

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B SMC' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member

आयकर अपील सं./I.T.A. No.1626/Chny/2025
निर्धारण वर्ष/Assessment Year: 2016-17

Pradeep Jeyavelu,
No. 2/697 Balaji Nagar Thiruyur
Kuppam, Sevvapettai,
Tiruvallur 602 025.

Vs. The Income Tax Officer,
Ward 1,
Tiruvallur.

[PAN:BBLPJ4017P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri R.S. Hithesh, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. V. Aswathy, JCIT
सुनवाई की तारीख/ Date of hearing : 01.09.2025
घोषणा की तारीख /Date of Pronouncement : 03.09.2025

आदेश /O R D E R

This appeal filed by the assessee is directed against the order dated 22.04.2025 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi for the assessment year 2016-17.

2. The assessee raised 9 grounds of appeal amongst which, the only issue emanates for consideration as to whether the Id. CIT(A) is justified in confirming the addition made by the Assessing Officer on account of long term capital gain.

3. At the outset, it is noted that the assessee is an individual, filed return of income on 28.03.2023 declaring total income of ₹.13,91,143/- in response to the notice under section 148 of the Income Tax Act, 1961 ["Act" in short]. It is noticed that the Assessing Officer asked the assessee to furnish details in support of the deduction claimed in the return of income. The assessee filed details as sought for, which is reflecting in page 3 of the assessment order. The case of the Assessing Officer is that the assessee has not declared income of assessee's minor daughter on sale consideration received. The assessee explained that he himself and his daughter are the legal heirs of the property inherited through his spouse after her death. He accounted his share of 50% and claimed deduction under section 54 of the Act by filing valuation report given by the Chartered Engineer and registered valuer.

4. Regarding the share of assessee's minor daughter, it was explained that in pursuance of court order dated 27.03.2015 deposited her share in nationalized bank, which is reflected in page 12 of the impugned order. The Assessing Officer was of the opinion that the assessee's minor daughter's share should be accounted in the hands of the assessee since transfer has taken place in terms of the provisions under Income Tax Act. Accordingly, the Assessing Officer determined

capital gains with reference to assessee's minor daughter's share at 50% by giving benefit under section 54 of the Act only with reference to assessee's share. The Id. CIT(A) confirmed the view of the Assessing Officer.

5. The Id. AR Shri R.S. Hithesh, Advocate submits that the Id. CIT(A) as well as Assessing Officer failed to understand that the assessee's minor daughter's sale consideration is curtailed to be utilized as per the directions of City Civil Court at Chennai. He argued that the minor daughter's share cannot be treated as income until such sale consideration is free of constraints either in the hands of the assessee or in the hands of his minor daughter. He vehemently argued that 50% share of assessee's minor daughter cannot be utilized for determination of capital gain nor investing in any assets to claim deduction from capital gain as it is deposited in a nationalized bank as per Court's order. He submits that the said amount, which is deposited in the nationalized bank, cannot be used until his minor daughter attains majority and it should be free from all restraints to determine the same as income of the assessee. He argued that the authorities below failed to appreciate that the inability of the assessee in utilizing the share of his minor daughter in the sale proceeds and the said 50% share cannot be clubbed in the accounts of

the assessee for determining long term capital gain. He prayed to allow the ground in deleting the addition made by the Assessing Officer.

6. The Id. DR Ms. V. Aswathy, JCIT submits that the issue is very simple that the income of the minor i.e. 50% of share has to be clubbed with the income of the assessee in the year under consideration as the transfer was effected in terms of the provisions of the Income Tax Act for determining the long term capital gain. The Id. CIT(A) rightly held that the submissions of the assessee is not acceptable regarding, that the sale of his minor daughter has not happened as he cannot decide on its utilization whether the sale happened or not. She argued that the entire consideration is part of sale consideration which is to be taxed under the head long term capital gain as the transfer has taken place. She argued that the ability to use the money is not determinant to taxability of sale proceeds once it is decided long term capital gain is effected in the year under consideration and the assessee should have clubbed his minor daughter's shares also in his account for consideration of long term capital gain. She supported the order of the Id. CIT(A).

7. I find there is no dispute with regard to the sale of property standing in the name of assessee's deceased wife. The assessee sold the said property with the permission of City Civil Court and deposited 50% minor

daughter's share in the nationalized bank as the minor daughter being a legal heir succeeding to the property of her deceased mother. There is no dispute with regard to accounting of assessee's 50% share and offering the same as capital gain with the deduction of claim under section 54 of the Act. There is no dispute with regard to the Assessing Officer accepting the said claim under section 54 of the Act and determination of the capital gain in the hands of the assessee. The only issue is the assessee should have included the share of assessee's minor daughter also in his hand in offering long term capital gain in the year under consideration. Admittedly, the said 50% share of assessee's minor daughter was deposited in the name of Registrar, City Civil Court, Chennai under section 8(2) of Hindu Minority and Guardianship Act, 1956, the receipt of which is reflecting in page 12 of the impugned order. On perusal of the order dated 27.03.2015 in HMGOP No. 21 of 2015 on the file of the City Civil Court, Chennai, it is noted that the assessee herein filed a petition seeking permission of the Court to alienate property standing in the name of his deceased wife stating to facilitate better education and welfare of their minor daughter. Considering the same, the Id. City Civil Court, Chennai permitted the assessee to sell his minor daughter's interest in the property and deposit her share in any of the nationalized bank in the name of Registrar, City Civil Court, Chennai.

Therefore, I find force in the argument of the Id. AR that the assessee cannot decide the utilization of his minor daughter's share as it is deposited as per Court's order and it is impossible to club the same in assessee's hand. Therefore, I accept the submissions of the assessee's AR, which is reproduced at page 12 of the impugned order and hold that the addition made in the hands of the assessee with reference to assessee's minor daughter's share is not justified and it is deleted. Consequently, the brokerage charges, which is of 1% of the sale consideration, as it is usual practice across real estate sector, it is disallowed for want of evidence is also deleted by accepting the assessee's submissions. Thus, the grounds raised by the assessee are allowed.

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

Order pronounced on 03rd September, 2025 at Chennai.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 03.09.2025

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.