

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1780/Mds/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Smt. Vedha Srinivasan,  
16, Gowdia Mutt Road, Royapetta,  
Chennai - 600 014.

v. The Income Tax Officer,  
Business Ward IX(3),  
Chennai - 600 006.

PAN : ACGPV 6395 P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. N. Devanathan, Advocate

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

सुनवाई की तारीख/Date of Hearing : 19.12.2017

घोषणा की तारीख/Date of Pronouncement : 28.12.2017

### **आदेश /ORDER**

**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 24.03.2016 and pertains to assessment year 2010-11.

2. Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that the Assessing Officer made addition of ₹19,00,000/-

under Section 68 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. counsel, out of ₹19,00,000/-, ₹9,00,000/- was credited towards capital account of the assessee's son and daughter. According to the Ld. counsel, the house, which was owned by the assessee's son and daughter, was let out for running women's hostel. The rent received by the assessee on behalf of her daughter and son was deposited in the bank account to the extent of ₹9,00,000/-. According to the Ld. counsel, the assessee's son is settled in USA. The assessee's son is not assessed in India since he has no taxable income in India. According to the Ld. counsel, the assessee's son has property at Kelambakkam from which he received a rental income of ₹3,00,000/-. Similarly, the assessee's daughter received rental income of ₹6,00,000/- from the property at Gowdiya Mutt Road, Royapettah. According to the Ld. counsel, the assessee's daughter was assessed to tax, hence, the assessee's daughter disclosed the receipt of ₹6,00,000/- and paid the taxes.

3. The Ld.counsel for the assessee further submitted that the assessee has also entered into an agreement for sale of property with M/s Vikas Promoters and Developers. The property was situated at an interior place in Mahabalipuram Village. The

developer could not comply with the agreement, therefore, the agreement was subsequently cancelled. The advance received from the developer was deposited in the bank account to the extent of ₹10,00,000/-. The Assessing Officer, according to the Ld. counsel, has not disputed the source of fund. The Assessing Officer has made addition only on surmise and conjectures. Therefore, according to the Ld. counsel, the addition cannot stand in the eye of law. According to the Ld. counsel, the assessee is a widow and she has no source of income other than pension.

4. The Ld.counsel for the assessee further submitted that the assessee is not maintaining books of account. When the assessee is not maintaining any books of account, the provisions of Section 68 of the Act is not applicable. According to the Ld. counsel, the bank passbook of the assessee cannot be construed as books of account of the assessee. Therefore, according to the Ld. counsel, any credit found in the bank passbook cannot be a basis for making addition under Section 68 of the Act.

5. The Ld.counsel for the assessee submitted that the Assessing Officer selected the return filed by the assessee for scrutiny contrary to the circular issued by the CBDT in Circular No.749A dated 12.03.1996. Placing reliance on the judgment of

Andhra Pradesh High Court in CIT v. Smt. Nayana P. Dedhia (2004) 270 ITR 572, the Ld.counsel submitted that the Assessing Officer has exceeded his jurisdiction in taking the return for scrutiny. The Ld.counsel has also placed his reliance on the decision of Third Member of Guwahati Bench of the Tribunal in Smt. Madhu Raitani v. ACIT (2011) 10 ITR(Trib) 91. Placing reliance on page 1 of the paper-book, the Ld.counsel submitted that the rent received on behalf of the assessee's son Shri Suresh Kumar in respect of the property at Kelambakkam was disclosed to the extent of ₹3,00,000/- Rent received from the property at Gowdiya Mutt Road was also disclosed in the accounts. The advance received from M/s Vikas Promoters and Developers against sale agreement for development and sale of vacant land at Mahabalipuram was also disclosed in the account. This fact was not taken into consideration by the Assessing Officer. Referring to the copy of revised statement of income filed by the assessee's daughter Smt. Sreedevi Srinivasan, the Ld.counsel submitted that the rent received for three months and for vacant period was disclosed in the revised statement filed before the authorities. Therefore, according to the Ld. counsel, at the best, the sum of ₹3,00,000/- received from the property belonging to the assessee's son has to be assessed only in the

hands of the assessee's son and in respect of ₹6,00,000/- being rent received from the property at Gowdiya Mutt Road by the assessee's daughter can be assessed only in the hands of the assessee's daughter. According to the Ld. counsel, the advance received from M/s Vikas Promoters and Developers is not income of the assessee since it was returned subsequently, therefore, there cannot be any addition in the hands of the present assessee. The Ld.counsel has also placed his reliance on various judgments of the High Courts and Supreme Court.

6. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessee has claimed that ₹10,00,000/- was deposited in the bank account from the advance received for sale of property. The Assessing Officer found that the original agreement was not filed, and agreement itself was dated 06.05.2009, whereas, the money was received on various dates. The Ld. D.R. further submitted that the assessee has also disclosed rental income from the property at Gowdiya Mutt Road only for three months at the rate of ₹50,000/- per month and the remaining period was declared to be vacant. Therefore, according to the Ld. D.R., the assessee could not have had so

much of money for making deposit in the bank account, hence, the Assessing Officer has rightly made addition which was confirmed by the CIT(Appeals).

7. We have considered the rival submissions on either side and perused the relevant material available on record. Out of ₹19,00,000/- addition made by the Assessing Officer, the assessee claims that ₹3,00,000/- pertains to rental income from the property belonging to her son and ₹6,00,000/- from the property at Gowdiya Mutt Road belonging to her daughter. The assessee has also claims that ₹10,00,000/- was received towards advance for sale of property to M/s Vikas Promoters and Developers. The Assessing Officer doubts the part sale consideration claimed to be received as advance and also the availability of rental income. The fact that the assessee's son owned property and let out is not in dispute. The assessee has also disclosed ₹3,00,000/- as rent received from the property belonging to her son. Therefore, this Tribunal is of the considered opinion that there cannot be any dispute with regard to ₹3,00,000/- deposited in the bank account. In respect of ₹6,00,000/-, the assessee disclosed as income said to be received from the property at Gowdiya Mutt Road belonging to her daughter.

The assessee has disclosed rental income of ₹50,000/- per month for three months and remaining period appears to be kept vacant. But, Income-tax Act provides for payment of income-tax in respect of the rental income which is expected to be received or receivable. Section 23(1)(c) of the Act specifically provides for payment of tax when the property was vacant during the whole and part of the previous year. Hence, the assessee has to necessarily disclose ₹6,00,000/- in the computation. Moreover, the assessee has no other source of income other than pension. Therefore, the income deposited in the bank account in respect of the property which is admittedly belonging to her daughter cannot be taken as income of the assessee at all. Hence, the Assessing Officer is not justified in making addition of ₹6,00,000/-.

8. Now coming to the advance, no doubt, the deposits were made on different dates. The fact is that the assessee received the advance which cannot be doubted since there was an agreement for sale of property. Moreover, the assessee is a widow. She has no other source of income. But for this advance, the assessee could not have had any money for making deposit of ₹10,00,000/- in the bank account. In the absence of any other source of income

other than a meagre pension, this Tribunal is of the considered opinion that the assessee cannot have any source for making such deposit. Hence, the contention of the assessee that the money was deposited from and out of the advance received from M/s Vikas Promoters and Developers cannot be rejected. The matter would stand differently in case the assessee has other source of income. In the absence of any other source of income, and the assessee being a widow, could not have earned so much of money in other sources. Therefore, the addition made by the Assessing Officer cannot stand in the eye of law. Accordingly, the orders of both the authorities below are set aside and the addition made by the Assessing Officer to the extent of ₹19,00,000/- is deleted.

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

Order pronounced on 28<sup>th</sup> December, 2017 at Chennai.

sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 28<sup>th</sup> December, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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