

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 1545/Chny/2024
निर्धारण वर्ष/Assessment Year: 2017-18

Kannan Asha, Old No.6, New No.15, Veera Perumal Koil Street, Mylapore, Chennai-600 004.	v.	The ITO, NCW-1(1), Chennai.
[PAN: AKRPA 9370 Q]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.H. Yeshwanth Kumar, CA
प्रत्यर्थी की ओर से /Respondent by	:	Dr. Samuel Pitta, JCIT
सुनवाईकीतारीख/Date of Hearing	:	21.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	18.10.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 22.03.2024 for the Assessment Year (hereinafter in short "AY") 2017-18.

2. At the outset, the Ld.AR of the assessee drawing our attention to Assessment Order passed by the AO on 28.03.2022, submitted that the assessee didn't get proper opportunity before the AO and therefore, was not able to participate and present the relevant evidences before the AO



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which resulted in the AO passing the ex parte order qua assessee [best judgment assessment u/s.144 of the Income Tax Act, 1961 (hereinafter in short "the Act")] and has made an addition of Rs.3,53,66,666/-. According to the Ld.AR, even though, the assessee preferred an appeal before the Ld.CIT(A) and filed written submissions along with the relevant documents, the same couldn't be fully uploaded due to technical glitches and which resulted in the Ld.CIT(A) giving part relief to the assessee by holding as under:

Therefore, the sale consideration received of Rs. 2,37,25,000/- is to be taken on (Rs. 9,49,00,000 (4) and not the 1/3. In the result, the appellant gets a relief of Rs. 1,16,41,666/- (Rs. 3,53,66,666-Rs. 2,37,25,000)..

Accordingly, the sale proceeds of the land of Rs. 9,49,00,000/- attracts the provisions of section 45(1) of the Act in the hands of the appellant as well as the other three co- vendors. Further, I have no hesitation in holding that the sale consideration received of Rs. 2,37,25,000/- by the appellant during the previous year relevant to the Assessment year under consideration is taxable under the head "Long Term Capital gains" as per the provisions of section 45 r.w.s. 48 of the Act. Also, it is noted from page 12 of the impugned sale deed dated 24-08-2016, that the appellant and the other three persons, viz; Mrs. B. Lakshmi, Mrs. V. Usha and Mr. B. Prakash, being legal heirs of Mr. K. BhoopathiChettiyar, have acquired the impugned properties comprised in Nanjai Survey No.s 58/128, 61, 62, 60/2 and 103 absolutely by virtue of settlement deed dated 09-07-2007 and also by way of Hindu succession Act after the demise of Mr. K. Bhoopathi Chettiyar. Therefore, I am of the considered view that the Capital Gains arising out of the sale of the impugned land is required to be taxed under the head "Long Term Capital gains" and not as "Short term capital Gains".as mentioned in the assessment order.

Therefore the sale consideration of Rs.2,37,25,000/- arising in the hands of the appellant for the Assessment Year under consideration are required to be taxed as "Long term Capital Gains" as per the provisions of section 45 r.w.s. 48 of the Income Tax Act, 1961. the assessing officer is directed to calculate the long-term capital gains as per the indexation (indexed cost of an asset in question) while giving the effect to this order and arrive the total income accordingly.

3. According to the Ld.AR, as per the Hon'ble Supreme Court decision in the case of the Hon'ble Supreme Court in the case of TIN Box Co. v. CIT reported in [2001]249 ITR 216(SC), if the assessee doesn't get proper opportunity before the AO, then the assessment has to be restored back



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to the file of the AO for de novo assessment. The Hon'ble Supreme Court in the case of TIN held as under:

1. It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :

"We will straightaway agree with the assessee's submission that the Income-tax Officer had not given to the assessee proper opportunity of being heard."

2. That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of selling out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.

3. Two questions were placed before the High Court, of which the second question is not pressed. The first question reads thus :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ?"

4. In our opinion, there can only be one answer to this question which is inherent in the question itself : in the negative and in favour of the assessee.

5. The appeals are allowed. The order under challenge is set aside. The assessment order, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as aforesaid. No order as to costs.

4. The assessee has brought to our notice that the assessee had entrusted the case to the Authorized Representative who failed to appear /participate before the AO due to some ill-health developed, because of Covid-19 and therefore, AO's notices u/s.142(1) of the Act couldn't be complied with and which resulted in the AO passing the ex parte order qua assessee. According to the Ld.AR, the assessee should not be penalized for the omission on the part of the Ld.AR. Be that as it may, after going through the records and affidavit filed by the assessee and



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taking into consideration the reasons given for not participating during the course of assessment proceedings, we find that the assessee didn't get proper opportunity before the AO and therefore, relying on the decision of the Hon'ble Supreme Court in the case of the Hon'ble Supreme Court in the case of TIN Box Co. v. CIT (supra), we set aside the impugned order of the Ld.CIT(A) and restore the assessment back to the file of the AO on the condition that the assessee pay sum of Rs.5,000/- as cost to the State Legal Aid Authority, Hon'ble Madras High Court, and produce necessary proof of receipt of the same before the AO and thereafter, the AO to frame the de novo assessment after hearing the assessee. The Ld.AR undertakes to file relevant documents/written submissions and also to participate through video conference before the AO and the AO to give proper opportunity to the assessee and frame the assessment de novo in accordance to law.

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

Order pronounced on the 18th day of October, 2024, in Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 18th October, 2024.

TLN. Sr.PS



ITA No.1545/Chny/2024 (AY 2017-18)
Kannan Asha

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF