

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri Manjunatha, G., Accountant Member

आयकर अपील सं./I.T.A. No.1123/Chny/2022
निर्धारण वर्ष/Assessment Year: 2012-13

K. Ponni,
No. 20/51, Vasantha Avenue,
MRC Nagar, R A Puram,
Chennai 600 028.

Vs. The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 5,
Chennai.

[PAN:AEAPP5038D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri H. Yeshwanth Kumar, CA
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT
सुनवाई की तारीख/ Date of hearing : 23.08.2023
घोषणा की तारीख /Date of Pronouncement : 23.08.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 31.10.2022 relevant to the assessment year 2012-13.

2. Brief facts of the case are that the assessee filed the return of income for the assessment year 2012-13 on 20.12.2012 declaring an income of ₹.60,00,700/-. As per information received from DIT (Inv.) that

Shri Mathivanan, Chennai has purchased a property for ₹.6,50,00,000/- along with three others i.e., A. Kumar, Shenbagavalli and K. Ponni. The assessee's 1/4th share comes to ₹.1,62,50,000/-. The source for purchase of property required to be verified with reference to documentary evidences. Further, the assessee had received her share of sale consideration of ₹.2,50,00,000/- from Makesworth Projects & Developers Pvt. Ltd. on sale of jointly held property, whereas, the assessee has not shown any capital gain on sale of jointly held property. The assessee should have brought the total transaction under the head 'capital gains' and subsequently, should have claimed exemption under section 54 of the Income Tax Act, 1961 ["Act" in short]. Moreover, the assessee has not invested the entire sale proceeds in purchase of property. The difference in cost of sale and purchase of property ₹.87,50,000/- [2,50,00,000 – 1,62,50,000] should have formed part of computation of total income under the head 'capital gain. Since the Assessing Officer believed that the income chargeable to tax had escaped assessment, notice under section 148 of the Act dated 05.05.2016 was issued on the assessee. In response to the above notice, the assessee filed the return of income on 21.08.2017 declaring an amount of ₹.60,00,700/-. After considering the details filed against statutory notices, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 147 of the Act

dated 22.12.2017 assessing total income of the assessee at ₹.2,60,00,700/- after making addition towards forfeited earnest money as her business income which is adventure in the nature of the trade.

3. The assessee carried the matter in appeal before the Id. CIT(A). Besides challenging the quantum addition, the assessee has also raised legal issue of reopening as 'bad in law'. The Id. CIT(A) concluded the appellate order by dismissing the appeal of the assessee without adjudicating the legal issue of reopening raised by the assessee.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that without adjudicating the legal issue of reopening of assessment raised by the assessee, the Id. CIT(A) completed the appellate order is bad in law and cannot be sustained. It was further submitted that the order passed by the Id. CIT(A) may be set aside and directed the Id. CIT(A) to adjudicate the legal ground raised by the assessee with regard to reopening of assessment.

5. On the other hand, the Id. DR has submitted that the Id. CIT(A) has not adjudicated the reopening issue and further he passed the order on merits.

6. We have heard both the side, perused the materials available on

record and gone through the orders of authorities below. The grounds raised by the assessee before the Id. CIT(A) are reproduced as under:

2.1 Grounds of Appeal

- 1. For that the order of the Assessing Officer is without jurisdiction is contrary to law, facts and circumstances of the case and in any case is opposed to the principles of equity, natural justice and fair play.*
- 2. For that the reopening was bad in law.*
- 3. For the Assessing Officer failed to appreciate that where the reason falls, the reopening fails.*
- 4. For that the Assessing Officer failed to appreciate that the provisions of section 56 are not in vocable in the facts and circumstances of the case.*
- 5. For that the Assessing Officer failed to appreciate that the earnest money received by the appellant is a capital receipt.*
- 6. For that the Assessing Officer failed to appreciate that the earnest money if at all be taken into account at the time of computation of capital gain from sale of land.*
- 7. For that the Assessing Officer failed to appreciate that no assessment can be framed without determining the head under which the purported income is assessable.*
- 8. For that the appellant object to the levy of interest under section 234A, 234B and 234C.*
- 9. For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that this respected authority may be pleased to:*
 - 1. Quash the reopening and/or.*
 - 2. Delete the addition of Rs.2,00,00,000/- and/or.*
 - 3. Pass such other orders as this respected authority may deem fit.*

6.1 One of the grounds raised by the assessee is with regard to reopening of assessment. We find that without adjudicating the legal

ground of reopening of assessment, straightaway, the Id. CIT(A) decided other issue of quantum addition on merits. In our opinion, the Id. CIT(A) ought to have been decided at first the legal ground and thereafter on merits. Accordingly, we set aside the order of the Id. CIT(A) and remit the matter back to the file of the Id. CIT(A) to decide the legal ground raised by the assessee, at first and thereafter on merits in accordance with law by affording an opportunity of being heard to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 23rd August, 2023 at Chennai.

d/-
(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 23.08.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.