

आयकर अपीलीय 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, VICE PRESIDENT AND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1980/CHNY/2019**

निर्धारण वर्ष/Assessment Year: 2014-15

Shri M. Karthikeyan,
Old No.15, New No.7,
Demonte Street,
Mylapore,
Chennai – 600 004.

The Income Tax Officer,
vs. Non-Corporate Ward – 1(4),
Chennai – 34.

PAN: AYWPK 0661P

(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

: 17.08.2023

घोषणा की तारीख/Date of Pronouncement

: 17.08.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-1, Chennai ITA No.14/2017-18/(A)-2 dated 30.04.2019. The assessment was framed by the

Income Tax Officer, Non-Corporate Ward 1(4), Chennai for the assessment year 2014-15 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order of dated 21.12.2016. The penalty under dispute was levied by the Income Tax Officer, Non-Corporate Ward 1(4), Chennai u/s.271(1)(c) of the Act vide order dated 30.06.2017.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the levy of penalty by the AO u/s.271(1)(c) of the Act and directing the AO to recomputed the penalty. For this, the assessee has raised various grounds running into 10 grounds and citing case laws which are argumentative in nature.

3. Brief facts are that the assessee filed his return of income for the relevant assessment year 2014-15 on 31.07.2014. The assessee's case was selected for scrutiny under CASS to examine the AIR transaction of assessee, which is reflected in the individual transaction statement on account of sale of immovable property for total consideration of Rs.75 lakhs on 15.04.2013. The AO noted that the assessee has not declared the sale consideration in the return of income filed or capital gain arising out of sale

consideration or not offered for taxation also. The AO required the assessee to explain as to why the long term capital gain should not be assessed on the sale of this property. The assessee explained vide letter dated 15.09.2016 that the assessee sold his residential house at old No.27/2, New No.2, Malleswarar Koil Street, Mylapore, Chennai – 600004 admeasuring 784 sq.ft. on 15th April, 2013 for a sale consideration of Rs.75 lakhs. The assessee explained that this property was settled in his favour by his father Shri A.P. Moorthy on 13th Jan, 2010. This property was originally purchased by Mr.A.P. Moorthy on 9th July, 1993. However, this sale of property was inadvertently omitted by the assessee in filing his return of income for assessment year 2014-15. The same is offered to tax now. The assessee computed long term capital gain at Rs.10,91,947/- and declared the same. But the AO computed the capital gain by not adopting the year of purchase of property by assessee's father but the year of purchase taken by AO is when his father settled the property in his favour on 31.01.2010 and not the date of original purchase by his father on 09.07.1993. He took the purchase consideration Rs.1.50 lakhs and indexed the same and after considering the explanation assessed the long term capital gain at Rs.65,86,320/-. The assessee carried the matter before CIT(A) against the assessment order and the CIT(A) vide order in ITA

No.14/2017-18/(A)-2 dated 30.04.2019 directed the AO to recomputed the capital gain by taking the year of purchase of previous owner i.e., the assessee's father date of acquisition. The CIT(A) observed as under:-

Reproduced from appeal order in ITA No.15 of 2017-18 dated 30.04 2019
4.6 Respectfully following the decision of the Hon'ble High Court of Bombay in the case of Manjula J. Shah (supra), I hold that the Assessing Officer erred in restricting the indexation benefit to the date of Settlement Deed as against the date of acquisition of the property (1993-94) by the previous owner i.e the appellant's father in the case on hand. Therefore, the Assessing Officer is directed to re-compute the Capital Gains by granting indexation benefit to the appellant from the year 1993-94. Therefore, the appellant partly succeeds on this ground.

Against the order of CIT(A) neither assessee nor Revenue preferred appeal and that has become final.

4. The AO initiated penalty proceedings u/s.271(1)(c) of the Act before the order of CIT(A) in quantum, and levied penalty on the entire sale amount of long term capital gain of Rs.65,86,320/- and thereby levied minimum penalty of Rs.13,17,260/-. Aggrieved assessee preferred appeal before CIT(A). The CIT(A) confirmed the levy of penalty but directed the AO to recomputed the quantum of penalty on the sale amount of capital gains in term of order of CIT(A) in quantum appeal by observing in para 4.3 to 4.5 as under:-

4.3 I have considered the cases relied upon by the appellant and found that the facts are totally distinguishable. Penalty u/s 271(1) (c) is a civil liability and for attracting such civil liability, willful concealment is not essential ingredient as is case in the matter of prosecution u/s 276C as decided in the case of Union of India Vs. Dharmendra Textile Processors (2008) (166 Taxman 65) (SC).

4.4 In the case on hand, the issue is not whether a wrong claim has been made but it is a clear-cut case of concealment on the part of the appellant. Moreover, against the assessment order u/s 143(3) dated 21.12.2016 for the same A.Y. 2014-15, the appellant has preferred an appeal before the CIT(A). Vide order in ITA No.15 of 2017-18 dated 30.04.2019, the AO was directed to re-compute the cost of acquisition by granting indexation benefit to the appellant from the year 1993-94 as under :

Reproduced from appeal order in ITA No.15 of 2017-18 dated 30.04.2019

4.6 Respectfully following the decision of the Hon'ble High Court of Bombay in the case of Manjula J. Shah (supra), I hold that the Assessing Officer erred in restricting the indexation benefit to the date of Settlement Deed as against the date of acquisition of the property (1993-94) by the previous owner i.e the appellant's father in the case on hand. Therefore, the Assessing Officer is directed to re-compute the Capital Gains by granting indexation benefit to the appellant from the year 1993-94. Therefore, the appellant partly succeeds on this ground.

4.5 Respectfully following the decision in the case of Union of India Vs. Dharmendra Textile Processors (supra) and considering the facts of the case, the AO is directed to re-compute the quantum of penalty for concealment based on the revised LTCG after giving an opportunity of being heard to the appellant. Therefore, the penalty is partly confirmed.

Aggrieved, now assessee is in appeal before Tribunal for sustenance of penalty.

5. We have observed from the order sheet entries that this appeal was fixed 32 times finally and none is present from assessee's side despite service of notice. The last service of notice returned with postal remark as 'NSP – No such person'. The relevant speedpost is available on record. Hence, we proceed to decide this issue ex-parte.

6. We have heard Id. Senior DR and gone through the facts and circumstances of the case. We noted that the assessee admitted before AO during original proceedings that he has not declared this property and no capital gain has been declared due to inadvertence. The assessee neither before AO during penalty proceedings nor before CIT(A) during appellate proceedings against levy of penalty has given any reason as to why the assessee has not declared this property in the return of income. Since no reasonable cause is adduced by assessee neither before AO during penalty proceedings nor before CIT(A) appellate proceedings against levy of penalty and even now before us, none is present and from records, it cannot be inferred that there was the reasonable cause for not declaring this

property in the return of income. Hence in the absence of any reasonable cause, we confirm the levy of penalty and confirm the order of CIT(A) and the appeal of the assessee is dismissed.

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

Order pronounced in the open court on 17th August, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)
(MANJUNATHA.G)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 17th August, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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