

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.580/CHNY/2022

निर्धारण वर्ष/Assessment Year: 2009-2010

Shri D. Ramagopal,
14-A, 10th Street,
Ganapathypudur,
Ganapathy,
Coimbatore 641 006.

vs. The Deputy Commissioner of
Income Tax,
Central Circle I,
Coimbatore.

[PAN AKGPR 3621L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri Jhabakh, C.A.
: Shri Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing

: 09.01.2024

घोषणा की तारीख/Date of Pronouncement

: 05.04.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-19, Chennai in ITA No.555/19-20 dated 25.05.2022. The assessment was framed by the Assistant Commissioner of Income-tax, Central Circle-1, Coimbatore for the assessment year 2009-10 u/s.153A r.w.s.

143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 30.03.2016.

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO in making addition of profit from land dealing. For this, assessee has raised following ground Nos.1 to 3:-

1. The assessing officer and the C.I.T. appeal erred in not considering the assessee as Power Agent.

2. The assessing officer and the C.I.T appeal erred in making addition as profits from land dealing.

3. The assessing officer and the C.I.T appeal erred in relying on a bogus fax and letter which has no evidentiary value as per facts and law.

3. Brief facts are that the assessee is engaged in finance business since 1989 and claimed to have closed in 2003. The assessee is now engaged in dealings in immovable properties particularly land etc., in and around Coimbatore. The fact relating to the sale of Property No.108, Venkatsamy Road, RS Puram, Coimbatore are that the assessee facilitate the sale of this property to Martin Builders P. Ltd., Coimbatore through Shri Vincentraj. The assessee claimed that he is not the owner of the property and he claims that he is the power of attorney for the portion of land i.e., unregistered power of attorney signed by Shri P.R. Balakrishnan on 27.01.1995 in lieu of

loan advanced by assessee to Shri P.R. Balakrishnan. The AO noted that this property was transferred by the assessee to his maternal uncle Shri R. Srinivasan vide sale deed dated 19.10.2008 on a court direction of specific performance. This property was registered for a total consideration of Rs.55 lakhs in the name of Shri R. Srinivasan. In the sale deed, this amount of Rs.55 lakhs was mentioned as paid in cash and has been confirmed by both the parties. The assessee contended that the transfer was for name sake only to secure the property and no consideration was passed on from Shri R. Srinivasan to the assessee, Shri D. Ramagopal but the AO noted that the assessee entered into unregistered sale agreement dated 11.10.2008 with one Shri Leo Charlie Vincentraj for sale of property for a total consideration of Rs.2.56 crores against which an advance of Rs.70 lakhs was paid. The AO noted the details of Rs.70 lakhs as under:-

<i>06.10.2008</i>	<i>DD No.612822 of Punjab National Bank</i>	<i>Rs.20,00,000</i>
<i>10.10.2008</i>	<i>DD No.612849 of Punjab National Bank</i>	<i>Rs.10,00,000</i>
<i>07.10.2008</i>	<i>cash</i>	<i>Rs.40,00,000</i>

The AO noted that the sale agreement was impounded during the course of survey u/s.133A of the Act on the business premises of the assessee on 27.11.2013 and this was confirmed by the assessee during the course of post search proceedings and assessment proceedings u/s.153A of the Act that the total consideration

received by him from the sale of property was Rs.2.6 crores. Various details of cash received and demand draft received was mentioned in the agreement to sale. The assessee himself filed complete working from sale of property as against sale consideration received of Rs.2.6 crores by providing expenses for removing encroachment of Rs.26,85,050/-, house clearing expenses of Rs.31,50,000/- and amount given to Shri P.R. Balakrishnan of Rs.2,00,00,000/-. Shri P.R.Balakrishnan during post search assessment proceedings vide letter dated 19.02.2014 categorically denied transaction of receiving this payment of Rs.2 crores. The relevant text of letter reads as under:-

"I wish to categorically stat that I have not received any cash from D. Ramagopal on 15.10.2008 nor have I given any receipt for the same.

I state that the subject totally false and untrue.

I state that I have not given any Power of Attorney registered or unregistered to D. Ramagopal. D. Ramagopal is a habitual Criminal indulging repeatedly in such criminal activities with similar criminal associates.

I have initiated criminal and court proceedings against D. Ramagopal and his accomplices' associates. I have initiated court proceedings D. Ramagopal, Srinivasan and Sarni Vincent Ram, Martin Builders Pvt. Ltd. in OS. 585/09.

I will comply and co-operate fully with the Income Tax Department"

The assessee claimed to have receipt of Rs.2 crore obtained from Shri P.R.Balakrishnan but without any signature. Even the assessee during the course of assessment proceedings shown his inability to

produce Shri P.R.Balakrishnan as he is absconding for many years and even police could not trace him on the orders of the court. The AO also required to prove the removal of encroachment as mentioned in the assessment order, the parties in numbering 19 and out of this 19 parties, assessee is able to produce Shri U. Anand Kumar, Shri V. Narayanasamy, Shri Samiappan and Shri Velusamy but unable to produce any other party. The assessee claimed that he is not the owner of the property at 109, Venkatsamy Road, RS Puram, Coimbatore but only a power agent but based on unregistered Power of Attorney issued by Shri P.R. Balakrishnan, the assessee has sold this property. The assessee therefore objected to treatment of income on sale of property as capital gain in his hand. The AO after going through the facts of the case noted that the assessee is unable to prove the payment made for removal of encroachments, unable to prove payments made for house clearing expenses and also could not produce Shri P.R. Balakrishnan to whom he claimed to have made payment of Rs.2 crore. Therefore, the AO estimated profit in this land dealing as business income treating the same as adventure in the nature of trade and assessed the same at Rs.2,59,91,000/- by observing as under:-

“As these amounts are meagre and are not in violation of Section 40A(3), the same are allowed though the assessee has not proved all these amounts beyond doubt. As for the payments made to Sh R Srinivasan by cheque and DD totaling to Rs.4,75,000/-, the same have been denied by Sh. R.

Srinivasan and there is no evidence that these payments have been received by him in his bank account. AS regards the payments made by DD to Sh Balakrishnan, Sh Damodarasamy, Sh Jayakumar, Sh Kanagaveni, Muthusamy, L Narayansamy, Smt. Saratha, Sh Uttamaraj and Sh Venugopal, the parties have not been produced and have not confirmed having received these payments. As regards DDs purportedly to Sh. Mounasamy, Sh. V Naryanasamy and Sh. Velusamy, the copy of the bank accounts of these parties for verifying credit of such amounts were not filed. Neither was any evidence filed from the issuing bank that the DDs were actually issued in the names of these persons. As regards payments made to Bhuvaneshwari, Doraisamy, Jagadish, Kumarasamy, Muthusamy, Samiappan, these were through bearer cheques and were not confirmed by these parties. The payments made to Sh U Ramesh and Sh Hariharan are either by cash or bearer cheques and both these parties were not produced by the assessee for the examination. As such, payments totaling to Rs. 58,27,050/-(5836050-9000) are not allowable as they have not been proved to the satisfaction of the Assessing Officer and also attract disallowance u/s 40A(3). The payment of Rs. 2,00,00,000/- to Sh PR Balakrishnan is not proved by the assessee and also attracts disallowance u/s 40A(3). As such expenditure totaling to Rs. 2,58,27,050/- as claimed by the assessee is not allowed. The profit from this land dealing is assessed at Rs. 2,59,91,000/-. Penalty u/s 271(1)(c) for concealment of income is initiated.”

Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) after considering the submissions of the assessee dismissed the claim of assessee and confirmed the action of AO in making addition of profit earned from land of Rs.2,59,91,000/- by observing as under:-

“6.5 During the year under consideration the appellant facilitated sale of property at Coimbatore to M/s. Martin Builders P Ltd., through one Sh.Vincentraj. The AO in the order had clearly held that the appellant is not the owner of the property. During the course of the assessment proceedings, the AO has made a clear findings that the appellant had received a sum of Rs.2,60,000/- as a sale consideration and the net income of the appellant (as admitted by the appellant) is Rs.1,63,950/-. The details of the working is as under:-

Total Consideration received	:	Rs.2,60,00,000/-
Less:		
A. Commission paid	:	Rs. 26,86,050/-
B. House Clearing expenditure expenses	:	Rs. 31,50,000/-
C. Amount Given to PR Balakrishnan	:	Rs. 2,00,00,000/-
		<u>2,58,36,050/-</u>
Net Income from the land dealing		1,63,950/-

6.6. The AO while examining the contention of the appellant about the expenditure incurred as considered only Rs. 9,000/- and the balance amounting Rs. 2,59,91,000/- was added to the total income of the appellant as income from the business.

6.7. While making the addition the AO has made the following findings:

- The appellant was not the owner of the property sold
- He was only a power agent based on the unregistered general power of attorney issued by the owner Shri PR Balakrishnan.
- The net income prepared by the appellant in the land dealings was accepted.
- It has been concluded that the income is under the head "Income from Profits and Gains of Business and Profession". In view of this the AO has opined that provisions of section 28 to 44 of the Act would clearly apply.
- As the payments amounting Rs. 2,59,91,000/- which has been claimed as expenditure has been disallowed by the AO as per the provisions of section 40A(3) of the Act since the payments were made by way of cash exceeding Rs. 20,000/- as provided under section 40A(3) of the Act.

6.8. There can be no dispute on the part of the appellant on the findings of the AO about the receipt of cash and payment of cash towards the expenditure claimed. As the appellant has claimed the expenditure the AO has correctly disallowed the expenditure for violating the provisions of section 40A(3) of the Act. In view of this the action of the AO in disallowing the expenditure claimed is legally tenable. In this background the grounds raised upon this issue by the appellant are dismissed.”

Aggrieved, now assessee is in appeal before us.

5. We have heard rival contentions and gone through facts and circumstances of the case. The assessee could not produce anything before us or could not make any argument except that the assessee is a power agent. On query from the Bench, the Id.counsel for the assessee Shri Jhabakh, CA could not produce either sale deed, power of attorney or any evidence which support his claim that he has not taken this consideration or he has made payment to Shri P.R.Balakrishnan of Rs.2 crores and also incurred expenses for house clearing expenses and removal of encroachments. In the absence of any evidences or any document, we have no hesitation in confirming the orders of lower authorities and this issue of assessee's appeal is dismissed.

5. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in not considering the agricultural income and treating the agricultural income at nil.

6. Briefly stated facts are that the assessee has declared agricultural income i.e., net agricultural income at Rs.3.50 lakhs and claimed gross agricultural income at Rs.5.50 lakhs. The assessee claimed that there is agricultural land in his name at Ravathur Pririvu and Yelaneli Village, Coonoor Taluk. The assessee did not

file any detailed working of agricultural income but he filed original Mandi receipts from sale of agricultural produce to the extent of Rs.5,50,000/- lakhs and expenditure bill for a sum of Rs.2,01,500/-. The assessee claimed to have utilized this agricultural income for his personal drawings. The AO made enquiries through Inspector to verify the Mandi receipts but there is no shop in the name of Mani Vegetable Mandi, Trichy Road, Coimbatore from whom assessee have claimed to have sold the agricultural produce and receipt these receipts. Accordingly, the AO treated the agricultural income at nil. Aggrieved, assessee preferred appeal before CIT(A).

7. The CIT(A) also dismissed the assessee's ground by observing in para 7.1 as under:-

"7.1.The appellant filed the return of income by admitting Rs. 3,50,000/- as agricultural income relevant to the assessment year 2009-10. In the absence of any details, the AO ignored the claim. It may be appreciated that eventhough the appellant has agitated the addition in the grounds of appeal and the written submission submitted, no evidence such as land holding details crops raised etc. were given. In the absence of such details the treatment of agricultural income by the AO as NIL is considered as correct and the grounds raised by the appellant upon this issue are dismissed."

Aggrieved, now assessee is in appeal before the Tribunal.

8. We have heard rival contentions and gone through facts and circumstances of the case. We noted that there is no addition made

by AO of this agricultural income and there is no addition of consequent personal drawings claimed to have been out of this agricultural income. Since there is no addition, the assessee should not have any grievance because no amount is taxed. Hence, this ground raised by assessee is dismissed as infructuous.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 5th April, 2024 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 5th day of April, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT