

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1458/Chny/2018
निर्धारण वर्ष/Assessment Year: 2008-09

Shri K. Venkatakrishnan,
Legal Heir of Late –
Shri K.S.Deenadayalu Reddy,
No.3/1, Old No.2,
Avalon Flats, Ground Floor,
Sixth Street, Gopalapuram,
Chennai-600 086.

v.

The ITO,
NCW-20(2),
Chennai.

[PAN: AAKPV 7243 A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1537/Chny/2018
निर्धारण वर्ष/Assessment Year: 2008-09

The ITO,
NCW-20(2),
Chennai.

v.

Shri K. Venkatakrishnan,
No.3/1, Old No.2,
Avalon Flats, Ground Floor,
Sixth Street,
Gopalapuram,
Chennai-600 086.

[PAN: AAKPV 7243 A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

:

Shri N.V. Balaji, Advocate

प्रत्यर्थी की ओर से /Respondent by

:

Shri A. Sasikumar, CIT

सुनवाईकीतारीख/Date of Hearing

:

13.06.2024

घोषणाकीतारीख /Date of Pronouncement

:

04.09.2024



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आदेश / ORDER

PER ABY T. VARKEY, JM:

ITA No.1458/Chny/2018 is an appeal preferred by the late assessee, Shri K.S.Deenadayalu Reddy represented by his legal heir S/o deceased, Shri Venkatakrisnan against the order of the Learned Commissioner of Income Tax (Appeals)-12, (hereinafter in short "the Ld.CIT(A)"), Chennai, dated **15.02.2018** for the Assessment Year (hereinafter in short "AY") 2008-09; and ITA No.1537/Chny/2018 is an appeal preferred by the Revenue against the order of the Ld.CIT(A), dated **16.02.2018** for AY 2008-09 against Shri Venkatakrisnan.

2. At the outset, it is noted that appeal filed by the Revenue is delayed by '3' days and an application for condonation of delay has been filed by the Revenue along with an affidavit explaining the reasons for delay, which we have perused and found that to be reasonable and therefore, we are inclined to condone the delay and proceed to hear the appeal.

3. In the assessee's appeal, grounds raised by the legal heir of deceased assessee, Shri K.S.Deenadayalu Reddy [in ITA No.1458/Chny/2018] are as under:-

1. The order of the Commissioner of Income Tax (Appeals) [CIT (A)] is against the law, the facts and circumstances of the case and the principles of equity and natural justice.



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2. The order of the assessing officer is void ab initio, since the notice under section 148 as well as the assessment order were on the deceased assessee and not on the Legal Representative. The mere reference in the notice as addressed to the "dead assessee is represented by the legal heir" does not convert the notice having been issued to the legal representative.

3. The notice under section 148 also does not mention that the notice is issued to legal representative to assess / reassess the income in respect the dead assessee and the same shows that the notice is issued only to the dead assessee. The notice and all consequential proceedings are therefore invalid in law.

4. The assessing officer erred in issuing notice the assessee represented by Mr.Venkata Krishnan without any satisfaction that Mr. Venkata Krishnan is the legal representative in accordance with the law. The notice issued therefore is illegal.

5. The CIT (A) failed to appreciate that the reason that the assessing officer had, to believe that the income of the dead assessee escaped the assessment was never communicated and therefore there was no opportunity to contest the validity of reopening.

6. The CIT (A) failed to appreciate that the reopening was made without complying with the provisions of section 151 of the Income Tax Act.

7. The CIT (A) failed to appreciate that the reopening was made without any reason to believe that the income had escaped the assessment and therefore the reopening is invalid. The CIT (A) failed to note that the transfer, if any, was made by the person to whom the assessee had transferred the capital asset in the earlier year (AY 2007-08).

8. The CIT (A) failed to appreciate that the sale deed in Doc No. 2179 of 2007 dated 05.07.2007 registered with the office of the sub-registrar, Alandur, which is the basis for the conclusion that there was transfer of capital asset during the assessment year 2008-09 is set aside by the Hon'ble Jurisdictional High Court, vide its order in WP No.33462 of 2014 dated 04.01.2016. In view of the sale deed being set aside, the CIT (A) erred in holding that there was transfer of capital asset during the previous year relevant to assessment year 2008-09.

9. The CIT (A) erred in concluding that transfer of capital asset took place on 05.07.2007 placing reliance on the order of the Hon'ble Tribunal in WTA No.24/Mds/2016 dated 27.12.2016. The CIT (A) failed to appreciate that the said order was passed based on the sale deed dated 05.07.2007 which was set aside later by the Hon'ble High Court

10. The CIT (A) failed to appreciate that even if the sale deed is valid, the transfer did not take place in AY 2008-09 and took place in AY 2007-08 only. Based on material evidences the CIT (A) ought to have



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come to the conclusion that there was no transfer at all in any year and definitely no transfer took place during the previous year relevant to AY 2008-09.

11. The CIT (A) failed to appreciate that the assessee has offered the income on sale of the property in AY 2007-08 and that the same cannot be taxed again in AY 2008-09. The CIT (A) ought to have noted, that the assessee has offered the capital gains in AY 2007-08 in response to the notice under section 148 of the Act and paid the taxes and the department chose to drop the reopening proceedings.

12. The CIT (A) failed to appreciate that the assessee's son had also offered part of the sale consideration as his income in AY 2007-08 and paid taxes in respect of the same. The department not having refunded the taxes has only accepted the income in the hands of the assessee's son. The assessing officer therefore had erred in assessing the same income in hands of the assessee in AY 2008-09.

13. The CIT (A) erred in holding that the possession was handed over to power agent during the previous year relevant to AY 2008-09 and therefore there was transfer of capital asset during the said year. The CIT (A) erred in holding that physical possession of property only on 05.07.2007, relying on the date of the purported sale deed, without appreciating that the said document is in respect of sale made by the power agent to his son.

14. The CIT (A) failed to appreciate that the assessment was made in the impugned assessment year (AY 2008-09) for the reason that the same income was protectively made in the name of the assessee's (Mr Deenadayalu Reddy) son (Mr K Venkata Krishnan) in AY 2008-09. The CIT (A) ought to have appreciated that mere fact that the income was protectively made in the son's name in a wrong assessment year does not lead to the conclusion that the assessee's income should also be assessed in the same incorrect year.

15. The CIT (A) erred in holding that the assessee had transferred the capital asset during the previous year relevant to assessment year 2008-09. The CIT (A) failed to appreciate that the assessee did not transfer any capital asset during the said year and accordingly the assessment of income as capital gain arising out of a purported transfer is incorrect.

16. The CTT (A) failed to appreciate that the transfer of capital asset, if any, was made pursuant to the agreement to sell in the earlier year itself and provisions of Section 50C prior to amendment by the Finance (No.2) Act, 2009 would apply.

17. The CIT (A) failed to appreciate that the appellant has not inherited any property from the estate of his father and hence he cannot be made liable under the Income Tax Act. The demand notice mentioning the entire tax on the income assessed is contrary to the provisions of the Act, particularly Section 159.



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18. The CIT (A) erred in relying on judgements which are distinguishable on facts.

19. The CIT (A) erred in confirming the order passed by the assessing officer without bringing all the legal representatives on record.

20. The appellant craves the leave of the Hon'ble Tribunal to adduce additional grounds in support its contentions before and during the course of hearing of this appeal.

4. The grounds of appeal raised by the Revenue [in ITA No.1537/Chny/2018] against the action of the Ld.CIT(A) deleting the protective assessment made in the hands of Shri Venkatakrisnan are as under:-

1. The order of the learned CIT(A) is erroneous in law and facts and opposed to the facts and circumstances of the case.

2.1 The learned CIT(A) erred in deleting the addition of Rs. 74,09,91,105/- on account of Long Term Capital Gain on sale of land along with his father, Shri K.S.Deenadayalu Reddy through Sale Deed No.2179 of 2007, dated 5.7.2018.

2.2 The learned CIT(A) ought to have seen that the assessee's name has been clearly mentioned in the Sale Deed as Vendor(2) and hence the assessee is also one of two owners of the property.

2.2 The learned CIT(A) ought to have seen that it was clearly mentioned in Page No.3 of Sale Deed that "..and the property A was inherited through intestate succession by Mr.Deenadayalu Reddy (Vendor No.1) herein Mr. Venkatakrisnan Vendor No.2 herein is the son and legal heir of Mr. Deenadayalu Reddy and hence the assessee had 50% ownership in the property sold and hence the liable for tax on 50% of the long term capital gain arised on sale of the above land.

2.3 It is humbly submitted that the decision of the CIT(A)-12 in the case of father of assessee, Late. K.S.Deenadayalu Reddy (represented by Shri.K.Venkatakrisnan as Legal Heir) confirming the entire Long Term Capital Gain on sale of property assessed substantively has not attained finality and hence the present appeal filed to keep the issue alive.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT (A) may be set aside and that of the Assessing Officer be restored.



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5. First we will adjudicate the assessee's appeal which has been preferred by the legal heir of late assessee Shri K.S.Deenadayalu Reddy [i.e. Shri Venkatakrisnan] in whose hands substantive addition of capital gain [LTCG] has been confirmed by the Ld.CIT(A). Ground No.1 is general in nature, so dismissed.

6. Ground Nos.2 to 4 are legal issues which is questioning the legality of the action of the AO re-opening the assessment for AY 2008-09 by issuing notice u/s.148 of the Income Tax Act, 1961 (hereinafter in short "the Act"), which according to the Ld.AR was bad, since it was issued in the name of the deceased-assessee and not in the name of legal representatives and that mere reference on the address/notice "*dead assessee is represented by the legal heir*" does not satisfy the requirement of law that the notice should be issued to the legal representative in the event of demise of an assessee. In this regard, it is noted that even though, the assessee has raised these grounds, the Ld.AR has not been able to place on record the copy of the impugned notices to support the Ground Nos.2 & 3. Moreover, we note that cause-title of the assessment order (*consequent to re-opening of assessment*) shows in place of the name of the assessee as "Shri K.S.Deenadayalu Reddy represented by legal heir Shri K.Venkata Krishnan". Therefore, we



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don't find any merits in the Ground Nos.2 & 3, therefore, Ground Nos.2 & 3 stands dismissed.

7. Coming back to Ground No.4 which is against the action of the AO issuing notice to Shri K.VenkataKrishnan without ascertaining that Shri K.VenkataKrishnan is the legal representative of the deceased assessee Shri K.S.Deenadayalu Reddy. Such a ground itself is contrary to the ground Nos.2 & 3 (supra) and the assessee admits that the AO had issued notice in the name of Shri K.VenkataKrishnan (legal representative of the deceased assessee Shri K.S.Deenadayalu Reddy). Be that as it may, we note that there is no material on record to suggest that after receiving the notice u/s.148 of the Act from the AO, Shri K.VenkataKrishnan [who was a Govt. employee in the Audit Department], didn't prefer any objection before the AO and pointed out to him the omission on his part, if any, regarding non-inclusion of any other name or name of all legal heirs of the deceased-assessee [Shri K.S.Deenadayalu Reddy], and take steps to make them parties in the assessment proceedings. Since such an objection was neither raised nor discernable from records, the AO is not expected to know the names of all the legal heirs of the deceased assessee Shri K.S.Deenadayalu Reddy. Therefore, nothing turns on such an issue being raised after considerable lapse of time. For completeness, it is noted that during the re-opening of assessment, the assessee vide



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letter dated 27.04.2015 had asked a query to AO as to whether any notice u/s.148 of the Act was issued to the other legal heir Mrs.Revathi and it is noted that the AO had answered in negative to Shri K.Venkata Krishnan vide letter dated 08.02.2016 and thereafter, since no objection/material was placed before the AO to implead any other legal heirs, the AO proceeded with the re-assessment. Before us, no material was placed to show that assessee had brought to the notice of the AO about any other legal representative to represent the deceased father other than raising a query before the AO at the inception of the re-opening of assessment; and nothing has been placed on record to show that assessee had raised such a legal issue at the earliest at least before the Ld.CIT(A). Therefore, this ground also can't be addressed for want of supporting evidence on record. Therefore, Ground No.4 also stands dismissed.

8. By preferring Ground Nos.5 to 7, assessee raises a legal issue, wherein, he challenges the jurisdiction of the AO to have re-opened the assessment u/s.147 of the Act. However, the Ld.AR failed to produce copy of the reasons recorded by the AO to have re-opened the assessment. In this regard, the Ld.AR submitted that the assessee was never supplied with copy of the reasons recorded. But this statement doesn't appear to be correct, because, we note that assessee before the Ld.CIT(A) while



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Shri K. Venkatakrisnan

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raising this legal issue (against re-opening of assessment) has stated that "reasons for re-opening, was furnished vide ITO's letter dated 17.02.2016 delivered in the first week of March – after 11 months of request" which according to the Assessee, only provided the same information which was submitted by him earlier to the AO vide letter dated 26.12.2014. Thus, it was submitted before the Ld.CIT(A) "to hold the very same submission which was accepted for holding the transfer as being done in FY 2006-07 i.e. AY 2007-08 as a transaction not disclosed to the Department is factually wrong and not acceptable". From perusal of these averments [made before the Ld CIT(A)] while challenging the re-opening of assessment, it is implied that assessee was in receipt of the reasons recorded for re-opening of assessment. Be that as it may, before us, the Ld.AR on the last date of hearing i.e. 13.06.2024 has placed the reasons recorded which reads as under:

GOVERNMENT OF INDIA
INCOME-TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER, NON CORPORATE WARD-20 (2),
Room no: 406, Wanaparthi Block, 121, Mahatma Gandhi Road,
Aayakar Bhavan, CHENNAI-600.034.

PAN: AGHPD08518/2008-09

Date: 17-02-2016

To
(Late) Shri.K.S. Deenadayalu Reddy,
Rep by L/H Shri.k. Vekatakrisnan,
Door No.4, Driftwood Avenue
Off TVS Avenue, East Coast Road
Chennai 600 119

Sir,

Sub: Income Tax scrutiny proceedings-in your case - for the
Asst.year 2008-09-reg.

Please refer to the above.



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As requested by you the reasons for recorded for re-opening is furnished as under:

"The assessee late Shri.K.S. Deenadayalu Reddy, a retired individual from civil aviation department had sold his immovable property extending to 9092 acres or 432115 sq.ft at 120, Alandur Village, Tambaram Taluk, Kancheepuram by way of sale agreement 23-08-2006 and executing the sale deed for the said property on 05-07-2007. The consideration received for the said transaction is Rs. 10,00,00,000/- on the following dates:

Rs.10,00,000/-	10-04-2006
Rs.50,00,000/-	03-08-2006
Rs.9,40,00,000/-	08-10-2007

The assessee had neither disclosed this transaction to the department and offered any long term capital gains on sale of above property transaction nor filed any return for the AY 2008-09.

Further on perusal of sale deed, it is seen that the market value of the property is Rs.157,72,20,480/- for which 1% stamp fee i.e Rs. 1,57,74,025/- was paid."

Yours faithfully,
Sd/-
(S.V. KAMESHWARI)
Income Tax Officer,
Non Corporate ward 20(2) Chennai-24

9. A reading of the reasons recorded reveals that even though assessee sold immovable property described therein vide sale-deed dated 05.09.2007, [which was an event pursuant to sale-agreement dated 23.08.2006], for a consideration of Rs.10 Crs., the assessee has neither filed return of income nor disclosed these transactions to the Department or offered LTCG on the sale of the immovable property; and that market value of property was Rs.157 Crs. and for which stamp duty of 1% Rs.1,57,74,025/- was paid. These information's are the basis of which, AO has recorded his reasons to re-open the assessment, which impugned action of the AO can't be faulted, since the AO has pointed out in the reasons recorded that despite the aforesaid transaction [i.e. sale deed was



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registered] still, the assessee failed to file return of income; and AO taking note that stamp duty Valuation Authority having valued the property in question at Rs.157 Crs., [which is 15 times the sale consideration of Rs.10 Crs. shown by the assessee], he re-opened the assessment. In the aforesaid circumstances, clause (a) of Explanation-2 u/s.147 of the Act comes into play which deems cases where income chargeable to tax has escaped assessment, when no return of income has been filed by the assessee. Therefore, nothing turns on these grounds of appeal. In such a scenario, Ground Nos.5 to 7 are devoid of merits and consequently stands dismissed.

10. Coming to Ground Nos.8 to 19 which are mainly against the action of the Ld.CIT(A) confirming the order of the AO making an addition of Rs.77,97,18,884/- as income from Long Term Capital Gains. Brief facts are that the assessee (late Deenadayalu Reddy) was an individual who retired from Civil Aviation Department, Government of India. After post-retirement, he settled down at Chennai, and it is noted that he had inherited immovable property from his father, which is situated at Alandur; which immovable property's ownership has been traced by the AO and has confirmed the ownership of assessee (late Shri K.S.Deenadayalu Reddy) by observing as under:

4.7.3. Lineage/ownership of the property:



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4.7.3.1. The property in question was in possession of one Shri. Loganatha Reddiar and by way of sale deed, Shri. Sriramulu, father of the assessee became the absolute owner of the property. By way of settlement deed, the assessee and his wife became the settlees of the property. As stated above, since one of the settlees Smt. Lalitha Kumari and Shri Sriramulu Reddy, both die intestate, the assessee inherits the property.

4.7.3.2. On perusal of sale agreement dt.23.8.2006, it is seen that Shri. Venkatakrisnan, assessee's only son born through his second wife has been joined as necessary party to this agreement by way of an abundant caution. Though Shri. Venkatakrisnan is the son and legal heir of the assessee furnished by the assessee, it is mentioned that Shri. Venkatakrisnan is one of the owners of the aforesaid property.

4.7.3.3. As discussed earlier, just because the said amounts have been received by Shri. Venkatakrisnan, son of the assessee, he cannot be treated as the owner of the property in question as there is no legal document as discussed above to prove that Shri Venkatakrisnan is also one of the owners of the property

4.7.3.4. In these circumstances, Shri. Deenadayalu Reddy is confirmed as the absolute owner of the property which was sold.

11. In AY 2007-08, the assessee had executed an un-registered agreement for sale of immovable property at Alandur (described therein the agreement of sale) on 23.08.2006 i.e. between the vendor-assessee (late K.S.Deenadayalu Reddy) and his son Shri Vekatakrisnan (legal heir/son of late assessee) as first-party; and the buyer Shri S P. Velayutham, as second-party for a consideration of Rs.10 Crs. (*Rs.10 lakhs received as advance on 10.04.2006 & Rs.50 lakhs on 23.08.2006 & balance on registration i.e. Rs.9.46 Crs.*). Further, it is noted that on the same day, i.e. on 23.08.2006, a Deed of Power of Attorney (hereinafter in short 'PoA') was executed and registered by late assessee and his son Shri Vekatakrisnan, in favour of Shri S P.Velayutham authorizing him to



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do certain acts as per the terms and conditions given therein in the PoA on behalf of principal/guarantor/doner; and the Deed of PoA didn't expressly prohibit the agent (Shri S.P. Velayutham) from encumbering the immovable property owned by the assessee. And on the strength of PoA dated 23.08.2006, the agent/Shri S.P.Velayudam sold the immovable property in question to his son Shri Amar and executed a Sale-Deed in the name of his son Shri Amar dated 05.07.2007. Taking note of the registration of Sale Deed No.2179 of 2007 dated 05.07.2007 in the Sub-Registrar Office, Alandur, Chennai, the AO re-opened the assessment taking note that by executing the Sale Deed No.2179 of 2007 dated 05.07.2007, the assessee has sold the immovable property which was inherited by the assessee and since the assessee had received an amount of Rs.9,40,00,000/- on 08.10.2007 (agreement for sale dated 23.08.2006, for a total consideration of Rs.10 Crs. out of which Rs.10 lakhs & Rs 50 lakhs was paid on 10.04.2006 & 03.08.2006 (i.e. AY 2007-08) and the balance of Rs.9.40 Cr. to be paid on registration of sale (i.e. in AY 2008-09). However, the AO noted that the market value of the property in question was Rs 157,72,20,480/- and realizing this fact, buyers had paid 1% stamp fee i.e. Rs.157,72,205/-. And AO noted that since the assessee passed away on 26.08.2009, his son Shri Vekatakrisnan was confronted by the AO 'as to why' the value adopted by the stamp Authority should not be adopted as per sec 50C of the Act.



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And since, legal heir Shri Vekatakrisnan contested the circle rate of the property in question, the AO referred the valuation of the property to the Valuation Officer u/s.55 of the Act, who valued the property at Rs.87,36,76,000/-.

12. Thereafter, the AO rejected the objections raised on behalf of the assessee that if any capital gain is assessable it was only when the agreement for sale was made i.e. AY 2007-08 and not in the relevant assessment year under consideration i.e. AY 2008-09 and discussed the same at Para No.4.7.3.5 of assessment order. The AO also noted at Para No.4.7.3.7 that though assessee had received Rs.60 lakhs at the time of sale agreement, no possession of property was granted; and that assessee received Rs 4,70,00,000/- (vide DD No.025743) on 13.10.2007; and vide DD No.025744, Rs.4,70,00,000/- was credited in the name of Shri Vekatakrisnan in his account on 18.02.2008, which events happened during the relevant AY 2008-08; and also noted from the recital of Sale Deed at Page No.7 Para No.3 that the original title-deed of the property in question was delivered to the purchaser/Mr.Amar only upon registration of sale-deed. Thus, the AO concluded that the transfer of property has taken place on the date of execution of sale deed i.e. 05.07.2007 and computed the capital gain at Rs 77,97,18,884/- in the



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hands of the deceased assessee (late K.S.Deenadayalu Reddy) represented by legal heir.

13. Aggrieved the assessee preferred an appeal before the Ld.CIT(A), which was dismissed.

14. Aggrieved the assessee is in appeal before us.

15. We have heard both the parties and perused materials available on record. The aforesaid facts relating to unregistered agreement for sale of immovable property owned by late-Assessee on 23.08.2006, and the fact that Assessee granted certain power to Shri S K Velayutham by executing Registered PoA on 23.08.2006, and thereafter PoA holder executed/registered sale-deed no 2179 of 2007 to his son on 05.07.2007 at the office of Sub-Registrar at Alandur, are facts which are undisputed and are not repeated for sake of brevity. The Ld.Counsel for the assessee Shri N V Balaji, Advocate, at the outset, brought to our notice certain facts which are relevant to the fact-in-issue i.e, the event which caused the addition of LTCG in the hands of Assessee. The Ld.Counsel brought to our notice that the Sale-Deed executed on 05.07.2007 which was registered by the Sub-Registrar at Alandur, has been quashed and the entry made in the book of Registrar had been directed to be expunged/removed vide order dated 04.01.2016 by the Hon'ble Madras High Court (single-bench) in WP No 33462 of 2014 which order of the



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Hon'ble High Court has been finally upheld by the Hon'ble Supreme Court vide order dated 04.05.2022 in Civil Appeal Nos.2752 & 2753 of 2022. Accordingly, he submitted that since the capital gains has been computed on the alleged transfer of property vide sale-deed no 2179 of 2007 dated 05.07.2007 registered in Sub-Registrar Office, Alandur, has been quashed and entry made in the books of Registrar has been expunged, question of capital gains arising from it doesn't arise because, there is no transfer in the eyes of law. In order to support his contention, he drew our attention to the following relevant orders of the Hon'ble High Court & the Hon'ble Supreme Court: -

1. Order of the Hon'ble Madras High Court in WP 33462 of 2014 dated 15.12.2015
2. Order of the Hon'ble Madras High Court in WA 59 and 60 of 2016 dated 31.08.2021
3. Order of the Hon'ble Supreme Court in Civil Appeal Nos.2752-2753 of 2022 dated 04.05.2022

16. In this regard, the Ld.AR drew our attention to the brief facts as noted by the Hon'ble Supreme Court at Para No.3 of its order, which reads as under: -

3. The brief facts necessary for the disposal of the appeals can be summarized as follows:-

(i) In the year 1992, the Indian Bank sanctioned financial facilities to M.V.R. Group of Industries. According to the Indian Bank, the borrower offered the immovable property covered by the document now in dispute, as collateral security and a mortgage by deposit of title deeds is said to have been created way back in the year 1995-96;

(ii) Alleging that the borrower defaulted in repayment of the loan, Indian Bank filed an application before the Debts Recovery



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Tribunal in the year 1996 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

(iii) However, after the advent of the Securitization Act, 2002, the Bank issued a demand notice dated 15.12.2004 under Section 13(2) of the Securitization Act. It was followed by a possession notice dated 30.03.2005 under Section 13(4);

(iv) Thereafter, the respondent nos. 4 and 5 herein executed a deed of Power of Attorney ('PoA' for short) on 23.08.2006 in favour of Mr. S.P. Velayutham, the 1st respondent in one of these appeals and the 6th respondent in the other appeal. This deed of Power of Attorney contained an express prohibition for the agent to encumber the properties. This deed of PoA was registered in the Office of the SubRegistrar, Alandur;

(v) By another deed of PoA dated 07.06.2007, the power of sale is said to have been conferred upon the agent, but this deed of power was un-registered;

(vi) On the basis of the original registered deed of PoA dated 23.08.2006 which did not confer a power of sale, Mr. S.P. Velayutham sold the property to his son Amar (the 6th respondent in one of these appeals and the 1st respondent in the other appeal) under a deed of sale dated 05.07.2007;

(vii) In the meantime, Indian Bank which already initiated proceedings under the Securitisation Act, assigned the debt and the collateral security in favour of the appellant herein, which is an asset reconstruction company. On the basis of such assignment, the appellant issued a sale notice dated 05.08.2008;

(viii) However, Mr. Amar, executed a deed of settlement dated 13.10.2008 in favour of his father Mr. S.P. Velayutham, from whom he had purchased the property;

(ix) While so, during the period 2009-2015, some encroachments took place which led to the initiation of proceedings under Section 145 Cr.P.C. The original borrowers also filed civil suits and the appellant got themselves impleaded in those suits;

(x) Eventually, the appellant filed a writ petition in W.P.No.33462 of 2014 seeking a declaration that the act of the Sub-Registrar in registering the sale deed executed by S.P. Velayutham in favour of his son Amar, was null and void. The said writ petition was allowed by a learned Judge on the ground that there was utter failure on the part of the Registering Authority to follow the mandate of law as prescribed in Sections 32 to 35 of the Registration Act, 1908 and that the Registrar failed to verify the deed of PoA dated 23.08.2006, before allowing registration of the sale deed executed on the basis of the said power;



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(xi) However, two intra-court appeals filed by the father-son duo, were allowed by the Division Bench primarily on the ground, (1) that the appellant ought to have taken recourse to a civil suit; and (2) that the appellant is guilty of violating the order passed by this Court in the proceedings arising out of the order of the Sub-Divisional Magistrate under Section 145 of the Cr.P.C., directing the parties to approach the civil court. Aggrieved by this order of the Division Bench, the appellant has come up with the above appeals.

17. The facts noted by the Hon'ble Supreme Court as well as by the Hon'ble Madras High Court was that the assessee and his son Shri Vekatakrisnan had executed a deed of Power of Attorney (PoA) on 23.08.2006 in favour of Shri S P.Velayuthaam, and on the strength of this PoA dated 23.08.2006, he sold the property to his son Shri Amar by executing a Sale Deed dated 05.07.2007 at the Office of Sub-Registrar, Alandur, which action of the Sub-Registrar to register the property in the name of Shri Amar was done without ascertaining whether the PoA holder Shri S.P.Velayutham had necessary power to transfer/sell the property. In other words the Sub-Registrar of Alandur failed to exercise his duty as required u/s.32-35 of Registration Act, 1908, to examine the PoA dated 23.08.2006, which didn't grant power of sale of assessee's property to Shri S.P.Velayutham, therefore, the Sale-Deed no 2179 of 2007 executed by him on 05.07.2007 on behalf of the title holder/assessee was held to be void. This action of the Hon'ble High Court (single-bench) was upheld by the Hon'ble Supreme Court. The Hon'ble Madras High Court (single-bench) held in this regard that registration of deed (Sale Deed dated



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05.07.2007 by Shri S.P.Velayutham to his son Mr.Amar) was void by holding as under:-

30. Thus, when the presentation on the face of it is unauthorised, it can never be any registration giving an iota of recognition through the official act. Rule 22 of the Registration Rules under Chapter VII deals with presentation and examination of documents. When we speak about examination of document, the registering officer will have to examine its contents as stated therein. Similarly, Rule 55 speaks about enquiry before registration. Such an enquiry is not to be made only on title, but must necessarily include the verification of the facts as stated in the document sought to be registered. Though Rule 55 derives power under Section 35 of the Registration Act, it throws light on the scope and power of the Registering Officer. Therefore, what is required is only examination of the contents of the document, which would also include the source for executing the document. The source, being a power deed, such an examination would not be construed as one of title. It is only to check as to whether the document, which forms the basis of execution of the sale deed, empowers the executant to do so or not. After all, there is no dispute since the title and execution are not denied as the executant seeks registration based upon that document alone. When there is no valid execution, the deed becomes void as there is no executant. Thus, registration of such a deed also would become void.

18. It is further noted that the Hon'ble Supreme Court upheld the action of Hon'ble High Court, by modifying to the extent of canceling the registration of Sale-Deed no 2179 of 2007 dated 05.07.2007 by the Sub-Registrar, Alandur and thus, upheld the action of Single Bench of the Hon'ble High Court allowing the Writ Petition wherein, the prayer of the Writ Petitioner which was filed under Article 226 of the Constitution of India was *"seeking for the relief of issuance of writ of certiorari and mandamus to call for the records of the 2nd respondent (Sub-Registrar, Alandur) culminated in the sale deed dated 5.7.2007, which has been registered with S.R.O., Alandur, Chennai and quash the same and consequentially direct the 2nd Respondent to remove the entry made as Document No.2179 of 2007 in Book I in office of the Sub-Registrar,*



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Alandur, Chennai" (Refer 2nd page of the order of the Hon'ble Madras High Court (single-bench) dated 04.01.2016).

19. In the light of the aforesaid binding order of the Hon'ble High Court & Hon'ble Supreme Court (supra), we hold that there was no valid sale-deed/transfer in the eyes of law of the immovable property referred to in sale-deed number 2179 of 2007, which was registered on 05.07.2007, at the office of Sub-Registrar, Alandur, Chennai, which event caused the substantive addition of capital gain in the hands of late assessee & on protective basis in his son's hand.

20. In this context the Ld.CIT-DR pointed out that the property description in the Hon'ble High Court's order is only 120 grounds (6.60 acres approximately) whereas the AO has described area of immovable property at Para No.4.7.1, which property extends to 43211.2 sq.ft. (9.92 acres approximately) at Alandur. And the order of the Hon'ble High Court/Supreme Court only discusses about 6.60 acres of land and not about 9.92 acres of land as noted by the AO which gives rise to mismatch of measurement of land and therefore, it is necessary to verify the facts (regarding the measurement of land), which Revenue authorities/AO are at liberty to do and move appropriate application before this Tribunal for modification of order if an occasion arises. And at this stage, we don't find any reasons to state anything further on it and leave it to



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Department to verify the documents and accordingly take necessary steps in accordance to law.

21. Since we have noted that the action of the AO adding LTCG in the hands of deceased-assessee represented by legal-heir Shri K.Venkatakrisnan, was arising from registration of sale-deed No.2179/2007 dated 05.07.2007 of immovable property registered at Sub-Registrar, Alandur, which registration has been cancelled/expunged by the Hon'ble Supreme Court as noted (supra), hence, the LTCG addition confirmed by Ld.CIT(A) in the hands of late father Shri K.S.Deendayalu Reddy is ordered to be deleted on the principle in legal-maxim "*sublato Fundmento Credit opus*" meaning in case a foundation is removed, the super-structure falls. In Badarinath v. Tamil Nadu AIR 2000 SC 3243, the Hon'ble Supreme Court held that once the basis of proceedings is gone, all consequential orders & acts would fall on the ground automatically which is applicable to judicial and quasi-judicial proceedings. Therefore, on the aforesaid reasons, the impugned action of the Ld.CIT(A) is held to be un-sustainable in the eyes of law, and hence we allow the grounds of appeal of the legal-heir of late Shri K.S.Deendayalu Reddy assailing the substantive addition of LTCG arising from execution of sale-deed no 2179 of 2007 dated 05.07.2007 and direct deletion of addition made on this issue.



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22. In the result, ITA No.1458/Chny/2018 filed by legal heir of late Shri K.S.Deenadayalu Reddy i.e. Shri K. Venkatakrisnan stands partly allowed.

23. Next, coming to **[ITA No.1537/Chny/2018 – for AY 2008-09 i.e. Revenue’s appeal against Shri K. Venkatakrisnan,** it is noted that the sole issue raised by Revenue in this appeal is against the action of Ld CIT(A) deleting the *protective-addition* in the hands of Shri K. Venkatakrisnan, since Ld CIT(A) sustained the substantive addition made by AO in the hands of late father Shri K.S.Deenadayalu Reddy [supra].

24. Brief facts as noted by AO in respect of this issue are that during the course of assessment proceeding, the Assessee in the present case (i.e, Shri K. Venkatakrisnan) asserted before him that the legal owner of the property in question is his father Shri. K.S.Deenadayalu Reddy and the property were alienated during his lifetime [i.e., father]. Further, according to him [Assessee], his name was included in the sale-deed which was registered on 05.07.2007 as document no.2179 of 2007 only because in the unregistered-sale-agreement it has been included; and mentioned therein [sale-agreement] that it was being included as '*abundant caution*' (refer para 4 of page 4 of sale-agreement dated 23.8.2006); and that his name was included at the '*request*' of his father



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as mentioned in para 4 of page 4 of the Power of Attorney [PoA]. Thus it was contented by Assessee before AO that erroneously his name was included in sale-agreement as well as sale-deed and therefore he cannot be treated as if he was one of the Joint-Owners of the property in question. Such a claim of the Assessee, was considered by AO with reference to the details available on record. According to AO, it would appear from perusal of relevant documents that the father of the Assessee Shri. K.S.Deenadayalu Reddy was the actual owner of the property in question. And since the property had been transferred during the lifetime of the father of the Assessee, according to AO, the Capital Gains on transfer of such property will have to be assessed in the hands of the father of the Assessee, which conclusion he discussed/shared/informed the Assessing Officer [Income Tax Officer, Salary Ward II(1), Chennai], having tax jurisdiction over the father of the Assessee i.e., Shri. K.S.Deenadayalu Reddy. In such circumstances, the AO, finally concluded that the assessment in the case of this Assessee viz., Shri K.Venkatakrisnan must be made on a protective basis, since substantive-assessment had been made in the hands of father Shri. K.S.Deenadayalu Reddy (AGHPD0851V) for the relevant assessment year.



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25. Thus the AO added LTCG of Rs.74,09,91,105/- and kept the demand in abeyance, since it was protective assessment in the hands of Shri K.Venkatakrisnan.

26. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and the Ld.CIT(A) was pleased to allow the appeal vide order dated 16.02.2018, and deleted the LTCG added in the hands of assessee, since the substantive addition was confirmed in the hands of owner of land, Shri Late K.S. Deendayalu Reddy (Rep. by Shri K.Venkatakrisnan vide order dated 15.02.2018)

27. Aggrieved, the Revenue is in appeal before this Tribunal.

28. We have heard both the parties and perused the records. And since we have noted that the action of the AO adding LTCG (on protective basis) in the hands of assessee (Shri K.Venkatakrisnan) was in respect of sale-deed registration No.2179/2007 dated 05.07.2007 of immovable property registered at Sub-Registrar, Alandur, which registration has been cancelled/expunged by the Hon'ble Supreme Court as noted (supra) and therefore, the substantive addition confirmed by Ld.CIT(A) in the hands of late father Shri legal K.S.Deendayalu Reddy has been ordered to be deleted on principle in the maxim "*sublato Fundmento Credit opus*" meaning in case a foundation is removed, the super-structure falls. Therefore, on the very same reasoning, when the substantive addition



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itself will not survive in the eyes of law, fate of protective addition will be same. Therefore, the impugned action of the Ld.CIT(A) is upheld on the aforesaid reasons and hence, we dismiss the appeal of the Revenue.

29. Before parting the other grounds raised by Revenue are academic, especially ground no 2.2-2.3 i.e, Assessee was one of the two owners, which issues we understand are pending litigation before competent civil courts [Lis-Pendens], in such circumstances, we refuse to answer such questions because as noted it has become academic. In the result, appeal filed by the Revenue [ITA No.1537/Chny/2018] stands dismissed.

30. In the result, ITA No.1458/Chny/2018 filed by assessee/legal heir of late Shri K.S.Deenadayalu Reddy i.e. Shri K. Venkatakrisnan is partly allowed; and appeal filed by the Revenue [ITA No.1537/Chny/2018] stands dismissed.

Order pronounced on the 04th day of September, 2024, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**



ITA Nos.1458 & 1537/Chny/2018 (AY 2008-09)
Shri K. Venkatakrisnan

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चेन्नई/Chennai,
दिनांक/Dated: 04th September, 2024.
TLN, Sr.PS

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