

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.243/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2014-15)

Shri Mathaiyan Saravanakumar #1/92, Kailash Nagar 4 th Cross Brinvadan Road, Fairlands Salem-636 016.	बनाम / Vs.	ACIT Circle-2(1) Salem.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AVDPS-4253-K		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri T.S. Lakshmi Venkataraman (FCA) -Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri AR V Sreenivasan (Addl. CIT) - Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	10-04-2024
घोषणाकी तारीख / Date of Pronouncement	:	25-04-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 09-02-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 28-12-2016. The grounds raised by the assessee read as under:

1. The order of Commissioner of Income Tax (Appeals), NFAC dated 09.02.2023 in confirming the assessment framed by the AO is opposed to the facts of the case and is not legally maintainable.

2. On the facts and circumstances of the case, the first appellate authority is not justified in confirming the action of the AO in bringing to tax under the head long term capital gains in respect of property to an extent of 76.41 cents acquired under the land acquisition act, which has been judicially settled that gains arising out of such compulsory acquisitions are not liable for taxation. The land was compulsorily acquired for Highways projects by The Land Acquisition Officer and District Revenue Officer, Tirupur by proceedings dated 27.11.2013.
3. On the facts and circumstances of the case, the first appellate authority is not justified in confirming the action of the AO in disallowing a sum of Rs.1,21,91,007/- as excess indexed cost of acquisition claimed by the appellant.
4. On the facts and circumstances of the case, the first appellate authority is not justified in disallowing the cost of improvement made by the assessee to an extent of Rs.22,84,468/- which has been claimed as a deduction in computing long term capital gains.

1.2 The assessee has raised additional grounds of appeal on 31.12.2023 which read as under: -

1. On the facts and circumstances of the case, the appellant has wrongly offered to tax a sum of Rs.45,91,310/- on capital gains arising out of compulsory acquisition of urban land which is exempt u/s 96 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which act of the assessee has been acted upon by the Department in framing the assessment which is bad in law .
2. On the facts and circumstances of the case, further, it is submitted that the appellate authorities has power to grant relief / benefit to the assessee in accordance with law which was failed to be claimed by the assessee due to ignorance of law.
3. On the facts and circumstances of the case, the above-mentioned additional grounds travel to the root of the assessment framed, therefore, it is raised before Hon'ble ITAT, even though it has not been raised before the lower authorities, by relying on the decision of Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. vs CIT 1998 229 ITR 383 (SC).

1.3 The Ld. AR filed paper book and advanced arguments in support of grounds of appeal as well as additional grounds of appeal. Reliance has been placed on various judicial decisions to support the same, the copies of which has been placed on record. The Ld. Sr. DR controverted the arguments of Ld. AR. Having heard rival submissions, our adjudication would be as under.

2. Proceedings before lower authorities

2.1 It transpired that the assessee purchased 100 cents of land at Survey No.251, Ward-F, Block No.9, TS No.7, Mannarai Village, Tirupur

(in short 'Tirupur' property) for Rs.30 Lacs on 21.12.2005. During this year, a portion of land to the extent of 76.41 cents was acquired by Land Acquisition officer & District Revenue officer (LAO & DRO), Tirupur on compulsory acquisition for compensation of Rs.255.88 Lacs. The assessee admitted capital gains by taking cost of the property as Rs.119.90 Lacs as against actual cost of Rs.30 Lacs. The said amount of Rs.119.90 Lacs was nothing but value fixed by registration authority. However, Ld. AO rejected the same on the ground that Sec.50C is a deeming provision and applicable to seller only for computation of capital gains. The assessee being buyer could not adopt the said valuation as cost of acquisition. The assessee supported its stand by taking cue from Sec.43CA as introduced by Finance Act, 2013 as well as Sec.56(2)(viib) as inserted by Finance Act, 2010 w.e.f. 01.04.2009. However, Ld. AO rejected the plea of the assessee and arrived at proportionate indexed cost of Rs.65.21 Lacs as against Rs.187.12 Lacs as computed by the assessee.

2.2 The assessee also claimed cost of improvement for Rs.22.84 Lacs on account of filling and leveling of the land in this year. However, upon perusal of Award order dated 27.11.2013 as passed by LAO & DRO, it was noted that as per GO (D) No.272 dated 13.11.2007, the aforesaid land was declared to be needed for public purpose. Further, LAO & DO issued acquisition notice on 21.12.2011. The Ld. AO noted that the assessee gave work order of Rs.52.92 Lacs to M/s KPM Projects P. Ltd., Salem on 25.03.2013 and a work bill of Rs.29.89 Lacs was raised by that party on 28.06.2013. The assessee made payment and deducted TDS. However, the work order as well as work bill did not contain exact location of land. The assessee would not have spent such a huge

amount on developing the land to be acquired by the Government. The work order and work bill relate to work contract executed at some other place and not pertaining to the land sold. Therefore, the claim of improvement was rejected

2.3 The Ld. CIT(A) endorsed the stand of Ld. AO against which the assessee is in further appeal before us.

Our findings and Adjudication

3. The additional ground raised by the assessee are only legal grounds and the adjudication of the same do not require any appreciation of new facts. Therefore, we admit the same. Since these grounds goes to the root of the matter, we take up the same first. The Ld. AR, in the written submissions supporting the additional ground of appeal, has submitted that the land was acquired by the Tamilnadu Government under Tamil Nadu Highways Act, 2001. The Ld. AR submitted that the parliament has enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act) which was assented by the Hon'ble President of India on 26.09.2013 and subsequently notified with effect from 01.01.2014. The Tamilnadu Acquisition of land for Harijan Welfare Schemes Act, 1978, the Tamil Nadu Acquisition of Land for industrial purposes Act, 1997 and the Tamilnadu Highways Act, 2001 ceased to exist with effect from 27.09.2013 due to enactment of RFCTLARR Act, 2013. To continue land acquisition process under these State Land Acquisitions Act, the Tamilnadu Government had amended the RFCTLARR Act, 2013 by inserting Sec.105-A vide RFCTLARR (Tamilnadu Amendment Act), Act, 2015 which places these State land acquisition acts in a newly created fifth schedule on par with the Central

Enactment, which are listed in the fourth schedule and have been exempted from the purview of RFCTLARR Act, 2013 except with respect to compensation, rehabilitation and resettlement. However, RFCTLARR (Tamilnadu Amendment Act) Act, 2015 has been declared as null and void by Hon'ble High Court of Madras in the case of The Caritas India vs. UOI. Subsequently, Tamilnadu State assembly has enacted Tamilnadu Land Acquisition Law (Revival of Operation, Amendment and Validation) Act, 2019 on 15.12.2019 in order to revive the operation of the Tamil Nadu Highways Act, 2001 which had ceased with effect from 27.09.2013 to exist due to enactment of RFCTLARR Act, 2013 as they were guided by Land Acquisition Act, 1894. As per Sec. 1(2) of TNLAL (ROAV) Act, 2019, the above three acts including Tamil Nadu Highways Act, 2001 has been given retrospective effect from 26.09.2013. As per Sec.10 of TNLAL (ROAV) Act, 2019, compensation needs to be determined by the RFCTLARR Act, 2013 when the land is acquired under the Tamil Nadu Highways Act, 2001. From the facts, it is evident that even through the RFCTLARR Act, 2013 had been notified with effect from 01.01.2014, the provisions with respect to compensation, rehabilitation and resettlement have come into force with effect from 27.09.2013 with respect to all Land Acquisitions Acts enacted by Central and State Legislatures. Therefore, the compensation received by the assessee from Tamil Nadu Government on 02.12.2013 under Tamil Nadu Highways Act, 2001 is not chargeable to tax as the same has been exempted u/s 96 of RFCTLARR Act which provide that no income tax or stamp duty shall be levied on any award or agreement made under this Act except u/s 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same. The Ld. AR thus submitted that

benefit of RFCTLARR Act has to be extended to the assessee who got the compensation amount on 02.12.2013 even though the above act was notified w.e.f. 01.01.2014. The Ld. AR has sought distinction in the case law of Agra Bench of Tribunal in the case of **Jagdish Arora vs. ITO (127 Taxmann.com 728)** as referred to by Ld. Sr. DR. The Ld. AR has submitted that the restrictions prescribed in Sec.105 of RFCTLARR Act, 2013 apply solely to Central enactments listed in Schedule IV and not to State Enactments such as Tamil Nadu Highways Act, 2001. The Ld. AR pleaded that effective date of RFCTLARR Act, 2013 has been upheld by jurisdictional High Court.

4. The Ld. Sr. DR, in its written submissions, stated that the award has been given u/s 34/2002 of Tamil Nadu Highways Act, 2001 and not u/s 96 of RFCTLARR Act, 2013 and therefore the assessee is not entitled for exemption. The Ld. Sr. DR submitted that the claim of the assessee is not correct.

5. Upon perusal of award document as placed in paper-book, it could be seen that the compensation has been awarded by competent authority to the eligible persons on 27.11.2013 u/s 34/2002 of Tamil Nadu Highways Act, 2001 and the award has been received by the assessee on 02.12.2013. The RCTLARR, Act, 2013 has been notified only with effect from 01.01.2014. The provisions of Sec. 96 of this Act provide that no income tax or stamp duty shall be levied on any award or agreement made under this Act. Subsequently, the Tamilnadu Government had amended the RFCTLARR Act, 2013 by inserting Sec.105A vide RFCTLARR (Tamilnadu Amendment Act), Act, 2015 which placed these State land acquisition acts in a newly created fifth schedule on par with the Central Enactment, which are listed in the

fourth schedule and have been exempted from the purview of RFCTLARR Act, 2013 except with respect to compensation, rehabilitation and resettlement. The provisions of Sec.105-A provide as under: -

(1) Subject to sub-section (2), the provisions of this act shall not apply to the enactments relating to the land acquisition specified in fifth schedule.

(2) The State Government shall, by notification, within one year from the date of commencement of this act, direct that any provisions of this Act, relating to the determination of compensation in accordance with the first schedule and rehabilitation and resettlement specified in the second and third schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notifications, as the case may be.

The fifth schedule, inter-alia, include The Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002). This enactment has come into force on 01.01.2014. The provisions of Sec.105-A came into challenge before Hon'ble High Court of Madras in The Caritas India (WP Nos.22448/2018 & ors. dated 03.07.2019). The Hon'ble Court, in concluding para-158, inter-alia, held that by enacting Sec. 105-A of the new Act, the State of Tamil Nadu could not have revived the three acts that had become repugnant as on 27.09.2013.

6. Consequently, Tamilnadu State Assembly has enacted Tamilnadu Land Acquisition Law (Revival of Operation, Amendment and Validation) Act, 2019 on 15.12.2019 in order to revive the operation of the Tamil Nadu Highways Act, 2001 which had ceased with effect from 27.09.2013 to exist due to enactment of RFCTLARR Act, 2013 as they were guided by Land Acquisition Act, 1894. As per Sec. 1(2) of TNLAL (ROAV) Act, 2019, aforementioned act has been given retrospective effect from 26.09.2013. As per Sec.10 of TNLAL (ROAV) Act, 2019, compensation

needs to be determined by the RFCTLARR Act, 2013 when the land is acquired under the Tamil Nadu Highways Act, 2001. Section 10 & Sec. 11 of TNLAL (ROAV) Act, 2019 provide as under: -

10. Revival of operation of Tamil Nadu Act 34 of 2002. - (1) All the provisions of the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002) (hereinafter referred to as the 2002 Act), except the provisions relating to the determination of compensation, shall stand revived with effect on and from the 26th day of September 2013.

(2) All rules, notifications, notices, orders, directions issued or any other proceedings initiated under the 2002 Act, except those relating to determination of compensation, which were in force immediately before the 26th day of September 2013 shall, for all purposes, be deemed to have been revived on and from the 26th day of September 2013.

(3) The provisions relating to the determination of compensation as specified in the First Schedule, rehabilitation and resettlement as specified in the Second Schedule and infrastructure amenities as specified in the Third Schedule to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) shall apply to the land acquisition proceedings under the 2002 Act.

11. Central Act 30 of 2013 not to apply. - Save as otherwise provided in this Act, the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) shall cease to apply to any land which is required for the purpose specified in sub-section (1) of section 15 of the 2002 Act and any such land shall be acquired by the Government only in accordance with the provisions of the 2002 Act.

It could thus be seen that only provisions relating to compensation, rehabilitation and resettlement has been made applicable to the State Act and therefore, the provisions of Sec.10 have limited applicability. The provisions of Sec.11 specifically exclude the application of provisions of RFCTLARR Act. Undisputedly, the compensation has been received by the assessee is under a state act and not under RFCTLARR Act. Nothing has been shown that the benefit of RFCTLARR Act has ever been extended to the State Government by any notification, directly or impliedly. As held by Agra Tribunal in para-18 of its order in the case of **Jagdish Arora vs. ITO (127 Taxmann.com 728)**, the exemption is required to be specifically granted by the statute and it cannot be inferred to be drawn. Another pertinent fact that could be noted is that the date of award of compensation as well as date of compensation received by the

assessee fall before 01.01.2014 i.e., the date on which RFCTLARR Act came into effect. Therefore, no such benefit as averred by Ld. AR could be granted to the assessee. Accordingly, the additional grounds as urged by Ld. AR stand dismissed.

7. So far as the cost of acquisition is concerned, we concur with the stand of Ld. AO that the assessee could not adopt 50C value in place of actual cost of acquisition. Similarly, the provisions of Sec.43CA or Sec.56(2)(viib) do not render any aid to the case of the assessee to compute cost of acquisition. So far as the cost of improvement is concerned, we find that the same has been denied to the assessee since the assessee could not conclusively establish the same. The work order as well as work bill was deficient, though the payment was through banking channels and due TDS was deducted. Therefore, we deem it fit to restore the issue of cost of improvement to the file of Ld. AO with a direction to the assessee to substantiate its claim. The grounds, on merits, stand partly allowed.

8. The appeal stands partly allowed in terms of our above order.

Order pronounced on 25th April, 2024

Sd/-

(MAHAVIR SINGH)

उपाध्यक्ष / **VICE PRESIDENT**

चेन्नई Chennai; दिनांक Dated :25-04-2024

DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / **ACCOUNTANT MEMBER**