

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1522/CHNY/2019
निर्धारण वर्ष/Assessment Year: 2007-08

Late Shri K. Kandasamy,
Rep. by L/H Smt. K. Amirtham,
No.52, Dindigul Main Road,
Karumandapam,
Trichy – 620 001.

The Income Tax Officer,
Vs. Ward – 1(2),
Trichy.

PAN : AWGPK 0750R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 20.12.2022
घोषणा की तारीख/Date of Pronouncement : 20.12.2022

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-1, Trichy in ITA No.260/2014-15/CIT(A)-1/TRY dated 24.04.2019. The assessment was framed by the Income Tax Officer, Ward-I(2), Tiruchirappalli for the assessment year 2007-08, u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 26.03.2015.

2. The only issue remains for adjudication is as regards to the order of CIT(A) confirming the action of AO in computing long term capital gain on sale of land situated at Kuniamuthur, Coimbatore admeasuring 6.75½ acres for a consideration of Rs.45 lakhs as per sale deed but addition confirmed based on sworn statement of the assessee admitting the sale consideration at Rs.2,63,99,250/-.

3. At the outset, the Id.counsel for the assessee when confronted the issuance of notice u/s.143(2) of the Act by the AO fairly agreed that he is not agitating the jurisdictional issue either on reopening u/s.148 of the Act or non-issuance of notice u/s.143(2) of the Act.

4. The Id.counsel for the assessee but drew our attention to peculiar facts of this case. The Id.counsel drew our attention to the acknowledgment of return of income filed in response to notice issued by AO u/s.148 of the Act dated 21.03.2014 filed on 23.03.2015. He drew our attention to the copy of notice issued u/s.143(2) of the Act supplied by Department now during the course of hearing before Tribunal and also copy of power of attorney of ITP from S. Sridhar of Trichy which is dated 25.03.2015 and even the notice is also issued on 24.03.2015 and received by the ITP on

25.03.2015. The AO fixed the date of hearing on 25.03.2015 at 10.30 a.m and the assessment was completed u/s.143(3) r.w.s. 147 of the Act dated 26.03.2015 to culmination of assessment order u/s.143(3) r.w.s.147 of the Act dated 26.03.2015 happened only within 3 days including issuance of notice u/s.143(2) of the Act and framing of assessment. The Id.counsel stated the assessee died on 21.12.2011 leaving his legal heirs Smt. K.Amirtham (wife), Shri K.Ganesh (son) and Smt. K. Renuga (daughter). He stated that the AO just relied on the statement of deceased assessee recorded on 29.07.2011 wherein he replied to question No.6 & 7 as under:-

“Q.No.6: As a result of an enquiry u/s.131(1A) of the IT Act, today (29.07.2011) with Mr. Balasaravanan and others, certain documents have been found to the effect that you have sold 6.75 acres of land to Mr.Balasaravanan and his associates. Please explain and tell about the above said transaction?

Ans.: I have got Rs.2,63,99,250/- as you said. This land sale was registered only for Rs.45,00,000/-. Out of this sale proceeds, I purchased the house in which I am presently residing.

Q.No.7: How did you spent the above said sum of Rs.2,63,99,250/-?

Ans: I sold this property since my son was incurring loss in his business at Trichy. Out of the above said proceeds I gave Rs.1 crore to my son to wipe out his debts. I gave 25 lakhs to my daughter. I bought a land for Rs.14,50,000/- in my wife's name and gifted it to my daughter. I paid our Rs.40,00,000/- to wipe out my business debts and another Rs.15,00,000/- to wipe out Canara Bank loan. I invested Rs.10 lakhs in FD with LVB. I spent around Rs.25 lakhs for purchase and renovation of my residential house. Out of the balance, I met out the expenditure for my bye-pass surgery. My wife is also a heart patient. I am attending to her medical treatment also.”

4.1 The Id.counsel for the assessee in view of the above stated that the assessee family was not in proper state of mind and they were not aware about the facts of the case and the AO without going into the details framed assessment. Further, Id.counsel took us through the order of CIT(A) which is practically ex-parte and there is no adjudication on merits except by cryptic order, the CIT(A) dismissed the claim of assessee by observing in para 15 & 16 as under:-

“15. In view of persistent non-attendance and non-cooperation, this office is hence left with no choice but to complete the appeal on the facts available on record.

16. Mr. Kandasamy had in a statement himself confirmed to have sold 6.75 acres of land to Mr. Balasaravanan and his associates when corroborating the enquiry made u/s 131(1A) on 29/7/2011 with Balasaravanan & others for having received sale consideration of Rs.2.63,99,250/- which was only registered for Rs.45 lakhs. As the recipient has himself accepted the receipt of cash, over above the amount mentioned in cheque, and the seller has on his part also confirmed the payment and has also been assessed on this issue, there can be no doubt that late Mr. Kandasamy had indeed received Rs.2.69 crores for sale of land which he failed to disclose. That land was his capital asset and hence, the gains arising will be assessed as capital gains is not in dispute. In the light of these facts, the addition made is confirmed.”

4.2 The Id.counsel in view of the above noted events stated that neither the AO nor CIT(A) has properly adjudicated the facts on merits and for this, he requested that for proper adjudication of the issues matter may be remanded back to the file of the AO. The Id.counsel brought before us one more fact that in the case of

purchasers of this land i.e., one of the co-owner purchaser, assessment was framed in the case of Shri Balasaravanan vide order dated 18.03.2015 for assessment year 2007-08 u/s.143(3) r.w.s. 147 of the Act, wherein the AO has accepted the land purchased was assessed at Rs.1,40,48,658/- for his share but he CIT(A) accepted the explanation of assessee and confirmed addition of Rs.42,27,780/- only. For this, he referred to para 6.5.5 of CIT(A)'s order in the case of Shri Balasaravanan, which reads as under:-

“6.5.5. The unexplained investment, if any, will have to be taxed in the financial year relevant to the assessment years in which the said statement has been made. Direction u/s 150(1) of the Income Tax Act is given to the Assessing Officer to bring to tax such investment amounting to Rs.42,27,780/- in the appropriate assessment years after ascertaining the relevant date of payment from the impounded material and other evidence and giving the appellant an opportunity. The addition of Rs.42,27,780/- is confirmed in the appellant's hands till the proceedings initiated subsequent to direction u/s 150(1) of the Income Tax Act, 1961 attain finality on a protective basis for financial year 2006-07 relevant for assessment year 2007-08.”

The Id.counsel stated that even this order of CIT(A) in the case of purchaser has to be considered by the AO during the course of set aside assessment proceedings.

5. On the other hand, the Id. Senior DR aggressively contested the set aside of the assessment for the reason that the AO has made

detailed enquiry and on the basis of detailed enquiry conducted by DDIT (Investigation), Coimbatore in the case of Shri M. Balasaravanan and others who happened to be the purchasers, the assessee Shri K. Kandasamy (at the time when he was alive) in his statement on 29.07.2011 have admitted to have been sold this land of 6.75½ acres for consideration of Rs.2,63,99,250/-. According to Id. Senior DR, the AO has carried out proper enquiry and then made addition in the hands of assessee. The Id.Senior DR also stated that even though sufficient notices were given to assessee to represent the case before CIT(A) by the CIT(A) but he has not availed of the opportunity and accordingly, the CIT(A) has to decide ex-parte based on facts available on record. When a query was put to Id. Senior DR, whether the CIT(A) has discussed the issues and passed speaking order, he could not controvert the above fact situation. Further, he could not controvert that the order of CIT(A) is ex-parte.

6. After hearing rival contentions and going through the facts of the case, we are of the view that as admitted by Id.counsel for the assessee that the assessee has received notices u/s.143(2) of the Act and there is no legal issue of reopening remains, we confirm the assumption of jurisdiction by the AO.

7. As regards to the facts and circumstances narrated by Id.counsel for the assessee that the AO while framing assessment u/s.143(3) r.w.s. 147 of the Act dated 26.03.2015, he has not considered the facts in proper perspective by not allowing indexed cost of acquisition, indexed cost of improvement, expenses of transfers, deduction u/s.54EC & 54F of the Act and also not considered the assessment framed in the purchasers namely Shri M. Balasaravanan by the AO, wherein only unexplained investment to the extent of Rs.42,27,780/- was considered. Even the CIT(A) has passed cryptic and non-speaking order and that also ex-parte qua assessee without elaborating on merits of the case, whether the assessee has received total consideration of Rs.2,63,99,250/- as admitted by him in his statement given before DDIT (Investigation), Coimbatore on 29.07.2011 u/s.131(1A) of the Act or the consideration recorded in sale deed amounting to Rs.45 lakhs, we remit this issue on merits back to the file of the AO to go into the details and confront the statements to the legal heirs so that they can produce whatever evidence in their favour before AO for assessment of the deceased assessee as their legal heirs. The AO also will consider the claim of deduction as made before him during

the course of assessment. Needless to say, the legal heirs will provide all the details to the AO as and when called for.

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

Order pronounced in the open court on 20th December, 2022 at Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 20th December, 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. |