

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. Nos. 1129 & 1130/Mds/2013.
निर्धारण वर्ष /Assessment years : 2005-06 & 2009-2010.

Shri. R. Jayakumar,
Proprietor :M/s. Sree Vijaya
Plywoods,
70, Madurai Road,
Tiruchirpalli 8.

Vs. The Assistant Commissioner of
Income Tax,
Central Circle II,
Tiruchirapalli.

[PAN AAHPJ 3219M]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri. R. Durai Pandian, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 21-11-2016
घोषणा की तारीख /Date of Pronouncement : 25-11-2016

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

These appeals filed by the Revenue are directed against orders dated 26.02.2013 by Id. Commissioner of Income Tax (Appeals), Tiruchirapalli. Appeal for the assessment year 2005-06 is first taken up for disposal.

2. Though assessee has taken altogether eight grounds, its effective grievance is on an addition of ₹6,00,000/- confirmed by the Id. Commissioner of Income Tax (Appeals).

3. Facts apropos are that assessee an individual was subjected to a search on 26.08.2009. Pursuant to the search, a notice u/s.153A of the Income Tax Act, 1961 (herein after referred to as 'the Act') was issued to the assessee for the impugned assessment year, alongwith others. Assessee had during the relevant previous year purchased land measuring 5000 sq.ft with a small building for a consideration of ₹19,00,000/- shown in the deed. Including registration and stamp duty expenditure for the acquisition as per the assessee came to ₹21,00,000/-. During the course of search proceedings a sworn statement recorded from the assessee and in such sworn statement, it was stated by the assessee that he had paid approximately ₹25,00,000/- for the purchase of above property. Ld. Assessing Officer also noted that guideline value fixed by the Tamil Nadu Revenue Department authorities for this property came to ₹32,68,111/-. Ld. Assessing Officer reached a conclusion that actual consideration paid was ₹25,00,000/- and made an addition of ₹.6,00,000/-.

4. Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). Argument of the assessee was

that sworn statement was recorded many years after purchase of the property. According to the assessee, the sum of ₹25,00,000/- mentioned by him on the date of the search was an approximate figure. Further as per assessee, guideline value adopted by the State Revenue authorities could be never the basis for an addition. However, Id. Commissioner of Income Tax (Appeals) was not impressed by the above contentions. He confirmed the addition.

5. Now before us, Id. Authorised Representative submitted that assessee in the sworn statement mentioned the sum of ₹25,00,000/- as an approximate cost. According to him, just because Tamil Nadu Revenue authorities fixed a higher value for the impugned property would not mean a consideration in excess of what was stated in the conveyance deed was paid. According to him, the addition was unjustly made.

6. Per Contra, Id. Departmental Representative strongly supported the orders of the authorities below.

7. We heard the rival contentions and perused the orders of the authorities below. What the assessee had stated at the time of search is reproduced hereunder:-

"House in my name at Door No.49, Park View, Anna Nagar, Tennur. Plot Area: 5000 sq.ft purchased some 5 years back at a cost of ₹25 lakhs approx the per sq.ft ₹500 to ₹550/- approx".

The above statement was recorded on 26.08.2009. The purchase of the property was on 09.12.2004. So, there was a gap of more than four years between the date of recording of the statement and the date of acquisition of land. Hence, we cannot say that the approximate value of ₹25,00,000/- mentioned by the assessee was a sacrosanct one, and sufficient reason to make an addition. Id. Assessing Officer has not given any reason for adopting the value of ₹25,00,000/- except for the approximate amount mentioned by the assessee in the statement recorded from him. Admittedly Tamil Nadu Revenue authorities had fixed the value ₹32,68,111/-, but this figure was not considered by the Assessing Officer for computing the undisclosed investment made by the assessee. There were three figures available with the Id. Assessing Officer, viz: (i) What was stated by the assessee in the conveyance deed. (ii) What was mentioned by the assessee in the statement recorded u/s.132(4) of the Act and (iii) What was fixed by the Tamil Nadu Revenue authorities as guideline value. When there is a doubt regarding actual consideration what can be taken as real is the amount mentioned in the conveyance deed. For brushing aside the consideration which is mentioned in a conveyance deed, which is a registered document, strong and irrefutable material evidence is required. Nothing of this sort has been brought on record by the Revenue. We are of the

opinion that addition was not warranted on the facts and circumstances of the case. Such addition stands deleted.

8. Now, we take up appeal of the assessee for the assessment year 2009-2010.

9. Sole grievance raised by the assessee, through its grounds No. 1 to 8, is on an addition of ₹80,550/- .

10. Facts apropos are that during the course of search, it was found that assessee had constructed a residential house. The residential house comprised of two floors. In answer to a query, assessee had mentioned during the course of search, that construction had started in the year 2006 and was completed in the year 2009. The books impounded from the premises of one M/s. Shri. Vijaya Plywoods Trichy did reflect the cost of the construction of said building. As per assessee, funds were transferred from Vijaya Plywoods Trichy to his personal account with ICICI Bank, Main Branch, Trichy and this was utilized for construction of the building. In the return filed prior to the search, the assessee had shown in its balance sheet, the cost of construction of the building at ₹52,25,450/-. Ld. Assessing Officer made a reference to the valuation cell of the Income Tax Department. District Valuation Officer valued the said property as Rs.53,06,000/-. An addition of Rs.80,550/- was made.

11. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals) but did not meet with any success.

12. Now before us, Id. Authorised Representative submitted that difference between value shown by the assessee and value fixed by the District Valuation Officer was very meagre and insignificant. According to him, fixing the value of the building was done on estimates and therefore small variations could always be there. Reliance was placed on the judgment of Hon'ble Supreme Court in the case of *Sargam Cinema vs. CIT, 328 ITR 513*.

13. Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

14. We have considered the rival contentions and perused the orders of the authorities below. Assessee himself had admitted the cost of construction as ₹52,25,450/- and this was recorded in the notebook found during the search. When a reference was made to the DVO, value was fixed at ₹53,06,000/-. When assessee had shown expenditure incurred for construction in his books, unless and until these were found defective in our opinion, Id. Assessing Officer could not have referred the matter to the valuation. No matter which authorities has done a valuation, there is bound to be elements of

estimation thereon. Hence variation of ₹80,550/- over a cost of ₹52,25,450/- cannot be considered so substantial warranting an addition for undisclosed investments. Considering the facts and circumstances, we are of the opinion that the addition was not justified. Such addition stands deleted.

15. In the result, the appeals of the assessee for both years are allowed.

Order pronounced on Friday, the 25th day of November, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 25th November, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |