

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.2817/Chny/2017

निर्धारण वर्ष / Assessment Year : 2005-06

Shri A. Jesu Rajendran,
No.7, Vallalar Street,
Vetriselvi Anbalagan Nagar,
Chennai - 600 082.

v. The Income Tax Officer,
Business Ward – XIII(2),
Chennai - 600 034.

PAN : ACQPJ 5627 E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri K.G. Raghunath, Advocate

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

सुनवाई की तारीख/Date of Hearing : 05.04.2018

घोषणा की तारीख/Date of Pronouncement : 26.04.2018

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) -12, Chennai, dated 09.10.2017 and pertains to assessment year 2005-06.

2. The only issue arises for consideration is addition of ₹79,21,500/- as undisclosed income.

3. Shri K.G. Raghunath, the Ld.counsel for the assessee, submitted that there was a search in the premises of one Shri R.N. Shanmugam. In the course of search operation, according to the Ld. counsel, the Revenue authorities claimed that they found material to indicate that the assessee has purchased land to the extent of 14 acres and 21.38 guntas at Illathore Village, Kundan Hobli, Devanhalli Taluk, Bangalore Rural district, for a total consideration of ₹79,21,500/- on 12.10.2004 from M/s Alfa Home Makers Pvt. Ltd. According to the Ld. counsel, the assessee explained before the investigation wing of the Department the source for making such investment. According to the Ld. counsel, the assessee in fact purchased the property from M/s Alfa Home Makers Pvt. Ltd. However, no payments were made during the year under consideration. Referring to the sale deed, a copy of which is available at page 8 of the paper-book, the Ld. representative submitted that the cheques were issued on 12.10.2004. The amount available in the bank account was less than ₹1 lakh during the time when the cheque was issued and sale deed was executed. According to the Ld. counsel, the vendor offered the land for sale on credit. However, the assessee gave cheque on the date of the execution of sale deed even though the funds were not available in the bank. According to the Ld. counsel, the assessee requested the

vendor to present the cheque for clearance after sufficient funds were deposited in the bank. Sufficient funds were deposited in the bank during the assessment year 2006-07. For the assessment year 2006-07, the assessee has disclosed the income to the Revenue authorities.

4. Referring to the bank statement, which is available at pages 15 and 16 of the paper-book, the Ld.counsel for the assessee submitted that the cheque was in fact realized only on 11.04.2005 which falls in the assessment year 2006-07. According to the Ld. counsel, when the assessee issued cheque in favour of the vendor without having sufficient balance in the bank account, it does not amount to investment or payment of money by the assessee. At the best, the payment has to be construed on the date on which the assessee deposited sufficient money in the bank account for clearance of cheque. According to the Ld. counsel, the funds were deposited only in the assessment year 2006-07, therefore, the assessee was expected to explain the source for making deposit in the bank account for the assessment year 2006-07. According to the Ld. counsel, the assessee in fact disclosed the source for making deposit in the assessment year 2006-07, hence, the addition made by the Assessing Officer for the assessment year under consideration is not justified.

5. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the claim of the assessee that the vendor offered the land for sale on credit basis is an afterthought. In fact, according to the Ld. D.R., the assessee acquired the land with an intention of developing the same into housing site. The land was purchased for real estate business. The Ld. D.R. further submitted that the assessee stated before the investigation wing of the Department that he received ₹73 lakhs as interest-free loan from one Shri Sathish. This amount of ₹73 lakhs along with ₹6 lakhs from his personal savings was used for purchase of property. Subsequently, the assessee offered another explanation for source of funds claiming that it is a windfall gain or interest-free loan. In view of the contradictory stand taken by the assessee, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer to the extent of ₹79,21,500/-.

6. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee issued cheque for making investment in the landed property on 12.10.2004. The assessee had no sufficient balance in the bank account. The question arises for consideration is when the assessee issued the cheque and no cash balance was available for clearance of cheque on the date on which the cheque was issued and

subsequently the assessee deposited cash in the bank and the vendor deposited the cheque for clearance, what will be the date on which the investment was made by the assessee? This Tribunal is of the considered opinion that even though the date of cheque has to be considered as date of payment in respect of sale deed, for the purpose of Income-tax Act, the actual deposit of cash in the bank account for the purpose of clearance of the cheque has to be taken into consideration.

7. If the assessee had sufficient cash balance in the bank account while issuing a cheque, the matter would stand on different footing. In this case, the bank balance was less than ₹1 lakh which is not sufficient for clearing the cheque. Therefore, the actual deposit of cash made in the bank account for honouring / clearing the cheque has to be taken as date of investment. In this case, admittedly, the cash was deposited in the bank account so as to enable the vendor to encash the cheque during the assessment year 2006-07. Therefore, this Tribunal is of the considered opinion that there cannot be any addition for the assessment year 2005-06. Hence, we are unable to uphold the orders of the lower authorities. Accordingly, orders of both the authorities below are set aside and the addition made by the Assessing Officer is deleted.

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

Order pronounced on 26th April, 2018 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 26th April, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-12, Chennai
4. Principal CIT-3, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.