

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI V. DURGA RAO, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.279/Chny/2020
(निर्धारण वर्ष / Assessment Year: 2006-07)

Shri Pandit Vettrivel B-272, Ground floor, B-Block Rear Flat, Greater Kailash Part I, New Delhi-110 048.	बनम / Vs.	ACIT Central Circle-3(4) Chennai-34.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AJZPP-4861-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri N.V. Balaji (Advocate)-Ld.AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri S. Senthil Kumaran (CIT)- Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	27-07-2023
घोषणा की तारीख / Date of Pronouncement	:	21-09-2023

आदेश / O R D E R

PER BENCH:

1. Aforesaid appeal by assessee for Assessment Year (AY) 2006-07 arises out of the impugned order dated 27.09.2019 passed by learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] in the matter of an assessment framed by learned Assessing Officer (AO) u/s 143(3) r.w.s. 153A of the Act on 30.12.2016. The elaborate grounds of appeal filed by the assessee read as under: -

1.The order of the learned CIT (A) is viz:

- (a) Contrary to law, facts and circumstances of the case and arbitrary
- (b) Opposed to principles of natural justice, legitimate expectation and procedure
- (c) Against evidence on record

(d) Non application of mind

2. The order of the CIT (A) is perverse and confirmed the investments on the basis of the assessment order without going into grounds raised by the Appellant. The CIT (A) ought to have appreciated that the agricultural lands were purchased in the year Dec 2005 and registration of the sale deed bears only sale value of the document through power of Attorney holders and not from any other persons, hence the statements and depositions allegedly given by other real estate brokers who has not connected with the transaction entered by the Appellant.

3. In any event the Appellant was not given right of cross examination and without prejudice the statements given by M. Subramaniam and N. Balasubramanian is not trustworthy and discrepancies pointed by the Appellant was not considered by CIT (A) and the department failed to appreciate the affidavit given by the Appellant with regard to nature of the transactions, in any event the lands are Agricultural lands as per Revenue Records and cultivated by the Appellant which is not disputed and the appellant qualifies for the exemption in respect of sale of land.

The assessee, Shri Pandit Vettrivel had purchased some lands in Kangeyam Palayam in Erode district in Dec.2005. The appropriate stamp duty was paid by the assessee at the time of the sale deeds based on the sale value of the documents. It may be noted that

1. No additional stamp duty was required to be paid by the assessee at the time of registration

2. Guideline value of the properties was not higher than the sale price as per the documents-

3. The lands were acquired by executing sale deeds with the land owners through their registered power of attorney holder and not from any other person. This is evidenced by the sale deed themselves.

However based on the statements and depositions allegedly given by other real estate brokers in the area, the assessing officer arrived at a conclusion that the appellant had suppressed the cost of acquisitions of the lands from Rs.3.6 crores to Rs.30.52 lakhs and therefore proceeded to add the difference to the income of the appellant.

It is most humbly submitted that the appellant had acquired the lands for Rs.30,52,000/- and the sale deeds for the lands were accepted and registered by the registrar. The assessing officer therefore made an addition of the difference between Rs.3.6 crore and Rs.30.52 lakhs as undisclosed investments in the hands of the appellant.

It is most humbly submitted that the entire structure of the arguments of the Assessing officer is based on the statements of two brokers of the area, viz N. Subramaniam and M. Balasubramaniam. Attention of this authority is drawn to the fact that these two persons are completely unconnected with the transactions entered into by the appellant. The Assessing Officer has merely used their position as alleged real estate brokers to obtain information. However, there is no documentary evidence whatsoever for the information purportedly given by them.

The Assessing officer has conveniently ignored the following discrepancies in the statements of both the persons, which were highlighted by the appellant in his letter filed on 30.11.2009 with the Assessing Officer;

1. That Shri. N. Subramaniam is in the real estate business is merely on a statement made by him not backed by any material or evidence either in his possession or in the possession of the revenue authorities.

2. In his statement Shri. N. Subramaniam has purportedly mentioned that the assessee's brother Mr. Arulvelu approached him to purchase the land for a good price

from him. However, the land owners had in fact sold the lands directly to the assessee and Shri. N. Subramaniam did not have any control over the lands and was definitely not in a position to sell the lands.

3. The price per acre, which according to Shri. N. Subramaniam, was reportedly fixed for the lands (Rs.6.75 lakhs per acre) is not supported by any document / working to show how it was arrived at. It appears to be just a figment of imagination by Shri. N. Subramaniam

4. Shri. N. Subramaniam has reportedly mentioned in his statement that even after finalizing a negotiated agreement to pay Rs.6.75 lakhs per acre, the assessee had paid at a lower rate of Rs.4 lakh per acre to the land owners. This statement alone is sufficient to show that Shri. N. Subramaniam is not stating the truth. If a price of Rs.6.75 lakhs per acre were fixed, it is not understood how any seller would accept a lower payment of Rs.4 lakhs. It is not known what evidence Shri. N. Subramaniam has given in support of his statement and to disprove the documented evidence in the form of registered sale deed stating payment of a different amount.

5. The sale deeds for the purchase of the said lands have been accepted and registered by the Registrar. No additional stamp duty was required to be paid at the time of registration. The documents have been signed by the assessee, as well as the landowners, through their registered power of attorney holder, in the presence of the Registrar. The landowners have acknowledged the receipt of the amounts mentioned in the sale deeds. When compared against this evidence, a mere statement by a third party, which is not supported by any evidence other than the statement itself (which itself is a mere statement made without evidence and which lacks cogency as explained earlier) cannot be relied on.

4. Shri. N. Subramaniam has reportedly mentioned a lot of matters which preceded the actual transaction. He has reportedly said that a lot of negotiations took place first between him and the land owners and then between him and the assessee's brother Mr. Arulvelu. Preceding any transaction, a number of negotiations do go on but it is the final transaction which bears relevance. This is true in purchases of all commodities, where the seller quotes a higher price, the buyer quotes a very low price and the final bargained / negotiated price is something different. The preceding negotiations do not give the real price and just because the seller quoted a high price does not mean that the transaction concluded at that price and such preceding negotiations purported to have taken place as stated by Shri. N. Subramaniam are of no value in determining the value for which the property was acquired by the assessee.

The statement of Mr. M. Balasubramaniam also lacked consistency and therefore evidentiary value on account of the following reasons:

1. By his own admission, he was apparently instrumental in introducing the previous deponent Shri. N. Subramaniam to the assessee but apart from that he played no part in the purchase of the lands.

2. As Shri. M. Balasubramaniam was not involved in any of the negotiations (as mentioned in his deposition, it was Mr. Arulvelu who conducted the negotiations) he was not in any position to know the price fixed during the negotiations. Therefore, the figure mentioned by him seems to be just his imagination or suggestion or rather may even be on the basis of hearsay which information source is not known to the assessee.

3. A comparison of the two statements would show that both the deponents are claiming to know about the negotiations but are both mentioning different figures at different point.

- a) According to Shri. N. Subramaniam the negotiations were finalized for Rs.6.75 lakhs per acre but the land owners were paid at amounts varying from Rs.4 lakh to Rs.7 lakh per acre.
- b) According to Shri. M. Balasubramaniam the land price was fixed at Rs.7 lakh per acre

This shows that both persons are not narrating the actual facts, but just what they believed/ suspected, the reason for such belief/ suspicion not being known to the assessee.

Attention of this authority is also drawn to the fact that the lands acquired by the appellant consisted of about more than 15 different pieces of land situated in different locations, some near the main road, some near a water source, some in interiors, etc. each piece would have a different value. The very fact that the above persons are citing one rate for all the lands is evidence for their ignorance of the realities.

It is therefore most humbly submitted that their statements lack evidentiary value on the basis of their exhibited lack of knowledge. It is also very apparent that these two persons whose sworn statements have been relied on were under stress and have given the statements under duress. That could be the only reason why the extracts from their statements are so inconsistent. The fact that the statements of both persons seem to be revolving around the figure of Rs.7 lakhs seem to be due to suggestions heard by them the source of such suggestions being unknown to the assessee.

Therefore, the statements of Shri. N. Subramaniam and Shri. M. Balasubramaniam, do not state the facts but seem to be their opinion/ suspicion/ guess/ surmises of what might have happened. No evidence in support of their statements has been furnished and no evidence has been submitted that the appellant concluded his transactions at the values mentioned by these brokers. Therefore, their statements do not have any evidentiary value and cannot be relied on to draw any conclusion on the price paid by the assessee for acquiring the lands.

It is therefore most humbly submitted that the consideration mentioned in the registered sale deeds executed by the assessee and the land owners was the actual cost incurred by the assessee for acquiring the lands.

5. Additions u/s 68

The learned CIT (A) failed to appreciate Assessing Officer has made an addition of Rs.28,00,000/- being the amount of unsecured loans taken from Jaya Finance, appearing in the Balance Sheet filed by the appellant on the ground that the appellant had not discharged the onus of producing evidence in respect of the loans and therefore these amounts were liable to be treated as unexplained cash credits.

Attention of this authority is drawn to the fact that in his letter filed on 30.11.2009 with the Assessing Officer, the appellant had stated that he had called for confirmations from the parties but since these confirmations were not forthcoming, he requested the Assessing Officer to issue summons to these parties and examine them. It is most humbly submitted that the Assessing Officer had not done so and has merely made an addition of the entire balance shown under Unsecured Loans.

Reliance is placed on the following decisions

Munnalal Murlidhar v CIT 79 ITR 540 (All),

Merchant Flour Mills Co Ltd v CIT 5 ITR 459 (Lahore)

Addl CIT v Radhey Shyam Jagdish Prasad 117 ITR 186 (All)

In the above decisions it was held that the Assessing Officer is bound to call for and examine evidence which was offered by the assessee to explain the nature and source of credit and that failure on the part of the officer to do so would vitiate the entire proceeding of assessment.

As the Assessing Officer has not discharged the burden cast on him, it is most humbly submitted that the assessment proceedings have been vitiated and therefore the addition made is arbitrary and unjustified.

As is evident, the assessee is aggrieved by confirmation of certain quantum additions.

2. The Registry has noted delay of 47 days in the appeal, the condonation of which has been sought by Ld. AR on the strength of an affidavit of the assessee. It has been submitted that the delay has occurred due to adverse medical conditions being faced by the assessee. The Ld. CIT-DR has opposed the condonation of delay. However, keeping in view the period of delay and the contents of the affidavit, we condone the delay and admit the appeal for adjudication on merits.

3. The Ld. AR advanced arguments to support the case of the assessee. The Ld. AR, inter-alia, submitted that the additions have been made merely on third party statements without an opportunity of cross-examination and therefore, the additions would be unsustainable. The Ld. AR also submitted that the transactions have not happened between the assessee and the third parties. Reliance has been placed on various judicial pronouncements to support the various arguments, the copies of which have been placed on record. The Ld. CIT-DR has controverted the arguments made by Ld. AR and supported the orders of lower authorities. The written submissions have also been filed by both the sides which have duly been considered by us while adjudicating the appeal. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Proceedings before Ld. AO

4.1 The assessee being resident individual is an astrologer by profession and stated to have earned income from real estate. This is second round of appeal since the matter, in the first round, was set-aside by Tribunal to the file of Ld. AO for fresh adjudication. The assessee was subjected to search action u/s 132 on 23.08.2007 which led to an assessment u/s 153A r.w.s. 144 on 14.12.2009 which reached up-to the level of Tribunal wherein the assessment was set aside for fresh adjudication since the assessment was made on best judgment basis. Pursuant to the same, present assessment has been framed which is in further challenge before us.

4.2 In the second round of assessment, Ld. AO, noting the background in which the assessee acquired certain parcel of land at Changapalli in Erode District, observed that the assessee visualized that an entity by the name M/s ETL Infrastructure Services Ltd. (ETL) planned to set up an SEZ at a place named Changapalli in Erode District. To achieve the said purpose, that entity required huge parcel of land. This entity started purchasing land in financial year (FY) 2005-06. That triggered investment on the part of the assessee. Prior to search on assessee, on-the-spot verification of land was made and the land was identified as barren land except for few patches of bushes, widely grown cattle feeder etc. The land was dependent on seasonal rains. During rainy seasons, fodder would grow and for rest of the period, the land remained barren since the few wells located therein would also get dried up after the rains depriving continuous supply of water.

4.3 The assessee, sensing the ensuing investment opportunity, purchased the land at the same place. During search proceedings, he deposed that the land deal was undertaken by him as a business adventure and he agreed to offer the gains on sale of land to tax. However, the statement was retracted subsequently. The assessee purchased approx. 53 acres of land which was subsequently sold to M/s ETL. This land was owned by two families and 65 persons had ownership rights in the same.

4.4 The Ld. AO further noted that another person by the name Shri N. Subramaniam of Tirupur (NS) had blocked that part of land by an agreement before the assessee entered into the scene and had already paid advances to the landowners during January, 2005. He entered into agreement on 20.01.2005 with 37 persons holding 47.35 acres of land for consideration of Rs.244 Lacs. A sum of Rs.10 Lacs was paid as advance and the documents was signed but kept unregistered. Another sum of Rs.10 Lacs was paid in February, 2005 and necessary entries were made on the overleaf of first page in that agreement itself. The agreement period was for 9 months. This piece of evidence was produced by one of the co-owners i.e., Shri R. Arumugam. The remaining parcel of land i.e., 5.65 Acres, as deposed by Shri N. Subramaniam (NS), was stated to be covered by oral agreement. However, Shri N. Subramaniam (NS) could not honor the agreement within the stipulated period and was under pressure to lose the advance money as well as related expenses incurred by him.

4.5 At this juncture, another person by the name Shri M. Balasubramaniam (MB), a childhood friend of the assessee, started

negotiating with the land owners. The assessee's brother Shri Arulvelu started negotiating with land owners through Shri M. Balasubramaniam (MB) under oral settlement that Shri N. Subramaniam was to stay away from the agreed land deal against refund of Rs.20 Lacs together with an additional amount of Rs.30 Lacs as his profit for bringing out successful deal with the land owners. It was settled that the assessee and his brother would settle the amount payable to the landowners on the date of registration of documents.

4.6 The investigation team conducted enquiries from 9 land owner family heads. It transpired that all the landowners were instructed to be present at the sub-registrar office, Uthukuli on 12.12.2005 for executing Power of Attorney (POA) in favor of Shri Arulvelu and to receive the amount as per agreement dated 20.01.2005 with Shri N. Subramaniam. The Power of Attorney (POA) was executed in favor of Shri Arulvelu and the money was also transferred in cash. Later on, Shri Arulvelu executed sale deed on 13.12.2005 in favor of the assessee. Few enquiries were made by the investigation team with nationalized banks located in surrounding areas and it transpired that cash was deposited in several bank accounts of few sellers which were opened on the same day. These persons have been tabulated on page no.9 of the assessment order. The listed person constituted approx. 35% of total sellers. The rest of them did not deposit the sale proceeds in that locality.

4.7 As per Shri Arulvelu, the sources for acquisition of the property came from his brother i.e., present assessee. The seized material from Shri Arulvelu included a document marked as ANN/SSK/B&D/S-6 papers 17 & 18. The document indicated Sl. No., Name, Doc. No., area, Total

Area, document value, fees and extra amount for 15 pieces of land. For total area of 54.18 acres, the total value shown was Rs.29.52 Lacs whereas extra amount paid was for Rs.460.53 Lacs. The Ld. AO concluded that the assessee's accounted investment for Rs.30.52 Lacs closely matched with the amount of Rs.29.52 Lacs as mentioned in the seized document.

4.8 The Ld. AO also summarized the deposition made by Shri N. Subramaniam. He deposed that as per agreement, the price was fixed at Rs.7 Lacs per acre for 23 Acre of land situated on National Highway side whereas the price for remaining 24.35 Acre was fixed at Rs.4 Lacs per acre. The price was negotiated at uniform rate of Rs.6.75 Lacs per acre with Shri Arulvelu.

4.9 The statement of Shri M. Balasubramaniam was also recorded on 29.08.2007 and 19.09.2007 which was been summarized on page no.14 of the assessment order. He, inter-alia, submitted that the assessee and his brother requested him to acquire land in that area. During the last week of March, 2007, Shri Arulvelu contacted him to arrange certain certificates for Income Tax purposes from Village Administrative Officer. Further on 25.08.2007, he was requested to arrange bills for sale of vegetable produce, tractor bills, fertilizers bills etc. The Village administrative officer (VAO), deposed that the land was not put to agricultural use and the same was purchased for real estate purposes. The assessee acquired it for Rs.7 Lacs per acre and did not undertake any agricultural operations.

4.10 During assessment proceedings, the assessee was show-caused to furnish explanation / clarification with regards to actual cost price of

land procured by the assessee. However, the assessee maintained that the land was procured for Rs.30.52 Lacs only. Shri Arulvelu had sold the land to assessee at guideline value which was evidenced by copies of purchase deed. The copies of statement recorded were provided to the assessee. Finally, Ld. AO held that the total cost of acquisition was Rs.3.6 Crores. The brokerage and incidental expenses were estimate as about 5% of the entire cost of land. The total cost was thus computed at Rs.378.11 Lacs. After adjusting the cost of Rs.30.52 Lacs as admitted by the assessee, the unaccounted investment as made by the assessee was quantified at Rs.347.59 Lacs.

4.11 The Ld. AO made another addition u/s 68 since the seized document indicated that the assessee received loans which were stated to be deposited in the bank account. The assessee submitted that loans were received from Rajalakshmi Pandit Vettrivel. However, in the absence of cogent evidences forthcoming from assessee, in this regard, the deposit of Rs.3.59 Lacs was held to be unexplained cash credit u/s 68 and added to the income of the assessee.

4.12 The assessee claimed to have received another loan of Rs.28 Lacs from M/s Jaya Finance. In the absence of any confirmation from loan creditor, the same was also added to the income of the assessee as unexplained cash credit u/s 68. Aggrieved as aforesaid, the assessee assailed the assessment before Ld. CIT(A).

Proceeding before Ld. CIT(A)

5.1 During appellate proceedings, the assessee, inter-alia, submitted that the lands were purchased by Shri Arulvelu from various people with which the assessee had no connection. The assessee merely paid

purchase consideration as per the guideline value. The assumption of payment of on-money was baseless and there was no evidence to link that the assessee had paid the said amount.

5.2 However, Ld. CIT(A) noting the factual matrix of the case, confirmed the stand of Ld. AO as under: -

6.1. I have gone through the assessment order, grounds of appeal and written submissions made in this regard. In this case, the major additions have been made by the Assessing Officer on account of undisclosed investments in purchase of land and unexplained credits including cash loans. The Assessing Officer has given the detail of the investment in land that have been carried out by the Appellant in the assessment order. The land involved is in the village of Uthukuli Village, Perundurai Taluk, Erode District measuring 53 acres. The Assessing Officer has described the entire process of the acquisition of this property by the Appellant. This particular land was owned two major families and there were about 65 persons having ownership rights in this land, initially in the month of January, 2005, Shri.N. Subramanian of Tirupur entered into an agreement dated 20-01-2005 to purchase this land for a consideration of Rs.2.44 Crores (for 47.35 Acres) for which he gave advances of Rs.10 Lakhs each on two occasions one was 20-01-2005 and the other was 06-02-2005. This agreement was to be executed within nine months. However, Shri. N. Subramanian could not execute the subsequent sale of this land and was not in a position to pay the land owners the amount of Rs.2.44 Crores that was promised. During this period, this Shri. N. Subramanian was approached by Shri. N. Balasubramaniam (a friend of Pandit Vetrivel) to arrange the sale of this land to Pandit Vetrivel and this sale was subsequently done in favour of Pandit Vetrivel. First, the owners of the land executed Power of Attorney in favour of Sri. Arulvelu (brother of Pandit Vetrivel) and on next day on 13th December, 2005, Sri. Aruvelu sold this property to Pandit Vetrivel. In the seized records, the consideration of this land is much more than what is reflected in the registered property document. It is very clear that in the original document, the sale consideration was Rs.2.44 Crores for 47.35 acres (Page 6, First Para of Assessment Order) of land whereas the registered property document for 53 acres in favour of Pandit Vetrivel show the entire land purchased as Rs.30,52,000/- only. Thus evidently it is a case of suppression of purchase on account of the Appellant. The Assessing Officer has referred to the seized material, the statements recorded during the course of search of the land owners and that of Sri. N. Subramanian and also that of Sri. N. Balasubramaniam, he has also referred to the inquiries carried out into the bank accounts of some of land owners in whose account cash deposits were found on the next day of the payment made to them in cash on sale of the property. That is the evidence of 'on money' being paid to them on sale of property by them (table appearing on page 9 of the assessment order)

6.2. The property as per the inquires done and statement recorded has been sold as per the following table extracted from the assessment order.

<i>Land particulars</i>	<i>Total Average</i>	<i>Rate per acre in Rs. Lakhs</i>	<i>Total consideration in Rs. Lakhs</i>
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<i>Land adjacent to NH Road</i>	23.0	7	161.00
<i>Land at Interior side</i>	24.35	4	97.40
<i>Other land on direct deal</i>	6.0	6.75	40.50
<i>Total</i>	53.35		298.90

Price for which Shri Arulvelu & others negotiated with Shri. N. Subramaniam for the cost of acquisition for Pandit Vetrivel through Shri. Arulvelu:

<i>Land particulars</i>	<i>Total Average</i>	<i>Rate per acre in Rs. Lakhs</i>	<i>Total consideration in Rs. Lakhs</i>
<i>Land adjacent to NH Road</i>	23.0	6.75	155.25
<i>Land at Interior side</i>	24.35	6.75	164.36
<i>Other land on direct deal</i>	6.0	6.75	40.50
<i>Total</i>	53.35		360.11

6.3. Similar sworn statement has been recorded from Shri.N. Balasubramaniam on 29.08.2007 and 19.09.2007. It is also observed that in the seized material at the residence of Sri. Arulvelu, ANN/SSK/ B&D/S6 papers 17 & 18. The seized material indicates Serial No., Name, Document No., Areas, Total areas, document value, paper, fees and extra amount of 15 pieces of land. For the total area of 54.18 acres land, total document value plus paper plus fees are shown at Rs,29,52,810 and the total extra amount shown in these papers are at Rs.4,60,53,000. The Appellant and his brother did not present themselves to explain these documents when confronted with the same. The Assessing Officer has therefore relied upon the seized material and the statement recorded and verification made to arrive at the unaccounted investments which has been worked out by him at Rs.3,47,59,000 (37811000 minus 3052000). I see no reason to interfere with the conclusion reached by the Assessing Officer regarding the investment made in the purchase of the property under consideration. The property is certainly not purchased for the amount of Rs.30 lakhs as shown by the Appellant and there is lot of evidence to the Assessing Officer to show that there is suppression of the investment by the Appellant and therefore this ground of appeal of the Appellant on undisclosed investment is not tenable and hence rejected.

