

**आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISA KHAPATNAM BENCH, VISA KHAPATNAM  
(through web-based video conferencing platform)**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष**

**BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.347/Viz/2019  
(निर्धारण वर्ष / Assessment Year : 2011-12)**

M/s Sri Ravi Chandra Textiles (P) Ltd. Vs. Asst.Commissioner of  
F.No.GF-2, Sai Prakash Apartments Income Tax  
1<sup>st</sup> Lane, Vidya Nagar, Guntur Circle-2(1)  
[PAN : AAOCS 2563F] Guntur  
(अपीलार्थी/ Appellant) (प्रत्यर्थी/ Respondent)

**आयकर अपील सं./I.T.A.No.355/Viz/2019  
(निर्धारण वर्ष / Assessment Year : 2011-12)**

Asst.Commissioner of Vs. M/s Sri Ravi Chandra Textiles (P)  
Income Tax Ltd., F.No.GF-2,  
Circle-2(1) Sai Prakash Apartments,  
Guntur 1<sup>st</sup> Lane, Vidya Nagar, Guntur  
[PAN : AAOCS 2563F]  
(अपीलार्थी/ Appellant) (प्रत्यर्थी/ Respondent)

**Cross Objection No.118/Viz/2019  
(Arising out of I.T.A.No.355/Viz/2019)**

M/s Sri Ravi Chandra Textiles (P) Ltd., Vs. Asst.Commissioner of  
F.No.GF-2, Sai Prakash Apartments, Income Tax  
1<sup>st</sup> Lane, Vidya Nagar, Guntur Circle-2(1)  
[PAN : AAOCS 2563F] Guntur  
(अपीलार्थी/ Appellant) (प्रत्यर्थी/ Respondent)

निर्धारिती की ओर से/ Assessee by : Shri GVN Hari, AR  
राजस्व की ओर से / Revenue by : Shri SPG Mudaliar, DR

सुनवाई की तारीख / Date of Hearing : 09.02.2022  
घोषणा की तारीख/Date of Pronouncement : 11.03.2022

## **आदेश / O R D E R**

### **Per Shri Duvvuru RL Reddy, Judicial Member :**

These appeals are filed by the assessee as well as the revenue against the order of Commissioner of Income Tax (Appeals) [CIT(A)]-1, Guntur dated 26.03.2019 for the Assessment Year (A.Y.)2011-12 and the cross objections are filed by the assessee.

2. The only grievance of the assessee is that the Ld.CIT(A) erred in sustaining an addition of Rs.1,79,00,000/- made by the AO on protective basis u/s 69 of the Income Tax Act, 1961 (in short 'Act') towards alleged on money paid for purchase of lands.

3. Brief facts of the case are that the assessee is a company, e-filed its return of income for the A.Y.2011-12 on 09.11.2011 admitting total income at Nil. Thereafter return was processed u/s 143(1) of the Income Tax Act, 1961 (in short 'Act'). The Assessing Officer (AO) was in receipt of certain information from DDIT (Inv.), Guntur that the assessee purchased agricultural lands admeasuring 17.87 cents from Shri G.Punna Rao and his son Shri G.Kalyan Babu for more than the consideration mentioned in the registered sale deeds executed. During the course of

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enquiry proceedings before the DDIT (Inv.), Guntur, Shri G.Punna Rao was stated to have submitted copies of sale agreements entered along with his son Shri G.Kalyan Babu with Shri S.Masthan Rao, supervisor of the assessee company, in support of receipt of on money over and above the registered value from the assessee as mentioned in sale deeds. Subsequently, the AO initiated proceedings u/s 147 of the Act and issued notice u/s 148 of the Act to the assessee mentioning the reasons for such reopening. On receipt of information from Investigation Wing, Guntur, the AO found that Shri G.Punna Rao has shown receipts from consideration on account of sale of agricultural land to the assessee for more than the amount mentioned in registered deeds, whereas the books of accounts of the assessee depicts only the registered value. Hence, the AO worked out the difference of amount as per sale agreement and registered deed at Rs.2,88,26,250/- (3,24,00,250 - 35,74,000). The assessee has contended that the agricultural lands were purchased from Shri G.Kalyan Babu for the purpose of construction of spinning mill, but not entered into any agreement with Shri G.Kalyan Babu before purchase of the property. The assessee further contended that the assessee company has not paid on money in excess to the amount mentioned in

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the registered sale deed towards purchase of said land and furnished details relating to F.Y..2010-11 as under :

Date of Purchase	Extent	Sale consideration (Rs.)	Mode of payment
14.03.2011	Ac.8.50 cents	17,00,000	Cheque
11.04.2011	Ac.1.00 cents	2,00,000	Cash
25.07.2011	Ac.8.37 cents	16,74,000	Cheque Cash 74,000

The AO found that information filed by the assessee and claim made by Shri G.Punna Rao were contradictory. When Shri S.Mastan Rao, supervisor of the assessee company was questioned by the AO to verify the correctness, he stated that he has not entered into any agreement in relation to purchase of said property by the company, but he has only signed as witness on registered sale deed entered with Shri G.Kalyan Babu. When the supervisor was shown the copy of sale agreement produced by Shri G.Punna Rao to confirm the signature, he submitted that he neither entered into agreement nor signed such sale agreement. The AO also enquired whether any authorization was given to the supervisor of the company to enter into sale agreement with Shri G.Kalyan Babu, but he was informed that the company has not given any authorization in this regard. The AO verified the specimen signatures of Shri S.Masthan Rao with that of signature on sale agreements

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produced by Shri G.Punna Rao as they are photo copies. The AO felt that the signatures were difficult to tally and hence veracity of sale agreement could not be established beyond reasonable doubt. However, the Ld.AO made an addition u/s 69 of the Act relying on the decision of Hon'ble Supreme Court in the case of Lalji Haridas under the head "income from other sources" on protective bases to the tune of 2,88,26,250/- for the A.Y.2011-12.

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and submitted that the actual investment made in purchase of lands were recorded in books of account which is matching with registered deed and hence the addition made by the AO on protective basis, invoking sec.69 of the Act is incorrect. After considering the arguments of the assessee, the Ld.CIT(A) partly allowed the assessee's appeal. The order of the Ld.CIT(A) reads as follows :

*"In view of the above, the appellant paid Rs.1.93 cr. by way of cash over and above the registered value to the seller. This fact is supported by the copies of documents as referred above. It is a fact that during the year under consideration, the appellant paid Rs.81,25,000/- in excess of the amount mentioned in the sale deeds as per the evidences. The AO considered certain amounts pertaining to the F.Y.2011-12 corresponding to the A.Y.2012-13 and arrived at unexplained income at Rs.2.88 cr. which appears to be incorrect. In view of the above, unexplained income should have been assessed by the AO at Rs.81,25,000/- only on evidence basis. The agreement holder, Sri S.Masthan Rao admitted by acceptance letter that the entire amount was paid as agreed in instalments and the entire land was registered in the name of the company. In view of this it has to be*

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*concluded that the assessee could have paid Rs.1.36 cr. and Rs.43 lakhs as per the agreements during the year under consideration. Hence, Rs.1.79 cr. could have been taken as the payment made in excess of amounts mentioned in sale deed during the year. Having regard to the evidences, it is held that Rs.81,25,000/- is the amount paid as on money and not recorded in the books of accounts. In view of this, the AO is hereby directed to treat Rs.81,25,000/- as unexplained investment u/s 69 of the Act substantively in the hands of the appellant. Further considering the acceptance letter and subsequent act of registration of lands in the name of the company, unexplained investment at Rs.97,75,000/- must also be considered for assessment. In view of the above discussion in all Rs.1.79 cr must be treated as unexplained investment in the hands of the appellant u/s 69 of the Act substantively. The balance amount is hereby deleted as those amounts do not pertain to the year under consideration. In view of this the AO is hereby directed to modify the order accordingly and these grounds of appeal are partly allowed."*

5. On being aggrieved, the assessee preferred an appeal before the Tribunal and raised the following grounds of appeal :

1. *The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The learned Commissioner of Income Tax (Appeals) is not justified in sustaining on substantive basis, an addition of Rs.1,79,00,000/- out of the total addition of Rs.2,88,26,450/- made by the assessing officer on protective basis u/s 69 of the Act towards alleged on money paid for purchase of lands.*
3. *Any other grounds may be urged at the time of hearing.*

The revenue also filed cross appeal against the order of the Ld.CIT(A) and raised the following grounds of appeal :

1. *Order of the Ld.CIT(A) is erroneous in law, facts and circumstances of the case.*
2. *The Ld.CIT(A) erred in not appreciating the fact that the sale agreements were entered into in the year 2010-11*

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*relevant to A.Y.2011-12, therefore, difference of amounts as per the sale agreements and registered deeds shall have to be treated as unexplained investment u/s 69 of the Act for A.Y.2011-12 only.*

*3. Any other ground(s) that may be urged at the time of hearing.*

6. Ground No. 1 and 3 of assessee's appeal are general in nature which does not require specific adjudication.

7. Ground No.2 is related to sustaining an addition of Rs.1,79,00,000/- made by the AO on protective basis u/s 69 of the Act.

8. The Ld.Counsel for the assessee argued that the contention of Shri Punna Rao regarding receipt of on money payment is false since the assessee company neither entered into any agreement nor purchased any piece of land from Shri Punna Rao. Therefore, the question of payment of sale consideration by way of cash to Shri Punna Rao does not arise. The Ld.AO as well as the Ld.CIT(A) have relied on the photostat copy of unregistered agreements of sale and wrongly reopened and concluded the protective assessment in the hands of the assessee company. He further submitted that the assessee company has not given any authorisation to Shri Masthan Rao, who is the supervisor of the company for the purpose of purchase of agricultural land at any point of

time. Therefore, the assessee company is no way concerned with the unregistered agreements of sale between Shri Kalyan Babu and Shri Masthan Rao. The AO himself is not able to identify the signature of Shri Masthan Rao on the agreement of sale. Therefore, there is no valid documentary evidence to establish on money transaction. He pleaded for deletion of the addition made by the AO as well as Ld.CIT(A).

9. The Ld.DR submitted that the assessee company has entered into an agreement for purchase of Ac.17.87 of agricultural land for Rs.1.53 cr and Rs.1.71 cr on 22.12.2010 and 05.03.2011 respectively and given an advance of Rs.38,25,000/- and Rs.43,00,000/- to the seller. The entire amount as agreed was paid in instalments with respect to entire land of Ac.17.87 and got registered in the name of the assessee company. He further argued that there were agreements for sale with regard to two agricultural lands which were subsequently registered in the name of the assessee company, though the agreements were between Shri S.Masthan Rao, employee of the company and Shri Kalyan Babu. He further submitted that Shri Masthan Rao has given acceptance letter, wherein, it was stated that both the lands were registered in the name of the company as the entire amount was paid in instalments to the seller as per the agreement. He further submitted that the company used its employee

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only as name lender and front person, whereas, the ultimate person behind the transaction is the assessee company itself, therefore, the AO correctly passed protective assessment order in the hands of the assessee company. Hence, the order passed by the Ld.CIT(A) to be confirmed.

10. We have heard both the parties and perused the material placed on record. It was the case of the AO that one Shri G.Punna Rao has made cash deposits in his bank account substantially during the period from 01.10.2010 to 21.12.2010. An inquiry was conducted by investigation wing and during the enquiry Shri G. Punna Rao had disclosed his source for the cash deposits, saying that he had received the amount by virtue of unregistered sale agreements entered for sale of ancestral agricultural land with one Shri S.Masthan Rao, Supervisor of the assessee company. Based on this information, the AO reopened the case of Shri G.Punna Rao to examine the source of cash deposits. Similarly, the assessee's case, being purchaser of properties was also reopened and completed the assessment on substantial and protective basis.

10.1. The contention of the revenue is that there are two unregistered agreements for sale with regard to ancestral agricultural lands which were subsequently registered in the name of the assessee company. The

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agreements were between one Shri Kalyan Babu, S/o Sri G.Punna Rao and Shri S.Masthan Rao, who is the supervisor of the assessee company. The said Masthan Rao has given the acceptance letter, wherein, it was mentioned that the entire amount was paid in instalments to the seller as per the agreements and both the lands were registered in the name of the assessee company. The advances given of Rs.38,25,000/- and Rs.43,00,000/- for two properties were more than the value of the said properties as per the sale deed. The amounts which were received by way of cash were deposited by Shri G.Punna Rao in his bank account. Based on the above statement, the AO concluded the protective assessment in the hands of the assessee company. Now it is necessary to examine the unregistered agreements of sale dated 22.12.2010 and 05.03.2011 between Shri G.Kalyan Babu and Shri Masthan Rao. The sale consideration was shown in the agreement of sale dated 22.12.2010 at Rs.1,14,75,000/- and Rs.1,71,00,250/-. We have also examined the registered sale deeds dated 14.03.2011 and 25.07.0211, wherein, the sale consideration was shown at Rs.17,00,000/- and Rs.16,74,000/- respectively. Admittedly, the name of Sri Punna Rao is not mentioned in the agreements of sale or in the sale deed as seller. Shri Kalyan Babu, S/o Shri Punna Rao executed unregistered agreements of sale of lands in

favour of one Shri Masthan Rao. Subsequently, the said Kalyan Babu executed registered sale deeds in the name of the assessee company. Apart from this, there are no recitals in agreements of sale or sale deeds that Shri Punna Rao had received any amount of sale consideration. The main contention of the revenue is that the said Shri Punna Rao received the sale consideration by way of cash and deposited the said amount in his bank account. Therefore, the revenue made substantive and protective assessments in the hands of Shri Punna Rao and the assessee company. But there is no evidence to show that the said Shri Punna Rao is the owner of the property. As per the agreements of sale as well as the sale deeds, one Shri Kalyan babu, is the owner of the lands and he has entered into an unregistered agreement of sale in favour of Shi Masthan Rao, but he executed registered sale deeds in favour of the assessee company. The assessee company never entered into any agreements of sale with Shri Kalyan Babu. There are no recitals in the agreements of sale that the assessee company has purchased the land. Therefore, one thing is clear that there is no seller and buyer relationship between Shri Punna Rao and the assessee company. Thus, the contention of the revenue has no legs to stand.

10.2. Another contention of the revenue is that some portion of payments were made through cheques which were issued by the assessee company and the said cheques photostat copy was affixed on the agreement of sale as acknowledgement. Therefore, the AO made protective and substantive assessments in the name of Shri Punna Rao and the assessee company. On this aspect, agreements of sale were produced before the AO for verification. After verification, the AO opined that ***“however, the specimen signatures of Sri S.Mastan Rao were obtained and placed on record to verify the signatures with sale agreements. As the sale agreements produced by Sri G.Punna Rao are photo copies and the specimen signatures obtained from Sri S.Masthan Rao are difficult to tally and thereby the veracity of the sale agreement could not be established beyond reasonable doubt.”***

Admittedly, the assessee company has not given any authorisation to the said Masthan Rao for the purpose of purchase of land in the name of the assessee company. Therefore, we are of the view that there is no satisfactory evidence to establish that the assessee company has entered into agreement of sale through one of its employees by name Shri Mastan Rao. The AO had relied only on the photostat copy of unregistered agreement of sale. Hence, we are of the firm view that

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unregistered agreement for purchase of the property cannot be material to rely on, when the registered sale deed has been produced and the same shows that the property was purchased at particular price. According to us, the agreement of sale loses its character, the moment, the registered sale deed is executed. The property has been purchased at a higher price than that of amount mentioned in the purchase deed, the burden to prove is heavily placed on the AO to establish the said fact. After considering the above said facts, we are of the considered view that the AO as well as Ld.CIT(A) have done guess work while coming to conclusion that the price of the property is more than mentioned in the sale deed. In the present case on hand, as discussed above, there is no seller, buyer relationship between Shri G.Punna Rao and the assessee company. Therefore, the protective assessment which was made in the hands of the assessee company is not sustainable. In this case, except the oral statement of Shri G.Punna Rao, there is no other piece of evidence to establish that the amount of sale consideration was paid by way of cash to Shri Punna Rao by the assessee company. Therefore, we allow the ground No.2 raised by the assessee.

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11. As far as ground No.2 of revenue's appeal is concerned, the tax effect involved in this appeal is below Rs.50 lakhs. As per the latest circular No.17/2019, dated 08.08.2019 of CBDT, which is in supersession of its Circular No.3/2018 dated 11.07.2018, in relation to filing of appeals before the Income Tax Appellate Tribunal, the appeal filed by the revenue is not maintainable. The Ld. D.R. has not raised any objection. In view of the above, the appeal filed by the revenue is not maintainable. Hence, the same is dismissed.

12. Since the appeal of the revenue is dismissed, the cross objections filed by the assessee becomes infructuous, hence, dismissed.

13. In the result, the appeal filed by the assessee is allowed and the appeal filed by the revenue as well as the cross objections filed by the assessee are dismissed.

Order pronounced in the open court on 11<sup>th</sup> March , 2022.

Sd/-

(एस बालाकृष्णन)  
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 11.03.2022

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)  
(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s Sri Ravi Chandra Textiles (P) Ltd.,  
F.No.GF-2, Sai Prakash Apartments, 1<sup>st</sup> Lane, Vidya Nagar, Guntur
2. राजस्व/The Revenue – Asst.Commissioner of Income Tax, Circle-2(1)  
Guntur
3. प्रधान आयकर आयुक्त / The Pr.Commissioner of Income-tax, Guntur
4. (अपील)/ The Commissioner of Income Tax (Appeals)-1, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam