additions.

3. Thereafter, the assessee filed a petition under section 154 of the Act dated 01.01.2019, wherein, it was stated that the cost of acquisition of property sold was wrongly adopted in the return filed for the assessment year 2016-17 at ₹.10 lakhs instead of ₹.21,12,000/-, which resulted in capital gains being offered at ₹.4,44,221/-, which fact was brought to the notice of the Assessing Officer during the course of scrutiny proceedings and the same was not considered by the Assessing Officer. After considering the submissions of the assessee, the Assessing Officer has concluded that the assessee has not filed any revised return of income under section 139(5) of the Act and therefore, the plea of the assessee was not considered and moreover, there was no error in the assessment order passed under section 143(3) of the Act and accordingly, the rectification petition filed by the assessee was rejected vide order under section 154 of the Act dated 22.10.2019. On appeal, the Id. CIT(A) confirmed the order passed

under section 154 of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the Id. CIT(A) has failed to adjudicate on a deduction claimed by the assessee without filing the revised return of income and the decision of the Hon'ble Supreme Court in Goetze (India) Ltd.'s case has not prohibited to make such claim before the appellate authorities and prayed that the Id. CIT(A) may be directed to adjudicate on the deduction claimed by the assessee.

5. On the other hand, the Id. DR supported the order passed by the Id. CIT(A).

6. We have heard both the sides, perused the materials available and gone through the orders of authorities below including paper book filed by the assessee. It is an admitted fact that the assessee has not made any fresh claim, but plea for modify the claim of deduction, in fact, during the course of assessment proceedings, the assessee has brought to the notice of the Assessing Officer that the cost of acquisition of property sold was wrongly adopted in the return of income filed for the assessment year 2016-17 at ₹.10 lakhs instead of

₹.21,12,000/-, which resulted in capital gains being offered at ₹.4,44,221/-. Since the Assessing Officer has not heeded to the plea of the assessee and rejected the claim to modify the deduction since the assessee has not filed revised return under section 139(5) of the Act, by following the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT 284 ITR 323 (SC), the Assessing Officer rejected the claim of the assessee. On appeal, while dismissing the appeal of the assessee, the Id. CIT(A) has observed that the issue is not amenable to section 154 of the Act, and if at all, the issue should have been challenged by the assessee by an appeal against the order under section 143(3) of the Act dated 30.12.2018. The Id. Counsel for the assessee has submitted that the appeal against the order under section 143(3) of the Act dated 30.12.2018 is pending before the Id. CIT(A). Under the above facts and circumstances, we remit the matter back to the file of the Id. CIT(A) to adjudicate the claim of deduction while adjudicating the appeal against the assessment order under section 143(3) of the Act by affording reasonable opportunity of being heard to the assessee.

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

Order pronounced on the 30th August, 2022 in Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 30.08.2022

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.