

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

**माजनीय श्री महावीर सिंह, उपाध्यक्ष एवं
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 सं. ITA No.1163/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2016-17)**

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

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

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

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee (SRHL) for Assessment Year (AY) 2016-17 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 action of the Assessing Officer in making an addition of Rs.42,23,00,000/- towards undisclosed income of the appellant.
4. That the Ld. CIT(A) failed to appreciate that there exists neither incriminating material nor corroborative evidence to establish that the sum of Rs.42,23,00,000/- added by the Assessing Officer represents undisclosed income of the appellant.
5. That the Ld. CIT(A) failed to appreciate that the sum of Rs.42,23,00,000/- represent land advances and cannot be treated as income of the appellant.
6. That the Ld. CIT(A) erred in not considering the refund of advances out of the sum of Rs.42,23,00,000/- added by the Assessing Officer towards undisclosed income.
7. That the Ld. CIT(A) erred in not considering the income admitted under PMGKY Scheme.
8. That the Ld. CIT(A) erred in confirming the addition of Rs.70,00,000/- made by the Assessing Officer towards unaccounted income alleging cash payment to M/s Magnum Foundation.
9. That the Ld. CIT(A) failed to appreciate that the appellant never paid alleged cash of Rs. 70,00,000/- to M/s Magnum Foundation and consequently erred in sustaining the addition made by the Assessing Officer.

As is evident, the sole issue that falls for our consideration is addition of undisclosed income as made by Ld. AO in the assessment order which has been confirmed in the impugned order.

2. The Ld. AR advanced various arguments and drew our attention to various documents as placed on record. Our attention has been drawn to seized material and the retraction filed by Shri T. Rajkumar before Ld. AO. 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 real estate business 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. In response, the assessee admitted income of Rs.339.59 Lacs. The main

issue arose on account of unexplained income which was based in incriminating material as found from the laptop of Shri S. Senthilkumar, AGM (Finance & Accounts) of M/s Sakthi Finance Ltd. (SFL).

3.2 In the Asus Laptop as found in the chamber of Shri S. Senthilkumar, an excel sheet by the file named "Corpus" was found. It allegedly contained date-wise deposits of cash along with the names of the depositors and summary of cash deposits made with the assessee-company and another entity by the name M/s Sakthi Finance Holdings Ltd. (SFHL). The backup of the laptop was taken and it was seized vide ANN/SFL/SM/ED/S-1. The hardcopy of the excel sheet containing the date-wise deposits of cash and inflow of cash was seized vide ANN/SFL/LS/S. The excel sheet also contained the details of application made out of the funds so received from the depositors. Shri Senthilkumar admitted that the laptop belonged to him and the excel sheet was maintained by him for storing the details of cash deposits received from customers on various dates for the purpose of reporting to Shri Veluswamy (Senior President-Operations) at regular intervals.

3.3 The summary of cash deposits as allegedly received by the group entities was tabulated as under: -

No.	Name of Entity	FY 2014-15	FY 2015-16	FY 2016-17	Total
1.	Sakthi Finance Holding Ltd.	Rs.53.04 Crores	Rs.22.63 Crores	Nil	Rs.75.67 Crores
2.	Sakthi Realty Holdings (Assessee) Ltd.	Nil	Rs.42.23 Crores	Rs.33.45 Crores	Rs.75.68 Crores
	Total				151.35 Crores

It was also admitted by Shri Senthilkumar that aforesaid cash was not accounted for in the books of any of the entities.

3.4 A statement was also recorded from Shri Velusamy (Sr. President-Operations) on 25-11-2016 who made similar admission. Shri T.

Rajkumar (Director) also submitted an affidavit dated 26-12-2016 to investigation wing admitting Rs.37.47 Crores as income in the hands of SFHL and another amount of Rs.76.65 Crores in the hands of the assessee company. However, the said income was not offered in the return of income.

3.5 During the course of assessment proceedings, the assessee defended its stand and submitted that there was no unaccounted income in the hands of the assessee. It was stated that there was no seized evidences regarding unaccounted asset for the alleged amount as found during the course of search. The said advances were received towards real estate business as carried out by the assessee. Subsequently, refunds were processed for Rs.36.89 Crores. As per seized sheet, the cash receipts upto 31-05-2015 were Rs.58.43 Crores being advances received towards real estate activity of the company. Out of this, sum of Rs.20.96 Crores had already been refunded to the concerned parties leaving a balance of Rs.37.47 Crores. The details of land advances refunded to the extent of Rs.20.96 Crores were furnished to Ld. AO. The confirmation of land advances with respect to the sum of Rs.37.47 Crores was also furnished. It was also submitted that Annexure-I Sources and applications of funds was a rough work / draft sensitivity analysis report prepared by the trainees on board. Therefore, the same was to be disregarded. The assessee also furnished reconciliation statements and made various submissions to establish that there was no unaccounted income in the hands of the assessee.

3.6 However, Ld. AO, going by the statements made by Shri Senthil Kumar, Shri Velusamy and affidavit of Shri T. Rajkumar, rejected the aforesaid contentions of the assessee. The assessee produced list of

parties from whom Rs.37.47 Crores was stated to be received. Out of the same, 50 persons were selected randomly by Ld. AO and the assessee was asked to produce the confirmations from them. The same was provided by the assessee. The assessee also produced details of persons who were refunded the land advances. From this list, seven persons were summoned. Three persons appeared whereas summons was returned back in remaining case. It was alleged by Ld. AO that the three persons who appeared were not able to prove their creditworthiness and they were having agricultural income. No acceptable proof of income could be furnished by them towards land advances. Finally, the explanation furnished by the assessee was rejected and the amount of Rs.42.23 Crores was treated as unaccounted income of the assessee.

3.7 In AY 2013-14, Ld. AO made certain addition of Rs.11 Crores on the allegation that the assessee paid cash advance for purchase of land. A sum of Rs.70 Lacs was allegedly paid in this year and accordingly, the same was also added in the hands of the assessee as unaccounted income. Aggrieved, the assessee assailed the impugned addition in further appeal.

Appellate Proceedings

4.1 The Ld. CIT(A) noted that Shri Senthil Kumar and Shri Velusamy admitted that the amount noted in the seized material represent cash deposits received from various customers and the amounts were not recorded in the regular books of accounts. Shri T, Rajkumar filed an affidavit on 26-12-2016 in which he admitted an amount of Rs.76.65 Crores in the hands of the assessee and another amount of Rs.37.47 Crores in the hands of SFHL.

4.2 During appellate proceedings, the assessee submitted that these deposits were not income of the assessee. All the persons admitted that the above deposits were procured through various branches. The assessee also stated that the amount as admitted by Shri T. Rajkumar belonged to other entities and the sum of Rs.66.70 Crores was already declared under PMGKY Scheme in the hands of various entities (detailed in impugned order). It was also stated that except for affidavit given by Shri T. Rajkumar, the department did not seize any material to prove that the unaccounted receipts were in the nature of income for the assessee. Taxing the receipt as income would be against the principles of taxation. These receipts were in the nature of land advances which was to be repaid if the sale deeds were not executed. The assessee also assailed the addition of Rs.70 Lacs on various grounds.

4.3 The various contentions as raised by the assessee were summarized by Ld. CIT(A) as under: -

1. Seized material shows that amount received constitutes liability in hands of Appellant but not income. Seized material confirms that they are mere receipts.
2. Charging section and computation provision together constitutes integrated code. If either of them is not attracted, then there can't be any levy of tax. As per Principles of taxation, receipts can't be subjected to tax.
3. No evidence could be found during search that contents of seized material constitute undisclosed income of appellant. Neither Mr. Senthil kumar nor Mr Velusamy have admitted cash receipts found in seized material as unaccounted income of the appellant.
4. The deposit taken against sale of land amounting to Rs.24.96 Crores out of Rs.37.47 Crores reflected by seized material after excluding refund of Rs.20.96 Crores is duly reflected in the return of income filed in response to notice issued u/s.153A under the head 'current liabilities.'
6. The AO has relied only the affidavit filed by Shri T Rajkumar for making the addition while finalizing the assessment.
7. The AO has not considered statements of persons who appeared before him and confirmed repayment of land advance.
8. The appellant has filed confirmation letters with respect to land advance. With filing of confirmation letters, the appellant has discharged the initial onus of proving credits/receipts.

4.4 The Ld. CIT(A) noted that the assessee was not disputing the receipts of amounts. It was the contention that the aforesaid receipts actually represent cash received from different individuals towards land advance. Therefore, the issue was two-fold i.e., first, whether the amount was received from same individuals against whose names the amount was recorded in seized documents and secondly, to determine the nature of the receipts in hands of assessee. Only when the assessee could establish that the amount was received from persons as mentioned in seized material, question of determining the nature of receipts become important. The onus was on assessee to prove the identity of the depositors, their creditworthiness and the genuineness of the transactions. As per the findings of Ld. AO, the assessee had failed to prove creditworthiness by filing relevant evidences with respect to even fifty persons who were randomly identified by Ld. AO from seized list. From the confirmation letter reproduced by AO in assessment order, it was noted that though one individual named Smt. P.Chandana confirmed site advance of Rs.12 Lacs, the confirmation do not specify the location of the site, area of the site for which the amount was advanced. It was stated that the amount of Rs.12 Lacs was out of accumulated savings, the evidence thereof was no furnished and accordingly, creditworthiness was not established. The assessee failed to discharge this onus not only with respect to 50 persons as randomly selected by Ld. AO but also in remaining cases wherein the assessee did not even make any effort to proved the identity of the parties.

4.5 The assessee also claimed that it already refunded a portion of land advances as received from some of the individuals before the date of search itself. However, out of seven persons as examined by Ld. AO

by issuing summons, only three persons appeared and they could not file evidences to prove genuineness of amount as advanced to the assessee by establishing creditworthiness. The immediate source of cash advances could not be proved by any of the lenders. Mere statements with regard to source for funds without any evidence in support of same could not establish the creditworthiness of the lenders. When the assessee could not establish the source of lenders, the question of refund of the same would not arise. As per the provisions of Sec.68, the onus was on assessee to file documentary evidences to establish Identity, creditworthiness and genuineness of loan creditors. Only thereafter, the onus would shift on Ld. AO to conduct further enquiries to verify the genuineness of the claim of the assessee. In the present case, initial onus was not discharged by the assessee and therefore, the receipts would be deemed to be the income of the assessee. Reference was made to various decisions to support this conclusion.

4.6 The Ld. AO, in para 7.15 of the impugned order, noted that though the assessee claimed that land advances were received from various parties, the assessee never furnished details of land purchase. The assessee did not furnish the details of land for which advances were collected. Nothing was shown that the assessee entered into sales deeds in subsequent years to prove the genuineness of entries in seized material.

4.7 The assessee contended that the affidavit as filed by Shri T. Rajkumar was under coercion. The Ld. CIT(A) noted that the affidavit was filed on 26-12-2016 whereas the search took place on 24-11-2016 and therefore, the affidavit was filed after one month from the date of

search. In this affidavit, it was clearly stated that the names mentioned in the seized material were fictitious and the amount of Rs 76.65 Crores actually belonged to the assessee company. It was only during assessment proceedings, it was stated by the assessee that the amounts were mobilized on behalf of other entities as well which was to be rejected. So far as the claim that the income was admitted under PMGKY Scheme was concerned, the assessee was not able to establish such a link and therefore, no credit could be given for such disclosure. Finally, the impugned addition was confirmed. The Ld. CIT(A) also confirmed the addition of Rs.70 Lacs. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the only primary evidence which has led to impugned addition is excel sheet titled as "Corpus" as found from the laptop of Shri Senthil Kumar. The copy of the same has been placed on record at Page Nos. 1 to 36 of the paper-book. Upon careful consideration of the same, it could be seen that there is inflow of cash from various parties and there is also outflow of cash under some abbreviations. The parties from whom deposits have been received are identified by clear names / description. The outflow of cash entries also bear incentives / interest paid by assessee to various parties. The assessee has refunded various amounts to lenders from time to time. A careful perusal of these entries would show that inflow of cash is primarily deposits / advances received from various persons by different branches of the assessee. The Ld. AO has considered these deposits as the income of the assessee and taxed the receipts considering the same to be the unaccounted income of the assessee. The same is in contrast

to the fact that the seized material also contain the details of refund as well as payment of incentive / interest. It could be seen that the assessee is engaged in real estate business and it would have received land advances from prospective buyers so as to carry out its business activities. In our considered opinion, the conclusion of Ld. AO that these receipts constitute the income of the assessee is clearly opposed to nature of entries as recorded in the seized material. It is trite law that the purpose of assessment is to determine the correct income of the assessee and only real income could be taxed. No addition could be made on mere suspicion, conjectures or surmises.

6. Our aforesaid conclusion is supported by the fact that the excel sheet was found from the Asus Laptop belonging to Shri Senthilkumar. The sheet contains date-wise deposits of cash along with the names of the depositors and summary of cash deposits made with the assessee-company as well as with SFHL. The excel sheet also contains the details of application made out of the funds so received from the depositors. The outflow entries, inter-alia, include the entries of incentive / interest as well as refund made to the depositors. Shri Senthilkumar admitted that the laptop belonged to him and the excel sheet was maintained by him for storing the details of cash deposits received from customers on various dates for the purpose of reporting to Shri Veluswamy (Senior President-Operations) at regular intervals. The same was confronted to Shri Velusamy who made similar admission. Thus, both the statements are in agreement with each other and the perusal of the same would suggest that the impugned inflow of cash is nothing but deposits as received from various customers at different branches. The deposits represent liabilities which are to be repaid by the assessee. By no

stretch, a conclusion could be drawn that the same would represent unaccounted income of the assessee and the assessee has written some random names to record these deposits. Unless a finding has been rendered that such deposit represent unaccounted income of the assessee, no such addition could have been made in the hands of the assessee.

7. Proceeding further, the secondary evidence that is available with Ld. AO is the affidavit filed by Shri T. Rajkumar. However, during search, no incriminating material is found which would suggest that the assessee was in possession of any unaccounted asset which is represented by such unaccounted receipts. In fact, the assessee furnished reconciliation statements during assessment proceedings wherein it was established that the refunds were processed to the tune of Rs.36.89 Crores. As per seized sheet, the cash receipts up-to 31-05-2015 were Rs.58.43 Crores being advances received towards real estate activity of the company. Out of this, sum of Rs.20.96 Crores had already been refunded to the concerned parties. The detail of such refunds was duly furnished to Ld. AO. The confirmation of land advances with respect to remaining sum of Rs.37.47 Crores was also furnished. Having furnished such statements, the assessee in our considered opinion, had duly discharge the primary onus of proving that the deposits, in fact, represent liabilities for the assessee. The onus was on Ld. AO to rebut the same. However, Ld. AO has simply gone by the statements made by Shri Senthil Kumar, Shri Velusamy and affidavit of Shri T. Rajkumar without carrying out any independent investigation to bring on record any concrete material to rebut the contentions as made by the assessee. It is another fact that Ld.

AO has not even otherwise acted on the averments made in the affidavit and already disregarded the same while framing the assessment.

8. We also find that during the course of assessment proceedings, the assessee had also produced the list of parties from whom the deposits of Rs.37.47 Crores was stated to be received. Out of the same, fifty persons were selected randomly by Ld. AO and the assessee was asked to produce the confirmations from them. The assessee furnished confirmation from all of them. From the list of person who was refunded the deposits, seven persons were summoned. Three persons appeared and confirmed the transactions. The fact the summons were returned back or the fact that the lenders lacked creditworthiness could not be held against the assessee since all these were undisclosed deposits and the depositors may not be forthcoming to confirm the transactions. Nevertheless, the aforesaid fact would not change the character of the receipts in the hands of the assessee. In such a case, having furnished the details of depositors, it would not be the onus of the assessee to prove the creditworthiness of each of the lenders. Further, the provisions of Sec.68 could be invoked only in a case when there is cash credit in the regular books of accounts as maintained by the assessee and the same remain unexplained to the satisfaction of lower authorities. The same is not the case here.

9. Finally, considering the entirety of facts and circumstances of the case, the impugned addition is liable to be deleted. We order so. The corresponding grounds stand allowed accordingly.

10. The issue of addition of Rs.70 Lacs stood covered in assessee's favor by our decision in assessee's own case for AY 2013-14, ITA No.1160/Chny/2024 as under: -

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.

Facts being *pari-materia* the same, taking the same view, we delete the impugned addition of Rs.70 Lacs and allow the corresponding grounds as raised by the assessee.

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

Order pronounced on 10th 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