

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

**माननीय श्री वी. दुर्गा राव, 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.329/Chny/2020  
(निर्धारण वर्ष / Assessment Year: 2011-12)

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आयकर अपील सं./ ITA No.330/Chny/2020  
(निर्धारण वर्ष / Assessment Year: 2012-13)

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आयकर अपील सं./ ITA No.331/Chny/2020  
(निर्धारण वर्ष / Assessment Year: 2013-14)

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आयकर अपील सं./ ITA No.332/Chny/2020  
(निर्धारण वर्ष / Assessment Year: 2014-15)

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आयकर अपील सं./ ITA No.333/Chny/2020  
(निर्धारण वर्ष / Assessment Year: 2015-16)

<b>M/s. Kumaralayam Properties Pvt. Ltd.</b> 2B, II Floor, Royal Court, No.41, Venkatanarayana Road, T.Nagar, Chennai-600 017.	<b>बनाम/</b> <b>Vs.</b>	<b>ACIT</b> Central Circle-3(2), Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AACCK-4608-F</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकी ओरसे/ <b>Appellant by</b>	:	Shri K. Meenakshi Sundaram, (ITP)-Ld. AR
प्रत्यर्थीकी ओरसे/ <b>Respondent by</b>	:	Shri M. Rajan, (CIT)-Ld. DR

सुनवाईकी तारीख/ <b>Date of Hearing</b>	:	04-01-2023
घोषणाकी तारीख / <b>Date of Pronouncement</b>	:	29-03-2023

**आदेश / ORDER****PER BENCH:**

1. Aforesaid appeals by assessee for Assessment Years (AY) 2011-12 to 2015-16 arise out of separate appellate orders. However, the facts as well as issues are identical in all the years and it is admitted position that adjudication in one year would apply to the other years also. The appeal for Assessment Year (AY) 2011-12 arises out of the order of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 29-11-2019 in the matter of an assessment framed by learned Assessing Officer u/s 153A r.w.s. 143(3) r.w.s. 144 of the Act on 21-12-2018. The grounds raised by the assessee read as under: -

On questions of law:

1. The learned Commissioner (Appeals) ought to have appreciated the fact that there was no recovery of any cash, gold, silver, diamond, jewellery, valuable article or thing or documents of immovable property, promissory notes, cheques, drafts, bills of exchange, actionable claims etc and since the sin qua non for a search assessment is the recovery of cash etc during a search and further since such recovery is absent here the proceedings ought to have been closed as infructuous.
2. The learned Commissioner (Appeals) ought to have appreciated the fact that the excel sheets that were recovered during the search were only loose sheets which have no evidentiary value regarding concealment of income and hence no search assessment can be completed under section 153A solely relying upon loose sheets.
3. The learned Commissioner (Appeals) ought to have appreciated the fact that the search party did not come across any books of accounts, bank statements etc and hence section 153A has no application to the assessee's case.
4. The learned Commissioner (Appeals) ought to have appreciated the fact that the procedure laid down under sec153A permit a complete review of all the facts and evidences already considered in the completed assessments prior to the search along with materials recovered during the search.
5. The learned Commissioner (Appeals) ought to have appreciated the fact that the additions made in the original assessments and pending in the High Court of Chennai warranted a fresh application of mind and since the Commissioner did not consider the issues in the pending appeal in the High Court once again afresh in the search assessment under section 153A a serious error had crept into his order.
6. The learned Deputy Commissioner ought to have appreciated the fact that the search party found only Rs.4,400/- in the premises and no other materials had been seized which indicate clearly that there is no case for action under section 153A.

7. The learned Commissioner (Appeals) ought to have appreciated the fact that the Income tax Act does not authorize levy of tax on figures noted in loose sheets but only when the figures in the loose sheets are *linked* to a receipt of income.

8. The learned Commissioner (Appeals) ought to have appreciated the fact that unproved cash transactions by themselves in loose sheets are not income in any manner in the absence of corroborative evidences to the fact that there is direct nexus between the jottings in the loose sheets and to the presence of undeclared income or assets.

9. The Commissioner (Appeals) ought to have appreciated the fact that transactions in loose are not covered by chapter VI of the Income tax Act which deals with aggregation of income and treating certain receipts as deemed income.

On question of facts

1.The learned Commissioner (Appeals) ought to have appreciated the fact that Rs1,00,55,000 *even* if the same represented any business receipts they are not covered by chapter VI of the Income Tax Act which deals with aggregation of income and treating certain receipts as deemed income.

2.The learned Commissioner (Appeals) ought to have appreciated the fact that entries in the computer have no evidentiary *value* without corroborative evidences and the duty of collecting the corroborative evidences rests upon the department and this duty has not been discharged by the department so far in this case in the face of stout denial by the assessee that the entries in the excel sheets did not represent any details of *concealed commercial* receipts *in* the course of the business.

3.The learned Commissioner(Appeals) ought to have appreciated the fact that the entries in the excel sheets represented details collected by the assessee in respect of transactions that had taken place among *various* customers of the assessee in land related matters and such details were collected by the assessee without any verification of the genuineness by his own efforts for prevention of collusive activities among the assessee's customers for cheating the assessee of the commission due to the **assessee**.

4.The learned Commissioner (Appeals) ought to have appreciated the fact that the sum of Rs.1,00,55,000 represented only a part of the sales turnover and the entire turnover cannot be a profit for the business but only a percentage of the turnover represented income element *involved* in the receipt of Rs.1,00,55,000.

5. The learned Commissioner (Appeals) erred in confirming the entire turnover instead of directing the Assessing Officer only to estimate the income imbedded in Rs.1,00,55,000 at the net profit rate as admitted by the assessee *in* respect of the admitting turnover.

6. The learned Commissioner (Appeals) erred in treating the difference in jewel loans received and paid without examining the ownership of the jewels by holding that the excel sheets were books of accounts of the Company and by treating the excess payments of Rs.2,06,600 as unexplained income under section 69/69A in the hands of the company.

7. The learned Commissioner (Appeals) ought to have appreciated the fact that the sum of Rs.2,06,600 was a liability in the hands of the assessee as belonging to the employees by way of jewel loans and as such the same ought not to have been treated as an asset under section 69/69A.

8. The learned Commissioner (Appeals) erred in treating the receipts of Rs.5,33,56,000 received from STN properties (P) Ltd as unexplained cash receipts and as unexplained income under section 69/69A in the hands of the Company without properly investigating the same simply going by the belief that the excel sheets were books of accounts and that they belong to the assessee only.

11.The learned Commissioner (Appeals) erred in reaching summary conclusions without appreciating the fact that the entries in the excel sheets were dumb documents without any

corroborating evidences and that the transactions in the excel sheets under the heading of STN Properties (P) Ltd did not represent the income of the assessee.

12. The learned Commissioner (Appeals) erred in treating the entries in excel sheets to an extent of Rs.4,75,99,800 as unexplained cash receipts under section 69/69A simply because the same was entered as sums received during the period from unidentified persons.

13. Notwithstanding the objections for the inclusion of Rs.4,75,99,800 in full the addition ought to have been restricted to the profit element imbedded in the sum as there is no controversy that the whole amount of Rs.4,75,99,800 represented only the un-reflected portion of the total sale receipts.

14. As the assessment is wide open and since the proceedings start afresh from stage one all the issues that are pending in an appeal before the Honourable High Court of Chennai also ought to have been considered once again in an appeal before the Commissioner of Income tax (Appeals).

15. In short the learned Commissioner (Appeals) erred in treating a total sum of Rs.11,12,17,400 as unexplained income under section 69/69A knowing fully well that there were no assets in any form anywhere during the search operation under section 132 in the company's premises or in the premises of the Managing Director.

16. The assessee craves leave to file additional grounds and or additional evidences as the hearing progresses in case a need arises for the same.

17. The assessee under the circumstances submits that the Hon'ble Tribunal maybe pleased to annul the assessment under section 153A under law or in the alternative delete all the additions as unsustainable for elaborate reasons stated in the grounds of appeal restricting the additions to only the profit element imbedded in the cash transactions by way of assessee's portion of his commission."

As is evident, the assessee assails the validity of assessment proceedings on legal grounds. The assessee also assails the quantum additions on merits.

2. The Ld. AR advanced arguments supporting the case of the assessee. The Ld. AR submitted that in the absence of incriminating material, the impugned additions are not sustainable in law. The Ld. AR placed on record financial statements of the assessee and urged that the transactions as found during the course of search operations were not carried out by the assessee. The Ld. CIT-DR, on the other hand, controverted the arguments of Ld. AR and justified the impugned additions. The Ld. CIT-DR submitted that the additions have been made on the basis of seized material. Having heard rival submissions and after perusal of case records, our adjudication would be as under.

### **Proceedings before lower authorities**

3.1 From the facts, it emerges that the assessee is a resident corporate assessee and stated to be engaged in the business of real estate and construction. The original return of income was scrutinized u/s 143(3) on 31.03.2014 determining income of Rs.99.49 Lacs after certain additions / adjustments. The assessment was confirmed up-to the level of Tribunal vide ITA No.2200/Mds/2015 dated 20.09.2017 against which the assessee's appeal is stated to be pending before Hon'ble High Court of Madras.

3.2 In the meantime, the assessee was subjected to search action u/s 132 on 16.11.2016 and accordingly, notice u/s 153A was issued on 03.05.2018. Notices u/s 142(1) were issued from time to time requiring the assessee to file the requisite details which remained un-responded. Finally, the assessee filed its reply by post only on 05.12.2018. Considering the same, the assessment was framed.

3.3 During the course of search action, certain incriminating documents were seized in the form of loose sheets and electronic device vide annexure ANN/DSG/KPPL/LS/S and ANN/DSG/KPPL/ED/S. On perusal of said loose sheets, it was seen that the assessee received undisclosed cash from different parties during the year. The undisclosed receipts were not accounted in the books of accounts and accordingly, the books of account were rejected and following additions were made: -

#### **4. Unaccounted Receipts of Rs.100.55 Lacs**

4.1 The loose sheets as found during search were confronted to Mr. Nandagopala Reddy (Chairman and Managing Director) and sworn statement was recorded u/s. 132(4) on 12.01.2017, the relevant portion of which is extracted in the assessment order. The loose sheets

contained amounts received by the assessee from M/s Grand Housing Private Limited (GHPL) for project at Maiyur and Thirukachur. The page No.12 contained details of amount received by the assessee from GHPL for Rs.300 Lacs during the period 22.03.2011 to 24.03.2011. The amount of Rs.198.75 Lacs was received by cheques which was accounted in the books of accounts as advance received. However, the amount of Rs.100.55 Lacs was received in cash which was not accounted for in the books of accounts. The same was admitted in the recorded statement. It was submitted that the project had not materialized till date and the cash of Rs.100.55 Lacs belonging to GHPL was repaid to them during 2012. However, in the absence of any documentary evidences, the explanation furnished by the assessee was rejected and the amount of Rs.100.55 Lacs was added to the income of the assessee as unaccounted receipts.

4.2 The Ld. CIT(A) endorsed the action of Ld. AO on the ground that recordings of transaction were not random. The entries indicate date, purpose, mode of transactions etc. in an orderly fashion and the same was not dumb document. Accordingly, the additions were confirmed against which the assessee is in further appeal before us.

## **5. Unexplained Cash Receipts of Rs.2.06 Lacs out of Jewel Loans**

5.1 This addition was made since the loose sheet contained details of jewel loans availed by the different employees of the assessee during financial years 2010-11 to 2014-15. The assessee received said loan by pledging the jewels of its various employees on various dates. Since the assessee could not explain the same, the difference of receipts and

payments amounting to Rs.2.06 Lacs was added as unexplained cash receipts. Similar addition was made in other years.

5.2 Upon further appeal, Ld. CIT(A) endorsed the addition made by Ld. AO against which the assessee is in further appeal before us.

## **6. Unaccounted cash receipts from M/s. STN Properties Pvt.Ltd. (STN)**

6.1 During the course of search proceedings at office premises of STN on same date, an electronic device was seized and Page nos. 80 to 82 were extracted. The same contained details of land advances given by that entity to the assessee. In the sworn statement recorded u/s 132(4), the Chairman of STN stated that as on 05.12.2014, STN had given land advances to the assessee in cash for Rs.811.05 Lacs. However, the assessee's submissions reflected land advances of Rs.2306.43 Lacs from STN. The Ld. AO noted that the entries found in seized material from assessee as well as from STN matched only to the extent of Rs.811.05 Lacs and there was variation of Rs.1495.38 Lacs. The CMD of the assessee was confronted with the statement recorded in the case of STN. It was admitted that excel sheet as seized from the assessee's premises contained two type of land advances received from STN i.e., land advances that were routed through the assessee to the respective landowners by STN which amounted to Rs.870.05 Lacs. The land advances that were not routed through the assessee but paid directly by STN to the respective land owners amounted to Rs.1447.80 Lacs. It was submitted that the same was noted in the excel sheet since the deal was brokered by the assessee. In order to keep track of the commission that was due to the assessee, the notings were recorded in the excel sheet of the assessee. However, in the absence of any other documentary

evidences forthcoming from the assessee, these receipts aggregating to Rs.1495.38 Lacs were added in the hands of the assessee for AYs 2011-12 to 2014-15.

6.2 The Ld. CIT(A) confirmed the impugned additions against which the assessee is in further appeal before us.

## **7. Unexplained Cash Receipts**

7.1 One of the excel sheet containing receipts transactions between the assessee and different parties was also found. The amount aggregated to Rs.1121.77 Lacs and the same was confronted to the assessee during recording of statement u/s 132(4) wherein this transaction was explained as under: -

“Sir as explained earlier, the noting in the excel sheets contain transactions with respect to many parties. The excel sheet contains transactions in which the money was routed through us and also the transactions in which the money was paid directly by the purchaser to the respective landlords. We keep noting of both type of transactions. However, we are at present not in a position to differentiate the same based on any data or with the help of the narrations as mentioned in the said excel sheet. Moreover, the said excel sheet is not our books of accounts and hence the unexplained amount of Rs.11,21,77,750 cannot be treated as the income of KPPL. I also wish to state that further time may be granted to collect the relevant materials and substantiate the nature of transactions which at present we are not able to explain clearly.....”

Since the assessee could not explain the source of such receipts, the same was brought to tax as unexplained cash receipts by the assessee. The same resulted into an addition of Rs.1121.77 Lacs over AYs 2011-12 to 2015-16.

7.2 The Ld. CIT(A) confirmed the impugned addition against which the assessee is in further appeal before us.

## **Decision of Ld. CIT(A) on legal grounds**

8. Before Ld. CIT(A), the assessee assailed the assessment proceedings on the ground that in the absence of any incriminating

material found during the course of search, the impugned additions could not have been made. However, Ld. CIT(A) held that AO was under obligation to issue notice u/s 153A to assess or reassess the total income. The provisions do not stipulate recovery of incriminating evidences as a pre-condition to make the assessment. In fact, AO is bound to issue notice for specified period and the assessee is under obligation to file return of income for the specified period. In the assessee's case, number of incriminating materials was unearthed which has been referred by Ld. AO in the assessment order. The loose sheets revealed that the assessee received undisclosed cash from different parties which was not accounted. Therefore, the legal grounds urged by the assessee were dismissed. Aggrieved, the assessee is in further appeal before us.

### **Our findings and Adjudication**

9. So far as the legal grounds are concerned, we find that the legal issues have been adjudicated by Ld. CIT(A) in correct perspective. It could be seen that various incriminating material in the form of loose sheets and electronic data has been unearthed by the search team and the additions are based on incriminating material. The Ld. AO has extensively referred to these documents while making the impugned additions. These transactions have also been confirmed by the Managing Director of the assessee company in statement recorded u/s 132(4). There is nothing on record to support the legal grounds urged by the assessee. Therefore, no interference is called for in the impugned order on legal grounds. The corresponding legal grounds raised in all the years, stand dismissed. The issues, on merits, are adjudicated in subsequent paragraphs.

### 10. Unaccounted Receipts from GHPL

From the fact, it emerges that the amount so received by the assessee from GHPL represent advance for development of project. The same was not accounted for in the books of accounts. However, in the recorded statement, it has been admitted by the Managing Director that the said projects did not materialized and the cash was repaid to GHPL. We find that part of the amount has been received in cheque whereas part of the payment has been received in cash. If the project had not materialized and the advances have been repaid in cash, the same would not constitute the income of the assessee. In such a case, the assessee would have refunded the cheque amounts also. The Ld. AO is directed to verify the same. If the cheque amount has also been refunded and no income has accrued to the assessee from this transaction then this addition would not be sustainable in the hands of the assessee. In any other case, Ld. AO may re-adjudicate the issue with a direction to the assessee to substantiate the fact that the amount was ultimately refunded to GHPL and no income accrued to the assessee, on this count. The corresponding grounds stand allowed for statistical purposes.

### 11. Unexplained Cash Receipts out of Jewel Loans

It emerges that the assessee has received certain loans by pledging the jewellery of its various employees. The assessee could not explain the difference of receipts and payments and accordingly, additions for differential amount has been made in all the years. Before us also, the assessee is unable to substantiate / explain the difference. Therefore, the impugned additions stand confirmed in all the years.

### 12. Unaccounted cash receipts from M/s. STN Properties Pvt.Ltd.

We find that the assessee has received land advances from STN to procure land. However, certain payment is stated to be made directly by STN to landowners which are not found recorded in the books of accounts. The assessee has submitted that these transactions have been recorded in the excel sheets to keep track of the commission payment. However, the assessee could not substantiate the same during assessment proceedings. Considering the principal of natural justice, we deem it fit to provide another opportunity to the assessee to substantiate its case. Accordingly, this issue stand restored back to the file of Ld. AO for de-novo adjudication with a direction to the assessee to substantiate its claim. The corresponding grounds stand allowed for statistical purposes in all the years.

### 13. Unexplained Cash Receipts

The assessee is shown to have received cash from various parties to carry out these transactions. The assessee has also kept record of the payments made by purchaser directly. The same has been added as the income of the assessee since the assessee could not explain the source of such receipts. Considering the facts of the case, we deem it fit to provide another opportunity to the assessee to substantiate the fact that the impugned receipts do not constitute assessee's income. Therefore, this issue is also set aside to the file of Ld. AO for de-novo adjudication with a direction to the assessee to substantiate the same. The corresponding grounds stand allowed for statistical purposes in all the years.

14. In AY 2014-15, there is one more issue of addition of unaccounted receipts from sale of land for Rs.27.40 Lacs. The same stem from the

fact the seized material revealed that the assessee received cheque payment of Rs.27.40 Lacs from Mr. Chengalraya Chettiar against sale of two properties admeasuring 0.435 units. The property was sold jointly with other owners for aggregate cheque amount of Rs.252.82 Lacs. Another sum of Rs.500 Lacs was found to the received in cash. The assessee submitted that total extent of land purchased by the purchaser was 17.08 acres of land for total sale consideration of Rs.18.48 Crores. However, the assessee failed to produce the sale deeds and stated that the said transaction was normal business transaction and admitted in the return of income. The sale deeds were stated to be executed by the assessee as power holders only. However, in the absence of any documentary evidences forthcoming from the assessee, the same was added to the income of the assessee. The position remained the same during appellate proceedings which resulted into confirmation of this addition. Aggrieved, the assessee is in further appeal before us.

The Ld. AR has reiterated that the said transaction has already been accounted for in the books of accounts and therefore, the same could not be added separately. Considering the same, we restore this issue back to the file of Ld. AO for de-novo adjudication with a direction to the assessee to substantiate its claim. The corresponding grounds raised in AY 2014-15 stands allowed for statistical purposes.

### Conclusion

15. All the appeals stand partly allowed for statistical purposes.

Order pronounced on 29<sup>th</sup> March, 2023.

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 29-03-2023

DS

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF