

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.1935/Mds/2016

& C.O. No.116/Mds/2016

(in ITA No.1935/Mds/2016)

निर्धारण वर्ष /Assessment year : 2012-2013

The Assistant Commissioner
of Income Tax,
Circle -1,
Erode 638 001.

Vs. S.P. Mani and Mohan Dairy,
84, Jeevanantham Street,
Kollampalayam,
Erode 638 002.

[PAN AAKFS 5133J]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent/ Cross Objector)

अपीलार्थी की ओर से/ Appellant by : Shri. Supriya Pal, IRS, JCIT.
प्रत्यर्थी की ओर से /Respondent by : Shri. N.C. Ravikrishnan, Adv

सुनवाई की तारीख/Date of Hearing : 21-09-2016
घोषणा की तारीख /Date of Pronouncement : 28-09-2016

आदेश / O R D E R

PER SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:

These are appeal of the Revenue and Co-objection by the assessee, both directed against order dated 28.03.2016 of the Commissioner of Income-tax (Appeals)-3, Coimbatore. Revenue in its

appeal has taken altogether six grounds of which Ground Nos. 1 & 6 are general in nature needing no specific adjudication.

2. Vide its ground No.2, the grievance raised by the Revenue is that the Id. Commissioner of Income Tax (Appeals) deleted an addition of ₹9,50,000/- considered by the Id. Assessing Officer has capital outgo towards construction of building.

3. Facts apropos are that the assessee, running a milk dairy had filed return of income for impugned assessment year disclosing income of ₹3,13,38,420/- and agricultural income of ₹4,02,170/-. During the course of assessment proceedings, the Id. Assessing Officer noted that assessee has constructed a new canteen building. The cost of such building was shown by the assessee as ₹4,95,181/- in its books. The Id. Assessing Officer required assessee to explain how a new building could be constructed with a sum as little as ₹4,95,181/-. The Id. Assessing Officer noted that assessee had purchased cement for ₹4,06,077/- which was included by it under the head "building maintenance" claimed as revenue expenditure. Total building maintenance expenditure claimed by the assessee came to ₹18,19,310/-. Explanation of the assessee was that there was no new building but only canteen staff room renovation. As per assessee such expenditure was for staff welfare. However, Id. Assessing Officer was not impressed. According to him, assessee did not file details required

by him, like area of new construction. He held that a sum of ₹10,00,000/- out of the building maintenance claimed would have been incurred for construction of the canteen building and disallowed ₹10,00,000/-. However, he allowed depreciation of 5% on such cost demarcated out of the maintenance expenditure. The effective disallowance came to ₹9,50,000/-.

4. Aggrieved, the assessee moved an appeal before Commissioner of Income Tax (Appeals). Contention of the assessee was that no new building was constructed. According to it, the old building was remodified and expenditure on such modification rightfully claimed under the head building maintenance. Further, as per assessee building maintenance claimed by it included certain equipment as well. The Id. Commissioner of Income Tax (Appeals) after considering the above submissions held as under:-

'6.2. The Assessing Officer has treated repairs and maintenance to building as capital in nature. In the assessment order itself, it is stated that the assessee has not filed the details of area constructed. In fact, there is no construction but only repairs and modification of canteen and other areas. No additional area is constructed. This is clearly revenue in nature and the addition is not sustainable.

5. Now before us, the Id. Departmental Representative strongly assailing the orders of Id. Commissioner of Income Tax (Appeals), submitted that relief was given to the assessee without any evidence produced by it. Assessee, as per the Id. Authorised Representative had not shown how such huge amount of building maintenance expenditure was justified. Submission was that the Id. Commissioner of Income Tax (Appeals) deleted the disallowance without appreciating the facts.

6. Per contra, Id. Authorised Representative submitted that there was no new building constructed during the relevant assessment year. As per Id. Authorised Representative it was a figment of the imagination of the Id. Assessing Officer. As per Id. Authorised Representative, Id. Commissioner of Income Tax (Appeals) was justified in deleting the disallowance.

7. We have considered the rival contentions and perused the orders of the authorities below. The claim of the assessee is that there was no new canteen building constructed but only renovation of an existing building. However, as per Id. Assessing Officer assessee had constructed a new canteen building. Before Id. Commissioner of Income Tax (Appeals) assessee had stated that building maintenance expenditure of ₹18,19,310/- claimed by it included equipment. In our opinion, the matter requires a fresh look by the Id. Assessing Officer.

The Id. Assessing Officer has to verify whether there was new construction, and whether the building maintenance expenditure included cost of any equipment which was to be capitalized. We, therefore set aside the question of disallowance of claim of building maintenance expenses back to the file of the Id. Assessing Officer for consideration afresh in accordance with law.

8. Ground No.2 of the Revenue stand allowed for statistical purpose.

9. Vide ground No.3, the grievance raised by the Revenue is that the Id. Commissioner of Income Tax (Appeals) deleted an addition made on account of short term capital gains for transfer of land.

10. Facts apropos are that the assessee, which was a partnership firm during the relevant previous year had transferred following lands to a new formed company.

Date	Particulars of land	Amount
18.01.2012	Land –Avalpoondurai (RS No.1785/2B, 1786/9D) 0.48.5 Hec	220900.00
18.01.2012	Land –Avalpoondurai (RS No.1770/1) 0.69.61 Hec	316200.00
18.01.2012	Land –Avalpoondurai (RS No.1770/1) 0.53 Hec	256400.00
18.01.2012	Land –Avalpoondurai (RS No.1785/2A, 1786/9C) 0.49.5 Hec	225500.00
18.01.2012	Land –Avalpoondurai (RS No.1770/2) 0.95 Hec	431600.00
18.01.2012	Land –Avalpoondurai (RS No.1785/2C, 2D, 4B, 9A, 9B)-1.35.58 Hec	617000.00
18.01.2012	Land –Avalpoondurai (RS No.1785/1, 1786/7, 1786/10) 0.84.67 Hec	385000.00

18.01.2012	Land –Avalpoondurai (RS No.1785/3) 0.40.47 Hec	288000.00
18.01.2012	Land –Avalpoondurai (RS No.1785/3) 0.40.47 Hec-2	288000.00
18.01.2012	Land –Avalpoondurai (RS No.1785/2C, 2D, 4A, 4B, 9A, 9B-1.51 Hec	131200.00
18.01.2012	Land –Avalpoondurai (RS No.1785/1, 1786/7, 1786/10) 2.54.0 Hec	929753.00
18.01.2012	S.P.Loganathan Current A/c.	
18.01.2012	R. Mohanasundram Current A/c.	
		4089553.00

The Id. Assessing Officer required assessee to explain why such transfer should not be considered as sale and why profits/capital gains should not be assessed in the hands of the assessee, considering market value/fair market value of such land. In reply, assessee stated that transferred land was agricultural in nature and the transfers were effected at guideline value fixed by the Government. As per assessee, the transfer was a result of succession of the assessee by a company and by virtue of clause (xiii) of Sec. 47 of the Income Tax Act, 1961 (herein after referred to as 'the Act'), the transaction was not exigible to capital gains. However, Id. Assessing Officer was not impressed by the above reply. According to him, assessee was not doing any agricultural activities. The Id. Assessing Officer was of the opinion that mere admission of agricultural income would not prove agricultural operations. As per Id. Assessing Officer partners of the assessee firm had planned to expand the business and land was purchased and accounted by the firm with this intention. Further, as per Id. Assessing Officer, major part of the land was purchased in July, 2009 and

September, 2009 and a portion was purchased in July, 2011. Assessee firm had not done any agricultural activities in the said land. Thus, the Id. Assessing Officer came to a conclusion that the primary intention to purchase the land was for construction by the company. As per Id. Assessing Officer assessee firm had transferred the land to a new company at book value squaring up the capital/current accounts of the partners. He held that difference between purchase cost of the land and its guideline value had to be considered as Short Term Capital Gains, considering it as sale of the land from the firm to the company; After deducting purchase cost of ₹40,89,553/- from the guideline value of ₹52,77,500/- a Short Term Capital Gain of ₹11,87,947/- was worked out and added to the assessee.

11. Aggrieved, the assessee moved an appeal before Id. Commissioner of Income Tax (Appeals). Assessee reiterated the contentions raised before Id. Assessing Officer. As per assessee, it had sufficient evidence to prove agricultural operations. Further, as per assessee performance of the agricultural activities was not a prerequisite for transfer of agricultural land. Id. Commissioner of Income Tax (Appeals) after considering the submissions of the assessee came to a conclusion that land transferred was situated at Avalpoondurai beyond 8kms of outer limits of Erode Municipality.

Hence according to him, it could not be considered as capital asset. He deleted the addition made for Short Term Capital Gains.

12. Now before us, the Id. Departmental Representative strongly assailing the orders of Id. Commissioner of Income Tax (Appeals) submitted that nothing was available on record to show how the conclusion that the land was beyond 8 kms from outer limits of Erode Municipality was reached. As per Id. Departmental Representative, assessee had not shown any agricultural operational expenditure in its books. The land was purchased within two years from the date of transfer to the company. As per Id. Departmental Representative, the Id. Commissioner of Income Tax (Appeals) had went by mere submissions of the assessee and given relief.

13. Per Contra, the Id. Authorised Representative strongly supporting the order of the Id. Commissioner of Income Tax (Appeals) submitted that relief was given after considering the facts of the case.

14 We have considered the rival contentions and perused the orders of the authorities below. The assessment order does not even have a whisper regarding distance of the land sold from the outer boundary of Erode Municipality. All along, the contention of the assessee was that land transferred was agricultural and transfer fell as

such within clause (xiii) of Sec. 47 of the Act. We find that claim of the assessee before Assessing Officer, which was not accepted by the Id. Assessing Officer and reasons given by the Id. Commissioner of Income Tax (Appeals) for deleting the addition of Short Term Capital Gains were not related to each other. We are therefore, of the opinion that issue requires fresh look by the Id. Assessing Officer. We set aside the order of the lower authorities on the issue regarding addition of Short Term Capital Gains back to the file of the Id. Assessing Officer for consideration afresh in accordance with law. Needless to say, the assessee is free to raise any plea in support of its contention that there was no capital gains and can also produce records to substantiate its case.

15 In the result, ground no.3 of the Revenue is allowed for statistical purpose.

16. Vide ground no.4, the grievance of the Revenue is that disallowance of 50% made by the Id. Assessing Officer for expenditure incurred on purchase of plastic tray and milk cans was deleted by the Id. Commissioner of Income Tax (Appeals).

17. Facts apropos are that the assessee had purchased milk can and milk crate for ₹19,49,125/- and ₹17,25,155/- respectively aggregating to ₹36,74,280/- during the relevant previous year. The Id.

Assessing Officer was of the opinion that these were capital acquisition and could not be allowed as Revenue expenditure. Though assessee relied on a decision of Visakhapatnam Bench of the Tribunal in the case of *ACIT vs. M/s. Tirumala Milk Products Pvt. Ltd* (ITA No.282/Vizag/2011, dated 12.04.2011) which considered the question whether expenditure incurred on milk can and milk crate by a Dairy firm was allowable, Id. Assessing Officer, disallowed the claim taking a view that the Tribunal had not given a speaking order.

18. Aggrieved, the assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Argument of the assessee before Id. Commissioner of Income Tax (Appeals) was that it was in the business of running a milk dairy and purchasing milk can and milk crates was in the ordinary the course of such business. As per assessee, it received no enduring benefit through such acquisition since life of crates and cans were only four to six months. The Id. Commissioner of Income Tax (Appeals) was appreciative of these contentions. According to him, such expenditure could not be treated as capital in nature.

19. Now before us, the Id. Departmental Representative strongly assailing the orders of Id. Commissioner of Income Tax (Appeals) submitted that acquisition of can and crates were capital in nature.

20. Per contra, the Id. Authorised Representative are again relied on the decision of Vizag Bench in the case of *M/s. Tirumala Milk Products Pvt. Ltd (supra)* and submitted that the Id. Assessing Officer fell in error in not abiding by the said decision.

21. We have considered the rival contentions and perused the orders of the authorities below. The issue whether expenditure for milk can and milk crates acquired by the assessee in the business of diary farm, was revenue or capital in nature had come up before the Visakhapatnam Bench of the Tribunal in the case of *M/s. Tirumala Milk Products Pvt. Ltd (supra)*. In our opinion, the Id. Assessing Officer fell in error in not following the decision of a higher judicial body. The Id. Commissioner of Income Tax (Appeals) was justified in deleting the disallowance. No interfere is required. Ground No. 4 raised by the Revenue stand dismissed.

22. Cross objection filed by the assessee are mainly in support of the order of Commissioner of Income Tax (Appeals). However, in Cross objection, assessee has taken a ground that the Id. Commissioner of Income Tax (Appeals) in a Miscellaneous Petition filed by the assessee sustained an addition made by the Id. Assessing Officer, by disallowing a claim of agricultural income.

23. We find that the above ground in the Cross objection is against an order of the Id. Commissioner of Income Tax (Appeals), in a Miscellaneous Petition filed by the assessee. Issue does not arise from the order assailed by the Revenue in this appeal which is dated 28.03.2016. Hence in our opinion such Cross objection has been incorrectly raised by the assessee.

24. In the result, Cross objection filed by the assessee is dismissed.

25. To summarize, the appeal of the Revenue is partly allowed for statistical purpose and Cross objection filed by the assessee is dismissed.

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 28th September, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER