

आयकर अपीलिय अधिकरण, 'सी (एस एम सी)' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C (SMC)' BENCH, CHENNAI

श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **991/Chny/2022**

निर्धारण वर्ष / Assessment Year: 2017-18

Raghupathy Srivatsa
Ravikumar,
C/o. J. Prabhakar,
Chartered Accountant,
No. 245, Residency Apartments,
T.T.K. Road, Alwarpet,
Chennai – 600 018.

Income Tax Officer,
v. Non Corporate Ward 1(3),
Chennai.

[PAN: AIZPR-6860-L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. J. Prabhakar, FCA

प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 02.08.2023

घोषणा की तारीख/Date of Pronouncement : 11.08.2023

आदेश /ORDER

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income-tax (Appeals)-16, Chennai, dated 05.09.2022 and pertains to assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

1. *The Learned C.I.T(Appeal) is not justified in confirming the addition of cash component of land sale at Rs.44 lakhs as unexplained investment on the specious ground that the credit worthiness of the buyer is not proved.*

2. The Learned C.I.T(Appeal) is not justified in ignoring the legal presumption that as an NRI, the only proximate source for cash generation is the sale of agricultural land and no other nexus is established by the C.L.T(Appeal) de-hors this transaction.

3. The C.I.T(Appeal) having accepted the credit worthiness of the buyer to the extent of 42.80 lakhs qua the registered sale deed has no basis to take a different stand in respect of the cash component thereof especially when the buyer has transacted with several co-owners of the property in question by purchasing contiguous lands during the same period expending substantial sums therefor.

4. The C.I.T.(Appeal) is not justified in making allegation vide para 4.3(page 21 of his order) against the appellant for alleged money laundering by suspecting the cash deposit on land sale as monies belonging to third parties without an iota of evidence to prove the same.

5. The Learned C.J.T.(Appeal) is not justified rejecting relevant and pertinent case laws in para 4.2 on proximate nexus to source of income by splitting hairs on flimsy facts.

6. The Learned C.I.T(Appeal) is not justified in confirming the application of section 50 C on the penultimate day of time bar without giving opportunity under section 50 C (2) to rebut the same.

7. The Learned C.I.T(Appeal) erred in confirming misapplication of section SOC despite confirming that the amounts declared as sale consideration in the Return of income filed at Rs.86.80.000/- is far in excess of the amounts mentioned under section 50 C of the Act.

8. The Learned C.I.T.(Appeal) is not justified in omitting to invoke the provisions of section 55 (2) (b) to determine fair market value of property sold as on 1-4-2001 to determine capital gain by blaming the appellant to invoke the claim.

9. The Learned C.I.T.(Appeal) is not justified in confirming the jurisdiction of the A.O. to assume assessment jurisdiction for non-resident assesses when stratified jurisdiction has been conferred upon International Tax division of the department for cases other than resident assesses.

10. In any event the order of the C.LT(Appeal) is illegal, arbitrary, capricious and rendered with a jaundiced eye without due regard to the facts and circumstances of your appellant's case and the law applicable thereto.

11. Your appellant craves the indulgence of the Hon'ble I T A T to add /supplement and/or alter the grounds of appeal to bring facts on record and the legal issues involved in this appeal.

12. For these grounds and for such other grounds that may be adduced at the time of hearing, it is prayed that the order of the C.I.T(Appeal) be cancelled."

3. The brief facts of the case are that, the appellant is non-resident Indian settled in Botswana. The appellant had visited India in the month of October, 2016. During the financial year relevant to assessment year 2017-18, the assessee along with other co-owners sold agricultural land on 03.11.2016, for a consideration of Rs. 42.82 lakhs and also claims to have received a sum of Rs. 44 lakhs as cash consideration for sale of property. The assessee has deposited a sum of Rs. 44 lakhs to his savings bank account maintained with State Bank of India, Rajaji Nagar Branch, Bangalore and Mylapore, Chennai. The assessee has computed capital gains from transfer of property by adopting full value of consideration which includes cash component of Rs. 44 lakhs. The appellant had also responded to the query on the cash deposits, online in February, 2017 when the Department sought details for cash deposits made into bank account and source therein by stating that the sum was on-money received on property sale.

4. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has made cash deposits of Rs. 44 lakhs in specified bank notes during demonetization period. The Assessing Officer, called upon the assessee to explain the source for cash deposits for which the assessee stated that, he had sold an immovable property and received sale consideration in cash, and the same has been deposited in bank locker opened on 02.11.2016. Since, the Government has announced demonetization of currency, he has deposited amount received towards sale of property into his bank account. The Assessing Officer however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee could not file any evidence to show that he has received on-money towards sale of property. The registered documents for conveying the title in property clearly shows that consideration for property has been received through banking channel. Further, although the assessee claims to have received on-money, but the buyer of the property did not respond to summons during the course of assessment proceedings. Neither the assessee has filed any confirmation nor evidence, therefore rejected arguments of the

assessee and made additions towards cash deposits during demonetization period as unexplained investment and taxed u/s. 115BBE of the Act.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A), the assessee has reiterated his arguments made before the Assessing Officer and contended that except one source of income from sale of property, the assessee does not have any source of income and thus, cash deposit during demonetization period cannot be considered as unexplained money. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of certain judicial precedents observed that, although assessee claims to have received on-money for sale of property, but had not given any evidence in support of the claim. In absence of any evidence, it can be safely concluded that cash deposits during demonetization period is unexplained investments and thus, the Assessing Officer has rightly assessed cash deposits u/s. 69 of the Act. Therefore, rejected arguments of the assessee and sustained additions made towards cash deposits. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

6. The Ld. Counsel for the assessee, Shri. J. Prabhakar, FCA, submitted that the Id. CIT(A) erred in not appreciating fact that the assessee has admitted on-money received towards sale of property and paid necessary tax. The Ld. Counsel for the assessee, further referring to various documents submitted that the assessee has opened a bank locker before demonetization and has deposited on-money received towards sale of property. Since, the Government has announced demonetization, the assessee has immediately deposited specified bank notes into his bank account and also reported to Income Tax Department in the month of February, 2017. The assessee being non-resident Indian, settled in Botswana, does not have any other income except one source of income from sale of property. If you consider circumstantial evidences including timing of cash deposits and sale of property, it can be easily said that cash deposits to bank account is out of sale of property. Although, the assessee has furnished all evidences, but the Assessing Officer and CIT(A) rejected arguments of the assessee and made additions u/s. 69 of the Act. In this regard, he relied upon certain judicial precedents including the decision of Hon'ble Kerala High Court in the case of K.S. Kannan Kunhi vs CIT [1969] 72 ITR 757

(Ker). The assessee had also relied upon the Hon'ble Supreme Court in the case of Mehta Parikh and Co vs CIT [1956] 30 ITR 181 (SC) and also relied upon the decision of ITAT Chennai Benches in the case of Umamaheswari vs ITO in ITA No. 527/Chny/2022.

7. The Id. DR, Shri. D. Hema Bhupal, JCIT, supporting the order of the Assessing Officer and CIT(A) submitted that, the claim of the assessee is not supported by any evidence. The assessee trying to link dates of cash deposits to sale of property and the buyer did not confirm payment of on-money in cash. Under these facts and circumstances, the arguments of the assessee that source for cash deposits is out of on-money received from sale of property cannot be accepted. The Assessing Officer and CIT(A), after considering relevant facts has rightly rejected arguments of the assessee and made additions and their order should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts borne out from record indicates that the appellant had deposited a sum of Rs. 44 lakhs during demonetization period in specified bank notes to his savings

bank account maintained with State Bank of India, Bangalore and State Bank of India, Chennai Branches. The assessee claims to have received on-money from sale of property and source for cash deposits is out of on-money received from the buyer. To support his claim, the assessee has filed income tax returns filed for the impugned assessment year and argued that the assessee has paid capital gains tax on sale consideration received from transfer of property including on-money received from buyer. The Assessing Officer, made additions towards cash deposits as unexplained money u/s. 69 of the Act and taxed u/s. 115BBE of the Act, on the ground that the assessee could not explain source for cash deposits made during demonetization period. We find that, although the assessee claims to have received on-money for sale of property, but no evidence has been filed except making oral statement. Further, when the Assessing Officer has issued summons to the buyer, but the buyer did not turn up and admitted to have paid on-money for purchase of property. In absence of any evidences in support of receipt of on-money, the explanation of the assessee that source for cash deposit into bank account is out of money received for sale of property cannot be accepted on the principle of preponderance of

probability or any other consideration. No doubt, the assessee is a non-resident settled in Botswana, but fact remains that the assessee is deriving regular income in India from various sources. Therefore, when the assessee is earning income in India from various sources, the assessee cannot claim that the only source of income is out of sale of property. Therefore, we are of the considered view that the assessee could not satisfactorily explain source for cash deposits found in bank account during demonetization period with necessary evidences.

9. In so far as various case laws relied upon by the assessee, including the decision of Hon'ble Kerala High Court in the case of K.S. Kannan Kunhi vs CIT (Supra), we find that the Assessing Officer and CIT(A) distinguished the above case laws with facts of this case to prove that the facts of the present case are not at all applicable to the case laws relied upon by the assessee. Further, the case laws relied upon by the Ld. Counsel for the assessee in the case of Umamaheshwari vs ITO (Supra), we find that the facts in the above case are entirely different, where the assessee claims to have received money from sale of property and the same has

been confirmed by the buyer. Under those facts, the Tribunal has accepted the arguments of the assessee, towards cash deposits during demonetization period. In the present case, except giving oral statement, the assessee could not file any evidence in support of his claim. Therefore, we are of the considered view that there is no error in the reasons given by the Id. CIT(A) to sustain additions made towards cash deposits during demonetization period u/s. 69 r.w.s. 115BBE of the Act. Thus, we are inclined to uphold the findings of the Id. CIT(A) and dismiss the appeal filed by the assessee.

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

Order pronounced in the court on 11th August, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 11th August, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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