

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री मंजुनाथ जी, लेखासदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI MANJUNATHA G, ACCOUNTANT MEMBER AND**  
**SHRI MANOMOHAN DAS, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.3344/Chny/2019  
निर्धारण वर्ष /Assessment Year: 2009-10

**The Income Tax Officer,**  
Non Corporate Ward-3(5),  
Chennai.

**Smt. M. Vijyalakshmi,**  
PM Tower, No.37,  
**Vs.** Greams Road,  
Chennai – 600 006.  
**[PAN: AGZPV-8594-M]**

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee by  
प्रत्यर्थी की ओर से /Revenue by

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

सुनवाई की तारीख/Date of Hearing

: 02.08.2023

घोषणा की तारीख /Date of Pronouncement

: 27.09.2023

**आदेश / ORDER**

**PER MANOMOHAN DAS, J.M**

This appeal by the Revenue is directed against the order of the learned Commissioner of Income-Tax (Appeals)-4 Chennai [CIT(A)] dated 09-10-2019 and pertaining to the Assessment Year [AY] 2009-

10. The grounds of appeals are as under:

*"1. The order of the Ld. Commissioner of Income Tax(Appeals) is contrary to the law and the facts of the case.*

*2. The Ld. CIT(A) has erred in law and on facts in admitting the appeal in stark violation of the provisions of section 249(4) of the Act.*

*2.1 The Ld. CIT(A) has erred in not considering the ratio of the decision*

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*in the case of M/s.Rathna Stores (Firm) in ITA Nos.2576 to 2578/20 16 dated 16/11/2018 wherein it is held that once the return is filed, the assessee is bound to pay the tax due on the returned income before filing the appeal before the CIT(A) and if the taxes are not paid appeal filed would not be admitted by the CIT(A).*

*2.2 The Ld. CIT(A) ought to have noted that it is against the principles of human probabilities that the encroachers have accepted to vacate the land without receiving any compensation at the time of sale based on a mere promise and without any supporting documentation.*

*2.3 The Ld CIT(A) erred in allowing the claim of the assessee in spite of absence of reliable documentation in the form of FIR, suit in courts of law, etc regarding the impugned encroachment.*

*2.3 The Ld. CIT(A) has erred in holding that the assessee has discharged his primary onus of establishing the identity of the encroachers when the genuineness of the transaction itself is put to test.*

*2.4 The Ld. CIT(A) failed to note that as per the recitals in the sale deeds dated 04/05/2009 and 30/04/2008, the land is "free from all encumbrances" which fact was brought out by the AO in the Assessment Order.*

*3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) may be set aside and that of the Assessing Officer restored."*

2. The facts of the case are that the assessee did file return of income for the AY year 2009-10. Again, the assessee vide Sale Deed No. 1002/08 dated 30-04-2008 sold a plot of land measuring 1 acre 7 cents situated at village Parivakkam, Poonamallee Taluk, District Thiruvallur for a sale consideration of Rs. 2.60 Crores. The purchaser of the land is M/s Neptune Homes Pvt. Ltd. As the assessee failed to file return of income for the AY 2009-10 and capital gains chargeable to tax had escaped assessment, the matter was reopened by issue of statutory notice under section 148 on 09-03-2016. The notice was

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issued with the prior approval of the Id. Principal Commissioner of Income-Tax [PCIT]-5, Chennai and the same was served upon the assessee on 09-03-2016. As there was no response from the assessee reminder letter dated 15-06-2016 was issued to the assessee for filing of the return of income. The assessee vide letter dated 27-06-2016 sought the reasons for reopening of the assessment. The Id.AO responded the letter of the assessee informing that as per the decision of the Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd. that when a notice u/s 148 was issued, the proper course of action for the assessee was to file return of income and then to seek the reason for reopening of the assessment. Thereafter, vide letter dated 17-10-2016 the assessee was asked to file return of income on or before 26-10-2016 but no respond from the assessee. So, on 20-12-2016 notice under section 142(1) was issued as final opportunity and posted the matter for hearing on 26-12-2016. In responds assessee appeared and filed statement of computation of total income declaring a total income of Rs. 98,71,880/- including short term capital gains of Rs. 93,20,000/-. The assessee vide the statement of computation inter alia showed payment of Rs. 1,56,00,000/- towards compensation paid to tenants for evacuating the land. The assessee also filed photocopies of letters from 8 persons regarding receipt of money by them for vacating the

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assessee's said land as a proof of payment of compensation of Rs. 1,56,00,000/-. The names, addresses and amount of compensation paid to each of them had also been submitted by the assessee. Summons under section 131 dated 23-12-2016 were issued to all the eight persons at their addresses through the Inspector of Income-tax. The Inspector of Income-Tax vide report dated 26-12-2016 submitted that none of the persons to whom summon were residing at the given addresses nor the door numbers mentioned in the summons matched. The Inspector of Income-Tax also reported that nobody was aware that any such persons lived there. Thereafter, on 26-12-2016 the assessee was asked to produce that eight persons and to furnish evidence that they have encroached the land of the assessee at Parivakkam and case was adjourned to 29-12-2016. However, none appeared. As the assessment was getting time barred on 31-12-2016, the assessment was completed as per the materials as was available on record. The Id. AO vide order dated 30-12-2016 added the amount of Rs. 1,56,00,000/- to the total income of the assessee. The Id. AO while adding that amount of Rs. 1,56,00,000/- based the following observations as reasons for addition of the said amount:

*"The assessee has conveyed the above said land free from all encumbrances absolutely forever. Further, as per para 3 of the above said sale deed, the assessee had covenant with the purchaser that she had not done anything, omitted or knowingly suffered an act, deed or thing whereby the Schedule property may stand in any way*

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*encumbered or impeached in the title. Further, as per para 10 of page 4 of the above said sale deed the assessee has handed over vacant possession of her property to the purchaser. From a recital of the sale deed, it is crystal clear that there is no encumbrance whatsoever in the assessee's land as on 7<sup>th</sup> May, 2008 i.e. on the date of execution of the sale deed. The above finding is fortified by the date of the letters submitted by the purported 8 encroachers which were dated in the months from July 2009 to January 2010 as stated above which were more than 13 months from the date of sale. It is common knowledge that no prudent seller would pay the encroachers after he/she had sold her property and that too after a period of more than 13 months from the date of sale. The assessee has not furnished the bank statements indicating any corroborative bank withdrawals for payment of the compensation to the purported encroachers. Further, the assessee as not furnished any evidence for having taken legal recourse for vacating the said encroachers.*

*Later but not the least, in spite of numerous opportunities granted to the assessee, the assessee had responded only just one week before the assessment is getting time barred by limitation of time on 31.12.2016 and had put for forth this argument of having paid the encroachers a huge sum of Rs. 1.56 Crores. Had it been genuine claim, the assessee would have complied with the notice u/s 148 on time and provided full details thereof much earlier. In order to thwart the investigation process, the assessee had come up with a dubious claim in the eleventh hour in order to evade payment of tax. In view of the above, it is clear that the assessee failed to establish the genuineness of its claim of having paid the compensation to the eight encroachers as listed above. Hence the assessee's claim of payment of Rs. 1,56,00,000/- is not allowed".*

Being aggrieved, the assessee filed 1<sup>st</sup> appeal before the Id.

CIT(A). The Id. CIT(A) allowed the appeal of the assessee.

3. Being aggrieved, the Revenue filed the present appeal before the Tribunal.

4. Heard both parties and perused the materials on record. We carefully considered the submissions of the parties. We observe that, the Ld. CIT(A) sought a remand report from the Ld. AO so as to give one more opportunity of being heard to assessee in order to prove the

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genuineness of expenses of Rs. 1.56 crores claimed by the assessee towards compensation paid for evacuating the land. The Id. AO in responds inter alia submitted that summons were served on the 8 persons, 3 of them appeared, hence genuineness regarding the receipt of compensation by the remaining 5 persons could not be ascertained. Their signatures did not match with the signatures obtained in the sworn statements. They have not furnished any documentary evidences in the shape of bank account statement, ITR filed for the relevant assessment year. Two persons have confirmed about the receipt of compensation whereas the other person Shri D. Saminathan denied that he has received any compensation.

5. We observe, the three persons namely, S. Saminathan, R. Suresh and S. Selvamani stated before the Id. AO that they did agricultural activities on the instant land. Further, S. Selvamani and R. Suresh stated that they received Rs. 18,00,000/- and Rs. 19,00,000/-. Shri D. Saminathan retracted that he had received any money from the assessee and retraction was due to pressure of the Id. AO.

6. From the above, it is clear that the assessee paid compensation to the eight persons in order to clear the land she sold. Because, the remaining 5 persons did not say that they did not receive any money from the assessee. If no money was paid to the remaining 5 persons,

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then, immediately they will state to the Id. AO that they had received no money from the assessee. It is so, because, who will take the blame that they had taken money which is untrue. They had received money from the assessee and therefore, they did not say anything.

7. Regarding the observation of Id. AO that no prudent man purchases encumbered land, we may say that encumbrance means mortgage over the land and or subject matter of the land in a court case. This type of encumbrances was not recorded in the Sub-Registrar's Office. So, the land was free from encumbrances. Purchaser of immovable property checks record in the office of the Sub-Registrar before purchasing any immovable property. Sometime, some purchaser purchases encumbered property also, because, they can clear the property from encumbrances.

8. The next observation of the Id. AO that the assessee had not furnished any evidence for having legal recourse for vacating the land, we may say that outside court settlement is possible and same is not unknown to the society.

9. Again, there was a letter from the purchaser of the land M/s Neptune Homes Pvt. Ltd. dated 09-07-2018 which says about the occupancy of the said land by a few labourers who were raising

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vegetables and other seasonal crops thereon. Further, according to the contents of the letter the vendor could not persuade the encroachers before the registration of the sale deed. Regarding the encumbrance/non encumbrance, the letter says that matter was left to the vendor to negotiate and settle with the encroachers of land and they took decision not to bring the encroachment matter in the sale deed.

10. The aforesaid discussions were considered by the Id. CIT(A). The Id. CIT(A) also observed that assessee withdrawn money from the IDBI bank, Kotak Mahindra bank and HDFC bank amounting to Rs.1,57,00,000/- from the account Nos.005104000317771, 04630010011960 and 04411000014001 respectively which were as under:

<i>IDBI Bank</i>	<i>60,46,500</i>
<i>HDFC Bank</i>	<i>24,20,000</i>
<i>Kotak Mahindra Bank</i>	<i>72,33,500</i>
<i>Total</i>	<i>1,57,00,000</i>

11. In view of the aforesaid, it is our considered opinion that, the assessee was successful in proving that she had incurred an amount of Rs. 1,56,00,000/- towards evacuating the instant land and the Id. CIT(A) correctly decided the appeal of the assessee by deleting the addition of Rs. 1,56,00,000/- made by the Id. AO. Accordingly, we uphold the order of the Id. CIT(A) dated 09-10-2019.

12. In the result, the appeal of the Revenue is dismissed.

*Order pronounced on 27<sup>th</sup> September, 2023.*

**Sd/-**  
**(मंजुनाथ. जी)**  
**(Manjunatha G.)**

**लेखा सदस्य /Accountant Member**

**Sd/-**  
**(मनोमोहन दास)**  
**(Manomohan Das)**

**न्यायिक सदस्य/Judicial Member**

चेन्नई/Chennai, दिनांक/Dated: 27<sup>th</sup> September, 2023.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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