

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **303/Chny/2022**
निर्धारण वर्ष / Assessment Year: 2016-17

Shri. Mayur Muljibhai Madhvani
Aries Exports P Ltd.,
Bhaktawar, 11th Floor,
Nariman Point,
Mumbai – 400 021.

Income Tax Officer,
v. International Taxation Ward,
Coimbatore.

[PAN: AESPM-7303-J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. J.K. Reddy, FCA &
Shri. Vijay J Reddy, FCA

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 08.03.2023

घोषणा की तारीख/Date of Pronouncement

: 12.04.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income-tax (Appeals)-16, Chennai, dated 11.03.2022 and pertains to assessment year 2016-17.

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

"1. On the facts and circumstances of the case, the learned CIT erred in confirming the addition made by the learned AO of Rs. 20,05,500/- which were paid to the society as transfer charges by stating that the transfer charges paid cannot be treated as part of the cost of acquisition without appreciating the fact that the same was mandatory and non-refundable payment, thus such addition is bad in law.

2. On the facts and circumstances of the case, the learned CIT erred in confirming the addition made by the learned AO to the extent of Rs. 13,54,725/- incurred towards cost of improvement without appreciating the fact that the details of such expenditure were submitted to the department and the payments for all these expenses was done through banking channel."

3. The brief facts of the case are that, the assessee is a non-resident, filed his return of income for the assessment year 2016-17 on 22.07.2016, admitting total income of Rs. 1,28,860/-. The case has been selected for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has made investment towards property development to the tune of Rs. 1,35,01,000/-. The assessee was asked to furnish the name and address of the developer to whom the payment made along with source. In response, the assessee stated that he had incurred expenses to get tenants vacated from the property situated at Porbandar city and

further, above expenses is not forming the part of the asset but it has been claimed as expenses whenever the property is sold. The AO, on the basis of details filed by the assessee and also taken note of nature of expenses incurred made additions of Rs. 1,35,01,000/- as unexplained investment in property.

4. Being aggrieved by the assessment order, assessee preferred an appeal before the CIT(A). Before the Id. CIT(A), the assessee has filed detailed written submissions on the issue along with certain judicial precedence and explained that expenditure incurred towards development of property was supported by necessary evidences. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of certain evidences filed by the assessee, allowed partial relief where he has confirmed additions towards payment made to housing society towards transfer chargers amounting to Rs. 20,05,500/- and expenses incurred towards cost of improvement without supported by any evidence amounting to Rs. 13,54,725/-, however allowed relief in respect of balance amount of expenditure incurred for development of the property. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The first issue that came up for consideration from ground no. 1 of assessee appeal is addition towards payment made to housing society towards transfer charges amounting to Rs. 20,05,500/-. The assessee has paid a sum of Rs. 20,05,500/- on 20.09.2007 after registration of flat to the housing society. The AO, disallowed amount paid to housing society on the ground that there is no necessity to make payment to housing society after registration of property. The Id. Counsel for the assessee, referring to receipt issued by the society and confirmation from the said party, submitted that the assessee has paid a sum of Rs. 20,05,500/- as per payment advise by the Vithal Nagar Co-operative Housing Society, and said payment has been made through proper banking channel. Further, said charges are levied by the housing society for transfer of flat. Therefore, it cannot be said that the assessee has not proved the expenses.

6. The Id. DR, on the other hand supporting the order of the CIT(A) submitted that no details has been filed as to why the assessee has paid such huge amount to society even after

registration of the property. Therefore, the AO has rightly made additions and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee has paid a sum of Rs. 20,05,500/- to the Vithal Nagar Co-operative Housing Society towards non-refundable lease transfer charges as per payment advise by the society. Further, said payment has been made through proper banking channel. The assessee had also filed confirmation letter issued by the society in respect of payment. From the above, it is very clear that, payment made by the assessee to housing society is supported with necessary evidences and also confirmed by said party. Therefore, we are of the considered view that when the assessee has filed all details to justify payment, the AO ought not to have questioned the purpose of payment made by the assessee. In our considered view, it is between the assessee and the housing society which maintained the flat purchased by the assessee. Therefore, in our considered view the AO and CIT(A) erred in making addition towards payment made to housing society and thus, we direct the AO to delete additions

made towards non-refundable lease transfer charges to Vithal Nagar Co-operative Housing Society.

8. The next issue that came up for our consideration from ground no. 2 of assessee appeal is addition of Rs. 13,54,725/- towards expenditure incurred on cost of improvement of property. The assessee has spent various expenditure to improve the property after the purchase. The assessee has paid amount towards purchase of air conditioner, curtains and pedestal light fittings. The AO, disallowed said expenditure on the ground that it is in the nature of personal effects and cannot be allowed as deduction.

9. The Id. Counsel for the assessee, referring to relevant bills in respect of purchase of various items submitted that the assessee has purchased air conditioner, curtains, pedestal light fittings to make house habitable and said expenditure is in the nature of improvement of the property. Therefore, the same needs to be allowed as cost of improvement while computing capital gains.

10. The Id. DR, on the other hand supporting the order of the CIT(A) submitted that, the assessee could not justify how expenditure incurred for purchase of AC, curtains and light fittings comes under cost of improvement. Therefore, the AO has rightly disallowed said payment and their order should be upheld.

11. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee has purchased a property and spent various expenditure to make house habitable. The assessee has incurred amount for purchase of Air conditioner. The assessee had also incurred expenditure for furnishing the house. The assessee had also spent amount toward purchase of light fittings. If you go by nature of items purchased by the assessee, all items are essential requirements to make house habitable. Therefore, we are of the considered view that the AO and CIT(A) completely erred in classifying said items as personal effects and disallowed while computing capital gains. Thus, we direct the AO to allow deduction towards expenditure incurred towards purchase of air conditioner, furnishing of

curtains, light fittings as cost of improvement while computing capital gains.

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

Order pronounced in the court on 12th April, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
पाध्यक्ष /Vice President

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

चेन्नई/Chennai,

दिनांक/Dated: 12th April, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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