

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, CHENNAI

BEFORE SHRI C.M. GARG, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं./ITA No.3256/CHNY/2016
(निर्धारण वर्ष / Assessment Year :2012-2013)

Sri Sun City Developers 89-A, East Lokmanya Street, R.S.Puram, Coimbatore-641002	Vs	ITO, Non-Corporate Ward-2(3), Coimbatore
PAN No. : ABIFS 4607 E		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri Sridhar, Advocate
राजस्व की ओर से /Revenue by	:	Shri G.Johnson, Addl. CIT

सुनवाई की तारीख / Date of Hearing	:	16/02/2022
घोषणा की तारीख/ Date of Pronouncement	:	21/02/2022

आदेश / ORDER

Per Bench:

The assessee has filed this appeal against the order passed by the Id. CIT(A)-2, Coimbatore dated 09.09.2016 for the assessment year 2012-2013.

2. The only issue in this appeal agitated by the assessee is that the Id. CIT(A) was not correct and justified in confirming the addition to the extent of ₹16,34,700/- made by the AO on account of cost of purchase by observing that no evidence found and impounded during the course of survey.

3. Ld. Assessee's counsel submitted that the authorities below have not given attention to the contention of the assessee as well as explanation offered by it during the course of assessment proceedings. Ld. Counsel also submitted that the authorities below were not correct in relying on the statements and credential to the person who insisted on the

cash payment leaving aside to the statement of the taxpaying assessee who proved beyond doubt the payments to the tune of ₹5.53 crores, which includes an amount of ₹16,34,700/-. Therefore, Id. AR submitted that the appeal of the assessee may kindly be allowed and the entire addition should be directed to be deleted.

4. Replying to the above, Id. Sr. DR drew our attention towards relevant paras 9 & 10 of the assessment order as well as 4.4 of the first appellate order and submitted that the assessee was allowed to offer explanation with the support of documentary evidence and also provided cross examination of the witnesses who deposed before the survey team, therefore, when 97% of the total amount has been allowed by the authorities below, then there is nothing wrong done by the lower authorities to expect from the assessee to prove the genuineness of the impugned payment of ₹16,34,700/-. The explanation submitted by the assessee was not tenable as he failed to substantiate the payment of ₹16,34,700/- to Shri K.Chinasamy and Shri K. Chinasamy also categorically denied to have received such amount from assessee in cash. Therefore, Id. Sr. DR submitted that the orders of the authorities below may kindly be upheld and the appeal of the assessee deserves to be dismissed.

5. On careful consideration of the above rival submissions as well as from the assessment order, we observe that the AO has made addition after considering the relevant facts placed on the record of ₹16,34,700/- with the following observations :-

“In view of the above discussion, the cost of purchase to the extent of ₹5,53,26,800/- is treated as genuine and allowed as expenditure based on the confession statements given by Shri T.R.Ramasubramaniam and Shri. K.Chinnsasamy after considering the further genuine claim of the assessee vide its letter dt.26-03-2015 even though there were no evidences found and impounded during the course of survey. Therefore, the balance of ₹16,34,700/- is disallowed.”

6. The assessee carried the matter before the CIT(A), which was dismissed with the following observations :-

“4.4 With regard to disallowance of purchase cost of ₹16,34,700/-, I have to state that the AO had already looked into the reconciliation and other submissions which have been put forth before me. The stopped cheque alone may not on its own stand as proof for payment of ₹10 lakhs in cash to Shri Chinnasamy. On the other hand Shri Chinnasamy denied to have received this amount as well as ₹6,34,700/-. Although the AR's argument that there is no reason for the appellant to inflate the purchase cost by this meagre amount as compared to huge price paid for land appears plausible, it is difficult to accept an expenditure claim without adequate proof. Therefore, I am unable to agree with the AR's plea to allow this payment towards purchase cost. Further, I am not convinced with the plea that the closing stock should also have been correspondingly increased nullifying the addition because large part of the stock of this land was sold during the year and the cost to this extent has already been claimed against the sales of this year. It may be true if the whole of the purchases remains as closing stock at the year end and even then the inflated cost would go to reduce future profits. In the light of the above, the addition of ₹16,34,700/- is sustained and ground no.3 is dismissed.”

7. On careful consideration of above rival submissions as well as the findings recorded by both the authorities below, we are of the considered view that during the assessment proceedings the AO had allowed the assessee to reconcile and to submit his stand and explanation which was allowed regarding almost 97% of the impugned amount making disallowance of ₹16,34,700/- only. The AO as well as the First Appellate Authority dismissed and declined to accept the contention of the assessee regarding the said amount by observing that the stopped cheque will not on its own stand as proof for payment of ₹10 lakhs in cash to Shri

Chinnasamy and Shri Chinnasamy denied to have received this amount as well as ₹6,34,700/-. In this situation, the first appellate authority was right in observing that the expenditure claimed without adequate proof cannot be held as allowable, therefore, he denied to agree with the contention of the assessee to allow the impugned payment towards purchase cost. Ld. CIT(A) was also right in dismissing the contention of the assessee that the closing stock should also have been correspondingly increased nullifying the addition because large part of the stock of this land was sold during the year and the cost to this extent has already been claimed against the sales of this year.

8. In view of the foregoing discussion, we are compelled to hold that the addition made and confirmed by the CIT(A) is quite justified, reasonable and correct as the assessee failed to substantiate that the amount of ₹16,34,700/- was paid to Shri K.Chinnasamy in cash and the same was part and parcel of payment made by the assessee towards purchase cost. Therefore, we are unable to see any reason to interfere with the findings arrived at by the Id. CIT(A) on this issue and, thus, we uphold the same. Accordingly, we dismiss the appeal of the assessee.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 21/02/ 2022.

Sd/-

(ARUN KHODPIA)

लेखा सदस्य /ACCOUNTANT
MEMBER

Sd/-

(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Chennai; दिनांक Dated 21/02/2022
Prakash Kumar Mishra, Sr.P.S.(on tour)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Sri Sun City Developers
89-A, East Lokmanya Street,
R.S.Puram,Coimbatore-641002
2. प्रत्यर्थी / The Respondent-
ITO, Non-Corporate Ward-2(3), Coimbatore
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **Chennai** / DR,
ITAT, Chennai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
ITAT Chennai Benches, Chennai