

आयकर अपीलीय अधिकरण, 'सी' (एस एम सी) न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' (SMC) BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT**

आयकर अपील सं./ITA Nos.: **114, 115 & 116/CHNY/2023**  
निर्धारण वर्ष/Assessment Years: 2009-10, 2010-11 & 2011-12

**Late G. Subramaniam,**  
**Rep. by L/H Shri S.Ramesh,**  
No.117, Old No.56,  
Sami Naicken Street,  
Chintadripet,  
Chennai – 600 002.

**The Income Tax Officer,**  
Vs. Non-Corporate Ward 9(4),  
Chennai.

**PAN: AAHPS 8985M**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri Abhishek Murali, CA  
: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 27.02.2023  
घोषणा की तारीख/Date of Pronouncement : 28.02.2023

**आदेश /ORDER**

These three appeals by the assessee are arising out of three different orders of the Commissioner of Income Tax (Appeals)-10, Chennai in ITA Nos.101, 100 & 99/16-17/CIT(A)-10 of even date 09.11.2018. The assessments were framed by the Income Tax Officer, Non-Corporate Ward 9(4), Chennai for the assessment years 2009-10, 2010-11 & 2011-12 u/s.143(3) r.w.s. 147 of the Income

Tax Act, 1961 (hereinafter the 'Act') vide orders of even date 31.03.2016.

2. At the outset, it is noticed that the assessee has raised identical grounds in all the three appeals and the grounds read as under:-

(i) The order of the Learned AO/CIT(A) is bad and erroneous in law and against the principles of natural justice.

**Giving Effect Order based on Valuation done Without Issuing Show-Cause Notice:**

(ii) The Learned AO/CIT(A) ought to have noted that a proper show-cause notice should be served before passing the giving effect order.

(ii) The Learned AO/CIT(A) has failed to consider and dispose off the objections raised by the Appellant against the valuation report which was issued.

**AO Has no Power to Pass Such Order - CIT(A) Ought to have Passed the Order:**

(iv) The Learned AO ought to have noted that he has no jurisdiction to pass the order giving effect to Valuation Report, only the CIT(A) has the power to do the same.

(v) The Learned CIT(A) ought to have noted that the valuation report should have been adjudicated by the CIT(A) and a remand report ought to have been issued before disposing of the Appeal.

(vi) The Learned AO/CIT(A) ought to have noted that the Appellant has lost opportunity in appeal to adjudicate the issues raised against the improper valuation by the incorrect order passed by the AO.

**Re-Opening is Bad in Law:**

(vi) The Learned AO erred in assuming jurisdiction u/s 147 of the Act and consequently erred in framing the re-assessment u/s 147 r/w section 143(3) of the Act without assigning proper reasons and justification.

(vii) The Learned AO failed to appreciate that the order of re-assessment under consideration was passed out of time, invalid, passed without jurisdiction.

(ix) The Learned CIT(A) has incorrectly failed to adjudicate the technical grounds raised in the course of the Appeal proceedings.

(x) Any other ground that may be raised at the time of personal hearing.

When the above grounds were pointed out to Id.AR for the assessee, he argued that he has challenged the order of CIT(A) as legal heir of assessee Shri G. Subramaniam. He stated that the issue in dispute is Long Term Capital Gain on sale of 9600 sq.ft., area situated at No.100, Pammal Village, Meenakshisundaram Street, Paimash No.742/2, Patta No.978, Patta Survey No.93/3, Tambaram Taluk, Kanchipuram District. The assessee is having 1/20<sup>th</sup> share in the above subject property. But it is noticed that the assessee in the grounds of appeal has challenged only the order giving effect and the grounds are not property raised. These appeals were filed by assessee on 31.01.2023 and the date of orders of CIT(A) is 09.11.2018. The assessee claimed in Form No.36 that the date of service of CIT(A)'s order is dated 27.01.2023, which is not disputed by the Revenue. It means that there is also delay in filing of appeal by 1074 days. The assessee has filed affidavit stating the reason for delay and the relevant para 2 to 5 of the affidavit reads as under stating the reasons:-

2. I state that the respected Assessing Officer had passed an order giving effect to the order of Commissioner of Income Tax (Appeals) dated 24/12/2019 which was not received by me. I state the appeal against the order ought to have been filed before the Hon'ble Income Tax Appellate Tribunal within 60 days, i.e. on or before 22/02/2020.

3. I state that due to no knowledge of such order being passed, I was unable to file the appeal. As there was a dispute in the family, some of the notices/orders of my late father were collected by my siblings or served on my siblings without my knowledge. Only on 27 January, 2023, on receipt of a demand notice by the Tax Recovery Officer did the nature of CIT(A) order come to my light.

4. I state that upon recent reference to our counsel, M/s. Victor Grace & Co.. Chartered Accountants, for regularizing the issue by proper appeal against the impugned order, the appeal was filed on 31/03/2023 resulting in a delay of 1074 days.

5. I state that the delay in filing the above appeal is neither willful nor wanton but only due to the aforesaid bonafide reasons

4. The Id.AR for the assessee before me stated that the property also under distress sale and there is dispute in the family among the legal heirs of the assessee and he is not aware whether the other legal heirs have filed appeals qua the estate of the assessee qua their share. He stated that since there was a dispute in the family the notices or orders passed by Income-tax Department on late assessee, the father of the assessee, are collected by his siblings or served on his siblings without his knowledge. It came to his notice only on 27.01.2023 i.e., on receipt of demand notice by TRO and came to knowledge of the order of CIT(A). He stated that the orders

passed by CIT(A) are ex-parte because the assessee did not receive any of the notices. Similarly, the assessee did not receive the appellate orders. Thereafter, the assessee consulted the legal advisors and accordingly, the orders were procured from the Income-tax Department only on 27.01.2023 and appeals were filed only on 31.01.2023. Due to abundant caution, the assessee filed this condonation petition. Actually, there is no delay in filing of appeal.

5. When pointed out to Id. Senior DR, he vehemently contested the delay and he stated that it is not possible that the order of CIT(A) dated 09.11.2018 was not received by assessee but he could not produce any evidence of service of orders of CIT(A), before me.

6. It seems that the plea of the assessee in absence of any evidence cannot be rejected that the assessee did not receive the order of CIT(A) on 27.01.2023. Admittedly the assessee received this order on 27.01.2023, in the absence of any contrary evidence, I presume that there is no delay in filing of appeals and appeals cannot be denied to be admitted. Hence, these appeals are admitted as within time.

7. However as noted above, the appeals filed by assessee seems to be defective because in the grounds of appeal, the assessee has only challenged the orders giving effect to the orders of CIT(A) which is the order of AO dated 24.12.2019. Hence, these appeals are dismissed as defective. But I give liberty to the assessee to file fresh appeals against the orders of CIT(A) and raise fresh grounds of appeal challenging the issues whatever he wants to raise. Hence, these appeals are dismissed as defective but subject to above liberty. The assessee's liberty is only for limited period of 30 days from the receipt of this order.

8. In the result, the appeals filed by the assessee are dismissed as defective

Order pronounced in the open court on 28<sup>th</sup> February, 2023 at Chennai.

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 28<sup>th</sup> February, 2023

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.