

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

**माजनीय श्री महावीर सिंह, उपाध्यक्ष एवम्  
माजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।  
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND  
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकर अपील संख्या ITA No.1160/Chny/2024  
(निर्धारण वर्ष / Assessment Year: 2013-14)**

M/s. Sakthi Realty Holdings Ltd. #62, Dr. Nanjappa Road, Coimbatore-641 018.	बनम्/ Vs.	DCIT Central Circle-2, Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AAECA-8414-H</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकी ओरसे/ <b>Appellant by</b>	:	Shri R. Venkata Raman(CA) - Ld.AR
प्रत्यर्थीकी ओरसे/ <b>Respondent by</b>	:	Shri R. Clement Ramesh Kumar (CIT) -Ld. DR

सुनवाईकी तारीख/ <b>Date of Hearing</b>	:	20-09-2024
घोषणाकी तारीख / <b>Date of Pronouncement</b>	:	10-12-2024

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals), Chennai-20, [CIT(A)] dated 23-02-2024 in the matter of an assessment framed by the Ld. AO u/s 153A r.w.s 143(3) of the Act on 31-12-2018. The grounds raised by the assessee read as under: -

1. That the Learned Commissioner of Income Tax (Appeals) - 20, Chennai ["Ld. CIT(A)] failed to appreciate that the assessment order dated 31.12.2018 passed by the Deputy Commissioner of Income Tax, Central Circle - 2, Coimbatore ["Assessing Officer"] u/s.153A r.w.s 143(3) of the Income-tax Act, 1961 ["Act"] is without jurisdiction, bad in law, barred by limitation and consequently erred in upholding the assessment.

2. That the Ld. CIT(A) ought to have appreciated that the approval accorded by the Range Head u/s.153D of the Act was mechanical and consequently the impugned assessment order is invalid and void ab initio.

3. That the Ld. CIT(A) erred in confirming the addition of Rs.11,00,00,000/- made by the Assessing Officer towards undisclosed alleging cash payments to M.s Magnum Foundation.

4. That the Ld. CIT(A) failed to appreciate that the appellant never paid alleged cash of Rs.11,00,00,000/- to M/s Magnum Foundation and consequently erred in sustaining the addition made by Assessing Officer.

As is evident, the sole issue that falls for our consideration is addition of alleged payment made by the assessee to another entity.

2. The Ld. AR advanced arguments with the help of various documents as placed on record. The Ld. CIT-DR also advanced arguments and referred to the findings of lower authorities in their respective orders. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

### **Assessment Proceedings**

3.1 The assessee being resident corporate assessee is stated to be engaged in business of real estate and property development. The assessee-group was subjected to search action u/s 132 on 24-11-2016 and notice u/s 153A was issued to the assessee on 11-10-2017. The assessee admitted income of Rs.58.63 Lacs. The main issue arose on account of alleged on-money payment for purchase of certain land by the assessee.

3.2 During search, loose sheets were seized vide ANN/SM/SRIL/LS/S. The loose Sheet No.1 indicated that an amount of Rs.26.20 Crores was paid by the assessee to M/s Magnum Foundation as land advance. Out of this amount, the sum of Rs.11.20 Crores was allegedly paid in cash in FY 2012-13. Another amount of Rs.50 Lacs was allegedly incurred for patta transfer in favor of M/s Magnum Foundation. The copy of the sheet

which forms the basis of impugned addition has already been extracted in the assessment order.

3.3 During search, handwritten manuscript of Shri S. Veluswamy (SVP operations of M/s Sakthi Finance Ltd.) was also seized vide ANN/SM/SRIL/LS/S which has also been extracted in the assessment order. Shri Veluswamy, in statement recorded during search, accepted that Rs.11 Crores would be unaccounted income of the company.

3.4 On the basis of these facts, Ld. AO alleged that the assessee paid Rs.11 Crores in cash towards advance for purchase of land and the said amount was added as unaccounted income of the assessee. Aggrieved, the assessee assailed the impugned addition in further appeal.

### **Appellate Proceedings**

4.1 The assessee assailed the impugned addition, inter-alia, by stating that the addition was made only on the basis of manuscript of Shri Veluswamy. The document does not carry any date of payment nor were the payments confirmed by M/s Magnum Foundation. The assessee drew attention to the terms of MOU which do not indicate any such cash payment. In the absence of any credible evidence to prove that the cash payments were made through undisclosed sources, there was no basis for impugned addition. In the absence of any dates of payment and corroborative evidences, it could not be presumed that the assessee made such payments. No corroborative evidences were brought on record to substantiate the contents of the seized material.

4.2 However, Ld. CIT(A) rejected the same on the ground that Shri Veluswamy clearly stated that cash payment was made for Rs.11.20 Crores and another payment of Rs.50 Lacs was paid for patta transfer. Out of the same, sum of Rs.11 Crores was incurred during this year and

the balance Rs.70 Lacs was paid during AY 2016-17. He also clarified that the cash payment was not recorded in the books of accounts. The cheques payments as mentioned in the loose sheets was exactly matching with the payment details as mentioned on MOU. Therefore, the entries could not be treated as random or incorrect. Absence of dates with respect to cash payment would not automatically lead to a conclusion that cash payments have not been made. The MOU nowhere specifically stipulate assessee to make payments through banking channels only nor expressly prohibits cash payment. The assessee failed to offer explanation for source of cash payment and therefore, the impugned addition was confirmed against which the assessee is in further appeal before us.

#### **Our findings and Adjudication**

5. From the facts, it emerges that the sole addition as made by Ld. AO is substantially based on loose sheet found during the course of search. On the basis of the same, it has been alleged that the assessee has paid on-money on purchase of certain land. The copy of the loose sheet has been extracted on Page No.3 of the assessment order. Upon perusal of the same, it could be seen that the complete details of cash payment are nowhere discernible in the said document. The dates on which the alleged cash payment is made is not mentioned except last entry wherein the date has been mentioned as 29-04-2015 which falls in AY 2016-17. The person who has made the payment has nowhere been spelt out in the document. The purpose for which the payment is made is also not mentioned in the said document. The document also does not bear any acknowledgement or receipt by any of the party. On the basis of the same, no concrete conclusion of payment of on-money on transfer

of land could be made out against the assessee. The document is more in the nature of loose sheet and is to be considered as dumb document only. The same do not bear the essential details so as to arrive at conclusion of payment of alleged on-money by the assessee. Further, upon perusal of terms of MOU, it could be seen that the same do not postulate any payment in cash by the assessee. Pertinently, no independent investigation has been carried out by Ld. AO from the payee (M/s Magnum Foundation) of the alleged on-money payment and the addition is unilateral addition without bringing on record any concrete corroborative evidence to substantiate the same. Nothing has been shown that the payee has admitted any such payment and confirmed the receipt thereof from the assessee. It has nowhere been shown that this payment has been considered to be the income of the payee. Proceeding further, Shri Veluswamy, in reply to Q.No.16, is unable to recollect the exact dates when the payments have happened and therefore, not much reliance could be placed on the same and the statement, on standalone basis, could not lead to formation of opinion of alleged on-money in this year. In our considered opinion, in the absence of credible evidence to prove that the cash payments were made through undisclosed sources, there would be no basis for impugned addition in this year in the absence of any corroborative evidence. There is no confirmation of receipt of money by the payee and therefore, the impugned addition, in our considered opinion, is based more on suspicion and surmises. Having searched the entire premises of the assessee, the searched team could not bring on record any corroborative evidence establishing the creation of unaccounted money by the assessee and alleged payment thereof for purchase of land.

6. The Hon'ble Karnataka High Court in its recent decision titled as **CIT vs. Sunil Kumar Sharma (159 Taxmann.com 179; 22.01.2024)**, rendered in the context of Sec.153C, held that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. The Hon'ble Court referred to the decision of Hon'ble Supreme Court in the case of **CBI vs. V.C. Shukla (3 SCC 410)** as well as another decision in **Common Cause vs. UOI (supra)** while arriving at such a conclusion. The Hon'ble Supreme Court in the case of **CBI vs. V.C. Shukla (3 SCC 410)** held that every transaction as recorded in the regular books needs to be independently corroborated and proved when some liability is to be fastened in respect of such transactions. The legal principle as laid down by Hon'ble Supreme Court is that independent corroborative evidence is required in respect of entries in regular books of accounts and the same would apply in the present case. Pertinently, Special Leave Petition (SLP) of revenue against this decision has been dismissed by Hon'ble Supreme Court on 20-08-2024 which is reported as 165 Taxmann.com 846. We are of the opinion that aforesaid principle as laid down by Hon'ble Court would apply to the facts of the present case before us and the same strengthens the arguments of Ld. AR. Similarly, Mumbai Tribunal, in the case of **ITO vs. Kranti Impex Pvt. Ltd. (ITA No.1229/Mum/2013)** held that when the seized papers were undated having no acceptable narration and did not bear the signature of any party, they are in the nature of dumb documents having no evidentiary value and could not be taken to be the sole basis for determination of undisclosed income of the assessee. The onus would be on revenue to collect cogent evidences to

corroborate the nothings therein. The ratio of all these decisions supports the case of the assessee.

7. Upon cumulative consideration of aforesaid facts and reasoning, we would hold that impugned additions as made by Ld. AO merely on the basis of loose sheets and bald statement, without any corroboration thereof, was not adequate enough to draw adverse inference of alleged payment by the assessee. Therefore, we delete the same and allow the corresponding grounds as raised by the assessee. The Ld. AO is directed to recompute the income of the assessee in terms of our adjudication. No other ground has been urged in the appeal.

8. The appeal stand allowed in terms of our above order.

*Order pronounced on 10<sup>th</sup> December, 2024*

*Sd/-*  
**(MAHAVIR SINGH)**  
उपाध्यक्ष / **VICE PRESIDENT**

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

चेन्नई Chennai; दिनांक Dated :10-12-2024  
*DS*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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