

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं./ ITA No.1219/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2011-12)

Shri Palladam Krishnasamy Ganeshwar 21, Shri Ganesa Textiles, Pollachi Road, Palladam, Tirupur-641 664.	बनाम/ Vs.	DCIT Central Circle-3 Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. ADFG-6476-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar (Advocate)-Ld.AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri R. Clement Ramesh Kumar (CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	10-09-2024
घोषणा की तारीख / Date of Pronouncement	:	19-11-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by assessee for Assessment Year (AY) 2011-12 arises out of an order passed by learned Commissioner of Income Tax (Appeals), Chennai-20, [CIT(A)] on 04-03-2024 in the matter of an assessment framed by the Ld. AO u/s.143(3) r.w.s 153A of the Act on 18-06-2021.

1.2 The grounds raised by the assessee read as under: -

1. The order of the CIT(Appeals) - 20, Chennai dated 04.03.2024 vide DIN & Order No. ITBA/APL/S/250/2023-24/1061962645(1) /for the above mentioned Assessment Year is contrary to law, fact and in circumstances of the case.
2. The CIT(Appeals)- 20, Chennai erred in confirming the search assessment in terms of section 153A of the Act in contra distinction to a search assessment as per section 153C

of the Act without assigning proper reasons and justification and ought to have appreciated that the order of search assessment was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

3. The CIT(Appeals) - 20, Chennai failed to appreciate that the assumption of jurisdiction in terms of Section 153A of the Act beyond the block period of 6 years should be reckoned as bad in law and further ought to have appreciated that conditions in relation thereto for assuming jurisdiction beyond such period were not fulfilled in the present case, thereby vitiating the notice issued under Section 153A of the Act and the consequential impugned search assessment order.

4. The CIT(Appeals) - 20, Chennai failed to appreciate that the evidence gathered in the search proceedings and the sworn statements recorded at the time of search as well as in the course of the search assessment proceedings were wrongly analysed thereby vitiating the entire search assessment.

5. The CIT(Appeals) - 20, Chennai erred in sustaining the addition of Rs.22,00,000/- representing the additional undisclosed business income based on the disputed seized materials in the computation of taxable total income without assigning proper reasons and justification.

6. The CIT(Appeals) - 20, Chennai failed to appreciate that the inferences drawn from the disputed seized materials for making the said addition were highly debatable and not sustainable in law thereby vitiating the addition fully.

7. The CIT(Appeals)- 20, Chennai failed to appreciate that the assessment of the differential sum in the hands of the appellant was wholly unjustified and further in any event ought to have appreciated that the rejection of the explanation pertaining to the differential sum being not received was wholly unjustified in view of the misreading of the loose sheets / invalid evidence as well the entries in the regular books of accounts.

8. The CIT(Appeals) - 20, Chennai erred in partly sustaining the addition to the extent of Rs.3,87,46,000/- being the presumed component of additional consideration in relation to the purchase of investments / assets based on the loose sheets found at the residential premises of Mr. K. Sathish Kumar while completely overlooking the sworn statements recorded without assigning proper reasons and justification.

9. The CIT (Appeals) - 20, Chennai failed to appreciate that the provisions of section 69B of the Act had no application to the facts of the case and further ought to have appreciated that having fully recorded the transactions relatable to the appellant in the books of accounts maintained regularly, the presumption of extra consideration paid in the absence of the direct evidence should be considered as not sustainable both on facts and in law.

10. The CIT(Appeals) - 20, Chennai failed to appreciate that the presumption of extra consideration paid for the purchase of investments/assets was wholly unjustified and ought to have appreciated that the validity of the loose sheets / seized materials was completely ignored inasmuch as ought to have appreciated that there was no legal sanctity for the loose sheets seized from the residential premises of Mr. K. Sathish Kumar on various grounds.

11. The CIT(Appeals) - 20, Chennai failed to appreciate that the loose sheets were admittedly not written by Mr. K. Sathish Kumar and ought to have appreciated that the disputed and debatable seized materials should not form part of the basis for the addition in the search assessment.

12. The CIT(Appeals) - 20, Chennai failed to appreciate that misreading of the sworn statements would vitiate the addition made and further ought to have appreciated that having not rejected the affidavits filed from the sellers, the presumption of extra

consideration paid would fall to the ground in the light of the law consistently declared by the Supreme Court.

13. The CIT(Appeals) - 20, Chennai failed to appreciate that the findings recorded in this regard in of the impugned order were wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.

14. The CIT(Appeals) - 20, Chennai failed to appreciate that having not examined the nature of transactions reflected in the invalid loose sheets, the addition made should be reckoned as bad in law in view of the wrong presumption of extra consideration received.

15. The CIT (Appeals) - 20, Chennai failed to appreciate that the entire recomputation of taxable total income including the quantification of interest charged under various sections was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.

16. The CIT(Appeals) - 20, Chennai failed to appreciate that there was no proper /reasonable opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

As is evident, the subject matter of present appeal is additions made by lower authorities consequent to search proceedings in the case of the assessee. The assessee has challenged the assumption of jurisdiction on legal grounds and also assailed the quantum additions on merits.

1.3 The Ld. AR advanced arguments and assailed the confirmation of addition. The Ld. CIT-DR also advanced arguments supporting the orders of lower authorities. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

2.1 The assessee being resident individual is stated to be engaged in textiles business in proprietorship concern namely Shri Ganesha Textiles. The assessee and his spouse Smt. Chithira Devi were major shareholders in a corporate entity by the name M/s SG Wind Farms Pvt. Ltd. The impugned assessment was framed pursuant to search action by department in the case of assessee group on 06-03-2019. Consequently, a notice u/s 153A was issued to the assessee for various assessment years on 06-02-2020. The assessee responded to the same and filed returns of income which could be tabulated as under: -

A.Y	Date of notice issued u/s.153A	Original return of income as per 139(1)	Original return of income date filed	Return of income as per 153A	Date of return of income filed u/s.153A	Agri income	Add. income disclosed
2011-12	06.02.2020	-110177310	30.09.2011	-110177310	18.08.2020	765400	Nil
2012-13	06.02.2020	375100	29.09.2012	10605100	18.08.2020	825700	10230000
2013-14	06.02.2020	23354770	29.09.2013	51315770	18.08.2020	1025600	27961000
2014-15	06.02.2020	43979575	29.09.2014	43979575	18.08.2020	877000	-
2015-16	06.02.2020	5470260	02.10.2015	5470260	18.08.2020	303500	-
2016-17	06.02.2020	8329460	10.10.2016	8875360	18.08.2020	314600	545900
2017-18	06.02.2020	14322420	07.11.2017	14322420	18.08.2020	412600	-
2018-19	06.02.2020	28136770	27.09.2018	28136770	18.08.2020	463050	-
2019-20	143(2)	2364868	19.08.2020	NA	NA	NA	NA

2.2 During search, the residence of Shri Sathish Kumar (an employee of assessee) was also covered wherein two notebooks were found and seized as annexure ANN/GK/SK/B&D/S-1 and S-2. The same allegedly contained receipts (through cash and bank) from various entities such as 'Nagraj & Co.', 'Angel Tex', and 'Raja Gopal'. Shri Sathish Kumar, in sworn statement u/s 132(4), admitted that the payments were received on account of sale of machinery of M/s Booma Realty Pvt Ltd. (BRPL) in which the assessee was major shareholder and one of the directors. In statement recorded u/s 131(1) from the assessee, the assessee admitted that the entries referred to sale proceeds of sale of old machineries / scrap / waste cotton of M/s Kongrar Textile Ltd. (KTL) which was acquired by BRPL. It was also stated that the receipts as received through banking channels were admitted in the books of BRPL but cash receipts were not accounted for in financial year (FY) 2010-11 and partially accounted for in FY 2011-12.

2.3 The cash received from Nagarajan & Co. was quantified as Rs.50.50 Lacs for this year whereas cash received from Angel Textile was quantified at Rs.34.25 Lacs. The aggregate amount was Rs.84.75 Lacs but the assessee admitted additional income of Rs.62.75 Lacs only.

For remaining Rs.22 Lacs, it was stated that the amount was not received as it was rounded-off in the slip itself. However, Ld. AO rejected the submissions of the assessee and added the amount of Rs.22 Lacs to the income of the assessee.

2.4 Another addition of undisclosed investment was based on certain loose sheets as found from the residence of Shri Sathish Kumar which were seized as per Annexure ANN/GK/SK/LS/S-1 which allegedly contained cash paid for purchase of land by the assessee and M/s Subapriya Realty Pvt. Ltd. (SRPL) (entity in which the assessee and his spouse were major shareholders) for purchase of certain land at Avinashi. The same was tabulated as under: -

No.	Purchaser	Seller	Area in acre	Amt. entered in Tally/Registered sale deed and books of account	DD/Cheque amt. mentioned in loose sheet	unaccounted cash as per loose sheet but not entered in books of account
1	Subapriya Realty Pvt.Ltd	NS Palanisamy	0.60	26,70,000	26,70,000	42,50,000
2	Subapriya Realty Pvt.Ltd	M.Gurusamy	1.11	85,00,000	85,00,000	1,37,00,000
3	Subapriya Realty Pvt.Ltd	V.Lingeshwaran	0.40	30,50,000	30,50,000	18,30,000
4	Subapriya Realty Pvt.Ltd	V.Vittalrajan	6.36	3,86,00,000	3,86,00,000	1,34,00,000
5	Subapriya Realty Pvt.Ltd	Uthayakumar	1.96	60,00,000	60,00,000	60,00,000
6	Subapriya Realty Pvt.Ltd	Saravanan	3.84	48,00,000	48,00,000	30,00,000
7	P.K.Ganeshwar	C.K. Ramasamy & Ramasamy	1.90	61,00,000	60,00,000	2,60,00,000
8	P.K.Ganeshwar	Dhanamal	1.90	61,00,000	60,00,000	1,40,00,000
9	P.K.Ganeshwar	A.Ponnusamy	0.50	15,22,600	15,26,000	84,74,000
10	P.K.Ganeshwar	K.Balasubramaniam & Vasantha	0.78	34,28,000	25,60,000	42,72,000
		Total unaccounted cash				9,49,26,000

The transactions pertaining to this year were tabulated out as under: -

No	Purchaser	Seller	Area in acre	Amt. entered in Tally/Registered sale deed and books of account	DD/Cheque amt. mentioned in loose sheet	unaccounted cash as per loose sheet but not entered in books of account
1	Subapriya Realty Pvt.Ltd	NS Palanisamy	0.60	26,70,000	26,70,000	42,50,000
2	Subapriya Realty Pvt.Ltd	M.Gurusamy	1.11	85,00,000	85,00,000	1,37,00,000
3	Subapriya Realty Pvt.Ltd	V.Lingeshwaran	0.40	30,50,000	30,50,000	18,30,000
4	Subapriya Realty Pvt.Ltd	V.Vittalrajan	6.36	3,86,00,000	3,86,00,000	1,34,00,000
5	Subapriya Realty Pvt.Ltd	Uthayakumar	1.96	60,00,000	60,00,000	60,00,000
6	Subapriya Realty Pvt.Ltd	Saravanan	3.84	48,00,000	48,00,000	30,00,000
7	P.K.Ganeshwar	C.K. Ramasamy & Ramasamy	1.90	61,00,000	60,00,000	2,60,00,000
8	P.K.Ganeshwar	A.Ponnusamy	0.50	15,22,600	15,26,000	84,74,000
9	P.K.Ganeshwar	K.Balasubramaniam & Vasantha	0.78	34,28,000	25,60,000	42,72,000
		Total				8,09,26,000

The aggregate cash payment so made for AYs 2011-12 & 2012-13 was thus quantified at Rs.949.26 Lacs. The payment allegedly made by the assessee and SRPL for AY 2011-12 was quantified at Rs.809.26 Lacs. The amount of Rs.140 Lacs as tabulated above pertained to AY 2012-13.

2.5 Another statement was recorded u/s 131(1A) from Shri Sathish Kumar on 14-11-2019 wherein he admitted that the loose sheets were in his handwriting and those were proposal given for purchase of land and cash portion refer to the amount to be paid by cash. He further stated that the complete transactions were known to the assessee only. However, the assessee, in statement made u/s 131(1) denied the same and stated that no unaccounted investment was made by him. The loose sheets were not in his handwriting and the same was not seized from his

pemises. The assessee also assailed the conclusion of Ld. AO, inter-alia, by submitting that the aforesaid document did not mention the name of the person who allegedly made the cash payment. There was no corroborative evidence to show that the aforesaid amount was paid by the assessee in cash. In support of submissions, the assessee furnished the affidavits of various sellers. The assessee contended that the consideration was paid through cheques only as mentioned in the registered sale deeds and no money was paid over and above the said sale consideration. The sellers' affidavits denying the receipt of any on-money in respect of these transactions was also furnished before Ld. AO. The assessee submitted that loose paper had no evidentiary value and no addition could be made on the basis of mere suspicion or presumption.

2.6 However, Ld. AO held that Shri Sathish Kumar was responsible for dealing and managing the property details of the assessee and his associated firms. He kept the details of cash paid over and above the document value for acquisition of these properties. Reliance was placed on the decision of Delhi Tribunal in Mahavir Woollen Mills vs CIT (245 ITR 297) holding that noting in diary which had correlation with the entries made in the regular books, could not be called as dumb document and its evidentiary value could not be ignored. The veracity of affidavits as filed from the sellers was questionable. One of the sellers had expired whereas the three other persons did not appear. Accordingly, the amount of Rs.809.26 Lacs was added in the hands of the assessee u/s 69B of the Act. The amount of Rs.421.80 Lacs was added protectively in the hands of SRPL.

Appellate Proceedings

3.1 The assessee assailed the assessment so framed by Ld. AO by way of elaborate written submissions which have been extracted in the impugned order.

3.2 On the issue of undisclosed investment, Ld. CIT(A) held that the loose sheet contained the details of purchase of land by the assessee group. The transactions were not denied by the parties recorded in the loose sheets. The assessee was only denying the cash component of the transaction recorded in the loose sheets. The Ld. CIT(A) concurred with the submissions that though the name of Shri Govindrajan and Shri KPR was appearing in one of the pages of seized material, sale transaction with them had not finalized / materialized. Against these transactions, no details of cash paid were recorded. Upon perusal of contents of loose sheets, Ld. CIT(A) rejected the argument that the loose sheets had no evidentiary value. The assessee did not file sale deeds to bring out the difference in actual extent of land so purchased by the assessee. The loose sheets were found containing actual purchased transactions of land which showed payment of cash component and the same was not recorded in the books of accounts. Therefore, Ld. AO rightly assumed jurisdiction u/s 153A.

3.3 Proceeding further, Ld. CIT(A) noted that the assessee produced undertaking deeds dated 17-12-2019 from the sellers as evidence for correctness of investment in land. The sellers confirmed that the amounts were received through banking channels only. However, in response to summons, none of the sellers appeared for examination. Therefore, the action of Ld. AO was confirmed with the only modification that the amount of Rs.387.46 Lacs would be taxed in the hands of the

assessee whereas the remaining amount of Rs.421.80 Lacs would be added in the hands of SRPL.

3.4 On the issue of addition of Rs.22 Lacs as stated to be received on 16-02-2011, the assessee stated that the amount was not actually received and therefore, not admitted as income. The Ld. CIT(A) rejected the same and confirmed the addition by invoking the presumption of Sec.292C. Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

4. From the facts, it clearly emerges that the whole basis of addition of unaccounted investment as made by Ld. AO stem from the loose sheets as found from the premises of Shri Sathish Kumar who is stated to be an employee of the assessee. These loose sheets were not found from the premises of the assessee. In this regard, a statement was recorded u/s 131(IA) from Shri Sathish Kumar on 14-11-2019 which is kept on Page Nos. 6 to 11 of paper book Volume-I. In reply to Q. No.3, it was stated by him that the entries in the sheets were in his handwriting. The entries were written by him based on oral instruction given by Shri Gunasekar who was a land broker. It was confirmed that the entries correspond to the amounts to be given for the land owned by the parties mentioned in the sheet. In reply to Q. No.5, it was stated that Shri Gunasekar approached him but the assessee (Shri PK Ganeshwar) completed the transaction himself and complete details were known to him only. In reply to Q. No.7, it was stated that 'advance' as mentioned in the sheet was estimated amount to be given to the parties. In reply to Q. No.10, it was stated that Sheet No.55 was total of pay order column and cash column entered in Sheet Nos. 49-52. He had summed it up in order to

present the total value of quoted value of Shri Gunasekar. Similarly, sheet Nos. 56-57, & 59-66 were stated to be proposal given by Shri Gunasekar for lands owned by the parties as mentioned in these sheets. Finally, in reply to Q.No.14, it was stated that sheets of Annexure ANN/GK/SK/LS/S-1 were prepared by him and Shri Gunasekar but the details of payments may be enquired from the assessee (Shri PK Ganeshwar). On these facts, it could be concluded that the transactions as mentioned in the loose sheets were mere proposal and Shri Sathish Kumar had no knowledge of the actual payments made on these transactions. The entries were stated to be mere proposal and quoted values. Nowhere, it was admitted by him that actual payments were made on these transactions since the actual transactions as well as payments thereof were known to the assessee only. These sheets were more in the nature of quoted values / proposal etc. and not the actual transactions as alleged by Ld. AO.

5. Proceedings further, it could be seen that a statement was recorded from the assessee u/s 131(1A) on 30-10-2019 which is kept on Page Nos. 71 to 84 of paper book Volume-I. The seized sheets were confronted to the assessee. The assessee, in reply to Q.No.5, stated that the seized material was not in his handwriting and the same was not found from the premises of the assessee. The existence of the sheet was not known to him. The properties were purchased by him and his concerns and these investments were duly reflected in the books of accounts. It was stated by the assessee that no unaccounted investment was made in financial year 2010-11. The assessee also furnished the extent of land purchased from the parties and amount for which it was purchased. Thus, the assessee denied having made any undisclosed

investment and asserted that all the investments were duly accounted for in the books of accounts.

6. We find that the contents of loose sheets which form the very basis of impugned addition in the hands of the assessee have been extracted on Page Nos. 8 to 13 of the assessment order. Upon perusal of the same, it could be seen that these documents lack sufficient details to form an opinion of actual cash payment by the assessee. The name of the assessee is nowhere mentioned therein. The document even lack the basic details i.e., date of payments etc. These are mere scribbling / bald jottings which could not lead to a conclusive conclusion of payment in cash by the assessee and his associated concerns.

7. It could be seen that the assessee has, all along, denied having made such investment to various parties. It could also be seen that no incriminating material whatsoever has been found from the possession / premises of the assessee to establish the source of alleged unaccounted investments. The loose sheets have been found from the premises of an employee of the assessee. The employee has denied having complete knowledge of the transactions. He merely stated that the losses sheets contain mere proposal for purchase of land and cash portion refer to the amount to be paid by cash. There is no admission of payment of actual cash. Pertinently, the entries are stated to be written by him based on oral instruction given by Shri Gunasekar who was a land broker. It was confirmed that the entries correspond to the amounts to be given for the land owned by the parties mentioned in the sheet. Though, Shri Gunasekar approached him but the assessee completed the transaction himself and complete details were known to him only. It was further stated that these were quoted value of Shri Gunasekar for proposal

given by him. The Ld. CIT(A) has also noted that no transaction had materialized with two parties. Thus, no credence could be given to these loose sheets and these were rough jottings and in the nature of mere proposals carrying no evidentiary value to make impugned addition in the hands of the assessee unless the entries were corroborated by concrete evidence on record.

8. We further find that assessee furnished undertaking from various sellers confirming that the consideration was paid through cheques only as mentioned in the registered sale deeds and no money was paid to them over and above the registered sale consideration. One seller has expired whereas others three did not appear. However, the same could not be held against the assessee since the assessee had already furnished the undertakings of all the sellers before Ld. AO. No adverse inference could be drawn against the assessee on this fact. Rather the assessee had duly discharged the onus as casted upon him to substantiate his claim. The onus was on Ld. AO to disprove the same. We find that there is no such material on record which would negate the documents furnished by the assessee or which would falsify these documents.

9 We also find that except for rough notings in the loose sheet, there is nothing with Ld. AO to corroborate allegation of undisclosed investment. In our considered opinion, the burden was on Ld. AO to prove that such cash flows happened between the parties as alleged. However, there is nothing on record to corroborate the allegation of Ld. AO.

10. Therefore on the given facts of the case, we would hold that the addition of undisclosed investment was made merely on the basis of

dumb document which would not possess any stand-alone evidentiary value since it did not contain the complete particulars of the relevant transactions to facilitate drawing of such an inference as done by Ld. AO. An entry made in the loose sheets with scant details could not be used to fasten the tax liability on the assessee in the absence of any corroborative evidence. Such seized material is liable to be treated as dumb document which would not have any evidentiary value in respect of entries found therein in the absence of corroborative evidence which could provide necessary reliable basis for deciphering the nature and character of the said entries. The addition made on the basis of such a dumb document could not be sustained. Therefore, we delete the addition of undisclosed investment as sustained by Ld. CIT(A) In the impugned order. The corresponding grounds stand allowed.

11. On the issue of addition of Rs.22 Lacs, the undisputed position that emerges is that the aforesaid cash has been received by the assessee out of sale proceeds of machinery belonging to KTL. The total amount as received for this year was Rs.84.75 Lacs out of which the assessee has admitted income of Rs.62.75 Lacs only. The assessee, in our opinion, is unable to offer any valid explanation in support of the claim that the balance amount was not received. Therefore, this addition is confirmed. No other ground has been urged in the appeal. No defect has been shown in the jurisdiction of Ld. AO.

12. The appeal stands partly allowed in terms of our above order.

Order pronounced on 19th November, 2024

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

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

चेन्नई Chennai; दिनांक Dated : 19-11-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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