

आयकर अपीलिय 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, HON'BLE ACCOUNTANT MEMBER  
AND SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER**

आयकर अपील सं./ITA No.: **311/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2008-09

ARRS Megamall P. Ltd.,  
102, Yercaud Road,  
Reddiyur, Alagapuram,  
Salem – 636 001.

Deputy Commissioner of  
v. Income Tax,  
Central Circle,  
Salem.

**[PAN: AAGCA-7199-F]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 28.08.2023

घोषणा की तारीख/Date of Pronouncement

: 01.11.2023

**आदेश / O R D E R**

**PER MANJUNATHA. G, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-19, Chennai, dated 01.03.2023 and pertains to assessment year 2008-09.

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

*"1. The order of the CIT (Appeals) - 19 dated 01.03.2023 vide DIN ITBA/APL/M/250/2022-23/1050274837(1) for the above Assessment Year is contrary to law, fact and in circumstances*

2. The CIT(Appeals) - 19 erred in sustaining the addition of Rs. being one of the components of the purchase consideration of an property owned by Premier Roller Flour Mills P. Ltd as investment in terms of Section 69B of the Act by reckoning such the previous year related to the assessment year under without assigning proper reasons and justification.

3. The CIT(Appeals) - 19 failed to appreciate that provisions of the Act had no application to the present case and in circumstances case, thereby negating the related findings in the impugned order

4. The CIT(Appeals)-19 failed to appreciate that sum of Rs. were paid to the seller of the disputed transaction during the period 01.04.2012 to 27.05.2012 with a view to remove the encumbrances to the property, thereby negating the presumption of applicability provisions of Section 69B of the Act.

5. The CIT (Appeals) - 19 failed to appreciate that having proved of the transaction of Rs. 6,15,00,000/- by placing on record the copies of ledger account, orders of the courts regarding the disputed property, settlement memo in the hands of the appellant company, presumption of applicability of provisions of Section 69B of the Act was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.

6. The IT(Appeals) - 19 failed to appreciate that the cross verification carried out by the revenue for coming to the conclusion on the completion of the transaction in the assessment year under consideration had no legal sanctity and ought to have appreciated that the sequence of events provided by the appellant backed up the evidences filed in support to establish the payment of the disputed component of the purchase consideration were completely overlooked and brushed aside, thereby vitiating the related findings in the impugned order.

7. The CIT(Appeals) - 19 failed to appreciate that the addition based on mere suspicion and surmises without looking into the facts provided by the appellant for substantiating the claim of payment of disputed component the subsequent assessment year as referred to consistently in the responses filed before him and before the JAO should be considered as nullity in law.

8. *The CIT(Appeals) - 19 failed to appreciate that the encumbrances attached to the property were cleared only in the subsequent assessment years and hence ought to have appreciated that rejection of the claim of payment of the disputed component of the purchase consideration at a later point in time was wholly unjustified.*

9. *The CIT(Appeals) - 19 failed to appreciate that the sworn statement of Director of M/s Premier Roller Flour Ltd was not provided to the appellant before making the disputed addition under consideration, thereby grossly violating the principles of natural justice and fairness in taxation, the consequential re-assessment order should be reckoned as bad in law.*

10. *The CIT(Appeals)-19 failed to appreciate that the assumption of jurisdiction u/s. 147 of the Act was without sanction of law and ought to have appreciated that the consequential re-assessment order accordingly should be reckoned as bad in law.*

11. *The CIT(Appeals) - 19 failed to appreciate that the reopening of the assessment on various facets was bad in law and ought to have appreciated that law laid down by the Apex Court in the case reported in 259 ITR 19 was not followed, thereby vitiating the consequential re-assessment completed.*

12. *The CIT(Appeals) - 19 failed to appreciate that the reopening of the assessment based on the misreading of the search results in the hands of the C. Duraisamy should be reckoned as bad in law and ought to have appreciated that having not possessed with any material to dislodge the stand of the appellant herein, the re-assessment completed based on the suspicion should fall to the ground.*

13. *The CIT(Appeals) - 19 failed to appreciate that having accepted on one side about the payment of the balance purchase consideration after the completion of the registration process, the rejection of the stand of the appellant in making the payment of the disputed component of the purchase consideration during 01.04.2012 to 27.05.2012 should accordingly considered as wrong and incorrect especially in the absence of direct evidence.*

14. *The CIT(Appeals) - 19 failed to appreciate that there was*

*effective/proper opportunity given before passing the impugned order and any order passed in violation of the principles of natural justice is nullity in law.*

*15. The appellant craves leave to file additional grounds/arguments at the time of hearing."*

3. The brief facts of the case are that, the appellant is a Private Limited Company, filed its return of income for the assessment year 2008-09 on 27.09.2008, admitting Nil total income. A search and seizure action u/s. 132 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was conducted at the premises of Shri. C. Doraisamy on 09.03.2012. During the course of search proceedings, it was noticed that the appellant company had purchased an immovable property measuring 1.97 acres of land and building from M/s. Premier Roller Flour Mills Ltd., for a consideration of Rs. 12 crores. A statement of oath was taken from Shri. C. Doraisamy, Managing Director of M/s. Premier Roller Flour Mills Ltd., where he had admitted that the property has been sold to M/s. ARRS Malls (P) Ltd., for a consideration of Rs. 24 crores and sale deed was executed for Rs. 12 crores only. He further admitted that, additional consideration of Rs. 12 crores was unaccounted. In order to verify the transactions of purchase of property, an enquiry u/s. 131 of the Act, was

conducted with M/s. ARRS Megal Mall Pvt Ltd and a sworn statement was recorded from Shri. R. Srinivasan, Managing Director of the company on 28.05.2012, in which he had deposed that the appellant company had purchased 1.97 acres of land belonging to M/s. Premier Roller Flour Mills Ltd., for a consideration of Rs. 24 crores and sale deed was executed only for Rs. 12 crores. He further admitted that, additional consideration of Rs. 12 crores has been paid on various dates between 02.04.2012 and 27.05.2012. A perusal of the return of income filed by the assessee for assessment year 2008-09 showed that, the assessee had not disclosed the above transactions fully. Therefore, the assessment has been reopened u/s. 147 of the Act, for the reasons recorded as per which income chargeable to tax had been escaped assessment and accordingly, notice u/s. 148 of the Act dated 07.02.2014, was issued and served on the assessee. In response to notice issued u/s. 148 of the Act, the appellant vide letter dated 14.02.2014 stated that the return of income originally filed on 27.09.2008 may be treated as return filed in response to notice u/s. 148 of the Act.

4. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer called upon the assessee to explain source for additional consideration of Rs. 12 crores paid to M/s. Premier Roller Flour Mills Ltd., for purchase of property vide sale deed on 03.01.2008. In response, the assessee vide letter dated 18.06.2014 submitted details of payment of Rs. 24 crores made to M/s. Premier Roller Flour Mills Ltd., for purchase of property and explained that sum of Rs. 4.85 crores has been paid for purchase of property on various dates starting from 02.04.2012 to 27.05.2012. The remaining amount of Rs. 1.50 crores has been offered to tax in the hands of Shri. R. Srinivasan, Director of the appellant company for assessment year 2013-14, because the assessee could not explain source for payment made for purchase of property.

5. The Assessing Officer, however was not convinced with explanation furnished by the assessee and according to the Assessing Officer, subsequent affidavit filed by the appellant along with confirmation letter from Shri. C. Doraisamy, for receipt of Rs. 12 crores on various dates for the financial year 2012-13 relevant to assessment year 2013-14, is only an

afterthought to circumvent additions proposed towards unexplained investment for purchase of property. The Assessing Officer, had discussed the issue at length in light of certain judicial precedents including the decision of Hon'ble Supreme Court in the case of CIT vs Durga Prasad More 82 ITR 540 and Sumati Dayal vs CIT 214 ITR 801, in light of theory of preponderance of human probabilities and observed that no prudent person would sell his property and receive part consideration after period of four years. The Assessing Officer, further observed that the evidence gathered during the course of search and post-search investigation coupled with statements recorded from Shri. C. Doraisamy and Shri. R. Srinivasan, clearly shows that the appellant company had paid additional consideration of Rs. 12 crores on or before the registration of the property i.e., on 03.01.2008 and thus, rejected explanation furnished by the assessee and made additions of Rs. 6.15 crores as unexplained investment u/s. 69B of the Act. The relevant findings of the Assessing Officer are as under:

*17. The facts of the case and the submissions made by the assessee and the details and documents produced and gathered by way of enquiry from the Banks are considered carefully.*

- *The assessee-company had purchased the property from M/s Premier Roller Flour Mills P Ltd on 3.1.2008. The sale*

consideration as per the registered document of Rs. 12 crores was however received on 9.4,2008 by way of cheque drawn on IOB.

- The sale was registered vide Sale Deed dated 3.1.2008 and the sale consideration was mentioned as Rs. 12 Crores paid by Cheque No. 43640o1 dated 3.1.2008 drawn on Indian Overseas Bank, Salem in favour of M/s Premier Roller Flour Mills (P) Ltd.
- The following concerns of the MD Sri R Srinivasan had made the additional payments of Rs. 5.85 crores as under:

1. M/s ARR Srinivasan Firm - Rs. 4.85 Cr (Rs. 4.25 Cr + Rs. 0.60 Cr)
2. M/s ARRS Srinivasan & Sons - Rs. 1.00 Cr

18 The Bank account Statements of Mis Premier Roller Flour Mills (P) Ltd were called for and examined. It is seen from the same that an amount of Rs. 17.85 Crores has been received by the Company through Cheques / RTGS on the following dates.

- i) On 5.1.2008 - Rs. 1 Crore
- ii) On 23.1.2008 - Rs. 4.25 Crores
- iii) On 5.2.2008 - Rs. 0.60 Crores
- iv) On 9.4.2008 - Rs. 12 Crores [Cheque dated 3.1.2008]

19. In respect of the balance Rs. 6.15 crores as per the details filed and examined, cash payments are alleged to have been made to Sri C.Duraisamy on various dates beginning with 1.4.2012 and ending with 27.5.2012.

20. However, the following facts point to the impracticability of the entire payment schedule of the balance amount of Rs. 6.15 Crores and indicate that this is a carefully thought plan to avoid taxation of the said on-money payments:

- The Sworn statement of Sri C Duraisamy was recorded on 9.3.2012, on which date itself, he has deposed before the Investigation Authorities that the sale consideration of Rs. 24 Crores has already been received.
- Sri R Srinivasan was enquired u/s 131 (1A) of the IT Act on 28.5.2012, on which date, he had deposed that he had paid the registered sale value of Rs. 12 Crores and the additional consideration of Rs. 12 Crores and that the same was unaccounted.
- It is not possible that the payments made as recently as on 27.5.2012, practically a day before the said enquiry is not known / recolected as having been made from accounted or unaccounted source.
- Further, in the statement deposed by Sri C Doraisamy u/s 132 (4) of the Act during the course of search proceedings on 9.3.2012, he had furnished the details of payments made to various persons / parties as follows:

"Q.No.5 Please explain the sale and purchase transactions of M/s. Premier Roller Flour Mills Page/ Ltd in detail?"

Ans: I state the transactions about M/s. Pramior Roller Flour Mills Ltd as below Sale consideration Ms, Prermier Roller Flour Mills Ltd Rs. 24 Cr.

Less:

Description	Amount
1. Amount paid to erstwhile shareholders	Rs. 3.15 Cr
2. Amount paid to erstwhile shareholder as per receipt	Rs. 645 Cr
3. Amount paid to the uncle of erstwhile shareholders	Rs. 0.55 Cr
4. Amount paid to Shri Ramalrngam tor cancellation of earlier agreement	Rs. 2.50 Cr
5. Settlement of Co-Operative bank loan	Rs. 1.99 Cr
6. Debts of cotton suppliers of Andhra Pradesh of erstwhile owners	Rs. 0.75 Cr
7. Cash given lo the family members of K. Venkatachalam	Rs. 1.00Cr
8. Settlement of small debts of erstwhile Administration	Rs. 0.20 Cr
<b>Total Expenses</b>	<b>Rs. 16.59 crores</b>

21. The chronology of events upto and after the transfer of the property from M/s Premier Roller Flour Mills P Ltd to M/s ARRS Mega Mall P Ltd furnished, very briefly, below indicate clearly that the payments averred to have been made by Sri R Srinivasan, MD of the assessee Company towards various persons (as per the submissions dated 14.2.2014) were already made by Si C Doraisamy much before the dates specified by the assessee company, (payments emphasized)

- 29.10.2004 -K. Venkatachalam group enter into an agreement with C. Doraisarny group for a loan.
- 30.10.2004 -Settlement of secured loan from Co-operative Bank by C. Doraisamy Rs. 1,99,94,597/-
- 30.11.2004 -Paid for Share Transfer Rs. 3,15,00,000/-
- 01.11.2004 -Board meeting for the approval of the above transfer. Appointment of C. Doraisamy group as directors of M/s. Premier Roller Flour Mills Limited and resignation of K. Venkatachalam group. Form 32 has been filed with the Registrar of Companies. Annual Returns for the year 31.03.2005, 31.03.2006 and 31.03.2007 filed with the Registrar of Companies, Taminadu, Coimbatore disclosing the above facts.
- 18.12. 2006 -Settled Sundry Creditor Shri. Rarmalingam Rs. 2,50,00,000/
- 2007 - Negotiations between C. Doraisamy Managing Director of M/s. Premier Rolier Flour Mills Private Limited and M/s. ARRS Mega Mall Private Limited for the sale of land & building owned by M/s. Premier Roller Flour Mills Limited. K.

Venkatachalam group filed a civil suit OS/312/2007 before the Munsif Court, Salem against the above sale.

- 03.01.2008 -M/s. Premier Roller Flour Mills Limited sold the property to M/s. ARRS Mega Mall Private Limited for a consideration of Rs. 12 Crores.
- 08.04.2008 -Compromise deed between C. Doraisamy group and K. Venkatachalam group. On receipt of Rs. 6,45,00,000/-, K. Venkatachalam group confirmed the transfer of shares to C. Doraisamy group and consented to the sale of company's properties to M/s. ARRS Mega Mall Private Limited. All the pending cases before the various authorities were agreed to be withdrawn.

09.04.2008 -Deposit through PNB D.D. to old share Holders by M/s Premier Roller Flour Mills P Ltd. Rs. 6,45,00,000/-

- Paid in cash to old share holders Rs. 1,00,00,000/-
- Paid to Shri. Gopalakrishnan, one of the old share holders Rs. 55,00,000/-
- Settled outstanding dues relating to Venkatachalam & sons Rs. 20,00,000/
- Paid to Sundry cotton suppliers of Andhra Pradesh Rs. 75,00,000/

22. The payments of the same to Sri C Duraisamy, therefore, are unverifiable and defy logic. No nexus can also be drawn to the alleged payments by the Purchaser and the payments made by the Seller to the persons stated above. Further, no prudent business man, especially in a real estate transaction, would wait up to more than four years for the payment of the additional consideration, especially after the transfer of the property.

22. Though it is averred that an affidavit was filed on 4.6.2012 itself before the Investigating Authorities retracting a part of the deposition made on 28.5.2012 and stating that the payments of Rs. 10.50 crores were accounted and the uncovered portion of Rs, 1.50 Crores will be admitted and return of income filed, no evidence of any supporting documents / books of accounts / dates of payments etc seem to have been furnished to the Investigating Authorities in support of the said Affidavit.

23. Hence, as can be seen from the above events and the statement deposed under oath by Sri C Doraisamy, the payments to these persons have already been made immediately about the time of the transfer of the property.

24. Further, the assessee-company has not filed the return of Income for and from A.Y. 2011-12 onwards stating that in view of the litigation involved and the fact that no business was carried out, the returns could not be filed. Therefore, the alleged payments made in April / May 2012 for and on behalf of the

company as stated by Sri R Srinivasan cannot be verified with respect to the returns of income.

25. When the above facts were brought to the assessee, during assessment proceedings, the assessee further averred that the said payments were made by cash and at later date and as reimbursements for the payments made by the Seller to various parties. The authenticity of such payments and the veracity of the assessee's statement is however not verifiable.

26. The seized materials and the sworn statements point towards the preponderance of probability that the sale consideration and the additional consideration have changed hands about the time of transfer of property. This fact cannot be ignored because of the human probabilities and surrounding circumstances as laid down by the Hon. Supreme Court of India in the cases of CIT Vs. Durga Prasad More 82 ITR 540 and Sumati Dayal Vs. CIT 214 ITR 801.

27. Further, it is humanly highly improbable that for a sale registered as early as on 3.1.2008, the Seller is willing and accepts to receive 50 % of the total actual consideration after nearly four years and that too in numerous installments ranging from Rs. 5 lakhs- to Rs. 20 lakhs.

28. A Show Cause Notice, was therefore issued to the assessee, on 05.03,20 15 detailing the above facts and proposing to add the balance additional consideration of Rs. 6.15 Crores to the returned income and calling for his objections | clarifications / explanations to the said proposal.

29. The assessee filed a letter dated 10.3.2015 reiterating the facts already stated during assessment proceedings. He also referred to a letter alleged to have been issued by Sri C Doraisamy, confirming the receipt of Rs. 12 crores on various dates from Sri R Srinivasan and requested that as the Seller himself had accepted that the payments were made in April and May 2012, the same should be accepted by the Department and allowed. He further requested for an opportunity for personal representation.

30 The assessee's final submissions are again considered carefully. The assessee did not avail of the further final opportunity given for personal representation on 16.3.2015.

31. It is a well settled law that statements given under oath during the course of Search and Seizure proceedings are reliable evidences and the same cannot be retracted lightly without any basis or corroborative evidence. A statement given under oath is reliable evidence and cannot be retracted without any material evidence to show that such statement was made under ignorance of facts or on account of misunderstanding of the provisions of law. The following case laws hold that statement recorded u/s 132

(4) of the Act are reliable and oral evidence and retraction of the Statement without establishing coercion cannot be accepted:

1. PRASANCHAND SURANA VS ACIT [HYD] [ITAT] [76 ITD 423]
2. CIT VS HOTEL MERIYA [KER (332)] [TR 537]
3. KANTILAL C SHAH VS ACIT [TAT][AHMEDABAD] [133 ITD 57]
4. SUDHARSHAN P AMIN VS ACIT [2013] [TIOL] [88 HC AHM]

32. The above are only some illustrative cases wherein the Hon'ble Courts have held that the statements recorded from the assesseees are valuable evidences and cannot be discounted lightly without establishing the retraction with material evidences. It has also been held in various courts that when the assessee makes an admission under oath and then later retracts without furnishing any reasons, additions can still be made in the assessments.

33. Further, the following case laws and the judicial pronouncements therein, strengthen the stand taken by the department:

- 1) Manharlal Kasthurchand Choksi, [ 61 ITD 55][Ahd.] - wherein it was held that It is well settled law that an admission by a party is the best evidence of a point in issue and is decisive of the matter unless successfully withdrawn (or) proved to be erroneous.
- 2) Paramanand Builders (P) Ltd., 59 ITD 29(Bom) - wherein it was held that Even if a statement recorded at the time of search is retracted, its validity cannot be taken to be null and void Additions can still be made.
- 3) Hotel Kiran 82 ITD 493(Pune) - wherein it was held that "When statement u/s. 132(4) was voluntarily made and there was no coercion or threat whatsoever, the same would be binding on the assessee even if it was retracted subsequently."

34. The assessee has not produced any additional evidence for corroborating his stand that the payments alleged to have been made to Sri C Doraisamy in April/ May 2012 are for the sale of the said property. No nexus between the payments made in April / May 2012 and the receipt of additional consideration by Sri C Doraisamy, MD of M/s Premier Roller Flour Mills Ltd has been established. The assessee-company has not filed its return of income for A.Y. 2013-14 to substantiate the said payments in its accounts.

35. Therefore, as detailed in the paragraphs mentioned supra, there is no veracity, authenticity, or sanctity for the cash paymernts of Rs. 6.15 Crores stated to have been made by Sri R Srinivasan towards the additional sale consideration oul of accounted sources. The same is held to be the unexplained investments of the assessee-company and assessed as such u/s 69B of the Act."

6. Being aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). Before the Id. CIT(A), the assessee has filed a detailed written submission on the issue, which has been reproduced at Para 5 of page 4 to 9 of Ld. CIT(A) order. The sum and substance of arguments of the assessee before the Id. CIT(A) are that, the property has been purchased for a consideration of Rs. 24 crores and sale deed was executed for Rs. 12 crores only. The balance amount of Rs. 12 crores has been paid on various dates and up to assessment year 2013-14, including an amount of Rs. 4.85 crores in cash to Shri. C. Doraisamy, Director of the seller company. The appellant had also offered to tax a sum of Rs. 1.50 crores towards source for investment in purchase of property for the assessment year 2013-14 in the hands of Shri. R. Srinivasan, Managing Director of appellant company. The appellant had also explained reasons for deferred payment to the seller, even though the property was registered in the financial year 2007-08 relevant to assessment year 2008-09 and argued that there was a dispute in the property, which resolved in settlement between the seller and purchaser subsequent to date of sale and thus, balance consideration has

been paid on various dated and the same has been accounted in the books of accounts of the appellant company.

7. The Id. CIT(A), after considering relevant submissions of the assessee and also taking note of various facts brought on record by the Assessing Officer opined that, from the facts brought on record during the course of assessment proceedings, it is clear that both the Directors of the vendor company and the appellant company in their statements recorded u/s. 132(4) and 131(1A) of the Act respectively, admitted above payments/receipts of extra amount of Rs. 12 crores in addition to sale consideration of Rs. 12 crores as per the registered sale deed. The Assessing Officer, has examined the bank statement and found that out of Rs. 24 crores agreed consideration, a sum of Rs. 6.15 crores remains unexplained. The appellant has failed to bring any cogent and satisfactory evidence neither during the course of assessment proceedings nor at the time of appellant proceedings to prove that payment of Rs. 6.15 crores had actually being paid to clear the encumbrance upon the title of the property purchased. Therefore, the Id. CIT(A) held that the argument of the assessee with subsequent affidavit and confirmation letter

from Shri. C. Doraisamy regarding confirmation and subsequent payment made against purchase of property is only an afterthought and thus, rejected explanation of the assessee and sustained additions made u/s. 69B of the Act, towards unproved amount paid for purchase of property. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

8. The Ld. Counsel for the assessee, Shri. S. Sridhar, Advocate, submitted that the Id. CIT(A) erred in sustaining additions of Rs. 6.15 crores being unproved source for purchase of immovable property from M/s. Premier Roller Flour Mills Ltd., as unexplained investment u/s. 69B of the Act. The Ld. Counsel for the assessee, referring to various documents including judgment of District Court in O.S. No. 312/2007, dated 17.04.2008 and Compromise Deed executed by the sellers dated 08.05.2008, submitted that there was a dispute on the property, which has been subsequently sorted out by way of Court order and subsequent compromise deed. The appellant has paid a sum of Rs. 4.85 crores on various dates starting from April, 2012 to July, 2012, as per the directions of Shri. C. Doraisamy, Director of vendor company,

and the appellant has accounted said payment in the books of accounts for the financial year 2012-13 relevant to assessment year 2013-14. The remaining amount of Rs. 1.50 crores has been offered to tax in the hands of Shri. R. Srinivasan, Director of the appellant company for the assessment year 2013-14. The appellant has filed an affidavit and explained details of payments made to different persons as per the directions of the seller company. Shri. C. Doraisamy, Director of vendor company has confirmed receipt of sum of Rs. 4.85 crores during the financial year relevant to assessment year 2013-14. Therefore, the Assessing Officer and CIT(A) are erred in making addition of Rs. 6.15 crores for the assessment year 2008-09, only on the basis of sale deed executed for the assessment year 2008-09, ignoring all evidences filed by the assessee. Further, the Ld. Counsel for the assessee submitted that, it is not strange in real estate transactions that payments have been made subsequent to the date of registration of property depending upon various facts including understanding between the buyer and the seller. Therefore, merely on the basis of statement of Director of vendor company, additions cannot be made ignoring the fact that the appellant company had categorically stated during post-search investigation that,

balance consideration has been paid on subsequent dates. The Id. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer and thus, additions made by the Assessing Officer should be deleted.

9. The Id. DR, Shri. D. Hema Bhupal, JCIT, supporting the order of the CIT(A) submitted that, evidence gathered during the course of search and post-search investigation coupled with statements recorded from Director of vendor company and also appellant company clearly shows receipt of on-money of Rs. 12 crores before registration of property. Further, the appellant company through its Director had admitted that additional consideration paid for purchase of property was unaccounted and also agreed to pay tax on unexplained investment. Further, analysis of bank statement of appellant company and seller company clearly reveals payment of Rs. 17.85 crores has been paid by the appellant company through Cheques/RTGS. In respect of balance cash payment of Rs. 6.15 crores, no source has been explained. Although, the appellant claims to have made Rs. 4.85 crores for the financial year 2012-13 relevant to assessment year 2013-14, but no evidence has been filed to substantiate the claim, except an

affidavit from the appellant company and confirmation letter from the Director of the vendor company. From the above, it is very clear that subsequent averments by way of affidavit is only an afterthought, which is contrary to the theory of preponderance of human probabilities, as explained by the Assessing Officer, in light of the decision of Hon'ble Supreme Court in the case of CIT vs Durga Prasad More (Supra) and Sumati Dayal vs CIT (Supra). The Id. CIT(A), after considering relevant facts has rightly sustained additions made by the Assessing Officer and their order should be upheld.

10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the appellant company had purchased 1.97 acres of land from M/s. Premier Roller Flour Mills Ltd., vide registered sale deed dated 03.01.2008 for a consideration of Rs. 12 crores. It is also an admitted fact that evidence gathered during the course of search in the case of Shri. C. Doraisamy, Director of the vendor company, clearly establishes the fact of receipt of additional consideration of Rs. 12 crores for sale of property. This fact is further strengthened by post-search investigation

conducted in the case of appellant company u/s. 131 of the Act, where Shri. R. Srinivasan, Managing Director of the company in his sworn statement recorded on 28.05.2012, clearly admitted to have paid additional consideration of Rs. 12 crores for purchase of property from M/s. Premier Roller Flour Mills Ltd. From the above, it is undoubtedly clear that the appellant company had purchased immovable property from M/s. Premier Roller Flour Mills Ltd., for a consideration of Rs. 24 crores and the sale deed has been executed for a consideration of Rs. 12 crores only. In fact, both the vendor company and the appellant company agreed that the property has been purchased for a consideration of Rs. 24 crores. In light of above facts, it is necessary to examine reasons given by the Assessing Officer to make additions of Rs. 6.15 crores as unexplained investment u/s. 69B of the Act.

11. It is an admitted fact that out of total consideration of Rs. 24 crores (Rs. 12 crores as per registered sale deed), the Assessing Officer has accepted source explained by the appellant to the extent of Rs. 17.85 crores. The disputed portion of additional consideration paid is only Rs. 6.15 crores. According to the appellant, sum of Rs. 4.85 crores has been

paid through Shri. C. Doraisamy for settlement of land dispute with Shri. Ramalingam and settlement of creditors of M/s. Venkatachalam and Sons in the month of April and May, 2012. The appellant further claimed that unproved balance consideration of Rs. 1.50 crores has been offered to tax in the hands of Shri. R. Srinivasan, Managing Director of appellant company. The Assessing Officer, rejected arguments of the appellant mainly on the ground of theory of preponderance of human probabilities and to support his observations, the Assessing Officer took support from the decision of Hon'ble Supreme Court in the case of CIT vs Durga Prasad More (Supra) and Sumati Dayal vs CIT (Supra). According to the Assessing Officer, no prudent person would sell his/her property and receive part consideration after a period of four years. Except this, the Assessing Officer has not brought on record any other reasons to disbelieve the affidavit filed by the Director of the appellant company, undertaking dates and amount paid to various persons as per the instructions of Shri. C. Doraisamy, the Managing Director of vendor company and confirmation letter filed by Shri. C. Doraisamy, accepting receipt of consideration subsequent to sale deed. On the other hand, the evidences brought on record by the assessee

including statement of oath recorded from Shri. R. Srinivasan, Managing Director of appellant company and statement recorded from Shri. C. Doraisamy, coupled with judgment of District Court in O.S. No.312/2007 and Compromise Deed executed by the seller dated 08.05.2008, clearly shows there was a dispute on the property between various persons and the same has been sorted out subsequent to the date of sale deed. This fact is further strengthened by affidavit filed by the Director of appellant company and supported by confirmation letter filed by Shri. C. Doraisamy, undertaking dates and amounts received subsequent to date of sale i.e., for the financial year relevant to assessment year 2013-14. If you go by affidavit filed by the assessee to support his argument, it appears that there was a dispute in the property between various persons and appellant has made part payment after settlement of dispute and execution of Compromise deed by the sellers. Further, statement recorded from Shri. R. Srinivasan, Director of appellant company during the course of search clearly shows that, additional consideration was paid only in installments due to pending litigation over the subject property and resolved during the assessment year 2013-14. The answers in the sworn statement under any stretch of

imagination cannot be considered as a device to cover up the source for the additional consideration paid, because the survey team has not put the information obtained in the search/survey conducted in the hands of the seller. The questions were put to the Director of the appellant company during survey independent of the search results obtained in the hands of the seller and therefore, the answers given by the Director of the appellant company cannot be brushed aside by solely relying upon the sworn statement of Shri. C. Doraisamy. Moreover, additional consideration paid in tranches, dispute pertaining to the transfer of property by way of a suit in the Civil Court and further, by way of proceedings initiated before the Company Law Board cannot be disputed, because said facts clearly captured in the statement given by the Director of the appellant company. Further, the dispute on the property has been resolved only after registration process which is evident from the order passed by the Civil Court restraining the parties concerned in transferring/selling the property. Therefore, in our considered view, the observations of the Assessing Officer in light of date of sale deed executed by the parties and subsequent statement of Director of vendor company cannot proceed on the premises of justifying the

Revenue's attempt in asking for source for the additional consideration paid. It is common in many cases that property has been registered by accepting part consideration and remaining consideration has been paid in installments, after the date of registration and it all depending upon the arrangements between the parties and other issues like disputes, if any on the properties. It is an exceptional case whereby dispute relating to the subject property is resolved only after registration of the documents including the payment of additional consideration. Therefore, from the combined reading of all the answers given in the sworn statement of the Director of the appellant company, it is abundantly clear that said additional consideration has been paid and being accounted in the assessment year 2013-14. Accordingly, the shortfall for the source for payment of additional consideration to the tune of Rs. 1.5 crores is already offered for taxation in the assessment year 2013-14, in the hands of Shri. R. Srinivasan, Director of the appellant company. Therefore, in our considered view, the reasons given by the Assessing Officer to allege that the arguments of the appellant with regard to substantiate payment to the vendor company, in light of affidavit and confirmation letter from the Director of

the vendor company is an afterthought is devoid of merits and thus, rejected.

12. Further, the Assessing Officer has made additions solely on the basis of statement of Shri. C. Doraisamy, but fact remains that said statement cannot be relied upon for the simple reason of non-furnishing of the full version before passing of the re-assessment order. Further, in the statement of Shri. C. Doraisamy, there is no iota of any evidence with regard to details of payments, even though he had admitted that additional consideration of Rs. 12 crores has been received for sale of property. Moreover, the offer of the additional consideration received by the seller in the income tax returns filed for the assessment year 2008-09, by virtue of provisions governing computation of capital gains would not alter the recognition of payments by the appellant during the assessment year 2013-14 in the hands of appellant company, especially when amounts were paid to resolve dispute, which was pending after the execution of sale deed and also stated on oath in the statement which should be considered as sacrosanct. Furthermore, the reporting of additional consideration by the seller either as capital gains or as other

income because of the search conducted in the month of March 2012 in the assessment year 2008-09, so as to justify and to link the additional consideration to the sale deed executed for several reasons to come out from the rigors of the Income Tax Act. Therefore, the statement of Shri. C. Doraisamy, cannot be taken as sacrosanct and on that basis additions cannot be made for assessment year 2008-09. Further, the Assessing Officer in the re-assessment order had concluded on the presumption that the appellant had paid disputed component of additional consideration during the assessment year 2008-09, solely on the basis of execution of the sale deed, which cannot be considered as correct approach in view of the peculiar facts of the present case. Therefore, in our considered view, the presumption of disputed sum being paid during the assessment year under consideration is wholly unjustified especially in view of the settlement of dispute in the subsequent assessment years. This fact is further strengthened from the confirmation of Shri. C. Doraisamy, where he had categorically admitted that sum of Rs. 4.85 crores has been paid in the assessment year 2013-14. Therefore, we are of the considered view that the Assessing Officer should not have read the statement of Shri. C.

Doraisamy in isolation and combined reading of the statement and facts emerging there from would establish the fact that the transactions is completed only in the assessment year 2013-14 and the appellant has established the source for balance consideration of Rs. 6.15 crores. The Id. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer. Thus, we set aside the order passed by the Id. CIT(A) and direct the Assessing Officer to delete additions made towards additional consideration paid for purchase of property amounting to Rs. 6.15 crores as unexplained investment u/s. 69B of the Act.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 01<sup>st</sup> November, 2023 at Chennai.

**Sd/-**

(मनोमोहन दास)

**(MANOMOHAN DAS)**

**न्यायिक सदस्य/Judicial Member**

**Sd/-**

(मंजुनाथ. जी)

**(MANJUNATHA. G)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 01<sup>st</sup> November, 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