

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.1226/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2019-20)

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

Per BENCH:

1. Aforesaid appeal by assessee for Assessment Year (AY) 2019-20, arises out of an order passed by learned Commissioner of Income Tax (Appeals), Chennai-20, [CIT(A)] on 29-02-2024 in the matter of an assessment framed by the Ld. AO u/s.143(3) of the Act on 18-06-2021. The sole grievance of the assessee is confirmation of addition of undisclosed investment u/s 69 for Rs.144.41 Lacs. Having heard rival submissions and upon perusal of case records, the issue is adjudicated as under.

Assessment Proceedings

2.1 Consequent to search action on assessee group on 06-03-2019, notice u/s 153A was issued to the assessee. The assessee being resident individual is stated to be engaged in textiles business in proprietorship concern namely Shri Ganesh Textile Mills. During search, a stock statement was found. The physical stock was found in excess of Rs.190.90 Lacs.

2.2 During the course of assessment proceedings, the assessee submitted that excess stock was sourced from suppressed receipts in hotel business and other unaccounted receipts. The assessee admitted the stock out of cash flow generated on account of additional income disclosed in the previous years. The same 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	Addl. 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

During assessment proceedings, the net inflows were computed by the assessee as Rs.217.11 Lacs which was sourced to purchase excess stock. The computations thereof have been extracted on Page No.4 of the assessment order.

2.3 The Ld. AO partially accepted the claim of the assessee. The assessee claimed that it advanced sum of Rs.277.78 Lacs in cash to the various sellers viz. Visvanathan, Ramathal and Sundarasamy for

purchase of 52.78 acres of agricultural land. However, the assessee purchased only 22.50 acres for Rs.140.37 Lacs which was disclosed in the regular books of accounts of M/s Booma Realty Pvt. Ltd. The amount of Rs.144.41 Lacs for remaining portion of land which was not purchased, was received back. In support, the assessee furnished unregistered sale agreement with Ramathal to support the fact that the amount of Rs.277.78 Lacs was meant for 52.78 acres of lands.

2.4 However, Ld. AO alleged that the whole amount of Rs.277.78 Lacs was paid for 22.50 acres of land and not for 52.78 acres as claimed by the assessee. The amount of Rs.144.41 Lacs was to be considered as on-money. Therefore, the assessee could not take the credit of the same. The sale agreement was unregistered one. There should have been subsequent notings in the seized material detailing the repayment of the money by the sellers. Accordingly, the amount of Rs.144.41 Lacs was added to the income of the assessee as unexplained investment. The explanation with respect to remaining addition was accepted.

Appellate Proceedings

3.1 During appellate proceedings, the assessee reiterated that the source of undisclosed stock was amount refunded by the seller. The agreement was originally entered for 52.78 acres of land. However, the land to the extent of 22.5 acres only was purchased. The excess amount as paid to the sellers was offered to tax in AY 2013-14. The same was refunded by the sellers which constituted source of the undisclosed stock. The assessee filed confirmation of the refund of such sum forming part of the agreement.

3.2 The Ld. CIT(A) noted that the claim of the assessee was based on unregistered sale agreement dated 19-07-2012 between the assessee

and Ramathal for 52.78 acres of land for consideration of Rs.277.78 Lacs. The cash payment of Rs.144.41 Lacs was not mentioned in the sale agreement. The assessee claimed that cash was paid on 18-07-2012 to three family members. The evidence of refund was self-signed declaration of receipt of amount of Rs.144.41 Lacs from Viaswanathan on 15-03-2013. The assessee did not file confirmation of the sellers. The assessee filed undertaking deed dated 03-10-2020 from three individuals. Shri Vishwanathan has undertaken to sell 22 acres of land in survey nos. 243/1, 243/2, 243/3, 243/4 & 243/5. He received consideration of Rs144.41 Lacs on 18-07-2012 from the assessee, He stated the amount was repaid on 15-03-2013 since he could not sell the land to the assessee. However, there were discrepancies in the undertaking deed and sale agreement and therefore, these documents as furnished by the assessee were held to be mere after-thought. The only evidence found during search was payment of Rs.277.78 Lacs whereas the amount of Rs.140.37 Lacs was reflected in the books of accounts. No entry relating to refund of Rs.144.41 Lacs was found during search. Therefore, the action of Ld. AO was confirmed. The alterative argument to estimate profit element on unaccounted stock was also not accepted by Ld. CIT(A). Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. It emerges that excess stock of Rs.190.90 Lacs was found from the premises of the assessee. Accordingly, the assessee was required to explain the source of the same. The assessee furnished cash flow statement and arrived at net inflows of Rs.217.11 Lacs which was stated to be sourced to purchase excess stock. The computations thereof have

been extracted on Page No.4 of the assessment order. Upon perusal of the same, it could be seen that there was net cash outflow of Rs.279.61 Lacs during AY 2013-14 which has been offered as additional income in that year. The assessee made payment of Rs.144.41 Lacs to the three sellers on 18.07.2012. The same constitute part of additional income as offered by the assessee. The advances to the extent of Rs.362.41 Lacs is stated to be received back by the assessee which has been used to make payment of Rs.145.29 Lacs. The net inflows thus arrived at are Rs.217.11 Lacs out of which the assessee is stated to have sourced unaccounted stock of Rs.190.90 Lacs. Thus, there is still excess cash inflow of Rs.26.21 Lacs. The Ld. AO has substantially accepted this working and has only doubted the refund of Rs.144.41 Lacs which is stated to be received back by the assessee since the transaction had not materialized. It was submitted that the assessee advanced sum of Rs.277.78 Lacs in cash to the various sellers viz. Visvanathan, Ramathal and Sundarasamy for purchase of 52.78 acres of agricultural land. However, the assessee purchased only 22.50 acres for Rs.140.37 Lacs which was disclosed in the regular books of accounts of M/s Booma Realty Pvt. Ltd. The amount of Rs.144.41 Lacs for remaining portion of land which was not purchased by the assessee, was received back. In support, the assessee furnished unregistered sale agreement with Ramathal to support the fact that the amount of Rs.277.78 Lacs was meant for 52.78 acres of lands. The copy of the same has been placed on record on Page No.819, Paper book Volume II. This agreement has been entered on 19-07-2012 for purchase of 52.78 acres of land along with right of way. On the backside of the agreement, noting has been made as under: -

As per Sale agreement of 52.78 Acre which was delaying due to yourself for the registration. As mutually agreed by ourselves only 25.50 Acres can be sale within 6 months from today. So, the amount for the balance land of Rs.1,44,41,000/- (One Crore Forty Four Lakh Forty One Thousand Only) received by cash from Mr. Viaswanathan as on today 15/03/2013.

The aforesaid document duly substantiates the case of the assessee. However, the lower authorities have held the same to be mere after-thought since the same was not found during the course of search. However, apart from this observation, there is nothing adverse against the assessee which would doubt the genuineness of the aforesaid document or falsify the aforesaid documents. The assessee has duly filed the confirmation from the three sellers which has also been placed on record at Page Nos.816 to 818 of the paper book. The contents of the same duly support the case of the assessee. Shri Vishwanathan has clearly stated that the amount of Rs.144.41 Lacs was repaid to the assessee on 15-03-2013 since he was not able to execute the sale deed in favour of the assessee. Pertinently, the aforesaid undertakings / confirmations have not been controverted by Ld. AO and no material has been brought on record to disprove the same. Once the assessee had discharged the requisite onus to substantiate its case, it was onus of Ld. AO to disprove / controvert the same. In the absence of such an exercise, no adverse inference could be drawn against the assessee. Once the fact of refund was established by the assessee, the claim could not be rejected without making any independent enquiries and merely on the ground that there were discrepancies in the documents filed by the assessee. Therefore, on the given facts, the claim of the assessee has to be accepted. In the result, the impugned addition of Rs.144.41 Lacs

stand deleted. The Ld. AO is directed to re-compute the income of the assessee.

5. Though the assessee has raised certain legal grounds, we find no defect in the jurisdiction of Ld. AO. The legal grounds have adequately been dealt with by Ld. CIT(A) in the impugned order. We concur with the same.

6. 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
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चेन्नई Chennai; दिनांक Dated : 19-11-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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