

आयकर अपीलिय अधिकरण, बी / एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

B / SMC BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.408/Mds/2016

निर्धारण वर्ष / Assessment Year : 2009-10

Shri S.A. Gurumurthy,  
23/4, Apparswami Koil Street,  
Tiruvottiyur, Chennai - 600 019.

v. The Income Tax Officer,  
Non Corporate Circle 16(3),  
Chennai - 600 034.

PAN : AAEPG 5068 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. K. Balasubramanian, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Sh. P. Radhakrishnan, JCIT

सुनवाई की तारीख/Date of Hearing : 13.06.2016

घोषणा की तारीख/Date of Pronouncement : 18.08.2016

### **आदेश / O R D E R**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 5, Chennai, dated 16.12.2015 and pertains to assessment year 2009-10.

2. Shri K. Balasubramanian, the Ld.counsel for the assessee, submitted that the assessee has incurred an expenditure of ₹19,65,700/- towards demolition of unauthorized construction and dismantling and removing dilapidated hutments, building, etc. The

assessee has also incurred expenditure in levelling the ground with sand which was below 10 ft. from the ground level. According to the Ld. counsel, payments were made to contractors through cheques. The recipients of the amount, namely, the contractors were summoned under Section 131 of the Income-tax Act, 1961 (in short 'the Act') and they confirmed the fact of carrying out the development work by way of filling and levelling the ground with sand. The CIT(Appeals) disallowed the claim of the assessee on the ground that the existence of compound wall was not mentioned in the sale deed. According to the Ld. counsel, the assessee has also paid to the unauthorized occupants who encroached upon the property and staying there for several years so that the assessee can get vacant possession of property. Referring to the copy of sale deed, which is available at page 59 of the paper-book, the Ld.counsel submitted that after receiving ₹5,00,000/-, the unauthorized occupants vacated the premises and each unauthorized occupant confirmed the receipt of money from the assessee. In view this, according to the Ld. counsel, the CIT(Appeals) ought to have deleted the addition made by the Assessing Officer.

3. On the contrary, Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that the assessee has entered into a property transaction jointly with Shri R. Jayapal and Shri T. Janakiraman on 14.07.2008 and on 01.09.2008. The assessee claimed that he paid a sum of ₹19,72,280/- towards commission expenses to four persons. On examination, the Assessing Officer found that the assessee appears to have given contract to four persons for levelling the ground and construction of compound wall of 6 ft. According to the Ld. D.R. when the first two contracts itself covered the entire area, the assessee is claiming duplicate amount on the ground that the very same work was allotted to other two contractors. The so-called agreement was only an estimation and the assessee has not produced any evidence to prove the development cost. Referring to the amount paid to unauthorized occupants, the assessee has not substantiated the payment made to unauthorized occupants for vacating the premises. The Assessing Officer examined the bank account and found that a sum of ₹12,00,000/- was withdrawn on various dates. Though the claim of payment was to the extent of ₹30,00,000/-, the assessee has shown the withdrawal only to the extent of ₹12,00,000/-. Therefore, according to the Ld. D.R., the assessee's share of expenditure was

₹4,00,000/- being 1/3<sup>rd</sup> share in the property. Accordingly, out of total claim of ₹10,00,000/-, the Assessing Officer allowed ₹4,00,000/- and the balance ₹6,00,000/- was disallowed.

4. I have considered the rival submissions on either side and perused the relevant material available on record. The assessee is a co-owner of a property holding 1/3<sup>rd</sup> share. The assessee along with one Shri R. Jayapal and Shri T. Janakiraman entered into an agreement of sale on 14.07.2008 and 01.09.2008 respectively. For computation of capital gain, the assessee claims payment of ₹19,72,280/- towards his share, namely 1/3<sup>rd</sup> share, for levelling the ground and for construction of 6 ft. height compound wall. The Assessing Officer found that the contract was given to Shri T. Kumar and Shri T. Santhakumar. The very same work was also said to be entrusted to one Shri D. Jaganathan and Shri S. Durariraj. Therefore, the Assessing Officer found that it is a duplicate of amount claimed. In the absence of any evidence to show existence of compound wall in the sale deed and for levelling the ground, he disallowed the entire claim of the assessee. The question arises for consideration is whether the assessee has constructed the compound wall before the sale of property which is said to be 6 ft. height from the ground level. This Tribunal is of the

considered opinion that this fact needs to be examined on the basis of the material available on record and also by summoning the so-called contractors. The Revenue claims that the work was allotted to two contractors and the very same work was allotted to another two contractors. Therefore, it has to be established which contractors actually performed the work. Hence, the Assessing Officer has to examine all the four so-called contractors and find out what is the nature of work actually performed by them. In the absence of any material available on record, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. The orders of the authorities below are set aside and the issue of disallowance of ₹19,72,280/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue as indicated above and thereafter decide the issue in accordance with law after giving reasonable opportunity to the assessee.

5. Now coming to the payment said to be made to unauthorized occupants, the assessee appears to have claimed a sum of ₹30,00,000/- paid to unauthorized occupants and the assessee being the 1/3<sup>rd</sup> shareholder, is claiming ₹10,00,000/- as expenditure. The Assessing Officer found that the assessee has withdrawn only

₹12,00,000/- from the bank account. In the absence of any other source of income for making the payment of ₹10,00,000/-, the Assessing Officer restricted the same to the extent to his share, namely, ₹4,00,000/- and the balance of ₹6,00,000/- was disallowed. It is not known from the order of the Assessing Officer whether the bank account from which money was withdrawn belonging to the assessee individual or it was joint account along with other two co-owners. If it was joint account, then what the Assessing Officer says may be correct since the assessee's share is only 1/3<sup>rd</sup> in the property. In the absence of any details with regard to bank account said to be examined by the Assessing Officer, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. The orders of the authorities below are set aside and the issue of payment made by the assessee to the unauthorized occupants is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter and bring on record the names of the persons on whose names the bank account stands and whether the assessee has made payment from any other source and thereafter, he shall decide the issue in accordance with law after giving reasonable opportunity to the assessee.

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

Order pronounced on 18<sup>th</sup> August, 2016 at Chennai.

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 18<sup>th</sup> August, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai
4. Principal CIT-9, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.