

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.343/Chny/2022
निर्धारण वर्ष /Assessment Year: 1995-96

The Dy. Commissioner of
Income Tax,
Central Circle-2(2),
Chennai.

Vs. M/s. Jay Real Estate,
No.18, Balamuthu Krishna Street,
T Nagar,
Chennai – 600 017.
[PAN: AACFJ 6509K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by
प्रत्यर्थी की ओर से /Revenue by

: None
: Smt. Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 26.08.2024

घोषणा की तारीख /Date of Pronouncement

: 04.09.2024

आदेश / ORDER

PER S.R. RAGHUNATHA, A.M. :

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-19, Chennai [hereinafter "CIT(A)] in ITA No.100/21-22, dated 09.02.2022. The assessment was framed by the Assessing Officer for the Assessment Year 1995-96 u/s.143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 20.03.2003.

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2. The Revenue has raised following grounds of appeal.

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

2. The learned CIT(A) erred in deleting the addition of Rs.15,00,000/- made towards unexplained credits in the bank account though the assessee has not satisfactorily explained the source for the same.

3. The learned CIT(A) ought to have appreciated that the receipts and payments account of Mrs.Sasikala filed in her appeal proceedings did not exactly tally with the account of Mrs.Sasikala appearing in the books of M/s.Jay real estate. Though the payment received from Sasikala amounting to Rs.15,00,000/- tallied, payment made to Sasikala amounting to Rs.9.5 lakhs did not tally. The assessee has not given any clarification before the learned CIT(A) in this regard.

4. The learned CIT(A) erred in holding that the assessee has clearly proved the source for the deposit as having come from Mrs. Sasikala though the assessing officer has given reasons for non acceptance of the explanation furnished by the assessee in his remand report.

5. The addition was made in the assessment reopened on the basis of report filed by DVAC, one of the law enforcing agency. Hence, as per para 10(e) of Circular No.3 of 2018, the issue is contested on merits, though the tax effect is below the prescribed monetary limit for filing appeal before the Hon'ble ITAT

6. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored,

3. The brief facts are that the assessee is a firm, has filed its return of income on 01/02/1999 admitting Rs.Nil income, which was lodged as it was filed belatedly. The return of income did not contain a copy of the Balance sheet, Profit and Loss Account. Subsequently, information received from the Directorate of Vigilance and Anti Corruption (DVAC), Tamilnadu a charge sheet in a crime No.13/A/C/96 of the DVAC, Chennai was filed in the case of Ms.J.Jayalalitha. As per the details

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contained in the Annexures to the said charge sheet, it was noticed that the assessee had made the several investments in immovable and/or movable properties. These had not been disclosed to the Income Tax department earlier. There was reason to believe that income chargeable to tax had escaped assessment within the meaning of Section 147 of the Act, and hence assessment was reopened and notice U/s.148 was issued to the assessee. Pursuant to the notice, the assessee filed return of income on 10/01/2003 by declaring Rs.Nil Income and also filed the letter on 14.01.2003 by explaining the source of funds for the purchase of property of Rs.33,44,000/- on 19/07/1994 and also details of credits in the bank account to the tune of Rs.31,25,000/-. The AO was not convinced with the sources explained for acquiring the immovable property passed an order U/s.143(3) r.w.s.147 on 31/03/2003 by holding as under:

8. Hence, the assessment is completed with reference to the details filed in letter dated 14-1-2003.

(1) Investment in Immovable property at 5 Murugesan Mudali St., Chennai Rs.33,44,000 it is explained in the letter dated 14-1-2003 that the investment property was met out of the drawings of Rs.31,06,000 from the assessee's current account No.1050 with Indian Bank, Abhiramapuram Branch. and a further sum of Rs.2,38,000 being cash received from M/s Jaya Publications through its common partner, Smt N. Sasikala. it is verified from the copy of the assessee's Current Account No.1050 with Indian Bank, Abhiramapuram that there were drawings of Rs.31,06,000 on July 15, 1994. Hence the explanation in respect of Rs.31,06,000 is accepted. However, there is no evidence for the balance of Rs.2,38,000 which was stated to be cash received from M/s Jaya Publications through Mrs. N. Sasikala. The assessee has not furnished any proof in respect of the explanation for Rs.2,38,000.

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Hence it is treated as unexplained investment in the purchase of the property and is assessed as income under "Other Sources".

Amount added Rs. 2,38,000

(2) Credits in Bank Account:

Indian Bank, Abhiramapuram Branch, Chennai:

16-7-1994	Rs. 10,00,000
-do-	Rs. 15,00,000
-do-	<u>Rs. 6,25,000</u>
Total	<u>Rs. 31,25,000</u>

9. The assessee has explained that these were amounts received from the assessee's partner, Smt N. Sasikala and they have been explained in her personal assessment.

10. The assessee's explanation is not an explanation at all as no evidence for the same has been furnished. Mere statement that the amount was received from partner Smt N. Sasikala and these have been explained in her personal assessment in not and cannot be considered as an explanation. If the fact be so, the assessee could have furnished a copy of the letters in evidence regarding the explanation submitted by Smt N. Sasikala. There is no indication in the I.T. records of any explanation for the 3 amounts of Rs.10,00,000, Rs.15,00,000 and Rs.6,25,000 on 15-7-1994. In view of this, the above 3 credits in bank account adding upto Rs.31,25,000 are not treated as explained and are therefore assessed as income under "Other Sources". Amount added Rs.31,25,000/-."

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) – 19, Chennai. During the course of appellate proceedings, the AR furnished the details to prove the sources of deposits and the Ld.CIT(A) has deleted the additions of Rs.31,25,000/- and also Rs.2,38,000/- in his order dated 09/02/2022 by holding as under:

8. I have considered the reasons given by the AO and the submissions of the AR. The appellant firm explained that the source for the deposit of Rs.15 lakhs was from the amount received from Mrs. N Sasikala out of her current account with Canara Bank Account having a/c No. 2196. The assessing officer

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rejected the explanation on the ground that the said current account was not disclosed in the tax returns of Smt.Sasikala. So far as the appellant is concerned, it has-discharged its onus of proving the source by establishing the identity of the party, genuineness of the transaction and the transaction was supported by the entries in the bank account. Simply because the receipts and payments account filed by Smt. Sasikala do not tally with the ledger filed by the appellant with regard to the payments made by the appellant to the extent of Rs. 9.5 lakhs, the transaction cannot be doubted especially when the payment of Rs. 15 lakhs to the appellant is clearly shown in the said receipts and payments account filed by Mrs. N Sasikala in her appeal proceedings. The appellant has clearly proved the source for the deposit as having come from Mrs. Sasikala and the reasons given by the Assessing Officer for rejecting the said explanation of the appellant was not on sound grounds. In view of this, the addition of Rs. 15 lakhs requires to be deleted which was made as unexplained deposit in the bank account. The same is treated as proved and the grounds raised by the appellant are allowed.

8.1 In view of this, the addition of Rs. 31,25,000 made towards unexplained deposit in bank is deleted.

8.2 The addition of Rs. 2,38,000 made as unexplained investment in property is confirmed as the appellant has not pressed this issue during the course of appellate proceedings. In view of this, there is no need for any adjudication upon this issue. In this background, the ground raised upon this issue by the appellant is treated as dismissed.

Aggrieved by the order of the Ld.CIT(A), the Revenue preferred an appeal before us.

5. The Ld.DR assailing the action of the Ld.CIT(A) stated that order has been passed by accepting the sources of funds deposited as explained without obtaining the confirmation from Mrs.Sasikala. Ld.DR stated that the Ld.CIT(A) has erred in deleting the additions made by

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the AO and prayed for setting aside the order and allow the appeal of the revenue by reinstating the order of the AO.

6. We have heard the arguments of the revenue and gone through the orders of lower authorities. The assessee's case was reopened for the A Y 1995-96 for the reason that an immovable property was purchased on 19/07/1994 for Rs.33,44,000/- and Rs.31,25,000/- has been deposited to A/c.1050 with Indian Bank, Abhiramapuram, Chennai, as per the information received from the Directorate of Vigilance and Anti Corruption (DVAC), Tamilnadu a charge sheet in a crime No.13/A/C/96 of the DVAC, Chennai. The assessee had furnished the details of source of the bank credits and in turn the same had been utilized for the purchase of said immovable property. The amounts which were added as unexplained investment of Rs.2,38,000/- and unexplained bank credits and brought to tax by the AO, have been deleted by the Ld.CIT(A).

7. We note that the assessee has furnished entire details of the bank credits as additional evidence in the form of certain books of accounts before the Ld.CIT(A) and the remand report from the AO has been obtained on 30/09/2009.

i) Rs.10,00,000/-

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- ii) Rs.15,00,000/-
- iii) Rs. 6,25,000/-

Rs.10.00 Lakhs and Rs.6.25 Lakhs has been accepted by the AO in his Remand report as explained received from Smt.Sasikala, through her concerns M/s.Fresh Mushrooms & M/s.Vinod Video Vision. However, as per the AO the credit of Rs.15.00 Lakhs has been received from Mrs.N.Sasikala, from her Canara bank account No.2196, has not been shown in her statement of affairs and hence the same cannot be accepted as explained source. According to the Assessee, the source has been completely explained as the amount of Rs.15.00 Lakh also has been received from the Bank account of Mrs.N.Sasikala, by proving the identity, genuineness of the transaction and source of the funds credited supported by the entries in bank account. In present facts and circumstances of the case, the genuineness of the transaction cannot be doubted since the amount of Rs.15.00 lakhs has been transferred to assessee's bank account from bank account held in Canara bank by Mrs.N.Sasikala, who is also assessed to income tax. Therefore, we are of the considered view that, there is no infirmity in the order of the Ld.CIT(A) in deleting the entire addition of bank credits to the tune of Rs.31.25 lakhs and hence we dismiss the appeal of the revenue.

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8. In the result the appeal of the Revenue is dismissed.

Order pronounced on 04th September, 2024.

Sd/-

(यस यस विश्वनेत्र रवि)

(S.S. Viswanethra Ravi)

न्यायिक सदस्य / Judicial Member

Sd/-

(एस. आर. रघुनाथा)

(S.R. Raghunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 04th September, 2024.

JPV

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त/CIT, Chennai

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF