

आयकर अपीलिय अधिकरण, “सी” न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL ‘C’ BENCH, CHENNAI  
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष  
Before Shri Abraham P. George, Accountant Member &  
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.456/Chny/2014  
निर्धारण वर्ष/Assessment Year:2005-06

Shri K.V. Vijayaraghavan,  
C/o. Shri T.N. Seetharaman,  
Advocate, # 384 (Old No. 196),  
Lloyds Road, Chennai 600 086.

Vs. The Deputy Commissioner of  
Income Tax,  
Company Circle I(1),  
Chennai.

**[PAN:ACLPV6440Q]**

**(अपीलार्थी /Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से / Appellant by : Shri T.N. Seetharaman, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri R. Clement Ramesh Kumar,  
: Addl. CIT  
सुनवाई की तारीख/ Date of hearing : 06.09.2018  
घोषणा की तारीख /Date of Pronouncement : 29.10.2018

**आदेश /O R D E R**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) I, Chennai dated 22.11.2013 relevant to the assessment year 2005-06. The only effective ground raised in the appeal of the assessee is that the Id. CIT(A) has erred in confirming the addition of ₹.7,34,750/- made as “unexplained investment” under section 69 of the Income Tax Act, 1961 [“Act” in short].

2. Brief facts of the case are that the assessee filed his return of income for the assessment year 2005-06 on 29.10.2005 admitting a taxable income of ₹.1,17,976/-. The return was processed under section 143(1) of the Act accepting the returned income. Subsequently, the case was selected for scrutiny and an order under section 143(3) of the Act dated 31.03.2005 was passed by assessing an income of ₹.3,96,980/-. Thereafter, there was a survey conducted at the business premises of M/s. Ambika Appalam Company Pvt. Ltd. under section 133A of the Act on 07.08.2009 in which the assessee is the Managing Director holding more than 10% of the shares. During the course of scrutiny proceedings of the company for the assessment year 2007-08 and the details collected during the survey proceedings, the company has granted loans to its Managing Director Shri K.V. Vijayaraghavan amounting to ₹.19,59,402/- during the year relevant to the assessment year 2005-06. Therefore, the Assessing Officer reopened the assessment under section 147 of the Act and notice under section 148 of the Act was duly issued on 22.03.2010. After considering various submissions during the reassessment proceedings, the assessment was completed under section 143(3) r.w.s. 147 of the Act on 30.12.2010 by assessing total income of the assessee at ₹.14,32,941/- after making various additions.

2.1 With regard to the addition towards unexplained investment under section 69 of the Act, the assessee has entered into an agreement with M/s.

Aadithiya Constructions on 14.01.2003 of sale of undivided share of land and for the construction of Departmental Store and a flat was purchased at No.113, Arcot Road, Alwarthirunagar, Chennai-87. The total cost as per the agreement was ₹.17,00,000/-. The payments were made up to November, 2004 to the extent of ₹.17,56,000/-. In the return of income filed for the assessment year 2005-06 also shows the same amount as ₹.17,56,500/-. But during the course of survey under section 133A of the Act on 07.08.2009, a sheet, vide impounded documents in ANN/LS/BS/IMP-2, shows the cost of flat as ₹.24,91,250/- with the title 'Final Statement' given by M/s. Aadhlthiya Constructions was taken from the business premises of M/s. Ambika Appalam Co. Pvt. Ltd. The assessee has not agreed with the statement of M/s. Aadhithiya Constructions, since the amount does not confirm with their books of accounts. Since the assessee has not given any proof to counter the amount reflected in the statement of M/s. Aadhithiya Constructions, the difference of amounts of ₹.24,91,250/- and ₹.17,56,500/- which comes to ₹.7,34,750/- was disallowed and added to the income of the assessee as unexplained investment under section 69 of the Act.

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee and mainly relying on the "final statement" of M/s. Aadhithiya Constructions stated to have impounded at the

premises of the assessee, the Id. CIT(A) confirmed the addition made under section 69 of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that in response to reasons for reopening of assessment, vide letter dated 04.10.2010, the assessee has furnished complete explanation in regard to the transaction viz., agreement of sale of undivided share of land and department store to be constructed with Aadhithiya Constructions and there was no reason to discredit the explanation given. It was further submitted that as per the agreement dated 14.01.2003, the total amount payable was ₹.17 lakhs and the assessee paid a total sum of ₹.17,56,000/- towards cost of the land, construction, stamp duty and other expenses and the payments were duly reflected in the assessee's accounts on the correct dates. Thus, it was prayed that no addition under section 69 of the Act could be made.

5. On the other hand, the Id. DR strongly supported the orders of authorities below.

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. We have also perused the agreement copy as well as other details filed in the form of paper book. As per the agreement of sale of undivided share of land and department store to

be constructed with Aadhithiya Constructions, which was entered into on 14.01.2003, the total cost of undivided share of land and cost of construction of departmental store in the ground floor comes to ₹.17,00,000/- excluding stamp duty and other expenses. The assessee claims to have paid a total sum of ₹.17,56,000/- towards cost of the land, construction, stamp duty and other expenses and the payments were duly reflected in the assessee's accounts on the correct dates. However, during the course of survey under section 133A of the Act on 07.08.2009, a sheet, vide impounded documents in ANN/LS/BS/IMP-2, shows the cost of flat as ₹.24,91,250/- with the title 'Final Statement' given by M/s. Aadhlthiya Constructions was taken from the business premises of M/s. Ambika Appalam Co. Pvt. Ltd. The assessee has not agreed with the statement of M/s. Aadhithiya Constructions, since the amount does not confirm with their books of accounts.

6.1 In response to reasons for reopening of assessment, vide letter dated 04.10.2010, the assessee furnished complete explanation in regard to the transaction viz., agreement of sale of undivided share of land and department store to be constructed with Aadhithiya Constructions dated 14.01.2003. As per the agreement, the total consideration for the land and building was ₹.17,00,000/- and claimed to have paid a total sum of ₹.17,56,000/- towards cost of the land, construction, stamp duty and other expenses and the payments were duly reflected in the assessee's accounts on various dates.

By virtue of impounded "final statement" of M/s. Aadhithiya Constructions, wherein, the said company has stated various amounts received on different dates, the difference between as per the said "final statement" and admitted in the books of accounts of the assessee was held as unexplained investment under section 69 of the Act. While doing so, it is not clear from the orders of the authorities below as to whether the agreement of sale of undivided share of land & department store to be constructed with Aadhithiya Constructions dated 14.01.2003 has been rejected or not. If the agreement of sale was not rejected, the amount paid by the assessee in cash of ₹.4,00,000/- being token advance on 14.01.2003 as mentioned in the agreement at para "C)" page 2, should have been accounted. In fact, the same was accounted by the assessee as per assessee's books of account. But the said amount of ₹.4,00,000/- paid on 14.01.2003 as per the agreement is not found reflected in the "final statement" of Aadhithiya Constructions, when the company has stated to have been received various amounts to the extent of ₹.22,00,000/- on different dates between 17.08.2002 to 25.05.2004, inter alia, the credential of the "final statement" is doubtful. Under the above facts and circumstances, the Assessing Officer is directed to call for the complete details of M/s. Aadhithiya Constructions and verify the accountability of all the payments stated to have been received by it in the "final statement" in that company's books of account and decide the issue afresh. In case the payments stated to have been received as per "final

statement” is duly reflected in the company’s account, then, due credit should be given to the token advance of ₹.4,00,000/- paid by the assessee on 14.01.2003, which is not reflected in the “final statement” or otherwise.

6.2 The assessee has raised an alternative plea that the payments numbered as 1 to 4 fall in the financial year 2002-03 relevant to assessment year 2003-04, which is barred by limitation. Admittedly, the transaction entered into viz., “agreement of sale of undivided share of land and department store to be constructed with Aadhithiya Constructions” is single property spread over to various years and when the sources are in question, the said sources are to be seen for the property as a whole as has been rightly observed by the Id. CIT(A). Thus, the contention of the assessee that the amounts paid in the financial year 2002-03 got barred by limitation is not acceptable. Thus, the alternative plea rejected by the Id. CIT(A) stands confirmed.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 29<sup>th</sup> October, 2018 at Chennai.

Sd/-  
(ABRAHAM P. GEORGE)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, the 29.10.2018  
Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.