

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.141/Chny/2020
(निर्धारण वर्ष / Assessment Year: 2009-10)

Shri K B M Nagendra Sethupathy L/H of Late N.Kumaran Sethupathy #384, Old No.196, Lloyds Road Chennai – 600 086.	बनाम/ Vs.	ITO Ward 1(1) Sapthagiri Complex 144, Agraharam Road Ramanathapuram- 623 501
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. ADWPK-2065-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Assessee by	:	Shri T.N. Seetharaman (Advocate) – Ld. AR
प्रत्यर्थी की ओर से/ Revenue by	:	Shri ARV Sreenivasan (Addl. CIT) – Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	16-01-2023
घोषणा की तारीख / Date of Pronouncement	:	16-01-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. In this appeal for Assessment Year (AY) 2009-10, the grievance of the assessee is two-fold i.e., (1) Computation of Long Term Capital Gains (LTCG); (ii) Addition of cash deposit. The assessee has filed revised Form No.36 to bring on record legal heirs of the deceased assessee which is found in order. The assessee has also filed concise grounds on impugned issues. The order under challenge has been passed by learned Commissioner of Income Tax (Appeals)-1, Madurai

[CIT(A)] on 06.11.2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s. 147 on 28.03.2014. Having heard rival submissions, the issues are adjudicated as under.

2. Computation of Long Term Capital Gains (LTCG)

2.1 The assessee sold 4.09 Cents of certain land situated at Ramanathapuram Town on 21.07.2008 for Rs.4.50 Lacs. The property was ancestral property and the market value of the same was Rs.11.37 Lacs. The assessee submitted that it was ancestral property and as ex-ruler, this property was received from British Rulers. Since the cost was Nil, there would be no scope for computation of capital gains. However, rejecting the same, Ld. AO brought to tax market value of Rs.11.37 Lacs as Long Term Capital Gains (LTCG).

2.2 During appellate proceedings, the assessee's submissions were subjected to remand proceedings. During remand proceedings, it was noted that the assessee became owner of the property in the year 1997-98 as per the orders of Additional Sub-Judge Ramanathapuram. Therefore, considering market value of the property prevailing in that year, Ld. AO worked out LTCG of Rs.3.04 Lacs.

2.3 However, Ld. CIT(A) directed the assessee to prove that the property was acquired from British Rulers and also furnish instrument through which it was acquired. In the absence of any documentary evidences forthcoming from the assessee, it was clear that the property was acquired prior to 1947 or during 1947. At that point of time, the value of the property was insignificant. The assessee himself considered the cost to be Nil. Therefore, the benefit of cost would not be available to the assessee and the assessment made at Rs.11.37 Lacs was confirmed, against which the assessee is in further appeal before us.

2.4 From the finding of Ld. CIT(A), it emerges that the assessee family has acquired the property long time back which has been devolved upon the assessee during 1997-98. The property is ancestral property. In such a case, an option is given to the assessee under law to consider actual cost or fair market value (FMV) as on 01.04.1981 to be the cost of the property. Therefore, we direct Ld. AO to take FMV as on 01.04.1981 as the cost of the property and allow the indexation of the same. The LTCG thus computed would constitute assessee's income. We order so.

3. Cash Deposit in Taminadu Mercantile Bank Ltd.

3.1 This issue was racked up by Ld. CIT(A). It was observed that the case was reopened to examine the cash deposit which was not done by Ld. AO. Accordingly, Ld. AO was directed to file remand report, in this regard. It transpired that the assessee deposited cash of Rs.12.66 Lacs out of which Rs.8 Lacs was deposited on 03.06.2008 and Rs.2 Lacs was deposited on 09.06.2008. The assessee submitted that the contribution was received from alumni of Rajah's Higher Secondary school and well wishers in cash ranging from Rs.1000/- to Rs.10,000/- and the collection was deposited in assessee's bank account. Thereafter, demand draft of Rs.10 Lacs was made and deposited with District Collector, Ramanathapuram as share of the public. However, in the absence of documentary evidences, the submissions were rejected and the amount of Rs.12.66 Lacs was added to the income of the assessee. Aggrieved, the assessee is in further appeal before us.

3.2 Upon perusal of documents on record, it transpires that the assessee is an alumni and secretary of Rajah's Higher Senior Secondary school. This school is stated to be founded by assessee's grandfather. Under a government scheme, the District Collector Ramnad

District granted administrative permission for construction of additional school building at a cost of Rs.20 Lacs out of which Rs.10 Lacs was govt. contribution and the balance Rs.10 Lacs was share of the public. Under this arrangement, the assessee received small donations in cash from alumni of the school and other well wishers from public in small amounts ranging between Rs.1000/- to Rs.10,000/-. The collection so made was deposited in assessee's own bank account and thereafter, the amount was remitted to District Collector through demand draft. The perusal of assessee's bank statement as placed on record corroborates the same. The balance cash is stated to be deposited out of rental income earned by the assessee. The stated facts, in our opinion, support the case of the assessee though the assessee may be lacking in satisfactory documentary evidences. The surrounding circumstances supports the case of the assessee that the cash was sourced out of small donations received from school alumni and other well wishers which has been deposited in the bank account and thereafter, remitted to the District Collector as share of the public. The assessee has also shown rental income in the return of income. Therefore, keeping in view the peculiar fact of the case, the impugned addition of Rs.12.66 Lacs is not sustainable. We order so.

4. The appeal stand partly allowed for statistical purposes.

Order pronounced on 16th January, 2023.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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