

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

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

आयकर अपील सं./ITA No.: 286/Chny/2019
निर्धारण वर्ष / Assessment Year: 2009-10

Mrs. Shanthamani,
(representing Late Mr. M.
Ramalingam)
111, Oor Gounder Thottam, Anna
Nagar, Velappanaickenpalayam,
Chinnavedampatti PO,
Coimbatore – 641 006.
[PAN: ANLPR-8229-C]

The Income-tax Officer,
v. Non-Corporate Ward 2(2),
Coimbatore.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. R. Meena, CA
प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 22.12.2022
घोषणा की तारीख/Date of Pronouncement : 04.01.2023

आदेश /ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-2, Coimbatore, dated 03.12.2018 and pertains to assessment year 2009-10.

2. The assessee has raised the following grounds of appeal:

"The Appellant respectfully submits that the order of the learned Assessing Officer ('AO') and learned Commissioner of Income Tax (Appeals) ('CIT(A')) in so far as it related to the additions made is concerned against the provisions of law and contrary to facts and circumstances of the case, based on the following grounds:

Ground no. 1 - Erroneous non-issuance of refund of taxes paid on income which is not assessable to tax in the hands of Late Mr. M Raralingam

*The learned CIT(A) ought to have upheld the claim of the Appellant for refund as CIT(A) -2 in his order dated 30.09.2016 in **ITA No. 218/15-16** has clearly held that there is no question of determining income and tax payable in the order giving effect to order passed by Hon'ble Income Tax Appellate Tribunal ('ITAT'), Chennai dated 13.11.2015 quashing the original assessment u/s. 143(3) read with Section 147, in the facts and circumstances of the case and in law.*

The Learned CIT(A) ought to have held that the AO was not right in not granting the refund of taxes paid by the appellant, after the assessment was quashed, by the Hon'ble ITAT 'A' Bench, Chennai vide its order in ITA No. 2229/Mds/2014 dated 21.08.2015 and reconfirmed the same, by Hon'ble ITAT 'D' Bench, vide its order in ITA No. 494/Mds/2014 dated 13.11.2015, in the facts and circumstances of the case and in law.

The learned CIT(A) ought to have held that the Hon'ble ITAT, Chennai, having found that the capital asset transferred, did not belong to the appellant, in his individual capacity, the return filed by the appellant, was invalid in Law, as there is no question of determining income and tax payable, in the facts and circumstances of the case and in law.

The learned CIT(A) has erred in holding that the return filed by the appellant was pursuant to notice issued u/s. 147 of the Act and it was valid even while no income was found to have escaped assessment by Hon'ble ITAT, Chennai, in the facts and circumstances of the case and in law.

The learned CIT(A) failed to appreciate that when there was no income from capital gains having accrued to the appellant, as an

individual, the return filed in his capacity as individual, admitting the said income, would not be a valid return, and in such circumstances, the provisions of self-assessment u/s. 140A are not attracted, as rightly contended by the appellant before him, in the facts and circumstances of the case and in law.

*The learned CIT(A) ought to have held that the AO did not have any direction whatsoever, in terms of proviso (b) to section 240 of the Act, as there cannot be an estoppel against the statute as held by the Bombay High Court, in the case of *Nirmala L Mehta* (269 ITR 11), in the facts and circumstances of the **case** and in law.*

For these and other additional grounds of appeal that may be adduced at the time of hearing, the order of the CIT(A) is opposed to law and unsustainable in the facts and circumstances of the case.

Prayer

The appellant prays to consider the submissions favorably and seeks your leave to add, alter, supplement, amend, vary, withdraw or otherwise modify the ground mentioned herein above at or before the time of hearing. AU the aforesaid grounds of appeal are independent, in the alternative and-without prejudice to on another."

3. The brief facts of the case are that, the assessee had sold agricultural land situated at Chinnavedampatti, Coimbatore on 11.08.2008. The assessee did not file his return of income for the assessment year 2009-10. Therefore, notice u/s. 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 21.11.2011 was issued. In response to 148 notice, the appellant had filed his return of income on 26.12.2011 and admitted long term capital gains of Rs. 3,03,07,540/-. The AO computed long term capital gains from sale of agricultural land

at Rs. 4,07,41,679/-, after rejecting exemption claimed u/s. 54F of the Act. The AO had also made additions towards cash payment to Shri. Seethapathy Naidu amounting to Rs. 1 crore and interest credited in Shri. M. Ramalingam's TNMB account at Rs. 1,20,534/- under the head 'income from other sources'. On appeal before the first appellant authority, the assessee could not succeed. Therefore, the appellant had preferred second appeal before the ITAT. The ITAT vide their order dated 25.10.2016 held that, the impugned capital asset on which long term capital gains computed by the AO is not held by the appellant, but it was the asset of the HUF. Therefore, annulled the assessment and directed the AO to proceed in accordance with law, and is at liberty to assess the long term capital gains in the hands of the HUF and consequent deduction, if any, can be examined in the hands of the HUF. The AO in pursuant to directions of the tribunal, passed order giving effect and reduced total income to nil in the hands of the assessee. However, withheld tax paid by the assessee amounting to Rs. 89,43,680/- in terms of provisions of section 240(b) of the Act, on the ground, where by an order, an assessment is annulled, the refund shall become due only of

the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee. Further, the AO has initiated assessment proceedings in the hands of the HUF and assessed capital gains derived from sale of agricultural land in the hands of HUF, but did not adjust taxes paid by the assessee in the individual capacity. The assessee carried the matter in appeal before the CIT(A). The Ld.CIT(A) vide their order dated 03.12.2018 rejected appeal filed by the assessee on the ground that as per the provisions of section 240(b) of the Act, refund if any, on account of annulled assessment is restricted to tax paid over and above, income returned by the assessee. Therefore, there is no error in the action of the AO in withholding the amount paid by the assessee. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, submitted that when the AO has assessed impugned capital gains derived from sale of agricultural land in the hands of HUF, as per the directions of the Tribunal, then he ought to have refunded entire amount

of tax paid by the assessee or adjusted against taxes payable by the HUF.

5. The Ld. DR, on the other hand referring to provisions of section 240(b) of the Act, submitted that as per said provisions, refund if any of amount on annulled assessment can be issued, over and above the tax paid by the appellant on returned income. Therefore, there is no error in the action of the AO in withholding tax paid by the assessee. However, he fairly agreed that, since the AO has assessed income in the hands of HUF, a direction may be given to adjust refund due to the assessee against payment in the hands of HUF.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee has sold an agricultural land and claimed that said land is outside the scope of capital asset as defined u/s. 2(14) of the Act and is not liable to capital gain tax. The AO has reopened the assessment u/s. 147 of the Act, and in response to 148 notice the assessee has declared capital gains arising out of sale of land in the individual capacity. The

tribunal while deciding the issue has held that capital gains computed by the AO on land sold by the appellant is owned by HUF, but not the assessee. Therefore, annulled the assessment order passed by the AO and given a liberty to the Assessing Officer to proceed in accordance with law, on HUF to assess the capital gains, if any arising out of sale of land if limitation prescribed u/s. 151 of the Act permits. The AO passed consequential order giving effect to tribunal order and reduced income assessed to nil. However, withhold tax paid by the assessee in terms of provisions of section 240(b) of the Act. Further, the AO reopened the assessment of HUF and assessed capital gain derived from sale of agricultural land. According to the AO, as per provisions of section 240(b) of the Act, where by an order, the assessment is annulled, a refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.

7. We find that the AO grossly erred in invoking the provisions of section 240(b) of the Act, because if at all the tribunal held that capital gain derived from sale of impugned

land is assessable in the hands of the assessee, but for some reason annulled the assessment, then the AO is right in invoking provisions of section 240(b) of the Act. But fact remains that since the tribunal has held that impugned land is not held by the appellant, and held by HUF, and capital gain if any, is assessable in the hands of the HUF and also the AO assessed the capital gains arising out of sale of agricultural land in the hands of HUF, in our considered view, he cannot invoke provisions of section 240(b) of the Act and withhold tax paid by the assessee, because the entire income arising out of land is assessed in the hands of HUF and consequent tax paid by the assessee on said income needs to be refunded. Therefore, we direct the AO to issue refund due to the assessee on tax paid in respect of capital gains arising out of sale of agricultural land. We further, direct the AO to adjust refund due to the assessee against payment created in the hands of HUF because income pertains to land has been assessed in the hands of HUF only. We made it clear that we have not examined taxability of income in light of provisions of section 2(14) of the Act in the hands of the HUF and the AO

cannot construed that the Tribunal has decided the issue on taxability of capital gains in the hands of HUF for any purpose.

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

Order pronounced in the court on 04th January, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/Judicial Member

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 04th January, 2023

JPV

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 |