

आयकर आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1538/Chny/2019

निर्धारण वर्ष /Assessment Year: 2013-14

Shri R.D. Kasiviswanathan,
No.284, Pandiammal Street,
Nataraja Nagar,
Madurai – 625 016.

Vs. Income Tax Officer,
Non-Corporate Ward-2(3),
Bibikulam,
Madurai – 625 002.

[PAN: AMHPK 4856D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: None

प्रत्यर्थी की ओर से /Respondent by

: Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 25.07.2019

घोषणा की तारीख /Date of Pronouncement

: 22.10.2019

आदेश / ORDER

PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:

The Assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-2, Madurai in ITA No.0151/2016-17 dated 09.04.2019 for the assessment year (AY) 2013-14.

2. The Assessee filed this appeal with the following grounds:

1. *The order of the Ld. CIT (A) is against the facts of the assessee's case and opposed to the law as applicable to such facts.*

2. *The Ld. CIT (A) erred in confirming the addition of Rs. 4,32,355/- towards 'unexplained money'.*

2.1. *The Ld. CIT (A) failed to apply the ratio of the decisions of the Supreme Court in CIT v. Daulat Ram Rawatmull 87 ITR 349 (SC); Kishan Chand Chellaram v. CIT 125 ITR 713 (SC) and CIT v. Shivakami Co. P. Ltd. 159 ITR 71 (SC).*

2.2. *The Ld. CIT (A) failed to note that as per sec. 102, 103 and 106 of the Indian Evidence Act, 1872, the burden of proof was on the transferor.*

2.3. *The Ld. CIT (A) failed to consider the decisions in CIT V. Paramjit Singh v. ITO 323 ITR 588 (P&H) and ITAT, Jaipur Bench order in ITA No. 467/JP/201 1 in Sharad U. Mishra v. DCIT dt. 25-11-2016 which are on identical point though they were placed before him during the course of appeal hearing.*

2.4. *The Ld. CIT (A) failed to note that the transferor did not adduce any evidence to prove that the monies deposited into the bank accounts of his wife and 2 sons were those received from the assessee.*

3. *For the above and other grounds that may be adduced at the time of hearing, it is prayed that the addition of Rs. 4,32,355/- may be deleted and justice rendered.*

3.1 None was present on behalf of the assessee. The hearing notice sent to the assessee returned unclaimed after 1st intimation dated 15.06.2019 & the 2nd intimation dated 17.06.2019 by the postal authorities. The Id.DR submitted that Shri R.D. Kasiviswanathan, the assessee, earns income from making jewellery. The AO found that the

assessee has disclosed in his return for the assessment year 2012-13, that he had acquired a property located at 284, Pandiammal Street, Natraj Nagar, Madurai-16 jointly with his wife (50%:50%) from Shri Syed Mohammed Nazir Hussain (the seller) for a consideration of Rs.23,30,000/- as recorded in the sale deed registered dt 19.12.2012. On issue of summon u/s 131, the seller made a sworn statement on 11.03.2015 before the Assessing Officer that he had sold his property to Shri R.D. Kasi Viswanathan and his wife Smt. K. Vijayalakshmi for a total consideration of Rs.32 lakhs. The property transferred consisted of the ground floor and first floor approximately 1,600 sq.ft. alongwith the land of 1549 sq.ft. He has taken Rs.26.75 lakhs as his share and had given Rs.1.75 lakhs each to his wife and his two sons so that they do not create any claim in future. The seller disclosed his PAN as AABPH8775L with assessment jurisdiction Ward No.111(4), Madurai. The seller stated that there was no agreement for sale and the assessee, Shri R. D. Kasiviswanathan paid a token sum of Rs.101/- and the entire sale consideration of Rs.32,00,000/- was received in cash on the date of registration of the property on 19.12.2012 from the purchasers. However, the property was registered only for Rs.23,30,000/-. To corroborate the receipt of Rs.32,00,000/- in cash, the seller submitted the copy of his wife bank account where Rs.24

lakhs was credited. He also submitted his bank statement and his son's bank statement in which he had deposited Rs.4 lakhs each. Thus , the total cash deposited, after sale of property was Rs.32,00,000/- (24,00,000+4,00,000+4,00,000).. The sworn statement was signed by the seller as well as his authorised representative, Shri C.P. Chinna Venkataraman, FCA. The assessee was called on the same day and he was shown the sworn statement of the seller and the documentary evidence. Considering the overwhelming proof of having paid sale consideration at Rs,32,00,000/- , the assessee himself accepted the correctness of the statement made by the seller and submitted the consent letter authenticating the facts stated by the seller in his statement. He has also submitted that they had incurred a sum of Rs.1,61,560/- and Rs.4,600/- towards stamp duty and registration fees thereby indicating that total investment made was Rs.33,91,660/- for previous year 2012-13, relevant to the assessment year 2013-14; 50% share of the appellant working out to Rs.16,93,855/-.

3.2 Since the assessee had disclosed his share of investment only at Rs.12,61,500/-, the AO reopened the assessment . In response to the notice u/s 148 the assessee asked for the reason recorded u/s 147 of the Act. The Assessing Officer intimated the reason for reopening

through his letter dated 14.09.2016. During the course of assessment proceedings, the assessee requested for cross examination of the seller Shri Syed Mohammed Nazir Hussain. The Assessing Officer allowed the cross examination on 21.11.2016. The assessee requested the seller regarding any other proof which he had to substantiate that he had paid Rs.32 lakhs to him towards purchase of the said property. To which, the seller replied that no sale agreement was made between them. The assessee had paid a token advance of Rs.101/- initially and the entire amount of Rs.32 lakhs was paid in cash on the date of sale deed on 19.12.2012. He also submitted that even for registered value of Rs.23,30,000/- there was no agreement. The seller also reiterated that the entire 32 lakhs that he had received was deposited in various bank accounts (Rs. 24 lakhs in his wife's bank account, Rs.4 lakhs in his own bank account and Rs.4 lakhs in his son's bank account). Faced with such credible the documentary evidence along with the statement of the seller, the appellant was not in a position, to oppose the reply of the seller. The assessee then stated that he had submitted the acceptance under duress. However, he could not produced any cogent argument or documentary evidence to substantiate that his acceptance was under duress. Subsequently, on 28.11.2016, he filed the petition u/s 144A of the Act before the Joint Commissioner of Income Tax, Non Corporate

Range-2, Madurai submitting that “unverified, unproved, uncorroborated and unsubstantiated statement of the transferor cannot be based for initiation for proceeding u/s 147, requesting the direction for the guidance of the Assessing Officer on the issue.” In his direction u/s 144A dated 27.12.2016, the Joint Commissioner of Income Tax, Non Corporate Range-2, Madurai has observed as under:

“The assessee has not submitted any evidence in support of his argument nor furnished any documents which proves that the statement dated 11.03.2015 was rebutted/retracted before the department and as such the statement stands legal and valid as on date. This clearly indicates that the assessee has taken contradictory position by stating that the reopening was made based on the unverified, unproved, uncorroborated and unsubstantiated statement of the transferor. The assessee is well aware of the statement of the transferor and the assessee also submitted consent for the same vide his letter dated 11.03.2015.”

and further directed the Assessing Officer to complete the assessment proceedings after considering the arguments of the assessee.”

3.3 Thereafter, the AO relying on various case laws completed the assessment after adding the impugned sum. Aggrieved against that order, the assessee filed appeal before the CIT(A) and the Id.CIT(A) after considering the assessment order, background facts of the case, the submissions made by the authorised representative and the case laws relied upon and upheld the assessment . Aggrieved against that

order, the assessee filed this appeal. The Id.DR pleaded that the facts of the case remain undisputed, therefore, the decision rendered by the Id.CIT(A) on the basis of the facts and circumstance of this case may be upheld.

4. We heard the above submissions and gone through the relevant material. The facts and circumstances mentioned above remain undisputed. The relevant portion of the order of the Id.CIT(A) is extracted as under;

5. I have carefully considered the assessment order, background facts of the case, the submissions made by the authorised representative and the case laws relied upon. Admittedly, in this case, faced with overwhelming evidence in form of sworn statement of the seller wherein actual sale consideration was disclosed at Rs.32 lakhs paid in cash coupled with the fact that the entire Rs.32 lakhs was deposited in various bank accounts by the seller (Rs.24 lakhs in the bank account of the sellers wife, Rs.4 lakhs in sellers own bank account and Rs.4 lakhs in the bank account of his son's) the appellant had accepted the facts mentioned in the statement by seller. The appellant had also made a consent letter to the Assessing Officer on 11.03.2016. Based on the above documentary evidence, the Assessing Officer had reason to believe that the income had escaped assessment. He recorded the reasons u/s 147 and issued a notice u/s 148. In response to notice u/s 148, the appellant requested that the ITR filed by him for assessment year 2013-14 on 10.06.2013 may be taken as return in response to this notice. Subsequently, during the course of assessment proceedings the appellant was granted sufficient opportunity. He had the benefit of intervention by the Joint Commissioner of Income Tax, Non Corporate Range-2, Madurai u/s 144A. Further, as requested by the appellant, the cross examination of the seller was also granted by the Assessing Officer on 21.11.2016 wherein the appellant could not disprove the fact that he had not paid Rs.32 lakhs. The various case laws quoted by the authorised representative have been

considered. Under the facts and circumstances of the case, the appellant does not get any support from the cited case laws. In my considered opinion, therefore the Assessing Officer was correct in bringing to tax the undisclosed amount of Rs.4,32,355/- in his assessment order. No interference is called for in the assessment order. Accordingly, all the grounds taken by the appellant are dismissed.”

From the above, it is clear that the Id.CIT(A) decided the issue based on facts and circumstances, which remain undisputed. Since the assessee has not laid any material for the alleged duress, the original statement made by the assessee with the corroborating evidences from the seller side clinches the issue in favor of the Revenue. Therefore, we find no reason to interfere with the order of the Id.CIT(A) and hence, the assessee's appeal is dismissed.

5. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 22nd October, 2019 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 22nd October, 2019

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्था/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |