

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एस एस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI S.S. VISWANETHRA RAVI, HON'BLE JUDICIAL MEMBER
AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No.: 1011/Chny/2024

निर्धारणवर्ष / Assessment Year: 2015-16

Sundaramurthy Sathyakumar,
V-31, 13th Street, Anna Nagar,
Chennai - 600 040.

Income Tax Officer,
v. Corporate Ward -6(3),
Chennai.

[PAN: AASPS-1930-K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/Appellant by

: Shri. K. Meenakshi Sundaram, ITP

प्रत्यर्थी की ओरसे/Respondent by

: Shri. Aroon Prasad, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 25.07.2024

घोषणा की तारीख/Date of Pronouncement

: 01.10.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2015-16, vide order dated 14.02.2024.

2. The assessee has raised the following grounds of appeal:

"1.The Commissioner(Appeals) National Faceless Appeal Centre erred in reproducing the same facts stated by the Assessing Officer for long pages in his order and finally confirming the order

of the Assessing Officer without telling his own decision on the issues in an unequivocal manner.

2.The Commissioner(Appeals) National Faceless Appeal Centre had not acted as a fact finding authority independently and erred in confirming the order of the Assessing Officer more as a superior Officer giving approvals to the orders of the subordinate authorities rather than acting in a neutral role of a quasi judicial Authority enquiring and rendering justice in a dispute between two litigants.

3.The Commissioner(Appeals) National Faceless Appeal Centre ought to have appreciated the fact that the balance sheet is not a book of account and no addition under section 68 can be made in an order for the reason that the improvements made by the assessee after taking in auction an immovable property were not truly reflected in the accounts and in the balance sheet.

4.The Commissioner(Appeals) National Faceless Appeal Centre ought to have appreciated the fact that an immovable property sold in public auction by a bank for failure to pay the bank loan would not have been in a good condition and that the same is purchased by an individual only for its land value and every purchaser of the bank property had to spend a lot after its purchase in an auction for making the building fit for use.

5.The Commissioner(Appeals) National Faceless Appeal Centre ought to have appreciated the fact that the Income tax Officer who had completed the assessment had acted in a manner as though he had been possessed of a lot of technical knowledge to determine the extent of improvement expenditure that the assessee had incurred in the improvement of the immovable property taken in auction.

6.The Commissioner(Appeals) Faceless Appeal Centre ought to have got a valuation report from the valuation cell of the income tax department and for this purpose should have remanded the case to the Assessing Officer to take steps for getting a valuation report from the Valuation Cell and then forward the same to the Commissioner(Appeals) for further action.

7.of an assessee without any base purely on the basis of inconsistencies and errors present in the assessee's submissions while defending his case with respect to the cost of construction of the property after acquisition by the assessee from the bank in the public auction.

8. *The Commissioner (Appeals) National Faceless Appeal Centre ought to have appreciated the fact that the Assessing Officer had only picked holes in the assessee's submissions and had not collected any corroborative evidences that the cost of construction stated by the assessee was excessive and inflated and the true cost of construction was less based upon evidences collected by the Assessing Officer.*

9. *The Commissioner (Appeals) erred in confirming the addition of Rs.17,62,292 under interest in routine and non-speaking fashion. When the project that the assessee had carried out was a huge one the interest payment may not be very little.*

10. *The Commissioner (Appeals) National Faceless Appeal Centre ought to have appreciated the fact that the Chennai Tribunal had held in many cases of sales of rubber gardens, tea estates and coffee estates where the cost of acquisition and the cost of improvement could not be ascertained with accuracy the capital gains were estimated by the Chennai Tribunal at 30% of the sales price as long term capital gains on sales of the estate and this decision deserves to be followed in this case also as the assessee as well as the department are equally unaware of the true cost of improvement.*

11. *The assessee craves leave to file additional grounds and or additional evidences as the gearing progresses in case a need arises for the same.*

12. *The assessee under the circumstances submits that the honourable Tribunal may be pleased to determine the capital gains on sale of the immovable property afresh as a final fact finding authority and also allow the interest payment of Rs.17,62,292/-."*

3. The brief facts of the case are that, the assessee filed his Return of Income for the Assessment Year 2015-16 on 31/03/2016, admitting total income of Rs.32,02,760/-. The Return of income was processed under Section 143(1) on 22/07/2016. The deduction claimed by the assessee u/s.54F against long term capital gain earned on sale of immovable

property, was not in accordance to law and hence the case was reopened for assessment and statutory notices were issued by the AO to the assessee for framing the correct total income under re-assessment. The assessee filed his return of income in response to notice u/s.148 on 09/07/2018 by declaring the same income as shown in the original return of income filed u/s.139(4). The Assessee has acquired a property measuring 10,403 sq.ft. of land along with building in the nature of sheds through public auction from DRT, Chennai on 07/07/2006 for Rs.62,16,336/-. The assessee paid additional cost of Rs.46,54,186/-, to the owner of the property, which has been shown in the Balance Sheet for 2008-09. The assessee incurred cost on modification of the building for the purpose of letting it out and earning rental income. The cost incurred by the assessee for improvement / modification was Rs.10,00,000/- and Rs.1,38,75,750/- in 2006-07. The assessee sold the building during the AY 2016-17 and earned Long term Capital gains of Rs.53,32,205/-, after deducting indexed cost of acquisition and indexed cost of improvement.

4. During the course of the scrutiny assessment, the assessee furnished evidence consisting of vouchers and detailed statements in support of the cost of improvement claimed in the Return of Income. The assessee also explained the source of investment out of personal borrowings in the name of the proprietor. The cost of improvement was not included in the Balance Sheet of the assessee, since the borrowing was in personal name and the asset itself was a capital asset and not used in the business of the assessee, which was meant for sale. The Ld.AO disallowed the cost of improvement and made an addition on account of the same to the returned income of the assessee. The AO disallowed the claim on account of the asset not appearing in the Balance Sheet, despite plea by the assessee that it was not a business asset and the related loan was a personal loan in the name of the proprietor. The AO dismissed the documentary evidences and supporting vouchers as self serving and unreliable. The AO failed to make reference to the Valuation Officer for a fair estimation of the Cost of Improvement claimed by the appellant.

5. Aggrieved by the Order, the assessee prefers an appeal before the Ld.CIT(A), for deleting the additions made by the AO as hereunder and the Id.CIT(A) confirms the action of the AO, finding no infirmity in the order. Aggrieved by the order of the Ld.CIT(A), assessee is before us.

6. The Ld.AR of the assessee stated that the AO has erred in rejecting the claim of cost of improvement made out of borrowings made in assessee's personal name. Since, the loan was taken in personal name of the assessee both the loan and improvement to the asset had not been included in the balance sheet of the business. The assessee had let out such building for earning rental income, which has been shown in the return of income. The AO and that of the Ld.CIT(A) have erred in arriving the cost of improvement by making own technical estimates based on PWD rates, without referring to the case to DVO for obtaining the valuation of the impugned property sold. Further, the Ld.AR stated that the vouchers pertaining to the cost of improvement has been rejected

without any conclusive proof to establish that such vouchers were not genuine.

7. The Ld.AR also stated that, the AO and that of Ld.CIT(A) have erred in rejecting the interest claimed by the assessee, when the assessee has shown the rental income of the property in the return of income from the impugned property had given rise to income from capital gains and not business income. In light of the above, the Ld.AR prayed for setting aside the impugned order of the Ld.CIT(A) and allow the indexed cost of improvement as claimed in the return of income.

8. Per contra, the Ld.DR stated that the assessee has not provided any kind of supporting documents for cost of improvement claimed and hence the impugned order of the Ld.CIT(A) be confirmed by dismissing the appeal of the assessee.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is undisputed fact that the assessee has sold the

immovable property and declared a long term capital gain on the same by filing the return of income. We note that during the Assessment proceedings, the assessee has submitted the following documents in support of his claim of cost of improvement to the impugned property.

"11.2 Evidences for claim of Improvement:

In support of the claim, the assessee earlier given some bills and a statement of expenses. Now, he has given copies of photographs and a valuation report dated 20.07.2007. Relying on them, the assessee submitted as under:

1. The cost of improvement expended for the AY 2007-08 of Rs.1,23,85,176/- and for AY 2008-09 ie from 01.04,2007 to 17.04.2007 is Rs.14,90,565/- for which original bills have been submitted on 19.03.2019 before the then AO.

2. The valuation report of AAV Perumal & Associates dated 20.07.2007 along with photos taken by the valuer on 18.07.2007 has evidential value for the improvement of building and the cost incurred.

3. We had wrongly mentioned in AY 2010-11 as Rs.1,67,800,000/-. We have submitted revised computation along with the original bills as Rs.13,87,750 (sic /Rs.1,38,75,750). Hence, the cost of improvement may be taken for the FY 2006-07.

4. The expenses are supported by detailed statement of expenses, along with bill/voucher references and statements from contractor. The original bills were already submitted to the then AO. However, we are now uploading the Statement of expenses along with Bill reference.

5. The cost of improvement expended for AY 2007-08 is Rs.1,23,85,176/- and AY 2008-09 ie from 01.04.2007 to 17.04.2007 Rs.14,90,565/-.

6. The market value of the building adopted by the SRO as on 10.07.2014 was Rs.1,56,50,000/-. The stamp duty was paid by the purchaser only after the inspection by the SRO. This is an additional evidence, corroborating our claim of improvement for Rs.1,38,75,750/-.

7. Hence, these may be kindly allowed in the respective financial years as claimed in the Return of income.

8. At the time of auction from DRT, building could have had a value of only about approximately Rs.4,00,000/-. The property

was acquired from DRT only for the land value and not for the building value. The consideration paid was only for land acquired and only an insignificant value for building. The valuation report of DRT will be submitted (not submitted till the time of passing this order.)

9. Approval of local authorities, will be required only when a building is demolished and reconstructed. In my case, I have done improvements on the existing building. Suitable for commercial purpose and it was let out. Hence the question of obtaining approval does not arise.

10. The cost of improvement also included a portion of repair cost, which was not in the nature of current repairs, but accumulated repairs. Hence they form part of improvement only.

11. The expenses pertaining to the improvements claimed from the separate register, which are supported by documentary proofs. These are actual payments made to effect improvement on the building.

12. It is true that I have not brought it in the books of account of Sathya Engineering. However, it was spent out of my personal loans obtained for the purpose of improvement of building.

13. Sathya engineering is a proprietor concern maintaining books of account under section 44AA, and it was audited. But the personal information was not filed from the AY 2007-08, but the loan was taken and the improvement was done for that building.

14. We have made improvement including head room for which photos are attached. We had constructed the head room.

15. But the lessee has put up ACC sheets for their convenience, which is only an additional attachment to the head room by the lessee for their convenience.

16. The vouchers are not self-made but obtained from local workers and artisans. The work was done in-house supervision, without engaging a contractor. Hence it may not be possible to obtain VAT/service tax bills from these parties. Hence the claim may be allowed in full.

17. The detailed explanations under each para have been furnished above. Hence the original claim may kindly be allowed."

10. It is noted that, the AO has rejected the claim of the assessee, since the Audited financials filed by the assessee along with audit report u/s.44AB does not consist of these

values in the Asset along with depreciation schedule filed by the assessee and the same is confirmed by the Id.CIT(A).

11. In the peculiar facts and circumstances of the case, we are of the view that, the AO has rejected the claim based on the audit report and fixed assets schedule filed by the assessee without verification of the source of bank loan borrowed by the assessee in his personal name and corresponding expenditure spent towards cost of improvement as claimed by the assessee, which has not been included in the financials of the business. Therefore, we remit back the file to the AO for verification of details of borrowing in his personal name as a source for spending towards cost of improvement. Further, we also direct the AO that, if necessary the case may be referred to DVO for obtaining valuation report of the impugned property. Thus the ground Nos.4 to 11 of the appeal of the assessee are allowed for statistical purpose.

12. Further, the assessee's claim of certain interest payments as expenditure against commission income is not supported by any evidences and hence, we do not find any fault in the orders of lower authorities and we confirm the order of

the Ld.CIT(A) in this regard and dismiss the ground No.12 of the assessee. Ground Nos.1 to 3 are general and hence we dismiss the same.

13. In the result the appeal of the assessee is partly allowed.

Order pronounced in the court on 01st October, 2024 at Chennai.

Sd/-

(एस एस विश्वनेत्र रवि)

(S.S.VISWANETHRA RAVI)

न्यायिक सदस्य/**Judicial Member**

Sd/-

(एस. आर.रघुनाथा)

(S. R. RAGHUNATHA)

लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 01st October, 2024

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT- Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF