

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, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.576/Chny/2019**
(निर्धारण वर्ष / Assessment Year: 2010-11)

Mrs. P. Selvamani Ranjithan 12, Perumal Koil Street, Madanakuppam, Kolathur, Chennai-600 099.	बनाम / Vs.	ITO Non-Corporate Ward-10(4) Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. DLWPS-9773-Q		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri D. Anand (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri AR.V.Sreenivasan (Addl.CIT) –Ld. Sr.DR
सुनवाई की तारीख/ Date of Hearing	:	19-04-2023
घोषणा की तारीख / Date of Pronouncement	:	12-06-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2010-11 arises out of the order of learned Commissioner of Income Tax (Appeals)-12, Chennai [CIT(A)] dated 29-01-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143 r.w s. 147 of the Act on 28-12-2017. The sole issue in the appeal is assessment of capital gains in the hands of the assessee.

The Ld. AR, drawing attention to the factual matrix, submitted that the sale consideration was not received by the assessee and only real income is to be assessed in the hands of the assessee. The Id. SR. DR, on the other hand, maintained revenue's stand that the assessee was owner of land which was sold and therefore, the assessment of capital gains was justified. Having heard rival submissions and after perusal of case records, the appeal is disposed-off as under.

2. From the facts, it emerges that the assessee sold vacant land measuring 48,473 square feet for Rs.188.90 Lacs through a power holder on 20.08.2009. Since the assessee did not file return of income, the case was reopened and impugned assessment was framed. From perusal of sale deed, it transpired that the assessee was the absolute owner of the property. The sale deed was executed by the power of attorney holder on behalf of the assessee. However, the assessee did not offer capital gains on the same and stated as under: -

"Mr Pethanna Nadar, assessee's husband, orally agreed to sell the same property to Dr C.Mohan Reddy and received Rs.5,00,000/- in 2005 itself. The said Dr C. Mohan Reddy, entered into sale agreement dated 16/10/2008 with Mr S. Anand agreeing to sell the property. Mr Pethanna Nadar settled his 70 cents of land in favour of his wife by settlement deed dated 08.07.2009 registered as Doc.No.1910 of 2009 with SRO Villivakkam. Thereafter on the instructions of Dr. Mohan Reddy by a Power of Attorney dated 08/07/2009 registered as Doc.No.1064 of 2009 appointed Mr S.Anand S/o Srinivasan as power Agent of P.Selvamani, the assessee, to sell the 70 cents of land".

The AO found that the stated agreement between the assessee's husband, Late Pethanna Nadar and Dr. Mohan Reddy in 2005 was an oral agreement. The assessee did not furnish any proof for receipt of Rs. 5 Lacs stated to have received by Shri Pethanna. The AO further held as follows: -

It is stated that Smt Amsaveni and Bethanna agreed to sell the land of 1.4 acres to Dr.Mohan Reddy as per the MoA dated 16/10/2008. However, this MoA is not registered and further the subsequent settlement deed makes all the earlier PoA's and MoAs null and void. Therefore, the assessee is the absolute owner of the said property at the time of sale of property during F.Y.2009-10 and hence capital gains is assessable in the hand of the assessee in this assessment year, AY 2010-11 only.

The assessee also raised another argument that the property was settled unto the assessee without adequate consideration and the sale happened during the lifetime of Mr. Pethanna Nadar and therefore, capital gains would be taxable in the hands of her husband only considering clubbing provisions. The assessee's husband died on 03-03-2010. However, Ld. AO held that the clubbing provisions would apply only to income arising from certain assets. Finally, Ld. AO computed capital gains in the hands of the assessee. In the absence of data relating to cost of the asset in the hands of original owner, fair market value of land as on 01.04.1981 was taken. However, benefit of indexation was not granted to the assessee. The Long-Term Capital Gains thus worked out to be Rs.185.70 Lacs.

3. During appellate proceeding, the assessee did not produce any evidence and reiterated the stand taken before Ld. AO. The Ld. CIT(A) concluded that the assessee was the absolute owner and the property was registered. The sale consideration was received on behalf of the assessee by the power holder. The Gift deed did not mention about any earlier oral agreement with Mohan and also about the transaction by Mohan with Dr. Anand. The document would clearly establish the ownership of appellant and her capital gains liability on the sale of the property and therefore, the same was rightly assessed by the AO in the

hands of the assessee. The legal ground urged by the assessee were also dismissed. Aggrieved, the assessee is in further appeal before us.

4. Upon due consideration of material facts, it emerges that though the assessee has made certain submissions in support of her claim, it has miserably failed to substantiate the same. It could be seen that the assessee's husband settled the impugned land vide settlement deed dated 08.07.2009 wherein there is no mention of earlier agreements. The assessee has also failed to adduce any evidence with respect to earlier transactions with respect to impugned land. The assessee has executed General Power of attorney on the same date in favor of Mr. S. Anand. The power agent was required to maintain one account in respect of the property and to get the assessee's approval. The assessee did not receive any consideration for executing the power of attorney. Shri S. Anand, vide letter dated 04.04.2013, furnished the disbursement account of sale consideration. The same has been placed on page nos. 38 to 40 of the paper-book. The sale deed has been executed jointly on 20.08.2009 for sale consideration of Rs.300 Lacs. The assessee's husband has died on 03.03.2010. We find that all these facts as well as documents would strengthen the case of the revenue that the assessee was the absolute owner of the property and the property was sold by the power agent of the assessee. The onus is on assessee to prove that the capital gains did not accrue to her. It could also be seen that even if capital gains were to be computed, the indexation benefit would be available to the assessee. Considering the stated factual matrix and keeping in mind the principle of natural justice, we deem it fit to grant another opportunity to the assessee to substantiate her case. Therefore, we restore the appeal back to the file

of Ld. CIT(A) for fresh adjudication, keeping all the issues open, with a direction to the assessee to substantiate her case. Needless to add that adequate opportunity of hearing shall be granted to the assessee before disposing-off the appeal.

5. The appeal stand allowed for statistical purposes.

Order pronounced on 12th June, 2023.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

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

चेन्नई / Chennai; दिनांक / Dated : 12-06-2023
DS

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF