

आयकर अपीलीय अधिकरण, 'सी' (एस एम सी), न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' (SMC) BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज, उपाध्यक्ष के समक्ष
BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

आयकर अपील सं./ITA No.: 994/CHNY/2025

निर्धारण वर्ष/Assessment Year: 2013-14

Ms. Ponnusamy Priya,
No.1A, Kajamiyan Street,
Kaja Nagar, Trichy,
Tiruchirappalli - 620 020.

**The Asst. Commissioner of
Income Tax,**
Vs. Circle -3(1),
Tiruchirappalli.

PAN: AHWPP 0952H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri M.K. Rangaswamy, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri Ashwin Gowda, JCIT

सुनवाई की तारीख/Date of Hearing

: 30.06.2025

घोषणा की तारीख/Date of Pronouncement

: 01.07.2025

आदेश/ ORDER

This appeal filed at the instance of the assessee is directed against the Addl/JCIT(A), Panchkula order, dated 19.02.2025 passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2013-14.

2. The solitary issue raised is whether the First Appellate Authority (FAA) is justified in confirming the addition made by the AO of Rs.15,29,320/- towards land development expenses disallowed for the purpose of Long-Term Capital Gains.

3. Brief facts of the case are as follows: The assessee is an individual. For the assessment year 2013-14, the return of income was filed on 30.03.2015 declaring total income of Rs.18,57,000/-. The assessment was selected for scrutiny under CASS to verify the cash deposits made in the Savings Bank account. The assessment was completed u/s.143(3) of the Act on 29.03.2016 by accepting the income returned by the assessee and also considering the source of cash deposit made in the bank account. The assessment was reopened u/s.147 of the Act to verify the genuineness of admission of income under capital gains by the assessee. The reassessment was completed u/s.143(3) r.w.s. 147 of the Act vide order dated 28.12.2018 by making addition of Rs.15,29,320/-. The AO recomputed the long term capital gains by allowing only proportionate expenditure of Rs.6,80,680/- as land development expenses as against the sum claimed of Rs.22,10,000/-.

4. Aggrieved by the order of reassessment passed u/s.143(3) r.w.s. 147 of the Act dated 28.12.2018, assessee preferred appeal before the First Appellate Authority (FAA). The FAA confirmed the view taken by the AO. The relevant finding of the FAA reads as follows:-

6.2 The learned AO had every right to consider the sworn statement of the contractor, Mr. A. Govindarajan, as part of the investigation process. The contractor himself admitted that the development work was done for an area of 15.000 sqft. and the payment of Rs. 22,10,000/- was in respect of that area. The reliance on the contractor's sworn statement is not misplaced in this case.

6.3 The AO correctly determined that the land development expenses should be allowable only in proportion to the actual land involved in the sale transaction. The appellant sold 4620 sq.ft, and as per the sworn statement of the contractor recorded u/s 131 of the Act, the expenses incurred were for a larger area of 15,000 sq.ft. Hence, only the proportionate expenditure of Rs. 6,80,680/- (4620/15000 Rs. 22,10,000) could be allowed, in accordance with Section 48 of the Income Tax Act, which provides for deduction of expenses incurred directly related to the transferred asset.

6.4 The appellant's contention regarding no opportunity was granted to to cross-examine the contractor, Mr. A. Govindarajan, has no merit in this case. Due opportunity was granted to the appellant by the AO which is evident from the facts mentioned in the assessment order that

"the assessee was granted an opportunity to go through the statement recorded from Shri A. Govindarajan on 27/12/2018. However, the assessee did not turn up on the said date to peruse the statement recorded from Shri A.Govindarajan."

The appellant was duly informed of the statement made by the contractor and opportunity to go through his statement has not been availed by her. The statement of the contractor was recorded by the AO on oath which has evidentiary value in the eyes of law. The principles of natural justice were therefore not violated. The claim of

Rs.22,10,000/- as land development expenses is not supported by any credible evidence linking the full expenditure to the appellant's plot of land. The disallowance of the excess amount is, therefore, justified and in line with the provisions of the Income Tax Act. Based on the above observations, I find that the AXDE Assessing Officer has correctly determined the capital gains and has rightly made the disallowance of the excess land development expenses. The reliance on the sworn statement of the contractor is valid, and the appellant was given adequate opportunity to present her case during the assessment proceedings. In view of the above, these grounds of appeal of the appellant are hereby dismissed.”

5. Aggrieved by the order of the FAA, the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper-book enclosing therein the original assessment order, the purchase deed and the sale deed of the immovable property, details of maintenance work carried out amounting to Rs.22,10,000/-, valuation report dated 23.12.2012, replies filed by the assessee during the course of assessment proceedings, written submissions filed before the FAA. The Ld.AR submitted that the contractor who has undertaken the improvement work in the property had addressed the letter to the assessee detailing the receipt of Rs.22,10,000/- and also the works undertaken by him. In the work undertaken by the contractor, the contractor has clearly mentioned the details of the property which belongs to the assessee. It is submitted that assessee could not respond to cross examining the contractor since during the relevant time,

assessee's father was hospitalized and same was mentioned to the AO. However, the assessment was completed solely based on sworn statement without any supporting documentary evidence. Therefore, it was prayed the entire improvement cost of Rs.22,10,000/- ought to be allowed as expenses while computing the long-term capital gains.

6. The Ld.DR strongly supported the orders of the AO and the FAA.

7. I have heard rival submissions and perused the material on record. The vacant plot of land was purchased by the assessee on 13.06.2008, which was sold on 03.01.2013 admeasuring about 4620 Sq.Ft. only. (Copy of the Registered documents are enclosed in Paper Book at Page Nos. 06 to 34). This land was situated at SF. No. 173/1B. Old No.5/8, new No.18/18, Indian Bank colony, KK Nagar, Trichy. During the relevant assessment year, the assessee had spent a sum of Rs.22,10,000/- for removal of dumped debris, wastages, mud, clay, earth work and levelling of land admeasuring about 4620 Sq.Ft. The assessee engaged the services of one M/s. Conservation Engineering Services (Coneng) (Copy of the statement describing the nature

of activity carried out by the contractor dt.20.12.2012 and acknowledging the receipt of money on various dates are placed in paper book at Page 35 & 36). The assessee has also submitted the approved valuer report done by M/s. Safe Associates dt.23.12.2012. During the course of re-assessment proceedings, a summon u/s 131 of the IT Act was issued to Shri A. Govindarajan, proprietor of M/s. Conservation Engineering Services. On 21.12.2018, a sworn statement was recorded from Shri A.Govindarajan, who has responded in Q.No.7 referred in Pg.No.4 of the re-assessment order that he has cleared and cleaned land around 15000 Sq. Ft. The assessee was served with the notice dated 21.12.2018 stating therein a final opportunity for the proposed allowing only an amount of Rs.6,80,680/- as pro-rata land development expenses as against the amount claimed Rs.22,10,000/- and fixing the hearing to appear on or before 24.12.2018. In response, the assessee filed a letter dt.24.12.2018 objecting to the proposal of the AO. The assessee further filed a letter dt.27.12.2018 clearly stating therein that the land belongs to her is only 4620 Sq.Ft. not 15000 Sq. Ft. as stated by the contractor in the sworn statement during the re-assessment proceedings. It was further stated that her inability to appear in person on the said date that she has to

take care of her father who was hospitalized during that period. However, the assessment was completed by merely relying on the sworn statement of the contractor, which is not supported by any other documentary evidences including the receipt / statement of work carried out by him dated 20.12.2012. The sworn statement alone should not be a basis for disallowance of expenses, which is not supported by any other documentary evidences. On facts on record, it is clearly discernable that the contractor has received payment of Rs.22,10,000/- from the assessee and he acknowledged the same. Therefore, the addition of Rs.15,29,320/- to the long-term capital gain is deleted. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 1st July, 2025 at Chennai.

Sd/-

(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 1st July, 2025

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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