

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.1193/Chny/2019

(निर्धारण वर्ष / Assessment Year: 2008-09)

Mr. J.Srinivasan, 12B, Thanikachalam Street, Perambur, Chennai-600 011.	Vs	Assistant Commissioner of Income Tax, Central Circle-3(2) Chennai.
PAN: AOVPS 4456H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. T.Banusekar, C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Durgesh Sumrott, CIT & Mr. Sajit Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	10.03.2022
घोषणाकीतारीख /Date of Pronouncement	:	18.03.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the learned Commissioner of Income Tax (Appeals)-19, Chennai, dated 28.02.2019 and pertains to assessment year 2008-09.

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

"1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the reassessment was bad in law.*
4. *For that the Commissioner of Income Tax (Appeals) failed to appreciate the fact that a third party affidavit cannot be construed as 'fresh tangible material' for the purposes of reassessment.*
5. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the material relied upon did not have any nexus with the conclusion of escapement of income in the hands of the appellant drawn by the Assessing Officer.*
6. *For that the Commissioner of Income Tax (Appeals) erred in concluding that proper sanction has been obtained by the Assessing Officer from the Joint Commissioner of Income Tax prior to initiation of the reassessment proceedings in the impugned assessment year.*
7. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in rejecting the revised books of accounts of the appellant for the impugned assessment year.*
8. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in treating cash advance of Rs.25,00,000/- towards purchase of land as unexplained investment.*
9. *For that without prejudice to the above, the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in concluding that the appellant has no explainable sources for the purchase of land.*
10. *For that the Commissioner of Income Tax (Appeals) erred in dismissing the submissions of the appellant as an afterthought.*
11. *For that the Commissioner of Income Tax (Appeals) erred in upholding an addition of Rs.6,09,293/- as income from business."*

3. Brief facts of the case are that the assessee filed his return of income for the assessment year 2008-09 on

19.09.2008 declaring total income of Rs.6,56,900/-. A search & seizure operation u/s.132 of the Income Tax Act, 1961, was conducted in the case of the assessee on 28.01.2015 and consequently, assessment has been reopened u/s.147 of the Income Tax Act, 1961. During the course of search, document was found, as per which the assessee has purchased property in the name of his wife for Rs.75 lakhs, which has been paid partly by cheque for Rs.50 lakhs and partly in cash amounting to Rs.25 lakhs. The assessee did not disclose cash payment for purchase of property. The Assessing Officer, after considering relevant explanation of the assessee has made additions towards cash portion paid for purchase of property at Rs.25 lakhs as unexplained investments.

4. The assessee carried the matter in appeal before the first appellate authority. Before the learned CIT(A), the assessee submitted that he had explained sources for cash payment of Rs.25 lakhs towards purchase of property out of drawings from M/s. J.S. Constructions. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of various facts brought out by the Assessing Officer rejected arguments of the assessee and sustained additions made by

the Assessing Officer by holding that the assessee has failed to explain source for cash payment made for purchase of property. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

5. The learned A.R for the assessee submitted that the learned CIT(A) erred in not appreciating fact that the assessee has explained source for cash payment out of his known source of income. The AR further submitted that although, the assessee has admitted undisclosed income of Rs.25 lakhs before the DDIT (Investigation), but subsequently explained source for cash payment, The Assessing Officer as well as learned CIT(A) have ignored evidences filed by the assessee and made additions. Therefore, the issue may be remitted to the file of the Assessing Officer to verify various evidences filed by the assessee to justify his case.

6. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the assessee has failed to produce necessary evidence, including evidences to prove that cash payment made for purchase of property was reflected in the books of account for relevant assessment year. Therefore,

the learned CIT(A), after considering necessary evidences has rightly sustained additions made by the Assessing Officer.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The incriminating materials found during the course of search clearly indicate cash payment of Rs.25 lakhs for purchase of property and same has not been disclosed in the regular books of account maintained by the assessee for the relevant assessment year. The assessee had also failed to file necessary evidences, including source for cash payment, except stating that he had sufficient cash withdrawals from proprietary concern M/s. J.S. Constructions. We have gone through reasons given by the Assessing Officer in light of arguments of the assessee along with bank statement of proprietary concern M/s. J.S.Constructions. We find that although, the assessee has certain withdrawals on various dates from proprietary concern, but fact remains that whether cash withdrawals has been recorded in the books of account of the assessee and further, payment made for purchase of property was disclosed in the books of account or not is not clear. No doubt, the assessee may be having various cash

withdrawals from bank account, but unless the assessee proves that those cash withdrawals are used for making cash payment for purchase of property, the benefit of telescoping cannot be allowed. In this case, except bank account, the assessee failed to produce books of account to explain availability of source for cash payment of Rs.25 lakhs and in absence of any evidence, merely on the basis of bank statements, explanation of the assessee cannot be accepted. 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 by the Assessing Officer towards unexplained investments for purchase of property. Hence, we are inclined to uphold findings of the learned CIT(A) and dismiss appeal filed by the assessee.

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

Order pronounced in the open court on 18th March, 2022

Sd/-

(वी. दुर्गा राव)

(V.Durga Rao)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 18th March, 2022

DS

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.

Sd/-

(जी.मंजुनाथ)

(G.Manjunatha)

लेखा सदस्य / Accountant Member