

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2206/Chny/2019  
निर्धारण वर्ष /Assessment Year: 2014-15

**E. Murugan,**  
No.3/91, Padavattamman  
Koil Street, Padur Post,  
OMR Road, Kazhipattur,  
Kanchipuram – 603 103.  
**[PAN: CIXPM-8913-P]**

**The Income Tax Officer,**  
**Vs. Non Corporate Ward-22(3),**  
Tambaram.

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: None  
: Shri N. Sanjay Gandhi, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 13.09.2022

घोषणा की तारीख /Date of Pronouncement

: 16.09.2022

**आदेश / ORDER**

**Per Mahavir Singh, Vice President :**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-10, Chennai in ITA No.185/16-17/CIT(A)-10 dated 31.01.2019 for Assessment Year 2014-15. The Assessment was framed by Income Tax Officer, Non Corporate Ward-22(3), Chennai u/s. 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act') vide order dated 27.12.2016.

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2. The only issue in this appeal of the assessee is assessment of Long Term Capital Gain on compulsory acquisition of land by Government under the Tamil Nadu Highways Act, 2001 (Act No.34/2002) in the hands of the assessee alone instead of all the co-owners. There are many aspects to this issue those are I) that the land belongs to many co-owners and assessment cannot be made on the compulsory acquisition of this land in the hands of the assessee alone II) that the land acquired was compulsory acquisition under Tamil Nadu Highways Act, 2001 (Act No.34/2002) and it falls under the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('RECTLAAR Act').

3. The brief facts of the case are that the assessee was co-owner of the land at Survey Nos. 231/2B2, 231/3B, 231/4B and 231/5B belonging to the assessee and other surviving co-owners namely Smt. Bhuvaneswari, W/o late Kandan, Brother of the assessee, Sri Dhanasekar, son of late Kandan, brother of the assessee, Sri Dinesh, son of late Kandan, brother of the assessee, Ms. Thenmozhi, daughter of late Kandan, brother of the assessee, Smt. Malar, daughter of late Kandan, brother of the assessee and Smt. Chandra, daughter of late Etti and sister of the assessee. The A.O noted this fact in his assessment order, but the A.O computed the Long Term Capital Gain

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on the entire compensation received on compulsory acquisition of this land and building in the hands of the assessee i.e. the total consideration of acquisition of Rs. 2,41,84,347/- and thereby computing the Long Term Capital Gain after allowing indexation cost at Rs. 1,84,36,747/-. This was computed on the basis that the assessee at the time of hearing on 22.12.2016 requested to consider full capital gain in his hand and the fact recorded by the A.O at Page-3 as under:

*“Assessee at the time of hearing on 22.12.2016 also requested to consider full capital gains in his hands. After discussion with assessee and authorized representative, assessment is completed as under and long term capital gains is computed as under:”*

4. Accordingly, the A.O assessed the entire capital gain in the hands of the assessee. One more fact that the assessee claimed entire TDS deducted u/s. 194LA in the hands of the assessee and this fact also noted by A.O in his assessment at Page-4 as under:

*“iv) The land belonged to Assessee and his family members. Assessee has received the entire compensation / consideration for land and building on compulsory acquisition by the government. Compensation was awarded to the assessee after deduction of TDS u/s. 194LA. Assessee has claimed the entire refund on account of TDS. Hence, the entire compensation/consideration for compulsory acquisition of land and building is treated as long term capital gains in the hands of the assessee.”*

Aggrieved, the assessee preferred appeal before CIT(A).

5. Before CIT(A) the first issue raised was that the land compulsorily acquired by State Government was held by his brother

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and sister jointly as legal heirs and therefore, the assessment in the hands of the assessee should be restricted to his share of capital gain and entire capital gain should not be assessed in the hands of the assessee. Even before the CIT(A), the assessee even though raised this issue but it seems that he has not pressed this ground and this fact is recorded by CIT(A) in para 5.3.4 as under:

*“5.3.4 Even during the appellate proceedings the appellant submitted that though he had objected to the assessment of Capital Gains entirely in his hands he was not pressing the said ground but requested to consider allowing the other legal heir's claiming of exemption u/s 54F in his hands. The submissions are duly considered and the ground raised by the appellant with respect to assessment of individual legal heirs separately is treated as not pressed and thus dismissed.”*

6. The second aspect that the claim of exemption u/s. 54F of the Act was allowed in the hands of the assessee only to the extent of his share and not as claimed by the assessee to the extent of Rs. 63,02,500/- by the A.O, which was challenged by the assessee before CIT(A) and CIT(A) dismissed this ground on the premise that the investment in the residential house is not owned by the assessee nor it is held jointly with such other legal heirs who were the joint owners of the land. Further, the restriction of claiming more than one house as exempt u/s. 54 of the Act also does not permit allowing the claim in the hands of the assessee and not on this premise also CIT(A) confirmed the action of the A.O. For this, the CIT(A) recorded the fact in para 5.3.5 as under:

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*“5.3.5 As regards the ground requesting to allow exemption u/s 54F of the Act with respect to the investment made in residential house by other legal heirs, namely sons of his late brother Shri. Kandan in his hands, it is to state that the same is duly considered but is not found to be acceptable as the investment in the residential house is not owned by the appellant nor is it held jointly with such other legal heirs. Further, the restriction of claiming more than one house as exempt u/s 54F of the Act also does not permit allowing the claim in the hands of the appellant. In view of the same, no further exemption u/s 54F of the Act can be allowed as the appellant has already claimed exemption with respect to investment made by him in a residential house.”*

7. Another aspect noted by CIT(A) was ascertaining value of cost of construction/improvement and determining the value towards allowing exemption u/s. 54F of the Act towards cost of construction/improvement. Aggrieved against all, the assessee came in appeal before the Tribunal.

8. Before us, the assessee has raised various grounds, but the above noted issue is the sole issue i.e., assessment of capital gains on the land compulsorily acquired under the Tamil Nadu Highways Act, 2001 (Act No.34/2002) for Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('RECTLAAR Act'). The first question is as to whether the entire long term capital gain will be assessed in the hands of assessee alone on the land compulsorily acquired even though the assessee is co-owner to his proportion in the land acquired. Secondly, the land compulsorily acquired under the Tamil Nadu Highways Act, 2001 (Act No.34/2002) for Right to Fair Compensation and Transparency in Land

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Acquisition, Rehabilitation and Resettlement Act, 2013 ('RECTLAAR Act') is at all assessable to long term capital gain in term of CBDT Circular No.36/2016 dated 25.10.2016 or not.

9. None is present from the assessee's side before us, but going through this issue we have heard the matter as this matter fixed on many times and it seems that the assessee sometimes appears, but sometimes does not appear. Hence, qua the assessee, this appeal of assessee is heard exparte.

10. We have heard Ld. Sr. D.R, gone through the facts and circumstances of the case and also various case records. We have gone through the paper book filed by the assessee consisting of 18 pages and noted that one Shri Etti purchased land at Survey No.231 on 21.04.1997. Shri Etti expired on 29.10.1990 living behind a large family as noted by A.O as well as CIT(A). The family consisting of family members as is apparent from the order of A.O as under:

*Smt. Bhuvaneswari, W/o late Kandan, Brother of the assessee  
Sri Dhanasekar, son of late Kandan, brother of the assessee  
Sri Dinesh, son of late Kandan, brother of the assessee  
Ms. Thenmozhi, daughter of late Kandan, brother of the assessee  
Smt. Malar, daughter of late Kandan, brother of the assessee  
Smt. Chandra, daughter of late Etti and sister of the assessee*

11. When a query was put to Ld. Sr. D.R whether assessment can be made in the hands of one person on account of Long Term Capital

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Gain when the land is owned by many co-owners. He only stated that the assessee has given concession qua that and even before CIT(A) the assessee has not pressed this ground. We drew his attention to the grounds raised before us i.e., Grounds No.1 to 4, which reads as under:

*"1. The First Appellate Authority confirming the order of the Second Respondent has failed to take into consideration that the properties viz., agricultural lands and land belong to the legal heirs of deceased Etti viz. the Appellant herein and his elder brother E. Kandan who died leaving his surviving legal heirs viz., Bhuvaneswari, wife, Malar Daughter, K. Dhanasekaran and K. Dinesh Kumar, Sons and Thenmozhi, another daughter, Appellant's sister, Chandra and Appellant's younger brother, E. Murugan and thereby the assessment which was made in the name of the Assessee, is incorrect.*

*2. The First Appellate Authority confirming the order of the Second Respondent has failed to countenance that the properties of deceased Etti - had he died 'intestate' - would have been inherited by his legal heirs in a manner known to law; but, the above properties were compulsorily acquired under the Tamil Nadu High Ways Act (Act No. 34 of 2002) and the compensation which was apportioned among the legal heirs is taxable in the individual hands of the legal heirs and not on the Appellant, as Association of Persons "AoP";*

*3. The First Appellate Authority has failed to take into cognizance that "Association of Persons" would be formed only if 2 or more persons come forward voluntarily for certain purpose; whereas, the compensation received by the Appellant was apportioned among the legal heirs of deceased Etti in whose names the properties stood and those properties were acquired by the authority;*

*4. The First Appellate Authority has failed to take into consideration that the assessment ought to have been made individually - being the 'co-owners of the properties - are only entitled in equal share i.e. 1/3rd share each, in terms of Section 8 of Hindu Succession Act, 1956 and the First Appellate Authority erroneously held that the same was not pressed;"*

12. This land now in Survey No.231/2B2, 231/3B, 231/4B and 231/5B belonging to the assessee and other surviving co-owners was compulsorily acquire by the Government under Tamil Nadu Highways Act, 2001 (Act No.34/2002) and compensation was given for this land which is owned by many co-owners. Now the question arises whether there can be agreement against law or any concession can be given by assessee and can be accepted by departmental authorities in making assessment in one hand i.e. the assessee alone of the entire capital gains. Admittedly, as admitted by A.O and CIT(A), the land belongs to assessee along with other family members they are co-owners. The assessment long term capital gains should have been made in exact proportion to the extent to which land belongs to each of the assessee. According to this, there cannot be a concession in law which is available to the authorities and the assessment should have been made on the right person and in the right proportion. Hence, we set aside the orders of the lower authorities i.e., of the A.O as well as CIT(A) and remand the matter back to the file of the A.O to re-do the issue first what is exact proportion of the share of the assessee and accordingly, assessee Long Term Capital Gain qua his share only. Secondly, the land is acquired under compulsory acquisition under Tamil Nadu Highways Act, 2001 (Act No.34/2002) and compensation



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received by the assessee for the land acquired under the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('RECTLAAR Act'), the same should have been assessed as per CBDT Circular issued by Ministry of Finance, Department of Revenue i.e., Circular No.36/2016 dated 25.10.2016. We direct the A.O accordingly. The other consequences whether the assessee is entitled for claim of exemption u/s. 54 of the Act or 54F of the Act, the A.O will examine afresh after confronting the assessee, but to the extent of the proportion of the assessee only. For rest of the co-owners, the A.O can proceed as per law, if law permits. The orders of lower authorities are set aside and the matter remitted back to the file of the A.O for fresh adjudication. Thus, the appeal of the assessee is allowed for statistical purposes.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

*Order pronounced on 16<sup>th</sup> September, 2022.*

**Sd/-**  
**(जी. मंजुनाथ)**  
**(G. Manjunatha)**

**लेखा सदस्य /Accountant Member**

**Sd/-**  
**(महावीर सिंह)**  
**(Mahavir Singh)**  
**उपाध्यक्ष / Vice President**

चेन्नई/Chennai, दिनांक/Dated: 16<sup>th</sup> September, 2022.

EDN/-

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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