

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस. जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.736/Chny/2018

निर्धारण वर्ष /Assessment Year : 2010-11

Shri B.S. Venkatesan,
15C/1, Abbai Street,
Vellore Main Road, 2nd Street,
Varadaraka Chettiar School,
Arcot, Vellore – 632 503.

v. The Income Tax Officer,
Ward – 2, Vellore,
No.2, Barracks Cross Street,
Officers Line,
Vellore – 632 001.

PAN : AESPV 1633 C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri V. Nagaprasad, CA

प्रत्यर्थी की ओर से / Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख / Date of Hearing : 08.01.2019

घोषणा की तारीख / Date of Pronouncement : 22.01.2019

आदेश /O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -13, Chennai, dated 18.09.2017 and pertains to assessment year 2010-11.

2. The only issue arises for consideration is assessment of capital gain.

3. Shri V. Nagaprasad, the Ld. representative for the assessee, submitted that the father of the assessee Shri B. Sambanda Mudaliar purchased an old building used as Kalyana Mandapam consisting of 4 grounds in the name of the assessee and his brother Shri B.S. Murugesan on 05.12.1979. On the date of purchase of the property, according to the Ld. representative, the assessee and his brother Shri B.S. Murugesan were minors. The minors had no independent source of income. Out of the income of the family, Shri Sambanda Mudaliar purchased the property in the name of two minor children. Therefore, according to the Ld. representative, the property now in question is a family property. In other words, the property belongs to Hindu Undivided Family of Shri Sambanda Mudaliar even though the document was registered in the names of minor children of Shri Sambanda Mudaliar.

4. Shri V. Nagaprasad, the Ld. representative for the assessee, further submitted that Shri Sambanda Mudaliar initially engaged in the business of leather trading in the name and style of B.S. Leathers. Subsequently, the proprietorship concern of B.S. Leathers was converted into partnership firm on 18.02.1987.

According to the Ld. representative, there were four partners in the partnership firm consisting of Shri Sambanda Mudaliar and his three sons including Shri B.S. Murugesan. According to the Ld. representative, the partnership firm borrowed loan for business from State Bank of India, Walajapet Branch, mortgaging the land in question. Since it is a family property belonging to Hindu Undivided Family and the assessee and his brother Shri B.S. Murugesan being coparceners of the Hindu Undivided Family, signed the document for mortgage. Subsequently, according to the Ld. representative, the partnership firm was converted into a private limited company in the name and style of M/s B.S. Shoes Pvt. Ltd. in the year 1995. According to the Ld. representative, the loan granted by State Bank of India, Walajapet Branch was transferred to the company and the guarantee and securities given for loan continued. In the year 1998, according to the Ld. representative, the assessee's father Shri Sambanda Mudaliar passed away. After the death of the assessee's father, the business of the company could not be carried on effectively and it suffered continuous loss. In the year 2001, according to the Ld. representative, State Bank of India initiated proceeding for recovery of outstanding amount. In

fact, State Bank of India recalled the entire loan with interest in the year 2003. State Bank of India also approached Debt Recovery Tribunal to recover the outstanding amount and also invoked the provisions of SARFAESI Act to recover the bank's due by taking over the possession of all securities. In fact, according to the Ld. representative, on 28.11.2005, the State Bank of India took the possession of the property which is now in question. The total outstanding was ₹12.17 Crores. The assessee negotiated with State Bank of India and there was mutual settlement between State Bank of India and the company. Ultimately, according to the Ld. representative, State Bank of India's loan was cleared on payment of ₹6.5 Crores by way of one time settlement. The amount of ₹6.5 Crores was paid by Federal Bank Ltd. by taking over the loan from State Bank of India. In other words, the loan of State Bank of India to the extent of ₹6.5 Crores was taken over by Federal Bank Ltd. on 30.03.2007 and the securities given by the assessee and the business concern continued as such.

5. The Ld. representative for the assessee further submitted that the assessee's brother Shri B.S. Murugesan met with a road accident and died on 29.12.2007. According to the Ld.

representative, the business of the company could not pick up and it suffered a heavy loss. The loan sanctioned by Federal Bank Ltd. to the extent of ₹6.5 Crores had come to the extent of ₹10 Crores and Federal bank Ltd. also initiated recovery proceeding by invoking provisions of SARFAESI Act. Since the assessee could not do anything being a coparcener of Hindu Undivided Family, according to the Ld. representative, the property was sold to the extent 2 grounds for ₹5 Crores to M/s NAC Jewellers Pvt. Ltd. The sale deed stood in the name of the assessee and his brother Shri B.S. Murugesan. They executed the sale deed in favour of M/s NAC Jewellers Pvt. Ltd. According to the Ld. representative, on behalf of Shri B.S. Murugesan, his legal heir signed the document for sale of property. Out of two grounds, the assessee sold one ground on 11.1.2010 for a consideration of ₹3 Crores and the buyer paid the entire amount to the bank liability. According to the Ld. representative, the assessee could not get even a single pie. The Assessing Officer found that the property was sold for ₹3 Crores by the assessee, therefore, he has to pay long term capital gains for transfer of asset. According to the Ld. representative, the property was admittedly purchased on 05.12.1979, a copy of document is

available at page 8 of the paper-book. The English version of document is available at page 6 of the paper-book. According to the Ld. representative, this document clearly establishes that the assessee was a minor on the date of purchase, i.e. on 05.12.1979. The assessee's father, out of family funds, purchased the property in the name of the assessee and his brother Shri B.S. Murugesan. Therefore, according to the Ld. representative, it is a property belonging to Hindu Undivided Family. Hence, the capital gain on transfer of such land has to be at the best assessed only in the hands of Hindu Undivided Family. The Ld. representative has also alternatively submitted that the funds were invested by the assessee's father Shri Sambanda Mudaliar, therefore, it is his property and it cannot be assessed in the hands of the assessee in his individual capacity. Hence, according to the Ld. representative, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer with regard to levy of capital gain.

6. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that admittedly the property in question stood in the name of the assessee and his brother Shri B.S. Murugesan. According to the Ld. D.R., the

assessee sold one ground of land for ₹3 Crores. Merely because the entire amount was paid towards discharging of bank liability of the family business, according to the Ld. D.R., it does not mean that the assessee was absolved from the payment of capital gain tax. Even though the entire sale consideration of the property was paid to the bank for discharging the business loan, according to the Ld. D.R., the gain arising out of the sale of property is liable for taxation. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the capital gain tax levied by the Assessing Officer. On a query from the Bench when the property was purchased by the assessee's father in the year 1979 when the assessee admittedly was minor and the assessee had no independent source of income, whether the property belongs to the assessee or HUF of Shri Sambanda Mudaliar?, the Ld. D.R. submitted that he is placing reliance on the observation made by the Assessing Officer and the CIT(Appeals).

7. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the property in question was purchased by Shri Sambanda Mudaliar, the assessee's father on 05.12.1979 in the name of the assessee

and his brother Shri B.S. Murugesan. On the date of purchase, the assessee and his brother were admittedly minors and they had no independent source of income. The income generated out of family business was invested in the property in question. The assessee being one of the coparceners, the property was purchased by his father in the name of the assessee and his brother. It is also not in dispute that the property in question was mortgaged for borrowing loan for the family business. Therefore, this Tribunal is of the considered opinion that the property in question belongs to Hindu Undivided Family of Shri Sambanda Mudaliar.

8. Hindu Undivided Family is not a legal entity under the common law. Therefore, it cannot hold any property / title over the immovable property. Hence, the registered sale deed for purchase of the property in question has to be in the individual name of the coparcener. In this case on our hand, the assessee and his brother are admittedly coparceners. Therefore, the property was purchased in the name of the assessee and his brother by their father. However, under the Income-tax Act, Hindu Undivided Family is a separate and independent assessable unit. Since the property belongs to Hindu Undivided Family and the Hindu Undivided Family

is an independent and separate assessable unit under the Income-tax Act, this Tribunal is of the considered opinion that the gain arising out of sale of property has to be assessed only in the hands of Hindu Undivided Family and definitely not in the hands of individual coparcener. The assessee and his brother are individual coparceners. Therefore, there cannot be any capital gain assessment in respect of the property belonging to the Hindu Undivided Family in the hands of the assessee. In view of the above, we are unable to uphold the orders of both the authorities below. Accordingly, orders of both the authorities below are set aside and the entire addition is deleted.

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

Order pronounced in the court on 22nd January, 2019 at Chennai.

sd/-

(एस. जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 22nd January, 2019.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-13, Chennai-34
4. Principal CIT- 8, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.