

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

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय 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 सं. ITA No.581/Chny/2022**  
**(निर्धारण वर्ष / Assessment Year: 2011-12)**

<b>Shri D. Ramagopal</b> C/o.Mr. G.V. Jhabakh (FCA) 157, P.M Swamy Colony, 5 <sup>th</sup> Street, Coimbatore.	<b>बनाना</b> / Vs.	<b>ACIT</b> Central Circle-1 Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AKGPR-3621-L</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकी ओरसे/ <b>Appellant by</b>	:	Shri Jhabakh(CA)- Ld. AR
प्रत्यर्थीकी ओरसे/ <b>Respondent by</b>	:	Shri Nilay Baran Som (CIT)-Ld. DR

सुनवाईकी तारीख/ <b>Date of final Hearing</b>	:	18-03-2024
घोषणाकी तारीख / <b>Date of Pronouncement</b>	:	09-04-2024

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1.1 Aforesaid appeal by assessee for Assessment Year (AY) 2011-12 arises out an order passed by learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] on 25-05-2022 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s 143(3) r.w.s 153A of the Act on 30-03-2016. The grounds raised by the assessee read as under:-

1. The assessing officer and the C.I.T. appeal erred in making addition as Long Term and Short Term Capital Gain without considering the expenses involved to get the title.
2. The assessing officer and the C.I.T. appeal erred in treating cash deposits into bank account as un-explained income.

3. The assessing officer and the C.I.T. appeal also not considered the agriculture income and treating the income at nil without considering the agriculture expenses.
4. The assessing officer and the C.I.T. appeal erred in not considering the source the same assessing officer for the assessment year 2009-10 which is in plenty available was also not considered.

As is evident, three issues falls for our consideration i.e., (i) Computation of capital gains; (ii) Cash deposits in bank account; (iii) Agricultural income.

1.2 The Ld. AR advanced arguments supporting the case of the assessee. The written submissions have also been filed. The Ld. CIT-DR has supported the findings given in the assessment order as well as in the appellate order. Having heard rival submissions, the appeal is disposed-off as under. The assessee being resident individual is stated to be engaged as dealer in immoveable properties.

## **2. Assessment Proceedings**

2.1 The assessee was searched u/s 132 on 27-11-2013 wherein certain documents / papers were seized on the basis of which impugned assessment was made. A notice u/s 153A was issued on 26-12-2014. The copies of impounded material were also handed over to the assessee. The assessee remained non-compliance and accordingly, penalty u/s 271F was also imposed by Ld. AO. Finally, the assessee filed return of income only on 02-01-2016 declaring 'nil' income and agricultural income of Rs.3.80 Lacs. During the course of assessment proceedings, statement of the assessee was also recorded u/s 131 on various dates.

2.2 The assessee stated that it had no income except for agricultural income of Rs.3.80 Lacs out of agricultural activities carried out by him in agricultural land in his name at Ravathur Pirivu and Yelaneli Village,

Coonoor Taluk. However, the assessee could not file working of agricultural income except for filing of Mandi receipts for sale of agricultural produce. The gross receipts as per these Mandi receipts were Rs.5.43 Lacs. The assessee filed bills for expenditure for Rs.1.53 Lacs and worked out net agricultural income of Rs.3.90 Lacs. This income was stated to have been utilized by the assessee entirely for his personal drawings as per his statements u/s 131. To verify the genuineness of the Mandi receipts, summons u/s 131 were issued to the 3 parties. However, the same was returned un-served as the parties could not be located at the given addresses. The field enquiries revealed that there was no shop by those names at the given addresses. Accordingly, Ld. AO held that the income was not genuine. The claim of income was rejected. Since no statement of affairs was filed by the assessee and the application of bogus agricultural income was not available, no addition was made on this account.

2.3 During the year, the assessee sold two properties in Ravathur Pirivu, Irugur. On 31.07.2010, he entered into a registered sale agreement with Smt. Bhagyalakshmi, wife of Shri Damodaran for sale of 67 <sup>3</sup>/<sub>4</sub> cents of land at SF No 630 for a consideration of Rs.8.04 Lacs. On the same day, the assessee admitted receipt of consideration of Rs.8.04 Lacs. An amount of Rs.2 Lacs was paid as advance vide Cheque no. 504024 and encashed in his HDFC Bank account no. 2907. The balance amount of Rs.6.04 Lacs was stated to be received in cash on the same day. This property was in the name of the assessee and this transaction would attract Capital Gains. The property was registered in the name of Smt. Bhagyalakshmi on 31.07.2010. But the assessee did not offer any capital gains on the sale of this property. Considering the submission of

the assessee that it was agricultural property situated beyond 8 kms from the Municipal limits, a reference was made to the Highways Department, providing copy of the sale deed and requesting for the distance from the Corporation limit of Coimbatore as on 31.07.2010. As per the information furnished by the Divisional Engineer (H) C&M, Coimbatore-18 along with a sketch map, the total distance from the Corporation limit to SF No. 630/2, Ravathur was stated to be 6.7 kms. As such the sale of the property would give rise to Capital Gains which were to be brought to tax. The assessee did not file any computation of Capital Gains with his return of income. However, during the course of assessment proceedings, he filed a computation on 12.01.2016 admitting Capital Gain of Rs.40,997/- from the sale of this and another property which was not in his name but which was sold through general power of attorney (GPA) acquired by him from one Smt. Theresa Paulin.

2.4 As per details furnished by the assessee, property measuring 1 acre 17  $\frac{3}{4}$  cents was purchased on 26.06.1996 vide document no. 3318/1996 for a consideration of Rs.2.50 Lacs plus Stamp Duty and Registration charges of Rs.0.30 Lacs. The sale deed for this property was available in ANN/MUACT/B&D/S No- 6 which was seized from the premises of Sh. C.Ashwin (CA) on 11.12.2006, the assessee executed a sale deed in favour of Smt. Theresa Paulin for 50 cents of land out of the total area of 1 acre 17  $\frac{3}{4}$  cents which constituted around 42.5% of the total land area. The consideration in this sale deed was Rs.2.50 Lacs. The assessee submitted that this sale deed was executed against loan of Rs.2.50 Lacs as taken from Smt. Theresa Paulin. On 25.03.2009 the assessee has stated that he has repaid the amount of Rs.2.50 Lacs to Smt. Theresa Paulin and obtained from her General Power of Attorney

(GPA) on the same day in respect of the 50 cents of property, thereby taking back possession of the property. The assessee submitted that this property was sold to Smt. Bhagyalakshmi for a consideration for Rs.10.82 Lacs vide sale deed dated 31.07.2010.

2.5 Considering all these aspects, Ld. AO worked out capital gains on two properties as under: -

**(i) Sale of land of 67 ¾ cents (57.5% of total land holding on 1 acre 17 ¾ cents)**

Sale consideration (transferred on 31.07.2010)	Rs. 8,04,000/-
Cost of acquisition Vide sale deed dated 26.06.1996 (57.5% of Rs.2,80,000)	Rs.1,61,000
Indexed cost of acquisition (161000*711/305)	Rs. 3,75,315
<b>Long Term Capital Gain</b>	<b>Rs. 4,28,785/-</b>

**ii) Sale of land of 50 cents ( 42.5% of total land holding on 1 acre 17 ¾ cents )**

Sale consideration (transferred on 31.07.2010)	Rs. 10,82,850/-
Less: Cost of acquisition. from Smt Theresa Paulin through GPOA on 25.03.2009	Rs.2,50,000
<b>Short Term Capital Gain</b>	<b>Rs. 8,32,850/-</b>

2.6 As against this, the assessee admitted Long-Term Capital Gain of Rs.0.40 Lacs only. The same was on account of the fact that the assessee claimed transfer expenses of Rs.0.94 Lacs. The assessee also claimed expenditure incurred towards court fees for Rs.3.75 Lacs. The cost of land was considered to be Rs.4.05 Lacs as against Rs.2.80 Lacs as taken by Ld. AO. The Ld. AO held that no supporting details could be filed for expenditure of Rs.0.94 Lacs. The Court fees of Rs.3.75 Lacs was stated to be incurred by the assessee for clearing the land from encroachments in the year 1997-98. In support, the assessee first filed receipt from one Shri K. Sivakumar (Advocate) on his letter head. However subsequently, the assessee filed one more bill given by one Smt. K. Rajeswari (Advocate). Both the bills were compared by Ld. AO and it was found that both bills carry the same date and same amount of

expenditure. The wordings of the two bills were exactly the same. The only difference was that the same were issued on letter heads of two different persons and signed by two different persons. Various other discrepancies were noted in the bills submitted by the assessee and accordingly, the same was found to be not acceptable. The Ld. AO held that the claim was not supported by any documents. Further, the assessee claimed cost of land of Rs.4.05 Lacs whereas the sale deed showed expenditure of Rs.2.80 Lacs only. Therefore, Ld. AO rejected the computation of the assessee and adopted above computations.

2.7 The Ld. AO made another addition of credits in cash account and bank account. The assessee produced cash book and bank account ledger. The assessee showed that the following cash deposits of Rs.51.40 Lacs in his bank account were In the name of Shri Vijaychand Jhabakh as per following details: -

ACCOUNT No.	Date	Amount Rs.
HDFC A/c. 2907	23.09.2010	7,00,000
	07.10.2010	6,90,000
	01.12.2010	8,50,000
HDFC A/c. 4871	27.08.2010	2,00,000
	23.09.2010	8,00,000
	19.11.2010	8,50,000
	20.11.2010	8,50,000
	22.11.2010	2,00,000
	Total	51,40,000

These payments were stated to be in connection with deed of mutual understanding entered into by the assessee with Shri Vijaychand Jhabakh and others. As per deed of understanding dated 23.08.2010, the assessee agreed to deliver 63 cents of land at Ponniahraipuram without any encumbrance to Shri Vijaychand Jhabakh for consideration of Rs.500 Lacs. A token advance of Rs.0.11 Lacs was also paid. A

further sum of Rs.25 Lacs was paid by way of Cheque no. 24209 on 23.08.2010. Another sum of Rs.225 Lacs was payable within 60 days for the purpose of evicting the occupants of the land. However, as per details of payments furnished by Sh. Vijaychand Jhabakh, on being summoned by the DDIT (Inv.) Unit-I, Coimbatore, in post search proceedings, cash payments made to the assessee were tabulated as under: -

Date	Name of party making payment	Amount Rs.
23.08.2010	Sh. Vijaychand Jhabakh	11,000
22.11.2010	Sh Kushal Jhabakh	10,00,000
28.04.2011	GKC Trust	5,00,000
28.04.2011	Leena Jain	5,00,000
07.05.2011	GKC Trust	3,00,000
12.05.2011	GKC Trust	7,00,000
07.10.2011	Sanjay Gulecha	9,35,000
08.10.2011	Leena Jain	8,00,000
25.10.2011	Leena Jain	3,00,000
17.11.2011	Sanjay Gulecha	75,000
17.11.2011	Sanjay Gulecha	4,75,000
22.11.2011	Sanjay Gulecha	2,50,000
24.11.2011	Leena Jain	3,00,000
13.12.2011	Sanjay Gulecha	3,00,000
	Total	

The above details were furnished by Sh. Vijaychand Jhabakh in response to summons u/s 131 issued by DDIT (inv.). The Ld. AO noted that no cash was received from Shri Vijaychand Jhabakh or his family members on the dates mentioned by the assessee on which cash was deposited in the bank. The assessee failed to reconcile the same. The Ld. AO held that the onus was on assessee to prove the source of cash deposit and the assessee failed to discharge this onus. Therefore, the amount of Rs.51.40 Lacs was brought to tax as unexplained income of the assessee.

### **3. Appellate Proceedings**

3.1 In the absence of any new evidences forthcoming from the assessee, Ld. CIT(A) confirmed computation of Long-Term Capital Gains for Rs.4.28 Lacs. Regarding Short-Term Capital Gains, the assessee submitted that the question of capital gain will not arise since the assessee had not sold the property as the owner but sold the same in the capacity of GPA holder. However, Ld. CIT(A) held that the assessee obtained a loan for which he executed a sale deed and after the repayment of such a loan, the possession of the property was taken back by the assessee. The assessee obtained Power of Attorney and sold the land for Rs.10.82 Lacs. For all practical purposes, the assessee was the owner and in fact, he admitted capital gain during the course of assessment proceedings. Therefore, the impugned addition as confirmed

3.2 On the issue of cash deposit, the assessee drew attention to the findings of Ld. AO that the assessee sold property during the year under consideration. The assessee contended that sale consideration was deposited in the bank accounts. The Ld. CIT(A) held that as no doubt the assessee had sold the properties during the year and as per computations of capital gains, total consideration received by the assessee was Rs.18.86 Lacs out of which an amount of Rs.2 Lacs was received by way of cheque. However, the sale deed was executed on 31.07.2010 whereas cash was deposited from 27.08.2010 onwards. The assessee did not make any attempt to prove the nexus between the sale consideration received and the amount deposited. Therefore, the addition was confirmed. The issue of agricultural income was also decided against the assessee since no evidence of land holding, crops

etc. could be adduced by the assessee. Aggrieved, the assessee is in further appeal before us.

### **Our findings and Adjudication**

4. Before us, Ld. AR has filed written submissions. We have gone through the same. Upon perusal, we find that there is no cogent evidence to establish that the properties sold by the assessee were agricultural land. The assessee is also unable to furnish any evidence of incurring of expenditure also. The findings rendered by Ld. AO as well as Ld. CIT(A) has remain uncontroverted before us. During the year, the assessee sold two properties vide sale agreement dated 31.07.2010 for sale of 67  $\frac{3}{4}$  cents of land for a consideration of Rs.8.04 Lacs. As per the information furnished by the Divisional Engineer (H) C&M, Coimbatore-18 along with a sketch map, the total distance of this land from nearest municipality is less than 8 kms. and therefore, the land could not be held to be agricultural land.

5. The assessee has sold another property which has emanated from seized document. The same has been sold for Rs10.82 Lacs. The Ld. CIT(A) has rendered factual finding that the assessee obtained a loan for which he executed a sale deed and after the repayment of such a loan, the possession of the property was taken back. The assessee obtained Power of Attorney and sold the land for Rs.10.82 Lacs. For all practical purposes, the assessee was the owner and in fact, he admitted capital gain during the course of assessment proceedings. Considering all these facts, the computation of Short Term Capital Gains and Long Term Capital Gains stand confirmed.

6. On the issue of cash deposits, Ld. CIT(A) has noted that as per computations of capital gains, total consideration received by the

assessee was Rs.18.86 Lacs out of which an amount of Rs.2 Lacs was received by way of cheque. This being so, the addition to the extent of Rs.16.86 Lacs is unjustified. Therefore, we delete the addition to that extent. The balance addition stand confirmed. The issue of agricultural income does not require any interference on our part.

7. The appeal stands partly allowed.

*Order pronounced on 9<sup>th</sup> April, 2024*

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

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

चेन्नई Chennai; दिनांक Dated : 09-04-2024

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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