

आयकरअपीलीयअधिकरण, बी,न्यायपीठ,चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI MANU KUMAR GIRI, JM AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.735/CHNY/2024

निर्धारण वर्ष/Assessment Year:2010-11

Shanmugasundaram,
4/128, Gandhi Nagar,
Mangalam Post,
Tiruchengode – Tk,
Namakkal –Dist 637 501.

The Income Tax Officer,
Vs. Ward 1,
Tiruchengode.

PAN: BXLPS 2576N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri. D. Hema Bhupal, IRS, JCIT.

सुनवाईकीतारीख/Date of Hearing

: 26.06.2024

घोषणाकीतारीख/Date of Pronouncement

: 14.08.2024

आदेश /ORDER

PER MANU KUMAR GIRI (Judicial Member)

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in order No.ITBA/NFAC/S/250/2023-24/1060244741 (1) dated 30.01.2024. The assessment was framed by the Income Tax Officer, Ward -2, Tiruchengode for the

assessment year 2010-11 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 21.12.2018.

2. Brief facts of the case are that the assessee is an agriculturist and earned income from dairy activities. The assessing officer alleged that during the year the assessee has purchased 6 acres of agricultural land on 09-02-2010 from Shri. K.C. Sivalingam of kalipatti village for a sale consideration of Rs.90,00,000/-. On verification of the Data base, the assessee has not filed the return of income for the Asst. Year 2010-11. Hence Assessing Officer had reopened the case and stated that he has reason to believe that income chargeable to tax has escaped assessment for assessment year 2010-11 within the meaning of section 147 of the Income Tax. At, 1961. The AO, after getting necessary approval from the higher authorities issued notice u/s 148 of the Act dated 30-03-2017 which was duly served on the assessee on 01-04-2017. In response to the notice, the assessee filed his return of income along with a covering letter dated 03.06.2017 manually on 15.06.2017. Further the assessee filed his return of income electronically on 23.11.2017 admitting total income of Rs.1,88,200/- for the assessment year 2010-11. Thereafter, notice u/s 143(2) of the Act dated 24.11.2017 was issued and posted the case for hearing on 05.12.2017. In response to notice u/s.143(2) of the Act issued, the authorized representative of the assessee Shri. N. Mani, Auditor appeared and filed power of attorney in his favour, copy of purchase/Sale deeds etc. During the course of assessment proceedings, letter dated 31.07.2018 was issued to

the SRO, Mallasamudram regarding calling for copy of Purchase/ Sale deeds registered in the assessee's name u/s. 133(6) of the Act and the same were received and placed on record. On going through the details received from the SRO, Mallasumudram, it was observed by the AO that during the year the assessee had registered two documents and the details are as under:-

<i>Sl. No</i>	<i>Doc. No.</i>	<i>Date of registration</i>	<i>Seller name Shri.</i>	<i>Purchaser Name Shri.</i>	<i>Document value Rs.</i>
<i>1</i>	<i>555/2010</i>	<i>09.02.2010</i>	<i>K.C. Sivalingam</i>	<i>Shanmugasundaram</i>	<i>7,88,000/-</i>
<i>2</i>	<i>556/2010</i>	<i>09.02.2010</i>	<i>K.C. Sivalingam</i>	<i>Shanmugasundaram</i>	<i>2,11,000/-</i>
				<i>Total</i>	<i>9,99,000/-</i>

On going through the above details, AO find that during the year under consideration the assessee had registered two documents in his name for a total registered value of Rs.9,99,000/- only. Further, during the course of inquiry sworn statement was recorded from the three sons of the Seller Late Shri. K. C. Sivalingam all of them of the deceased have unanimously claimed to have received Rs.78,00,000/- only in cash as sale consideration by their father on 09.02.2010, and also supported by the fact that the entire sale consideration were invested in LIC Policies at Rs.25,00,000/- each on subsequent dates i.e; on 10.02.2010 and 11.02.2010. Moreover, AO also observed that the above persons have no other source of income to invest such huge amount in LIC Policies. Thus it can be construed that the claim of receipt of Rs.78,00,000/- in cash by their father late K.C.

Sivalingam appears to be true. In response to this the AR of the assessee submitted a willingness letter for cross examination. Hence a summons dated 12.11.2018 to the assessee was issued and a sworn statement was recorded from him on 16.11.2018 & 20.11.2018 wherein he deposed that, he had purchased 6.16 acres of land from Shri. K.C. Sivalingam for the total consideration of Rs.10,80,000/- only. Thereafter, based on the sworn statement recorded from the purchaser and the sellers a Cross Examination proceeding was conducted on 20.11.2018. Further, as requested by the assessee summons u/s.131 of the Act dated 20.11.2018 was issued to the above two witness and a sworn statement was recorded from him on 28.11.2018. Shri. P. Velayuthan one of the witness who has signed in the sale deed has deposed that for this transaction the sellers had received Rs.90,00,000/- from the buyer Shri. E. Shanmugasundaram by way of cash in the assessee's residence at Kalipatty, but other witness Shri.G. Sivasubramanian deposed that this agricultural land was registered in two documents for the registered value of Rs.4,60,000/- and Rs. 1,25,000/- thus the total registered value comes to Rs.5,85,000/- and the same value of cash of Rs.5,85,000/- was given to Late Shri. K.C. Sivalingam in the Registrar Office. Therefore, on the basis of the cross examination of the appellant and witness (Shri. P. Velayuthan) at para 3.7, Id.AO held that the assessee was not able to prove that the amount actual paid to the sellers. Hence, made an addition of Rs.84,55,000/-.

3. Aggrieved assessee challenged the order of AO before the Id.CIT(A). The Id.CIT(A) after considering the submissions of the assessee, dismissed the all grounds of appeal and held as under:-

'I have examined the facts of the case and submissions made the appellant. It is a commonplace knowledge that the purchase /sale of agricultural lands are mostly To undervalued to avoid the stamp duty payments and to accommodate unaccounted cash into the land investments. This case appears to be no exception as can be seen from the information received and investigation conducted, and the findings in the said land transaction.

In this case, the sellers had admitted to the receipt of sale consideration in cash of Rs. 78,00,000/- separately and one of the witnesses confirmed this fact. The dates of investment in LIC policies by the legal heirs of seller exactly coincided with the date of sale transaction. Mere denial by the appellant does not absolve him from the addition made based on preponderance of probabilities unless he provides any direct or circumstantial evidence to counter the evidences gathered. No such counter evidence have been submitted by the appellant".

On further appeal, the assessee is in appeal before us.

4. The Id.Counsel submitted that addition cannot be made only on the basis of statement of Sri S. Dhanabal (son of deceased seller). He further argued that one of witness, Shri G. Sivasubramaian has categorically deposed in favor of appellant that this agricultural land was registered in two documents for Rs.10,70,000/-. The Id. Counsel furthermore submitted that rules of cross examination has been flouted by the AO. The Id.Counsel for the appellant argued that the legal heirs of deceased seller cannot by making self serving statement vary or increase the sale

consideration of the sale deeds dated 09.02.2010 duly executed and registered.

5. Per contra, the Id.JCIT read out the relevant paras of the impugned order and further completely supported the orders of the lower authorities and prayed for dismissal of appeal of the assessee.

6. We have heard the rival submissions and perused the orders of the lower authorities and find that the impugned order is not sustainable in the eyes of law on account of following reasons:

I. There is no documentary evidence unearthed by the AO which could show that the assessee had paid huge amount over and above the sale consideration mentioned in both sale deeds dated 09.02.2010;

II. Market value of the property fixed by the Sub-Registrar office is Rs.9,99,000/- for the both are find mentioned in last page of each sale deeds;

III. On first principles and on general law, the principles of evidence Act has not been applied by the AO in this case. In this case, questions were asked by the AO and had been simultaneously, replied by the witness and assessee. It is settled practice that after chief examination of witness the other party is entitled to cross examination as per provisions of evidence Act which has not been done in this case. Evidence of a witness through examination or cross-examination is required to be done as per Sections 137 to 154 of the Indian

Evidence Act. In this case, we observe that there was no separate examination or cross examination done. The Hon'ble supreme court in the case of ***Chuharmal v. CIT (1988) 172 ITR 250 (SC)*** held that the Evidence Act does not apply to proceedings under the Income-tax Act. The Supreme Court pointed out that the rigours of rule of evidence contained in the Evidence Act were not applicable to the Income-tax Act, but on first principles and on general law, the principles of Evidence Act can be applied to proceedings under the Income-tax Act;

IV. Nothing concrete found against the assessee during so called cross examination and both parties contradicts veracity of statement of each other;

V. Other two sons of deceased seller were not examined;

VI. If we accept the version of sons of deceased seller then why they had not filed their respective return of income despite receipt of Rs.25,00,000/- each which were taxable income. Therefore, we reject the contention of buying LIC policies from the unaccounted receipt. Further, if we accept the version of AO then why no action had been taken by the AO against those persons who had receipt of Rs.25,00,000/- each and had not filed their respective return of income;

VII. The Apex Court in Damodhar Narayan Sawale (D) through LRs. Vs. Shri Tejrao Bajirao Mhaske&Ors(2023 SCC Online SC 566) held that provisions of TOPA along with the provisions of Registration Act and further emphasized that a Sale Deed, when registered and executed in due compliance, shall confer a valid and legitimate title to the receiver. In supra case it was noted that, the execution and registration of Sale Deed was not in dispute however, the dispute was only for nature of the transaction. It was noted that registered Sale Deed having recitals for transfer of right, title and interest in favour of recipient along with **recitals of sale considerations** shall give a presumption of valid title. Therefore, it is entirely upon the Defendants to establish otherwise and to prove that it did not reflect the true nature of transaction;

VIII. In Vimal Chand Ghevarchand Jain v. Ramakant Eknath Jajoo, (2009) 5 SCC 713 (SB Sinha,J.), it is held that the registered deed carries a presumption that the transaction was a genuine one;

IX. Sec. 114 of the Evidence Act allows the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case;

X. No inquiry had been done by the AO regarding circle rate;

XI. No comparable had been taken by the AO of the adjacent agricultural land;

XII. AO miserably had failed to refer the matter to DVO for ascertainment of value;

XIII. In view the above, we are of the opinion that if the testimony of one witness is discredited, there was no material with the Department on the basis of which it could justify its action, as the unsubstantiated statement of the witness was the only basis of making addition.

Hence, in the light of above findings, we allow the appeal of the assessee and delete the addition.

7. In result, appeal of the assessee is allowed.

Order pronounced in the open court on 14th August, 2024 at Chennai.

Sd/-

एस.आर. रघुनाथा

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 14th August, 2024

KV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER