

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL . 'A' 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

आयकरअपीलसं./I.T.A.No.421/Chny/2021

(निर्धारणवर्ष / Assessment Year: 2015-16)

Mr. Appaswamy Venkatesh New No.16, Old No.9, Appaswamy Manor, CIT Colony, 4 th Cross Street, Mylapore, Chennai-600 004.	Vs	The Income Tax Officer, Non-Corporate Ward-18(4) Chennai-600 034.
PAN:ABVPV 3248H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. I.Dinesh, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. R.Mohan Reddy, CIT

सुनवाईकीतारीख/Date of hearing	:	02.03.2023
घोषणाकीतारीख /Date of Pronouncement	:	15.03.2023

आदेश / ORDER

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of revision order passed by the Principal CIT-9, Chennai, u/s.263 of the Income Tax Act, 1961 (hereinafter 'the Act') vide order C.No. ITBA/COM/F/17/2019-20/ 1025472014(1) dated 20.02.2020. The assessment was completed by the Income Tax Officer, Non-Corporate Ward-18(4), Chennai, for the relevant assessment year 2015-16 u/s.143(3) of the Act vide order dated 27.09.2017.

2. At the outset, it is noticed that appeal filed by the assessee in ITA No.421/Chny/2021 is barred by limitation of

554 days. The learned AR for the assessee submitted that the delay is due to pandemic period of Covid-19 and the Hon'ble Supreme Court in Misc. Application No.665 of 2021 vide order dated 23.03.2020 had given directions that delay is to be condoned during the period from 15.03.2020 to 14.03.2021 and they have condoned delay upto 28.02.2022 in Misc. Application No.21 of 2022 vide order dated 10.01.2022. Since, the Hon'ble Supreme Court has condoned delay during the said period, respectfully following the same, we condone the delay and admit the appeal.

3. The only issue in this appeal of the assessee is as regards to order of the PCIT revising assessment u/s.263 of the Act by holding that two receipts i.e., additional receipt of Rs.15.00 lakhs received by the assessee from builder is additional sale consideration in the hands of the assessee and monthly compensation of rent, which are taxable. For this issue, the assessee has raised various grounds which are argumentative and factual, hence, need not be reproduced.

4. We have heard rival contentions and gone through facts and circumstances of the case. The facts are that the

assessee during the financial year 2014-15 relevant to the assessment year 2015-16 sold jointly with his mother Smt.Tara Appaswamy, his 1/3rd share of land in plot nos.44B & 45B situated at No.16, CIT Colony, Mylapore. The assessee jointly with his mother executed sale deed dated 25.08.2014 for a consideration of Rs.1,29,32,040/-. Hence, sale consideration in respect of assessee's share is at Rs.64,66,020/- being 50% share of sale consideration. The assessee's father has settled ground floor with 50% undivided share in favour of the assessee, after retaining life interest for himself and his wife vide settlement deed dated 28.02.2007 and hence, the assessee sold 1/3rd of share of land and rest invested in residential house property.

5. The PCIT, on examination of case records found that developer has paid monthly compensation of Rs.40,000/- to the assessee and his mother for a period of 19 months from the date of handing over of vacant possession of residential property to the developer for demolition and reconstruction. Thereby, the assessee is entitled to sum of Rs.7.60 lakhs. The assessee's 50% share comes to Rs.3.80 lakhs. According to

the PCIT, this amount should have been brought to tax as unexplained money u/s.68 of the Act, which has not been considered by the Assessing Officer while framing original assessment. Secondly, the developer has agreed to pay further sum of Rs.30.00 lakhs to the assessee and his mother in three installments of Rs.10,00,000/- each, while signing the agreement. The Assessing Officer while framing original assessment has not considered 50% of assessee's share amounting to Rs.15,00,000/-. Thereby, the PCIT has directed the Assessing Officer to reconsider these two aspects and frame assessment. For this, he observed in his decision as under:-

“6.1 I have examined the miscellaneous records, the assessment order as well as the written submissions of the assessee.

6.2 In so far as the matter of receipt of rent from the builder is concerned, it is the benefit received by the assessee on account of transfer of property. However records reveal that the AO has not verified this aspect at the time of the assessment.

6.3 With regard to the second issue of receipt of additional receipt of Rs.15.00.000/- from builder is concerned, the assessee has no objection in taxing Rs.15,00,000/- received from the builder as additional receipts. Hence, the AO is directed to tax a sum of Rs. 15,00,000/- as additional sale consideration in the hands of the assessee for the AY 2015-16.

6.4 From the above it is quite obvious that the order u/s 143(3) dated 27.09.2017, being erroneous in so far as it is prejudicial to the interests of Revenue, is hereby remitted back to the file of the AO with a direction to pass fresh assessment order in accordance with law after providing due opportunity to the assessee."

Aggrieved, now the assessee is in appeal before the Tribunal.

6. After hearing both the sides and going through facts of the case, we noted that the Assessing Officer while framing original assessment has not considered rent receipt from builder as well as additional receipt of Rs.15,00,000/- *qua*, the assessee's share. As argued by the learned CIT DR that non-consideration of these two issues make the order of the Assessing Officer erroneous as well as prejudicial to the interest of the revenue for the reason that income has gone untaxed to the extent of Rs.15,00,000/- + Rs.3,80,000 = Rs.18,80,000/-. On a query from the Bench, the learned counsel could not point out how the Assessing Officer has considered these two issues in his assessment order. As the assessee's counsel could not reply, we are of the considered view that the PCIT has rightly directed the Assessing Officer to reconsider these two issues, after allowing reasonable

opportunity of being heard and also allowing opportunity to produce whatever evidence the assessee wants to produce. In terms of above, we affirm revisional order passed by the PCIT and dismiss this appeal of the assessee.

7. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 15th March, 2023

Sd/-

(मनोज कुमार अग्रवाल)
(Manoj Kumar Aggarwal)
लेखा सदस्य / Accountant Member

Sd/-

(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President

चेन्नई/Chennai,

दिनांक/Date: 15.03.2023

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.