

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. No. 1754/Mds/2012
निर्धारण वर्ष /Assessment year : 2009-2010.

The Income Tax Officer,
Ward IV(4)
Chennai 600 034.

Vs. Shri. K.V. Ramadoss,
Plopt No.12, Velan Nagar,
Valasaravakkam,
Chennai 600 087.

(अपीलार्थी/Appellant)

[**PAN AAAPR 6133P**]
(प्रत्यर्थी/Respondent)

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

सुनवाई की तारीख/Date of Hearing : 24-11-2016
घोषणा की तारीख /Date of Pronouncement : 30-11-2016

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

In this appeal filed by the Revenue, its grievance is on the deletion of an addition of ₹38,59,100/- made by the Id. Assessing Officer treating certain cash credits as unexplained.

2. Revenue has filed this appeal with a delay of seven days. Condonation petition has been filed. Reasons shown for the delay are justified. Ld. Authorised Representative did not raise any serious objection. Delay is condoned. Appeal is admitted.

3. Facts apropos are that assessee had filed return of income for the impugned assessment year disclosing income of ₹2,68,980/-. Ld. Assessing Officer was having information from annual information report regarding certain cash deposits made by the assessee to his saving bank. Explanation of the assessee was sought for the source of cash deposits made during the relevant previous years, exceeding ₹50,000/-. Assessee in his reply stated that he had received following amounts as land advance:-

Sl.No	Nature	Source	Amount
1	Land advance	Shri. R. Ravi, Piranthiyakarai Post, Kariyapatinam, Vedagharanium Taluk, Nagapattinam 614 806.	₹10,00,000
2	Land advance	Shri. G.R. Vadivelu, New No.835/A, Old No.4/66, Kallar street, Kameswaram, Kivalur taluk Nagapattinam 611 110	₹15,00,000
3	Land advance	Shri. K. Raja, R.R. Puram South street, Velankanni Via Nagapattinam 611 110.	₹8,00,000
4	Land advance	Shri. N. Dharmarajan, Kizha Street, Velankanni, Nagapattinam	₹11,00,000
5	Land advance	Shri. K.K. Rajendran,	₹10,00,000

		C.R. Puram, Midiai Street, Velankanni Nagapattinam 611 110.	
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As per the assessee the deposits in the bank account were out of the above advances. Ld. Assessing Officer thereupon required the assessee to file the receipts for the above amount. As per Ld. Assessing Officer contents of the receipts filed by the assessee revealed the following information:-

Sl. No	Date of receipt	Parties between	Land type	Extent	Agreed sale value	Advance received by the assessee.
1	15.08.2008	Shri. K.V. Ramadoss and Shri. R.Ravi	Agricultural land	1 ½ acres	25,00,000	₹10,00,000
2	15.08.2008	Shri. K.V. Ramadoss and Shri. G.R. Vadivelu	Agricultural land	1 ½ acres	25,00,000	₹15,00,000
3	15.08.2008	Shri. K.V. Ramadoss and Shri. R.Ravi	Agricultural land	1 ½ acres	25,00,000	₹8,00,000
4	15.08.2008	Shri. K.V. Ramadoss and N. Dharmarajan	Agricultural land	1 ½ acres	25,00,000	₹11,00,000
5	15.08.2008	Shri. K.V. Ramadoss and Shri. K.K. Rajendran	Agricultural land	1 ½ acres	25,00,000	₹10,00,000

Ld. Assessing Officer noted that the receipts did not give any detail regarding the property which was proposed to be sold and assessee

could not show whether the sale was completed within three months from the date of receipt. Ld. Assessing Officer thereupon issued notices u/s.133(6) of the Act to the above five persons. He required them to file the agreements they had entered with the assessee, their source for the advances given to the assessee, their PAN numbers and details of the returns filed by them for the impugned assessment year. Ld. Assessing Officer also required them to clarify whether the purchase of land materialized. Ld. Assessing Officer thereafter summarized the information provided by the above persons pursuant to notice u/s.133(6) of the Act as under:-

Sl.No	Name of person	Reply to information u/s.133(6) of the persons
	Shri. R. Ravi	<ol style="list-style-type: none"> 1. A copy of sale advance receipt entered with Shri. K.V Ramadoss on 15.05.2008 for advance of ₹10,00,000/- 2. I am an agriculturalist and I made the payment out of my earlier year savings. 3. As I am not assessed to income tax as my income is from Agricultural activities, I don't have PAN and filing and return of income that the Asst. Year 2009-10 and subsequent years. 4. With regard to the land advance, due to the developmental activities in that area, there is a dispute in the rate, the agreement is not yet materialised and we are yet received back the advance amount paid to Shri. K.V. Ramadoss.
	Shri. G.R. Vadivelu	<ol style="list-style-type: none"> 1. A copy of sale advance receipt entered with Shri. K.V Ramadoss on 15.05.2008 for advance of ₹15,00,000/- 2. I am an agriculturalist and I made the payment out of my earlier year savings. 3. As I am not assessed to income tax as my income is from Agricultural activities, I don't have PAN and filing and return of income that the Asst. Year 2009-10 and

		<p>subsequent years.</p> <p>4. With regard to the land advance, due to the developmental activities in that area, there is a dispute in the rate, the agreement is not yet materialised and we are yet received back the advance amount paid to Shri. K.V. Ramadoss.</p>
	Shri. K. Raja	<p>1. A copy of sale advance receipt entered with Shri. K.V Ramadoss on 15.05.2008 for advance of ₹8,00,000/-</p> <p>2. I am an agriculturalist and I made the payment out of my earlier year savings.</p> <p>3. As I am not assessed to income tax as my income is from Agricultural activities, I don't have PAN and filing and return of income that the Asst. Year 2009-10 and subsequent years.</p> <p>4. With regard to the land advance, due to the developmental activities in that area, there is a dispute in the rate, the agreement is not yet materialised and we are yet received back the advance amount paid to Shri. K.V. Ramadoss.</p>
	Shri. N. Dharmarajan	<p>1. A copy of sale advance receipt entered with Shri. K.V Ramadoss on 15.05.2008 for advance of ₹11,00,000/-</p> <p>2. I am an agriculturalist and I made the payment out of my earlier year savings.</p> <p>3. As I am not assessed to income tax as my income is from Agricultural activities, I don't have PAN and filing and return of income that the Asst. Year 2009-10 and subsequent years.</p> <p>4. With regard to the land advance, due to the developmental activities in that area, there is a dispute in the rate, the agreement is not yet materialised and we are yet received back the advance amount paid to Shri. K.V. Ramadoss.</p>
	Shri. K.K. Rajendran	<p>1. A copy of sale advance receipt entered with Shri. K.V Ramadoss on 15.05.2008 for advance of ₹10,00,000/-</p> <p>2. I am an agriculturalist and I made the payment out of my earlier year savings.</p> <p>3. As I am not assessed to income tax as my income is from Agricultural activities, I don't have PAN and filing and return of income that the Asst. Year 2009-10 and subsequent years.</p> <p>4. With regard to the land advance, due to the developmental activities in that area, there is a dispute in the rate, the agreement</p>

		is not yet materialised and we are yet received back the advance amount paid to Shri. K.V. Ramadoss.
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4. From the confirmations and submissions made by the assessee and the above persons, Id. Assessing Officer noted that none of them could give any details of their sources though they all stated that advances were paid out their agricultural income. Though assessee submitted before Id. Assessing Officer that these persons were cultivating paddy, groundnut, sugar cane etc., Id. Assessing Officer was of the opinion that no good source was given for the earnings claimed by the creditors. He made an addition of ₹38,59,100/-, being the aggregate amount of deposits in the bank account which were considered as unexplained.

5. Aggrieved, assessee moved in appeal before the Id.CIT(A). Submission of the assessee before Id. Commissioner of Income Tax (Appeals) was that identity of the buyers were established and copies of the receipts furnished. Further as per the assessee the buyers had individually informed the Assessing Officer source of their earnings for giving advance to the assessee. As per the assessee he had discharged the onus resting on him for proving the credit. Reliance was placed on Hon'le Supreme Court judgment in the case of *CIT vs. P.K. Noorjahan 237 ITR 570* and *CIT vs. Lovely Exports Pvt. Ltd 216*

CTR 195, judgment of Delhi High Court in the case of CIT Vs. Sophia Finance Ltd 205 ITR 98 and judgment of Hon'ble Jurisdictional High Court in the case of CIT vs. Electro Polychem Ltd 294 ITR 661.

6. Ld. Commissioner of Income Tax (Appeals) was appreciative of the above contentions. According to him, assessee was owning 15 acres of land in 168 Kaatoor Villge, Gudavasal (TK) in Thiruvarur Dist, Tamil Nadu and had regularly shown agricultural income in his returns. From the submissions of the assessee, Id. Commissioner of Income Tax (Appeals) concluded that assessee had decided to dispose of 7.5 acres of land out of his holdings for a sum of ₹1,25,00,000/- to five buyers and entered into agreement with each of them for 1.5 acres, for a consideration of ₹25,00,000/-. As per Id. CIT(A) the buyers could not adhere to the original schedule of payment and the confirmation letters filed by them in this regard could not be disbelieved. Ld. Commissioner of Income Tax (Appeals) noted that assessee had never attempted to convert the agricultural land into residential land. The Id. Commissioner of Income Tax (Appeals) also noted that assessee had repaid the entire amount received from the five buyers back to them since the sale did not go through. As per Id Commissioner of Income Tax (Appeals) deposits of ₹38,59,100/- made by the assessee in his bank account was less than the advance of ₹54,00,000/- received by him. He deleted such addition.

7. Now before us, Id. Departmental Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that none of the five persons who had allegedly given the advance to the assessee could show how why they had kept the amount given to assessee in cash without banking. As per Id. Departmental Representative area in which the land was situated could never fetch a harvest of more than Rupees twenty thousand per year per acre. As per Id. Departmental Representative assessee could not show or give details of holding of any of these persons which could corroborate his claim that they had advanced sums varying between eight lakhs to fifteen lakhs, to the assessee. Id. Departmental Representative further submitted that it was impossible to believe that none of the sale went through, and these person had returned the money that was received by them as advance. According to him, assessee was trying to build up a story when he could not explain the source of the cash deposits made in the bank account.

8. Per contra, Id. Authorised Representative strongly supporting the order of the Id. Commissioner of Income Tax (Appeals) submitted that each of the persons had confirmed payment of advance. Each of the persons had mentioned the amount and the source from which he had raised the money. Thus, according to Id. Authorised

Representative the initial burden cast on the assessee to prove the credits stood discharged. Ld. Assessing Officer had made no further enquiry. As per Id. Authorised Representative he simply disbelieved the confirmations filed and made an addition. Ld. Authorised Representative submitted that addition was rightly deleted by the Id. Commissioner of Income Tax (Appeals). Reliance was once again placed on the Hon'ble Supreme Court judgment in the case of *Lovely Exports Pvt. Ltd (supra)*.

9. We have perused the orders and heard the rival contentions. Assessee had endeavored to explain cash deposits of Rs.38,59,100/- made by him in his bank account, as coming from land advance received from persons mentioned at para 3 (above). Assessee had furnished in support of this xerox copies of advance receipts showing the extent of area agreed to be sold by the assessee. The agreed prices varied except in one case. Reply given by each of the five parties to notice u/s.133(6) of the Act elicited typical answer. None of them gave the details of land they were holding, where they had kept the money and what was agricultural activities carried on by them. None of the sales had gone through. Claim of the assessee is that all the money were returned. It is hard to believe that all these persons had parted with their money, which run into lakhs without any agreements. It is still more hard to believe all these persons had

accepted the money back and not insisted on the purchase. Equally hard is it to believe that assessee had not insisted on the sale to go through. No doubt, it was not required for an assessee to show the source of the source. However, this principle cannot be so extrapolated to mean that a mere confirmation stating that money came out of agricultural operations would suffice. Loose ends in the version given by the assessee for explaining the source are so luminant that principle of preponderance of probability goes against the assessee. Ld. Commissioner of Income Tax (Appeals) had believed the version given by the assessee without appreciating the typical nature of the confirmations and absence of essential details which could show that the buyer was having the where withal to raise the money they had allegedly given to the assessee. Judgment of Hon'ble Apex Court in the case of P.K. Noorjahan (supra) would hardly come to the aid of the assessee since assessee was not so young or so destitute to come to a presumption that he could have had no source of income. As to the Apex Court judgment in the case of Lovely Exports Pvt. Ltd the question was regarding share application money received by a company. Similar was issue dealt with Hon'ble Delhi High Court in the case of *Sophia Finance Ltd* (supra). In our opinion, none of the judgments cited by the assessee would come to its aid. Assessee had woefully failed to substantiate the source of the deposits in the bank

account. We are of the opinion that Id. Assessing Officer was justified in disbelieving the claim of the receipt of the advance for sale of property and making an addition of ₹38,59,100/-. We set aside the order of the Id. Commissioner of Income Tax (Appeals) and reinstate the addition made by the Id. Assessing Officer.

10. In the result, the appeal of the Revenue is allowed.

Order pronounced on Wednesday, the 30th 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: 30th 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 |