

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.888/Chny/2018**
(निर्धारण वर्ष / **Assessment Year: 2010-11**)

ACIT Central Circle -3(4), 46, Nungambakkam High Road, Chennai – 600 034.	बनाम / Vs.	M/s. Anush Infrastructure (P) Ltd No. 21-1, Abbu Garden, OMR Road, Navalur, Chennai – 600 103.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAECA-8281-C		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

CO No.54/Chny/2019
(Arising out of **ITA No. 888/Chny/2018**)
(निर्धारण वर्ष / **Assessment Year: 2010-11**)

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(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue By	:	Shri Guru Bashyam (CIT-DR) – Ld. DR
Assessee By	:	Shri V. Nagaprasad (Advocate) – Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	13-06-2022
घोषणा की तारीख / Date of Pronouncement	:	06-07-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2010-11 arises out of the order of learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] dated 21-12-2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.153C r.w.s. 153A of the Act on 25-03-2014. 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. The learned CIT (A) erred in deleting the addition of Rs. 2,00,00,000/- made by the Assessing Officer (AO) u/ s 69 of the Income Tax Act, 1961 towards unaccounted receipt of advance from one Smt. M. Bhavika Jain on sale of one acre of land at Paiyanoor, in the assessment order passed u/s 153C r.w.s 153A of the IT Act in the assessee's case for AY 2010-11.

2.1 The Id.CIT(A) ought to have appreciated that addition made by the AO was based on the agreement executed on 24.08.2009 for sale of one acre of land at Paiyanoor to Smt. M Bhavika Jain for an agreed consideration of Rs.2,10,00,000/-which was seized during the course of search in the case of the assessee group and that this agreement was a registered document.

2.2 The Id.CIT(A) having allowed relief based on the order of the Hon'ble City Civil Court, Chennai in OS No. 7077/2011 dated 19.06.2012, erred in not appreciating that in the said order, nowhere did the Hon'ble Court mention that no advance was received by the assessee and as pointed out by AO that at point no.5 on page 3 of the sale agreement, it was clearly stated that 'the purchasers have today paid a sum of Rs.200,00,000/- only as advance by way of cash and the receipt of which the Vendor doth hereby admit and acknowledge' and the agreement was duly executed and signed by both the parties.

2.3 The Id.CIT(A) ought to have appreciated that at point No.16 of the Sale Agreement, it is mentioned that the original title deed shall be handed over by the assessee company and since the Hon'ble Court has directed the buyer Smt. Bhavika Jain to return the title deed, it transpires that, in furtherance of and in part performance of the sale agreement, original title deed was handed over to the buyer.

2.4 The Id. CIT(A) ought to have appreciated that in his answer to question no. 16 of the sworn statement recorded on the date of search u/s 132 of the IT Act on 21.06.2011, Shri B. Venkatrama Reddy, one of the directors of assessee company, has stated that the transaction with Smt. M. Bhavika Jain was loan taken and that a court case was pending.

2.5 The Id.CIT(A) ought to have appreciated that, the intention of the AO was not to hold that sale of land has become absolute and the relevant capital gains is to be taxed but that the amount of Rs.2,00,00,000/- shown in the said sale agreement as received as advance and stated by Shri B. Venkatram Reddy in his sworn statement recorded during the course of as loan received is to be treated as the unaccounted income of the assessee company brought in, in the guise of advance/loan.

2.6 The Ld.CIT(A) having relied on the order of Special Tahsildhar (land acquisition) in LAOP No.01/2013 dated 25-4-2014 to hold that it is an evident that the assessee company had not sold the property in the previous year relevant to A.Y 2010-11, ought to have appreciated that this document being a fresh evidence, the Id.CIT(A) ought to have given an opportunity to the AO to examine the veracity of the same as required in Rule 46A(3) of the IT Rules, 1962.

2. The Registry has noted a delay of 3 days in the appeal, the condonation of which has been sought by the revenue. Considering the period of delay, the delay is condoned and the appeal is admitted for adjudication on merits.

3. The assessee has also filed cross-objections which read as under:

1. The Appeal filed by the Department has not been filed within the statutory time limit of sixty days from the date of receipt of the order under appeal. Form 36 filed by the department shows the date of receipt as 21.12.2017 and the verification by the concerned officer is dated 18 March 2018. This clearly establishes that the Appeal is barred by limitation and hence liable to be dismissed.

2. without prejudice to Ground No.1,

a. The learned Assessing Officer erred in assuming jurisdiction u/s 153C of the Income Tax Act, 1961 against the Appellant.

b. The learned Assessing Officer issued notice u/s 153C despite being aware that the documents seized in the course of search had no bearing on the case of the Appellant for the year under consideration. The learned Assessing officer, therefore, grossly erred in ignoring the jurisdictional condition precedent to the issue of notice u/s 153C that money, bullion, jewellery or other valuable article or thing or any books of account or

document relevant for the year must be seized. Consequently, the satisfaction recorded by him for the year is bad in law and the assessment made in pursuance thereof is also bad in law.

- c. The learned Assessing Officer failed to realise that no notice u/s 153C could be issued in the absence of seizure of any incriminating document in the course of search u/s 132.
- d. The learned Assessing Officer erred in not following Circular No. 24/2015 dated 31 December 2015 issued by the CBDT which clearly instructs the Officers to record satisfaction note for assumption of jurisdiction u/s 153C. Assumption of jurisdiction u/s 153C is not an empty formality and it can be exercised only on being satisfied that the document seized is incriminating in nature.
- e. The seized documents are neither relevant for the year nor are incriminating in nature. Yet, the Assessing Officer wrongly assumed jurisdiction u/s 153C and has proceeded to deal with settled issues arriving at different conclusions thereon leading to addition. Such addition cannot be sustained in law. That there is no nexus of the document seized with the addition made alone is sufficient to quash the assessment order made u/s 153C.

4. The Ld. CIT-DR assailed the findings of Ld. CIT(A) in the impugned order whereas Ld. AR submitted that the documents which formed the very basis of additions was declared null and void. Having heard rival submissions and after due consideration of material on record, our adjudication would be as under.

Assessment Proceedings

5.1 The assessee was assessed u/s 153C r.w.s. 143(3) in view of the fact that the assessee group was subjected to search action u/s 132 on 21.06.2011. The assessee was engaged in real estate business. The group was managed by Shri B.Venkatrama Reddy and Shri Sukumar Reddy who were the directors of the assessee-company.

5.2 During search operations, one seized document was found which was in the shape of an agreement dated 24.08.2009 between the assessee and one Mrs. Bhavika Jain. As per the agreement, the assessee agreed to sell one acre of land at Paiyanoor for a sum of

Rs.210 Lacs out of which Rs.200 Lacs were already been received. Since the transaction was not reflected in the books of account, the assessee was confronted with the same.

5.3 The assessee submitted that the agreement was not executed at all and the alleged amount was never received. The assessee also produced copy of court judgment dated 19.06.2012 in OS No.7077 of 2011 passed by Hon'ble City Civil Court, Chennai by which the sale agreement dated 24.08.2009 was held to be null and void and Mrs. Bhavika Jain was directed to handover the original title deeds dated 23.03.2006. However, Ld. AO held that it was nowhere observed by the court that the money was never paid. Therefore, the amount of Rs.200 Lacs was added to the income of the assessee as unaccounted money.

Appellate Proceedings

6.1 During appellate proceedings, drawing attention to the order of civil court, the assessee submitted that it was not at all connected with the fraudulent sale agreement dated 24.08.2009 entered into by Shri B.Venkatrama Reddy with Mrs. Bhavika Jain and the assessee never received the cash amount of Rs.200 Lacs. It was averred that once the Court passed a final decree in the suit, the sale agreement was declared null and void since the assessee never entered into such agreement and received the consideration as stated therein. It was further submitted that Shri B.Venkatrama Reddy was director from 26.12.2005 to 08.12.2009 to look after day-to-day affairs. However, he misused the position as director and put the group companies into huge litigation and caused irreparable financial loss. When the group came to know of acts of omissions / commissions, irregularities and fraudulent acts of the director then it initiated civil and criminal cases against him. As a result of the

same, the sale agreement was declared null and void. The assessee also submitted that no approval to sell the property was taken from the Board of Directors and there was no Board resolution authorizing the director to conduct the sale of the property. To further support the same, the assessee drew attention to the peculiar terms of the sale agreement.

6.2 The arguments of assessee found favor with Ld. CIT(A) who concurred that the director acted without proper authority and defrauded the assessee-company. The assessee never received the said amount of Rs.200 Lacs. Further, in the judgment dated 19.06.2012, the agreement was declared null and void. Therefore, the addition was to be deleted. The relevant observations were as under: -

5. The submissions made by the assessee are verified. The assessee has elaborated the facts and circumstances of the developments in this case since 2009. The assessee has alleged that its former Director Shri Venkatarama Reddy had acted without proper authority and had defrauded the company. The assessee company has clearly undertaken that it has not received any monies of Rs.2,00,00,000 and that the property has not been sold. The detailed fact narrated by the assessee appear to be correct and acceptable. Moreover, the assessee has submitted a copy of the judgment dated 19.6.2012 by the Civil Court Judge in OS No.7077/2011 which reads as under:

"PWI present proof affidavit already fixed and Ex A1 to Ex.A3 marked and perused. Ex A1 is the Authorisation letter dated 6.6.2012. Ex A2 is the sale agreement dated 24.8.2009. Ex A3 is the legal notice with acknowledgment cards dated 27.7.2011. On perusal of records the plaintiff has made out his claim. Claim proved "Hence sale Agreement between 1 & 2" defendants 24.8.2009 and registered as doc. No.3017/2009 is null and void and the 1st defendant is directed to handover the original title deeds dated 23.3.2006 to the plaintiffs company and granted permanent injunction against the defendants restraining the defendants, their agents, servants or any one acting under them in dealing with the Schedule mentioned property and title deeds of the property with cost. Hence suit is decreed as prayed for with cost".

In the result, the suit is decreed as prayed for with cost".

6. Further, the assessee has also submitted an order by the Special Tahsildhar (land acquisition) in LAOP No.01/2013 dated 25.4.2014 on the impugned property as under:

"In the result, the reference made by the Land Acquisition Officer namely the Special Tahsildhar, Land Acquisition, Radial Road Scheme, Tambaram,

u/s.21(2) and Sec.22(3) of the Tamilnadu High Ways Act 2001 (34/2002) regarding acquisition of land at Paiyanur Village, Chengalpattu Taluk, lands acquired for the formation of IT express way (i.e) to extend six lay of old Mahabalipuram Road in Survey No.89/3 Al part-01833 sq. meters, under Collector RC 16832/2009 FI dated 15.9.2011 award serial no.9 in award No.12/2011 dated 15.9.2011 for a sum of Rs.67,94,848 is disbursed to the claimant.

The claimant is directed to produce after getting original sale deed in the, EP.30/2013 in City Civil Court, Chennai OS. 7077/2011 on the file of the Additional Sub Court, Chengalpattu, to the Special Tahsildhar, Chengalpattu, for making entries in the document for the proof of payment regarding compensation.

The claimant is directed to execute an indemnity bond for the compensation amount with interest to repay if the judgment and decree in OS.8887/2011 on the file City Civil Court, Chennai".

7. From the facts established by the assessee with support from Civil Decree dated 19.6.2012 by the Civil Court Judge in OS No.7077 /2011 as well as the order of Special Tahsildhar (land acquisition) in LAOP No.01/2013 dated 25.4.2014, it is evident that the assessee company had not sold any property and had not received any consideration during Assessment Year.2010-11 with respect to the impugned property. In view of the same, taxation of Rs.2,00,00,000 in the hands of the assessee is not correct and justified. The Assessing Officer is directed to delete the additions made."

Aggrieved as aforesaid, the revenue is in further appeal before us.

Our findings and Adjudication

7. Upon careful consideration of material facts, it could be gathered that the whole basis to make additions in the hands of the assessee is sale agreement dated 24.08.2009 allegedly executed between the assessee and one Mrs. Bhavika Jain. On the basis of this agreement, it has been alleged by Ld. AO that the assessee has received unaccounted money of Rs.200 Lacs on sale of land. However, as discernible from the order of Civil Court, the sale agreement has been declared null and void and Mrs. Bhavika Jain has been directed to hand over the original documents to the assessee. This is further supported by the order of Special Tehsildhar (land acquisition) in LAOP No.01/2013 dated 25.4.2014 on the impugned property. The same has already been

captured by Ld. CIT(A) in the impugned order. All these facts would lend credence to the fact that the agreement was executed fraudulently by the director of the assessee-company to sell the property without any valid authorization. The director of the assessee-company misused the position as director which ultimately led to declaration of sale agreement as null and void. Therefore, the money as allegedly paid under the agreement could not be considered to be received by the assessee and held as unaccounted money of the assessee. The Ld. CIT(A) has correctly appreciated the material facts and adjudicated the issue. Finding no reason to interfere in the same, we dismiss the appeal of the revenue. Ground No.1 of assessee's cross-objection opposing condonation of delay stand dismissed. The other grounds have been rendered academic and therefore, not dealt with.

8. The revenue's appeal as well as assessee's cross-objection stand dismissed.

Order pronounced on 06th July, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 06-07-2022.
JPV

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF