

**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.582/Chny/2022**  
**(निर्धारण वर्ष / Assessment Year: 2012-13)**

<b>Shri D. Ramagopal</b> C/o Mr. G.V. Jhabakh (FCA) 157, P.M Swamy Colony, 5 <sup>th</sup> Street, Coimbatore-641 002.	<b>बनम</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>	:	25-04-2024

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1.1 Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of 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 CIT (Appeals) erred in not considering the assessee as Power Agent.
2. The assessing officer and the C.I.T. appeal erred in making additions as profits from land dealing on 21 cents land near agricultural university property sold as poer agent and the litigation proceedings pending in the civil court in Coimbatore.
3. The assessing officer and the C.I.T. appeal erred in making addition on the advances received as per MOU before the possession and registration of the sale is given on the Ponnayarajapuram property and also without considering the second claim pending before the civil court in Coimbatore
4. 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.
5. The assessing officer and the C.I.T. appeal erred in treating the loan as undisclosed income.
6. The assessing officer and the C.I.T. appeal erred in arriving the capital gain working on Coonoor property sold.
7. 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.
8. The assessing officer and the C.I.T. appeal erred in not cosndiering the sources taxed by the same assessing officer for the assessment year 2009-10 and 2011-12 which is plenty available was also not considered.

1.2 As is evident, five issues fall for our consideration i.e., (i) Agriculture income; (ii) Addition of Loans; (iii) Computation of profit on sale of land; (iv) Computation of Capital Gains on Coonoor Property; (v) Profit on Sale of Land at Ponnaiarajapuram.

1.3 The Ld. AR advanced arguments and filed written submissions supporting the case of the assessee. The Ld. CIT-DR, on the other hand, supported the findings given in the assessment order as well as in the appellate order. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under. The assessee being resident individual is stated to be engaged as dealer in immoveable properties.

1.4 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-compliant 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 admitting agricultural income of Rs.3.50 Lacs. During the course of assessment proceedings, statement of the assessee was also recorded u/s 131 on various dates.

## **2. Agriculture Income**

2.1 The assessee stated that it had no income except for agricultural income of Rs.3.50 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.5.50 Lacs. The assessee filed bills for expenditure of Rs.2.01 Lacs and worked out net agricultural income of Rs.3.49 Lacs. This income was stated to have been utilized by the assessee entirely for his personal drawings as per his statement u/s 131.

2.2 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. The Ld. CIT(A) confirmed the stand of Ld. AO against which the assessee is in further appeal before us.

2.3 From the facts, it emerges that the assessee has made unsubstantiated claim of agriculture income. Whatever documents have been filed by the assessee to support this income, has been found to be bogus and non-genuine. Therefore, the claim made by the assessee has rightly been denied. The corresponding grounds stand dismissed.

### **3. Addition of Loans**

3.1 The assessee reflected loan of Rs.1.06 Lacs in the name of Sh. Samiappan and another Rs.10 Lacs in the name of Smt. Malathi. However, no evidences could be filed to support the same. Neither of the party was assessed to tax and the assessee did not file any confirmation from these parties. Sh. Samiappan, who appeared in connection with certain other payments made to him by the assessee, did not file any confirmation in respect of this loan nor did he produce the bank account. The assessee also failed to provide the requisite details and confirmation. The Ld. AO finally held that the assessee failed to establish the identity of the lender, the genuineness of the transaction and the creditworthiness of the lender. These amounts were brought to tax as unproved loans. The Ld. CIT(A) confirmed the stand of Ld. AO against which the assessee is in further appeal before us.

3.2 We find that both the loans obtained by the assessee have remained unsubstantiated. Mere filing of PAN was not sufficient but the assessee was required to prove the creditworthiness of the lenders as well. The onus was on assessee to substantiate its statement of affairs. However, the assessee has failed to do so. Therefore, the addition has rightly been made. We find no reason to interfere in the orders of lower authorities, on this issue.

#### **4. Sale of Land near Agricultural University**

4.1 During the year, the assessee sold 21 cents of land at Seeranaickenpalayam, near Agricultural University to one Shri S. Nagaraj vide sale deed dated 18.06.2012. The sale consideration as mentioned in this document was Rs.7 Lacs but the Stamp Valuation Authority determined the market value in the sale deed at Rs.97 Lacs. In his statement u/s 131 dated 16.03.2016, the assessee submitted that he acquired a general power of attorney (GPA) executed in his favour in 1996 in respect of this land from Sh. PR Balakrishnan against loan advanced to him. In his statement under oath u/s.132(4) during the course of search proceedings, the assessee stated that he had entered into a Memorandum of Understanding (MOU) with Sh. S. Nagaraj for transferring the land to him for a consideration of Rs.36 Lacs. He also submitted that the land was registered in the name of Sh. S. Nagaraj through Court order and out of the agreed consideration of Rs.36 Lacs, he had received an amount of Rs.10 Lacs. The sale deed, however, mentioned consideration of Rs.7 Lacs in cash.

4.2 In his statement u/s 131, the assessee submitted that Sh. S. Nagaraj was a broker who was very close to him. He said that he had decided to register the property in the name of Sh. S Nagaraj to secure the property of which the assessee was only a GPA holder. He further stated that he got the property registered in the name of Sh. S. Nagaraj and did not receive any consideration for the land. He stated that what was said in his statement u/s 132(4) was not true. He further submitted that he was unable to persuade Sh. S. Nagaraj to appear and give evidence in his favour.

4.3 During the course of assessment proceedings, on the request of the assessee, a summons was issued to Sh. S. Nagaraj u/s 131 but he failed to appear and give evidence. The assessee, however, produced evidence in the form of entry in his bank statements for payment of Stamp Duty and Registration charges totaling to Rs.7.75 Lacs for registration of the sale deed in the name of Sh. S Nagaraj. In view of the conflicting statements of the assessee at various points of time and his failure to produce any evidence regarding actual amount paid or not paid to Sh. S Nagaraj, it was held that the assessee received consideration of Rs.36 Lacs as stated by him on oath in his statement u/s 132(4). As the assessee was not the owner of the property and has only dealt in the same as a power of attorney holder to make a profit out of the deal, this activity of the assessee was treated as adventure in the nature of trade and the sale consideration of Rs.36 Lacs was brought to tax as Business Income.

4.4 During appellate proceedings, the assessee contended that sale consideration was not taxable in the hands of Power Agent. However, Ld. CIT(A) observed that GPA was given and possession was obtained against loans advanced by the assessee to Shri PR Balakrishnan. The assessee sold the property after 16 years. On these facts, the claim of the assessee could not be accepted. Another contention was that similar addition was made in the hands of Sh. S. Nagaraj as unexplained investment. The Ld. CIT(A) rejected the same on the ground that in assessee's case, the addition was for sale of property. Therefore, the stand of Ld. AO was upheld against which the assessee is in further appeal before us.

4.5 In our considered opinion, lower authorities have clinched the issue in the correct perspective. The assessee has executed sale deed and as per his own admission, received a sum of Rs.36 Lacs. Nothing has been shown that this amount was ever transferred to Shri PR Balakrishnan. The GPA was obtained not to sell the land but to secure the loans advanced by the assessee and the property has been sold after 16 years of obtaining GPA. The assessee has sold the land as owner and therefore, the impugned amount has rightly been brought to tax in his hands. Considering all these facts, we concur with the adjudication of Ld. CIT(A), on this issue.

#### **5. Capital Gains on Sale of Land at Coonoor**

5.1 During the year, the assessee sold two parts of land measuring 3 cents at Coonoor each to one Smt. Shalini Sardana. The first sale deed vide document no. 101/2012 dated 19.01.2012 was for a consideration of Rs.3,20,500/- whereas the second property sold vide sale deed document no. 555/2012 dated 12.03.2012 was for a consideration of Rs.3,25,000/-. The sale consideration was stated to have been received by Demand Draft (DD). However, the assessee could not identify the bank account where first DD of Rs.3,20,500/- was deposited. These two properties were part of properties purchased by the assessee vide sale deed no. 478/1996 dated 30.05.1996. The properties covered by this sale deed measured 17 <sup>13</sup>/<sub>16</sub> cents and purchased for Rs.4.20 Lacs plus stamp Duty and registration charges totaling to Rs.54,725/-. The properties sold by the assessee represent 33.67% of the total area of 17.81 cents. The cost of acquisition of these properties would, therefore, be Rs.1,59,839/- i.e., 33.67% of Rs.4.20 Lacs.

5.2 The assessee did not admitted any gains in the return of income. However, during the course of assessment proceedings, the assessee filed a computation of Long-Term Capital Gain (LTCG) in respect of the two properties as under:

"Long Term Capital' Gain

Land 19/01/2012		
Value u/s 50C	320500	
Sales Consideration Received	320500	
Sales Consideration		320500
Less: Transfer Expenses		<u>16025</u>
		304475
Less: indexed Cost	352432.29	
Tanbit Court Fees		
FY 2004-05 215500/480*785 -----		<u>352432.29</u>
		-47957.29

Capital Loss Rs.47957.29 will not set off from any other head of income'

Long Term Capital Gain

Land 12/03/2012		
Value u/s 50C	325000	
Sales Consideration Received	325000	
Sales Consideration		325000
Less: Transfer Expenses		<u>16025</u>
Less: indexed Cost	324712	
Tanbit Court Fees		
FY 2004-05 198550/480*785 -----		<u>324712</u>
		-15961.28

Capital Loss Rs 15961.28 will not set off from any other head of income"

5.3 The assessee also filed revised calculation of capital gains as under:-

CAPITAL GAIN CALCULATION ON COONOOR LAND SOLD TO SHALINI 6 CENTS

19/01/2012	<u>Sale Consideration</u>	<u>645500</u>	
	<u>Less : Sales Expenses</u>	<u>32275</u>	
	<u>Net Consideration</u>		<u>613225</u>
	<u>Less Indexed Cost of Acquisition</u> <u>160902/305*785</u>		<u>414124.82</u>
	<u>Less Indexed Cost of Improvement</u> <u>312678/480*785</u>		
	<u>Net Gain / Loss</u>		<u>-312258.63</u>

5.4 The claim of expenditure of Rs.32,275/- was denied by Ld. AO for want of evidences. The expense of Rs.3,12,678/- was stated to be paid to one Shri K. Sivakumar, Advocate, Chennai in connection with court expenses. According to the assessee, his property was attached by the TNPID court in connection with non-payment of deposits to public relating to the business of DRG Finance. The assessee claimed that he had to file cases before the TNPID court to get the property released from attachment. TNPID courts deals with economic offences. The properties of the assessee were attached in connection with default on the part of the assessee to make payment of deposits accepted from the public. The Ld. AO held that payment of lawyer fees for removing attachment over the property could not constitute cost of improvement of the property. The payments were stated to be part of total payment of Rs.9.24 Lacs made to the Advocate to clear attachment on these properties in the TNPID Court. The fees were stated to have been paid on 15.09.2004 and 29.11.2004 as per copy of receipts filed from Sh. K Sivakumar, Advocate. The bill dated 15.09.2004 was for Rs.4,14,050/- whereas bill dated 29.11.2004 was for Rs.5,10,250/-. The assessee was asked to produce Sh. Sivakumar in the light of the fact that assessee had produced bogus receipts from the said Advocate in connection with claim of court fees made by him during the course of assessment proceedings for AY 2011-12. The assessee, however, did not produce the said person for examination. The assessee was also unable to clearly explain as to what was the source of the payments made to Sivakumar of Rs.9,24,300/- during FY 2004-05 when he was not assessed to tax. In view of the fact that the genuineness of the payment was not proved and also the fact that legal fees paid for proceedings in

Courts in connection with cases of Economic offences against the assessee could not constitute cost of improvement of capital asset, the said claim of cost of improvement for Rs.3,12,678/- was denied. Finally, the gains were worked out by Ld. AO as under: -

19.01.2012 & 12.03.2012	Sale Consideration u/s 50C	645500
	Less Indexed cost of Acquisition 159839*785/305	411388
	Long Term Capital Gains	234112

The same were brought to tax in the hands of the assessee. The Ld. CIT(A) held that in the absence of acceptable evidences, the claim of expenditure could not be accepted. Aggrieved, the assessee is in further appeal before us.

5.5 The factual findings rendered by lower authorities remain uncontroverted before us. Though the assessee has made claim of expenditure, he was unable to substantiate the same with acceptable documentary evidences. We also concur that payment of lawyer fees for removing attachment over the property could not constitute cost of improvement of the property. Therefore, finding no reason to interfere in the orders of lower authorities, the corresponding grounds raised by the assessee stand dismissed.

## **6. Sale of 63 Cents of Land at Ponnaiarapuram**

6.1 The assessee acquired unregistered general power of attorney (GPA) on 63 cents of property at Ponnaiarapuram from Sh. PR Balakrishnan on 15.05.1996. The assessee obtained the possession also. The original power of attorney was impounded from the office of the

assessee. The GPA was taken against loans advanced by the assessee to that person.

6.2 The assessee entered into unregistered sale agreement with his maternal uncle Shri R. Srinivasan on 03.09.2007 by which he agreed to sell the land. As per the agreement, the assessee received amount of Rs.4 Lacs in cash from Shri R. Srinivasan. It was contended that the transaction was only an accommodation by Shri. R. Srinivasan by lending his name and no amount was paid by him to the assessee. This statement of the assessee has been confirmed on oath by Shri R. Srinivasan.

6.3 It was further noted by Ld. AO that the assessee entered into a Memorandum of Understanding (MOU) with one Shri Vijaychand Jhabakh on 23.08.2010 for sale of this property to him for a consideration of Rs.500 Lacs. A copy of this MOU was filed by Sh. Vijaychand Jhabakh during the course of post search proceedings in his case before the DDIT(Inv), Unit 1, Coimbatore. The MOU was signed by the assessee as well as by Sh. Vijaychand Jhabakh. As per MOU, an amount of Rs.25 Lacs was paid to the assessee by cheque on 28.03.2010 apart from a token advance of Rs.11,000/- in cash. It was further agreed that a sum of Rs.225 Lacs would be paid to the assessee within a period of 60 days for the purpose of evicting illegal occupants of the land and on receipt of sureties and securities to safeguard the interest of Sh. Vijaychand Jhabakh.

6.4 The assessee stated that an original deed of agreement to sale dated 15.11.2010 was entered into between the assessee and Shri R. Srinivasan on one side and Shri GV Jhabakh and his family members on the other side on plain paper to sell the property to Sh. Vijaychand

Jhabakh for a consideration of Rs.500 Lacs. Subsequently, a suit was filed in the name of Sh. R Srinivasan for specific performance on the unregistered sale agreement dated 03.09.2007 between the assessee and Shri R. Srinivasan and as per the direction of court, a sale deed was registered on 19.08.2011 wherein the property was transferred to Sh. R Srinivasan for a registered consideration of Rs.10.50 Lacs. The market value of the property was determined by Stamp Duty Authorities at Rs.384.20 Lacs and stamp duty and registration charges aggregated to Rs.33.63 Lacs. According to the assessee, this amount was borne by Shri Vijaychand Jhabakh and was part of the total consideration of the MOU. Subsequently, on 31.10.2011, a registered power of attorney was executed by Shri R. Srinivasan in favour of Shri Vijaychand Jhabakh, a copy of which was available in the impounded papers. The assessee submitted that he had received approx. Rs.350 Lacs from Shri Vijaychand Jhabakh and his family members both in cash and in cheque. However, he failed to file any confirmation from Shri Vijaychand Jhabakh. As per details furnished by Shri Vijaychand Jhabakh to DDIT (Inv) regarding payments made to the assessee, he made payments totaling to Rs.3,49,03,921/- to the assessee.

6.5 The assessee submitted that a large number of illegal tenements had been evicted from the land by incurring expenditure on the same and the original documents of the land were handed over to Shri Vijaychand Jhabakh at the time of execution of the GPA in his favour by Shri R. Srinivasan. The Ld. AO concluded that the possession of the property was handed over to Shri Vijaychand Jhabakh and as such the amount of Rs.500 Lacs had accrued to the assessee on that date. The total sale consideration would be taxable in the hands of the assessee.

6.6 The Ld. AO further noted that there were evidences to show that the assessee had incurred expenditure for the eviction of illegal tenements on the land. The assessee claimed to have made payment of Rs.102.81 Lacs to various parties through bearer cheques. He also stated that he made commission payments of Rs.16.65 Lacs to one Shri U. Anand Kumar and another payment of Rs.9.07 Lacs was made through bearer cheques. He also claimed to have made payment through bearer cheques for Rs.131.14 Lacs to various parties for clearing and leveling of land and cleaning of debris. A further sum of Rs.17.35 Lacs was stated to be paid as advocate fees and reimbursement of travelling expenses of Rs.1.22 also. Similar other payments were claimed by the assessee. All these expenditure aggregated to Rs.329.62 Lacs. However, the assessee failed to substantiate the same which is evident from detailed findings rendered by Ld. AO in assessment order. Finally, Ld. AO computed income from sale of land at Rs.491.65 Lacs after allowing expenditure of Rs.8.35 Lacs from sale consideration of Rs.500 Lacs. The same was brought to tax as adventure in the nature of trade.

6.7 The Ld. CIT(A) rejected the argument of the assessee that this amount was to be taxed in the hands of the owner and confirmed the working of Ld. AO. Aggrieved, the assessee is in further appeal before us.

6.8 The factual findings rendered by Ld. AO in the assessment order make it quite clear that sale consideration of Rs.500 Lacs has accrued to the assessee on this transaction. The purchaser has also confirmed the payments to the assessee, in this regard. Therefore, the action of Ld. AO to treat the same as business receipts of the assessee could not be

faulted with. The conclusion of Ld. AO remains uncontroverted before us. The argument that the gains are to be assessed in the hands of the owner would stand rejected in the light of the fact that in assessee's hands, gains have been assessed as business income.

6.9 Proceeding further, we are of the opinion that when there are evidences of incurrance of expenditure, the same should have been allowed to the assessee while computing business income. It could be seen that the assessee was unable to substantiate the same during the course of assessment proceeding. However, keeping in mind the principle of natural justice, we deem it fit to grant another opportunity to the assessee to substantiate the expenditure incurred by him in connection with this transaction. Therefore, to that extent, we restore the matter back to the file of Ld. CIT(A) for re-adjudication with a direction to the assessee to substantiate his case. The grounds stand partly allowed for statistical purposes.

### **Conclusion**

7. The appeal stand partly allowed in terms of our above order.

*Order pronounced on 25<sup>th</sup> April, 2024*

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

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

चेन्नई Chennai; दिनांक Dated :25-04-2024  
DS

### **आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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