

आयकर अपीलीय अधिकरण चेन्नई "सी" न्यायपीठ में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHENNAI BENCHES "C" : CHENNAI

BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.3427/CHNY/2018
निर्धारण वर्ष / Assessment Year : 2015-16

Shri Somasundara Kumar, No.D/26, Luckpriya Mark, 4 th Floor, 7 th Cross, Thillai Nagar, Trichy – 620 018. PAN: AHYPK 7550 N	Vs	The Income Tax Officer, Ward-3(2), Trichy.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None
Revenue by	Shri Sajit Kumar – JCIT(DR)
Date of hearing	23/08/2022
Date of pronouncement	21/11/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id. Commissioner of Income Tax(Appeals)-1, Trichy dated 12.10.2018 emanating from the assessment order passed under section 143(3) dated 31.12.2017 for A.Y. 2015-16. The Grounds of appeal raised by the assessee are as under:

“The order of the Hon'ble Commissioner of Income Tax (Appeal) and Assessing Officer is against facts and circumstances of the case.

Both the Learned CIT (A) and the Assessing Officer has failed to appreciate the various submissions made by the assessee.

1. Disallowance under section 69 of the IT Act - Rs.29,76,925/-

The assessing officer is erred in his conclusions that there was a cash consideration for the sale of land that the amount was to be

handed over to the original owners and such a conclusion based on surmises and conjectures without reading the terms of POA and powers and obligation of the grantee under the POA and other relevant circumstances was arbitrary and bad in law.

The Assessing Officer ought to have noticed from the facts and circumstances particularly the contents of POA that the deed of sale was only a deed of convenience to accomplish the work entrusted to the granter of POA and therefore consideration was agreed to be paid by Book entries and there is no material on record to the contrary. Section 69 has no application to the facts of the case.

2. Disallowance under section 43CA of the IT Act - Rs.5,04,460/-

The Assessing Officer erred in assuming that income deemed under section 43CA was automatic without any question whatsoever overlooking the settled legal position that a legal fiction should not work injustice to the affected party and procedure of safeguards provided in that section against injustice, an empirical study by experts rather than adhoc value fixed by Registrar Authorities, having been not followed by CIT and AO in violation of principles of Natural Justice, the addition made under section 43CA deserve to be deleted.

Based on the above submission the Appellant prays that appeal be allowed.

The Appellant prays to submit additional grounds if any at the time of hearing.”

None appeared on behalf of the assessee. We heard ld.Departmental Representative(ld.DR) for the Revenue and perused the records.

2. **Brief history of the case:** This case came up for hearing on 16.04.2019 before ITAT “C” Bench, Chennai. No one appeared on behalf of the assessee for the said hearing. The ITAT “C” Bench Chennai heard the ld.DR and passed the order on 30.04.2019 discussing merits of the case. On merits the ITAT dismissed the

appeal of the assessee. The assessee filed Miscellaneous Application No.149/CHNY/2019 requesting for one more opportunity to represent the case. In the M.A. Petition, the assessee claimed that the assessee had changed the address, therefore, the assessee did not receive the hearing notices. The M.A. No.149/CHNY/2019 was heard on 08.11.2019. Mr.M.Viswanathan appeared on behalf of the assessee. The ITAT vide order dated 08.11.2019 recalled its earlier order in ITA No.3427/CHNY/2018 dated 30.04.2019 and re-fixed the case for hearing. In the M.A. order, it is categorically mentioned “since the date of hearing was announced in the presence of both the parties, it may not be necessary for the registry to issue a separate notice of hearing”.

3. However, as mentioned earlier, the case was called for twice today i.e. 23.08.2022, however, no one appeared on behalf of the assessee.

4. **Brief facts of the case:** The assessee filed return of income for A.Y. 2015-16 on 30.08.2015 declaring total income of Rs.6,93,000/-. The case was selected for limited scrutiny. Accordingly, notice under section 143(2) was issued and served on the assessee. However, during the assessment proceedings, the Assessing Officer(AO) received information regarding purchase of property by assessee, therefore, the AO submitted proposal to the Id.Pr.CIT,

Trichy for conversion of the case to complete scrutiny. The said proposal was approved by the Id.Pr.CIT, Trichy-2 vide his letter no.Scrutiny approval.Pr.CIT/TRY-2/2017-18.568 dated 18.12.2017.

5. In para 5.1 of the assessment order it is mentioned that assessee has purchased immovable property at Kulumani Village for Rs.29,76,925/-. The said transaction was not appearing in the books of the assessee. The relevant part of the assessment order is reproduced here as under:

“5.1. Additions under section 69 of the Act towards Unexplained investment

From the cash flow statement filed by the assessee’s AR it was found that the payments made for the purchase of immovable property at Kulumani Village for Rs.29,76,925/- was not appearing. When enquired, the AR of the assessee filed a separate letter on 29.12.2017 stating as under:-

“The assessee got landed property through a registered sale deed for a total sum of Rs.29,76,925/- and the same is treated as due to his wife from whom it was purchased. No cash transaction was effected for the purchase of the said property which fact can be verified with reference to the balance sheet submitted by the assessee. Where in the assessee’s wife’s balance is showing a credit balance of Rs.36,76,925/-. Similarly his wife who is assessed to income tax in her Balance sheet reflected the same amount as due. Both the assessee’s and his wife’s balance sheets are available with you for your perusal.”

From the sale deed it is seen that Shri G Balasundaram and Sh G Rajagopal {original owners of the land} had given General

Power in favour of Smt K Radhika on 10.01.2011 and the Power was registered as document No.38/2011. Smt Radhika has sold the said property on 18.11.2014 to Shri S Kumar (her husband) for Rs.29,76,925/-. Shri S. Kumar has converted the above said land property into 30 plots and then sold three plots on 30.03.2015 for a consideration of Rs.4,32,000/- (stamp duty value Rs. 9,36,460/-). The land property was not belonging to Smt K Radhika and she has signed the document as the Power Agent for the original owners, who were not related party and hence the contention of the AR of the assessee that the amount of Rs.29,76,925/- was not paid to Radhika cannot be accepted, as the said amount was to be handed over to the original owners. Moreover, in the document, at page 6 it is clearly mentioned that the entire amount of Rs.29,76,925/- has already been paid by the purchaser, shri S Kumar and the same is received by Smt K Radhika, Power Agent on behalf of the original owners Shri . G Balasundaram and Sh G Rajagopal.

Hence, I am not satisfied with the explanation offered by the AR of the assessee and the cost of purchase of Rs.29,76,925/- is treated as Unexplained investment u/s 69 of the Act made by the assessee and accordingly the same is added to the returned income.”

6. Aggrieved by the same, the assessee filed appeal before the Id.CIT(A). The relevant part of the Id.CIT(A)'s order is reproduced herein under:

“4. The assessee has also raised one more ground with regard to disallowance of Rs.5,04,460/- under Section 43CA of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. D.R., the assessee has offered the sale value of three plots to Rs.4,32,000/-. The stamp duty authorities adopted the value at Rs.9,36,460/-. Therefore, according to the Ld. D.R., under Section 43CA of the

Act, the sale value of the plots was taken as Rs.9,36,460/-.

5. Having heard the Ld. D.R., we also perused the relevant material available on record. No material is produced before this Tribunal except the orders of the lower authorities. The assessee claimed before the Assessing Officer that no money was paid towards sale consideration in respect of the sale deed executed by his wife. From the order of the Assessing Officer, it appears that the claim of the assessee that the property was originally belonged to Shri G. Balasundaram and Shri G. Rajagopal and the assessee's wife Smt. K. Radhika in her capacity as power of attorney agent, executed the document on 18.11.2014 in favour of the assessee. As per the recital found in the impugned order, the sale deed discloses a receipt of Rs.29,76,925/-. The assessee claims that no money was paid to his wife for execution of the document. The assessee's wife is only a power of attorney agent, executed document on behalf of Shri G. Balasundaram and Shri G. Rajagopal. Therefore, the money should have been paid to the original owner Shri G. Balasundaram and Shri G. Rajagopal through the assessee's wife Smt. K. Radhika. Since the registered sale deed discloses the payment of sale consideration to the extent of Rs.29,76,925/-, the Assessing Officer made an addition disbelieving the statement of the assessee that no money was paid."

7. We have studied the case record. It is observed that during the M.A. proceedings, assessee had filed a paper book containing pages 1 to 48 and certified that the documents were filed before the Lower Authorities. At S.No.4 of the said paper book, assessee has filed copy of sale deed dated 18.11.2014 from page no.11 to 27. On perusal of the said document, it is observed that it is a registered sale deed dated 18.11.2014 having registration no.7410/2014. As per said

document, the assessee has purchased land at survey no.215/4A, Village Kulumani Gram, District Trichy admeasuring 58371 sq.feet from Smt.Radhika. Smt. K.Radhika was power of attorney holder for the said land. As per page six of the said agreement, assessee has paid entire consideration of Rs.29,76,925/- to Smt.Radhika and Smt.Radhika has received the entire amount.

8. At page no.43 to 48 of the said paper book is the power of attorney dated 10.01.2011 by G.Balasundaram and G.Rajagopal to Smt.Radhika for plot no.215/4A and 216/9 of Village Kulumani, District Trichy. The said power of attorney is the registered power of attorney.

9. Thus, as per these registered documents, it is clear that Smt.Radhika was power of attorney holder for the plot of land at survey no.215/4A which she sold to assessee for Rs.29,76,925/-. She has received entire consideration of Rs.29,76,925/- on 18.11.2014 which is categorically mentioned in the registered sale deed. It is observed that assessee was not able to explain the source of impugned investment. Even before the Id.CIT(A) or before us, the assessee has not filed any documents to explain the source of the said investment. The assessee has filed copy of the balance sheet of Smt.Radhika. However, from the said balance sheet it cannot be inferred that assessee has not made payment of Rs.29,76,925/- to

Smt.Radhika. Therefore, we agree with the conclusion drawn by the AO that assessee has failed to substantiate source of the investment of Rs.29,76,925/-. Therefore, the AO has rightly added the same amount in the assessment order to the total income of the assessee. Accordingly, the Ground No.1 of the assessee is dismissed.

10. Ground No.2: The assessee has sold three plots at Rs.4,32,000/-, however, the stamp duty authority have valued said transaction at Rs.9,36,460/-, therefore, the AO added the difference of Rs.5,04,460/- under section 43CA. The Id.CIT(A) has upheld addition. Since the assessee has objected to the valuation decided by stamp authorities, we direct the AO to refer the issue to the Departmental Valuation Officer(DVO) for valuation and adopt the value as decided by the DVO after giving opportunity to the assessee. Accordingly, Ground No.2 of the assessee is allowed for statistical purpose. Therefore, for this limited purpose only for deciding the value of the impugned sale value of three plots, the assessment is set-aside to the AO.

11. In the result, appeal of the Assessee is Partly Allowed.

Order pronounced in the open Court on 21st November, 2022.

Sd/-
(MAHAVIR SINGH)
VICE-PRESIDENT

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 21st Nov, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, चेन्नई बेंच,
चेन्नई / DR, ITAT, "C" Bench, Chennai.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.

S.No	Details	Date	Initials	Designation
1	Draft dictated on	10.11.2022		Sr. PS/PS
2	Final Draft placed before author	11.11.2022		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			