

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

मजनीय श्री महवीर सिंह, उपाध्यक्ष एवम्
मजनीय 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.1237/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2014-15)

Shri Sarangabani Kirubakaran 17/6, First Pillayar Koil Street, Ekkatuthangal, Chennai-600 032.	बनम् / Vs.	DCIT Circle-1(2) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. BUMPK-0892-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Ms. T.V. Muthu Abirami (Advocate)-Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) -Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	25-07-2024
घोषणाकी तारीख / Date of Pronouncement	:	04-09-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the common order of learned Commissioner of Income Tax (Appeals)-18, Chennai, [CIT(A)] dated 13-09-2023 in the matter of an assessment framed by the Ld. AO u/s.153C r.w.s. 144 of the Act on 31-03-2022. The grievance of the assessee is confirmation of addition u/s 69 for Rs.8.04 Lacs & Rs.5 Lacs. The assessee is also aggrieved by computation of Long-Term Capital Gains (LTCG) of Rs.157.45 Lacs.
2. The Ld AR advanced arguments on merits as well as on legal grounds and also raised additional grounds of appeal. The Ld. CIT-DR,

on the other hand, justified additions made in the assessment order and controverted the legal grounds as urged by Ld. AR. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 Pursuant to search action on M/s Lotus-G Square group on 29-01-2019, the proceedings u/s 153C were initiated against the assessee. The assessee's case was notified to Central Circle 1(2) and was centralized vide PCIT's notification no. No. ITBA/COM/F/17/2021-22/1035646573(1) in C.No./272A/Cent./PCIT-1 dated 13-09-2021. Subsequently, a notice u/s 153C was issued to the assessee on 22-09-2021. The assessee filed return of income on 21-03-2022 and admitted income of Rs.2.83 Lacs. After considering assessee's reply, Ld. AO made certain addition which has been confirmed by Ld. CIT(A) and the same is in further appeal before us.

3.2 The first addition was assessment of Long-Term Capital Gains (LCTG) on sale of certain land. It transpired that the assessee sold 57 cents of land at S.No.75/8, Kolapakkam at the Rate of Rs.3.50 Lacs per cent. The total sale consideration was Rs.199.50 Lacs. The sale deed was executed on 23-10-2013. The assessee did not offer any capital gains on sale of land and accordingly, show-caused by Ld. AO. The assessee submitted that what was sold was an agricultural land which was evident from encumbrance certificate, Patta, Adangal and Fasali issued by VAO Kolapakkam and therefore, the resultant gains were not taxable. The assessee also furnished clarification of land used certificate issued by district revenue authority and letter from PIO dated 16-03-2022 and certificate from Tehsildar to support the same. It was submitted that

the land was classified as agricultural land and it was put to use for agricultural and a wetland. It was also submitted that the assessee family held the above land from 1954 onwards and carried out agricultural activities like growing of paddy and sesame. Till the date of sale, agricultural activities were carried out by the assessee. However, Ld. AO held that that general classification of land would not prove that the said land was used for agricultural purposes and agricultural income was earned from this land.

3.3 In para-9, Ld. AO observed that the land was situated within 8 Kilometres from Chennai City Corporation limit and within the then Tambaram Municipality and therefore, it was a vacant urban land. Further, no proof of carrying out of agricultural activities was furnished by the assessee. The claim that distance of the aforesaid land from Tambaram was more than 8 KM by producing a certificate from Tehsildar was not acceptable. The land was situated within 8 KM from outer limits (boundary) of Tambaram Municipality. Further, the land was situated in developed area. The property was sold to M/s Emerald Haven Development Ltd. and it was being developed as a residential project. The sale was to non-agriculturist for non-agricultural purpose. Accordingly, rejecting the claim of the assessee, Ld. AO computed LTCG of Rs.157.45 Lacs and added the same to the income of the assessee.

3.4 The assessee was having two bank accounts, the bank statements of which were obtained from the banks. These banks had various credits. After considering assessee's submissions, Ld. AO added an amount of Rs.8.04 Lacs which represent jewel loan taken by the assessee for want of acceptable evidences. There was another credit of

Rs.5 Lacs which was stated to be loan returned to the assessee. However, the same was added to the income of the assessee for want of acceptable documentary evidenced. The loan was stated to be given by the assessee on 06-12-2010.

3.5 The Ld. CIT(A) confirmed the aforesaid additions. Aggrieved, the assessee is in further appeal before us. The Ld. AR assailed the impugned additions on merits and also assailed the jurisdiction of Ld. AO on legal grounds.

Our findings and Adjudication

4. So far as the assessment of Long-Term Capital Gains (LTCG) on sale of land is concerned, it could be seen that the assessee family own this land from 1954 onwards. The assessee is stated to be have carried out agricultural activities on the same. In support of the same, the assessee had furnished encumbrance certificate, Patta, Adangal, Fasali issued by VAO Kolapakkam etc. The assessee also furnished clarification of land used certificate issued by district revenue authority and letter from PIO dated 16-03-2022 and certificate from Tehsildar to support the same. It is the submission of the assessee that the land was classified as agricultural land and it was put to use for agricultural and a wetland. This fact has also been accepted by Ld. AO. The only reason to disallow the same is the allegation that the assessee is not able to show the carrying out of agricultural activities on the said land. We are of the considered opinion that as long as the land is classified as agricultural land and the same is sold as such then in such a case, the purpose for which the purchaser would use the land would be immaterial. It is also not necessary that the assessee should have earned agricultural income in earlier years so as to lay claim on this deduction. The receipt of

agricultural income is immaterial. The fact that the land is situated in developed area is also immaterial. Nevertheless, in the present case, agricultural use is established by Adangal and revenue records like encumbrance certificate. The assessee has furnished sufficient documentary evidences that the said land was classified as agricultural land and the land was used for agricultural activities. The fact that the land was situated beyond 8 Kms. was also established by the assessee by producing the letter from Tehsildar which state that the land was outside 8 Km from Tambaram Municipality. The Ld. AO has not controverted the documents furnished by the assessee and disregarded the claim on mere suspicion which could not be sustained in the eyes of law. Our view is duly supported by the decision of Hon'ble High Court of Madras in the case of **Mrs. Shakuntala Vedachalam vs. ACIT (53 Taxmann.com 62)**. In that case, the assessee sold agricultural land and claimed exemption from capital gains. The Ld. AO deputed field staff who reported that the land was dry land and no agricultural activities were undertaken by the assessee. Accordingly, Ld. AO rejected the claim by holding that the land sold was not agricultural land and therefore, brought entire gains to tax under the head capital gains. The first appellate authority found that the land was classified as agricultural land and as per revenue record the land squarely fell within the definition of agricultural land and therefore, allowed the claim of the assessee. The Tribunal reversed the stand of Ld. CIT(A). Upon further appeal by the assessee, Hon'ble High Court of Madras held that once it was accepted fact that the land was classified as agricultural land as per revenue records, the claim could not be denied. It was further observed that the manner in which the adjacent lands were used by the owner would not

be a ground to come to a conclusion that the land was not agricultural in nature. Similar is the subsequent decision of Hon'ble High Court of Madras in the case of **CIT vs. P. Ashok Kumar (TCA No.268 of 2011 dated 02-01-2019)**. In this decision, the land was classified and sold as an agricultural land. The Hon'ble Court held that though there may not be any cultivation carried as per land records, there was nothing on record to show that the land in question was used for any non-agricultural purposes and therefore, the assessee's claim was correct. This decision also supports the case of the assessee. Accordingly, we direct Ld. AO to accept the claim of the assessee. The corresponding grounds stand allowed.

5. Another grievance of the assessee is confirmation of addition u/s 69 as unexplained investment for Rs.5 Lacs and Rs.8.04 Lacs respectively. From the facts, it is quite clear that both these amounts represent credit in assessee's bank account and therefore, the same could not be considered as unexplained investment for the assessee invoking the provisions of Sec.69. We are of the opinion that the provisions of Sec.69 are applicable only where the assessee has made investments which are not recorded in the books of account and the assessee offers no explanation about the nature and source thereof. It is crystal clear that same is not the case here. The assessee has not made any investment but it has received certain credits in the bank account. Invoking of wrong provisions of law would vitiate the impugned addition. In such a case, impugned addition would be unsustainable as held by us in assessee' appeal for AY 2012-13, ITA No.1235/Chny/2023 as under: -

5. The Ld. CIT-DR, in the written submissions, has referred to the decision of Hon'ble High Court of Madras in the case of **SVS Oil Mills vs. ACIT (113 Taxmann.com 388)**. In that case, the assessee was subjected to survey u/s 133A

and excess stock was found. The Ld. AO held that excess stock was to be added as undisclosed income of the assessee u/s 69C. It was observed by Hon'ble Court as under: -

7. However, before parting with, we may observe that there is a series of five provisions viz., Section 69-Unexplained investments, Section 69A-Unexplained money, etc., Section 69B-Amount of investments, etc., not fully disclosed in books of account 69C-Unexplained expenditure, etc. and 69D-Amount borrowed or repaid on hundi which have been enacted in the Income Tax Act, 1961 from time to time to bring to tax the undisclosed income either as undisclosed income or the same found during the course of investigation either during the Survey under section 133A or the search operation under Section 132 of the Act or otherwise, investigation or scrutiny during the Assessment proceedings and thus, the unexplained investment or expenses are brought to tax in the form of undisclosed income by making the additions to the extent of such undisclosed income or expenditure straightaway. There is no justification or question of giving the corresponding deduction to the extent of any purchase or source of incurring such expenditure or unexplained investments.

8. In our opinion, Section 69B providing for amounts of investments in Bullion, Jewellery or other valuable articles (including excess Stocks as well) would have been more appropriate Section to be indicated in the orders passed by the Authorities below rather than Section 69C-Unexplained Expenditure. Nonetheless, we are of the clear opinion that mentioning of wrong section would not upset the Additions made by the Assessing Authorities below in the present case. All these 5 provisions enumerated above have been enacted with a view to bring to tax the unexplained debit balances in the Balance Sheet of the Assessee either in the form of Unexplained Investments, Expenses or Stocks, etc., or unexplained Assets, Money, Bullion, Jewellery, etc., and therefore, such unexplained investments and expenses intended to be brought to tax as Undisclosed Income, these provisions are not only clearly worded but also indicated to plug the loopholes and check the menace of black money. Likewise, unexplained credits in the Balance Sheet are also brought to tax under Section 68 of the Act.

9. In the light of the above, the contention raised by the learned counsel for the Assessee has essentially emanated from a misconception that the Additions made under Section 69B/69C have to be reduced to some extent by giving leverage to the Assessee to claim some deductions from these Additions as well. If the contention of the learned counsel for the Assessee was to be accepted viz., by allowing the purchases corresponding to the alleged excess stock, the Assessee will have to now record verifiable purchases in his Books of Accounts and for that he will have valid purchase Invoices from genuine and existing Sellers which is not possible. When the excess stocks were found during the Survey, there is no question of allowing the Assessee to record any additional purchases because such purchases had already been recorded in the books of accounts of the Assessee. Therefore, the excess stock, per se, has to be naturally brought to tax as 'undisclosed income' by itself and there is no question of any corresponding deduction from that in such cases.

It has been held by Hon'ble Court that all the 5 provisions as enumerated have been enacted with a view to bring to tax the unexplained debit balances in the Balance Sheet of the Assessee either in the form of Unexplained Investments, Expenses or Stocks etc., or unexplained Assets, Money, Bullion, Jewellery, etc., and therefore, such unexplained investments and expenses are intended to be brought to tax as Undisclosed Income, these provisions are not only clearly worded but also indicated to plug the loopholes and check the menace of black money. Likewise, unexplained credits in the Balance Sheet are also brought to tax under Section 68 of the Act. The said observation, in fact supports the case of the assessee. In the present case, the assessee is a receiver and not the giver and there could be no occasion to held that the assessee has made any unexplained investment. The receipt of loan is nothing but a credit entry which could be taxed u/s 68 and not u/s 69.

6. Another decision as referred to by Ld. CIT-DR is the decision of Mumbai Tribunal in **Jignesh Chimanlal Jobanputra (URA No.4008/Mum/2023 dated 18-04-2024)**. In that case, the assessee failed to furnish the source of loan obtained by it. The Ld. AO held the same to be non-genuine and made addition u/s 69. It was in that context, the bench observed that the addition could not be deleted for the reason that the section under which the addition is made was mentioned erroneously. The same is not the case here. Here the additions have clearly been made on account of undisclosed investments. The findings of Ld. AO run contrary and there is, in fact, no investment made by the assessee but it is a transaction of receipt of loan by the assessee. It is not the case of mentioning of wrong section. Therefore, this case law also does not support the case of the revenue.

7. The decision of Delhi Tribunal in the case of **Smt. Gloria Eugenia Runjah (ITA No.3510/Del/2019 dated 16-08-2023)** has been rendered in the context of Sec.68. The assessee contended that it was not maintaining books and cash was found deposited in bank account. Therefore, the provisions of Sec.68 would not apply. The bench observed that the addition could not be deleted merely on technical ground that Ld. AO mentioned Sec.68 instead of Sec.69 of the Act. The present case before is not wrong quoting of Section rather it is a case of receipt of credit in the bank accounts and Ld. AO has gone wrong in appreciating the correct facts.

8. The decision of Hon'ble High Court of Jharkhand in **Rajmeet Singh (160 Taxmann.com 83)** is a case where the assessee deposited cash in the bank account which was added u/s 68. The Hon'ble Court held that not mentioning the correct provision would not vitiate the addition. The amount so deposited would come within the purview of investment. In the present case, the credit represents receipt of loan through banks.

9. Therefore, all these decisions do not render any assistance to the case of the revenue. These decisions are contextually distinguishable. In our considered opinion, invocation of wrong provision of law on incorrect assumption of facts would vitiate the impugned addition. Therefore, we would hold the opinion that the impugned addition is unsustainable in law. We order so. No other ground has been urged in the appeal.

Facts being pari-materia the same, taking the same view, we would hold that both the additions are unsustainable. We order so. The corresponding grounds stand allowed.

6. The Ld. AR has raised legal issue on jurisdiction u/s 153C which has been rendered mere academic in nature. We refrain from dealing with the same.

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

Order pronounced on 4th September, 2024

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

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

चेन्नई Chennai; दिनांक Dated :04-09-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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