

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1880, 1881 & 1882/Mds/2013

निर्धारण वर्ष / Assessment Years : 2009-10, 2010-11 & 2011-12

M/s Coromandel Oils Private
Limited,
Doshi Towers, 9th floor,
156, PH Road,
Chennai - 600 010.

v. The Deputy Commissioner
of Income Tax,
Company Circle I(3),
Chennai - 600 034.

PAN : AAACC 8855 E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.1937, 1938, 1939, 1940, 1941 &
1942/Mds/2013

निर्धारण वर्ष / Assessment Years : 2009-10, 2010-11 & 2011-12

The Assistant Commissioner
of Income Tax,
Company Circle I(3),
Chennai - 600 034.

v. M/s Coromandel Oils Private
Limited,
Doshi Towers, 9th floor,
156, PH Road,
Chennai - 600 010.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती/Assessee by

: Sh. B. Ramakrishnan, FCA

राजस्व/Revenue

: Sh. Pathlavath Peerya, CIT

सुनवाई की तारीख/Date of Hearing : 07.05.2015

घोषणा की तारीख/Date of Pronouncement : 26.06.2015

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both, the assessee and the Revenue filed the appeals against the respective orders of the Commissioner of Income Tax (Appeals)-I, Chennai, for the assessment years 2009-10, 2010-11 and 2011-12. The Revenue also filed appeals against the order of the CIT(Appeals) on penalty levied under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). Since common issue arises in all the appeals, we heard the appeals together and disposing of the same by this common order.

2. First, let's take the assessee's appeals for assessment years 2009-10, 2010-11 and 2011-12 in I.T.A. Nos.1880, 1881 & 1882/Mds/2013.

3. Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that the only issue arises for consideration is with regard to determination of sale consideration of the land for the purpose of computation of capital gains. The Ld. representative submitted that the assessee has also raised an issue of reopening

of the assessment under Section 147 of the Act. Referring to the reopening of the assessment, the Ld. representative submitted that the Assessing Officer based upon an erroneous information in respect of period of holding of the property, determined the short term capital loss instead of long term capital loss on mutual funds. In fact, according to the Ld. representative, the assessment was reopened only for the purpose of assessing the capital loss on mutual funds by issuing notice under Section 148 of the Act. During the course of assessment proceedings, no income was found to have escaped in respect of capital loss on mutual funds. However, the Assessing Officer made addition in respect of capital gain on sale of land on assumption and presumption. On placing reliance on the judgment of Bombay High Court in CIT v. Jet Airways (I) Ltd. (2011) 331 ITR 236, the Ld. representative submitted that an Assessing Officer has not made any addition on the reasons for which the assessment was reopened under Section 148 of the Act, therefore, he cannot make any other addition in the reassessment proceedings under Section 147 of the Act. The Ld. representative also submitted that the time limit for issuing notice under Section 148 has expired for assessment years 2009-10 and 2010-11. Therefore, the reassessment proceeding initiated under Section 148 of the Act for assessment years 2009-10 and 2010-11 is not valid.

4. Coming to the merit of the appeal, the Ld. representative for the assessee submitted that there was a survey in the business premises of the assessee on 24.1.2012 and no material was found during the course of survey operation. The entire assessment was made on the basis of material found in the course of Coromandel Cables Pvt. Ltd. According to the Ld. representative, in the course of survey in the case of M/s Coromandel Cables Pvt. Ltd., it appears that the revenue authorities found certain development agreement and other material to indicate that M/s Coromandel Cables Pvt. Ltd. sold land to M/s Doshi Housing and received sale consideration over and above it was disclosed in the sale deed. On the basis of the material found in the case of Coromandel Cables Pvt. Ltd., the Assessing Officer came to a conclusion that the assessee also might have received the same amount for transfer of its land. According to the Ld. representative, no material is available on record to suggest that the assessee has received any money over and above the amount shown in sale deed. Merely because the assessee's land happened to be adjacent to the land of Coromandel Cables Pvt. Ltd., it does not mean that the assessee has received the same money on sale of the said land. In the absence of any material, according to the Ld. representative, there cannot be any

addition in the hands of the present assessee. According to the Ld. representative, the entire assessment proceeding is based on the presumption and assumption that the assessee might have received the sale consideration as it was in the case of Coromandel Cables Pvt. Ltd. According to the Ld. representative, this being a judicial proceeding, there cannot be any addition on the basis of assumption and presumption. According to the Ld. representative, the addition made by the Assessing Officer, which was confirmed by the CIT(Appeals), is not justified.

5. On the contrary, Sh. Pathlavath Peerya, the Ld. Departmental Representative, submitted that the assessee owns a factory and land at Perungudi. The assessee-company entered into an agreement with M/s Doshi Housing to develop a residential project, namely, "Etopia-II". In fact, the land belonging to the assessee is situated adjacent to the land owned by M/s Coromandel Cables Pvt. Ltd. According to the Ld. representative, the transaction between the assessee and the developers are so arranged that the higher sale consideration for the purpose of computing the capital gain in the hands of the assessee was suppressed by diverting the majority portion of the profits to the developer of the property so as to claim benefit under Section 80-

IB(10) of the Act. The Ld. D.R. further submitted that the partnership firm was reconstituted on 1.4.2007 in which one Shri M.G. Surendranath was introduced as partner with a share profit at 35%. However, he was not given any share of loss. According to the Ld. D.R., all the three entities, namely, M/s Coromandel Cables Pvt. Ltd., M/s Coromandel Oils Pvt. Ltd. (the present assessee) and M/s Doshi Housing Pvt. Ltd. are all belonging to one group, namely, Doshi Group in which Shri Harshad V. Doshi was at the helm of affairs having absolute control in all the spheres of activities. During the course of survey operation, the revenue authorities found that M/s Coromandel Cables Pvt. Ltd. entered into a joint development agreement with M/s Doshi Housing, a partnership firm, for developing a land belonging to M/s Coromandel Cables Pvt. Ltd. A copy of joint development agreement entered between M/s Coromandel Cables Pvt. Ltd. and M/s Doshi Housing was found during the course of survey operation.

6. The material found during survey operation shows that the value of the land belonging to M/s Coromandel Cables Pvt. Ltd. was found to be ₹35 Crores approx. as against the value of ₹10 Crores disclosed in the sale deed. In fact, according to the Ld. D.R., M/s Coromandel Cables Pvt. Ltd. disclosed the value as per guideline

value determined by the Sub-Registrar. In the assessment of M/s Coromandel Cables Pvt. Ltd., the Assessing Officer found that M/s Coromandel Cables Pvt. Ltd. is entitled for 37.54% of the value of saleable area in the project. Based upon that agreement, the Assessing Officer presumed that the assessee also might have received 37.54% of saleable area in the project. Other than the material found in the case of M/s Coromandel Cables Pvt. Ltd., no other material is available relating to the assessee to indicate that the assessee has received over and above the consideration disclosed in the relevant document. Since the land belonging to assessee is adjacent to the land owned by M/s Coromandel Cables Pvt. Ltd., the Ld. D.R. submitted that the value found in the case of M/s Coromandel Cables Pvt. Ltd. on the basis of the material found during the course of survey operation was adopted on estimation. On an enquiry from the Bench - whether any material was found during the course of survey or during the course of enquiry in the course of assessment proceeding relating to the assessee? The Ld. D.R. very fairly submitted that no material was available on record in the case of present assessee other than the material relating to M/s Coromandel Cables Pvt. Ltd. to indicate that the value of land is over and above the consideration that was disclosed by the assessee in the agreement for sale. In other words, the Ld.

D.R. clarified that other than the agreement for sale, no other material was available with the Department in respect of the assessee. The Ld. D.R. further clarified that since the land belonging to the assessee is adjacent to the land belonging to M/s Coromandel Cables Pvt. Ltd., the Assessing Officer adopted the same value as that of M/s Coromandel Cables Pvt. Ltd. on estimation. According to the Ld. D.R., there is no other material is available on record.

7. We have considered the rival submissions on either side and perused the relevant material on record. The only issue arises for consideration is with regard to determination of the value of the land for the purpose of computation of capital gains in the hands of the assessee. Admittedly, the assessee-company entered into an agreement with M/s Doshi Housing for sale of its land at Perungudi. A survey was conducted in the premises of the assessee as well as in the case of M/s Coromandel Cables Pvt. Ltd. on 24.01.2012. Admittedly, no material was found in the premises of the assessee. In the case of M/s Coromandel Cables Pvt. Ltd., several incriminating materials were found, including joint development agreement, indicating the percentage of the developed area to be allotted to M/s Coromandel Cables Pvt. Ltd. On the basis of the

incriminating materials, it appears from the assessment order that the Assessing Officer came to a conclusion in the case of M/s Coromandel Cables Pvt. Ltd. that the value of the land may be higher than ₹35 Crores. In the case before us, the assessee entered into agreement for sale and disclosed the value at ₹10.50 Crores and offered to long term capital gains accordingly. During the course of survey operation, it was found that one Smt. Rani Gopinath admitted that in the case of M/s Coromandel Cables Pvt. Ltd., the suppressed profit was more than ₹25 Crores on the basis of incriminating materials. From the assessment order it appears that apart from joint development agreement in the case of M/s Coromandel Cables Pvt. Ltd., certain loose sheets also found containing 40 pages. All the documents were relating to M/s Coromandel Cables Pvt. Ltd. The Assessing Officer, on the basis of sworn statement recorded from Smt. Rani Gopinath and the incriminating material found in the case of M/s Coromandel Cables Pvt. Ltd., came to a conclusion that the value of the land transferred by M/s Coromandel Cables Pvt. Ltd. was more than ₹35 Crores. By applying same yardstick, the Assessing Officer estimated the value of the assessee's land at ₹35 Crores.

8. Now the question arises for consideration is in the absence of any material found in the case of the assessee, can incriminating material found in respect of M/s Coromandel Cables Pvt. Ltd. be relied upon for estimation of value of the assessee's land. This Tribunal is of the considered opinion that it cannot be relied upon. The assessment proceeding is a judicial proceeding under Section 136 of the Income-tax Act. Therefore, assumption and presumption has no role to play in the judicial proceedings. Unless and until there is a concrete material to establish that the assessee has received any money over and above the value disclosed in the sale agreement, we cannot presume that the assessee has in fact received the money over and above the value shown in the sale agreement.

9. As repeatedly held by the Apex Court, market value is nothing but the price agreed between the willing purchaser and the willing seller. There may be several factors/reasons for agreeing to a particular price by the parties. One of the reasons presumably the assessee may be compelled to sell the property or transfer the property in any one of the possible mode agreed between the parties. Whatever may be the reasons when two parties came into an agreement to transfer the landed property, the judicial authorities

cannot step into the shoes of the parties and say that the property may be worth more than what was agreed between the parties. In fact, in order to avoid this settled position, Parliament has introduced Section 50C of the I.T. Act with effect from 1.4.2003 by Finance Act, 2002. Therefore, when the assessee claims that the value of the land is less than the value determined by the stamp authorities for payment of stamp duty, the value adopted by the stamp authorities shall be deemed to be the full value of the consideration received or accrued to the assessee as a result of such transfer.

10. We have also carefully gone through the sale agreement entered between the assessee and M/s Doshi Housing, a copy of which is available in page 11 of the paper-book. The agreement clearly says that the assessee agreed to transfer the land to the extent of 1,06,196 sq.ft. for a total consideration of ₹10.50 Crores and agreed to execute the sale deed in favour of M/s Doshi Housing or its nominee. In fact, the assessee has executed several sale deeds in favour of the persons who are nominated by M/s Doshi Housing. Other than this agreement for sale dated 1.4.2008, no other material is available on record. The joint development agreement referred by the Assessing Officer and the CIT(Appeals)

is relating to M/s Coromandel Cables Pvt. Ltd. and not to the assessee. Therefore, this Tribunal is of the considered opinion that no reliance could be placed on those incriminating materials found in the case of M/s Coromandel Cables Pvt. Ltd. This Tribunal is of the considered opinion that the value of the land has to be taken only as ₹10.50 Crores. In case the value shown in the sale agreement as ₹10.50 Crores is less than the value determined by the stamp authorities, then at the best, the guideline value can be taken as value of the land. Therefore, the lower authorities are not justified in estimating the value of the land on the basis of the material relatable to M/s Coromandel Cables Pvt. Ltd. Income-tax proceeding, being a judicial proceeding, the assessment has to be made on the basis of material available on record. Documents relating to other assessees cannot be placed reliance in the case of present assessee unless there is sufficient reason to rely upon that document. This Tribunal is of the considered opinion that there is no material available on record to suggest that the assessee received more than ₹10.50 Crores as disclosed in the sale agreement dated 1.04.2008. Therefore, the lower authorities are not correct in estimating the value of the land on the basis of the materials relating to M/s Coromandel Cables Pvt. Ltd. this Tribunal is of the considered opinion that in the absence of any other

material, the lower authorities have no other way except to accept the value of the land at ₹ 10.50 Crores as disclosed in the sale agreement dated 1.04.2008. Accordingly the orders of the lower authorities are set aside and the appeals of the assessee are allowed.

11. Now coming to the Revenue's appeals in I.T.A. Nos.1937, 1939 & 1941/Mds/2013, the only contention of the Ld. D.R. is that the sharing ratio of the developed project was reduced by the CIT(Appeals) to 40% as against 45% determined by the Assessing Officer. According to the Ld. D.R., the agreement was entered into by M/s Coromandel Cables Pvt. Ltd. in the year 2005, whereas the present assessee entered into agreement in the year 2008. Therefore, due to efflux of time, the developed area in the year 2008 in comparison to 2005 would be naturally more, therefore, the CIT(Appeals) ought to have confirmed the addition made by the Assessing Officer.

12. We have heard Shri B. Ramakrishnan, the Ld. representative for the assessee also. By efflux of time, the cost of construction or cost of land might have increased. However, the percentage of the share would not increase. If the assessee entered into an agreement for sharing the constructed area at 37.5% in the year

2005, the same sharing ratio would continue in 2008 also. By efflux of time, the cost may increase, accordingly the price may also increase, it does not mean that the share in constructed area would also increase due to efflux of time. This Tribunal is of the considered opinion that the CIT(Appeals) has rightly reduced the sharing ratio to 40% as against the ratio determined by the Assessing Officer at 45%. Therefore, this Tribunal do not have any reason to interfere with the order of the CIT(Appeals) and accordingly, the same is confirmed.

13. In the result, these appeals of the Revenue are dismissed.

14. Now coming to the Revenue's appeals with regard to penalty in I.T.A. Nos.1938, 1940 & 1942/Mds/2013, Sh. Pathlavath Peerya, the Ld. D.R. submitted that the Assessing Officer levied penalty. During the course of survey operation, certain incriminating material found, including the joint development agreement dated 23.11.2005 of M/s Coromandel Cables Pvt. Ltd. On the basis of the material found, the Assessing Officer came to a conclusion in the case of M/s Coromandel Cables Pvt. Ltd. that the profit on sale of land was suppressed. The Assessing Officer came to a conclusion that the present assessee also might have suppressed the sale profit on the basis of material found during the course of M/s Coromandel Cables

Pvt. Ltd. Since the assessee furnished inaccurate particulars with regard to sale value of the land, the Assessing Officer levied penalty under Section 271(1)(c) of the Act.

15. On the contrary, Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that no material is available on record to suggest that the assessee has suppressed any part of the income arising out of the transfer of the land to M/s Doshi Housing. According to the Ld. representative, the only document available on record is the agreement of sale entered between the assessee and M/s Doshi Housing on 1.04.2008. This agreement of sale clearly says that the value of the land is ₹10.50 Crores. Other than this, there is no other material on record. The impugned addition was made only on the basis of the incriminating material found during the course of survey operation in the case of M/s Coromandel Cables Pvt. Ltd. This material found, which is relatable to M/s Coromandel Cables Pvt. Ltd., cannot be a basis for levy penalty under Section 271(1)(c) of the Act. Therefore, the CIT(Appeals) has rightly deleted the penalty.

16. We have considered the rival submissions on either side and perused the relevant material on record. For levying penalty under Section 271(1)(c) of the Act, the assessee has to furnish inaccurate

particulars or failed to disclose any part of the income. In this case, during the course of survey, the so-called incriminating material, including joint development agreement dated 23.11.2005, in respect of M/s Coromandel Cables Pvt. Ltd. was found. In fact, no material was found relating to the present assessee. On the basis of the material found in the case of M/s Coromandel Cables Pvt. Ltd., the value of the land was estimated. In the earlier part of this order, while considering the quantum addition made by the Assessing Officer, this Tribunal found that there cannot be any addition on the basis of the material relatable to M/s Coromandel Cables Pvt. Ltd. In the absence of any material in respect of the present assessee other than the agreement for sale dated 1.04.2008, which discloses the sale consideration at ₹10.50 Crores, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly deleted the penalty. This Tribunal do not find any reason to interfere with the order of the CIT(Appeals). Accordingly, the same is confirmed.

17. In the result, the appeals of the assessee in I.T.A. Nos. 1880, 1881 & 1882/Mds/2013 are allowed and the appeals of the Revenue in I.T.A. Nos. 1937, 1938, 1939, 1940, 1941 & 1942/Mds/2013 are dismissed.

Order pronounced on 26th June, 2015 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 26th June, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-I, Chennai
4. आयकर आयुक्त/CIT, Chennai-I
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.