

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” 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**

**1. आयकर अपील सं. ITA No.1042/Chny/2023**  
**(निर्धारण वर्ष / Assessment Year: 2015-16)**

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|----------------------------------------------------------|-----------|---------------------------------------------------------------------------------------------|
| DCIT<br>Central Circle-2(4),<br>Chennai-34.              | बनाम/ Vs. | M/s. Pearl Printers and<br>Publishers (P) Ltd.<br>8/16, Mogappair West,<br>Chennai-600 058. |
| स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AABCP-7244-H</b> |           |                                                                                             |
| (अपीलार्थी/ Appellant)                                   | :         | (प्रत्यर्थी / Respondent)                                                                   |

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**2. Cross Objection No.10/Chny/2024**  
**(In ITA No.1042/Chny/2023)**  
**(निर्धारण वर्ष / Assessment Year: 2015-16)**

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|------------------------------------------------------------------------------------------|--------------|---------------------------------------------|
| M/s. Pearl Printers and Publishers (P) Ltd.<br>8/16, Mogappair West,<br>Chennai-600 058. | बनाम/<br>Vs. | DCIT<br>Central Circle-2(4),<br>Chennai-34. |
| स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AABCP-7244-H</b>                                 |              |                                             |
| (अपीलार्थी/ Cross Objector)                                                              | :            | (प्रत्यर्थी / Respondent)                   |

|                                               |   |                                                         |
|-----------------------------------------------|---|---------------------------------------------------------|
| अपीलार्थी की ओरसे/ <b>Revenue by</b>          | : | Shri V.Nandakumar (CIT) –Ld. DR                         |
| प्रत्यर्थी की ओरसे/ <b>Assessee by</b>        | : | Shri G. Baskar & Shri I. Dinesh<br>(Advocates)- Ld. ARs |
| सुनवाई की तारीख/ <b>Date of Hearing</b>       | : | 07-03-2024                                              |
| घोषणा की तारीख / <b>Date of Pronouncement</b> | : | 03-06-2024                                              |

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1.1 Aforesaid cross-appeals for Assessment Year (AY) 2015-16 arises out of an order passed by learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] on 19-07-2023 in the matter of an

assessment framed by Ld. Assessing Officer [AO] u/s. 153A of the Act on 29-09-2021. The assessee has filed cross-objections against the appeal of the revenue.

**1.2 The grounds raised by the revenue read as under: -**

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The Ld.CIT(A) erred in deleting the addition of Rs.5,68,76,000/- made by the assessing officer towards undisclosed income in respect of on-money paid for purchase of property at Kanchipuram Siruvakkam on the basis of excel sheet seized during the course of search and sworn statement recorded from Smt. Yasodha Rajan, accountant who had made entries in the excel sheet.

2.1 The Ld.CIT(A) failed to appreciate that sworn statement was recorded u/s.132(4) during the course of search on 21/01/2020 and the same is having evidentiary value, where as she has furnished sworn affidavit retracting the statement on 29/09/2021, nearly after 20 months from the date of recording statement. This clearly shows that the sworn affidavit was made by Smt. Yasodha, accountant on the insistence of the assessee.

2.2 The Ld.CIT(A) erred in relying on sworn affidavit of Smt. Yashodha in which she stated that she had made wrong entry as 38.5 lakh per acre instead of 8.5 lakh per acre by mistake. In the excel sheet, it has been clearly mentioned that agreed cost as Rs.7,42,28,000/-, Guide line value as 1,73,52,000/-. This guide line value amount is also mentioned as DD against the agreed cost and balance amount shown as Rs.5,58,76,000/-. Hence, the claim of typographical error in the sworn affidavit is not backed by any evidence and it is clearly an afterthought.

2.3 The Ld.CIT(A) failed to appreciate that the materials seized during the course of search presumed to be belonged to the assessee and its contents are true as per the provisions of Sec.132(4A) and 292C of the Act. The payment of on-money was also confirmed by the author of seized materials in her sworn statement.

2.4 The Ld.CIT(A) erred in observing that there was no corroborative evidence to substantiate that the on-money transaction mentioned in the excel sheet was happened, without appreciating that the statement recorded u/s.132(4) from the person who had made entries in the excel sheet corroborates those entries found in the excel sheet.

**1.3 The grounds of assessee's cross objection read as under: -**

1.1 The CIT(A) ought to have annulled the assessment framed u/s.153A of the Income Tax Act as the materials on the basis of which the addition was made by the AO were found during the course of search in case of a third party and not in the during the course of search of the assessee.

1.2 The CIT(A) ought to have held the addition on the base of seized material through a separate search warrant in the case of a third party cannot be utilized in an assessment framed u/s.153A of the IT Act.

1.3 The CIT(A) also ought to have seen that when the evidences collected in the search of the third party is being used the assessing officer of the searched person has to first record his satisfaction; and thereafter satisfaction has to be recorded by the Assessing Officer of this assessee as required u/s.153C of IT Act before proceeding to frame an assessment.

1.4 In the absence of such a satisfaction note recorded by either of the officers the order of assessment has no legs to stand and ought to have been cancelled by CIT(A).

2.1 The CIT(A) has rightly held that the addition of Rs.5,68,76,000/- made by the AO cannot be treated as undisclosed income.

2.2 The CIT(A) has rightly held that there is no evidence or even corroborative evidence to prove payment of on-money.

2.3 The CIT(A) has also rightly held that the loose sheet of paper found at the time of search had been duly explained.

2.4 The CIT(A) has rightly held that no evidence has been brought on record to prove that the market value of the property purchased is more than the recorded consideration.

As is evident, the sole issue that fall for our consideration is impugned addition of Rs.568.76 Lacs arising out of search assessment. The assessee has challenged the assessment proceedings on legal grounds besides supporting the impugned order on merits.

1.4 The Ld. CIT-DR advanced arguments in support of assessment framed by Ld. AO and relied on various judicial decisions. The Ld. AR, while supporting the impugned supported on merits, raised legal plea by relying on various judicial decisions. In support, the Ld. AR has referred to various documents as placed in the paper book. The Ld. CIT-DR has submitted that the impugned addition is based on statements recorded u/s 132(4) and incriminating material in the shape of excel sheet as founds from digital records. The Ld. AR submitted that in the absence of any corroborative evidences, no addition could have been made. It has been submitted that impugned addition is based on material found during the course of search on another assessee. Therefore, assessment could not have been made u/s.153A. At the most, the assessment could have been made 153C which require recording of satisfaction before issuance of such notice. In the absence of such a satisfaction, no assessment could have been framed u/s.153C. Reference has been made to the decision of Hon'ble Supreme Court in the case of **PCIT Vs. Abhisar**

**Buildwell (P) Ltd. (2023) 454 ITR 212 (SC)** as well as decision of the Bengaluru Bench of the Tribunal in the case of **ACIT Vs. P.Shyamaraju & Co. India Pvt. Ltd in ITA Nos.978 to 984/Bang/2014 dated 25-04-2022**. Reliance has also been placed on the decision of Hon'ble Supreme Court in the case of **CIT Vs. P.V. Kalyanasundaram (CA No.4262 of 2007 dated 14-09-2007)**. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

### **Assessment Proceedings**

2.1 During the course of search action u/s 132 in group cases of M/s. Velammal Group Institutions, the office premises of the assessee located at Mogappair, Chennai was also covered. Some incriminating material was seized and notice u/s.153A was issued to the assessee on 21-11-2020 calling for return of income. The assessee admitted income of Rs.305.03 Lacs. Subsequently, notice u/s. 143(2) was issued which was followed by notice u/s 142(1) of the Act. In the said notice, it was alleged that during the course of search u/s 132 of Income Tax Act at the premises of M/s. Veeramakali Memorial Welfare Trust located at Anna Nagar City Office, No. 8/3, 3<sup>rd</sup> Street, AA Block, Shanthi Colony, Anna Nagar, Chennai, an excel sheet with heading "Kancheepuram-Sirvakkam-Thiruvallur District" was found in the computer of Accountant Smt. Yesodha Rajan and a statement was recorded from her. She admitted that the said excel sheet pertains to payment made for purchase of lands located at Kancheepuram in the name of assessee company i.e., M/s. Pearl Printers & Publishers Pvt. Ltd. She also accepted the fact that an amount of Rs.568.76 Lacs was paid in cash as on-money for acquisition of the said land. The relevant portion of sworn

statement has been extracted on para 1.1 of the assessment order. Her answer to Q. No.27 read as under: -

Sir, I confirm that these have been obtained and printed from the desktop computer at my workplace. These are the details of payments made for land purchased in Kancheepuram in favour of M/s Pearl Printers Private Limited (in which Mr. M.V.M. Sasikumar is one of the shareholders) for a total sale consideration of Rs.74228000/- out of which the amount paid in DD is Rs.17352000 and by cash is Rs.56876000/-. The source of the cash payments is from the fees collected from M/s Veeramakali Memorial welfare trust.

Accordingly, the assessee was show caused as to why the aforesaid amount of Rs.568.76 Lacs should not be added as undisclosed income of the assessee for this year.

2.2 The assessee denied paying any cash component in the stated purchase transaction. The assessee also submitted that Shri Sasikumar did not admit having paid any on-money on the purchase of property by assessee company but merely admitted for assessment of unaccounted income for a sum of Rs.568.76 Lacs, Further, the excel sheet do not contain any detail regarding the date of payment of alleged sum of Rs.568.76 Lacs. However, rejecting the explanation of the assessee, the impugned sum of Rs.568.76 Lacs was taken to be the undisclosed income of the assessee and the assessment was finalized.

### **Appellate Proceedings**

3.1 During appellate proceedings, the assessee assailed impugned addition by way of elaborate written submissions which have been extracted in the impugned order. The assessee also assailed assumption of jurisdiction on legal grounds.

3.2 The assessee pointed out that during the course of assessment proceedings, it had submitted sworn affidavit of Smt. Yeshoda Rajan on 25-09-2021 wherein she admitted to have made certain typographical

error while feeding the data. The Ld. CIT(A) observed that Ld. AO relied upon two evidences to support the impugned addition. The first one was the Excel sheet as maintained by the Accountant in the system and the second one was the sworn statement of accountant as recorded during the course of search. The statement of the accountant recorded u/s 132(4) was adverse to the assessee. To rebut the contention of the accountant, the assessee produced sworn affidavit of the accountant before Ld. AO. Even though the sworn affidavit was available before Ld. AO, he did not render any findings on the sworn affidavit. Further, the sworn statement of the accountant was not subjected to any cross-examination by the assessee. Therefore, sworn affidavit as submitted by the accountant as recorded u/s 132(4) could not be rejected outrightly without examining the deponent to disprove that the sworn affidavit was incorrect. Reference was made to the decision of Hon'ble Apex Court in the case of **Mehta Parikh & Co. vs. CIT [1956] 30 TR 181 (SC)** wherein it was held that it would not be open to the revenue to challenge the statements made by the deponent in the affidavit later on, if no cross examination with reference to the statements made in the affidavits was done. When once Ld. AO relied upon the statement recorded from accountant during the course of search u/s 132(4), he should have attempted to strengthen the same by bringing evidence that the subsequent retraction made by way of sworn affidavit was wrong. Contrary to this, Ld. AO, in the Assessment Order, did not at all attempt to even bring sworn affidavit on record. Therefore, the reliance on sworn statement of accountant was not sufficient enough to sustain impugned additions.

3.3 Another argument made by the assessee that the sworn affidavit of vendors about the non-receipt of extra payment other than the one mentioned in the sale deed, was not considered by Ld. AO. It was noted that the assessee, during the course of assessment proceedings, had submitted sworn affidavit of the vendors who had sold the land to the assessee company, by rebutting the allegation about the excess consideration received other than the consideration mentioned in the sale deed. The same evidence was filed during appellate proceedings also. However, Ld. AO, in the assessment order, did not at all bring on record the sworn affidavit of the vendors in the assessment order and no findings were rendered on the same. To prove the allegations of on-money, it was essential to prove that the vendors had actually received such excess payment. When the sellers denied receiving excess consideration, Ld. AO must have attempted to prove that such sworn affidavit was wrong. However, no such exercise was carried out by Ld. AO.

3.4 The assessee also submitted that addition were made on the basis of dumb document which did not contain any details as to the date of payment, name and address of person to whom the cash payments were made. The Ld. CIT(A) concurred that the foundation of impugned addition had no corroborative evidence. The lower authorities did not made any attempt to collect further cogent and corroborative evidence to prove the existence of transaction which has resulted into payment of on-money as alleged. The excel sheet relied upon by Ld. AO did not have basic details i.e., date of payment of excess consideration, the details of parties to whom the consideration was made and it also had no acknowledgement or signature in support of excess consideration.

Therefore, this document, at best, could be considered as secondary evidence rather than primary evidence to sustain the addition. To support the same, corroborative evidence would be essential. No such attempt was made by Ld. AO to collect any corroborative evidence. Since the aforesaid document would require corroborative evidences and the same, on standalone basis, would have no evidentiary value and therefore, this ground was also allowed

3.5 The assessee also raised another legal issue that since no incriminating material was found from the possession of the assessee, framing of assessment u/s 153A was bad in law. The Ld. CIT(A) noted that warrant of authorization was issued in respect of all the entities pertaining to the group. The transactions between the entities of the group were intermingled. It could not be said that all entities of the group were strictly maintaining the transaction of one particular premises relating to relevant entity alone. Therefore, the contention that the excel sheet was found from third-party premise was not acceptable and accordingly, this ground was rejected. Finally the appeal was partly allowed.

3.6 Aggrieved as aforesaid, the revenue is in further appeal before us whereas the assessee has filed cross-objections against the appeal of the revenue on legal grounds.

#### **Our findings and Adjudication**

4. From the facts, it emerges that the assessee group was subjected to search and a Panchnama was drawn on 21-01-2020, a copy of which is on record. During search, business premise of the assessee was covered. The copy of the Panchnama along with seized documents from assessee has been place on record. This material include book of

accounts as per Annexure ANN/BVAK/PP&PPL/B&D/S and loose sheets as per Annexure ANN/BVAK/PP&PPL/LS/S. However, upon perusal of assessment order, it is quite clear that the sole addition made in the hands of the assessee is not based on this material. The assessment order take note of the fact that during the course of search u/s 132 of Income Tax Act at the premises of M/s. Veeramakali Memorial Welfare Trust located at Anna Nagar City Office, No. 8/3, 3<sup>rd</sup> Street, AA Block, Shanthi Colony, Anna Nagar, Chennai, an excel sheet with heading "Kancheepuram-Sirvakkam-Thiruvallur District" was found in the computer of its Accountant Smt. Yesodha Rajan. During the course of search in that case, a statement was recorded from her. On the basis of admission made by her that certain on-money was paid for acquisition of land for the assessee, the impugned additions have been made in the hands of the assessee. No addition has been made on the basis of material seized from assessee's premise since no reference thereof has been made in the assessment order. We find that this is AY 2015-16 and the search has taken place on assessee on 21-01-2020. It is undisputed fact that at the time of search, no proceedings were pending against the assessee for this year. The original return of income as filed by the assessee u/s 139(1) on 16-09-2015 had already attained finality. In such a scenario, the ratio of decision of Hon'ble Apex Court in **Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (149 Taxmann.com 399)** would squarely apply to the facts of the case. In this decision it has been held by Hon'ble Court that already concluded assessment could not be disturbed in search proceedings u/s 153A and the additions have necessarily to be based on incriminating material found during the course of search.

5. Proceeding further, the facts of the case would establish that impugned addition has been made on the basis of incriminating material found during the course of search on a third party as well as statement recorded therein. In such a case, the proceedings have to be initiated u/s 153C and not u/s 153A which has not been done by Ld. AO. To initiate proceedings u/s 153C, it is mandatory requirement of law that satisfaction should have been recorded by Ld. AO of the searched person as well as the AO of the other person before proceedings u/s 153C. The recording of satisfaction is sine qua non to assume jurisdiction u/s 153C. Without recording of this satisfaction, no addition could have been made in the hands of the assessee. In the present case, no such satisfaction has been shown to us and in fact, the assessment has been framed u/s 153A which could not be sustained in law considering the mandatory provisions of Sec.153C.

6. Our aforesaid view is duly supported by the decision of Hon'ble Delhi High Court in the case of **PCIT vs. Anand Kumar Jain HUF (ITA Nos.23/2021 & ors. dated 12.02.2021)**. The Hon'ble Court held that additions on the basis of statement recorded in a separate search action in the case of a third person are not permissible in Section 153A proceedings. The Hon'ble High Court observed that the statement of third person cannot be construed as an incriminating material belonging to or pertaining to the person other than the person searched. Similar is the view of Bangalore Tribunal in **ACIT Vs. P. Shyamaraju & Co. India Pvt. Ltd (ITA Nos.978 to 984/Bang/2014 dated 25-04-2022)** as well the decision of Kolkata Tribunal in the case of **Krishan Kumar Singhania vs. DCIT (88 Taxmann.com 259)** as placed on record.

7. Therefore, considering the aforesaid settled position of law, the assessment would be bad-in-law and therefore, the impugned addition could not be sustained on this score only. We order so. Ground Nos. 1.1 to 1.4 of assessee's cross-objection stand allowed. The other grounds of assessee's cross-objections are merely supportive in nature.

8. Though the impugned addition is not sustainable on legal grounds, we find that Ld. CIT(A) has rendered pertinent factual findings on merits and clinched the issue in the right perspective. The statement as relied upon by Ld. AO stood retracted and Ld. AO completely ignored the retraction. The affidavits filed by the assessee from vendors who sold the properties have also been completely ignored by Ld. AO. No corroborative evidences have been brought on record to strengthen the allegation of payment of on-money. The seized document is merely an excel sheet which did not have basic details or any acknowledgements. The same has rightly been held to be a dumb document and it could, at best, be considered as secondary evidence rather than primary evidence to sustain the addition. To support the addition arising out of this document, corroborative evidence would be essential. We concur with these findings of Ld. CIT(A). In the result, the appeal of the revenue stand dismissed.

### **Conclusion**

9. The appeal of the revenue stand dismissed. The assessee's cross-objection stand partly allowed.

*Order pronounced on 3<sup>rd</sup> June, 2024*

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

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

चेन्नई Chennai; दिनांक Dated :03-06-2024  
DS

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

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