

आयकर अपीलीय अधिकरण, 'सी' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' 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. No. 3437 /Chny/ 2018

(निर्धारणवर्ष / Assessment Year: 2014-15)

Smt. Selvi Chittiraja 13/96, S.Block, Anna Nagar West, Chennai-600 040.	Vs	The Income Tax Officer, Non-Corporate Ward-7(2), Chennai.
PAN: AKIPC 2389J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. D.Anand, Advocate
प्रत्यर्थीकीओरसे/ Respondent by	:	Mr. P.Sajit Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	11.05.2022
घोषणाकीतारीख /Date of Pronouncement	:	22.06.2022

देश / **ORDER**

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the learned Commissioner of Income Tax (Appeals)-7, Chennai, dated 27.09.2018 and pertains to assessment year 2014-15.

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

"1. The Order of the Commissioner of income Tax (Appeals) is contrary to Law, facts and circumstances of the case.

2 The Commissioner of Income Tax (Appeals) erred in confirming the assessment of sum of Rs.28,40,000/- being the difference in the sale value as per sale deed and the value adopted by the Stamp Valuing Authority u/s.56(2)(vii)(b) of the Act.

2.1 The Commissioner of Income tax (Appeals) erred in taking the value adopted stamp authorities on the date of registration

of sale deed instead of the date of agreement to sell as required under proviso to Section 56(2)(vii)(b).

2.2 The Commissioner of Income Tax (Appeals) ought to have appreciated that the assessee has the property was transferred under an agreement dated 25.07.2012 and has received advance of Rs.7,50,000/- for the same. Hence the cost of acquisitions on that date amounting to Rs.2,43,34,700/- ought to have been accepted as per proviso to sec 56(2)(vii)(b) of the Act.

3. The Commissioner of Income Tax (Appeals) erred in confirming the assessment of Rs 1,00,00,000/- as unexplained cash credit.

3.1 The Commissioner of Income Tax (Appeals) ought to have appreciated that the assessee has established the genuineness of the credit by explaining the source and identity of the creditor M/s.Aashana Enterprises as required u/s.68. Hence the same cannot be treated as unexplained cash credit in the hands of assessee.

3.2 The Commissioner of Income Tax (Appeals) ought to have appreciated that though the bank details show these amounts as transferred from SMJ Developer and Film Fabricator they all belong to M/s.Aashana Enterprises group.”

3. Brief facts of the case are that the assessee has filed her return of income for the assessment year 2014-15 on 14.06.2014 declaring total income of Rs.14,22,000/-. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has purchased house property for consideration of Rs. 2.74 crores. The Assessing Officer further noticed that the assessee claims to have purchased property out of loans taken from M/s. Aashana Enterprises,

sale proceeds of house property and current year income. The Assessing Officer has accepted source for purchase of property in respect of loan taken from M/s.Aashana Enterprises through her husband account amounting to Rs.90 lakhs. The Assessing Officer had also accepted source for purchase of property claims to have arranged from sale of house property and savings from current year income, however, rejected explanation of the assessee in respect of loan from M/s. Aashana Enterprises amounting to Rs.1,00,00,000/- on the ground that no details have been furnished to justify loan transactions with necessary evidences. Further, when summons were issued to M/s.Aashana Enterprises calling for details, there was no response from the party. Therefore, the Assessing Officer opined that loans claims to have received from M/s. Aashana Enterprises through M/s.SMJ Developers and M/s. Film Fabricators is unexplained credit and thus, added back to the total income of the assessee.

4. The learned A.R for the assessee submitted that the learned CIT(A) erred in confirming additions made by the

Assessing Officer towards loan taken from M/s. Aashana Enterprises u/s.68 of the Income Tax Act, 1961, without appreciating fact that loan amount of Rs.1.00 crore has been received thorough proper banking channel and also party has confirmed transactions by filing confirmation letter. The learned A.R further submitted that no doubt amount has been transferred from account of M/s.SMJ Developers and M/s. Film Fabricators, however, fact remains that those two firms are group concerns of the assessee and thus, the assessee has routed loan transactions through M/s.Aashana Enterprises and filed necessary details. Once transactions has been explained with necessary evidences, then same cannot be treated as unexplained cash credit.

5. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the assessee has failed to establish genuineness of transactions by filing necessary details which is evident from fact that when summons were issued u/s.131, the party has never responded. Further, the assessee claims to have received loans from M/s.Aashana Enterprises, whereas money has been received from M/s.SMJ

Developers and M/s. Film Fabricators. The Assessing Officer, after considering relevant facts has held that loan transactions claims to have taken from M/s.Aashana Enterprises is not explained to the satisfaction of the Assessing Officer and thus, made additions u/s.68 of the Income Tax Act, 1961.

6. We have heard both the parties, perused material available on record and gone through orders of the authorities below. There is no dispute with regard to fact that loan taken from M/s. Aashana Enterprises had been taken through proper banking channel, which is evident from fact that amount has been credited to bank account of the assessee maintained at Indian Bank, North Usman Road branch. It is also not in dispute that party has confirmed loan transaction by filing confirmation letters. In fact, the Assessing Officer never disputed these two facts, however, rejected arguments of the assessee only on the ground that the assessee claims to have received loan from M/s.Aashana Enterprises, whereas money has been transferred from M/s.SMJ Developers and M/s. Film Fabricators. It was explanation of the assessee that although, amount has been transferred from M/s.SMJ Developers and

M/s. Film Fabricators, but, because those two entities are group concerns of M/s.Aashana Enterprises, loan has been routed through M/s.Aashana Enterprises to books of account of the assessee. In this regard, the assessee has filed necessary ledger extract in the books of account of M/s.Aashana Enterprises to prove that money has been routed through M/s.SMJ Developers and M/s. Film Fabricators into books of account of the assessee. From the above, what is clear is that identity of the loan creditor is not in doubt. The genuineness of transaction is also proved, because loans have been transferred through bank account and creditworthiness of parties are not in doubt, because M/s.Aashana Enterprises has explained known source of income. Therefore, we are of the considered view that the assessee has discharged her onus of proving creditworthiness by filing necessary details, including confirmation from parties. No doubt, creditor may not have responded to summons issued by the Assessing Officer u/s.131 of the Act. However, that itself is not a ground to conclude that creditors have lacked identity, because omission on the part of creditors to subject themselves to enquiry being initiated by the Revenue or non-

furnishing of accounts by them shall not lead to doubt identity of creditors. This legal principle is supported by decision of the Hon'ble Calcutta High Court in the case of CIT Vs.Chandela Trading Co. P.Ltd. (2015) 372 ITR 232. In this case, there is no dispute with regard to identity of the creditors, genuineness of transaction and creditworthiness of parties. Therefore, we are of the considered view that the assessee has satisfactorily explained credits being loan taken from M/s.Aashana Enterprises by furnishing necessary details. Hence, we direct the Assessing Officer to delete additions made towards loan taken from M/s.Aashana Enterprises.

7. The next issue that came up for our consideration is additions of Rs.28,40,000/- made u/s.56(2)(vii) of the Income Tax Act, 1961. The facts with regard to impugned dispute are that the assessee has purchased property by entering into sale agreement on 25.07.2012 and paid advance amounting to Rs.7,50,000/- by cheque bearing no.874436 dated 25.07.2012 drawn on Indian Bank in favour of seller. The property has been registered in favour of the assessee on 02.04.2013. At the time of registration of sale deed, guideline value of the

property was more than amount of consideration paid by the assessee for purchase of property. The Assessing Officer has invoked provisions of section 56(2)(vii) of the Act and made additions of Rs.28,40,000/- by considering guideline value of the property as on date of registration of sale deed on 02.04.2013. It was explanation of the assessee that as per first and second proviso of section 50C of the Act, where date of agreement fixing amount of consideration and date of registration for transfer of capital asset are not the same, value adopted or assessable by Stamp Valuation Authority on the date of agreement may be taken for the purpose of computing full value of consideration for such transfer, if amount of consideration or part thereof has been received by way of account payee cheque or bank draft or by use of electronic clearance system through a bank account. In this case, there is no dispute with regard to fact that the assessee had paid consideration through proper banking channel and further, guideline value of the property as on date of agreement itself is less than amount of consideration paid for purchase of property. If guideline value of the property as on date of agreement of sale is considered, then there is no difference

between consideration paid by the assessee for purpose of purchase of property and value assessed by stamp duty valuation authority and thus, provisions of section 56(2)(vii) of the Act, cannot be invoked. Since, the assessee has satisfied conditions prescribed therein under 1st and 2nd proviso to section 50C of the Income Tax Act, 1961, the Assessing Officer has erred in invoking provisions of section 56(2)(vii) of the Act, and made additions towards difference between guideline value of the property and sale consideration. Hence, we direct the Assessing Officer to delete additions made towards difference in value of the property u/s. 56(2)(vii) of the Income Tax Act, 1961.

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

Order pronounced in the open court on 22nd June, 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 22nd June, 2022

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आदेशकीप्रतिलिपिअग्रेषित/Copy to:

- Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR 6. गार्डफाईल/GF.