

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No. 183/Chny/2022**
(निर्धारण वर्ष / **Assessment Year: 2015-16**)

Muruganand Swarnamala 48, West Ponnurangam Road, R.S.Puram, Coimbatore – 641 002.	बनाम/ Vs.	ITO Non Corporate Ward -2(5), Coimbatore.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AGVPS-9513-R		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri N. Arjun Raj (CA) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri M. Rajan (CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	06-09-2022
घोषणा की तारीख / Date of Pronouncement	:	07-09-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee contest revisional jurisdiction u/s. 263 as exercised by learned Principal Commissioner of Income Tax, Coimbatore-1 (Pr.CIT) vide order dated 17.11.2020 against an assessment framed by Ld. AO u/s 143(3) of the Act on 20.11.2017.

2. The grounds raised by the assessee read as under:

1. The order of the PCIT, Coimbatore - 1, Coimbatore dated 03.12.2020 in DIN & order No. ITBA/COM/F /17/2020-21/1028823998(1) for the above assessment year is contrary to law, facts, and in the circumstances of the case.
2. The PCIT erred in assuming jurisdiction u/s 263 of the Act and consequently erred in passing the impugned order in setting aside the assessment order dated 20.11.2017 without assigning proper reasons and justification.
3. The PCIT failed to appreciate that there was no error causing prejudice to the interest of the Revenue in the assessment order passed and ought to have appreciated that the twin conditions required to be complied with as per section 263 of the Act were not satisfied concurrently, thereby vitiating the jurisdiction assumed for revision as well consequently vitiating the revisional order.
4. The PCIT failed to appreciate the capital gains computed and reported from the assessment year 2015-16 to 2018-19 was wrongly considered as erroneous and ought to have appreciated that the provisions of section 2(47)(v) of the Act had no application to the facts of the case, thereby negating the presumption of under reporting of LTCCG.
5. The PCIT failed to appreciate that the findings recorded in setting aside the assessment order were wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.
6. The PCIT failed to appreciate that the deduction of tax at source at 20% at every stage effected had constituted the basis for reckoning the long term capital gains and hence ought to have appreciated that the decisions relied upon for reckoning deemed transfer based on development agreement dated 7.4.2014 had no application to the facts of the case, thereby vitiating the order of revision on various facets.
7. The PCIT failed to appreciate that the explanation offered in objecting the proposed revision was not considered in proper perspective while passing the impugned order, thereby violating the principles of legitimate expectation.
8. The PCIT failed to appreciate that the power of revision was apparently used by reviewing the assessment order and hence ought to have appreciated that the restricted power of revision was stretched beyond its scope, thereby vitiating the impugned order.
9. The PCIT failed to appreciate that there was no proper opportunity given before passing the impugned order and any order passed in violation of the principles of natural justice is nullity in law.
10. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

3. The Ld. AR advanced arguments supporting the assessment order which has been controverted by Ld. CIT-DR. Having heard rival submissions, the appeal is disposed off as under:

4.1 The assessee was assessed u/s. 143(3) accepting returned income of Rs. 462.73 Lacs. Subsequently, upon perusal of case records, Ld.

Pr.CIT invoking the provisions of Sec.263, held the order to be erroneous and prejudicial to the interests of revenue. The assessee was show caused wherein it was stated that the assessee entered into a development agreement on 07.04.2014 with M/s. R.R. Housing India P. Ltd, Coimbatore for sale of assessee's property for a consideration of Rs.1350 Lacs. However, the assessee admitted income of Rs.484.02 Lacs only on accrual basis and therefore, the balance amount of Rs.865.97 Lacs was to be brought to tax.

4.2 The assessee, inter-alia, submitted that full sale consideration has been offered to tax in various years as under: -

AY	Sale consideration admitted as Receipts	Long Term capital gain for which tax is paid
2015-16	4,84,02,710	4,56,00,754
2016-17	2,42,01,360	2,2,54,850
2017-18	3,34,82,537	3,11,08,307
2018-19	2,46,26,009	2,28,30,310
	13,07,12,616	12,17,94,221

The assessee also submitted that he being a non-resident, the purchaser has deducted TDS at 20% on every sale. Accordingly, the revision of the order was opposed.

4.3 However, rejecting the plea of the assessee, the assessment order was set aside and Ld. AO was directed to redo the assessment afresh after verification of facts and after obtaining necessary documentary evidences. Aggrieved, the assessee is in further appeal before us.

5. We find the issue to be in a very narrow compass. As per assessee's submissions, it has offered full capital gains in various years on accrual basis. It also appears that it is not a case of Joint Development Agreement but the case of sale agreement simplicitor wherein the developer has developed the property and passed on sale

consideration to the assessee. Based on sale deeds as executed by the assessee in various years, the sale consideration has already been offered to tax as capital gains. The sale consideration is also subjected to TDS. Therefore, we modify the directions as given in the impugned order. If the income as tabulated above has been offered by the assessee in various years, no further addition would be called for in this year. The assessee is directed to demonstrate the same. Needless to add that sufficient opportunity of hearing shall be granted to the assessee.

6. The appeal stands dismissed subject to the modifications of direction given in impugned order.

Order pronounced on 07th September, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 07-09-2022

JPV

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded 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