

अपीलीय अधीकरण, '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

आयकर अपील सं./ITA No.: **3310/CHNY/2018**

निर्धारण वर्ष /Assessment Year: 2013-14

Shri Malayandipattinam
Arumugam Vijayamoghan,
Artin Avenue, Kamaraj Road,
Mahalingapuram,
Pollachi – 642 002.

The ACIT,
v. Non-Corporate Circle -4,
Coimbatore.

PAN: ABKPV 6147N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 29.05.2023

घोषणा की तारीख/Date of Pronouncement

: 31.05.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-3, Chennai in Appeal No.55/16-17 dated 06.09.2018. The assessment was framed by the ACIT, Non-Corporate Circle -4, Coimbatore for

the assessment year 2013-14 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 17.03.2016.

2. This appeal was filed by assessee on 03.02.2018 and originally appeal was fixed for hearing on 07.03.2019, on which date the Tribunal vide order dated 13.03.2019 dismissed the appeal of assessee as defective because despite notice served on assessee on 16.10.2018, the defects were not removed or rectified. Subsequently, this order was recalled on the petition of assessee who rectified the defects and the Tribunal in M.P. No.291/CHNY/2019, order dated 10.03.2023, re-fixed the appeal after recalling the ex-parte order for hearing. This matter came up for hearing before Bench on various dates but none is present from assessee's side. From the notice served and particularly the last notice, the Department of Posts has reported "left" which is dated 30.03.2023. It means that the assessee is not traceable and no new address has been provided by assessee as to where the notices to be sent. Hence based on material available on record and after hearing

Id. Senior DR, we have decided to decide this appeal ex-parte, qua assessee.

3. The first issue in this appeal of assessee is as regards to the addition made by AO and confirmed by CIT(A) towards inadequate drawings of Rs.70,100/-.

4. We have heard Id. Senior DR and gone through the case records. We noted that the assessee has disclosed personal withdrawal at Rs.1,09,900/- but the AO noted that the assessee is leading a decent life and hence, this withdrawal of Rs.1,09,900/- is not in commensurate with the status of the assessee. Hence he estimated the monthly disallowance of Rs.15,000/- per month and thereby estimated withdrawal at Rs.1,80,000/- and giving rebate of already withdrawn amount at Rs.1,09,900/-, he disallowed the balance sum of Rs.70,100/- The CIT(A) also confirmed the addition only on the basis that assessee is a trustee of a trust which is running an Arts and Science College and a reputed person in that locality. Hence, he confirmed the low household withdrawal made by AO at

Rs.70,100/- and accepted the estimation made by AO of Rs.15,000/- per month as withdrawal. Aggrieved, assessee is in appeal before the Tribunal.

4.1 We noted from the orders of the authorities below i.e., the AO and the CIT(A) that there is no iota of discussion or any evidence that the assessee has expended over and above a sum of Rs.1.09 lakhs which is disclosed as withdrawals. We further noted from the orders of the lower authorities that there is no discussion about what is the size of the house, what is the consumption of electricity, how many kids the assessee is having, what is the expenditure estimated and in absence of these things, we are of the view that the withdrawals made by assessee of Rs.1,09,900/- seems to be reasonable and addition made is without any basis. Therefore, we delete this addition and allow this ground of assessee's appeal.

5. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of Long Term Capital Gain of Rs.16,96,077/-.

6. We have heard Id. Senior DR and gone through facts and circumstances of the case. Brief facts are that the Highway Department acquired assessee's agricultural land, which was inherited by assessee from his father and awarded compensation of Rs.24,78,520/-. The assessee's father purchased this 32 cents of agricultural land i.e., 13,940 sq.ft., @ Rs.11,550/- in the year 1974. The assessee computed long term capital gain by adopting the fair market value as on 01.04.1981 @ Rs.74/- per sq.ft., and thereby disclosed long term capital gain at Rs.7,65,565/-. The AO issued notice u/s.133(6) of the Act to the Sub-Registrar, Pollachi who informed the AO that the guideline value of the survey No.246/1A as on 01.04.1981 is Rs.40,000/- per acre i.e., Rs.0.91 per sq.ft. Therefore, the AO taking the guideline value of Rs.0.91 per sq.ft., adopted the fair market value of the land at Rs.16,878/- and thereby computed Long Term Capital Gain at Rs.24,61,642/- and added the differential Long Term Capital Gain of Rs.16,96,077/-. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of the AO but by a cryptic order.

7. We have gone through the case records and arguments of Id. Senior DR. We noted that the assessee's father purchased 32 cents i.e., 13,940 sq.ft., @ Rs.11,500/- in the year 1974. Therefore the fair market value as on 01.04.1981 is to be estimated. The AO has taken the basis of guideline value of survey no.246/1A as on 01.04.1981. There is no clarity that the guideline value provided by Sub-Registrar, Pollachi of survey no.246/1A whether it is in the vicinity of the land or it is far from there and what is the locality of that land. The claim of assessee that the assessee's agricultural land is within the vicinity of municipality and adjoining areas are developed as shop sites and many showrooms. This land is in close vicinity to the municipal school, sawmill and a car showroom. Hence, the fair market value of this property is very high and therefore the assessee has taken the value at Rs.74/- per sq.ft. We have noted from records that the agricultural land of the assessee is within the municipality and it is in the developed area. Hence in our view, a reasonable estimate can be made. Therefore, we estimate the fair market value of the property @ Rs.40/- per sq.ft., and direct the AO to recompute the Long Term

Capital Gain by taking the land value as on 01.04.1981 at Rs.40/- per sq.ft. The AO will recompute the Long Term Capital Gain and accordingly, revise the demand. This issue of assessee's appeal is partly allowed.

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

Order pronounced in the open court on 31st May, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 31st May, 2023

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

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.