

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' 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

आयकरअपीलसं./I.T.A.Nos. 1223/Chny/2018, 3 & 39/Chny/2018

(निर्धारणवर्ष / Assessment Years: 2014-15, 2014-15 & 2015-16)

Smt. A. Latha, No.112, Gopal Layout Ponniayarajapuram Coimbatore-641 002.	Vs	Assistant Commissioner of Income Tax, Central Circle-2 Coimbatore.
PAN: ABVPL 0483E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. S. Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.V. Pradeep Kumar, CIT

सुनवाईकीतारीख/Date of hearing	:	07.03.2022
घोषणाकीतारीख /Date of Pronouncement	:	31.03.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

These three appeals filed by the assessee are directed against separate, but identical orders of the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 22.3.2018 passed u/s.271(1)(c) of the Income Tax Act, 1961 for the assessment year 2014-15 and orders passed u/s.250(6) of the Income Tax Act, 1961, both dated 20.11.2017 for the assessment years 2014-15 & 2015-16. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

ITA No.3/Chny/2018 (A.Y. 2014-15):

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

1. *The order of The Commissioner of Income Tax (Appeals) 18, Chennai dated 20.11.2017 in I.T.A.No.479/16-17 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*

2. *The CIT (Appeals) erred in enhancing the assessment in recomputing the taxable total income in para 18 of the impugned order without assigning proper reasons and justification.*

3. *The CIT (Appeals) failed to appreciate that the recomputation of the taxable total income which resulted in enhancement was wrong, erroneous, unjustified, incorrect and not sustainable in law.*

4. *The CIT (Appeals) failed to appreciate that the order of assessment under consideration passed u/s 153C read with section 143(3) of the Act was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law*

5. *The CIT (Appeals) failed to appreciate that the reasons given in the enhancement notice, reproduced in para 10 of the impugned order were not correct as well as recorded perverse factual findings/observations thereby vitiating the recomputation of taxable total income in para 18 of the impugned order.*

6. *The CIT (Appeals) failed to appreciate that having noticed the strong objections for enhancement both on facts and in law from the Appellant fully extracted in para 14 of the impugned order, the rejection of such objections from para 15.1 was wrong, erroneous, unjustified, incorrect and not sustainable in law.*

7. The CIT (Appeals) failed to appreciate that the presumptions/ conclusions/inferences drawn from the seized materials with a view to arrive at the undisclosed income for assessment were not correct and ought to have appreciated that the misreading of the seized materials in this regard would vitiate the recomputation of taxable total income in para 18 of the impugned order.

8. The CIT (Appeals) failed to appreciate that the evidentiary value of the seized materials even though challenged was not considered in disposing of the related grounds of appeal and further ought to have appreciated that in any event the explanation offered for each of the entries in the seized materials in order to demonstrate the wrong addition made by the Assessing Officer as well as the enhancement computed in para 18 of the impugned order was considered in proper perspective from para 15.1 of the impugned order.

9. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.”

3. Brief facts of the case are that a search & seizure operation u/s.132 of the Income Tax Act, 1961, was carried out in the case of Shri E. Anandan, Director of M/s. Green Home Landscape Pvt. Ltd. on 17.03.2015. During the course of search in the premises of Shri E.Anandan, some incriminating documents (sale agreement/deeds) were found and seized

which revealed fact that the assessee had entered into sale agreement dated 07.02.2014 with Mr. K.Thangavelu for purchase of property at Vadavalli. As per sale agreement dated 07.02.2014, the assessee had paid an amount of Rs.1 crore advance in cash to Mr. K.Thangavelu for purchase of property and said property has been registered in the name of the assessee on 03.03.2015 for consideration of Rs.4,10,00,000/-. When the assessee was called upon to explain source for payment made to Mr. K.Thangavelu, it was submitted that one Mr. Ashok Kumar, S/o. Gopal had entered into sale agreement with Mr. K.Thangavelu on 23.08.2013 and paid advance of Rs.1 crore for purchase of very same property and the said sale agreement was cancelled on 07.02.2014, because Mr. Ashok Kumar could not arrange funds. Since, Mr. Ashok Kumar is relative to the assessee, he made over advance paid to seller of the property to the assessee and agreed to take back advance subsequently. The recital of Rs.1 crore advance mentioned in sale agreement between the assessee and Mr. K.Thangavelu was in fact, Rs.1crores advance paid by Mr. Ashok Kumar and same has been returned to Mr. Ashok

Kumar, out of sale proceeds of property owned by Mr. E.Anandan, husband of the assessee at Chennai.

4. During the course of assessment proceedings, the Assessing Officer however, was not convinced with explanation furnished by the assessee and according to Assessing Officer, on perusal of confirmation letter given by Mr. Ashok Kumar, it is noticed that said advance of Rs.1 crore was paid on 07.02.2014 as per registered sale deed as well as agreement of sale. If it is a case of Mr. Ashok Kumar make over his advance paid by him to Mr. K.Thangavelu to the assessee, same should have been reflected as a creditor in the balance sheet of Mrs. A.Latha. Further, contention of the assessee is that she had paid Rs.1 cores to Mr. Ashok Kumar, out of money received from sale of property by her husband Mr. E.Anandan at Chennai also does not hold water, because on perusal of bank account statement submitted by Mr. E.Anandan, it was noticed that buyer of the property Mrs.Lakshmi has paid sale consideration of Rs.90 lakhs by way of demand draft and RTGS starting from 03.04.2014 to 07.04.2014 and further, there is no cash withdrawal from account of Mr. E.Anandan to pay cash to Mr.

Ashok Kumar. The Assessing Officer further noted that as per seized documents found during the course of search in the premises of the assessee there are two notings in respect of cash paid to Mr. Ashok Kumar on 22.10.2013 for Rs.85 lakhs and on 24.11.2013 for Rs.57,50,000/- and this amply proves that Mr. Ashok Kumar had entered into an agreement of sale with Mr. K.Thangavelu on behalf of Mr. E.Anandan and paid these amounts. The Assessing Officer further noted that Mr. Ashok Kumar does not have any creditworthiness to advance such huge amount to Mr. K.Thangavelu. Therefore, the Assessing Officer opined that so called advance paid to Mr. K.Thangavelu by the assessee is made out of her undisclosed income and thus, made addition of Rs.1 crore being advance paid to Mr. K. Thangavelu for purchase of property as unexplained money u/s.69A of the Income Tax Act, 1961.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has filed detailed written submissions of the assessee which has been reproduced at para 7 on page 4 to 6 of learned CIT(A) order. The sum &

substance of arguments of the assessee before learned CIT(A) are that she had entered into sale agreement for purchase of property with Mr. K.Thangavelu, after agreement of Mr. Ashok Kumar with Mr. K.Thangavelu was cancelled on 07.02.2014 and further, advance paid by Mr. Ashok Kumar has been adjusted towards advance payable by the assessee. The assessee further contended that same has been repaid to Mr. Ashok Kumar, out of sale consideration received by her husband Mr. E.Anandan from sale of Chennai property.

6. The learned CIT(A), after considering relevant facts and also taken note of entries contained in sheet No.100 of seized documents found during the course of search, opined that although, the assessee has made payment of Rs.1,42,50,000/-, but, the Assessing Officer has not considered above amount for addition. Therefore, after analyzing various documents found during the course of search, including agreement between the assessee and Mr. K.Thangavelu has issued enhancement notice to the assessee and proposed to make addition of Rs.1,83,50,000/- towards unexplained investments in purchase of property. According to the learned CIT(A), evidences filed by

the assessee, including so called agreement between M/s. Green Home Landscape Pvt.Ltd with Mr. K Thangavelu dated 22.06.2012 and subsequent agreement between Mr. Ashok Kumar with Mr. K.Thangavelu are make belief stories. Therefore, the learned CIT(A) opined that the assessee had entered into agreement for purchase of property and made various payments to Mr. K.Thangavelu and thus, after considering necessary submissions of the assessee has enhanced assessment to the extent of Rs.1,83,50,000/- being various payments made by the assessee for purchase of property as unexplained money u/s.69A of the Income Tax Act, 1961. The learned CIT(A), in the process, has deleted additions made by the Assessing Officer towards advance paid by the assessee to Mr. K.Thangavelu amounting to Rs.1 crore on the ground that so called agreement between Mr. Ashok Kumar with Mr. K. Thangavelu is make belief story and thus, claim of Mr. Ashok Kumar making over said payment to the assessee is not accepted. The relevant findings of the learned CIT(A) are as under:-

“17.1. The sources attributed for the payments of the above amounts to Shri K.Thangavelu even though supported by documentary evidences, the same cannot be accepted at all for the simple reason that, all these sources have been raised before the date of entry of the appellant into the picture i.e., 7.2.2014 and further, nexus was not explained so as to prove that these sources were utilized for the purchase of the property. It is to be mentioned here that, during the course of assessment proceedings, when the Assessing Officer questioned about the source for the payment to Shri Ashok Kumar, the appellant did not claim the sources which he is claiming now during the appellate proceedings.

17.2. Further, it is to be stressed here that, Shri Anandan has schemed the entire deal in such a way to show as if initially M/s Green Home Landscape Pvt.Ltd., was the purchaser, later it was Shri.Ashok Kumar and finally it was Smt.Latha, the appellant. But in truth, Shri.Anandan's intention was to buy the property in the name of Smt.Latha only. This inference will be proved as correct if one goes through the relevant discussions made in the preceding paragraphs. Some important points to be highlighted here are that, even though the value of the property transferred runs to several crores, most of the payments were in cash only. Even though various agreements are claimed to have been entered into with Shri.K.Thangavelu by M/s Green Home Landscape Pvt.Ltd., and Shri Ashok Kumar, they have been cancelled and only the agreement entered into between Shri Thangavelu and Smt. Latha alone materialized.

17.3. Further, during the period 23.08.2013 and 07.02.2014 Shri. Anandan continued to make part payments of Rs.15,00,000/- & Rs.85,00,000/- to Shri.Thangavelu on

22.10.2013 & 24.11.2013 respectively in spite of the fact that the agreement between Shri.Ashok Kumar and Shri Thangavelu was alive during the above said period.

17.4. For the above payments received from M/s Green Home Landscape Pvt.Ltd., represented by Shri.Anandan, the vendor Shri K.Thangavelu has authenticated the same by his signature. In addition, signature of a witness (Shri.D.Karthik) has also been affixed. These entries are made on the reverse of the agreement entered between M/s Green Home Landscape Pvt.Ltd., and Shri Thangavelu.

17.5. If the agreement between Shri Ashok Kumar and Shri K.Thangavelu was really genuine and existing, then Shri Anandan would not have made payments during the period when this agreement was live.

17.6. Thus, it can be concluded that, Shri Ashok Kumar was only a benami and his name was unnecessarily dragged into this transaction. An inference can easily be drawn that, the money passed on from the Appellant to Shri K.Thangavelu is still lying with Shri K.Thangavelu till Smt.Latha enters into the agreement with Shri K.Thangavelu. This itself inexplicably proves that, there was no real transaction between Shri Ashok Kumar and Shri K.Thangavelu. Had there been such a transaction, this document should find a place only in the premises of Shri Ashok Kumar and not that of the appellant, as it happened in reality.

17.7. As per the observation made by the AO in the Asst.Order, regarding the addition of Rs, 1 Crore, it represents the amount returned by the Appellant to Shri Ashok Kumar. Since it is now

held that the introduction of Shri Ashok Kumar is a make believe story, the claim of Shri Ashok Kumar making over the said payment to the appellant is not accepted and the addition of Rs.1 Crore made by the AO is hereby deleted. This is because, in this order it is clearly proved that Shri Ashok Kumar was never a party in this transaction as wrongly projected by the appellant.

17.8. In this appeal, the appellant challenges the addition of Rs.1 Crore. While deciding the issue, the undersigned took the support of the seed material and hence the entire issue is re-visited. While doing so, this Appellate Order resulted in enhancement and therefore, the Grounds raised by the appellant against the addition of Rs.1 Crore made by the Assessing Officer stands deleted.

1. Hence the resultant enhancement is worked Out as under:

Particulars	Amount (in Rs.)
Advance (CASH) claimed to have been paid by M/s M/s M/s Green Home Landscape Pvt.Ltd., to Shri.Thangavelu (Even though it is claimed that, as if the advance was paid by M/s Green Home Landscape Pvt.Ltd., actually this amount has gone from the undisclosed sources of Smt.Latha only. This inference is drawn because, had there been a payment actually from M/s Green Home Landscape Pvt.Ltd., Shri.Thangavelu should have been shown as a Debtor in its Balance Sheet to the extent of Rs.10,00,000/-. This is not so.)	10,00,000
By Cheque	15,00,000
Cash (Ashok) paid on 24/11/2013	85,00,000
Cash (Ashok) paid on 7.2.2014	57,50,000
EMIs (as per entries found in page No.223A of seized document No.ANN/VN/GH/LS/S1), a sum of Rs.12,00,000/- only entered and in the page No.252 of seized document No. another EMI payment of Rs.4,00,000/- has been entered)	16,00,000
TOTAL	1,83,50,000

18.1. Even though various payments have been made as evidenced by the seized documents, those relating to the impugned Asst.Year alone (F.Y.2013-14) have been taken into

consideration in this order and thus resulting in an enhancement of Rs.1,83,50,000/-“

Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

7. The learned A.R for the assessee submitted that the learned CIT(A) erred in enhancing assessment without appreciating fact that the assessee has explained source for advance payment made to Shri K.Thangavelu for purchase of property. The learned A.R for the assessee further referring to various documents relied upon by the learned CIT(A) submitted that although, the learned CIT(A) observed that agreement between Mr. Ashok Kumar with Mr. K. Thangavelu is a make belief story, but failed to examine both the parties, when the assessee has filed evidences to justify her case. He further submitted that agreement between the assessee and Mr. K. Thangavelu was found during the course of search. As per seized documents, Mr. Ashok Kumar had entered into agreement for purchase of property and paid advance amount of Rs.1 crore on various dates. Since, he could not register property by paying balance consideration, had requested the

assessee and the assessee had entered into separate agreement, but amount of advance mentioned in the agreement was in fact, paid by Mr. Ashok Kumar and make over to the assessee. He further submitted that the learned CIT(A) without appreciating facts has simply enhanced the assessment only on the basis of some jottings found in loose papers.

8. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that in fact, there is no enhancement from the learned CIT(A), because if you see issue in total, whole issue is on account of unexplained investments in purchase of property. As per seized documents found during the course of search, the assessee had purchased property from Mr. K. Thangavelu for a consideration of Rs.6.67crores, including stamp duty and registration. The assessee could explain source to the extent of Rs.2.5 crores only, out of loan borrowed from bank. The balance amount has been added as unexplained investment, because the assessee could not explain source for investments. Although, the Assessing Officer had considered balance amount of Rs.4,17,00,000/- as unexplained investments, but made

addition of Rs.1 crore for the assessment year 2014-15 on the basis of agreement between the assessee and Mr. K. Thangavelu and balance amount of Rs.3,17,00,000/- has been added for the assessment year 2015-16. Though, the learned CIT(A) has enhanced addition for the assessment year 2014-15, to Rs.1,83,50,000/-, but while considering source for assessment year 2015-16 has sustained addition to the extent of Rs.2,33,50,000/-, which means total additions made by the Assessing Officer for both assessment years and sustained by the learned CIT(A) is one and the same and therefore, there is no merit in the arguments of the assessee that the learned CIT(A) has enhanced assessment for assessment year 2014-15. He further submitted that when it comes to source for investments made in purchase of property, although the assessee claims to have various sources, including loans borrowed from various persons, but on perusal of details filed by the assessee, it is observed that the assessee could not substantiate source and thus, learned CIT(A), after considering relevant explanation has rightly sustained additions made by the Assessing Officer and his order should be upheld.

9. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The sole issue revolves around addition made by the Assessing Officer towards amount paid for purchase of property by the assessee as unexplained money u/s.69A of the Income Tax Act, 1961. The basis for additions towards unexplained money u/s.69A of the Income Tax Act, 1961, is search conducted in the case of Shri E.Anandan, husband of the assessee. During the course of search, sale agreement between the assessee and Mr. K.Thangavelu dated 07.02.2014 was found as per which, the assessee had entered into agreement for purchase of property from Mr. K.Thangavelu for a consideration of Rs.4,10,00,000/- and paid advance of Rs.1 crore on the date of agreement. The Assessing Officer has made addition of Rs.1 crore u/s.69A of the Income Tax Act, 1961 for assessment year 2014-15 on the ground that explanation of the assessee that Mr. Ashok Kumar paid advance and said advance has been make over to the assessee is a make belief story without any evidence. The learned CIT(A), has deleted additions made by the Assessing Officer, however enhanced assessment and made addition of

Rs.1,83,50,000/- on the basis of his own appraisal of evidences and reasoning. The learned CIT(A) has disregarded all evidences filed by the assessee, including agreement between Shri Ashok Kumar and Mr. K.Thangavelu before the assessee had entered into agreement with Mr. K.Thangavelu for purchase of very same property. The sole reason for learned CIT(A) to disbelieve claim of the assessee was relationship between the assessee and Shri Ashok Kumar. According to learned CIT(A), Shri Ashok Kumar being related to the assessee, he had created document to make believe story, but in fact, Mr. E.Anandan had entered into agreement with Mr. K.Thangavelu for purchase of property in the name of his wife Smt. A.Latha, present assessee before us. The learned CIT(A) has given various reasons to disregard arguments advanced by the learned A.R for the assessee and according to him, when the agreement between Shri Ashok Kumar and Mr. K. Thangavelu was subsists, there is no reason for the assessee to make payment to Mr. K. Thangavelu. The learned CIT(A) has considered various facts and has also assumed certain facts and inferred that claim of the assessee that Shri Ashok Kumar had entered into agreement is a make believe story and

therefore, rejected arguments and went on to discuss the issue in light of various evidences and concluded that the assessee has purchased property from Mr. K.Thangavelu for a consideration of Rs.6,30,00,000/-, but could not explain source, except bank loan.

10. We have given our thoughtful consideration to the reasons given by the learned CIT(A) in light of various arguments advanced by the learned A.R for the assessee and we ourselves do not subscribe to the reason given by the learned CIT(A) for simple reason that when the learned CIT(A) has disbelieved agreement between Shri Ashok Kumar and Mr. K. Thangavelu, he could have examined both the parties before taking any adverse inference against the assessee, more particularly, when Mr. Ashok Kumar has confirmed having entered into agreement with Mr. K.Thangavelu and also confirmed make over advance payment to the assessee. The learned CIT(A), without carrying out necessary verification has simply rejected arguments of the assessee and went on to make additions by considering certain jottings recorded in the incriminating materials found during the course of search. The

main allegation of the learned CIT(A) is Mr. E.Anandan continued to make part payments of Rs.15 lakhs and Rs.85,00,000/- to Mr. K.Thangavelu on 23.10.2013 & 24.11.2013 respectively, even when the purported agreement dated 23.08.2013 between Shri Ashok Kumar and Mr. K.Thangavelu was alive. Therefore, the learned CIT(A) opined that agreement between Shri Ashok Kumar and Mr. K.Thangavelu was not genuine. We find that the learned CIT(A) has drawn inference against the assessee on assumption and suspicion without bringing on record any evidences to counter various evidences filed by the assessee, including agreement entered into by M/s. Green Home Landscape Pvt. Ltd. with Mr. K. Thangavelu. Further, the learned CIT(A) had also disbelieved various documents filed by the assessee, including agreement between Shri Ashok Kumar and Mr. K.Thangavelu with confirmation from the party only on the ground that Mr. Ashok Kumar is relative of Mr. E. Anandan, otherwise, evidences filed by the assessee, including agreement between Shri Ashok Kumar and Mr. K.Thangavelu clearly shows that he had paid advance of Rs.1 crore. Further, Shri Ashok Kumar has confirmed transactions by filing

confirmation letter. The learned CIT(A) without considering those evidences has simply disbelieved various documents filed by the assessee and made additions, even though parties have clearly proved payment of advance by Shri Ashok Kumar and make over said advance to the assessee. Therefore, we are of the considered view that the learned CIT(A) has erred in making enhancement of assessment only on the basis of certain entries in loose sheets without any further evidence to prove that said transactions are in fact taken place. Hence, we are of the considered view that the learned CIT(A) has erred in making enhancement of assessment on the basis of jottings recorded in loose sheets found during the course of search and assumed that the assessee has purchased property for a consideration of Rs.6,65,00,000/-, even though sale agreement between the assessee and Mr. K.Thangavelu and subsequent registered sale deed clearly proves fact that property has been purchased for consideration of Rs.4,10,00,000/-. Thus, we reject reasons given by the learned CIT(A) to enhance the assessment on the basis of incriminating materials found during the course of search. Further, in our considered view, explanation of the assessee that advance mentioned in sale

agreement between the assessee and Mr. K.Thangavelu was paid by Mr.Ashok Kumar and make over to the assessee is proved beyond doubt with necessary evidences, including confirmation letter from the party. Further, the assessee had also proved fact that she had repaid a sum of Rs.1 crore to Shri Ashok Kumar, out of sale proceeds of property at Chennai by her husband Mr. E.Anandan is also proved beyond doubt which is evidenced from fact that although, the purchaser had paid sale consideration of Rs.90 lakhs by demand draft / RTGS, but Mr. E.Anandan has withdrawn amount from his bank account which clearly proves that money has been used to make payment to Shri Ashok Kumar. Therefore, we are of the considered view that additions made by the Assessing Officer towards advance payment made to Mr. K.Thangavelu on the basis of sale agreement dated 07.02.2014 is not correct.

11. Coming back to additions made by the learned CIT(A). The learned CIT(A) made addition of Rs.10 lakhs cash advance claims to have been paid by M/s.Green Home Landscape Pvt Ltd. to Shri Thangavelu on the ground that this amount has gone from undisclosed source of Mrs.Latha. We find that when

the agreement clearly shows that payment has been made by M/s.Green Home Landscape Pvt. Ltd., same cannot be attributed to the assessee and thus, we are of the considered view that the learned CIT(A) has erred in making addition of Rs.10 lakhs in the hands of the assessee. Similarly, the learned CIT(A) has made additions towards entries recorded in some loose sheets on the ground that the assessee has paid cash to Mr. K.Thangavelu for purchase of property. As we have already stated in earlier part of this order, no additions can be made only on the basis of loose sheets, when the assessee demonstrated with evidence that the property has been purchased for the stated consideration in the agreement of sale and further registered deed executed for transferring title also confirms consideration paid for purchase of property. Therefore, we are of the considered view that enhancement made by the learned CIT(A) amounting to Rs.1,83,50,000/- on the basis of entries in loose papers cannot be sustained. Hence, we reverse findings of the learned CIT(A) and delete enhancement made by the learned CIT(A).

12. In the result, appeal filed by the assessee for assessment year 2014-15 is allowed.

ITA No.1223/Chny/2018 (A.Y. 2014-15):

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

“1 The order of The Commissioner of Income Tax (Appeals) - 18, Chennai dated 22.03.2018 in I.T.A.No.479/2016-17 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in imposing maximum penalty u/s 271(1)(c) of the Act at 300% of the tax sought to be evaded for the reasons stated from para 8.6 of the impugned order without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the initiation of the penalty proceedings u/s 271(1)(c) of the Act and passing the consequential penalty order at the appellate stage after enhancing the assessment in the quantum appeal was completely erroneous & bad in law and ought to have appreciated that the order imposing penalty was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

4. The CIT (Appeals) failed to appreciate that the conclusions reached based on the sworn statements were not correct and further ought to have appreciated that the presumption of payment of Rs.1,83,50,000/- from undisclosed sources of the Appellant to Shri K.Thangavelu for purchase of property at

Vadavalli was wrong, erroneous, unjustified, incorrect and not sustainable in law.

5. The CIT (Appeals) failed to appreciate that the reliability of the seized materials was heavily challenged both in the quantum proceedings as well as in the penalty proceedings and ought to have appreciated that the penalty imposed on the seized materials was wholly unjustified.

6. The CIT (Appeals) failed to appreciate that the quantum proceedings had not reached finality in view of pendency of appeal before the Jurisdictional Bench of the Income Tax Appellate Tribunal (appeal filed on 1.1.2018) and ought to have appreciated that the penalty proceedings in any event should be reckoned as independent thereby vitiating the levy of maximum penalty based on wrong presumption/inference of facts.

7. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.”

14. The assessee has filed this appeal and challenged 300% penalty levied by the learned CIT(A) on enhancement of assessment amounting to Rs.1,83,50,000/-. We find that additions made by the learned CIT(A) has been deleted by us in ITA No.3/Chny/2018 for the assessment year 2014-15. Since, addition on which penalty levied u/s.271(1)(c) of the Act, is

itself deleted, penalty levied by the learned CIT(A) on said addition cannot survive. Hence, we delete penalty levied by the learned CIT(A) u/s.271(1)(c) of the Income Tax Act, 1961 .

15. In the result, appeal filed by the assessee for the assessment year 2014-15 is allowed.

ITA No.39/Chny/2018 (A.Y.2015-16):

16. The facts and issues involved in this appeal are identical to the facts & issues which we have considered in ITA No.3/Chny/2018 for the assessment year 2014-15. The Assessing Officer has made addition of Rs.3,17,00,000/- u/s.69A of the Income Tax Act, 1961 on the ground that the assessee has purchased property from Mr. K.Thangavelu for Rs.6,30,00,000/- and has established source of Rs.2,50,00,000/- out of bank loan and thus, balance amount of Rs.4,17,00,000/- has been treated as unexplained investment. Since, a sum of Rs. 1 crore has been added for the assessment year 2014-15, balance amount of Rs.3,17,00,000/- has been treated as unexplained investments in house property for the assessment year 2015-16. We find that an identical issue has been considered by us in preceding paragraph in ITA

No.3/Chny/2018, where we have clearly held that additions made by the Assessing Officer and sustained by the learned CIT(A) on the basis of jottings recorded in loose sheets cannot be sustained, when the assessee has clearly established purchase of property for Rs.4,10,00,000/- and has also explained source. Therefore, additions made by the Assessing Officer and sustained by the learned CIT(A) on the basis of loose sheets cannot be sustained.

17. Coming back to the investments made in property and source for such investments. The assessee has purchased property for a consideration of Rs.4,47,00,000/-, including registration expenses. The assessee has explained source for investments in purchase of property, as per which the assessee has taken loan from bank amounting to Rs.2,50,00,000/- Further, the assessee had taken loan from Mr. Anthonysamy amounting to Rs.60,00,000/-. The assessee also availed jewellery loan from Karur Vysaya Bank amounting to Rs.7,54,000/-. The assessee has also availed jewellery loan from Axis Bank for Rs.17,00,000/-. The assessee had taken loan from Mr. E.Anandan out of jewellery loan from Karur

Vysaya Bank amounting to Rs.7,00,000/-. All these amounts are credited to bank account of the assessee maintained at Karur Vysaya Bank, R.S.Puram and from said bank account, amount has been paid to Sundaram BNP Paribas Home Finance Ltd amounting to Rs.2,94,00,000/-. The assessee had paid further amount of Rs.4,93,000/- to Sundaram BNP Paribas Home Finance Ltd. through RTGS from KVB Bank. The assessee had paid Rs.3,85,000/- on 08.10.2014 by cheque no.000106. All these amounts are transferred from the assessee bank account to Mr. K.Thangavelu. Therefore, we are of the considered view that there is no doubt about source of payment to the extent of Rs.3,13,78,000/-. Therefore, to this extent, the assessee has explained source for purchase of property and thus, the Assessing Officer and learned CIT(A) have erred in making additions towards amount invested for purchase of property by disregarding various evidences filed by the assessee, including documents filed for availing various loans from banks and relatives.

18. As regards cash payment of Rs.1,03,22,000/-, the assessee claims to have made Rs.1,03,22,000/- cash payment

to Mr. K. Thangavelu, out of which a sum of Rs.1 crore was paid on 07.02.2014 which has been explained out of advance paid by Mr. Ashok Kumar and make over to the assessee. Therefore, to the extent of Rs.1 crore, there is no dispute with regard to fact that the assessee has proved source, because the assessee has make over advance paid by Mr.Ashok Kumar and same has been subsequently repaid to Mr. Ashok Kumar out of sale proceeds of Madras property of Mr. E.Anandan, husband of the assessee. Hence, we are of the considered view that the assessee has proved source of cash payment of Rs.1 crore to Mr. K.Thangavelu and thus, the Assessing Officer as well as learned CIT(A) were erred in making additions towards amount invested in purchase of property.

19. As regards cash payment of Rs.3,22,000/- on 03.03.2015, it was explanation of the assessee that the assessee is having sufficient source of income out of agricultural loan jointly borrowed with her husband amounting to Rs.13,22,000/-. The assessee has filed source for agricultural loan in the form of loan sanction letters and also credits in the bank account of the assessee . Therefore, to the extent of

amount paid in cash of Rs.3,22,000/-, the assessee is having sufficient source to explain payment made to Mr. K. Thangavelu for purchase of property. Therefore, we are of the considered view that the learned CIT(A) has erred in sustaining additions made by the Assessing Officer for unexplained investments towards purchase of property.

20. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that the Assessing Officer as well as the learned CIT(A) were completely erred in making additions towards unexplained investments in property disregarding various evidences filed by the assessee to prove source for said investments. Hence, we reverse findings of the learned CIT(A) and direct the Assessing Officer to delete additions made u/s.69 of Income Tax Act, 1961, amounting to Rs.2,33,50,000/- for the assessment year 2015-16.

21. The next issue that came up for our consideration from ground no.9 & 10 of assessee appeal is addition of Rs.39,51,560/- towards unexplained cash credits in the bank

account of the assessee on various dates. The Assessing Officer has made addition of Rs.39,51,560/- being cash deposits found in bank account on various dates. It was explanation of the assessee that these cash deposits were payment made for purchase of property at Vadavalli and thus, when the Assessing Officer has made addition towards investments in purchase of property, once again addition towards cash deposits found in bank account amounts to double addition.

22. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We find that except stating that the Assessing Officer has already made additions towards investments made in property, the assessee could not file any documentary evidence to explain cash deposits found in bank account. Further, additions made by the Assessing Officer towards unexplained investments in purchase of property has been deleted by holding that the assessee has explained source for investments out of borrowings from banks, loan from friends and relatives and various other loans from banks. However,

with regard to cash deposits found in bank account on various dates, the assessee could not file any satisfactory explanation. Therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer to make additions towards cash deposits found in the bank account u/s.69A of the Income Tax Act, 1961. Hence, we are inclined to uphold findings of learned CIT(A) and reject ground taken by the assessee.

23. In the result, appeal filed by the assessee for assessment year 2015-16 is partly allowed.

24. To sum up, appeals filed by the assessee in ITA Nos.3/Chny/2018 & 1223/Chny/2018 for assessment years 2014-15 are allowed and appeal filed in ITA No.39/Chny/2018 for assessment year 2015-16 is partly allowed.

Order pronounced in the open court on 31st March, 2022

Sd/-
(वी. दुर्गा राव)
(V. Durga Rao)
न्यायिक सदस्य /Judicial Member

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

चेन्नई/Chennai,

दिनांक/Dated 31st 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.