

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' (SMC) BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.909/Chny/2019
निर्धारण वर्ष /Assessment Year: 2014-15

Shri R. Venkatachari,
Flat No.5,
Swathi Sumukhi Apartments,
No.15/6, Nageswara Road,
Nungambakkam, Chennai – 600 034

The Income Tax Officer,
Non Corporate Ward – 14(4),
Vs. Chennai – 600 034.

[PAN: AABPV 2073P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr. R. Vijayaraghavan,
Advocate

प्रत्यर्थी की ओर से /Respondent by

: Mr. A.R.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 09.06.2020

घोषणा की तारीख /Date of Pronouncement

: 09.06.2020

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

This is an appeal filed by the assessee against the order of the learned Commissioner of Income Tax (Appeals)-14, Chennai in .ITA No.345/CIT(A)-14/2016-17 dated 05.12.2018 for the Assessment Year 2014-2015.

2. Mr. R. Vijayaraghavan, Advocate represented on behalf of the Assessee and Mr. A.R.V. Sreenivasan, JCIT represented on behalf of the Revenue.

3. It was submitted by the learned Authorized Representative that the Assessee is an individual who was employed in a Private Limited company. It was a submission that the assessee had retired in the year 2004 and was receiving pension and interest income. It was a further submission that the assessee had sold his house property which was allotted to him through the Housing Board during the relevant Assessment Year. It was a submission that the sale deed was registered on 10.02.2014 disclosing an amount of Rs.95.50 lakhs. It was a submission that the assessee had received nearly Rs.30.00 lakhs more and the assessee had deposited Rs.28.00 lakhs, out of the same in his bank account. It was a submission that the cash deposits has been made between 27.01.2014 and 27.02.2014.

It was a submission that the assessee had invested Rs.96.00 lakhs in REC Bonds and had claimed the benefit of deduction u/s.54EC of the Income Tax Act, 1961. It was a further submission that the Assessing Officer, on the ground that the assessee was unable to explain the cash deposit of Rs.33,11,875/- in the assessee's bank account, treated the same as unexplained cash credits u/s.69A of the Income Tax Act, 1961.

It was a submission that the assessee has challenged only the deposit of Rs.28.00 lakhs which has been made by him and is treated as unexplained cash credits. It was a submission that before the learned Commissioner of Income Tax (Appeals), the assessee had submitted the said explanation. However, the learned Commissioner of Income Tax (Appeals) in para-9 of his order had though he has accepted that cash transactions cannot be ruled out in real estate business, set aside the issue to the file of the Assessing Officer to examine whether the purchaser of the property agrees that the cash has been paid.

It was a submission that admittedly, no purchaser who has paid cash in such real estate transactions which is in the nature of on-money would accept having paid such amounts. It was a submission that considering the probabilities and the possibilities of such cash transactions being involved in real estate transactions, the amount of Rs.28.00 lakhs as deposited in the assessee's bank account may be treated as part of the sale consideration of the immovable property sold by the assessee. It was a submission that the property had been registered at the guideline value of Rs.95.50 lakhs and the cash portion was approximately 20% of the sale price.

4. In reply, the learned Departmental Representative vehemently opposed these submissions. It was a submission by the learned

Departmental Representative that the issue did not arise out of the order of the learned Commissioner of Income Tax (Appeals) in so far as the learned Commissioner of Income Tax (Appeals) has directed the Assessing Officer to examine whether the purchaser has agreed to the factum of payment of cash of Rs.28.00 lakhs. It was a submission that the learned Commissioner of Income Tax (Appeals) has not made any confirmation of the addition under the head 'unexplained cash credits'.

It was a submission that admittedly it is not for the Department to make roving enquiries or look for evidences in favour of the assessee. It was a submission that it is for the assessee to substantiate its claim and the assessee having not substantiated his claim that the on-money has been paid to the assessee in respect of the sale of the immovable property, it is for the assessee to explain the source of the cash credits. It was a submission that the failure of the assessee to substantiate the cash credits has correctly been held as unexplained cash credits.

5. I have heard the rival submissions through Video-Conferencing and perused the materials available on record.

6. Admittedly, the learned Commissioner of Income Tax (Appeals) has directed the Assessing Officer to examine whether the purchaser of the immovable property confirms whether he has paid the cash of Rs.28.00 lakhs to the assessee in respect of the purchase of the

immovable property. The Departmental Representative does concede that the purchaser has denied having paid any cash to the assessee.

A perusal of the assessment order at page-7 shows the details of the consideration paid as recorded in the sale deed. This represents a cheque and Demand Draft payment from 08.01.2014 to 08.02.2014 for a total consideration of Rs.94,54,500/- and the balance of Rs.95,500/- represents TDS. The cash has been deposited in the bank account of the assessee between 27.01.2014 and 27.02.2014. The registration of the property has been taken place on 10.02.2014. Further, it is an admitted fact that the assessee does not have any other source of income other than pension and interest. The period during which the cash has been introduced into the bank account also supports the probability which has been admitted by the learned Commissioner of Income Tax (Appeals) in para-9 of his order that it cannot be ruled out and that there is no cash transactions in the real estate activities.

It is further supported by the fact that the registration of the said property has been done at the guideline value alone calls for substantial doubt. In these circumstances, considering the preponderance of probability, I am of the view that the cash deposits of Rs.28.00 lakhs from the bank account of the assessee is part of the sale consideration of the immovable property sold by the assessee during the assessment year. In the circumstances, the Assessing Officer is directed to re-compute the

capital gains by adopting the sale consideration in respect of the immovable property sold by the assessee during the year by including the amount of Rs.28.00 lakhs as has been admitted by the assessee.

7. In the result, the appeal of the assessee in I.T.A. No.909/Chny/2019 stands allowed.

Order pronounced in the open Court on 9th June, 2020 in Chennai.

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 9th June, 2020

IA, Sr. PS

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