

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2060/CHNY/2019

निर्धारण वर्ष/Assessment Year: 2015 - 16

Dr. Sabesan Parameswaran,
New No.6, Old No.30,
Second Street, East
Abhiramapuram,
Mylapore,
Chennai – 600 004.

The ACIT,
vs. Non-Corporate Circle-2,
Chennai

PAN: AMIPP 9152G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri P.R. Venkatachalam, C.A
: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 31.10.2022

घोषणा की तारीख/Date of Pronouncement

: 16.11.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-2, Chennai, in ITA No.117/2017-18 dated 02.04.2019. The assessment was framed by the ACIT, Non-Corporate Circle-2, Chennai for the assessment

year 2015-16 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 29.12.2017.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in treating the amount of Rs.6,86,06,500/- received by Shri S. Ramaswamy as income of the assessee under the head 'long term capital gain'.

3. Brief facts are that the AO during the course of assessment proceedings noticed from the computation of income filed by assessee that the assessee has disclosed long term capital gain of Rs.29,81,660/- on account of sale of land admeasuring 6462 sq.ft., comprised in survey No.2/5, block No.22, LB Road, Chennai. The AO noted that the assessee as per sale deed received sale consideration of Rs.7,43,50,000/- and the assessee submitted the details and from the perusal of sale deed, it transpired that the assessee along with his grandmother C.T. Saraswathi has executed power of attorney in favour of one Shri S. Ramaswamy, the agent in respect of the property measuring 23586 sq.ft. i.e., 9 grounds and 1986 sq.ft., at Parameswari Nagar, L.B. Road, Adyar, Chennai. This Power of Attorney (PoA) was executed on 19.02.2015 as on the date of execution of the sale deed of this land on 19.02.2015 for a

total consideration of Rs.7,43,50,000/-. The assessee explained that the assessee received this sum of Rs.30 lakhs only and hence, he has disclosed long term capital gain on Rs.28,81,660/-. The assessee filed a letter dated 28.11.2017 filed details of amount received as under:-

“Sale deed is for a total sum of Rs.7,43,50,000/-

The above sum is received by the assessee, his grandmother C.T. Saraswathi and S. Ramaswamy, the power of attorney holder on his own account as below:-

1. C.T.Saraswathi	Rs.20,00,000/-
2. Sabesan Parameswaran (the assessee)	Rs.30,00,000/-
3. S.Ramaswamy – the power holder	Rs.6,86,06,500/-
4. Amount of TDS	Rs.7,43,500/-
Total	Rs.7,43,50,000/-

3.1 The AO required the assessee as to why he has not declared capital gain on entire sale consideration of property of Rs.7,43,50,000/-. The assessee before AO vide letter dated 26.12.2017 claimed that he has received only a sum of Rs.30 lakhs and the relevant text of the letter reads as under:-

“a) There was no sharing ratio as such between CT Saraswathi, my grandmother and me. The buyer of the property gave Rs.20 lacs to my grandmother CT Saraswathi and Rs. 30 lacs to me. My grandmother CT Saraswathi disclosed Rs.20 lacs received by her return of income for A. Y. 2015-16 and paid tax on the same.

b) After my father's sudden demise on 3.8.2010 the burdern of my family came on my head. I was only 28 years old andI a Doctor by profession an anesthetist working in a hospital. I did not have and even now do not have knowledge of any business especially real estate business. My father has spent considerable energy and money in trying to evict squatters from the property in Adyar. Certain liabilities which my father had incurred for the sake of the property at Adyar that I had extinguish. No buyer was

forthcoming to buy the property. At that juncture Shri.S. Ramaswamy offered to get the property sold for a good price and compensate for the money spent by my father to evict the illegal occupants with whom my father had to fight even court cases. Therefore I felt compelled to give power of attorney to Shri.Ramaswamy. The power executed in favour of Shri. Ramaswamy was with any consideration. There were illegal occupants in the land and Shri. Ramaswamy stated that he required power to find and negotiate with the prospective buyers and also to evict the illegal occupants in the land. The money he had taken in his name from the buyer of land in his own name was to his benefit only and he claimed to us orally that he had expended large sums of money to evict illegal occupants and also to fight cases instituted by some of them.

Your notice requires me to establish the source of payments of moneys to illegal occupants to vacate the land. The notice was received by me today only and I have been required to prove the source of the funds for these payments which had been made by my later father Shri. C. Sabesan. this can be done only by going through the old papers of my father who passed away on 3.8.2010 and that would require at least 10 days and it is not possible for me to establish the source for payments. It is not understandable as to why the documents filed in respect of payments to the illegal occupants since they are proper documents only. Certain no one would consider buying the land without the illegal occupants being evicted. Hence the land becomes saleable only if the illegal occupants are evicted. "

3.2 The AO required the assessee to explain as to why the sum of Rs.6,86,06,500/- was given to Shri S. Ramaswamy, the PoA holder and assessee replied vide letter dated 11.2.2017 which is being reproduced in the assessment order and for the sake of clarity, we are reproducing again as under:-

"As regards the receipt of Rs.6,86,06,500/- by Shri. S. Ramaswamy the power of attorney holder under the Deed of Sale dated 19.2.2015 being Doc. No.433/2015 is concerned, it has been received in his own account. As evidence of the same a tax deduction certificate in Form No. 16B has been issued by the Purchaser Mr.A. Saleem for Rs.7,43,500/- in favour of Shri.

S. Ramaswamy. Thus the amount of Rs.6,86,06,500/- has been received by Shri. S. Ramaswamy in his individual Capacity.

Even assuming that it is taxable it is begged to point out a very large amount of expenditure has been incurred by the my late father Shri.C.Sabesan in his life time and after his demise myself to evict illegal squatters and to protect the property from further encroachments in the cleared area and to defund the ownership against several litigations by the squatters and encroachments. "

3.3 In view of the above letter, the assessee requested the AO to allow proportionate deduction of Rs.2,90,96,260/- on account of expenses incurred for removal of encroachment, eviction, illegal squatters etc. The AO has not accepted the reasoning or explanation submitted by assessee and also not allowed proportionate claim of Rs.2,90,96,260/- and assessed long term capital gain on entire sale consideration of Rs.7,43,50,000/- and by taking assessee's share of $\frac{2}{3}^{\text{rd}}$ at Rs.4,92,63,696/- computed the total income. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) concluded that the assessee being legal owner of the property and the agent or the PoA holder Shir S. Ramaswamy was never a legal holder and he has any right to claim any consideration in the property, he treated the entire amount received by assessee of Rs.7,43,50,000/- and out of his proportionate share of $\frac{2}{3}^{\text{rd}}$ is to be assessed as long term capital gain and assessed by

AO rightfully. Aggrieved, now assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the PoA dated 19.02.2015 given in faovur of Shri S. Ramaswamy in connection with the property sold by assessee, the relevant clause as regards to consideration to be received by assessee reads as under:-

“14 To do all other acts, deeds, incidental to and or necessary for the proper execution of acts, deeds and powers mentioned herein in relation to the said property.

15. Power to evict the encroachers at PoA cost and expenses.

16. The Agent is liable to render proper accounts in respect of the monies by him in pursuance of this Deed of Power of attorney and that the Principals have not received any monetary consideration from the Agent.

We hereby agree that all acts, deeds and things lawfully done by our said attorney shall be construed as acts, deeds and things done by us and we undertake to ratify and confirm all and whatsoever that our said attorney shall lawfully do and cause to be done for and on our behalf by virtue of this power hereby given.”

We noted that the GPA nowhere has given possession to the GPA holder and he has only executed this sale deed and as per clear terms of PoA, the principal has to receive monetary consideration from the agent after execution of sale deed. We noted that the CIT(A) has rightly pointed out the following:-

“(i) The GPA was executed for a high-priced plot of land located in a up-market area of Chennai without any consideration.

(ti) Out of the total sale proceeds of Rs. 7,43,50,000/, the appellant claims to have received Rs. 30 lakhs only whereas the lion's share of the sale consideration was received by Shri S. Ramaswamy.

(ii) If the appellant and his father spent money and made efforts to evict the so called occupants of the land, there was no necessity to execute a PoA in favour of Shri S.Ramaswamy.

(iv) By admitting only LTCG of an amount of Rs.29,81,660/- on account of the sale of land, the appellant showed that he had no intention of disclosing the capital gains in full.

(v) The appellant's intention to conceal his income is further proved by the fact that the PAN of Shri S. Ramaswamy was only given for TDS purposes as if he was the only recipient of the sale consideration.

5.1 We also noted that the PoA and sale deed both are executed on the same day by assessee as well as the GPA Shri S. Ramaswamy on 19.02.2015. It means the PoA holder has no legal right or interest in the property and entire consideration belongs to assessee or other co-owner. Even otherwise, Shri S. Ramaswamy has not accounted for this consideration in his return of income or no capital gain is declared either short term or long term by Shri S. Ramaswamy, the PoA holder in his return of income. Hence, the CIT(A) and the AO has rightly concluded that receipt of 93% of sale consideration i.e., 6,93,50,000/-i.e., sale of land without any encumbrance on the date when GPA was executed including GPA of Rs.7,43,50,000/- clearly proves that the assessee has no intention of declaring the capital gain in his return of income.

Hence, we are of the view that the authorities below have rightly concluded that the entire capital gain is to be assessed in the hands of the assessee to the extent of his share and hence, we confirm the order of the lower authorities and dismiss this issue of assessee's appeal.

6. Coming to another issue regarding disallowance of eviction expenses of Rs.2,90,96,260/-. The Id.AR for the assessee now before us made submission that the entire details are available with him as regards to eviction payments and eviction expenses which the assessee could not produce before the CIT(A) and hence, he requested that to that extent, the matter can be restored back to the file of the AO because the same were partly produced before the AO just before the completion of assessment. Even the AO has provided time only for 10 days and this fact is noted by the CIT(A) as under:-

“As rightly pointed out by the Assessing Officer, the burden lies on the appellant to prove that expenditure was actually incurred and that all the expenditure so incurred was incidental to the transfer to be allowed as a deduction in computing the amount of capital gains. The appellant failed to furnish any evidence - either in the course of assessment proceedings before the Assessing Officer or in the appellate proceedings before me - to prove the fact that his father incurred expenditure towards eviction of the supposed encroachers of the property. In the absence of evidence to the contrary, the Assessing Officer rightly rejected the eviction expenses of Rs.2,90,96,260/- claimed by the appellant to have been incurred by his father. The appellant fails on this ground.”

7. After hearing both the sides on this issue, now we are of the view that the assessee is entitled for this claim but assessee has to prove this claim and file evidence. Hence, we restore this issue back to the file of the AO for fresh adjudication after verifying the evidences. This issue of assessee's appeal is set aside and allowed for statistical purposes.

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

Order pronounced in the open court on 16th November, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 16th November, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त /CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF. |

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT