

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री वी. दुर्गारव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.92/Chny/2021**
(निर्धारण वर्ष / **Assessment Year: 2012-13**)

DCIT Central Circle 2(2), No. 46, Nungambakkam High Road Chennai – 34.	बनाम/ Vs.	Shri V.S. Guruswamy No. 14, Old No. 19, Srinivasan Street, Mandaveli, Chennai – 600 028.
स्थायी लेखा सं./ जी आइ आर सं./ PAN/GIR No. AADPV-3605-R		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri K. Ramakrishnan (CA) – Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri M. Rajan (CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	26-04-2022
घोषणा की तारीख / Date of Pronouncement	:	05-05-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] dated 28.01.2021 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 153A of the Act on 26.12.2018. The grounds raised by the revenue read as under:

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.
2. A sum of Rs.1,10,02,800 was recorded in the sale deed while the incriminating evidence suggested that the actual sale consideration was Rs.5,35,02,800/-.The assessee has not produced any proof of the payment towards the payment made to Shri. Pasupathi Pandian who had facilitated to vacate the tenants as claimed by the assessee.
3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

As evident, the revenue is aggrieved by the relief granted by Ld. CIT(A) in the impugned order. The sole issue that arises for our consideration is determination of sale consideration in the hands of the assessee.

2. Drawing attention to the grounds of appeal, Ld. CIT-DR submitted that search proceedings revealed that the assessee received on-money over and above guideline value on sale of land. There was no evidence that the sum of Rs.2.25 Crores as deleted by Ld. CIT(A) was paid by the assessee to Shri Pasupathi Pandian. The Ld. AR, on the other hand, submitted that impugned order would not require any interference on our part on the facts and circumstances of the case. Having heard rival submissions and after due consideration of orders of lower authorities, our adjudication would be as under.

Assessment Proceedings

3.1 Pursuant to search action on 21.04.2016 in the case of M/s Khazana Jewellery Private Ltd. (KJPL), it transpired that the assessee sold certain immovable property situated at West Boulevard Street, Trichy Main Guard Road to the said group and received on-money. Accordingly, the assessee was also searched and notice u/s 153A was issued on 10.08.2017. The assessee offered return of income declaring income of Rs.20.59 Lacs. During search operation, statement on oath was recorded u/s 132(4) from Shri Kishore Kumar Jain (KKJ), Managing

Director of KJPL, who admitted that the said property was purchased from the assessee. The document exhibit KVK/JHPO/B&D/F&D as seized from the residence of Shri Pandarinath (ex-employee of KJPL), revealed that the assessee received on-money of Rs.4,24,87,200/- in cash over and above the registered sale value of the said property. The assessee, in its sworn statement, claimed that part of the on-money i.e. Rs.2.25 Crores was paid to Shri Pasupathi Pandian who had facilitated vacating the tenants from the said property. The balance amount of on-money is not the subject matter of this appeal since the same has already been offered to tax.

3.2 Shri KKJ, in statements dated 21.04.2016 and 23.04.2016 admitted that on-money was paid to the extent of Rs.4.25 Crores and the same was reiterated in statement dated 03.05.2016. It was also admitted that Shri Pandarinath took care of transportation of cash and finalized the deal. During assessment proceedings, the assessee submitted that Rs.2.25 Crores was paid to Shri Pasupathi Pandian who had facilitated to vacate the tenants from sold out property which was also stated in statement recorded u/s 131 of the Act on 10.08.2016 as under: -

Q.No.5: What was the mode of receipt of sale consideration?

Ans. :Shri Kishore Kumar Jain agreed to pay totally Rs.5,35,02,800/- as the sale consideration for my property but he stated that the property would be registered as per the guideline value and the balance amount would be given in cash after deducting incidental expenses incurred. As he was the only party who was willing to buy the property. I had no other go except to agree to his offer. Accordingly, he paid the guideline value of the property Rs.1,10,02,800/- by demand drafts.

I told him to pay Rs.2 Crores to me and Rs.2.25 Crores to Shri Pasupathi Pandian who had facilitated the vacating of the tenants from the property directly. Shri Kishore Kumar Jain told me that he did not want to meet anyone else in this connection and he wanted me to settle the amount on his behalf. Shri Kishore Kumar Jain after deducting a small amount towards incidental expenses, he had deputed Shri Pandrinath to hand over the cash of Rs.4,24,87,200/- to me at my residence in Chennai. Meanwhile, Shri Pasupathi Pandian sent his men to collect Rs.2.25 Crores from me and I have handed over cash of Rs.2.25 Crores to them. I paid the amount of Rs.12,800/- from my pocket to make up the difference. As soon

as the cash was paid to them, his men returned the keys of my Trichy property to me. Only after that, the registration of sale of the property took place.

3.3 However, Ld. AO opined that there was no proper evidence / document in support of claim of Rs.2.25 Crores being paid to Shri Pasupathi Pandian. The said statement was an after-thought. Further, the reliance on the post-search statement of KKJ cannot be accepted. However, Ld. AO noted in the assessment order that the assessee produced legal documents for eviction which were signed by the assessee. Therefore, the fact that there were legal issues could not be disputed. However, the payment could be considered only when evidence of the payment was produced. In the absence of such evidences forthcoming from the assessee, the amount of Rs.2.25 Crores was added to the income of the assessee as unaccounted money u/s 69B. Aggrieved, the assessee contested the addition before learned first appellate authority.

Appellate proceedings

4.1 The assessee contested the additions, inter-alia, on the ground that Ld. AO failed to consider the sworn statement of KKJ as recorded on 29.06.2016 wherein he had categorically confirmed the payment of Rs.2.25 Crores to Mr. Pasupathi Pandian and his group and confirmed that the amount was not paid to the assessee. The only reason for impugned disallowance was that no proper document / evidence was produced by the assessee which would be justified by the fact that the payment was made for vacating the tenants in the property under consideration for which only oral evidences would be available. Nevertheless, the evidences for existing litigation with such tenants were already filed and accepted by Ld. AO. For the said very reason, the purchaser could be put in possession of the property without any

hindrance which would be an ample proof to establish that the litigation was settled amicably. The assessee, in its statement dated 10.08.2016 had clarified the position that the sum of Rs.2.25 Crores was used to evict the tenants in the property without which the whole sale transaction could not have materialized. The theory of approbate and reprobate was stated to be applicable and therefore, Ld. AO could not conveniently ignore part of the sworn statement just for the purpose of making such disallowance. It was further stated that this fact was also confirmed by KKJ in sworn statement recorded by the department on 29.06.2016 which was much before the sworn statement taken from the assessee on 10.08.2016. Therefore, the allegations of Ld. AO that the plea was mere after-thought were without any basis. The Ld. AO was in possession of such statement but conveniently chose to ignore the same. The sworn statement of the assessee as well as KKJ would serve as oral evidence to support the case of the assessee. Lastly, there was no evidence to indicate that the assessee was found to be owner of any bullion, jewellery or other article which are the essential ingredients for making addition u/s 69B.

4.2 The Ld. CIT(A), after due consideration of the observations of Ld. AO as well as assessee's submissions, concurred with the assessee and directed Ld. AO to delete the impugned addition by observing as under:

7. I have gone through the facts of the case of the appellant. Admittedly, the appellant had sold a property in Trichy during the FY relevant to the AY under consideration to Mr Kishore Kumar Jain of M/s Khazana Jewellery and in whose search proceedings evidence indicating the actual sale consideration of the impugned property at Rs.5,35,02,800/-, although a sum of Rs 1,10,02,800/- was recorded in the sale deed was recovered. The appellant admitted that the transaction resulted in the cash component in the nature of on - money to the tune of 4.25 crores. It is noticed that the appellant offered Rs 2 Crores received as additional income under PMGKY Scheme on 31.03.2017, even before filing of the return u/s.153A and completion of the said assessment and the same has been accepted by the Revenue and accordingly no addition were made on this account.

In the circumstances, the AO added Rs. 2,24,87,200 u/s 69B of the Act disregarding the appellant's explanation that the impugned sum and explained that was given to and was received by Mr. Pasupathi Pandian in order to clear certain encroachments that were obtaining in the said property and the money was paid with a view to removing legal hurdles.

8. The appellant has submitted that he had, during the search and post-search proceedings deposed on 10.08.2016 that the actual sale consideration of the property was Rs.5,35,02,800 although sum of Rs.1,10,02,800 was recorded as consideration in the sale deed; and that impugned Rs.2.25 crores out of the sale consideration was used to evict the tenants in the property (paid through Shri Pasupathi Pandian), without which the whole sale transaction could not have materialized.

8.1. The AO has not carried out any examination / enquiries to controvert the explanation of the appellant. Further, It is also relevant to observe that the appellant's stand was also confirmed by the purchaser Mr. Kishore Kumar Jain in the sworn statement recorded on 29.06.2016, as Mr. Kishore Kumar of M/s. Khazana Jewellery on 29.06.2016, he had confirmed in answer to Q.No.6 that he had paid only Rs.2 Crores to the appellant and Rs.2.25 Crores to one Mr. Pasupathi Pandian. The deposition of Mr. Kishore Kumar was much before to the sworn statement taken from the appellant on 10.08.2016. This position has not been properly appreciated by the AO especially when the AO himself has acknowledged the existence of legal hurdles/encroachments. The AO's reasoning that the appellant's claim is not acceptable in the absence of evidence is not tenable and the AO has not brought any positive material on record as the payer has also confirmed that the impugned sum of on-money was not paid to the appellant directly. The fact that the registration was effected indicates that the legal hurdles/ encroachments have been overcome and only then the registration could have been effected in accordance with the explanations of the appellant as has been confirmed by the appellant. It is vital to mention that the AO has not carried out any enquiries to come to the conclusion that the full cash component reached the hands of the appellant' especially in the light of the averments made by the stakeholders and of the material available on record.

9. Section 69B of the Act provides that where in the financial year immediately preceding the assessment year, the assessee is found to be the owner of unexplained money, relating to the impugned money utilized for eviction of tenants, which is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the AO, satisfactory, the value of the unexplained investments may be deemed to be the income of the assessee of such financial year. The rigor cast on the AO to make addition as undisclosed investment is so stringent in that the AO has to call for explanation of the assessee regarding the nature and source of such investment during the course of assessment proceedings and form opinion and record satisfaction. The appellant, in the instant case, right from the beginning has maintained that he received Rs 2 crores that had been offered under the PMGKY and the balance was given by Pandarinathan, an employee of Kishore Kumar Jain, the buyer to Mr. Pasupathy Pandian in order to remove the legal hurdles and encroachments. This position has been confirmed by Kishore Kumar Jain, the payer of the money, as well as discussed supra. The appellant has thus offered explanation and amply demonstrated that the on-money was utilized for eviction

purposes. The AO has not repudiated any of the explanations by bringing any credible/ positive / adverse material on record to suggest otherwise. The appellant could be taxed only on real income and not on an income which was not there at all, since there was no evidence to prove otherwise too. In the circumstances, I am of the view that the onus is on the AO especially when it is held that initial onus has been discharged by the appellant.

10. On careful consideration of the facts of the case, I am of the view that there is merit in the contention of the appellant that Theory of approbate and reprobate is applicable; the AO cannot conveniently ignore part of the sworn statement given by the appellant on 10.08.2016 wherein he had deposed that the actual sale consideration of the property was Rs. 5,35,02,800 although Rs.1,10,02,800 was recorded as consideration in the sale deed; in the same statement it was mentioned that Rs.2.25 crores out of the sale consideration was used to evict the tenants in the property (paid through Shri Pasupathi Pandian), without which the whole sale transaction could not have materialized; evidence for receipt of on-money is oral evidence -sworn statements recorded from appellant and Shri Kishore Kumar Jain and therefore the appellant has substantiated his onus for having made such expenditure that is evident in the same oral evidence which are the sworn statements referred supra.

11. In view of the foregoing discussions, I am of the view that the AO's decision in bringing the impugned sum to tax is untenable and therefore is liable to be deleted. Hence, the AO is directed to delete the addition of Rs.2,24,87,200/-. Accordingly, the appellant's grounds connected to the issue are allowed.

Aggrieved, the revenue is in further appeal before us.

Our findings & Adjudication

5. The material facts as enumerated in the preceding paragraphs are not in dispute. The narrow dispute before us is addition of Rs.2.25 Crores. We find that the seller as well as assessee, in sworn statements, has maintained that the aforesaid amount was given to Shri Pasupathi Pandian. Without paying the said sum, the sale could not have been materialized. It is admitted fact before Ld. AO that there were encroachments on the land and legal proceedings were already underway. However, the seller has been put in peaceful possession which would lend credence to the stand taken by the assessee. The assessee has taken consistent stand since beginning and maintained the position that the amount of Rs.2.25 Crores was directly paid to evict the tenants and therefore, the same could not be considered to be part

of sale consideration. This position has also been accepted by Ld. AO and the only basis to make the impugned addition is that there was no evidence of payment to Shri Pasupati Pandian. However, it could be gathered that the whole basis to make the addition is the sworn statements recorded from the assessee and purchaser. No incriminating material is shown to have been found from the assessee. Therefore, the statement was to be accepted as a whole and not in a piecemeal manner as done by Ld. AO. When one part of the statement has been used by Ld. AO to make the addition, the other part which is in assessee's favor could not be ignored by him without bringing on record any positive evidences to controvert the same. However, Ld. AO has not carried out any examination / enquiries to controvert the explanation of the assessee. The stand taken by the assessee has already been confirmed by KKJ in statement given on 29.06.2016 which was much earlier than the statement given by the assessee on 10.08.2016. Therefore, the statement of the assessee could not be held to be mere after-thought.

6. Considering the entirety of facts and circumstances, the adjudication of Ld. CIT(A) in the impugned order could not be faulted with. Concurring with the observations of Ld. CIT(A) as extracted in preceding paragraphs, we dismiss the appeal.

7. The appeal stands dismissed.

Order pronounced on 05th May, 2022

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 05-05-2022

JPV

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF