

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री चंद्र मोहन गर्ग, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.68/Chny/2020

(निर्धारणवर्ष / Assessment Year: 2010-11)

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| Mr. A.G. Raja, Prop. Vasantham Agencies 42, Edamal Street, Theni-625 531. | Vs | The Income Tax Officer, Ward-1(2) Theni-625 531. |
| PAN: AKPPR 9083H | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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| अपीलार्थीकीओरसे/ Appellant by | : | Mr. I. Dinesh, Advocate |
| प्रत्यर्थीकीओरसे/Respondent by | : | Mr. AR V Sreenivasan, Addl.CIT |

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|-------------------------------------|---|------------|
| सुनवाईकीतारीख/Date of hearing | : | 21.02.2022 |
| घोषणाकीतारीख /Date of Pronouncement | : | 23.02.2022 |

आदेश / O R D E R

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the learned Commissioner of Income Tax(Appeals)-1, Madurai, dated 18.10.2019 and pertains to assessment year 2010-11.

2. The assessee has raised following grounds of appeal:-

"1. The action of CIT(A) in disposing of the appeal ex-parte without affording sufficient opportunity is in gross violation of principles of natural justice and is liable to be set aside in to.

2.1 The CIT(A) erred in sustaining the addition u/s.69 of Rs.44,71,300/- in a summary manner without proper appreciation of facts.

2.2 *The CIT(A) failed to see that there has been gross violation of principles of natural justice in so far as the statement from the persons who have denied payment of advance totaling upto Rs.11,22,455/-, were neither furnished to the Appellant at any stage of the remand proceedings nor an opportunity to cross examine were provided, which renders the entire assessment null and void.*

2.3 *The CIT(A) erred in not considering the submissions of the Appellant in a proper perspective.*

2.4 *The CIT(A) went wrong in upholding the addition of Rs.18,80,3101- as the AO during the remand proceedings failed to enquire all the related parties who along with Mr.V.Thangaraj jointly purchased a portion of the immovable property from the Appellant.*

3.1 *The CIT(A) erred in treating a sum of Rs.2,22,588/- as Business income without proper appreciation of facts.*

3.2 *The CIT(A) failed to note that the AO himself in his order has addressed the fact that the Assessee had incurred expenditure pursuant to development of land, ought not to have held that the development expenses weren't claimed at any stage of assessment / remand proceedings."*

3. At the outset, we find that appeal filed by the assessee is barred by limitation for which necessary petition for condonation of delay explaining the reasons for the delay has been filed. The learned counsel submitted that assessee fell sick due to Chikungunya during last week of October, 2019 and as advised by Doctor, he took bed rest for 4 weeks and due to illness, the assessee could not file appeal within the time allowed under the Act, therefore, the learned AR prays that delay of 22 days in filing this appeal may be condoned.

4. Having heard both sides and considered the petition along with affidavit and medical certificate filed by the assessee for condonation of delay, we are of the considered view that reasons given by assessee for not filing the appeal within the time allowed under the Act comes under reasonable cause as provided under the Act, for condonation of delay and hence, delay of 22 days in filing above appeal is condoned and appeal filed by the assessee is admitted for adjudication.

5. Brief facts of the case are that the assessee is a proprietor of M/s. Vasantham Agencies engaged in the business of trading in household articles. During the financial year relevant to assessment year 2010-11, the assessee had purchased 21.72 acres of land from Mr.James Jacaob for Rs.1,07,16,523/- along with Smt. R.Muthulakshmi on 10.03.2010 and this fact was reported in AIR database. The assessment has been reopened u/s.147 of the Income Tax Act, 1961, on the basis of information available in AIR database and notice u/s.148 dated 29.01.2013 was issued and served on the assessee. In response to notice, the assessee has filed

return of income on 25.11.2013 and declared total income of Rs.4,81,360/-. During the course of assessment proceedings, the Assessing Officer called upon the assessee to file necessary evidence, including source for purchase of property. In response, the assessee submitted that he had purchased property from Mr. James Jacob on 10.03.2010 and has been converted into residential flats and sold to various buyers. He further claimed that he had received advance from 11 buyers and out of advance received from buyers, purchase price has been paid to Mr. James Jacob. During the course of assessment proceedings, the Assessing Officer on the basis of information furnished by the assessee obtained sale deed, copies executed in favour of 11 buyers from whom, the assessee claims to have received advance of Rs.56,99,430/- and noticed that all sale deeds have been executed in the month of October, 2010. The Assessing Officer had issued summons to all 11 persons and out of which summons issued to 4 parties were returned unserved. In respect of balance 7 persons to whom summons were served, all have appeared before the Assessing Officer and except two parties, remaining 5 have denied payment of any advance for purchase of property to the assessee.

Therefore, on the basis of information obtained from the Office of the Sub-Registrar and also details furnished by the assessee, the Assessing Officer opined that the assessee could not prove source for purchase of property and thus, 50% amount incurred for purchase of property, including stamp duty and registration fees which works out to Rs.58,40,586/- and same has been treated as unexplained investment and brought to tax u/s.69 of the Income Tax Act, 1961. The relevant findings of the Assessing Officer are as under:-

"4. During the F.Y.2009-10, the assessee has purchased a agriculture land from Shri. James Jacob, Kerala for Rs.1,07,16,523/- along with Smt. R. Muthulakshmi on 10.03.2010 at Veerapandi village to an extent of 21.72 acres and converted the same into plots and sold under the project namely "Swarna boomi". When questioned about the source for the aforesaid investment, the assessee claimed that the entire property purchased was immediately sold out and settled the matter. The gain made out of the transaction was admitted as short-term capital gain of Rs.2,62,518/- in the return of income filed and paid the tax. But he has not filed any sale documents in support of his claim even during the scrutiny proceedings, also he was unable to produce the sale documents as claimed in his return of income. In this regard, details collected from the SRO, Theni shows that the actual sale was effected only from August 2010 onwards i.e., relates to A.Y. 2011-12. When this was pointed out the assessee claimed that he received an advance of Rs,56,99,430/- from 11 persons who registered their documents in the F.Y.2010-11 well in advance even before the date of purchase and paid the consideration to the seller Shri James Jacob and the property was registered later to them starting from the month of August' 2010 onwards and produced a list of parties who had advanced the amount for purchase. The list of parties filed by the assessee is reproduced as under:

| S.No. | Name and Address | Advance Received in Rs. | Doc. Executed on | Remarks |
|-------|---|-------------------------|------------------|--------------------------------------|
| 1. | R. Perumalsamy, D.No.16, Ayyappan street, Allinagaram, Theni | 4,20,000 | 14.10.2010 | Summon u/s 131 unserved |
| 2. | C. Ravendran, D.No.37, Vadaveeranayakanpatty, periyakulam | 3,40,000 | 13.10.2010 | Claimed no advace paid |
| 3. | R. Alagesan, D.No.14-5-14B, VOC street, P.C. Patty, Theni | 2,62,535 | 13.10.2010 | Claimed no advace paid |
| 4. | K. Elevarasi, D.No.5/548, Ring Road, Munees Nagar | 5,67,640 | 13.10.2010 | Summon u/s 131 unserved |
| 5. | T. Baskar, D.No.117/N1/2B at Vadaveeranayakanpatty, Periyakulam | 1,34,815 | 13.10.2010 | Summon u/s 131 unserved |
| 6. | R. Renugadevi, D.No.55, Ward 1, Gonvindanagaram, Theni | 4,80,000 | 17.09.2010 | Summon u/s 131 unserved |
| 7. | M. Renugadevi, D.No.1554/16, Allinagaram village, Theni | 3,76,000 | 13.10.2010 | Claimed no advace paid |
| 8. | C. Anbuchellian, D.No.9A, Ponnambalam street, Bodi | 4,90,000 | 13.10.2010 | Claimed no advace paid |
| 9. | R. Narayanan, D.No.33, Allinagaram village, Theni | 3,80,000 | 13.10.2010 | Claimed to have paid but no evidence |
| 10. | K. Soundrarajan, D.No.15/14 Sivaji Nagar, Forest Road, Theni | 3,68,130 | 17.09.2010 | Claimed to have paid but no evidence |
| 11. | V. Thangaraj, D.No.15A, Sales Society street, Allinagaram | 18,80,310 | 13.10.2010 | Claimed no advace paid |

Summons were issued to all 11 persons, out of above, summons to 4 parties (SL.No. 1, 4, 5 & 6) were returned unserved by the ITI with the remarks that the parties have left the place of address. Out of 7 parties appeared, only two parties (Sl. No.9 & 10) claimed to have paid the advance but were not able to produce any evidence such as advance agreement etc. Others denied of paying any advance. It is clearly evident that no advance was received by the assessee towards sale of the land and his share of 50% of the cost of purchase was met out by the assessee from his own source and the implied impression of credit purchase from the seller Shri. James Jacob is also ruled out since no prudent seller will part with such a vast land of 21.72 acres of land worth more than Rs. 1 crore for credit. All transactions are claimed to have made in cash. There is no bank account transaction. No layout and plan approvals filed by the assessee and also claimed no closing stock (plots). No books of accounts were maintained by the assessee for this transaction. In the absence of evidence, the source of the investment stills remains unexplained and also the

explanation offered by the assessee was not satisfactory. Therefore, the entire investment including stamp duty worked out to Rs.58,40,586.50 (Stamp papers cost: Rs.50000 + Stamp duty paid Rs.807350 + Registration cost Rs. 107300 cost of purchase Rs.10716523 Rs.11681173/-; 50% of Rs.11681173 Rs.5840586.50) was considered as unexplained investment u/s 69 and added back to the total income under other source.”

6. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has reiterated his arguments made before the Assessing Officer. During the course of appellate proceedings, the learned CIT(A) has directed the Assessing Officer to submit remand report after examining 5 persons on the basis of their address available in PAN directory to allow opportunity to the appellant to cross examine the 5 persons who had denied any payment of advance to the appellant. The Assessing Officer submitted remand report dated 31.03.2016 and as per remand report of the Assessing Officer, the assessee has availed opportunity of cross examination of five persons before the Assessing Officer and all the five persons denied having paid any advance to the appellant for purchase of property. The learned CIT(A) had also directed the Assessing Officer to examine 4 persons to whom summons were issued and returned unserved. The

Assessing Officer conducted investigation, as per which Shri R.Perumalsamy, Smt.K.Elavarari and Mr.T.Baskar have denied of having paid any advance for purchase of property. They further stated that entire payment was made only on the date of registration of property. In respect of Smt. M.Renugadevi, the Assessing Officer could not conduct any enquiry, because she has left India and she is living in Canada. The learned CIT(A) has provided copies of remand report to the assessee for his comments for which the assessee has filed written submissions and claimed that he had received advance from parties and out of the same amount has been paid for purchase of property.

7. The learned CIT(A), after considering relevant facts and also taken note of remand report issued by the Assessing Officer observed that from the investigation conducted it is confirmed beyond doubt that the assessee has made false claim of advance receipts from prospective buyers of flats, even before he had purchased property from seller. Therefore, the learned CIT(A) opined that in case of 5 buyers referred to in Sr.No.1,5,7,8 & 11, they have categorically denied having paid any advance to the assessee. Therefore, claim of the

assessee that he had received advance from them and paid to purchaser cannot be accepted. Therefore, out of total additions made by the Assessing Officer towards 50% cost of purchase of land of Rs.58,40,586.50, the learned CIT(A) has sustained additions made towards unexplained investment in purchase of land to the extent of Rs.44,71,300/-, because claim of the assessee that he had received advance from 5 persons was proved to be wrong. Therefore, the learned CIT(A) sustained additions made towards unexplained investment to the extent of Rs.44,71,300/- and balance amount has been deleted. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

8. The learned A.R for the assessee submitted that the learned CIT(A) erred in not appreciating necessary evidences filed by the assessee, including copies of sale deed executed in favor of buyer to prove that he had received advances from prospective buyers of flats and out of the advance received, he has discharged consideration paid for purchase of property. The learned AR for the assessee referring to paper book filed by the assessee submitted that in case of sale deed executed

to Mr. V.Thangaraj, from whom the assessee claims to have received major advance for purchase of property, it was a fact that property has been sold to three buyers, however, the Assessing Officer has examined one buyer, without examining other two buyers. Therefore, in all fairness, issue may be set aside to the file of the Assessing Officer to given another opportunity of hearing to the assessee to examine remaining two buyers to ascertain fact with regard to payment of advances. He further submitted that in respect of 5 buyers to whom notices were served, although the Assessing Officer claims to have allowed opportunity of cross examination, but such opportunity was not provided to the assessee. Therefore, it is incorrect on the part of the learned CIT(A) to sustain additions made by the Assessing Officer without appreciating fact that opportunity of hearing was not accorded to the assessee in accordance with principles of natural justice.

9. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the assessee claims to have received advances from certain parties and these parties are witnesses of the assessee. Therefore, it is for the assessee to

prove its claim with necessary evidences, when witnesses have become hostile. Therefore, there is no merit in the arguments of the assessee that the Assessing Officer has not discharged its burden. The Assessing Officer as well as learned CIT(A), after considering relevant facts has rightly made additions and thus, there is no reason to give one more opportunity to the assessee.

10. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The claim of the assessee is that, he had received advance from prospective buyers of plots of land, even before the assessee could get property registered in his name from the seller is against human probability. Therefore, on the basis of claim of the assessee, no benefit can be given towards source for purchase of property. Even otherwise, the Assessing Officer has given full opportunity of hearing to the assessee, when the assessee claims to have received advance from various parties and has conducted thorough investigation into claim of the assessee and found that claim of the assessee is completely false. We further noted that even during remand

proceedings, the assessee could not substantiate its claim of advance receipts from prospective buyers of flats, which is evident from the fact that out of 11 buyers from whom the assessee claims to have received advance for purchase of land, 5 denied having paid any advance to the assessee during the assessment proceedings and remand proceedings. In respect of remaining 6 persons, three have once again denied of having paid any advance to the assessee. One buyer could not be examined, because she had shifted out of India and settled in Canada. In respect of 2 buyers, those who claimed to have paid advance to the assessee, the learned CIT(A) has allowed relief to the assessee. From the facts brought out by the Assessing Officer as well as learned CIT(A), what is clear is that, the assessee has made a claim of advance receipts from prospective buyers of land to explain source for investments in purchase of property, but, such claim was not proved with necessary evidences. The learned CIT(A), after considering relevant facts and also taken note of investigation conducted by the Assessing Officer during the assessment proceedings and remand proceedings has rightly arrived at a conclusion that the assessee could not prove source to the extent of

Rs.44,71,300/-, being advance claims to have been received from 5 buyers as stated in Sr.Nos. 1 to 5, 7,8 &11 in the table provided in the learned CIT(A) order. Facts remain unchanged. The assessee could not controvert finding of facts recorded by the learned CIT(A) with any evidences, except making vague argument that one property has been sold to three persons and out of three persons, the Assessing Officer has examined only one person. In our considered view, whether the Assessing Officer has examined one buyer or three buyers, it does not make any difference as long as buyer who appeared and made statement before the Assessing Officer that he has not paid any advance to the assessee. Further, it is not a case of the assessee that so called advance payment of purchase of property was made through cheque or proper banking channel. In fact, total transactions of purchase of property as well as sales to various buyers is in cash. Therefore, we are of the considered view that there is no error in the reasons given by the learned CIT(A) to sustain additions made towards unexplained investments for purchase of property u/s.69 of the Act to the extent of Rs.44,71,300/-. Hence, we are inclined to

uphold findings of the learned CIT(A) and reject grounds taken by the assessee.

11. The next issue that came up for our consideration from grounds no.3.1 & 3.2 of assessee appeal is disallowance of development expenses and treatment of sale transaction of Rs.2,22,588/- as income from real estate business.

12. We find that the learned CIT(A) has rejected claim of the assessee of incurring various expenses for development of land into plots of various sizes on the ground that the appellant has not claimed said expenses neither during the assessment proceedings nor remand proceedings and even during the appellate proceedings. Even before us, the assessee has not filed any evidences to prove that infact, he had incurred expenses for development of land. Therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer to reject arguments of the assessee towards addition made on account of sale transaction under the head 'income from business'. Hence, we are inclined to uphold

findings of the learned CIT(A) and reject grounds taken by the assessee.

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

Order pronounced in the open court on 23rd February, 2022.

Sd/-
(चंद्र मोहन गर्ग)
(Chandra Mohan Garg)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 23rd February, 2022

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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