

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. Nos. 2679, 2982 & 2983/CHNY/2017
निर्धारण वर्ष /Assessment years : 2009-10, 2011-12 & 2012-13.

K. Karuppasamy,
3, Rajamatha Street,
Near Tauta Nagar,
Vadavalli,
Coimbatore 641 041.

Vs. The Deputy Commissioner of
Income Tax,
Central Circle 1,
Coimbatore

[PAN AGBPK 9040M]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. B. Ramakrishnan, FCA
प्रत्यर्थी की ओर से /Respondent by : Shri. R. Clement Ramesh
Kumar, Addl. CIT.

सुनवाई की तारीख/Date of Hearing : 12-06-2019
घोषणा की तारीख /Date of Pronouncement : 21-08-2019

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER

These are appeals filed by the assessee directed against different orders of the learned Commissioner of Income Tax (Appeals)-18, Chennai (hereinafter called as 'CIT(A)') dated 15.09.2017,

18.09.2017 and 18.09.2017 respectively for the assessment years 2009-10, 2011-12 and 2012-2013.

2. Since, the identical facts and issues are involved in these appeals, we proceed to dispose the same vide this common order.

3. First we take up appeal of the assessee in ITA No.2679/CHNy/2017, for assessment year 2009-10 for adjudication.

4. The Assessee raised the following grounds of appeal:

"1) The Commissioner (Appeals) is against law and facts of the case.

2) The Commissioner (Appeals) ought not to have accepted AO's order mechanically and without considering the submission of the appellant.

3) The Commissioner (Appeals) ought to have seen the bank statement and mortgage loan details filed by the appellant.

4) The Commissioner (Appeals) having accepted the total income ought not to have treated the repayment as on expenditure u/s. 69C of Income tax Act'1961.

5) The Commissioner (Appeals) ought to have considered the source of income as follows:

Agricultural income : Rs.1,75,000

Rental income : Rs.2,10,000

Interest income : Rs.1,30,474

*.....
₹5,15,474/-*

*-----
Used for the repayment of loan.*

6)The Commissioner (Appeals) ought not to have merely repeated the AO's order even after the income declared and the payment made to bank to the tune of Rs. 3,05,000.

In view of the above grounds and such other grounds that may be urged at the time of hearing the appellant prays that the appeal may be allowed and justice may be rendered".

5. The brief facts of the case are as under:

The appellant is an individual engaged in the business of real estate. There was search and seizure operations conducted in the case of one Shri. D. Ramagopal on 27.11.2013. During the search proceedings, certain incriminating materials belonging to the appellant were stated to be found. Subsequently, notice u/s.148 of the Income Tax Act, 1961 (in short "the Act") was issued to the appellant on 28.03.2016. In response to which, assessee submitted letter dated 22.04.2016 stating that the original return of income filed on 20.08.2010 for the assessment year 2009-10 be treated as return in response to notice issued u/s.148 of the Act. Subsequently, the assessee was intimated by the Assessing Officer that original return of income was treated as invalid and therefore called upon the assessee to file fresh return of income and accordingly the assessee had filed return of income in response to notice u/s.148 of the Act on 09.05.2016 declaring total income of ₹2,78,582/-. During the course of re-assessment proceedings, the Assessing Officer found that assessee

had repaid a sum of ₹3,05,000/-, out of ₹16,00,000/- loan availed from UCO Bank, Karur prior to 31.03.2008 and source for the repayment of loan was explained by way of agricultural income of ₹1,75,000/-, rental income of ₹2,10,000/- and interest income of ₹1,30,474/-. However, the said explanation offered was not accepted by the Assessing Officer by holding that repayment of loan amount was not accounted in the books of accounts and accordingly made an addition of ₹3,05,000/- vide order dated 24.11.2016 passed u/s.143(3) r.w.s. 147 of the Act.

6. Being aggrieved by the above addition, the assessee preferred an appeal before the Id. CIT(A), who vide impugned order confirmed the action of the Assessing Officer.

7. Being aggrieved, the appellant is in appeal before us in the present appeal. It is contended that the Id. CIT(A) ought not have confirmed the action of the Assessing Officer in the light of the fact that the agricultural income, rental income and interest income were assessed to income tax.

8. On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities.

9. We heard the rival submissions and perused the material on record. The only issue involved in the present appeal relates to the addition on account of repayment of loan of ₹3,05,000/- to the UCO Bank, Karur. From the perusal of the assessment order, it is clear that the Assessing Officer assessed agricultural income of ₹1,75,000/-, rental income and interest income and the same should be treated as amount available for repayment of loan in the absence of any evidence to the contrary. The Assessing Officer had not brought any material on record to demonstrate that the amounts were utilized for some other purpose. Thus, the Assessing Officer was not justified in making the addition of ₹3,05,000/- without giving any valid reason. The Id. CIT(A) ought not have confirmed the action of the Assessing Officer on the ground that repayment of loan amount was not accounted in the books of accounts, as this cannot be reason for making the impugned addition. Thus, we delete the addition of ₹3,05,000/- made by the Assessing Officer. The appeal filed by the assessee is allowed.

10. In the result, the appeal filed by the assessee in ITA No.2679/CHNY/2017 for assessment year 2009-2010 stands allowed.

11. Now, we take up appeal of the assessee in ITA No.2982/CHNY/2017 for assessment year 2011-2012 for adjudication.

12. The Assessee raised the following grounds of appeal:

'1) The Commissioner (Appeals) order is against law and facts of the case.

2) The CIT (A) ought to not to have rejected the opening the balance of Rs. 9,90,000 as advance received from the parties without considering the previous year assessment order (AY: 20 10-11).

3) The CIT (Appeals) ought not to have confirmed the advances to the tune of Rs. 24,75,000 received and confirmed by the partners "as unexplained income" of the appellant without apprising the correct fact.

4) The Commissioner (Appeals) failed to appreciate the correct fact and merely added to Rs. 19,70,000 as investment u/s. 69 of the Income tax Act'1961.

5) The CIT (Appeals) failed to allow the LIC claim to the tune of Rs. 1,40,000.

6) The CIT (Appeals) failed to allow the agricultural income as claimed by the appellant to an extent of Rs. 5,27,500.

7) The Commissioner (Appeals) ought to have considered the addition made u/s. 69 by accepting the appellant's claim of source for carrying out repairs to an extent of Rs.4,50,000 by way of cheque to Mr. Sakthivel towards NSR land, Saibaba colony, Coimbatore.

8) The Commissioner (Appeals) having accepted the sale of property to Mr. Kannan and ought to have accepted the amount of Rs. 30,00,000 in the opening balance as a source of investment.

9) The Commissioner (Appeals) ought to have considered the genuine closure of business and collection of amount given outsiders out of the UCO bank mortgage loan before rejecting the same. The appellant submits that he has not filed any balance sheet relating to the finance business for this year.

10) The Commissioner (Appeals) as well as AO both have failed to understand the whole deal of the business venture and Court dispute relating to the property.

11) The CIT (Appeals) as well as AO have failed to note the dispute and occupancy of the different people in the property.

12) The CIT (Appeals) fails to appreciate the confirmation letter filed with the AO as well as the personal appearance of the parties.

13) The Commissioner (Appeals) ought to have considered the opening balance of Rs. 49,50,550 fully before considering the partial relief.

In view of the above grounds and such other grounds that may be urged at the time of hearing the appellant prays that the appeal may be allowed and justice may be rendered”.

13. The appellant is an individual engaged in the business of real estate. There was search and seizure operations conducted in the case of one Shri. D. Ramagopal on 27.11.2013. During the course of search and seizure operations, certain incriminating materials belonging to the appellant stated to have been seized. Accordingly, notice u/s.153C of the Act was issued on 07.07.2015 requiring the assessee to file return of income for the assessment year 2011-12. In response, no return of income was filed and subsequently the assessment was completed by the Assistant Commissioner of Income Tax, Central Circle-1, Coimbatore (hereinafter referred as ‘Assessing Officer’) on

30.03.2016 passed u/s.143(3) r.w.s153C of the Act at total income of ₹1,31,32,450/-. While doing so, the Assessing Officer made following additions.

1	Land at NSR Road	65,49,000
2	Land at Ponnayyarajapuram	12,50,000
3	Agricultural land at Karumbapalayam	15,88,355
4	Land and building at Narasimmanayakanpalayam	10,90,000
5	Land at Palani	5,00,000

When the appellant was called upon to explain the source for the investments in the above properties, it was mentioned that investments were made out of opening cash balance of ₹49,50,550/-, agricultural and business income of Rs.15,67,840/-, advance received from the parties against sale of property in Ponnayyarajapuram land of ₹24,75,000/- and advance received from sale of house property situated at Vayyapuri Nagar, Karur from one Shri. S.Kannan ₹30,00,000/- vide agreement dated 25.02.2010, loan from LIC of ₹1,40,000/- and loan from Alagappa Chettiar ₹20,00,000/-, LIC policy surrendered and matured amount ₹4,68,514/- and loan received from UCO Bank and private parties ₹19,70,000/-. The Assessing Officer had disbelieved the explanation of the assessee on

an amount of ₹30,00,000/- received as advance against sale of house property at Vayyapuri Nagar, Karur from one Shri. S. Kannan in terms of sale agreement dated 25.02.2010 for two reasons (i) the sale agreement was not signed by Shri. S. Kannan who is the buyer of the property and (ii) there was no evidence to show the source of Shri. S. Kannan for payment of ₹30,00,000/- and considering the fact that the property was sold only on 29.01.2016, the Assessing Officer concluded that receipt of advance of ₹30,00,000/- in cash on 25.02.2010 cannot be believed. The Assessing Officer also disbelieved reply of the assessee in respect of ₹9,90,000/- received as advance from the following parties.

Appasamy C	1,60,000
Duraisamy	2,00,000
Karuppanna Gounder	2,00,000
Ramasamy N	50,000
Sellathal	1,00,000
Thangavel	2,80,000

Total	9,90,000/-

For the reason that none of the parties had sources for the money given and this explanation was not given during the course of search proceeding. Similarly, the Assessing Officer also disbelieved opening

balance of ₹49,50,550/- in the absence of any evidence. The Assessing Officer also disbelieved advances received from the following parties for purchase of land at Ponnayarajapuram.

1	C. Appasamy	-	60,000/-
2	Chelladurai	-	6,00,000/-
3	Chellamuthu	-	1,50,000/-
4	Duraisamy	-	2,00,000/-
5	Karuppannagounder	-	2,00,000/-
6	Palanisamy	-	1,25,000/-
7	N. Ramaswamy	-	1,25,000/-
8	Saktivel	-	7,35,000/-
9	Sellathal	-	1,00,000/-
10	Subramanian C	-	1,80,000/-

	Total		24,75,000/-

For the reason that none of the parties had verifiable sources of income and the transaction had taken place in cash. The Assessing Officer considering the fact that agreement for acquisition of land at Poonayarajapuram was entered on 24.09.2010 and the advance was stated to have received much earlier and no such claim was made during the search proceedings, disbelieved the explanation given for advance received against sale of proceeds at Poonayarajapuram.

The Assessing Officer also disbelieved transaction of loan amount of ₹19,70,000/-, since assessee had failed to prove the loan transaction. Similarly, the Assessing Officer believed agricultural income and brought to tax. Similarly, the Assessing Officer also brought to tax investment made in land at NSR Road as unexplained investments including a sum of ₹4,50,000/- for realization of said property. The Assessing Officer also disbelieved ₹20,50,000/- stated to have received from Shri.Kannan against sale of property at Karur and accordingly brought to tax sum of ₹1,25,63,050/-.

14. Being aggrieved by the above additions, an appeal was preferred before Id. CIT(A), who vide impugned order held that addition on account of unexplained opening balance should be restricted to ₹34,27,090/- as the Assessing Officer himself accepted agricultural income of ₹12,56,050/-. In respect of advance received from Shri. Kannan of ₹20,50,000/-, the Id. CIT(A) opined that no addition was called for, since the Assessing Officer himself assessed capital gains for assessment year 2010-2011. Thus, the Id. CIT(A) partly allowed the appeal.

15. Aggrieved by that part of the Id. CIT(A) order, which is against assessee, the assessee is in appeal before us. It is contended

that Id. CIT(A) ought not have confirmed the addition of ₹9,90,000/- being advance received from parties against sale of property at Ponnaiarajapuram as the confirmation letters were filed before the Assessing Officer and some of the parties in person had confirmed the factum of having advanced the money against purchase of property at Ponnaiarajapuram. Regarding advance received from various parties to the tune of ₹24,75,000/- for the purpose of purchase of land in Ponnaiarajapuram, the Id. Authorised Representative contended that confirmation letters were submitted before the Assessing Officer from the concerned parties and some of them had appeared before the Assessing Officer had confirmed the payment of advance. Similarly, it is submitted that the Id. CIT(A) ought not have confirmed the addition of ₹19,70,000/- being amount drawn from UCO Bank by way of mortgage loan and realization of ₹3,75,000/- from the debtors. Further, it is submitted that the Id. CIT(A) ought not have confirmed the addition on account of loan availed from LIC of ₹1,40,000/-. Similarly it is contended that lower authorities ought not have restricted the agricultural income to ₹4,72,500/- in the light of the fact that agricultural income of ₹12,56,050/- was accepted by the Assessing Officer in the assessment year 2010-11. Therefore agricultural income of ₹10,00,000/- claimed by the assessee is not very high. As regards to the addition of ₹4,50,000/- on account of

renovation in respect of property situated at NSR Road, it is submitted that payments were made by way of cheque in F.Y. 2012-13 relevant to assessment year 2013-14 and no addition should be made in the current year.

16. On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities.

17. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to addition on account of unexplained investments made in purchase of land at NSR Road. It is matter of record that assessment is completed pursuant to notice issued u/s.153C of the Act. It is settled legal position of law that recourse to the provisions of Section 153C of the Act can be made only based on the seized material pertaining to the assessee found in the searched person. In the present case, the Assessing Officer found material pertaining to the assessee during the search proceedings in the case of one Shri. D. Ramagopal which reveals unexplained investments made in NSR Road of ₹70,00,000/-. From the perusal of the assessment order, it is not clear as what was the material found suggesting that the assessee made unexplained investment for purchase of property at NSR Road. Admittedly, the property was

bought by registered sale deed, whether the assessee had source of income for the purpose of purchase of property is an issue which requires thorough examination in the respective assessments of the assessee. The assessment order is silent as to contents of the seized materials. Therefore it cannot be said that material seized suggest any unaccounted investments in the said land. However during the course of present assessment proceedings, the assessee had offered an explanation in support of the source of investments made in purchase of property. The seized material does not contain anything to show that the explanation offered by the assessee cannot be believed or false. In the circumstances, the impugned additions cannot be sustained in the eyes of law as the addition was not made based on the incriminating material found as a result of searched material. Accordingly, the assessment order of the lower authorities are set aside and appeal of the assessee is allowed.

18. In the result, the appeal of the assessee in ITA No.2982/CHNY/2017 for assessment year 2011-12 is allowed.

ITA No.2983/CHNY/ 2017 for assessment year 2012-13

19. Since, the facts in the present appeal are identical to the facts in ITA No.2982/Chny/2017, for the reasons mentioned therein, we allow the appeal filed by the assessee the same lines indicated in

appeal ITA No.2982/Chny/2017 supra. Hence, the above captioned appeal filed by the assessee is allowed.

20. To summarize the result, the appeals of the assessee in ITA Nos.2679, 2982 and 2983/CHNY/2017 for assessment years 2009-10, 2011-12 and 2012-2013 stand allowed.

Order pronounced on 21st day of August, 2019, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 21st August, 2019.

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 |