

आयकर अपीलिय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री एबी टी.वर्की, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI ABY T. VARKEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1109/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2015-16)

Avinashi Vadivel Nageswaran 60, Velayutham Road, Anthiyur, Erode Dt – 638 501.	बनाम/ Vs.	ITO Ward -2(3), Erode.
स्थायी लेखा सं./जी आइ आर सं./TAN/GIR No. ABHPN-0151-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar (Advocate) (Erode) – Ld.AR
प्रत्यर्थी की ओर से/ Respondent by	:	Ms. R. Anita (Addl.CIT) -Ld. Sr. DR

सुनवाई की तारीख/Date of Hearing	:	26-09-2024
घोषणा की तारीख /Date of Pronouncement	:	09-10-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 21-02-2024 in the matter of an assessment framed by the Ld.AO u/s.143(3) on 30-12-2017. The sole grievance of the assessee is confirmation of addition of unexplained investment u/s 69 for Rs.67 Lacs. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

2. The assessee being resident individual is running Jewellery Shop by the name M/s ASM Jewellery. The assessee was subjected to survey on 05-03-2015. The assessee admitted income of Rs.15.57 Lacs in its return of income filed on 01-03-2016. During survey, the assessee admitted that it expended Rs.3.50 Crores for construction of building at Anthiyur. The same was sourced out of loan of Rs.2.75 Crores from Banks and another Rs.1 Crores was taken from the accounts of assessee, wife and two sons. However, in subsequent statement recorded on 10-03-2015, he stated that Rs.2.16 Crores was loan taken from Bank whereas Rs.40 Lacs was withdrawn from his bank accounts and Rs.27 Lacs was earned by him from his business and agriculture income. He offered balance Rs.67 Lacs as undisclosed income from the business. However, the said disclosure was not admitted in the return of income.

3. During assessment proceedings, vide letter dated 25-11-2017, the assessee submitted break up of amount spent by himself, his wife and two sons during AYs 2014-15 and 2015-16 as under: -

No.	Amount Spent by	AY 2014-15	AY 2015-16
1.	A.V.Nageswaran	75,50,158/-	1,78,11,000/-
2.	N. Rameshkumar	3,50,000/-	25,00,000/-
3.	N. Arunkumar	3,50,000/-	50,00,000/-
4.	N. Santhamani	---	7,00,000/-
5.	Spent by AVR, NR, NS i.e., 1,2 & 4		37,01,877/-
	Total	82,50,158/-	2,97,12,877/-

In support, the assessee furnished cash flow statements for AYs 2014-15 & 2015-16. However, going by the earlier statement, Ld. AO alleged that all the funds were routed through the accounts of the assessee. As per cash flow statements, the total investment by the assessee was Rs.281.37 Lacs and including insurance charges, the assessee debited

sum of Rs.286.88 Lacs in the Balance Sheet. Therefore, the balance amount of Rs.67 Lacs was added to the income of the assessee.

4. The assessee assailed the impugned addition, inter-alia, on the ground that the land on which the building was constructed was owned by the assessee, his wife and two sons. The construction was undertaken by four persons. The wife and two sons borrowed Rs.41 Lacs from the bank whereas the assessee along with his wife and elder son borrowed loan of Rs.120 Lacs from Bank. The other two sons borrowed loan of Rs.60 Lacs. The copy of sanction letters from banks was furnished. The construction of the building was done in two phases. In the first phase, construction was done on land belonging to assessee, his wife and one son. The construction was completed in July, 2015 and from October, 2015 onwards, the property was let out. The rental income was offered to tax in respective hands. In the second phase, construction was done on land belonging to himself, his wife and two sons. The construction was completed in March, 2016 and property was let out from April, 2017. The rental income was offered proportionately. On these facts, the assessee submitted that the property was owned by four persons and full addition as made in the hands if the assessee was not justified. The assessee also furnished details of amount contributed by four persons as under: -

No.	Amount Spent by	AY 2014-15	AY 2015-16	Total
1.	A.V.Nageswaran	75.50 Lacs	211.37 Lacs	286.88 Lacs
2.	N. Rameshkumar	3.50 Lacs	25.00 Lacs	28.50 Lacs
3.	N. Arunkumar	3.50 Lacs	50.00 Lacs	53.50 Lacs
4.	N. Santhamani	---	7.00 Lacs	7.00 Lacs
	Total	82.50 Lacs	293.37 Lacs	375.88 Lacs

The assessee also furnished the source of cash flow with respect to all the four persons which has already been extracted in the impugned order. The assessee relied on the decision in **S.Khader Khan (25 Taxmann.com 413)** to the effect that admission during survey u/s 133A would not have much evidentiary value. However, Ld. CIT(A) chose to confirm the addition. Aggrieved, the assessee is in further appeal before us.

5. From the facts, it emerges that the assessee has undertaken construction on a land which is jointly owned by the assessee, his wife and two sons. The same is also evident from the fact that after completion of the building, the same has been let out and rental income has been offered in respective hands on proportionate basis. In such a case, adding entire alleged undisclosed investment in the hands of the assessee could not be held to be justified. Another fact is that the assessee has furnished cash flow statements and statement of affairs of all the persons before lower authorities in support of the claim. However, going by the admission of the assessee in statement recorded during survey u/s 133A, Ld. AO has made impugned addition on estimated basis. There is no material on record to indicate that the assessee has made that kind of investment. The statement recorded during survey u/s 133A do not bind the assessee as per the decision of Hon'ble Supreme Court in the cited case of **S. Khader Khan (25 Taxmann.com 413)**. The same is rebuttable one. The assessee, in our considered opinion, by furnishing the cash flow statements and loan sanction letters, duly substantiated its case to a great extent. Considering the fact that the property is a joint one and with a view to put an end to litigation, we

restrict the impugned additions to the extent of Rs.10 Lacs. The balance addition stand deleted. No other ground has been urged in the appeal.

6. The appeal stand partly allowed.

Order pronounced on 9th October, 2024

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य / JUDICIAL MEMBER

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

चेन्नई Chennai; दिनांक Dated :09-10-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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