

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

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1959/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2016-17

Shri Badri Narayanan,
A2, Aishwaryam Apartment,
Tansi Nagar,
Velachery,
Chennai – 600 042.

The Income Tax Officer,
Vs. Non-Corporate Ward -2(1),
Coimbatore.

PAN: AFMPB 8640N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. N.V. Krishnan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. Anitha, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 11.12.2024
घोषणा की तारीख/Date of Pronouncement : 12.12.2024

आदेश /O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 06.06.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2016-17.

2. The assessee had filed four grounds. The assessee has also filed a petition dated 04.11.2024 for admission of additional grounds challenging the reopening of assessment. The Id.AR during the course of hearing did not press ground Nos.1 & 4 in the memorandum of appeal. The Id.AR also did not press the additional grounds raised vide application dated 04.11.2024. The surviving grounds namely ground Nos.2 & 3 and its sub-grounds read as follows:-

2. Re: Addition under the head Capital Gain:

a. The Hon'ble CIT(A) erred in confirming the order of the learned assessing officer, without properly appreciating the facts in the case of the Appellant.

b. The Hon'ble CIT(A) failed to appreciate that the Appellant was eligible to claim the of acquisition & improvement while computing the capital gain and the deduction u/s 54 of the Act.

c. The Hon'ble CIT(A) ought to have considered the submissions made during appellate proceedings, including the additional evidence filed in support of cost of acquisition, cost of improvement, etc.,

3. Re: Violation of Principle of Natural Justice:

a. The Hon'ble CIT(A) failed to appreciate that the hearing notices were sent to the email ID of the tax practitioner, who omitted to forward the same to the Appellant, and hence proper response could not be furnished by the Appellant.

b. The Hon'ble CIT(A) failed to appreciate that the Appellant was prevented by sufficient cause from furnishing necessary evidence in support of the ROI filed by him, and the case of the Appellant falls under rule 46A(1)(b) of the Income-tax Rules, 1962.

c. The Hon'ble CIT(A) ought to have appreciated that for cases where email communication is not effective, in the interest of justice, notice in physical mode must be served.

3. Brief facts of the case are as follows:

The assessee is an individual. For the assessment year 2016-17, the return of income was filed on 31.03.2018 declaring total income of Rs.4,38,630/-. The return of income was processed u/s.143(1) of the Act. The assessee had sold a property on 18.11.2015 for a consideration of Rs.5,52,00,000/- as per the information received from I & CI. To determine the capital gains on the same, the assessment was reopened by issuance of notice u/s.148 of the Act (notice issued and served on the assessee on 31.03.2021). In response to the notice u/s.148 of the Act, the assessee filed return of income on 07.02.2022 declaring total income of Rs.80,990/-. In the return of income, the assessee had claimed Rs.1,66,71,813/- and Rs.4,32,400/- as indexed cost of improvement and indexed cost of acquisition respectively. The assessee in the return of income filed pursuant to notice u/s.148 of the Act, had also claimed deduction u/s.54 of the Act amounting to Rs.12,95,787/-. The assessee was directed to explain the indexed cost of acquisition, indexed cost of improvement and deduction u/s.54 of the Act. The assessee did not respond to the notices issued u/s.142 of the Act

(except for one notice issued on 16.03.2022, wherein assessee sought for adjournment of 15 days on 21.03.2022). As the assessee had failed to respond to show-cause notices and furnish necessary evidence in support of the claim of indexed cost of acquisition, indexed cost of improvement and deduction u/s.54 of the Act, the assessment was completed on best judgment basis on 24.03.2022 u/s.147 r.w.s. 144 r.w.s. 144B of the Act. In the reassessment completed, the computation made by the AO is as under:-

Returned income	Rs. 80,990/-
Indexed cost of improvement	Rs.1,66,71,813/-
Indexed cost of acquisition	Rs. 4,32,400/-
Deduction u/s.54	Rs. 12,95,787/-
Total additions	Rs.1,84,00,000/-
Assessed income	Rs.1,84,80,990/-

4. Aggrieved by the reassessment order, assessee filed appeal before the First Appellate Authority. Before the CIT(A), the assessee furnished additional evidences in support of his claim on indexed cost of acquisition, indexed cost of improvement and deduction u/s.54 of the Act. The CIT(A) had called for a remand report from the AO. The AO vide his letter dated 17.10.2023 had submitted the remand report. After receipt of remand report from the AO, the same was forwarded to the assessee vide notices dated 13.12.2023 and 15.05.2024. The assessee did not submit any

reply. Hence, the CIT(A) dismissed the appeal of the assessee by observing as under:-

“5.3.3 The appellant in the appellate proceeding has submitted the details and his argument. His submission was remanded to the A.O for his comments. The A.O has submitted remand report vide letter dated 17.10.2023. The appellant was provided two opportunities to submit his reply vide notice dated 13.12.2023 and 15.12.2024. It is noted that the A.O in his assessment order and in his remand report has made quite clear that enough opportunity were provided to the appellant. The appellant failed to justify any queries raised by the A.O. The submission filed before me were examined by the A.O in the remand report and the A.O has categorically stated that it does not fall under the purview of Rule 46A of I.T. Rules, 1962.”

5. Aggrieved by the CIT(A)'s order, the assessee has filed the present appeal before the Tribunal. The assessee has filed two sets of paper-book, one enclosing the case laws relied on. In the other paper-book, assessee has enclosed the computation of total income for the relevant assessment year, letter seeking additional time to submit documents due to ill health of the assessee, English translation of sale deed dated 18.11.2015, English translation of gift settlement deed dated 02.02.1979, English translation of deed dated 16.06.2016 evidencing purchase of house site, the documentary evidence submitted before the CIT(A) evidencing cost incurred for improving the property, etc.

6. The Id.AR submitted that the hearing notices during the course of assessment proceedings were sent to the e-mail ID of the tax practitioner and the same was not brought to the notice of the assessee. Hence, a proper reply could not be furnished by the assessee during the course of proceedings before the AO. It was submitted that the e-mail communication is not effective and in the interest of justice, notice in physical mode ought to have been served. The Id.AR further submitted that the assessee was not in receipt of the notices issued from the office of the First Appellate Authority seeking his comments on the remand report submitted by the AO. It was prayed that in the interest of justice and equity, the assessee may be provided with one more opportunity to represent his case before the AO.

7. The Id.DR supported the order of the AO and the CIT(A).

8. We have heard rival submissions and perused the material on record. The assessee pursuant to the receipt of notice issued u/s.148 of the Act, had filed his return of income on 07.02.2022 declaring total income of Rs.80,990/-. In the return of income, the assessee had claimed indexed cost of acquisition, indexed cost of improvement and deduction u/s.54 of the Act. In response to

various notices issued u/s.142(1) of the Act, there was no compliance by the assessee and had failed to furnish the necessary evidence for the claim of deduction u/s.54 of the Act, indexed cost of acquisition and indexed cost of improvement. Consequently, the gross sale price was brought to tax under the head 'capital gains'. Before the CIT(A), the assessee had furnished additional evidences under Rule 46A of the Act. The CIT(A) had called for a remand report and after receipt of remand report from the AO, directed the assessee to submit his reply on the remand report vide notices dated 13.12.2023 and 15.05.2024. Since there was no response from the assessee, the CIT(A) did not admit the additional evidences and dismissed the appeal of the assessee.

9. We strongly deprecate nonchalant attitude of the assessee in not responding to the various notices issued from the offices of the AO and also not furnishing his reply to the remand report submitted by the AO during the course of First Appellate Authority proceedings. Since the gross sale price has been brought to tax under the head 'capital gains' ('short-term capital gain'), in the interest of justice and equity, as a last opportunity, we are of the view the matter needs to be examined by the AO. Accordingly, we restore the issue raised in ground No.2 to the file of the AO. The

assessee is directed to co-operate with the Revenue and shall not seek unnecessary adjournment. It is ordered accordingly.

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

Order pronounced in the open court on 12th December, 2024 at Chennai.

Sd/-
(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 12th December, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-
(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT