

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

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

आयकर अपील सं./ITA No.: **679/CHNY/2022**  
निर्धारण वर्ष/Assessment Year: 2008-09

**Shri Mohideen Sultan  
Abdulcader,**  
10, Nethaji Street,  
Adiramapattinam,  
Thanjavur – 614 701

**The Income Tax Officer,**  
Vs. Ward-1,  
Thanjavur.

**PAN: AAWPS 3175J**  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri G. Tarun, Advocate  
: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 05.07.2023  
घोषणा की तारीख/Date of Pronouncement : 05.07.2023

**आदेश /ORDER**

This appeal filed by the assessee is arising out of order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/2022-23/1043091675 (1) dated 20.05.2022. The assessment was framed by the Income Tax Officer, Ward 1, Thanjavur for the assessment year 2008-09 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter 'the Act') vide order dated 14.03.2016.

2. This appeal by assessee is time barred by 24 days and assessee has filed condonation petition stating the reason that the order of CIT(A) dated 20.05.2022 was sent to the registered email of the chartered accountant of the assessee on the very same date on 20.05.2022. However, the appeal was filed before Tribunal only on 12.08.2022 and thereby there is a delay of 24 days. The assessee stated that the manager had not brought the said order to the notice of the chartered accountant and it was noticed only during the process of filing of return of income of the assessee for the assessment year 2022-23 during 3<sup>rd</sup> week of July. Then, the Chartered Accountant immediately approached the counsel who facilitated in filing appeal and in this process, there is a delay of 24 days. When this was pointed out to Id. Senior DR, he could not controvert. Hence, going by the reasons, I'm of the view that cause seems reasonable and therefore, I condone the delay and admit the appeal.

3. The only issue raised by assessee in his appeal vide ground Nos.1 to 10 is as regards to the order of CIT(A) / NFAC confirming the assessment order passed by the AO assessing the Long Term Capital Gain assessed by DVO. The grounds raised from 1 to 10 are argumentative, exhaustive and factual, hence need not be reproduced.

4. Brief facts are that the assessee during the previous year 2007-08 relevant to assessment year 2008-09 sold his immovable property vide sale document No.261/2008 registered on 13.02.2008 with the District Registrar, Mayiladuthurai for a total sale consideration of Rs.29,00,000/- as against value determined by the Special Deputy Collector (Stamps), Thanjavur at Rs.71,80,109/-. This property is jointly owned by assessee i.e., one half share along with his brother Shri Mohammed Yakub. The Department was having information that the sale value as per the circle rates is fixed at Rs.71,80,109/- of the assessee property and his half share is to be assessed for Long Term Capital Gain which comes to Rs.33,21,745/-. Hence, show cause notice was issued by the AO. The assessee before AO requested that the matter may be referred to Departmental Valuation Officer to assess the correct value of the property sold by assessee. Accordingly, the AO issued letter dated 30.11.2015 to the Valuation Officer, Chennai u/s.142A of the Act to ascertain the correct fair market value of the property sold by the assessee. In the mean time, the assessee filed return of income in response to notice u/s.148 of the Act dated 17.12.2015 admitting his share of Long Term Capital Gain at Rs.6,92,484/- after claiming expenses towards land at Rs.9,83,000/-. In the computation of Long Term Capital Gain, the assessee adopted the sale value of

property i.e., 50% of his share at Rs.21,85,000/-. The DVO i.e., Assistant Valuation Officer, Unit-1, Chennai vide report in F.No.AVO-1/Chennai/CG(05)/2015-16 dated 17.02.2016 valued the property determining the fair market value of land as on the date of sale at Rs.56,96,400/-. During the course of hearing, assessee claimed certain expenses of Rs.9.83 lakhs towards improvement but could not prove these expenses by documentary evidence and hence, the same was rejected by the AO and AO computed Long Term Capital Gain taking the fair market value as determined by the DVO at Rs.25,93,440/- being half share of the assessee as against the Long Term Capital Gain determined by assessee suo-motto at Rs.6,92,484/-. Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) confirmed the action of the AO vide para 7 & 8 as under:-

7. On perusal of the details on record, it is seen that the appellant sold an immovable property registered on 13.02.2008 with District Registrar for a sale consideration of Rs.29,00,000/- as against the value of Rs.71,80,109/- as determined by the Special Deputy collector (Stamps). The appellant during the course of assessment proceedings requested for valuation to be determined by the Departmental Valuation Officer. The valuation officer determined the value of the property at Rs.56,96,400/-. The appellant has also claimed expenses amounting to Rs.9,83,000/-, but was not able to provide any supporting documents for such expenses. Therefore, the Assessing Officer determined the value of land at Rs.56,96,400/- and appellant's share being half of the amount and proceeded to calculate the LTCG on this basis.

8. The appellant during the course of this appeal proceeding stated that he has entered the agreement during the F.Y. 2006-07 and handed over the possession during the F.Y. 2006-07. But, the appellant has not provided any evidence that the agreement was done during the F.Y. 2006-07, as the sale document was registered on 13.02.2008 i.e. during the F.Y. 2007-08. Therefore, this claim of the appellant that the transactions were done during the F.Y. 2006-07 is not acceptable.

Aggrieved, assessee is in appeal before the Tribunal.

6. I have heard rival contentions and gone through facts and circumstances of the case. I noticed that the property is jointly owned by assessee with his brother Shri Mohammed Yakub and sold the property on 13.02.2008. The Special Deputy Collector (Stamps), Thanjavur determined the fair market value of the property for the purpose of computing stamp duty at Rs.71,80,109/- as against sale consideration noted in the sale deed at Rs.29,00,000/-. The matter was referred to the Departmental Valuation Officer on request of the assessee and the Assistant Valuation Officer valued the fair market value of the property as on the date of sale at Rs.56,96,400/- plus building cost at Rs.27,103/-, thereby the total value of land and building i.e., fair market value as on the date of sale is Rs.57,23,503/-. The AO after giving the indexed cost and other costs, allowing other deductions computed Long Term Capital Gain at Rs.51,86,884/- and computed his half share i.e., assessee's share at Rs.23,93,440/- and assessed accordingly. Now, the assessee's claim before the AO was of some expenses incurred on improvement

of Rs.9,83,000/- but no evidence was filed neither before the AO nor before CIT(A). A new claim was made before CIT(A) that this transaction relates to financial year 2006-07 but actually transaction pertains to financial year 2007-08 relevant to assessment year 2008-09 because the property was sold only on 13.02.2008. Hence, apart from this, assessee could not contest the order of CIT(A). As there is no infirmity in the order of CIT(A), I confirm the order of CIT(A) and dismiss the appeal of assessee.

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

Order pronounced in the open court on 5<sup>th</sup> July, 2023 at Chennai.

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 5<sup>th</sup> July, 2023

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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