

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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 अपीलसं./ITA Nos.: **1591 & 1592/CHNY/2019**

निर्धारण वर्ष/Assessment Years: 2008-09 & 2009-10

Smt. Sekar Devi,
16-C/2, Nadar Vidyasala Street,
South Veli Street,
Madurai – 1.

vs. **The Income Tax Officer,**
Non-Corporate Ward 2(1),
Madurai.

PAN: AEMPD 9173M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri P.M. Senthil Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 16.11.2022

घोषणा की तारीख/Date of Pronouncement

: 16.11.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These appeals by the assessee are arising out of different orders of the Commissioner of Income Tax (Appeals)-2, Madurai in ITA No.0104/2016-17 & 0076/2015-16 both dated 05.04.2019. The assessments were framed by the ITO, Non-Corporate Ward 2(1), Madurai for the assessment years 2008-09 & 2009-10 u/s.144 r.w.s 147 & u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders dated 13.06.2016 & 30.03.2015.

2. The common issue in both the appeals of the assessee is that the lower authorities i.e., the CIT(A) as well as the AO passed order without assigning any proper reasons and justification and the AO framed assessment ex-parte u/s.144 of the Act in assessment year 2008-09 and the CIT(A) in both the years has dismissed the appeals of assessee without deliberating on the merits of the case.

2.1 The Id.counsel referred to para 6 of the CIT(A)'s order in assessment year 2008-09 which reads as under:-

“6. During the course of appellate proceedings, Shri P. Rajavelu, FCA appeared he made several written submissions but he could not produce any documentary evidence which were required at the time of assessment proceedings to substantiate the opening balance as explained in the foregoing paragraph. In the absence of any documentary evidence, I am left with no opinion but to confirm the order of the Assessing Officer which is well reason and based on documents available on record. Accordingly, all the grounds taken by the appellant is dismissed and the Assessing Officer order is confirmed.”

The Id.counsel stated that the only issue in assessment year 2008-09 is as regards to the addition of opening capital of Rs.30,24,865/- but the AO has not provided reasonable opportunity of being heard to the assessee and framed ex-parte assessment order u/s.144 of the Act and the relevant findings given by AO in assessment year 2008-09 reads as under:-

“AS there was no response from the assessee despite repeated opportunities provided to the assessee to produce the source of the capital of

Rs.30,24,865/- reflected in the trial balance and no evidence was produced by the assessee's mother in support of her claim in the affidavit, a draft assessment order dated 01.06.2016 was sent to the assessee and posted the case on 10.06.2016. As there is still noncompliance from the assessee, the assessment is completed as under by making the addition of Rs.29,27,665/- under section 68 of the I.T. Act 1961 after allowing of Rs.97,200/- towards cost of land from Rs.30,24,865/- since the land was acquired in the assessee's name by her mother for Rs.97,200/- in the status of guardian.”

2.2 Further, the Id.counsel took us through the findings recorded by the CIT(A) in assessment year 2009-10 as regards to the adjudication of issue of long term capital gain and finding of CIT(A) was perused, which is recorded in para 11 and the same reads as under:-

11. Under the Income Tax Act even a belated return for the assessment year 2009-10 should have been filed before expiring of one year from the end of the assessment year or before the completion of assessment whichever is earlier. Therefore, for the return of the estate of late K.A.S. Sekar to be accepted u/s 139(4), it should have been filed by 31.03.2011; whereas this return was filed only on 02.02.2015 therefore. This return is non-nest in the eyes of law i.e.it is as not as though there is return. Therefore, the reliance by authorised representative on this return to substantiate the cost of acquisition at Rs.70,00,000/- is not acceptable at all. Moreover, the cost of the property on the date of purchase in the year 1990-91 was only at Rs.59,080/-. It is beyond the comprehension. The authorised representative has submitted acquisition cost at Rs.70,00,000/-. The Assessing Officer has observed that the argument of the assessee was without basis and hence cannot be accepted. The computation of long term capital gain as made by the Assessing Officer must therefore to sustain and the arguments advanced by the authorised representative and has to be rejected.

2.3 As regards to the addition of Rs.8,00,000/- being receivables, the CIT(A) dismissed the issue without providing opportunity of

being heard as claimed by Id.counsel for the assessee are reproduced in para 13 of the CIT(A)'s order, which reads as under:-

“13. I have carefully considered the assessment order, the submissions made by the appellant during the course of appellate proceedings. In my considered opinion, the order of the Assessing Officer is well reasoned and supported by relevant documents. The authorized representative has not submitted any documentary evidence to support his grounds of appeal. Accordingly, all the grounds taken by the appellant are dismissed.”

3. When these were confronted to Id. Senior DR and was specifically asked, what is the basis of addition by AO and subsequently confirmation by CIT(A), he could not support but he argued that ample opportunities were given to the assessee and despite that assessee has failed to produce evidences to prove her claim.

4. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the CIT(A) particularly has not passed a speaking order and even not discussed the basic facts relating to the issue involved in both the orders. But, it seems that ample opportunities were provided by the AO and despite that, in assessment year 2008-09, the order passed by AO is best judgment assessment u/s.144 of the Act because the assessee was not attending the matter. In regard to assessment year 2009-10, it is the allegation of the assessee despite assessee producing

documentary evidence, the AO has not examined properly. In entirety of the facts, going through the case records, despite opportunities given by the lower authorities, the assessee could not avail the opportunities without any reason. Hence, we have no alternative except to set aside the matter to the file of the AO in both the years and the AO will reframe the assessment after allowing reasonable opportunity of being heard to the assessee. We also impose cost on assessee for a sum of Rs.5,000/- to be paid to the Tamil Nadu State Legal Services Authority at Hon'ble High Court of Madras. In term of the above, we set aside the orders of lower authorities and allow these two appeals of the assessee for statistical purposes.

5. In the result, the appeals filed by the assessee are 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

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 16th November, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |