

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN (SMC)
BEFORE SHRI GORGE GEORGE K., JUDICIAL MEMBER

I.T.A. No.242/Coch/2018
Assessment Year : 2000-01

Shri Rajesh C. Legal Heir of Late K. Chenthamarakshan, Puliyanckavu Kalam, Vandithavalam P.O. Pattancherry, Palakkad-678 534. [PAN:AESPC 3102K]	Vs.	The Income Tax Officer, Ward-1, Palakkad.
(Assessee-Appellant)		(Revenue-Respondent)

I.T.A. No.243/Coch/2018
Assessment Year : 2000-01

Shri Ramesh R. Legal Heir of Late K. Ravindranathan, Choyikad Kalam, Vandithavalam P.O. Pattancherry, Palakkad-678 534 [PAN:AGEPR 0674H]	Vs.	The Income Tax Officer, Ward-1, Palakkad.
(Assessee-Appellant)		(Revenue-Respondent)

I.T.A. No.244/Coch/2018
Assessment Year : 2000-01

P.C. Shamila, Wife of B.P. Sheraffudin, Prop. Gazala Inn, H.P.O. Road Palakkad-678 534. [PAN: ALYPS 5905R]	Vs.	The Income Tax Officer, Ward-1, Palakkad.
(Assessee-Appellant)		(Revenue-Respondent)

I.T.A. No.245/Coch/2018
Assessment Year : 2000-01

Shri B.P. Sheraffudin, Prop. Gazala Inn, H.P.O. Road Palakkad- [PAN: AJJPS 8612C]	Vs.	The Income Tax Officer, Ward-1, Palakkad.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri C.B.M. Warriar, CA
Revenue by	Shri Mritunjaya Sharma, Jr.DR

Date of hearing	21/01/2020
Date of pronouncement	27 th /01/2020

ORDER

Per GEORGE GEORGE K., JUDICIAL MEMBER:

These appeals at the instance of four assessees are directed against the different orders of the CIT(A). The relevant assessment year in all the appeals is 2000-01.

2. The issues raised in these appeals are common in nature, hence, they were heard together and are being disposed off by this consolidated order.

3. Brief facts of the case are as follows:

Shri B.P. Sheraffudin and Smt. P.C. Shamila are husband and wife who are NRIs. They had purchased shares of M/s. Menco Electricals (P) Ltd from Shri K.

Chenthamarakshan and Shri K. Ravindranathan. The purchase price of these shares according to both the purchasers and sellers was Rs.25 lakhs. However, based on a tax evasion petition filed by one Mr. K.S. Krishnadas (wherein sale agreement for sale of shares was enclosed) the Assessing Officer proposed to treat the sale price of shares of M/s. Menco Electricals (P) Ltd at Rs.90 lakhs instead of Rs.25 lakhs. Both the buyers and the sellers of shares filed objection to the proposal of the Assessing Officer, by stating that the agreement was forged agreement and this is evident from the signatures of Shri B.P. Sheraffudin and his wife. It was stated that the agreement was forged by Shri K.S. Krishnadas, the original owner of M/s. Menco Electricals (P) Ltd and Shri Sheraffudin had filed criminal cases against Mr. K.S. Krishnadas before the Judicial Magistrate Court No. II, Palakkad. However, the objections of the assesseees, both the purchasers and the sellers of the shares were rejected. The Assessing Officer completed the assessments by taking into account the sale value of the shares at Rs.90 lakhs. Accordingly, additions were made u/s. 69B of the I.T. Act in the hands of the buyers. In the hands of the sellers, the capital gains tax was computed by taking the sale value of shares at Rs.90 lakhs. The relevant finding of the Assessing Officer for making the addition in the hands of Mr. Sherafuddin (one of purchaser of the shares) is as follows:

“3. The department received an information that Shri Sherafudheen and his wife had jointly purchased shares in M/s Menco Electricals (P) Ltd from Shri Chenthamarakshan and Shri Ravindranathan for a total consideration of Rs 90 lakhs and the parties to the transaction has not declared this correctly before this department. A Photostat copy of the agreement entered between the persons mentioned above was also filed along with the

information. As per the agreement Shri K.S. Krishnadas, Kandath Kalam, Pattanchery and another person (name and address not clear) were the witnesses to the agreement that was signed in the presence of Notary. On verification of the records it was found that:

1. Shri Sherafudheen and his wife (in the books of M/s Shamila & Co) had jointly accounted only Rs 25 lakhs as the purchase consideration paid.
 2. Shri Chenthamarakshan and Shri Ravindranathan who were assesseees in the jurisdiction of ITO, Ward-2 had not filed any return of income for this year.
 3. M/s Menco Electricals (P) Ltd was an assessee in Circle-1, Palakkad and had not filed any return of income after AY 1983-84 and was a defunct concern and the only asset owned by the concern was 45.28 cents of land with a dilapidated building.
 4. The shares in M/s Menco Electricals (P) Ltd were originally owned by Shri K.S. Krishnadas and his family and were transferred to Shri Chenthamarakshan and Shri Ravindranathan in 1987-88. They were also relatives of Shri K.S. Krishnadas.
 5. Shri Sherafudheen and his wife had sold the shares to M/s Malabar Gold Group, Calicut in AY 2003-04 for Rs 50 lakhs and the capital gains on this was declared by them in the R/I filed.
 6. The name of the company was changed to M/s Malabar Business Centre (P) Ltd and the present owners shifted registered office to Calicut.
4. Notice u/s 148 was issued to Shri Sherafudheen and his wife on 26-08-2004. The assessee has filed return of income in response to the notice u/s 148 on 20-02-2004 and has shown the same income as in the original return. The assessee has claimed that the agreement was bogus and the purchase cost of shares was only Rs 25 lakhs. A notice u/s 143(2) was issued to the assessee on 31-03-2004 and in response to this the assessee's authorised representative Shri C.R. Harish ITP appeared on 16-04-2004. A detailed questionnaire was issued to the assessee on 27-09-2004 and the assessee has filed detailed replies and evidences to this.
5. To support the claim that the agreement was bogus Shri Sherafudheen has filed the following evidences:

- 1 *An affidavit stating that the actual consideration paid to Shri Chenthamarakshan and Shri Ravindranathan was only Rs 25 lakhs.*
2. *Affidavits from Shri Chenthamarakshan and Shri Ravindranathan that they have received only Rs 25 lakh for the sale of shares of M/s Menco Electricals (P) Ltd.*
3. *An oral claim that there is difference in the signature of Shri Sherafudheen as it can be seen with reference to the signatures in the IT returns filed. (On verification some difference is seen.)*
4. *Copy of an agreement dated 15-05-1998 between from Shri Chenthamarakshan and Shri Ravindranathan for the sale of the same property to Shri Kumaran of Parco group for Rs 25 lakhs.*
5. *Copy of receipts dated 25-07-1999 issued by from Shri Chenthamarakshan and Shri Ravindranathan acknowledging the receipt of Rs 25 lakhs from Shri Sherafudheen and his wife.*
6. *Copy of a petition filed by Shri Sherafudheen before the Honorable Judicial Magistrate Court, No II, Palakkad against Shri K.S. Krishnadas, Shri V.Vijayakumar and Shri P.R. Kandunni and others by Shri Ashraf P., Manager of Hotel Gazalla on behalf of Shri Sherafudheen. The petition is dated 29-03-2003 before the date of issue of 148 notices by the department. In this petition the following points are stated:*
 - i) *Shri Sherafudheen purchased the land in which Hotel Gazalla is functioning in a court auction and this belonged to Shri K.S. Krishnadas of Kandath group,*
 - ii) *In 1999 Shri Krishnadas approached Shri Sherafudheen requesting him to purchase 45 cents of land inside Kandath Complex (this land is inside Kandath Complex and is correct).*
 - iii) *The land was in the name of M/s Menco Electricals (P) Ltd and the shareholders were Shri Chenthamarakshan and Shri Ravindranathan the benamis of Shri Krishnadas. (Krishnadas and family originally held the shares in the company and family and these were sold to Shri Chenthamarakshan and Shri Ravindranathan in 1988 and records prove this. Krishnadas and family also owned the surrounding lands. There is no evidence to prove that this was a benami transaction).*

iv) *Shri Krishnadas had earlier sold the shares to Shri Kumaran of Parco group and this group had earlier purchased the adjacent Kandath complex in a court auction. (A copy of the agreement is filed as evidence and Shri Sherafudheen had shown a payment to Shri Kumaran later in the income tax returns filed and this is claimed to be an out of court settlement of the earlier agreement. The agreement with Shri Kumaran was also signed by fShri Chenthamarakshan and Shri Ravindranathan and witnessed by Shri Kiishnadas)*

v) *Shri Ummer Haji had obtained a judgment against Shri Krishnadas against forcibly evicting him from this land. (Shri Ummer Haji was earlier a tenant in this land. Shri Sherafudheen has stated that this was also settled out of court later)*

vi) *When the assessee sold the property to M/s Malabar Gold Shri Krishnadas demanded Rs 50 lakhs more from the assessee and filed complaints before the municipality through third person. (The assessee has orally stated that the complaint filed before municipality was that Shri Krishnadas when he owned the property had earlier gifted the property to the municipality for building bus stand)*

vii) *A search was organized at the Hotel with the help of Shri Easwaran, SI, Chennai Central Crime Branch on 19-02-2003 on the complaint of one Vijayakumar that Shri Sherafudheen had sold this land to Shri Vijayakumar for Rs 39 lakhs*

6. *Shri Sherafudheen has also filed a copy of FIR filed by the Kerala Police before the Chief Judicial Magistrate dated 29-04-2003. According to the FIR Kerala Police had conducted a search at the (rented) residence of Shri Vijayakumar (s/o Appu Nair, Paruthipully, Palakkad.) at G-2, Block 1, Kethan Apartments, Rukkammal Colony, Thodiyailur, Coimbatore and has seized the following documents:*

i) *Copy of the agreement of sale dated 10-7-1999/7 pages (this is stated to be same agreement that is now used by the department as information/evidence*

ii) *Copy of pronote dated 29-08-2001 given by Sherafudheen to Vijayakumar for Rs 39 lakhs.*

iii) *Visiting cards with the addresses, (i) Vijayakumar, Director, Menco Elcctricals (ii) Vijayakumar, Inspector, CBI (iii) Vijayakumar, Financier (iv) Vijayakumar, Deputy Commissioner, Income Tax (v) Vjjayakumar, BA, LLB, Legal Advisor, Standard Chartered Bank.*

iv) Seals bearing the following (i) T.R.Srinivasan.BA.BL, Advocate and Notary (according to Shri Sherafudheen this seal is used in the agreement now used as evidence by the department) (ii) Vijayakumar, Deputy Commissioner, Income Tax (iii) Round seal of T.R.Srinivasan, BA.BL, Advocate and Notary (this seal is used in the agreement now as evidence by the department) (iv) Round seal of Jayakumar, Notary Public.

v) Copy of Power of attorney showing that Shri Sherafudheen has appointed Shri Vijayakumar as his power of attorney holder.

vi) Copy of Two memorandum of understandings (i) between Sherafudheen, Chenthamarakshan, Ravindranathan, Ashraf, Damodaran Nair and Vijayakumar (ii) between Sherafudheen, Chenthamarakshan, Ravindranathan and Vijayakumar

7. According to Shri Sherafudheen he had purchased the property from Chenthamarakshan and Ravindranathan at the request of Shri Krishnadas for Rs 25 lakhs and later when he sold the property for Rs 50 lakhs Shri Krishnadas approached him asking him to share the profit of this sale with him as he has arranged the earlier purchase for Rs. 25 lakhs. When Shri Sherafudheen refused to do this Shri Krishnadas tried to threaten him with various cases and other ways and to stop this he filed the petition before the court and made the Kerala Police conduct search of the residence of Shri Vijayakumar. The case is still going on in the court.

8. According to Shri Chenthamarakshan and Shri Ravindranathan they have received Rs 25 lakhs only.

9. Shri Sherafudheen has also filed a Photostat copy of a letter that is supposed to be written by Shri Krishnadas to Shri Damodaran Nair dated 16-01-2003. In this letter it is stated that he is sending an agreement between Sherafudheen and Shri Chenthamarakshan and Shri Ravindranathan attested by Notary. He has asked Shri Damodaran Nair to show this to Ashraf and ask Sherafudheen to settle the account before 31-01-2003. In the letter it is alleged that if the accounts are not settled before 31-01-2003 the agreement will be produced before Income tax department. In the letter it is further stated that a forged power of attorney is made and he is capable of doing anything at Madras. According to Shri Sherafudheen, the agreement now available with the department is this agreement and the police has seized the seals and forged power of attorney from Vijayakumar. Shri Sherafudheen has mentioned about this letter in the complaint filed before the court and the action done by Shri

Easwaran SI, Crime Branch Chennai was on 19-02-2003 and this according to Shri Sherafudheen was the worst action after 31-01-2003 that was threatened in the letter.

10. A summons was issued to Shri Krishnadas on 01-02-2005 asking him to appear on 16-02-2005 to verify whether the agreement was genuine and whether he was a witness to this and whether the letter that is stated to have been written by him to Shri Damodaran Nair was genuine. The summons was served on him on 05-02-2005 and he has not responded to the summons. A fresh summons and a show cause letter was issued to him on 03-03-2005 and the ITI has reported that he has left his residence and is visiting the place occasionally only and his present address is not known on enquiry. A letter was issued to the Notary to verify whether the agreement was signed in his presence. No response is received to that letter and the letter has also not returned as unclaimed. The name and address of the other witness is not clear but according to Shri Sherafudheen the witness is Shri Vijayakumar from whom the police seized bogus seals of the Notary, who had attested the agreement.

11. The questions to be looked into here are

i) Whether any agreement exists between Shri Sherafudheen and Shri Chenthamarakshan and Shri Ravindranathan for the purchase of shares in Menco Electricals (P) Ltd for a total consideration of Rs. 90 lakhs.

ii) Whether the photocopy of the agreement available with the department can be taken as a conclusive evidence for the existence of the agreement.

iii) Whether the consideration of Rs 90 lakhs as stated in the photocopy of the agreement has actually passed.

iv) Whether the photocopy of the agreement available with the department is a bogus document prepared by Shri Krishnadas as alleged by Shri Sherafudheen.

12. The following points on record are to be considered:

(i) Photocopy of the agreement is only available.

(ii) The three persons who have signed the agreement have denied any such agreement

(ii) *No evidence is available to prove that excess consideration has passed hands.*

(iv) *The photocopy of the earlier agreement available with Shri Kumaran was also for Rs. 25 lakhs*

(v) *The witness to the agreement Shri Krishnadas did not appear in response to summons and there is no further time to make him comply with the summons as the case is time barring*

(vi) *The notary who has signed the agreement has not responded to the letter and there is no further time to make him comply with the summons as the case is time barring.*

(vii) *The seal of the notary was seized by the police from the residence of Shri Vijayakumar.*

(viii) *The sale value of the sale of this property To Shri Vijayakumar in the complaint filed by Shri Vijayakumar was only Rs 39 lakhs.*

(ix) *The documented sale value of the sale of the- property to M/s Malabar group was only Rs. 50 lakhs.*

(x) *The evidences filed by Shri Sherafudheen also point out to certain other motives of Shri Krishnadas but these are not proved beyond doubt.*

(xi) *The photocopy of the letter filed by Shri Sherafudheen stated to be written by Shri Krishnadas to Shri Damodaran Nair states that an agreement attested by notary is forwarded.*

13. *The decision to be taken now is that whether the agreement is genuine. Various cases are pending between Shri Sherafudheen and Shri Krishnadas before courts and majority of these are regarding bogus agreements and bogus power of attorneys. It is known that the cases before the courts covers the agreement considered as evidence in this order also. The primary evidence to prove that an agreement actually existed and the purchase/sales consideration was Rs 90 lakhs will be the original copy of the agreement. None of the parties to the agreement has produced the original agreement.*

14. *The purchaser and seller to the agreement has not confirmed the existence of the agreement but has also denied the existence of any such agreement and this may be due to the fact that:*

i) *The agreement if taken as genuine increases the tax liability of the parties to the agreement.*

ii) *The matter is already pending before the court and any admission of the agreement as genuine will effect the proceeding before the court.*

iii) *The agreement may be actually false and bogus as claimed by the parties to the agreement.*

15. *The photocopy of the agreement can be considered as secondary evidence. The secondary evidence on record (the photocopy of the agreement) will be considered as genuine and on the strength of this evidence (the photocopy of the agreement) the purchase/sale consideration of the transaction will be taken at Rs 90 lakhs. The assessee has shown that he has purchased shares for Rs 13,43,535/- and Smt Shamila has purchased shares worth Rs 11,56,465/-. The total purchase cost will be taken at Rs 90 lakhs and the proportionate cost of purchase to the assessee will be Rs 48,36,726/- and that of Smt Shamila Rs. 41,63,274/-. The difference in investment of Rs. 34,93,191/- in the hands of the assessee and Rs.30,06,809/- in the hands of Smt Shamila will be assessed u/s 69B as the amount of investments not fully disclosed in the books of accounts in their respective assessments."*

4. Aggrieved by the additions made u/s. 69B of the I.T. Act and enhancement of capital gains tax, both the buyers and the sellers of the shares of M/s. Menco Electricals (P) Ltd filed appeals before the first appellate authority. Before the CIT(A), the assessees had sought adjournments for the reason that criminal cases against Shri Krishnadas for forgery of signatures were pending disposal. The CIT(A) noticed that the appeals were pending for a long time and refused further adjournments. The CIT(A) confirmed the view taken by the Assessing Officer and dismissed the appeals filed by the asseesees. The relevant finding of the CIT(A) in the case of Shri B.P. Sheraffudin reads as follows:

"9. I have considered the submissions of the appellant. In one of the grounds taken by the appellant viz. Ground No.4, the appellant claimed that genuineness of document was never a matter of litigation. However, the

submissions filed during the appellate proceedings have revealed that the case before Hon'ble Court (Judicial Magistrate) includes the charge of fabrication and forging of documents concerned.

10. Here, it is relevant to point out the conduct of parties (appellant in four different appeals) all throughout. This is a very old appeal and pending for 13 years now. The whole matter is based on the premise if the alleged document/agreement is genuine or forged one. Initially, the appellant claimed that forgery of the document is not a matter of litigation. But, later on, he shifted the stand and requested to keep appellate proceedings in abeyance since the matter is under consideration. The whole thing appears to mislead the authorities.

11. It must be emphasized that no effort has been made by any of the parties affected by this transaction to follow up the matter before the Hon'ble Court. It must also be stated that the appellant filed a verification report of some private expert for claiming relief knowing fully well that such matter is pending before the Hon'ble Court. In the circumstances mentioned above, the onus lies on the appellant to prove before me that the alleged document/agreement is a forged one.

12. As far as the argument that parties affected have given sworn statement that the agreement is a forged one does not help appellant because such a statement is only self serving. Since the appellant has already taken up forgery/genuineness of alleged document before Hon'ble Court in a criminal conspiracy case, no other evidence will help the appellant unless it is proved by the appellant before me conclusively that the alleged document is a forged and not a genuine one. The same has not been done even after years of passing of order by Assessing Officer. In the circumstances, I concur with the observations and conclusions held by Assessing Officer and confirm the assessment order.

13. In the result, the appeal is dismissed."

5. Similar orders were passed by the CIT(A) in the case of other assessees. Aggrieved by the above orders of the CIT(A), the assessees had filed these appeals before the Tribunal. The assessees have filed paper books enclosing therein replies to the remand reports, written submissions etc. The Ld. AR relied on the grounds of appeals. Further, it was submitted that during the course of

appellate proceedings, the CIT(A) had called for remand reports. It was submitted that sworn statements recorded from the buyers as well as the sellers were produced before the CIT(A). It was submitted that in the impugned orders of the CIT(A), there was no reference to the remand reports submitted by the Assessing Officer. It was stated that the assesseees had filed replies to the remand reports and copies of same is produced in the paper books filed by the assesseees (Pgs. 58 to 65). It was further contended by the Ld. AR that criminal cases against Shri Krishnadas for forgery of signatures have not been disposed off and are still pending before Judicial Magistrate Court No. II, Palakkad. The assesseees have also furnished a letter submitted before the CIT(A) requesting for getting copies of the remand reports and sworn statements recorded. It was stated that the remand reports of the Assessing Officer were in favour of the assesseees and the same has not been considered by the CIT(A) while disposing of the appeals filed by the assesseees.

5.1 On merits it was submitted that there is nothing on record to suggest that the sale price of shares is Rs.90 lakhs, except the forged document submitted by Shri Krishnadas. It was submitted that Shri Krishnadas did not appear before the Assessing Officer inspite of a summons being issued to him. It was further stated that only photocopy of forged sale agreement was furnished by Shri Krishnadas and not the original agreement. It was submitted that the assesseees in these appeals had appeared and confirmed that sale consideration of the

shares is only Rs. 25 lakhs. It was stated that Shri Krishnadas had approached buyers of shares when they had sold the property for Rs.50 lakhs, for a share of profit and when Shri Sheraffudin refused, Shri Krishnadas had filed tax evasion petition and furnished forged documents.

6. I have heard the rival submissions and perused the material on record. It is an admitted position that during the course of appellate proceedings, the CIT(A) had called for remand reports from the Assessing Officer from time to time and the Assessing Officer had furnished the same. The Ld. AR submits that the remand reports submitted by the Assessing Officer accepted the assessee's contention that the purchase price of shares of M/s. Menco Electricals (P) Ltd is only Rs.25 lakhs and not Rs.90 lakhs. It was further submitted that the only property of defunct Menco Electricals (P) Ltd namely 45 cents of land was sold by assessee to Malabar Business Centre (P) Ltd for a total consideration of Rs.50 lakhs and on the sale consideration of Rs.50 lakhs, both Shri Sheraffudin and Smt. Shamila had accordingly computed capital gains tax.

6.1 On perusal of the CIT(A) order, I find that there is no mention about the remand reports submitted by the Assessing Officer. It is an undisputed fact that remand reports were called for by CIT(A) during the course of appellate proceedings and the Assessing Officer had submitted the same. However, there is no mention of the same in the impugned orders passed by the first appellate

authority. The CIT(A) ought to have considered the remand reports submitted by the Assessing Officer and the replies to the same by the assesseees. Having failed to consider the remand reports submitted by the Assessing Officer and the replies to the same, I am of the view that the matter needs fresh examination by the CIT(A). It was also submitted that criminal cases filed by the assesseees against Shri Krishnadas for forgery of signatures have not been disposed off. For the aforesaid reasons, I remit the issue to the file of the CIT(A). The CIT(A) shall consider the remand reports and objections raised by the assesseees to the remand reports and shall pass speaking orders. It is ordered accordingly.

7. In the result, the appeals of the assesseees are partly allowed for statistical purposes.

Pronounced in the open court on 27th -01-2020.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 27th January, 2020

GJ

Copy to:

1. Shri Rajesh C. Legal Heir of Late K. Chenthamarakshan, Puliyanckavu Kalam, Vandithavalam P.O. Pattancherry, Palakkad-678 534.
2. Shri Ramesh R. Legal Heir of Late K. Ravindranathan, Choyikad Kalam, Vandithavalam P.O. Pattancherry, Palakkad-678 534.
3. P.C. Shamila, Wife of B.P. Sheraffudin, Prop. Gazala Inn, H.P.O. Road, Palakkad-678 534.
4. Shri B.P. Sheraffudin, Prop. Gazala Inn, H.P.O. Road, Palakkad-678 534.
5. The Income Tax Officer, Ward-1, Palakkad.

3. The Commissioner of Income-tax(Appeals), Thrissur
4. The Pr. Commissioner of Income-tax, Thrissur.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin