

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपीलसं./ITA No.: 2483/CHNY/2017

निर्धारण वर्ष/Assessment Year: 1996 - 97

**Shri H.M. Pandey,**  
Plot No.8, North Avenue,  
Anna Nagar West Extension,  
Chennai – 600 101.

**The Income Tax Officer,**  
vs. Non-Corporate Ward 19(1),  
Chennai.

**PAN: AASPP 0040M**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri T. Vasudevan, Advocate  
: Shri M. Rajan, CIT

सुनवाई की तारीख/Date of Hearing

: 05.09.2022

घोषणा की तारीख/Date of Pronouncement

: 16.09.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-12, Chennai in ITA No.280/CIT(A)-12/2013-14 dated 30.08.2017. The assessment was framed by the ACIT, Salary Circle-I(i/c), Chennai for the assessment year 1996-97 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 30.03.2004.

2. The first issue on merits is as regard to the order of CIT(A) confirming the addition made by AO of Rs,75,39,200/- under the head 'Income from other sources' as gratification received by assessee for awarding of contract for supply of TV sets, based on Trial Court decision on alleged gratification received from Videocon amounting to Rs.37,79,200/- and from Uptron amounting to Rs.37,60,000/-. For this, assessee has raised Ground Nos.3 to 10, which are argumentative and exhaustive and hence, need not be reproduced.

3. Brief facts are that the assessee was an IAS officer and was Secretary to the Department of Rural Development, Government of TamilNadu till 06.12.1995 and thereafter upto 31.03.1996 was Secretary to the Labour and Employment Department. The assessee filed his return of income for the assessment year 1996-97 on 28.07.1999. The assessment was reopened by issuing notice u/s.148 of the Act dated 27.03.2003. The reopening was done for the reason that the assessee been Secretary, Department of Rural Development, Government of Tamil Nadu during the relevant period under consideration and in receipt of illegal gratification from Videocon and Uptron, the TV suppliers for favoring them in supply orders. According to AO, the entire case of the assessee raised on

the decision of the Trial Court. The AO noted that a criminal case was instituted against the assessee under the Prevention of Corruption Act and also under various provisions of section under Indian Penal Code. The charge against the accused assessee was that, he has accepted Rs.30,00,000/- from BPL Company and Rs.37,79,200/- from Videocon Company and Rs.37,60,000/- from Uptron Company. The Trial Judge after verifying the evidences at para 69 of the judgment pronounced that the acceptance of gratification of Rs.30,00,000/- from BPL was not proved because the prosecution witness turned hostile. It was noted that the charge in regard to receipt of illegal gratification from Videocon Company amounting to Rs.37,79,200/- through one Shri K. Jayaraj was proved. Similarly, the trial judge noted that the assessee has received Rs.17,03,750/- as his share being the balance amount out of total share of Rs.37,60,000/- after receipt of Rs.20,56,250/- at the first instance. According to Trial Judge, the total sum of Rs.37,60,000/- is receipt of illegal gratification by assessee for approval of purchase of TV sets from Uptron Company. In view of the above, the AO just based on trial court judgment made addition of these two illegal gratification i.e., amount received from Uptron Company amounting to Rs.37,60,000/- and amount received from

Videocon Company amounting to Rs.37,79,200/- through Shri K. Jayaraj, by observing in para 9 as under:-

“The judicial authority having pronounced a judgment against the assessee concluding that he did receive the sums of Rs.37,79,200/- and Rs.37,60,000/- no further evidence is required. The Hon. Court has already gone into the oral and documentary evidences led by the prosecution during the trial. The Court has also considered the cross examination and the suggestions made by the defence and also the arguments of the defence lawyer. In view of the findings of the Court and the assessee having not come with any claim of expenditure during the course of assessment proceedings, I have added the entire proceedings from the two TV companies as income from other sources.”

Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the action of the AO in making addition on the basis that although the Hon'ble High Court has acquitted the accused assessee in the case relating to illegal gratification received in relation to TV purchases for Government of Tamil Nadu from Uptron Company and Videocon Company. But the judgment of Hon'ble High Court has not reached finality and hence, he confirmed the addition of Rs.75,39,200/- by observing in para 17, 18 & 19 as under:-

17. Similarly, though the High Court has acquitted the appellant in the case related to the transaction related to TV purchases for want of proof, it is pertinent to note that the Hon'ble High Court has convicted the appellant in disproportionate assets case.

18. In the order dated 12.01.2016 passed by the High Court of Madras (139 of 1999), it has been stated that "he amassed wealth, by using ill-gotten money to the value of Rs.1,01,32,107/- " The High Court also held that in the appellants case, This mere forfeiture of assets is not sufficient, the confiscation is unavoidable. This indicates the seriousness of the affairs noted by the Hon'ble High Court and therefore unless there is strong evidence contrary to what is held by the AO, no re-look at the order is possible at first appellate stage.

19. The case in which the appellant has been acquitted has not reached finality. At the same time, the appellant has filed appeal against his conviction in the disproportionate case. On an analysis of the facts on the disproportionate case, it is seen that the same has a bearing on the facts of the current case. The argument that the appellant has got acquitted by High Court on the issue of addition disputed in the current assessment does not make the appellant eligible for relief because the appellant could not prove his case with valid evidence either during assessment proceedings or appellate proceedings. In such a scenario, any material indicating acquisition of assets disproportionate to income in the case of appellant is relevant. Therefore, as the appellant could not disprove the facts on which the AO has made the impugned assessment, I confirm the addition of Rs.73,39,200/- made by the AO under Income from Other Sources.

Aggrieved, now assessee is in appeal before the Tribunal.

5. The Id.counsel for the assessee before us filed copy of judgment of Hon'ble Madras High Court dated 21.08.2009 in Criminal Appeal Nos.452 to 458 of 2000, wherein the assessee as accused No.4, was appellant in C.A. No.457/2000/ Accused No.4. The Id.counsel for the assessee read out the entire judgment and Hon'ble Madras High Court and he referred to the relevant paras,

wherein accused was acquitted by Hon'ble High Court and observed as under:-

102. Let us now take up the charge as against the fourth accused H.M.Pandey who was the Secretary, Rural Development Department. This court has already discarded the evidence of PW27 Jayaraj. Jayaraj would depose that he met A4 in the State Guest House on 21.10.1995 during evening hours. It is the version of PW27 that A4 demanded a commission of Rs.400/= per set and indicated that there was a bright chance for fixing the price of each television set at Rs.15,000/=. He would further depose that A4 asked PW27 not to quote anything less than a sum of Rs.15,000/= per television set. So, according to PW27, such an advice was given by A4 to him on 21.10.1995. But, it is found that PW27 had quoted the price of Rs.15,290/= per set as per Ex.P139 and submitted the same to the office of the Director of Rural Development on 20.10.1995 itself. His quotation at the rate of Rs.15,290/= per television set on 20.10.1995 itself a day earlier to the alleged advice given by A4 to him would go to establish that PW27 was not speaking the truth with respect to the aforesaid episode.

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104. The evidence of PW27 did not receive corroboration from PW29 Radhakrishnan, the Assistant General Manager of Videocon Company as regards the demand of commission of Rs.400/= per set by A4. To top it all, PW29 has come out with a revelation that the fourth accused in fact asked him as to why Videocon Company could not supply television sets directly to the Government eliminating the agents. If at all A4 wanted to eliminate agents from the deal and expressed his desire to have direct deal with Videocon Company as admitted by PW29, there was no scope for him to ask for commission of Rs.400/= per set from the agents PW27 and his brother. PW27 would depose that his brother Rajaguru also accompanied him to the Government Guest House on 21.10.1995 to meet A4. The credibility of PW27 has completely nose dived. But, quite unfortunately, the prosecution has never thought of examining his brother for lending corroboration to the evidence of PW27. As PW27 is also found to be jointly guilty as per his own showing, it is totally unsafe to rely upon his statement without any corroboration from an independent source or by substantial evidence unerringly supporting his statement to add evidentiary value to his testimony. The very fact that PW27 chose to quote a sum of Rs.15,290/= per set on 20.10.1995 under Ex.P139 even before meeting A4

on 21.10.1995 and later on quoted for a sum of Rs.12,500/= per set on 26.10.1995 even after meeting A4 with the alleged piece of advice rendered by A4 would go to show that PW27 never acted as per the alleged advice of A4. The above facts and circumstances would go to show that the version of PW27 that A4 asked him to quote not less than Rs.15,000/= and demanded commission of Rs.400/= per set is found to be totally unbelievable.

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109. Even as per the own showing of PW27, there was no role for A4 in the increase of allotment from 1000 television sets to 9448 television sets. Such being the case, no person of ordinary prudence would have parted with commission to A4 at the rate of Rs.400/= per set for 8448 television sets. PW27 would depose that having sent a fax message Ex.P161 on 17.11.1995 to the Finance Secretary, he alongwith his brother met A4 on the next day i.e., on 18.11.1995. He would further state that in the meeting with A2 on 19.11.1995, A4 also was present. But, A4 has produced Ex.D27 to establish that he had been to Delhi on 16.11.1995 and returned to Chennai only on 20.11.1995. A4 had been to Vellore as found from Ex.D28 on 11.2.1996 to attend to the visit of Her Royal Highness, the Duchess of Kent and returned to Chennai only on 13.2.1996. But, unfortunately, the deposition of PW27 that he made payment to A4 during that period at Chennai was accepted by the Trial Court. The Trial Court would reason out that A4 would have come down to Chennai from Vellore and received money from PW27 during that period and returned to Vellore. Firstly, that is not the case of the prosecution. Secondly, such a surmise of the court was not supported by evidence. The court is not supposed to take a departure from the case of the prosecution and supply its own reasons for arriving at a conclusion with regard to a particular fact. The court cannot construct and reconstruct a story different from the one propounded by the prosecution and convict the accused on that basis. At any rate, such a conclusion arrived at by the Trial Court is totally unwarranted either by evidence or by facts of the case.

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111. PW14 would further depose that the cheque dated 5.2.1996 Ex.P86 was handed over to Balasubramanian on 24.1.1996 as per Ex.P106. It is not clear as to why a cheque dated 5.2.1996 was handed over on 24.1.1996 itself. In this connection, it is pertinent to note that the said Balasubramanian

who received the cheque was not examined by the prosecuting agency. It was he who could speak as to when he gave the said cheque to PW15 and how it was encashed. Obviously, there is no record to show that the said cheque was encashed on 12.2.1996. The episode surrounding other cheque Ex.P87 is more mysterious. Though cheque, Ex.P87 dated 7.2.1996 was payable to PW15, it was received by Balasubramanian only on 28.2.1996 as per Ex.P107. When the cheque itself was received on 28.2.1996, the prosecution failed to explain as to how such a cheque could have been encashed on 12.2.1996 itself. Chandrakumar, who happened to accompany PW14 for making the alleged payment to A4 was not examined. Chandrakumar being the immediate superior of PW14 could have thrown some light on the prevaricating version of PW14, but, quite unfortunately, the said Chandrakumar was not examined before the court. The Trial Court has simply relied upon those witnesses whose testimony does not stand the legal scrutiny and arrived at a conclusion that A4 demanded and received commission from the agents of the Television Company misusing his office.

5.1 In view of the above, the Id.counsel stated that the above paras reproduced are related to the present assessee, wherein present assessee was made accused and trial court held assessee guilty of the charges of receiving illegal gratification but the Hon'ble High Court has acquitted the assessee as noted above in the judgment of Hon'ble High Court. The Id.counsel for the assessee stated that the entire premise of the AO and that of the CIT(A) was only the order passed by the trial judge in the criminal case constituted against the assessee under the Prevention of Corruption Act and Indian Penal Code. He stated that none of the authorities below have gone into any of the statement of these parties or other evidences by virtue of which addition is made. Hence, the addition

is only based on the order of the trial court sentencing the assessee accused, the addition cannot be sustained because the Hon'ble High Court has acquitted the assessee on the same reasoning.

6. On the other hand, the Id. Senior DR relied on the judgment of the Hon'ble Madras High Court in Criminal appeal No.139 of 1999 dated 12.01.2016, wherein charges framed by Special Judge No.1/XI Additional Judge, Chennai - 1, in Special C.C.No.3 of 1999 dated 02-03-2001 sentencing the appellant to four years of R.I. and imposing a fine of Rs.1 lac which was paid on 02-03-2001 and ordering that an amount of Rs.1,01,32,107/- shall be forfeited to Government under Sec 13 (3) of Criminal Law Amendment Ordinance 1944 and ordering the District Collector to recover the said amount by the provisions contemplated under the Revenue Recovery Act after the appeal time is over, for an offence under Section 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988 and prays to set aside the judgment and conviction and order of forfeiture. According to Id. Senior DR, the Hon'ble High Court has confirmed the judgment of Special Court and dismissed the Criminal Appeal No.192 of 2000 and Criminal Appeal No.139 of 1999 and the relevant portion cited before us i.e., para 27 of the judgment reads as under:-

27. Considering the aforesaid factual circumstances, this Court is of the view that subject to charge created in favour of the petitioner found in CrI.M.P.No.2384 of 1998, properties mentioned in the Annexure can be confiscated.

In fine,

(i) CrI.A.No.192 of 2001 is dismissed. The conviction and sentence passed in Spl.C.C.No.3 of 1999 by the Special Judge No.I (XI Additional Judge) are confirmed. If the appellant/accused is not in duress, the Trial Court is directed to take appropriate steps to immure him in prison to serve out the remaining period of sentence.

(ii) CrI.A.No.304 of 2001 is allowed to the extent of relief sought therein. The immovable properties mentioned in the concerned Annexure are confiscated to the State Government subject to the charge created in favour of the petitioner found in CrI.M.P.No.2384 of 1998 in CrI.O.P.No.9 of 1997.

(iii) Since an order of confiscation has been passed subject to the charge of the petitioner in CrI.M.P.No.2384 of 1998, CrI.A.No.139 of 1999 is dismissed.

According to Id. Senior DR, the assessee was held to be amassing assets disproportionate to his Known sources of income to the extent of Rs.1,01,32,107/- which was confirmed by Hon'ble Madras High Court to be confiscated by the State Government subject to the charge created in favour of the petitioner. In view of this, the Id. Senior DR stated that once the disproportionate assets case was decided by Hon'ble High Court against the assessee, the above additions may be confirmed.

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessment order and the order of CIT(A) is just based on the order of trial court holding that the accused assessee has received illegal gratification from Videocon Company amounting to Rs.37,79,200/- and from Uptron Company amounting to Rs.37,60,000/-. The entire basis of assessment is just the trial court judgment as is noted by us in the findings of the AO in para 9 of his assessment order, which is reproduced in the above para 3. The CIT(A) although gone into acquittal order of the acquitting the assessee in the case of transaction relating to TV purchases and alleged illegal gratification receipt but relied on another judgment of Hon'ble Madras High Court dated 12.01.2016, wherein the criminal case relating disproportionate asset was decided against the accused assessee and the relevant findings of CIT(A) given in appellate order para 17, 18 & 19 have already been reproduced by us in this order at para 4. We noted that entire basis of addition is just the findings recorded by the Trial Court and we have also perused the criminal case of the accused assessee and disproportionate asset adjudicated by Hon'ble Madras High Court, wherein there is no charge qua illegal gratification received by assessee from Videocon Company and Uptron Company. The charge in criminal case is disproportionate

asset case before special Court and Hon'ble Madras High Court was amassing wealth disproportionate to his known source of income to the extent of Rs.1,01,32,107/-. But the same was not at all related or there is no evidence that the same is in relation to alleged illegal gratification received by assessee from Videocon Company or Uptron Company. Even in the disproportionate assets case decided by Hon'ble High Court, there is no order of income in which year the assessee has amassed wealth as correlation with that of the alleged illegal gratification received by assessee.

8. From the above, we came to conclusion that the entire basis of assessment in this case is the Trial Court judgment, by virtue of which the assessee was held guilty receiving illegal gratification of Rs.37,79,200/- from Videocon Company and Rs.37,60,000/- from Uptron Company. Apart from this, there is no other material before CIT(A) or before AO to come to a conclusion that the assessee received these two amounts from these two companies for giving order for supply of TV sets. The AO has not gone into independent examination of any of the witnesses or any evidence whatsoever was brought on record for framing assessment except this Trial Court judgment. The Trial Cour judgment was subsequently revised by Hon'ble Madras High Court in Criminal Appeal No. 457/2000. As

the reliance placed by Revenue on the decision of Hon'ble Madras High Court in the disproportionate asset case in Criminal Appeal No.139 of 1999, 192 and 304 of 2001, wherein the accused was guilty of having disproportionate assets to his non-source of income to the extent of Rs.1,01,32,107/- but it is not clear that in which year, this income in relation to disproportionate asset was earned by assessee. It is also not clear from the order, for which we have gone through this order that these two alleged illegal gratification received from Videocon Company and Uptron Company are connected in any way with this disproportionate asset case. According to our reading, there is none. In such circumstances, no doubt the criminal case or proceedings in criminal case can be a basis for assessment but that criminal proceedings before the Trial Court as annulled by Hon'ble Madras High Court and that is also be taken into cognizance. As regards to Hon'ble Madras High Court in Criminal Appeal No.457 of 2000 has acquitted the assessee, as noted above in para 5 of our order, we are inclined to delete the addition.

9. The issue regarding consideration of material in the form of judgment of Civil Court came for consideration before the Hon'ble Bombay High Court in the case of J.S. Parkar vs. V.B. Palekar and

Others, 94 ITR 616, wherein the Hon'ble Bombay High Court has considered this issue and finally this being a three judge decision concurring with each other has considered as under:-

156. On a consideration of the rival submission that were put forward before the Division Bench, Mr. Justice Deshpande negatived all the contentions that were urged on behalf of the petitioner in the case. With regard to the first contention he took the view that the position was well-settled that the provisions of the Evidence Act did not apply to the proceedings before the Income-tax Officer and that it was open to the Income-tax Officer to rely upon the material in the form of judgment of the criminal court and come to a conclusion one way or the other on the question of ownership of gold. Relying upon direct authority of the Punjab High Court in the case of Anraj Narain Dass v. Commissioner of Income-tax, where reliance on the judgment of the criminal court by the Income-tax Officer was considered to be perfectly legal and further relying upon the decision of the Supreme Court in Dhakeshwari Cotton Mills Ltd. v. Commissioner of Income-tax he took the view that no fault could be found with the income-tax authorities if they choose to rely upon the proceedings and the judgments of the criminal courts where an assessee was tried for the same set of facts and that the findings recorded in the criminal courts being undoubtedly relevant for deciding the controversies that had arisen in the case the Income-tax Officer was justified in coming to the conclusion on the issue involved before him basing his decision on such material.....

and further, the Hon'ble High Court observed that

157. It may, however, be stated that out of the five contentions that were urged on behalf of the petitioner, Mr. Justice Mukhi expressed his agreement with the views of Mr. Justice Deshpande on three contentions. Mr. Justice Mukhi did not find any substance in the contention that the assessment order could not have been founded on the judgment and the evidence produced before the criminal court nor did he find any substance in the contention that the findings that were recorded by the income-tax authorities had been recorded in breach or violation of the principle of natural justice.....

9.1 From the above judgment of Hon'ble Bombay High Court, it is clear that the Revenue can rely upon the material in the form of judgment of the Criminal Court and findings recorded in the Criminal Court being undoubtedly relevant for deciding the controversy that had arisen in the Income Tax proceedings, the AO is justified in considering the same. But in the present case before us, the Hon'ble Madras High Court has acquitted the assessee in Criminal Appeal No.457 of 2000 and apart from this neither the AO nor CIT(A) has not at all considered any other material and in such circumstances, we cannot sustain the addition. Hence, we delete the addition and allow the appeal of assessee.

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

Order pronounced in the open court on 16<sup>th</sup> September, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह )

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 16<sup>th</sup> September, 2022

**RSR**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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