

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.22/Chny/2023
निर्धारण वर्ष/Assessment Year: 2018-19

Subramanian,
No. 51, Prop. Sekar Super Stores,
North Street, Tirukkoilur,
Villupuram 605 757.
[PAN: AQLPS8843A]

The Assistant Commissioner of
Income Tax,
Central Circle -2(3),
Chennai.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri A Suraj Nahar, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 14.06.2023
घोषणा की तारीख /Date of Pronouncement : 21.06.2023

आदेश /ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 19, Chennai, dated 20.09.2022 relevant to the assessment year 2018-19.

2. Brief facts of the case are that the assessee is an individual, engaged in the business of wholesale and retail sale of utensils and basic house hold appliances in the name and style of Sekar Super Stores. The assessee filed his return of income for the assessment year 2018-19 on

31.10.2018 admitting total income of ₹.14,50,170/-. A survey under section 133A of the Income Tax Act, 1961 ["Act" in short] was conducted in the premises of the assessee on 20.02.2019. Based on the findings of the survey, the case was reopened and a notice under section 148 of the Act was issued on 22.03.2021. In response to the said notice the assessee filed return of income on 17.04.2021 admitting a total income of ₹.809,63,540/-. Subsequently, a notice under section 143(2) of the Act was issued on 15.10.2021 and duly served on the assessee. The assessee, vide his letter dated 01.11.2021, raised objections for reopening of assessment. The Assessing Officer disposed of the objections by passing a speaking order dated 28.12.2021. Further, a notice under section 142(1) of the Act dated 29.12.2021 was issued for calling the details. In response to the above said notices, the assessee filed the details as called for on various occasion. After examining the details furnished by the assessee, the Assessing Officer has completed the assessment order under section 143(3) r.w.s. 147 of the Act dated 04.02.2022 by assessing total income of the assessee at ₹.2,16,22,922/- after making various additions. On appeal, after considering the submissions of the assessee and materials available on record, the Id. CIT(A) partly allowed the appeal of the assessee by sustaining the addition made towards re-computation of gross profits at 11.36% as

against 11.33% and addition made under the head “Capital Gains” i.e., on money receipts.

3. On being aggrieved, the assessee carried the matter in appeal before the Tribunal challenging the confirmation of addition made under the head “Capital Gains” i.e., on money receipts. The Id. Counsel for the assessee has submitted that the Assessing Officer has wrongly added a sum of ₹.73,81,000/- to the sale consideration as on-money received by the assessee in respect of plots sold at Kajura Garden purely on the basis of the statement recorded at the time of survey. It was further submission that the authorities below rejected the affidavit of the buyer confirming the fact that the buyer had not paid any excess money over and above the sale consideration as stated in the sale deed without making any cross examination of the buyer before rejecting the affidavit and prayed for deleting the addition.

4. On the other hand, the Id. DR has submitted that during the course of survey, on examination of impounded YAZ data, a ledger in the name of “Kajura Garden was found. When the assessee was confronted with the ledger and asked the same, the assessee has accepted that the above receipt was sale consideration in respect of property sold at Kajura Garden. It was further submission that during the course of past survey

proceedings, while answering to the questions regarding the discrepancies found in respect of unaccounted sales and other discrepancies including the sale of property at Kajura Garden, the assessee once again affirmed the statement given by him during the course of survey in respect of discrepancies found by the survey team. Since the statements were taken from the assessee twice on different dates and the assessee maintained the same stand in both the statements with regard to the discrepancies towards sale of property at Kajura Garden, the addition made on this account and confirmed by the Id. CIT(A) may be sustained.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. With regard to the addition made under the head "capital gains" i.e., on money receipts, during the course of survey, it was found that the assessee was maintaining two types of data viz., one is for his accounted sales and purchases and the other one is YAZ data which was used for actual sales and purchases. The assessee had also agreed the same. The both types of data were impounded, in which ledger account of Kajura Garden towards cash receipt of ₹.73,81,000/- was found and when confronted and asked to explain the same, the assessee accepted vide statement

recorded dated 20.02.2019 that the above receipt was sale consideration in respect of property sold at Kajura Garden. Further, during the course of post survey proceedings, the Assessing Officer issued summons under section 131 of the Act and sworn statement was recorded on 25.02.2019. While answering to the questions regarding the discrepancies found in respect of unaccounted sales and other discrepancies including the sale of property at Kajura Garden, the assessee once again affirmed the statement given by him during the course of survey in respect of discrepancies found by the survey team. Since the statements were taken from the assessee twice on different dates and the assessee maintained the same stand in both the statements with regard to the discrepancies towards sale of property at Kajura Garden, we are of the considered opinion that the Assessing Officer has rightly brought to tax the on-money receipt towards sale of property at Kajura Garden.

6. Before us, the Id. Counsel for the assessee has argued that when the assessee filed the affidavit from the buyer, the Assessing Officer should have cross-examined the buyer and decided the issue. We find no merits on the argument of the Id. Counsel for the reason that once the assessee has admitted the receipt of the cash amount, which represents towards sale of plots at Kajura garden, we find that the affidavit filed by

the buyer was only an afterthought and no weightage is deemed to be given. Further, we find that no cross examination was required for the reason that after lapse of time, the affidavit was filed. Particularly, when the assessee himself has admitted that the receipt of cash amount of ₹.73,81,000/- represents towards sale of plots at Kajura garden twice and statement to that effect was given by the assessee himself during the course of survey as well as during post survey proceedings, we find no reason to interfere with the orders of the authorities below. Accordingly, the ground raised by the assessee is dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on the 21st June, 2023 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, the 21.06.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.