

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1090/Chny/2022
निर्धारण वर्ष /Assessment Year: 2010-11

Chellappan (Deceased),
(Represented by wife and Legal
Heir Saraswathi)
71/72, Nethaji Road,
Erode – 638 002.
[PAN: APSPC-4593-D]

The Income Tax Officer,
Ward-1(1),
Vs. Erode.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

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

: Shri S. Sridhar, Advocate
: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 01.08.2023

घोषणा की तारीख /Date of Pronouncement

: 31.08.2023

आदेश / O R D E R

PER MANOMOHAN DAS, J.M:

The appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax- (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 22-11-2022 and pertains to the Assessment Year [AY] 2010-11.

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2. The grounds of appeal of the assessee are as under:

- 1) *The order of the learned CIT(A) is bad and erroneous in law.*
- 2) *The learned CIT(A) as well as the Assessing Officer erred in not following the mandate of Sec.149(1)(b). (Copy of the reasons recorded- vide communication dated 11/09/2017 to the appellant is attached).*
- 3) (a) *The learned CIT(A) erred in not disposing of Ground No: 2.*
(b) *Without prejudice to the above, the learned CIT(A) erred in not considering the fundamental principle that once the reasons recorded cease to exist, the Assessing Officer is prohibited from making any addition for which the reasons have not been recorded. (Reliance is placed on the decision of Madras High Court reported in 409 ITR 369).*
- 4) *The learned CIT(A) erred in not considering the written submissions in proper perspective.*
- 5) *The learned CIT(A) erred in not considering the fact that the order passed in the name of a deceased person is null and void, despite informing the same while filing the written submissions on 30/01/2021- Ack.No: 30012 113981351.*
- 6) *The learned CIT(A) erred in not considering the fact that the Assessing Officer relied only on the registered document evidencing sale of property by the appellant, as regards the share of the appellant, without providing copies of the alleged denial by the purchasers and without providing the enquiries revealing the cash deposit is the own unaccounted money appellant.*
- 7) *The learned CIT (A) erred in not considering the fact that the Assessing Officer erred in not summoning all the parties to the sale transaction-vide document No:469/2011 to evince the correct picture, while assessing Rs.59 lakhs as unaccounted income of the appellant.*
- 8) *The learned CIT (A) erred in not considering the fact that the case of the appellant reopening the case of the appellant by the issue of notice u/s.148 based only on the enquiry u/s.13 1(1A), wherein the appellant has given a deposition, failed to consider the statement so given in entirety and erred in solely relying on the alleged denial by the purchasers.*
- 9) *The learned CIT(A) erred in not considering the fact that the Assessing Officer erred in not considering the statement given by the appellant, wherein the appellant has clearly deposed that he had*

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been given the sum of Rs. 59 lakhs, as his 1/5th share by his brother Balasubramani, without verifying the said person.

10) Without prejudice to the above, the learned CIT (A) erred in not considering the fact that the Assessing Officer erred in not considering the vital fact that the SB account does not belong to the appellant alone and in fact, the nature of the SB account is Either (or) Survivor and thus, erred in adding the entire cash deposit as the income of the appellant.

11) The learned CIT (A) as well as the Assessing Officer erred in not considering the very factum of pendency of the appeal filed in Nos: 136 to 138 of 2007 in Madras HC, besides the decision of the SC in AIR 1961 SC 1747 or 1962 SCR (2) 474, in the context of Sec.47 of the Registration Act.

And for other grounds of appeal that may be adduced at the time of hearing, the appellant prays that the appeal be admitted, submissions be considered and justice be rendered.

3. The facts of the case are that as per the information received from the Investigation Wing available with the office records, the assessee deposited an amount of Rs. 59 lakhs into his Savings Bank account with the State Bank of India on 07-11-2009 and the same were withdrawn on subsequent dates. The assessee had received that amount of Rs. 59 lakhs as 1/5th share from the sale of property held by his father and deposited in SB account. During the year 2010, the assessee had utilized Rs. 34 lakhs in purchasing a land at Thoppupalayam, Perundurai and had constructed a house in that land for Rs. 33 lakhs. As per the further enquiry, the land sold on 06-11-2009 (Doc.No.942/2011 dt. 06-11-2009) was registered for Rs. 28,05,900/- only which were purchased by (i) Shri M.C. Mahasamy (ii) Shri M. Radhakrishnan (iii) Shri A. Rajaram and (i) Shri R. Rajeswari.

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The aforesaid purchasers have paid the sale consideration of Rs. 28,05,900/- to the seller by way of Demand Draft. They denied paying any sum in cash other than demand draft to the sellers. The land purchased by the assessee (Doc. No. 725/2010 dt. 10-02-2010) was registered for Rs. 9,06,000/- only and not for Rs. 34 lakhs as claimed by him.

4. As per the enquiry, the cash deposit of Rs. 59 lakhs by the assessee is indeed his own unaccounted money and he has utilized the same for purchase of land at Thoppupalayam, Perundurai. He has paid on-money to the tune of Rs. 24,94,000/-. He, the assessee did not file his return of income for the Assessment Year 2010-11 and therefore, the AO's office had reason to believe that income chargeable to tax has escaped assessment. Accordingly, notice under section 148 of the Act was served upon the assessee. In response to such notice, the assessee filed the e-Return of Income for the AY 2010-11 on 14-04-2017 by admitting Rs.35,560/- as income from other sources. Notice under section 143(2) of the Act was issued to the assessee on 20-12-2017. The assessee vide letter dated 25-04-2017 sought reasons for re-opening and the same was furnished to him vide office letter dated 11-09-2017 and 07-12-2017. The assessee vide letter dated 22-12-2017 filed reply before the Ld. AO. The Ld. AO after

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considering the reply/objections of the assessee completed the assessment vide order dated 29-12-2017. The Ld. AO rejected the reply/objections of the assessee and added the amount of Rs.59 lakhs to the total income of the assessee by treating it as unexplained cash credit under section 68 of the Act.

5. Being aggrieved, the assessee filed 1st appeal before the Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi. The Ld. CIT(A), (NFAC) vide order dated 22-11-2022 dismissed the appeal of the assessee.

Aggrieved further, the assessee filed the present appeal before the Tribunal.

6. Heard the learned representatives of both the parties and perused the materials on record. The Ld. AR submitted that the Ld. CIT(A) as well as the Ld. Assessing Officer did not consider the provision of section 149(1)(b) of the Act while disposing of the case of the assessee. The Ld. AR further submitted that assessee died during the pendency of the 1st appeal before the Ld. CIT(A) and the Ld. CIT(A) disposed of the appeal without bringing the legal heirs on record. Also, the Ld. AR reiterated the submissions made before the Ld. CIT(A). Per contra, the Ld. DR submitted that the assessee did not file return of

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income prior to issuance of the notice u/s 148. The DR further submitted that the assessee did not furnish the details of the legal heirs before the Ld. CIT(A) including the submission that the assessee did not reveal about the cash deposit of Rs. 59 lakh in his return of income. Thus, the Ld. DR is in support of the orders of the lower authorities.

7. We carefully consider the submissions made by Ld. Representatives of the parties and perused the materials on record including orders of the lower authorities. We observe that, the Ld. AR has raised a legal issue that the Ld. CIT(A) as well as Ld. A0 erred in not following the mandate of section 149(1)(b) of the Act. This ground of appeal has been mentioned as ground No.2 in Form No. 36 of the Form of Appeal to the Appellate Tribunal dated 25-11-2022.

8. In view of the submission made by the Ld. AR on the ground No. 2 of the appeals, we consider it necessary to remand this ground of appeal to the Ld. CIT(A) so as to consider the same by him before disposing of the appeal of the assessee by the Tribunal. Hence, we direct the Ld. CIT(A) to consider the said ground of appeal No. 2 and pass necessary order thereon. It is needless to add that the Ld. CIT(A) will hear the assessee before disposing of the matter. Accordingly, we

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set aside the impugned order of the Ld. CIT(A) dated 09-03-2020 as well as the assessment order dated 11-12-2017 for the disposal of the ground No. 2 of the appeal by the Ld. CIT(A).

9. In the result, the appeal of the assessee is allowed for statistical purposes only.

Order pronounced on 31st August, 2023.

Sd/-
(मंजुनाथ. जी)
(Manjunatha. G)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 31st August, 2023.

EDN/-

Sd/-
(मनोमोहन दास)
(Manomohan Das)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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