5.3 The additions made u/s 68 was also confirmed by holding that the loans as obtained by the assessee remained unsubstantiated. The relevant findings were as under: -

6.4. Regarding the undisclosed credits, the assertion of the Appellant is that since the amounts have been credited in his books through cheques therefore they should be construed as genuine. The Appellant has not produced any confirmation from the persons from whom these cheques have been received nor he has shown whether these undisclosed credits which are claimed as loans have been returned till date or

not. In the absence of any confirmation, a mere cheque entry cannot be considered as genuine. Therefore, the Assessing Officer has rightly treated the amounts as undisclosed. Hence, this ground also of unexplained credits as per the following table is rejected.

Sl. No	Additions	Amount
1	Loans from Java Finance	28,00,000
2	Bank Credit - Unsecured Loan - No Identity of Loan	2,00,000
3	Commission Income (no identity of persons from whom commission was received)	1,50,000

Lastly, there is an addition by the Assessing Officer of Rs.3,59,000 on account of cash deposit in the bank. The Appellant tried to explain this cash deposit as amounts taken from his Wife. However, the Assessing Officer confronted the same to the assessee vide notice dated 22.08.2016 to furnish the explanation regarding the discrepancy pointed out by him (page-19 of the Assessment Order last para). This discrepancy was not explained by the Appellant during the assessment proceeding nor the same has been clarified in the appellate proceedings. Therefore, the addition made by the Assessing Officer and objection raised by the Appellant is dismissed.

Thus, the assessment framed by Ld. AO was confirmed *in toto*. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

6. From the fact, it emerges that the assessee was subjected to search action u/s 132 on 23.08.2007. On the basis of seized material and third-party statements, it has been alleged that the assessee paid on-money to acquire certain parcel of land measuring approx. 53.35 acres situated at Kangeyapalayam, near Uthukuli village, Perundurai Taluk, Erode district. Prior to this transaction, one NS (a real estate businessman) had entered into a purchase agreement with the land owners on 20.01.2005 with an intention to resell the land to reap investment opportunities. The Ld. AO fortified this fact by observing that the land was not irrigated land and solely dependent on seasonal rains. The few wells located therein were dry wells and therefore, the land

could not be used for agricultural purposes. The Ld. AO further observed that NS paid land advances and entered into an agreement with 37 persons on 20.01.2005 who are stated to be owners of 47.35 acres of land against agreed consideration of Rs.244 Lacs. A sum of Rs.10 Lacs was advanced by NS on the date of agreement and another payment of Rs.10 Lacs was made subsequently on 06.02.2005. In addition, it was observed that another land measuring 5.65 acres was also covered by an oral agreement. It is another fact that since the land owners were not united and there was dispute between them, NS could not get the expected price from M/s ETL and hence, could not honor the agreement within the stipulated period. At this stage, Shri MB who (stated to be friend of the assessee) agreed to purchase the said land on behalf of the assessee by making suitable settlements / negotiations with NS. As per the terms of settlement, NS was paid additional sum of Rs.30 Lacs for his exit from the deal. Subsequently, the land owners executed POA in favor of Shri Arulvelu (brother of the assessee) on 12.12.2005 and Ld. AO held that the land owners were settled for the amount as agreed by them on 20.01.2005 as per agreement with NS. The Power of Attorney (POA) was to facilitate the transfer of ownership to the assessee. The sale deeds were executed by Shri Arulvelu on next day i.e., on 13.12.2005 in favor of the assessee. Accordingly, the allegations of on-money by the assessee have been made and impugned additions have been made. The Ld. AO has sought further fortification of the same by pointing out that investigation from nearby bank accounts revealed that few of the landowners opened the bank account a day prior and deposited cash in the same which would prove that cash was given over

and above the stamp duty value of the land. The revenue has also maintained that seized material from the residence of Shri Arulvelu would confirm these payments to the land owners. Upon perusal of these documents, Ld. AO observed that the price per acre was fixed at Rs.6.75 Lacs per acre. The revenue also relied on the statement of VAO Shri M. Duraisamy who made disposition on 28.08.2007 that the land was not purchased for agricultural use and it was purchased only for real estate purposes. Accordingly, Ld. AO made impugned additions. The Ld. Sr. DR has narrated all these facts in the written submissions and supported the findings of Ld. AO in making impugned additions.

7. On the other hand, the Ld. AR has submitted that the impugned addition of unexplained investment has been made merely on the basis of statement of Shri NS, MB and Shri Duraisamy (VAO) coupled with certain enquiries from few sellers of the land based on their bank statements. However, the addition has been made merely believing those statements without there being any concrete evidence on record. The statement of NS and MB would have no relevance since the purported earlier agreement entered into by NS had elapsed and the same was not acted upon. There is no deposition by the seller that they have received consideration from the assessee over and above the consideration mentioned in the registered deed. Even otherwise, the sworn statement of NS is not reliable and requires to be rejected since his answers to question No.5 and 8 in respect of statement recorded on 19.09.2007 contradict each other. The assessing officer grossly erred in relying on the statement of Shri Duraisamy, VAO, on the consideration, since he has no authority to determine or clarify on the correctness of the

consideration. The conclusion based on the sworn statement of MB is also required to be rejected since he himself had deposed that he was not connected with the transaction of purchase of land by the assessee. Further, the prices indicated by him also contradict with the statement of NS. The Ld. AR further submitted that Ld. AO completed the assessment mechanically without application of mind and he had simply relied on the appraisal report. The Ld. AR also submitted that the assessee did not pay any additional stamp duty at the time of registration of documents. The value adopted by stamp authorities is the same value as reflected by the assessee and AO ought not to have relied upon the inconsistent sworn statements and other unauthentic documents. The assessment was merely on the suspicion that the monies deposited by few sellers, purportedly based upon some random enquiry, were out of the consideration paid by the assessee. On the basis of bank statement of certain sellers, Ld. AO has raised a presumption that the amount paid was more than the amount reflected in the sale deed. The lower authorities failed to note that mere fact of cash deposits to the extent of Rs.87.25 Lacs, by no stretch of imagination, can form the basis for conclusion that the assessee had purchased the property for a consideration of Rs.378 Lacs unless AO is in the possession of material that establishes the proximity between the cash deposited by the sellers in their bank account and the impugned purchase transaction. Further, AO extrapolated this suspicion in respect of lands purchased from other persons from whom the appellant purchased the land, even without any examination of the fact whether there was any on-money paid in respect of remaining sellers. The AO did not bring on record the enquiry, but

merely stated in the order that he had considered the results of his enquiry. The assessee did not have any opportunity in this connection to rebut the findings. The addition was made without any seized material, except the loose sheets on the basis of which it was alleged that the assessee paid excess consideration over the recorded value. The copies of loose sheet were not provided to the assessee and also, the assessee was not granted any opportunity to examine Shri Arulvelu from whom the loose sheet was seized. The Ld. AR submitted that loose sheet cannot be a material for making the impugned addition in the hands of the assessee.

On the issue of addition of Rs.28 Lacs u/s 68, the Ld. AR submitted that the aforesaid amount was received from M/s Jaya Finance through banking channels and was duly disclosed in the books of accounts. This fact was acknowledged by the CIT(A) in para 6.4 of his order dated 27.09.2019. The assessee had provided all the details and requested the assessing officer for verification with the said firm. The assessing officer grossly erred in making the addition without exercising his powers under section 133(6) of the Act. Reliance has been placed on the decision of Hon'ble Allahabad High Court in the case of **Munnalal Murlidhar vs. CIT (79 1TR 540)** and the decision of Hon'ble Gujarat High Court in the case of **CIT vs. Chanakya Developers (43 Taxmann.com 91)** to support the said submissions. Accordingly, Ld. AR prayed for deletion of impugned addition.

On the issue of addition of cash deposit of Rs.3.59 Lacs, Ld. AR submitted that these additions were not part of original assessment which was already set aside by Tribunal in ITA No.575 to 578 of 2014.

Therefore, AO had exceeded his jurisdiction in travelling beyond the issues which were part of the grounds in the original appeal before this Hon'ble Tribunal and accordingly, this addition is required to be deleted. Reliance has been placed on the decision of Hon'ble Gujarat High Court in the case of **Saheli Synthetics Pvt. Ltd vs. CIT (302 ITR 126)** to support the said submissions. Without prejudice, Ld. AR submitted that cash deposits were made out of the loans extended by assessee's wife to the tune of Rs.4.74 Lacs.

8. Upon perusal of factual matrix as narrated in preceding paragraphs, the undisputed position that emerges is that the whole addition made by Ld. AO is based merely on the appraisal report of investigation wing without there being an independent investigation on the part of Ld. AO to support the allegation that the assessee paid any on-money to the sellers of the parcel of land. In fact, the assessee does not have any privity of contract with the sellers. The assessee has acquired the property through Shri Arulvelu who is Power of Attorney (POA) of the sellers. However, the assessee has not entered into any direct agreement, oral or written, with the sellers and has not directly dealt with them. It is also discernible that the agreement made by NS on 20.01.2005 with the sellers had lapsed since NS could not honor the terms of the agreement within the stipulated period and therefore, impugned addition of on-money could not be made merely on the basis of this agreement. There is nothing on record which would show that the assessee entered into any such agreement, whatsoever, at any point of time, with any of the parties.

9. Another pertinent fact is that though Ld. AO has relied on the statements of Shri NS, MB and Shri Arulvelu, however, no opportunity of cross-examination has ever been provided to the assessee to rebut the same. The assessee has not made any admission of payment of on-money to the sellers and submitted that the properties were acquired from POA holder of the sellers at registered value only. In such a case, the ratio of decision of Hon'ble Apex Court in **Andaman Timber Industries vs. CCE (62 Taxmann.com 3)** would apply wherein it was held that not allowing assessee an opportunity to cross-examine the concerned witnesses whose statements have been relied upon, is a serious flaw which would render the order to be nullity since it amounts to violation of principle of natural justice. This case law supports the case of the assessee. Considering the same, no much weightage could be given to the third-party statements being relied upon by Ld. AO and these statements, on standalone basis, would not be sufficient to support the impugned additions unless some corroborative evidences are brought on record by Ld. AO to support the allegations of unexplained investment by the assessee. We find that no such exercise is shown to be carried out by Ld. AO during the course of assessment proceedings. The statement of VAO would have no relevance to determine the actual sale consideration and therefore, the same was to be discarded as such. So far as the argument that there was cash deposit in the bank accounts of few sellers is concerned, we find that it is mere random enquiries from few sellers who constitute merely 35% of total sellers and none of them has made any admission of receipt of on-money from the assessee. No enquiries have been made by Ld. AO with any of the sellers. Therefore,

this fact coupled with the third-party statements alone would not be sufficient enough to support the allegation of Ld. AO.

10. Considering all these facts and circumstances, the inescapable conclusion would be that the impugned addition of unexplained investment is based merely on the suspicion, conjecture and surmises. The conclusion drawn by Ld. AO is bereft of any corroborative positive evidences which would show that the assessee paid alleged on-money to the sellers. No investigation, whatsoever, has been carried out by Ld. AO to support the allegation. Except for unsubstantiated third-party statements, there is no evidence / material in the kitty of the revenue to link the assessee with the sellers. It is trite laws that guess work or estimation or extrapolation of income is not permissible unless there are strong evidences to suggest otherwise. The additions are to be based solely on tangible material and not on the basis of estimations or extrapolation theory. Accordingly, we delete the impugned addition of Rs.347.59 Lacs as made by Ld. AO as alleged unexplained investment. The corresponding grounds stand allowed.

11. The addition of Rs.28 Lacs as made u/s 68 represent unsecured loan obtained by the assessee through banking channels from M/s Jaya Finance. The only reason to make the impugned addition is absence of furnishing of confirmation by the assessee. The argument of Ld. AR is that Ld. AO erred in making the addition without exercising the powers u/s 133(6) of the Act. It is undisputed fact that the impugned credits have been received through banking channels. Mere failure to file the confirmation would not lead to a conclusion that it was the assessee's own money that has been routed through banking channels. The

assessee has provided all the other required details except for confirmation of account. On the other hand, Ld. AO has not made any efforts to obtain confirmation of the lender. Undisputedly, the loan has been obtained through banking channels and all the requisite details have been filed by the assessee to substantiate the same. Therefore, considering the ratio of cited decisions, we delete the impugned addition. The corresponding grounds stands allowed.

12. The addition of cash deposit of Rs.3.59 Lacs represents unsecured loans of Rs.2 Lacs and Commission income of Rs.1.50 Lacs. The Ld. AR has submitted that the same was sourced out of loan of Rs.4.74 Lacs extended by assessee's wife. The Ld. AR has also argued that this addition was not made in the first round and therefore, Ld. AO has exceeded the jurisdiction in travelling beyond the issues which were part of the grounds in the original appeal before the Tribunal.

13. Upon perusal, the legal argument urged by Ld. AR is not to be accepted since the assessment, in the first round, was framed on best judgment basis and the assessee was in further appeal before Tribunal primarily on the ground of violation of natural justice, Accordingly, the assessment was set aside and Ld. AO was directed to frame de novo assessment. Therefore, this addition, in such a case, could very well be made by Ld. AO in the set aside proceedings. On merits, considering the facts of the case, we direct Ld. AO to sustain impugned addition to the extent of 50% and delete the remaining addition. The corresponding grounds stands partly allowed.

14. The appeal stands partly allowed in terms of our above order.

Order pronounced on 21st September, 2023

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :21-09-2023

DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF