

**आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI**

**माजनीय श्री महावीर सिंह, उपध्यक्ष एवम्
माजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकर अपील संख्या ITA No.530/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2015-16)**

&

**आयकर अपील संख्या ITA No.531/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2016-17)**

Shri Thomas Chandy Kondody C/o. B. Anand & Associates (CAs) No.5/4, Rama Street, Nungambakkam, Chennai-600 034.	बनाना / Vs.	ACIT Central Circle-1(2), Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No.	ALJPK-1289-M	
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri Anandd Babunath (FCA)-Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT)- Ld. Sr. DR

सुनवाईकी तारीख/ Date of final Hearing	:	30-01-2024
घोषणाकी तारीख / Date of Pronouncement	:	01-02-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2015-16 & 2016-17 arises out of common order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] on 08-02-2023 in the matter of separate assessments framed by Ld. AO u/s 143(3) r.w.s. 153A r.w.s. 153C of the Act on 29-12-2019 for AY 2015-16

and on 27-12-2019 for AY 2015-16. It is admitted position that facts as well as issues are quite identical in both the appeals and adjudication in any one appeal shall apply to the other year also. For the purpose of adjudication, facts from case records of AY 2015-16 have been culled out in this order. The grounds raised by the assessee read as under:-

1. For that the Order of the Ld. CIT (A) and Ld. AO are bad in law and circumstances and is opposed to the principles of natural justice, equity, and fair play.
2. For that the Order of the Ld. AO failed to bring on records any material evidences to prove that the cash payment was made by the Gokulam Group only **towards income of the Appellant** during assessment.
3. For that the Sworn Statement of a third party has been relied for the purposes of deeming the cash payment to Appellant as his income was without any proof by the Ld. AO and the assumption is erroneous and suffers from surmise.
4. For that the same sworn statement of the third party also affirms that the payments were made to the major shareholders by advancing the monies to the Appellant and the Appellant was used for intermediary and the same corollary was rejected for Cash disbursements is nothing but mere conjecture of the Ld. AO.
5. For that the Ld. AO rejected the deposition of the Appellant in the Statement wherein the details of payments to small shareholders were paid in the instruction of the Gokulam group and the register of payment was taken back as no evidences were left with the Appellant by the Gokulam Group renders that it cannot be deemed as income in the hands of the Appellant.
6. For that the Ld. AO, while completing the assessment allowed the payment to Major Share Holders but rejected the claim of disbursal to the small shareholders was covered by the judgment of Delhi High Court in CIT vs. Kabul Chawla, which mandates presence incriminating materials to make an addition in the hands of the appellant.”

As is evident, the sole issue that arises for our consideration is additions arising out of search proceedings.

2. The Registry has noted delay of 18 days in the appeals, the condonation of which has been sought by the Ld. AR on the strength of affidavit of the assessee. Considering the period of delay, the delay is condoned and the appeals are admitted for adjudication on merits.

3. The Ld. AR advanced arguments and drew our attention to various documents placed on record. The Ld. AR submitted that the impugned amounts do not represent the income of the assessee but it was paid to

shareholders. The Ld. CIT-DR controverted the arguments of Ld. AR and submitted that no plausible evidences could be furnished by the assessee to support the same. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

4.1 The assessee being resident individual is stated to be engaged as real estate commission agent. An assessment was framed against the assessee u/s.143(3) r.w.s. 153A r.w.s. 153C of the Act on 29-12-2019 pursuant to search operation conducted by the Department on 19-04-2017 in the case of M/s. Sree Gokulam Chit and Finance Company Pvt. Ltd. (SGCFCL) which was engaged in the business of chit fund.

4.2 During the course of search operations, certain books of account were found and seized vide annexure No.ANN/CM/GCFL/B&D/S-1 to S-6 and page No. 24 & 25 of the seized books marked as ANN/CM/GCFL/B&D/S-1 which, inter-alia, contained the details of payments made to the assessee by M/s Sree Gokulam Chit and Finance Company Private Ltd on various dates. During the course of search operations, it was identified that the said register was maintained by Shri M. Suresh Babu, AGM (Legal) of that entity. A statement was recorded from him u/s 132(4) wherein he stated that the present assessee was a land broker and the payments as recorded in pages were made to him in connection with the acquisition of a sick unit by the name M/s South India Wires and Ropes Pvt. Ltd. He also confirmed that the assessee demanded 50% of profit as commission. He was so far paid an amount of Rs.1.25 cores in cash which was not recorded in the books of

account. As per the entries made in the register, an amount of Rs.25 Lacs was paid to the assessee on 20-11-2014.

4.3 Since the information in the seized material related to the assessee and it had a bearing on the determination of the total Income of the assessee, a notice u/s.153A r.w.s. 153C was issued by Ld. AO to the assessee on 10-07-2019. However, the assessee did not file any return of income. Subsequently, a show-cause notice was issued on 25-11-2019 explaining the details of information in the possession of the Department and asking the assessee to file the return of Income. The assessee admitted same income as offered in the original return of income which was found not acceptable by Ld. AO.

4.4 The assessee denied having received impugned sum of Rs.25 Lacs in individual capacity but submitted that the amount of Rs.125 Lacs was received from SGCFCL towards settlement of shareholders of M/s South India Wire and Ropes Pvt. Ltd and he was only coordinating the activity between SGCFCL and the shareholders of that entity.

4.5 However, considering the statement of Shri M. Suresh Babu that the cash was paid to the assessee towards commissions, Ld. AO rejected the explanation furnished by the assessee. Further, during post search enquiries, summons were issued to the assessee by DDIT(Inv), Unit-3(3), Chennai and a statement was recorded from him with regard to the amounts received from SGCFCL. The assessee confirmed the receipt of cash of Rs.125 Lacs from SGCFCL but stated that the amount was utilized for making the payment to 2500 small shareholders of the company M/s South India Ropes and Wires Pvt. Ltd.

4.6 The relevant extract of the statement made by the assessee were as under: -

Q3. What was your role in acquiring process of the company M/s.South India Wires & Ropes Limited by Sree Gokulam Chit and Finance Company Pvt. Ltd.? How much money have you received from M/s. Sree Gokulam Chit and Finance Company Pvt. Ltd. for your role? Please explain in details, Whether those all amounts received are accounted?

Ans: I had provided legal and facilitation work myself and through my partnership firm M/s. South India Developers (PAN: ACSFS6498) to M/s.Sree Gokulam Chit and Finance Company Pvt. Ltd. for the taking over of the South India Wire and Ropes Pvt. Ltd. Initially I had received Rs.2.25 Crores from M/s, Sree Gokulam Chit and Finance Company Pvt. Ltd. through cheque and it got credited in my personal account on 26.04.2014 & 03.05.2016. It is reflected in my bank account statement (A/c number - Dhanlaxmi Bank- 000200900003972).This amount was received by me as an advance to give to share holders of M/s. South India Wires and Ropes Pvt. Ltd. Out of Rs.2.25 Crores received, approximately Rs.1.44 Crores was paid to three of the share holders namely Viraj Impex Pvt. Ltd., Full Tech Investment Ltd. and Solver Wires Pvt. Ltd. towards the purchase of shares of M/s. South India Wires and Ropes Pvt. Ltd. Further, Rs.55 lakhs was used to pay the bank to get the property document pledged in the bank by me. Balance of Rs.26 lakhs was spent towards day to day expenses incurred in respect of process of acquiring of M/s. South India Wires and Ropes Pvt. Ltd. Apart from Rs. 2.25 Crores, I had received an amount of Rs.1.25 Crores in cash from Sree Gokulam Chit and Finance Company Pvt. Ltd, This amount was utilized to make the payment to around 2,500 share holders of the company M/s. South India Wires and Ropes Pvt. Ltd. towards amicable settlement. Further, an amount of Rs.5.85 Crores was received in the account of my partnership firm named M/s. South India Developers after deducting the TDS of Rs. 65 lakhs towards commission charges which was provided to Sree Gokulam Infrastructure Pvt. Ltd, This amount is reflected in the bank account statement (State Bank of India A/C no. 34603770734) of M/s. South India Developers. Also It is reflected in the Profit and Loss account of the firm M/s. South India Developers.

Further, I state that I do not have details about the distribution of Rs.1.25 Crores amongst around 2500 shareholders of the Company M/s. South India Wires and Ropes Pvt. Ltd. However, I will provide the details of payments made to M/s. Full Tech Investments Ltd and M/s. Solvar Wires Pvt. Ltd. out of Rs.1.44 Crores by 29.09.2017. The amount of Rs.56,76,409/- is reflected in my personal Dhanlaxmi bank account statement which was debited from my account on 14.07.2014.

4.7 The Ld. AO, considering the admission of the assessee, observed that the cash amount as received by the assessee was stated to be utilized towards payment to 2500 shareholders but the assessee did not produce any vouchers in support of such payment of cash to

shareholders. In the absence of supporting evidences, the aforesaid amount was treated as unaccounted business income in the hands of the assessee and an addition of Rs.25 Lacs was made for AY 2015-16 and another similar addition of Rs.100 Lacs was made for AY 2016-17.

Appellate Proceedings

5. The Ld. CIT(A) considered the statement made by Shri M. Suresh Babu that the assessee demanded 50% of payment as commission and paid an amount of Rs.125 Lacs in cash which was not reflected in the books of accounts. The assessee admitted the receipt of the payment but stated that the amount was received for settlement of shareholders. However, the assessee could not produce any evidence to support the same either during assessment proceedings or during appellate proceedings. Therefore, the additions were upheld against which the assessee is in further appeal before us for both the years.

Appellate Proceedings

6. We have carefully gone through the case records and duly considered the documents placed before us. It is admitted position that the amount of Rs.125 Lacs in cash has exchanged hands between SGCFCL and the assessee. The same has not been recorded in the books of any of the parties. It may be true that the assessee was carrying out legal and facilitation work for SGCFCL for taking over of another entity i.e., the South India Wire and Ropes Pvt. Ltd. However, to settle these amounts, all the payments were received in cheques by the assessee. The same were also settled through banking channels only which is evident from 3 receipts as placed by the assessee on record. The assessee could not produce even minor details of payment to 2500

shareholders stated to be paid in cash before lower authorities. Even before us, the assessee has placed bald list of shareholders which do not show that any such payment was made even to a single shareholder. In our considered opinion, the onus was on assessee to establish that the impugned payment did not constitute the income of the assessee and this amount was disbursed to the shareholders. However, the assessee has miserably failed to prove the same and there is nothing on record to support this submission. Nothing has been shown to us that the assessee has otherwise admitted any income against the facilitation work stated to be carried on behalf of SGCFCL. Therefore, the arguments of Ld. AR are not acceptable. Ground Nos. 1 to 5 stands dismissed.

7. In ground No.6, Ld. AR has raised a legal ground that the assessment was not based on any incriminating material that was ever found during the course of search. This argument is to be summarily rejected since the only basis to make the assessment in the case of the assessee is the incriminating material coupled with the statement made by Shri M. Suresh Babu indicating that the same shall have bearing on determination of total income of the assessee. The assessee himself has admitted the receipt of payment in cash. Therefore, the reasons to make the impugned assessments are well founded and we do not find any infirmity in the jurisdiction of Ld. AO.

8. Both the appeals stand dismissed.

Order pronounced on 01st February, 2024.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 01-02-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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