

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and
Dr. S. Seethalakshmi, Judicial Member

ITA No. 376/Coch/2023
(Assessment Year: 2016-17)

Jagadish Kumar P.V. (L/H of Rema Padmaja Bai) Sree, T.C. 50/899(1), Kalady HSRA A-56, Karamana P.O. Thiruvananthapuram [PAN:AEMPP5283J]	vs.	Asst. CIT, Circle - 2(1) Thiruvananthapuram
(Appellant)		(Respondent)

Appellant by:	Shri Raja Kannan, Advocate
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	20.12.2023
Date of Pronouncement:	11.03.2024

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the Assessee challenging the Order dated 24.03.2023 by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)], confirming the assessee's assessment under section 143(3) of the Income Tax Act, 1961 (the Act) vide order dated 19.12.2018 for Assessment Year (AY) 2016-17.

2. The appeal is delayed by 26 days. The accompanying affidavit by the assessee's spouse, her legal representative (LR), not seriously contested by the Revenue, suitably explains the delay. Further, Shri Kannan, the learned counsel for the assessee, who stands duly authorised by all the legal heirs, would, on being inquired in the matter, unequivocally convey the ratification of the representation before the first appellate authority, i.e., as having the approval of all the legal heirs of

late Rema Padmaja Bai, being Sh. Jagdish Kumar, her spouse, and her two daughters. The appeal was accordingly admitted and heard.

3.1 The only addition made in the assessment and, thus, in dispute, is for Rs. 25 lacs, as unexplained, out of sums invested on purchase of a residential property during the relevant year. The same stands explained, besides by way personal savings at rs. 43.76 lacs, as loan/gift/s from family membes (at an aggregate of Rs. 110 lacs), to enable her to fund the investment in her residential house, at Rs. 294 lacs during the year, i.e., including bank loan of Rs. 140 lacs. We tabulate the amout ascribed to and accepted and, resultantly, not accepted, from different family members, as under:

(Amount in Rs. lacs)

Name	Relation	Loan/Gift	Accepted	Not Accepted
Padmajabhai	Mother	62.00	62.00	-
Suresh Kumar	Brother-in-Law	6.00	Nil	6.0
Dr. Remya Jagadeesh	Daughter	30.00	30.00	-
Dr. Soumya Jagadeesh	Daughter	12.00	12.00	-
Total		110.00	104.00	6.00

The investment in house property, as per the details provided by the assessee to the Assessing Officer (AO), was thus as under:

- Housing Loan: Rs. 140 lacs
- Gift/loan from family members: Rs. 110 lacs
- Personal Savings: Rs. 44 lacs

The assessee could, however, prove personal savings only to the extent of rs. 25 lacs, so that the balance rs. 25 lacs, i.e., including Rs. 6 lacs ascribed to Sh. Suresh Kumar, representing a shortfall in the funds explained by the assessee, were brought to tax as deemed income u/s. 69 of the Act. The details of 'personal savings' were later, i.e., in the appellate proceedings, on being enquired, stated to be as under:

- Padmajabhai (mother): Rs. 10.43 lacs
- cash withdrawal: Rs. 4.57 lacs (from bank a/c with Karur Vyasa Bank on 22/6/2015)
- Sh. Jagadeesh (spouse): Rs. 4.0 lacs

3.3 The reason/s for non-acceptance of a part of the amount ascribed to different family members by the Revenue are as under:

(a) Padmajabhai (mother): She, even admitting her being, as claimed, a widow staying with her daughter (assessee) and her family for a long (period not specified), has received pension at a total of Rs. 29.83 lacs from April, 1983 to July, 2017, being the only source of her income and, thus, saving, to whatever extent. A sum of Rs. 62 lacs therefrom, as stated, stands, nonetheless, accepted.

(b) Self: cash withdrawal of rs. 4.57 lacs on 22/6/2015: the same was not accepted inasmuch the bank statement furnished to substantiate the same, was not legible.

(c) Jagdish Kumar P.V. (spouse): The amount attributed to him stands, again, stated only subsequently, i.e., on furnishing the details of 'personal savings' in the appellate proceedings. The sum stands withdrawn in cash from his bank account, so that there is no direct evidence of funds transferred, even as the monthly withdrawal from the said bank, i.e., for household purposes, is at Rs.1 lac.

(d) Suresh Kumar (brother-in-law): He is a man of little means, i.e., vis-à-vis the assessee's family, and not in a position to provide them financial help.

4. Before us, the assessee's case was principally that the contributions being from close family members, their genuineness could not, in view thereof, be doubted. The only amount received by way of loan is from Sh. Suresh Kumar, which is, firstly, from the lender's bank account to the assessee's and, two, stands repaid therefrom. The Revenue, on it's part, relies on the orders by the Revenue authorities.

5. We have heard the parties, and perused the material on record.

5.1 The matter shall have to be necessarily examined with reference to each separate sum stated in explanation of the source of investment in house property and, accordingly, deemed as income as unexplained investment u/s. 69 of the Act.

5.2 Our first preliminary observation, also made during hearing, to no satisfactory answer by Shri Kannan, was as to how could the first three amounts regarded as not satisfactorily explaining the nature and source of investment be regarded as ‘personal savings’, i.e., as explained by the assessee to the AO, and who the law provides for being satisfactorily explained. And which can thus only be on the basis of materials adduced, along with explanations furnished, before him. The preview of an appellate authority, therefore, on a challenge in appeal, could only be as to whether the AO ought to have been, on the basis of the said materials and explanations before him, reasonably speaking, satisfied, or not so. As explained by the Hon'ble Apex Court in *CIT v. P. Mohankala* [2007] 291 ITR 278 (SC), and which in fact represents settled law, is that the expression “the assessee offers no explanation” means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by him. Couple this requirement of law with the fact that it is only the assessee on whom the burden to satisfactorily prove the nature and source of funds received by him (or found to be in his possession or invested by him), inasmuch as he is in the intimate know of his affairs, lies. And where not so proved, liable to be assessed as income (*Parimisetti Seetharamamma v. CIT* [1965] 57 ITR 532 (SC); *H.E. Nizam Religious Endowment Trust v. CIT* [1966] 59 ITR 582 (SC); *CIT v. Joseph John* [1968] 67 ITR 74 (SC)). This, as would be apparent, is also implicit in the statement of law afore-noted with reference to the decision in *P. Mohankala* (supra), which is itself in agreement with several decisions by the Apex Court in the matter. This would also put in context our finding it very queer that the amount explained as ‘personal saving’ – itself not a statement of a definite source,

rather, signifying an accumulation over a period of time out of own funds (which may further be derived from various sources), which thus and, in effect, is the source/s of funds and, thus, of the investment under reference, is finally stated as a gift/loan from family members, i.e., in terms of funds from sources outside self, so that it is inconsistent with the categorization of 'personal savings', implying own funds, constituting a part of the assessee's explanation furnished earlier. That is, loan/gift from family members itself forms part of the assessee's explanation at Rs. 110 lacs, besides personal savings at Rs. 44 lacs, which is now being again explained as loan/gift from family members, i.e., to the extent of Rs. 14.43 lacs! The inference of details furnished in appellate proceedings as being only an afterthought, i.e., on being called upon to provide the basis for the amount stated as 'personal savings', is irresistible. The assessee has not explained the reason for this *volte face* at any stage, including before us. The subsequent explanation, not furnished before the AO and, two, inconsistent with the assessee's earlier explanation, ought to find rejection at the threshold.

5.3 We would therefore though be justified in law in ignoring the assessee's subsequent explanation *qua* rs. 19 lacs, despite the Revenue considering it on merits, whose decision is not binding on us, nevertheless, in the interest of justice, examine each of the three sums comprising the impugned sum of Rs. 25 lacs, as under:

A. Rs. 10.43 lacs: Smt. Padmajabhai's pension, accumulated over the years – not shown though, amounts to, as stated, Rs.29.83 lacs, even as a sum of Rs. 62 lacs stands already accepted as received from her toward her daughter's residential house. Under the circumstances, the non-acceptance of another Rs. 10.43 lacs, stated as received from her in cash, without stating, much less proving, the source thereof, is to be confirmed. Needless to add, this receipt from her was not taken in the cash-flow statement, nor is there anything on record to exhibit the accumulation of pension and other funds to, at least Rs. 72.43 lacs and, further, of availability in cash to the extent

of at least Rs. 10.43 lacs, to provide any credence to the assessee's claim/s. Why, rather, would she provide cash to the assessee, has not been explained. Why, it being stated in explanation of the assessee's 'personal savings', further discredits the claim. The same stands rightly not accepted by the Revenue.

B. Rs. 4.57 lacs: Legible copy of the account with Karur Vyasa Bank is adduced, and sought to be admitted by way of 'additional evidence' (PB pg. 13). We do not think it as qualifying as one inasmuch as the said account was produced before the AO, who specifically called therefor vide para 4 of his requisition dated 06/12/2018. Being a withdrawal from her bank account on 22/6/2015, i.e., prior to the purchase, it qualifies as 'personal saving'. Further, the very fact that it is in an odd sum and, further, close to the date of purchase, with, as it appears, Rs. 21.76 lacs being expended cash toward stamp duty and registration charges, would validate the assessee's claim, which ought to have been examined by the Id. CIT(A), issuing finding/s thereon upon requiring the assessee to furnish a legible copy, rather than summarily dismissing it. The assessee, on his part, has not furnished before us the revised cash flow statement submitted to the AO on 17/12/2018, which he disregarded, and rightly so, for being not date-wise, which is essential, besides not clarifying the aspects of opening balance (Rs. 4 lacs) therein; personal expenses; and deduction u/s. 80-E, each of which, relevant, was found unexplained. Where, for instance, one may ask, is the need for the opening balance when cash stands withdrawn prior to the purchase, suggesting that the same to have been used for some other purpose during the year, or perhaps even later. The exact dates of purchase of stamp paper, registration charges, etc., would be relevant. Under the circumstances and, on balance, we, in the interest of justice, consider it proper that the matter goes back to the AO to allow the assessee an opportunity to explain his case *qua* the inclusion of rs. 4.57 lacs with reference to the said cash-flow statement and return, i.e., as a part of the personal savings available for investing in property. We clarify

that the burden to prove his case would be on the assessee and, two, the cash flow is to be for the entire year inasmuch as it may well be that cash is utilized later.

C. Rs. 4 lacs: Stated as received from her spouse, Sh. Jagadish, this is the second sum comprising the impugned sum received in cash. The same, we agree, is, then, not the assessee's personal savings, i.e., as initially stated. The same, withdrawn in two instalments of Rs. 2 lac each on 01/7/2015 and 11/7/2015, stands not accepted in view of it being consistent with the regular withdrawal of Rs. 1 lac after every 10-15 days, which is now being, therefore, sought to be taken advantage of. There are, prior to 01/7/2015, however, only two withdrawals of Rs. 1 lac each, on 05/5/2015 and 27/5/2015, during the year. This would explain the withdrawal of 01/7/2015 at rs. 2 lacs, signifying, as stated, a monthly withdrawal of rs. 1 lac. The proximity of the withdrawal date (11/7/2015) to the purchase date is strongly indicative of it being for incurring cash expenditure associated with the purchase. Subject, therefore, to cash expenditure in this sum or more having been expended on or after 11/7/2015, not shown, the second withdrawal of rs. 2 lacs, in our view, can surely be taken into account toward cash available with the assessee for being expended. Reference in this regard be made to para 5.3(B), wherein the assessee has been required to, in substantiation of his claim for rs. 4.57 lacs, furnish the cash-flow statement, correlating it with the purchase and his return. This sum, accordingly, can be rightly included therein. We do so construing the words 'personal savings' broadly, inasmuch as it flows from his spouse; the context allowing us to do so.

D. Rs. 6 lacs: The amount stands received by the assessee from Shri Suresh in her bank account with SBI on 11/7/2015 through banking channel, and returned back by the assessee from her bank a/c with Karur Vyasa Bank on 21/7/2015. Though therefore it cannot be said to have, in that sense, funded the investment, we are unable to see as to how it could not be accepted as a proved receipt. He enjoys a close relation with the assessee. Though a man of little means, his money, which is stated

to arise from retirement benefits received in May, 2015, remains with the assessee for a very short period of time. It is therefore incorrect to state of it as having financed the investment in house property, the same being the assessee's funds in Karur Vyasa Bank – not doubted in any manner, which have in effect financed it to that extent, i.e., as part of her personal savings. The addition is accordingly directed for deletion.

6. We decide accordingly.

7. In the result, the assessee's appeal is partly allowed and partly allowed for statistical purposes.

Order pronounced on March 11, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Dr. S. Seethalakshmi)
Judicial Member

Cochin, Dated: March 11, 2024
n.p.

Sd/-
(Sanjay Arora)
Accountant Member

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin