

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, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.910/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Palaniandi Pillai Periyasamy 1-1-17, M.V. Street, Pallathur, Pudukottai-630 107.	बनम / Vs.	ACIT, Circle-1, Karaikudi.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.	ABEPP-2924-M	
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी/ Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri G. Baskar (Advocate) -Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri AR V Sreenivasan (Addl.CIT)-Ld. Sr. DR

सुनवाईकी तारीख/ Date of Hearing	:	08-04-2024
घोषणाकी तारीख/ Date of Pronouncement	:	08-04-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 27-07-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 26-12-2019. The grievance of the assessee is confirmation of addition of Rs.236.85 Lacs. The assessee is also aggrieved by non-grant of TDS credit. Having heard rival submissions, the appeal is disposed-off as under.

2. It transpired that the assessee acted as Power Agent for one Sivakumar and sold his property wherein the PAN of the assessee was provided. Accordingly, TDS was deducted for Rs.6.30 Lacs against the assessee and the same was claimed by the assessee. It also transpired that the assessee along with one Swathi Priya entered into marketing agreement with Sivakumar whose property was under litigation and he was unable to sell it. As per the agreement, the assessee received commission of Rs.236.85 Lacs. After claiming expenditure, the income of Rs.113.73 Lacs which offered as business income. However, Ld. AO noted that the marketing agreement was unregistered agreement and it was made on 06.02.2017 whereas the registered sale deed was executed on 31.01.2017. Rejecting assessee's submissions, Ld. AO held that sale consideration of Rs.630 Lacs would be assessable in the hands of the assessee as capital gains. Since the market value of property as per sale deed was Rs.941.76 Lacs, the same was brought to tax. Pertinently, the business income as offered by the assessee was not disturbed.

3. The Ld. CIT(A), considering the judgment of Additional District Munsif, Alandur order dated 06-04-2016 in O.S. 740/2015 in the case of Shri S. Sivakumar and ors., held that Shri S. Sivakumar was the owner of the land. The land did not belong to the assessee. Therefore, capital gains were to be assessed in the hands of land owner. The entire commission of Rs.236.85 Lacs was to be taxed in the hands of the assessee. It was also held that only Shri S. Sivakumar would be entitled for credit of TDS as mandated by the provisions of Sec.199. Aggrieved, the assessee is in further appeal before us.

4 We find the dispute to be in a very narrow compass. The assessee is aggrieved by addition of gross commission. The Ld. AR submitted that commission income was already offered as business income. This being the case, the expenditure incurred to earn the same, as per applicable provisions governing computation of business income, would be allowable to the assessee. The Ld. CIT(A) is directed to verify and re-adjudicate this issue. So far as the claim of TDS credit is concerned, we find that the TDS has been deducted against the PAN of the assessee. It is not clear as to whether this credit has been claimed by the original owner or not. In our considered opinion, the credit has to be allowed once. Therefore, we remit this issue also to the file of Ld. CIT(A) for verification and re-examination. The assessee is directed to provide the requisite details and substantiate its case.

5. The appeal stand allowed for statistical purposes.

Order pronounced in open court on 08th April, 2024.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 08-04-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF