

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

माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

1. आयकरअपील सं./ ITA No.1384/CHNY/2023
(निर्धारणवर्ष / Assessment Year: 2015-16)
- &
2. आयकरअपील सं./ ITA No.1385/CHNY/2023
(निर्धारणवर्ष / Assessment Year: 2017-18)
- &
3. आयकरअपील सं./ ITA No.1386/CHNY/2023
(निर्धारणवर्ष / Assessment Year: 2019-20)

Shri Gopalsamy
No.3B, 3rd floor New No.27
East Street, Krishna apartments,
Raghava Reddy Colony,
Ashok Nagar, Chennai 600 083.

Vs. ACIT
DC/AC Central Cir 1(2)
Chennai

[PAN: BJTPG 4193H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri R. Subramanian, C.A.,

प्रत्यर्थी की ओर से /Respondent by

: Shri Nilay Baran Som, IRS, CIT.

सुनवाई की तारीख/Date of Hearing

: 21.05.2024

घोषणा की तारीख /Date of Pronouncement

: 31.07.2024

आदेश / ORDER

PER MANU KUMAR GIRI (Judicial Member)

1. Aforesaid appeals by assessee u/s 253 of the Income Tax Act, 1961 ('Act') arises out of a common order dated 29.09.2023 passed by the Id. Commissioner of

Income Tax (Appeals)-18, Chennai ['CIT(A)' in short] for Assessment Years (AY) 2015-16, 2017-18 and 2019-20. Facts as well as issues are substantially the same.

2. The grounds of appeal raised by the assessee read as under:

For AY 2015-16:-

1. *For that that the order of the learned Commissioner of Income Tax (Appeals) [CITA] is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.*
2. *For that the proceeding under Section 153C is invalid in law.*
3. *For that the Provisions of Section 153C cannot be initiated without the proper recording and satisfaction by the Assessing Officer.*
4. *For that the Commissioner of Income Tax Appeal ought to have been appreciated that searched person and the other person are one and the same. Therefore the order passed by the Assessing Officer is barred by the limitation.*
5. *For that the Commissioner of Income Tax Appeal ought to have followed the Judgments relied upon by the Appellant during the course of hearing.*
6. *For that the Commissioner of Income Tax Appeal erred in adding a sum of Rs.7,10,000/- for the Assessment Year 2015-16 as unaccounted Income.*
7. *For that the Commissioner of Income Tax Appeal ought to have held that addition cannot be made merely on the basis of statement recorded during the course of search without any corroborative evidence.*
8. *For that the Commissioner of Income Tax (Appeals) erred in dismissing without reason, the plea of the appellant that only part of the commission had been received, and that the appellant was following the cash system of accounting.*
9. *For that the Commissioner of Income Tax Appeal ought to have followed the CBDT Circular No. 286/2/2003 dated 10.03.2003 and F. NO. 286/98/2013 dated 18.12.2004 which was relied upon by the Appellant during the course of hearing.*
10. *For that the Commissioner of Income Tax Appeal erred in estimating the Commission Income earned by the Appellant for the above Assessment Year.*
11. *For that the Appellant objects to the levy of interest under sections 234A, 234B and 234C'.*

For AY 2017-18:-

1. *For that that the order of the learned Commissioner of Income Tax (Appeals) [CITA] is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.*
2. *For that the proceeding under Section 153C is invalid in law.*
3. *For that the Provisions of Section 153C cannot be initiated without the proper recording and satisfaction by the Assessing Officer.*
4. *For that the Commissioner of Income Tax Appeal ought to have been appreciated that searched person and the other person are one and the same. Therefore the order passed by the Assessing Officer is barred by the limitation.*

5. For that the Commissioner of Income Tax Appeal ought to have followed the Judgments relied upon by the Appellant during the course of hearing.
6. For that the Commissioner of Income Tax Appeal erred in adding a sum of Rs.23,50,000/- for the Assessment Year 2017-18 as unaccounted Income.
7. For that the Commissioner of Income Tax Appeal ought to have held that addition cannot be made merely on the basis of statement recorded during the course of search without any corroborative evidence.
8. For that the Commissioner of Income Tax Appeal ought to have followed the CBDT Circular No. 286/2/2003 dated 10.03.2003 and F. NO. 286/98/2013 dated 18.12.2004 which was relied upon by the Appellant during the course of hearing.
9. For that the Commissioner of Income Tax Appeal erred in estimating the Commission Income earned by the Appellant for the above Assessment Year.
10. For that the Commissioner of Income Tax Appeal ought to have deleted the addition in respect of Investments made towards the property during the impugned Assessment Year.
11. For that the Commissioner of Income Tax Appeal erred in not considering the source of the Investment in respect of aforesaid amount.
12. For that the Commissioner of Income Tax Appeal erred in confirming the addition under Section 69 of the Income Tax Act.
13. For that the Commissioner of Income Tax Appeal ought to have appreciated that the provisions of Section 115BBE are not invocable to the facts of the Appellant case.
14. For that the appellant objects to the levy of interest under sections 234A, 234B and 234C”.

For AY 2019-20:-

1. For that that the order of the learned Commissioner of Income Tax (Appeals) [CITA] is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.
2. For that the proceeding under Section 153C is invalid in law.
3. For that the Provisions of Section 153C cannot be initiated without the proper recording and satisfaction by the Assessing Officer.
4. For that the Commissioner of Income Tax Appeal ought to have been appreciated that searched person and the other person are one and the same. Therefore the order passed by the Assessing Officer is barred by the limitation.
5. For that the Commissioner of Income Tax Appeal ought to have followed the Judgments relied upon by the Appellant during the course of hearing.
6. For that the Commissioner of Income Tax Appeal ought to have held that addition cannot be made merely on the basis of statement recorded during the course of search without any corroborative evidence.
7. For that the Commissioner of Income Tax Appeal ought to have followed the CBDT Circular No. 286/2/2003 dated 10.03.2003 and F. NO. 286/98/2013 dated 18.12.2004 which was relied upon by the Appellant during the course of hearing.
8. For that the Commissioner of Income Tax Appeal erred in estimating the Commission Income earned by the Appellant for the above Assessment Year.
9. For that the Commissioner of Income Tax Appeal ought to have deleted the addition to a sum of Rs.2,00,43,300/- in respect of Investments made towards the property during the impugned Assessment Year.

10. For that the Commissioner of Income Tax Appeal erred in not considering the source of the Investment in respect of aforesaid amount.

11. For that the Commissioner of Income Tax Appeal erred in adding a sum of Rs. 56 lakhs in respect of cash payments on the basis of loose sheets found during the course of search without any collaborative evidence.

12. For that the Commissioner of Income Tax Appeal erred in confirming the addition under Section 69 of the Income Tax Act.

13. For that the Commissioner of Income Tax Appeal ought to have appreciated that the provisions of Section 115BBE are not invocable to the facts of the Appellant case.

14. For that the appellant objects to the levy of interest under sections 234A, 234B and 234C.

3. The Ld. AR advanced arguments on legal grounds as well as on merits with the help of documents as well as by relying upon various judicial decisions, the copies of which have been placed on record. It has been submitted that the additions have been made merely on the basis of statement and loose papers which are mere dumb document having no evidentiary value. The Id. CIT-DR, on the other hand, controverted these arguments. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

4.1 Pursuant to search action in the case of M/s Lotus-G Square group on 29.01.2019, the residential premise of the assessee at Flat No.3B , III Floor, New No.27, Krishna Apartment, East Street, Raghava Reddy Colony, Ashok Nagar, Chennai-83 was also covered u/s 132 of the Act. During the course of search proceedings, statement was recorded u/s 132 of the Act till 9 PM on 29.01.2019 and again on 30.01.2019.

4.2 Subsequently, the assessee's case was notified to Central Circle 1(2) and it was centralized vide PCIT's notification no. No. 12/2019-20 in

C.No.272A/Centralization/ PCIT-1/ 2019-20 dt. 23.08.2019. During the course of assessment proceedings, notice u/s 153C was issued to the Assessee on 12.01.2021 calling for return of income. The assessee sought copies of sworn statements / seized material which was provided. The assessee admitted income of Rs.3,19,960/- in its return of income. Notices u/s 143(2) as well as u/s 142(1) were issued from time to time calling for certain details from the assessee. The assessee responded to these notices and furnished various details.

4.3 The relevant portion of the statement of Mr. Gopalsamy as recorded on 29.01.2019 during the search and relied upon by the Revenue reads as under:

12. Who are your clients and what is the rate of commission paid to you?

Ans. I provide service exclusively to Mr. Saravana Arul of M/s Saravana Selvarathinam Group. The rate of commission depends on the value of transactions ranging from maximum for small value transactions and half percentage for high value transactions.

.....

17. Can you tell me since when you are doing exclusive property consultancy for Saravana Selvarathinam Group?

Ans: I am doing the above mentioned property consultancy for M/s Saravana Selvarathinam Group since the year 2014 yielding income for me from the year 2015.

.....

Q.No.21 *Please mention the total amount received/receivable as commission for the above said projects for which property consultancy was done by you.*

Ans. *The total commission amount cumulatively for all the three projects is approx. Rs.80 lakh of which 40% is received by me and remaining 60% is due to be received.*

14. *Provide details of immovable property held by you and your family members and sources for purchase of the same.*

Ownership	Address	Value in Rs.	Sources
K.Gopalasamy and G Vimala	38/27, 3rd floor, Krishna Apts, East street, Raghava Reddy Colony, Ashok Nagar Chennai-83	10311195	50 lakh Loan from PNB Bank: 30 lakh from current account of G.Vimala 1.5 loan from Vignesh Kumar 4.5 lakh loan from Selvram Kumar Balance: Need two days time to furnish the details

K.Gopalasamy and G Vimala	Hiranandani Realtors P Ltd at Egattur village, Tiruporur Taluk, Kanchipuram	10002300	73.4 lakhs: Loan from SBI Egmore Balance: Need two days time to furnish the details
K.Gopalasamy and G Vimala	Alliance Business Parts P Ltd No: 36/1, Gandhi Mandapam Road, Kotturpuram, Chennai- 85	10041000	10 lakh booking advance Loan process with PNB underway. Sale deed not yet signed
K.Gopalasamy and G Vimala	Virudhunagar Dist	234880	Property given to me instead of money to be returned to me by the person who borrowed by me
	Total	3,05,89,375	

[**Note:** We observe that there is no ‘Q’ or ‘Ans’ written against 14.]

.....

Q.No.20 How many projects have you done property consultancy for Saravana Selvarathinam Group?

Ans: I have done property consultancy for Saravana Selvarathinam Group for 3 projects - Tirunelveli, Madurai, Zamin Pallavaram (200 feet radial road)

.....

Q.No.35 . Please elaborate on the details of property purchased by Saravana Arul mediated through you.

Ans. I was nominated as Authorised signatory of Saravana Arul of Saravana Selvarathnam Group to purchase 1.27 acre of land at Tirunelveli for a consideration of Rs. 6.50 crores (approx.) in the year (2014-15). Apart from the above extent of land, another property admeasuring 15 cents @ Rs. 3 lakh- Rs. 4 lakh per cent was bought for the purpose of hostel for the employees at Tirunelveli outlet.

Subsequently, another property admeasuring 2.30 acres at Madurai was purchased for a consideration of Rs. 23.50 crores (approx..) at the beginning of the year 2016.

Finally, the property at Zamin Pallavaram admeasuring 5.47 acres(approx..) was purchased during the second half of the year 2017. I am not able to recollect the total consideration for the above mentioned extent or property.

4.4 On the basis of above statement, in assessment order for AY 2015-16,

Ld. AO noted that the assessee was in receipt of commission income of Rs.7.10 Lacs and accordingly, the same was added as undisclosed income.

Similarly addition of Rs.23.50 Lacs was made in AY 2017-18.

4.5 In AY 2017-18, Ld. AO made addition of unexplained investment u/s 69 for Rs.107.40 Lacs with respect to investment in immovable properties. The same was subjected to the provisions of Sec.115BBE. In AY 2019-20, Ld. AO made similar addition u/s 69 for Rs.200.43 Lacs and another addition of Rs.56 Lacs respectively.

5. ISSUE WISE GROUNDS FOR ADJUDICATION

Commission Income:

5.1 The assessee was doing consultancy business for identifying suitable land on behalf of Shri Sarvana Arul of Saravana Selvarathinam group. The Ld. AO, on the basis of answer to Q.Nos.12, 17, 21 and 35 in sworn statement, estimated transaction value of Rs.104.51 crores and estimated the income thereon @1% and arrived at commission income of Rs.104.51 Lacs as under: -

<i>Sl.No.</i>	<i>Project Name</i>	<i>FY</i>	<i>Transaction value</i>	<i>Commission income</i>
1	<i>Tirunelveli - two land transactions</i>	<i>2014-15</i>	<i>Rs.7.10 crores</i>	<i>Rs.7,10,000</i>
2	<i>Madurai</i>	<i>2016-17</i>	<i>Rs.23.50 crores</i>	<i>Rs.23,50,000</i>
3	<i>Zameen Pallavaram, Kancheepuram</i>	<i>2017-18</i>	<i>Rs.73.91 crores</i>	<i>Rs.73,91,000</i>
		<i>Total</i>	<i>Rs.104.51 crores</i>	<i>Rs.1,04,51,000</i>

<i>FY</i>	<i>Actual Commission income received</i>	<i>Commission income disclosed in ITR</i>	<i>Commission income not disclosed in ITR</i>
<i>2014-15</i>	<i>Rs.7,10,000</i>	<i>NIL</i>	<i>7,10,000/-</i>
<i>2016-17</i>	<i>Rs.23,50,000</i>	<i>NIL</i>	<i>Rs.23,50,000/-</i>
<i>2017-18</i>	<i>Rs.73,91,000</i>	<i>Rs.12,97,000/-</i>	<i>60,94,000/-</i>
<i>2018-19</i>	<i>Rs.18,75,301</i>	<i>Rs.18,75,301/-</i>	<i>Nil</i>
<i>Total</i>	<i>1,23,26,301</i>	<i>Rs.31,72,301/-</i>	<i>Rs.91,54,000/-</i>

Accordingly, the addition of Rs.7.10 Lacs was made for AY 2015-16 and addition of Rs.23.50 Lacs was made for AY 2017-18 which is impugned before us.

5.2 The Ld. CIT(A) has confirmed the addition by observing that the assessee acted as a consultant for Saravana Selvarathinam group and finalized 3 land projects for saravana Selvarathinam Group at Triunelveli, Madurai, Zamin Pallavaram (200 feet radial Road). The assessee was in this business from AY 2015-16 onwards. The assessee earned commission income which was not disclosed in full. The Ld. AO, on analyzing the seized materials and the sworn statement, estimated the commission at 1%, which was nominal. The assessee did not retract the statement immediately after search. The burden was on the assessee to prove that the contents of the statement were wrong. Aggrieved as aforesaid, the assessee is in further appeal before us.

5.3 Upon perusal of assessee's answer to question No.21 as extracted above, we find that the assessee has quantified the commission of approx. Rs.80 Lacs out of which he has received commission only to the extent of 40% i.e., Rs.32 Lacs. From para 4.8 of the assessment order, it could be seen that the assessee has already offered commission income of Rs.12.97 Lacs in FY 2017-18 and another commission income of Rs.18.75 Lacs for FY 2018-19. The income thus aggregate to Rs.31.72 Lacs which is close to the

admission made by the assessee. We find that except for the sworn statement, nothing was found from the assessee over and above what was stated in his sworn statement. Revenue authorities while making addition cannot adopt partial statement of the assessee or blow hot and cold at same breath. The findings of Ld. AR are vitiated by reason of its having been relied upon mere suspicion and surmises which is not supported by any evidence. No independent enquiry has been made to support the impugned additions. It is impermissible for AO to stretch, co-relate different statements and interpret those statements in such an arbitrary manner to make addition. Statement recorded during search must be categorical, unambiguous and specific. There should not be any scope for any vagueness, arbitrariness and foul play. AO is not entitled to interpret *inter se* statements in an arbitrarily manner while doing assessment. Therefore, we are inclined to delete the impugned addition of Rs.7.10 Lacs in AY 2005-16 and addition of Rs.23.50 Lacs in AY 2017-18. The corresponding grounds raised in the appeal stand allowed. No other ground has been urged in AY 2015-16. The appeal for AY 2015-16 stand allowed.

6. Investment in properties:

6.1 This addition is based on assessee's answer to Q. No.14 as extracted earlier in the order. The chart read as under: -

<i>Ownership</i>	<i>Address</i>	<i>Value in Rs.</i>	<i>Sources</i>
<i>K.Gopalasamy and G Vimala</i>	<i>38/27, 3rd floor, Krishna Apts, East street, Raghava Reddy Colony, Ashok Nagar Chennai-83</i>	<i>10311195</i>	<i>50 lakh Loan from PNB Bank: 30 lakh from current account of G.Vimala 1.5 loan from Vignesh Kumar 4.5 lakh loan from Selvram Kumar Balance: Need two days time to furnish the details</i>
<i>K.Gopalasamy and G Vimala</i>	<i>Hiranandani Realtors P Ltd at Egattur village, Tiruporur Taluk, Kanchipuram</i>	<i>10002300</i>	<i>73.4 lakhs: Loan from SBI Egmore Balance: Need two days time to furnish the details</i>
<i>K.Gopalasamy and G Vimala</i>	<i>Alliance Business Parts P Ltd No: 36/1, Gandhi Mandapam Road, Kotturpuram, Chennai- 85</i>	<i>10041000</i>	<i>10 lakh booking advance Loan process with PNB underway. Sale deed not yet signed</i>
<i>K.Gopalasamy and G Vimala</i>	<i>Virudhunagar Dist</i>	<i>234880</i>	<i>Property given to me instead of money to be returned to me by the person who borrowed by me</i>
	<i>Total</i>	<i>3,05,89,375</i>	

The Ld. AO alleged that the assessee could not furnish the complete details of the source for the purchase of the aforesaid properties. The Ld. AO, on the basis of return of income, tabulated the funds that could be available with the assessee from FYs 2014-15 to 2017-18 and arrived at available funds for Rs.16.45 Lacs. The funds that would be available with assessee's wife were quantified at Rs.4.20 Lacs. The Ld. AO also doubted the tailoring business / fabric business as stated to be carried out by the assessee and his family members.

6.2 The assessee, in its reply dated 30.04.2021, furnished the details of source of investment in these properties. In AY 2017-18, the addition has been made for Flat at Ashok Nagar which was purchased by the assessee for Rs.107.40 Lacs jointly with his wife. The assessee submitted that he made contribution of Rs.55 Lacs whereas the remaining funds of Rs.52.40 Lac came from assessee's wife. Out of Rs.55 Lacs, the assessee is stated to have obtained loans of Rs.41 Lacs and the balance contribution of Rs.14 Lacs was stated to be funded out of taxable income. The assessee also furnished details of unsecured loans / creditors along with their addresses and PAN. The confirmation was also furnished with respect to most of the parties. The Ld. AO issued notices u/s 133(6) and many of them filed confirmations also. However, Ld. AO rejected the same by doubting the creditworthiness of loan creditors. Finally, Ld. AO rejected the submissions / workings of the assessee and made impugned addition of Rs.107.40 Lacs. The remaining addition of Rs.200.43 Lacs was made in similar manner in AY 2019-20. The same were added u/s 69 r.w.s. 115BBE.

6.3 In AY 2019-20, on the basis of loose sheets seized vide ANN/JER/KG/LS/S-1, AO also made another addition of Rs.56 Lacs alleging that the assessee has made various cash payments.

7. Order of the CIT (A) in respect of Investment in properties:-

7.1 The AO made an addition u/s 69 of the Act on account of investment in properties as per chart referred supra, at Virudhunagar, Ashok Nagar, Zamin

Pallavaram and Egattur. During assessment proceedings, the Assessee has furnished following explanation:

	Paid by K. Gopalasamy		Paid by Vimala Gopalasamy	
1. Flat at Ashok Nagar purchased jointly during FY 2016-17 for a total cost of Rs. 1,07,40,985/- and assessee's share Rs.55,00,000	Naveen	Rs.2,00,000	Loans from relative and friends	26,00,000/-
	Vignesh Kumar	Rs.4,00,000	income AY 2016-17	5,65,324
	Ramajyam	Rs.5,00,000	income AY 2017-18	9,88,717
	Sivaramakrishnan	Rs.25,00,000	income AY 2018-19	11,84,437
	Sreejith	Rs.5,00,000		
	Total Loans	Rs. 41,000,000 (Total)		
	Balance out of taxable income	14,00,000/-		
	TOTAL	Rs.55,00,000		52,40,985

Property Details	Paid by K. Gopalasamy		Paid by Vimala Gopalasamy	
2. Flat at Egattur purchased jointly during FY 2018-19 for cost of Rs. 1,00,02,300/-	Net profit from Commission earned FY 2018-19	Rs. 14,32,00,000	income AY 2019-20	8,75,441/-
	Media Gate Pvt Ltd	6.00.000	SBI LOAN	38,18,028
	Pitchumani	1,00,000		
	Shanthi	1,00,000		
	Veerammal	1,00,000		
	TOTAL	Rs. 19,82,600		

3	Agri. Land, Duraisamipuram jointly owned and purchased during FY 2015-16, cost Rs. 2,53,584/-	Taxable income	1,26,792	Taxable income	1,26,792
---	---	----------------	----------	----------------	----------

7.2 The assessee also furnished details of unsecured loans as per below chart:

Sl. No	Name of the lender	Present address	PAN Number	31.03.2019
1	Ramajayam	New no 05/Old no 3 lakshmi colony, North cresent Road, T.nagar,ch-17.	BWUPR9618G	5,00,000
2	Sreejith	98, Harrington Apartment, Harriton Road, Chetput, Chennai-600031 CJFPS3376F	CJFPS3376F	5,00,000
3	Media Gate Pvt Ltd	Vijaya Raghava Rd, Parthasarathi Puram, T. Nagar, Chennai - 20017.		6,00,000
4	Naveen	Chennai		2,00,000
5	Pitchumani	76/18, Thanikachalam Nagar (West), 3rd Street, "F" Block Ponnianmanmedu Chennai-600110	AALPP7215R	1,00,000
6	Rajeshwari	House of Hiranandani, Tiana Tower, Flat No.2904, Egattur, Chennai-600 130.	CCFPR2150D	16,25,000
7	Shanthi	Athaikondan Road Kovilpatti 628502	FBLPS6261N	1,00,000
8	Dr Sivaramakrishnan HUF	Tirunelveli	AAAHH9835A	25,00,000
9	Veerammal	27/14 Ragava Reddy Colony, Ashok Nagar, Chennai-600 083.	BHTPV4021P	1,00,000
10	Vigneshkumar	27/14 Ragava Reddy Colony, Ashok Nagar, Chennai-600 083	ATKPV0171E	4,00,000
	Total			66,25,000

7.3 Regarding Zamin Pallavaram property, the assessee submitted explanation as under:

“(a) The flat at Zamin Pallavaram has been purchased by the appellant's wife Mrs. Vimala Gopal. The investment in the said property has been made by the appellant's wife through availing a housing loan from Punjab National Bank of Rs.54,00,000/-. The construction agreement was entered on 12.09.2019 and that the sale deed was executed on 04.03.2022 (Doc No: 2476 of 2022).

(b) During the impugned assessment year, the flat was under construction and whatever payments that were made in the impugned year were out of the disclosed sources of the appellant's wife and out of bank loan obtained in the year.

(c) The Appellant's wife purchased the property at Zamin Pallavaram for Rs.67,59,922/- and not as determined by the Assessing Officer of Rs.1,00,41,000/-. The Appellant registered the undivided share of land vide Sale Deed No.2476/2022 measuring 292.60 square feet for a total consideration of Rs.8,77,800/-. The Appellant also entered a Construction Agreement with M/s. Alliance Business Parks Private Limited for a construction cost of Rs.58,82,122/-.The Appellant made the total investment in the Zamin Pallavaram is only Rs.67,59,922/-. However the Assessing Officer without verifying the documents based on the Sworn Statement has made the additions of Rs. 1,00,41,000/- in the hands of the Appellant’.

However, Ld. CIT(A) rejected the explanation of the assessee as under and allowed the claim partially as under: -

“7.3.4.3.5 Regarding the value of the flat at Zaminpallavaram, the assessee claimed it at Rs.67,59,922 (based on the amount in the construction agreement and the land sale agreement Rs.58,82,122 + Rs.877800), whereas the AO has computed the value at Rs.Rs.1,00,41,000/-. From the incriminating materials seized vide ANN/SBC/KG/LS/s, in page 63, it is seen from the allotment letter dt: 21.07.2018 the value of the property is mentioned as Rs.1,00,41,000/-. It is also seen from sworn statement, the assessee himself has stated the value of the flat to be Rs.1,00,41,000/-. Now the assessee is taking the contrary stand that value of the property is Rs.67,59,922 only. The AO has adopted the value of the property at Rs.1,00,41,000/- as per the allotment letter seized backed by his sworn statement recorded under oath and it is seen that the statement has not been retracted at any time with any affidavit with evidence and therefore, I find no infirmity in the value of the property adopted by the AO. Majority of the payments for the property has gone in the impugned year. As stated in the earlier year, the source from loan creditors cannot be accepted for the

reasons stated therein. However, the loan taken from PNB of Rs.54,00,000 as source cannot be brushed aside. For this year, the AO has not given any categorical finding that the bank loan has been repaid immediately using any bogus creditors. Thus, the source to the extent of Rs.54 lakhs is taken as explained. Thus, the addition to the extent of Rs.46,41,000 (Rs.1,00,41,000-54,00,000) is confirmed. Thus, the grounds in this regard are partly allowed to the extent mentioned above.

7.3.4.3.6 The AO has given a finding that the assessee's wife has no running business to generate her own funds. The reason for investing the funds belonging to the assessee in wife's name may be for getting benefits of stamp duty reduction in registration. The assessee's contention that as the property is in the name of wife, addition in his hands is not warranted is not acceptable as it has not been established by the assessee that the funds are independently emerging from the established sources in the hands of the wife. On the contrary, the AO has established that the assessee's wife has no independent source and the funds have partly emerged from the bogus credits. Thus, this plea is rejected”.

Our findings on Zamin Pallavaram property

8. We observe that the Id.CIT(A) and AO has completely ignored the significance of construction agreement dated 12.09.2019 and sale deed executed on 04.03.2022 vide DOC No.2476 of 2022. Assessee vehemently pleaded before Id.CIT(A) that the flat at Zamin Pallavaram has been purchased for Rs.67,59,922/- [Paid for undivided share of land Rs.8,77,800/- plus Rs.58,82,122/- construction cost as per construction agreement with M/s Alliance Business Parks Private Limited] by the appellant's wife Mrs Vimala Gopal. However, Id.CIT(A) on the basis of sworn statement and loose sheet ANN/SBC/KG/LS/s purported to be a allotment letter dated 21.07.2018 (wherein the value of property mentioned as Rs.1,00,41,000/-) rejected the explanation of assessee and made an addition of Rs.1,00,41,000/- in AY 2019-20. We note that AO has not raised this issue of an allotment letter dated 21.07.2018 during assessment proceedings. It is the Id.CIT(A) who is for the first time arbitrarily used the purported allotment letter

dated 21.07.2018 while passing the order, even without providing an opportunity and confronting to the assessee. It is trite law that if an authority willing to use any adverse material against the assessee then the authority is supposed to follow the strict principles of natural justice, which is, in our view has not been followed in this case. We are of the considered view that lower authorities also failed to verify the factum of allotment letter dated 21.07.2018 from the concerned person/body. Even otherwise, purported allotment letter dated 21.07.2018 found in search is a loose paper and much credence should not be given to the same. Hence, we accept the explanation of the assessee referred at paras 7.3.4.3.5 and 7.3.4.3.6 of CIT(A) order(supra). Therefore, the balance addition of Rs.46,41,000/- is deleted.

Egattur Property

9.1 Regarding Egattur property, the assessee submitted explanation as under:-

The assessee stated that he along with his wife had made a booking application for purchase of the flat at Egatur on 31.05.2018. The sale deed for purchase of UDS of land entered into and registered only on 27.01.2020 for Rs.8,61,600 and the sale deed itself shows that an amount of Rs.7,00,00 was paid on 28.05,2019. The construction agreement was entered into on 27.01.2020 for Rs.92,38,886. They have availed a housing loan from State Bank of India for a sum of Rs.73,40,000/- for the said property on 29.09.2018. Further payments were made to Hiranandani Realtors Private Limited through Punjab National Bank Account.

The details of the payments made produced by the assessee are listed as under:

<i>Mode of payment</i>	<i>Bank</i>	<i>Date</i>	<i>Amount Rs,</i>	<i>Paid by</i>
<i>Cheque</i>	<i>PNB Chennai</i>	<i>27.08.2018</i>	<i>891300</i>	<i>Gopalswamy</i>
<i>Cheque</i>	<i>PNB Chennai</i>	<i>27.08.2018</i>	<i>991300</i>	<i>Gopalswamy</i>
<i>Cheque</i>	<i>PNB Chennai</i>	<i>18.05.2018</i>	<i>100000</i>	<i>Gopalswamy</i>

Cheque	Indian Chennai	14.05.2019	575774	Gopalswamy
Cheque	Indian Chennai	13.01.2020	250028	Gopalswamy

Further, in the impugned assessment year the appellant had only booked the flat and made some advance payments and the purchase of UDS and the construction agreement has been entered into only on 27.01.2020, which falls in the previous year relevant to assessment year 2020-21 and not in the impugned assessment year.

9.2 However, Ld. CIT(A) did not accept the explanation of assessee regarding tailoring business income of Rs.19,82,600/-. The remaining addition of Rs.80,19,700/- was deleted since as it did not pertain to AY 2019-20.

Our findings on Egattur property

10. We find that Id.CIT(A) rightly accepted the prayer of assessee that the construction agreement was entered into on 27.01.2020 which falls in AY 2020-21 and not in the impugned AY 2019-20.

11. We note that while making an addition of Rs.19,82,600/- both the lower authorities did not accept the explanation of tailoring business for the reasons stated below the Para 4.5 of assessment order for AY 2017-18 captioned as ***'Verification of business premise for tailoring/fabricts income'***.

12. We, while looking into the entire matter came to a conclusion that tailoring business of assessee was genuine and gross receipts were not inflated. This fact was already narrated by the assessee during the recording of his sworn statement. AO cannot partly accept sworn statement and partly reject the same. The assessee was regularly showing this business.

13. After perusing the reasons given by the AO regarding tailoring / fabric business, we observe that the physical verification was carried out during Covid-19 pandemic and there was every possibility was that the aforesaid business did not exist at that point of time. Nevertheless, the physical inspection report has nowhere been confronted to the assessee. The approach of Ld. AO could not be held to be judicious. The Hon'ble Supreme Court in case of Kishanchand Chellaram 185 ITR 713 held that the department was bound to give the Assessee an opportunity to controvert evidence and cross examine the evidence on which the department places its reliance. A failure in providing the same would result in the order being a nullity. The Bombay High Court in H.R. Mehta vs. ACIT (2016) 387 ITR 561 (Bom.)(HC) similarly observed that AO was bound to be provided with the material used against him apart from being permitting him to cross-examine the deponents.

14. Considering all these facts, the source to the extent of Rs.19,82,600/- is to be accepted. We order so. The addition as sustained in impugned order stand deleted.

Ashok Nagar property:

15. The assessee's contention in this regard were as under:

"Investment of Rs. 1,07,40,985/- pertaining to Flat at No.3b, 27/14, Ragahava Reddy colony, Ashok Nagar, Chennai is treated as unexplained investment: In this connection the Appellant wish to inform to this authority that the Appellant has purchased the UDS land in Ashok Nagar for a Total Value of consideration of Rs.52,78,000/-. The Appellant purchased the UDS land on

19/12/2016 by vide Sale Deed No.3192/2016. The Appellant have enclosed the copy of Sale Deed for this authority kind perusal.

The Appellant entered an Construction Agreement on 15/09/2016 for a Total Construction Cost of Rs.50,33,195/-. The Appellant purchased the above property along with his wife for a Total consideration of Rs.1,07,40,985/- The Assessing Officer treated the entire investment made by the Appellant as unexplained investment in the hands of the Appellant. However the Appellant and his wife they together purchased the property and they are the joint owner of the property and they have accounted only 50% of the loan and investment in their respective Books of Accounts. Hence the entire income cannot be assessed in the hands of the Appellant. The Appellant had obtained a loan from Punjab National Bank for purchasing the above property.

The Appellant borrowed a loan from Punjab National Bank for a sum of Rs.50,00,000/- and utilized the same towards purchase of land and construction of property. The Appellant enclosed the copy of Sanction Letter from Punjab National Bank for this authority kind perusal. Hence a sum of Rs.50,00,000/- borrowed from Punjab National Bank is utilized for the purpose of purchasing the above property.

The Appellant further obtained a loan from his wife for a sum of Rs. 15,60,000/- which also utilized for the purpose of purchasing the above property.

Hence the Appellant utilized the balance amount towards the purchase of property out of his own savings. The Appellant enclosed the copy of Bank Statement that the payment made through out of his own savings. The Appellant enclosed the copy of SBI Bank Account for this authority kind perusal. The Appellant wife also made the contribution for purchasing the above property. The Appellant purchased the property by obtaining a loan from the bank and his wife and from out of his own savings.

Hence the Appellant explained the sources for the purchase the property and same is required to be deleted.

The Appellant wife also contributed for the investment in property situated at Flat at No.3b, 27/14, Ragahava Reddy colony, Ashok Nagar, Chennai:
In this connection the Appellant wish to inform to this authority that the Appellant's wife is the proprietor of Akash Textiles and the Appellant's wife has declared the Income from Tailoring and Commission Income. The Appellant's wife through her State Bank of India Account contributed the following amounts for the purchase of the above property.

Date	Amount
11/05/2016	-Rs.5,00,000/-
22/08/2016	-Rs.3,11,195/-
19/01/2017	-Rs.5,00,000/-
20/01/2017	-Rs.5,00,000/-
11/02/2017	-Rs.5,00,000/-

Total -Rs.23,11,195/-

The Appellant and his wife obtained a loan from the Punjab National Bank for purchasing the above property. Hence the Appellant and his wife explained the source for the purchase of the above property.

Hence the additions made by the Assessing Officer are incorrect and required to be deleted”.

16. The findings of Ld. CIT(A) are as under: -

“7.3.3.3.1 The Construction Agreement dated 15.09.2016, the agreement of sale dated 15.09.2016 and sale deed executed dt: 19.12.2016 were seized during the search. It is seen that the sale deed was executed on 19.12.2016 the value of the land was Rs.52,78,000/-and the construction agreement dated 15.09.2016 the cost was Rs.50,33,195/- thus totaling to Rs.1,03,11,195/-. But, the assessee himself stated in his submissions that the total investment is Rs. 1,07,40,985. It is seen from the sale deed dated 19.12.2016, the assessee has paid Rs.50 lakhs on 16.12.2016 by DD. The loan creditors of the assessee were verified and found to be non-genuine by the AO and the income from the tailoring business was already discussed and not accepted as sources of investment. The AO found that just before the cheque payments made, the credits from the said creditors credited. Credit worthiness of the creditors has not been proved. For the detailed reasons stated by the AO in his order on the loans, I concur with his view that the said loans cannot be taken as the source for the impugned investment.

7.3.3.3.2 The assessee has claimed Rs.50 lakhs loan availed from PNB on 15.12.2016 in both the name of the assessee and his wife as source for the investment, just one day before the DD taken for payment of Rs.50 lakhs as in the sale deed. The assessee has closed the loan by 08.01.2018 itself and claimed the sources for repayment of loan to the tune of Rs.50 lakhs as certain loans received from certain parties. The AO has verified the creditors of the assessee and has come to the conclusion that they are not genuine. The creditors are shown more or less as common source in other property investments also. Hence the source for the loan repayment of Rs.50 lakhs made to PNB cannot be accepted as explained. The assessee got the loan from PNB on 15.12.2016 to show as if the cost is explained, whereas tried to show that the PNB loan was repaid by unexplained credits. This cannot be accepted. Therefore, the addition made by the AO is confirmed and the grounds in this regard are dismissed”.

Our findings on Ashok Nagar Property

17. We find that the assessee entered into an Construction Agreement on 15.09.2016 wherein construction cost was Rs.50,33,195/-. The appellant and his wife together purchased the property. Before us, assessee submitted that both are

joint owner of property and have accounted only 50% of the loan and investment in their respective Books of accounts. Assessee further submitted that the appellant borrowed a loan of Rs.50,00,000/- from Punjab National Bank towards purchase of land and construction. Assessee also obtained a loan of Rs.15,60,000/- from his wife. We have gone through the orders of Id.CIT(A) and AO and find them not tenable in law. It is undisputed fact that sale deed dated 19.12.2016 and construction agreement dated 15.09.2016 were found and seized during search. It is also not disputed that as per sale deed, appellant and his wife are the joint owners and 50% of the loan and investment in their respective Books of accounts are accounted for. Appellant explained that he took a loan of Rs.50,00,000/- from Punjab National Bank towards purchase of land and construction and also obtained a loan of Rs.15,60,000/- from his wife. The appellant before Id.CIT(A) also filed details of payment by banks towards the property. We have seen that payments were made through proper banking channel, furnished sanction letter and terms of payment etc. Therefore, we are of considered opinion that appellant and his wife are joint owners and their share in the property is only 50% of the loan and investment. The Hon'ble Allahabad High Court in Saiyad Abdulla v. Ahmad AIR 1929 All 817, has held that in the absence of specification of the shares purchased by two persons in the sale deed, it must be held that both purchased equal shares. We have already accepted the tailoring business income of the assessee in previous paragraphs. We also observe that AO has

not questioned the wife of appellant to verify the veracity of the explanation of the assessee.

18. The loan creditors have been rejected on the issue of creditworthiness. However, we find that the assessee has furnished complete details, in this regard before Ld. AO and most of them confirmed the loan transactions in response to notices issued u/s 133(6). If creditworthiness was under doubt, further details could be called from these loan creditors which was not done. Nevertheless the assessee had duly discharged the initial onus of establishing the same. It is trite law that no addition could be made on the basis of mere suspicion.

19. Considering all these aspects, we would concur that the investment made by the assessee in this property was duly explained and impugned addition is liable to be deleted. We order so. The appeal for AY 2017-18 stand allowed.

20. The only remaining issue in AY 2019-20 is addition of Rs.56 Lacs. The findings of Ld. AO are as under: -

On analyzing the loose sheets seized vide ANN/JER/KG/LS/S-1, it is seen that the assessee Shri. K. Gopalsamy has made various payments through cash amounts to Rs. 56,00,000/-. The source for the same was not explained by the assessee. Vide the show cause notice dated 16.04.2021, the assessee was asked to explain the source for the said cash payments made

The assessee in his reply dated 30.04.2021 has stated that

"5. Regarding my reply to Q No 24 of Sworn statement recorded on 29.01.2019, in respect of page No 36 of the loose sheet seized vide annexure ANN/JER/KG/LS, which contains handwritten details of INR denomination of Rs.3,61,29,552, I wish to reiterate as I already explained in my reply to Notice under sub-section (1) of Section 142 of the Income Tax Act 1961, that As per usual practice in Real-estate industry, whenever I discuss with other Agents/buyers, either myself or the negotiating party will note down the price under negotiation and stage of payment to be made for buying a property. These noting in loose sheets are probable future events and the loose sheets seized in ANN/SBC/KG/LS are neither relating to my financial transactions nor part of my books of accounts".

8. I never made any cash payment aggregating to Rs.56,00,000/- The loose sheets seized vide ANN/SBC/KG/LS/S-1 are noting made at the time of negotiation with selling parties As already explained in reply No 5 of this letter, whenever I discuss with other Agents/ buyers, either myself or the negotiating party will note down the price under negotiation and stage of payment to be made for buying a property. These noting in loose sheets are probable future events and are neither relating to my financial transactions nor part of my Books of Accounts."

The notings of cash payments relate to property transactions totalling Rs.56,00,000. The assessee has not explained the transactions such as parties involved, the property involved and explanations for the expenses noted. Assessee has simply denied the transactions relating to the notings he had made. In the absence of the explanation from the assessee and outright denial of transactions, the amount of Rs.56,00,000/- is treated as unexplained investments u/s 69 during the F.Y. 2018-19 relevant to A.Y. 2019-20 and to be taxed at special rates as per the provisions of Sec. 115BBE of the IT Act, 1961".

The Ld. CIT(A) has confirmed the same against which the assessee is in further appeal before us.

21. We find that the assessee in his reply dated 30.04.2021 has categorically stated that 'these noting in loose sheets are probable future events and loose sheets seized in ANN/SBC/KG/LS are neither relating to my financial transactions nor part of my books of accounts'. Except for these jotting, no further details are available. The nature of transaction is also not clear. The purpose of payment allegedly made by the assessee is nowhere discernible. In our opinion, this loose sheet is merely a dumb document which is without any corroborative evidence or finding that the alleged loose paper has materialized into transactions. Therefore, merely by relying upon these jottings, no such additions could be made. The Hon'ble Supreme Court in the case of **K.P. Varghese v. ITO [1981] 24 CTR (SC) 358/[1981] 131 ITR 597 (SC)** held that the fictional receipt cannot be deemed to be a receipt in the absence of any cogent material to support the factum of actual

receipt. The Hon'ble High Court of Delhi in case of Commissioner of Income-tax, Delhi (Central)-II v. D.K. Gupta [2008] 174 TAXMAN 476 (DELHI) upheld the order of the tribunal wherein it was held that Ad-hoc/ Dumb Documents without any corroborative evidence/finding that the alleged documents have materialized into transactions cannot be deemed to be the income of the assessee. Therefore, we delete the same. The appeal for AY 2019-20 stands allowed. No other ground has been urged in the appeal.

Conclusion

22. All the appeals stands allowed in terms of our above order.

Order pronounced on 31st July, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated : 3107-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

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