

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं  
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1934/Chny/2016  
निर्धारण वर्ष /Assessment Year: 2007-08

The Income Tax Officer,  
Non-Corporate Ward-4(2),  
63-A, Race Course Road,  
Coimbatore.

v. Mr.M.Balasaravanan,  
No.1/46A, Jothi Nagar,  
Thiruvalluvar Street,  
Kalapalayam,  
Theethipalayam,  
Coimbatore-641 010.

[PAN: APLPB 0708 G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Department by

: Mr.D. Hema Bhupal, JCIT

Assessee by

Mr.R.Vijayaraghavan, Adv.  
Mr.Saroj Kumar Parida, Adv.

सुनवाई की तारीख/Date of Hearing

: 20.12.2022

घोषणा की तारीख /Date of Pronouncement

: 23.12.2022

आदेश / ORDER

**PER G. MANJUNATHA, AM:**

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-3, Coimbatore, dated 31.03.2016 and pertains to assessment year 2007-08.

**:: 2 ::**

**2. The Revenue has raised the following grounds of appeal:**

- 1. The order of the CIT (A)-3. Coimbatore is against law, facts and circumstances of the case.*
- 2. The Id.CIT (A) erred not in relying on the evidence gathered during the course of enquiry made in the assessee's premises.*
- 3. The Id. CIT (A)-3 erred in relying on the cash flow statement produced by the assessee. wherein the assessee has showed that sources of the investment were from previous agricultural income. Cash flow statement has no legal validity in the eyes of law and allowing the assessee's appeal.*
- 4. The Id. CIT (A) erred relying on the income shown in the Cash Flow Statement as income derived from agricultural operations without any supporting evidence. The Chitta and Adangal, clearly reveals that the agricultural activities were done by Shri. Rangaswamy Gounder but not by the assessee. Also the assessee has not entered into any lease with Rangaswamy Gounder.*
- 5. The Id. CIT(A) erred in the interpretation of the sale deed, from which it is crystal clear that the entire consideration was paid by the buyer on the date of registration of Kuniyamuthur land i.e. on 15.02.2007 and also the seller had handed over the property to buyer for his utilization. Further the seller Shri.Kandasamy explained the utilization of the entire sales consideration in detail, in the sworn statement recorded by him. After registration the land were divided into sites for residential purpose and named as "Adithya Garden".,*
- 6. The Id.CIT (A) has not considered the sworn statement recorded from Shri.M.. Balasaravan on 29.07.2011 during the course of survey, wherein in Question No. 15 the assessee has stated that \*KBK Mohammad had paid Rs.1 Crore as advance for Kuniyamuthur land, out of which he had utilized his share of Rs.35,00,000/- for his personal purpose .*
- 7. In the circumstances, it is prayed that the order passed by the CIT (A) may be quashed and that of the Assessing Officer may be restored.*
- 8. The Hon'ble IT AT is requested leave to add, amend or modify the grounds of appeal, if necessary, in future.*

**3. The brief facts of the case are that the assessee is engaged in the business of bakery and real estate. An enquiry u/s.131(1A) of the Act, was conducted on 29.07.2011 by the Dy. Director of Income Tax (Investigation), Coimbatore, and during the course of investigation, it was revealed that the assessee had made investments in insurance policy for Rs.3 lakhs. Apart from the above, the assessee had also made investment in real estate and purchased 45 acres of land and source for said purchase**

**:: 3 ::**

was not explained. Therefore, the case was re-opened u/s.147 of the Act, and notice u/s.148 of the Act, dated 26.02.2014 was served on the assessee. In response, the assessee had filed his return of income on 23.04.2014 declaring total income of Rs.6,06,650/- and agricultural income of Rs.8,25,000/-. The case was selected for scrutiny and the assessment has been completed u/s.143(3) r.w.s.147 of the Act on 18.03.2015 and determined total income of Rs.2,06,77,808/- by making various additions including additions towards investments made in insurance policies, expense made in land development, disallowance of agricultural income share of investment in land purchased at Karadivavi and source for purchase of land at Kuniamuthur. The assessee carried the matter in appeal before the First Appellate Authority and the Ld.CIT(A) for the reasons stated in his appellate order dated 31.03.2016 partly allowed the appeal filed by the Revenue, where he has allowed relief towards investment made in insurance policies, expense made in land development additions towards disallowance of agricultural income. However, allowed partial relief in respect of addition towards land purchased at Karadivavi and land purchased at Kuniamuthur. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeal before us.

**4.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that the appeal filed by the Revenue has been disposed off by the Tribunal in light of CBDT Circular No.17/2019 dated 08.08.2019 on the ground that tax

**:: 4 ::**

effect involved in appeal filed by the Revenue is less than Rs.50 lakhs. The Revenue has subsequently filed MA to recall the order of the Tribunal on the ground that appeal filed by the Revenue comes under the exception as provided under Clause-10(c) of CBDT Circular No.17/2019. Therefore, the Tribunal has recalled its order in ITA No.1934/Chny/2016 dated 05.05.2022 in MP No.71/Chny/2022 dated 30.09.2022. At the time of hearing, the Ld.Counsel for the assessee submitted that the Revenue has challenged the order of the Ld.CIT(A) in light of provisions of Rule 46A of the Income Tax Rules, 1962, and thus, the issue involved in appeal may be set aside to the file of the AO to re-examine the issue in accordance with law. The Ld.DR present for the Revenue fairly agreed that the appeal may be set aside to the file of the AO to re-examine the issue involved in the appeal. We find that the main grievance of the Revenue in their appeal filed before the Tribunal is on violation of principle of natural justice in light of Rule 46A of the Income Tax Rules, 1962, on the ground that the Ld.CIT(A) has allowed relief to the assessee by admitting certain additional evidences without confronting those evidences to the AO for his comments. In fact, the Ld.Counsel for the assessee fairly agreed that the matter may be set aside to the file of the AO to re-examine the issue in light of various evidences filed by the assessee. Therefore, we are of the considered view that since both the parties agreed to set aside the issue to the file of the AO, we remit the issue back to the file of the AO and direct the AO to re-examine the

:: 5 ::

issue in light of various evidences filed by the assessee and decide the issues in accordance with law.

5. In the result, appeal filed by the Revenue is treated as allowed for statistical purposes.

Order pronounced on the 23<sup>rd</sup> day of December, 2022, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 23<sup>rd</sup> December, 2022.

**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

**Sd/-**

(जी. मंजूनाथा)

**(G. MANJUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF