

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

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

1. आयकर अपील सं. / ITA No.1995/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2012-13)

Shri Shanmugasundaram Umashankar 531, Easwaran Koil Street, Erode-638 001.	बनम/ Vs.	DCIT Central Circle-3(i/c) Coimbatore.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAFPU-0364-C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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2. आयकर अपील सं. / ITA No.1996/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2012-13)

Shri Shanmugasundaram Karthikeyan 531, Easwaran Koil Street, Erode-638 001.	बनम/ Vs.	DCIT Central Circle-3(i/c) Coimbatore.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AEEP K-4137-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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3. आयकर अपील सं. / ITA No.1997/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2012-13)

Shri P. Shanmugasundaram (HUF) 531, Easwaran Koil Street, Erode-638 001.	बनम/ Vs.	DCIT Central Circle-3(i/c) Coimbatore.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AACHP-1597-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Ms. T.V. Muthu Abirami (Advocate)- Ld.AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri R. Clement Ramesh Kumar (CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	03-12-2024
घोषणा की तारीख / Date of Pronouncement	:	24-02-2025

आदेश / ORDER

Per BENCH:

1. Aforesaid appeals by separate assessee for Assessment Year (AY) 2012-13 have common facts and issues. First, we take up ITA No.1995/Chny/2024 which arises out of an order passed by learned Commissioner of Income Tax (Appeals), Chennai-20 [CIT(A)] dated 25-05-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 153A of the Act on 31-03-2016. The grounds taken by the assessee read as under: -

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and is opposed to the principles of natural justice, equity and fair play.
2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.
3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the assessment completed u/s.143(3) r.w.s. 153A is bad in law
4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the addition was not made based on any incriminating material found during the course of search in the premises of the appellant.
5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer in a case where purported incriminating material pertaining to the assessee was found in the premises of a person other than the searched person, ought to have completed the assessment u/s.143(3) r.w.s.153C and not u/s.143(3) r.w.s.153A.
6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the addition was made based on a loose sheet which has no evidentiary value
7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the loose sheet does not contain any details about the appellant or about the land purchased at Oppanakara Street.
8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the addition was made based on a third-party statement who has no connection with the land purchased at Oppanakara Street.
9. For that the Commissioner of Income Tax (Appeals) failed to appreciate that no sale agreement was entered into with Mr. Yusuf in connection with the land purchased at Oppanakara Street.
10. For that the Commissioner of Income Tax (Appeals) erred in upholding the addition of Rs.3,05,49,283- in the hands of the appellant
11. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the purchase cost of the property at Oppanakara Street is Rs.3,05,76,000/- only.
12. For that the Commissioner of Income Tax (Appeals) erred in considering the rate comparison with properties purchased by M/s. Saravana Selvarathinam Pvt Ltd without

appreciating the litigations, locational disadvantages and improper size in respect of the subject property at Oppanakara Street purchased by the appellant

13. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer had adopted the value of land based on a third-party statement without making a reference to the valuation cell.

14. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the property was purchased by the firm SPP Silks in which the appellant is a partner and hence the addition is not warranted in the hands of the appellant.

15. For that the appellant objects to the levy of interest u/s.234B and 234C of the Income Tax Act.

As is evident, the subject matter of appeal is addition made by Ld. AO pursuant to search action on the assessee.

2. The Ld. AR advanced arguments on merits as well as on legal ground and referred to various judicial decisions. The written submissions have also been filed which have duly been considered while adjudicating the appeals. The Ld. CIT-DR also advanced arguments and referred to the findings of lower authorities. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being resident individual is stated to be engaged in textile business. Pursuant to search action u/s 132 on 09-05-2013 at the resident of Shri P. Shanmugasundaram and his family members as well as pursuant to survey action u/s 133A at M/s S.P.P. Silks, Erode ('SPP' in short), impugned assessment has been framed against the assessee u/s 143(3) r.w.s. 153A of the Act. In this year, M/s SPP was being run as a partnership firm, the assessee being one of the partners along with M/s P. Shanmugasundaram (HUF) and Shri S. Kathikeyan.

3.2 The impugned additions are based on search conducted by the department in the case of Shri M.K. Yusuf of Coimbatore on 07-02-2013

wherein a pocket diary was seized as Annexure ANN/MKY/PS/B&D/S/P-16. The above diary was shown to Smt. Vanitha Mohan of Pricol Group during search at her residence on 09-05-2013. She identified the certain notings were in her handwriting. She stated that these entries reflected transaction of a real estate property i.e., about 20 cents of land owned by Shri M.K. Yusuf and others who claimed to have sold the property to some textile person from Erode. In the purported agreement to sale, the sale consideration was stated to be mentioned as Rs.1222.23 Lacs. The balance yet to be received was stated to be Rs.59.23 Lacs. Subsequently, cross-enquiry was made from Shri M.K. Yusuf and his sworn statement was also recorded and he was asked to explain the entries. He acknowledged the fact as explained by her. He also agreed to compute the due taxes as arising out of the above transaction.

3.3 In the above background, Ld. AO noted that the stated transaction was relating to sale of 20 cents and 16 square feet of land at Oppanakara street belonging to Shri M.K. Yusuf and his family members which was sold to Shri S. Kathikeyan, S. Umashankar and P. Shanmugasundaram vide deed No.1664/2012.

3.4 Armed with above information, notice u/s 153A was issued to the assessee on 11-11-2014. In response, the assessee filed return of income on 12-12-2014 admitting income of Rs.9.59 Lacs. The assessee submitted that the property was purchased by M/s SPP and duly accounted for in its regular books of accounts. However, Ld. AO noted that there was no mention in the deed that the property was purchased on behalf of the firm. Accordingly, the investment was to be considered in the hands of the individual or HUF as the case may be and not in the

hands of the firm M/s SPP. Since Shri M.K. Yusuf admitted to have received additional sale consideration, the assessee was show-caused.

3.5 The assessee defended its stand and stated that Smt. Vanitha Mohan was neither a seller nor the owner of the property. When confronted with her statement, Shri M.K. Yusuf stated that the 'statement given by Smt. Vanitha Mohan may probably be correct and he nowhere stated that the property was sold for higher sale consideration. As against this, in statement recorded on 29-05-2013, he stated that the property was sold for Rs.305.76 Lacs. The assessee further defended its stand by stating that they had not entered into any agreement with Shri M.K. Yusuf and the statement made by Smt. Vanitha Mohan was totally false and not supported by any such agreement. It was further submitted that entire sale consideration was paid through bank account of the firm. The partnership firm had no separate legal entity and the firm is collectively represented by its partners only. Therefore, the proposed addition was unjustified.

3.6 However, considering the seized material and the fact that the seller admitted to the impugned transaction and also unaccounted income was assessed in his hands, the aforesaid submissions were rejected. The evidence was seized from the residence of Shri M.K. Yusuf from whom the property was purchased and it related to the property purchased by the assessee group. A copy of notings and sworn statements of Smt. Vanitha Mohan and Shri M.K. Yusuf was duly furnished to the assessee. The evidence was found from the premises of the seller of the property and it related to the same property as transacted by the assessee. The unaccounted income arising there-from was assessed in the hands of Shri M.K. Yusuf. Further, Shri M.K. Yusuf

settled outstanding loans of more than Rs.7 Crores with Smt. Vanitha Mohan on 02-02-2012. However, Shri M.K. Yusuf did not have any other funds but for the sale proceeds of the above property.

3.7 The Ld. AO further bolstered the allegations by observing that the adjacent lands were sold at around Rs.35 Lacs per cent. The assessee himself accepted that the impugned property as transacted by him could fetch Rs.7 Crores. In the light of all these facts, Ld. AO held that the property was sold for Rs.1222.23 Lacs as against registered sale consideration of Rs.305.76 Lacs. The differential of the two i.e., Rs.916.47 Lacs was held to be unaccounted investment of the assessee. The three assessees had 1/3rd share each and accordingly, addition of Rs.305.49 Lacs was made in the hands of each of the three assessee and assessments were framed. Aggrieved, the assessee preferred further appeal against the assessment so framed by Ld. AO.

Appellate Proceedings

4.1 During appellate proceedings, the assessee submitted that the addition was made on surmises and presumption and merely based on the statement of seller and third-party Smt. Vinita Mohan. The assessee never entered into any agreement for the purchase of the property nor the loose sheet reveal any entries specifically related to Oppanakara street Property. The documents were only in the nature of dumb document and the same would hold not evidentiary value against the assessee. The seized material did not contain any reference to the assessee's name, particulars of transactions etc. There were no corroborative / incriminating evidences found from the assessee group. In such a case, no addition could be made u/s 153A as held in various judicial decisions. The loose sheet was only third-party evidence which

could not be used against the assessee. The seized document was not a speaking document and therefore, it could not be relied upon to make the addition in the hands of the assessee. From the recorded statements, it was evident that there were number of transactions between Shri M.K. Yusuf and Smt. Vanitha Mohan relating to real estate properties. The assessee did not enter into any sale agreement as stated by Smt. Vanitha Mohan. If there was any such agreement, the copy of the same was to be provided to the assessee. No incriminating material was found from the assessee group evidencing earning of undisclosed income. Reference was made to numerous judicial decisions which have already been elaborated in the impugned order.

4.2 The Ld. CIT(A) observed that the assessee filed original return of income on 01-03-2013. The time limit to issue notice u/s 143(2) was expiring on 30-09-2013 whereas search happened on 09-05-2013. Therefore, this year could not be treated as year of completed assessment. The proceedings for this year were pending on the date of search which got abated due to search. Therefore, Ld. AO had jurisdiction to make regular additions based on information gathered / collected even in the absence of any incriminating material found in the case of the assessee.

4.3 On merits, Ld. CIT(A) observed that the seller of the property admitted that he received higher sale consideration as recorded in the seized material. He also agreed for computation of capital gains considering Rs.1222.23 Lacs as actual sale consideration received as per seized material on sale of Oppanakara Street Property. He had to pay extra tax because of admission of receipt of sale consideration as per seized loose sheet which was higher than the registered value of the

property. Smt. Vanitha Mohan, in whose hand-writings the loose sheets were recorded, clearly confirmed actual sale consideration as noted in the seized material. She explained the nature of amounts recorded in the loose sheet. The content behind recording of such transaction was also explained by her. She identified location of the property and correctly spelt extent of property though she could not give exact name of the assessee but it was clear that she referred to the assessee only. The conclusion of Ld. AO was further supported by the fact that enquiries revealed that the sale value of adjacent land was much higher than the registered sale value. The property was sold with a clear title. Applying the test of human probability as per the decision of Hon'ble Supreme Court in the case of **Sumati Dayal vs. CIT (80 Taxman 89)**, the additions were to be confirmed.

4.4 Another argument of the assessee was that the property was purchased by firm M/s SPP. However, Ld. CIT(A) observed that nowhere the name of M/s SPP was mentioned in sale documents. There was no bar for purchase of properties in the name of the firm. As per own admission of the assessee, only registered value of sale consideration was paid through the firm. The firm was constituted only in the month of May, 2011. Till that date, the business of the firm was being run by HUF. The property was purchased in January, 2012 i.e., approx. after 7 months from the time when the business was carried out by the firm. It could not be construed that the undisclosed income of around Rs.916.47 Lacs was generated by the firm in the matter of 7 months to make payment over and above registered value. Therefore, unexplained investment for purchase of the property would have been contributed by the partners only and therefore, the same was to be assessed in the

hands of the partners only. Finally, the action of Ld. AO in making the impugned addition was upheld against which the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the impugned additions are based on search conducted by the department in the case of Shri M.K. Yusuf of Coimbatore on 07-02-2013. During search, a pocket diary was seized which contained certain notings which are stated to be in the handwriting of Smt. Vanitha Mohan. She admitted that these notings reflected transaction of a real estate property i.e., about 20 cents of land owned by Shri M.K. Yusuf and others which was sold to some textile person from Erode. In the purported agreement to sale, the sale consideration was stated to be mentioned as Rs.1222.23 Lacs whereas the balance yet to be received was stated to be Rs.59.23 Lacs. The same was confronted to Shri M.K. Yusuf and he acknowledged the fact as explained by her. Pertinently, he also agreed to compute the due taxes as arising out of the above transaction. In the above factual background and considering the fact that the assessee was one of the purchasers of the property, Ld. AO proceeded to add the excess on-money allegedly paid under the transactions in the hands of the assessee. The case of the assessee is that Smt. Vanitha Mohan was neither a seller nor the owner of the property. Further, Shri M.K. Yusuf, did not, in unequivocal terms, stated that the property was sold for a higher sale consideration. In subsequent statement recorded on 29-05-2013, he stated that the property was sold for registered sale consideration of Rs.305.76 Lacs only. It is another argument of the assessee that it had not entered into any agreement with Shri M.K. Yusuf and the statement made by Smt. Vanitha Mohan

was totally false and not supported by any such agreement. The assessee also submit that the entire sale consideration was paid through banking channels only. The case of the revenue is that the seller has admitted to the impugned transaction and the excess unaccounted income was assessed in his hands. The Ld. AO bolsters its claim on the ground that Shri M.K. Yusuf settled outstanding loans of more than Rs.7 Crores with Smt. Vanitha Mohan on 02-02-2012 whereas he did not have any other funds but for the sale proceeds of the above property.

6. Upon careful consideration of material fact, we find that the agreement for sale as allegedly entered into by the assessee would be vital for adjudication of the issue in hand. The Ld. AR has stated that the assessee has never entered into any such agreement for the purchase of the property which revenue contradicts. The statement of Smt. Vanitha Mohan as well as the assessment made in the hands of Shri M.K. Yusuf would also be of vital significance since the same form the very basis of impugned addition. We are of the considered opinion that all these evidences including purported agreement for sale need to be confronted to the assessee to bring the issue to a logical end. Under these circumstances, we set aside the impugned order and restore the appeal back to the file of Ld. CIT(A) for fresh adjudication of issue on merits with a direction to the assessee to substantiate its case. The corresponding grounds stand allowed for statistical purposes.

7. The Ld. AR has also raised legal grounds challenging the validity of assessment proceedings on the ground that no incriminating material was found from the assessee. However, as rightly observed by Ld. CIT(A), the original return of income was filed on 01-03-2013. The time limit to issue notice u/s 143(2) was expiring on 30-09-2013 whereas

search has happened on 09-05-2013. Therefore, this year could not be treated as year of completed assessment. The proceedings for this year were pending on the date of search which got abated due to search. Therefore, Ld. AO had jurisdiction to make regular additions based on information gathered / collected even in the absence of any incriminating material found in the case of the assessee. We concur with this adjudication.

8. Another legal argument of Ld. AR is that the assessment ought to have been completed u/s 153C instead of Sec.153A since the loose sheets were found during search on Shri M.K. Yusuf and the same were used against the assessee. In such a case, Ld. AO should have recorded satisfaction of Sec.153C before proceedings against the assessee. In the absence of such a satisfaction, the assessment framed u/s 153A would be bad-in-law. However, we find that the assessee himself has been searched and Ld. AO was under an obligation to issue notice u/s 153A to the assessee and frame the assessment there-under. In such a case, in our opinion, there is no separate requirement of recording of satisfaction note to make the impugned additions in the hands of the assessee. Pertinently, this was an abated year and Ld. AO was free to make any additions whatsoever, by using any material, as available before him. Therefore, this argument is also to be rejected.

9. Similarly, we concur with the adjudication of Ld. CIT(A) to the extent that nowhere the name of M/s SPP was mentioned in sale documents. There was no bar for purchase of properties in the name of the firm. The firm was constituted only in the month of May, 2011. Till that date, the business of the firm was being run by HUF. The property was purchased in January, 2012 i.e., approx. after 7 months from the

time when the business was carried out by the firm. It could not be construed that the undisclosed income of around Rs.916.47 Lacs was generated by the firm in the matter of 7 months to make payment over and above registered value. Therefore, the conclusion that the addition has to be made in the hands of the partners only could not be faulted with. In the result, the appeal stands partly allowed for statistical purposes.

10. It is admitted position that facts as well as issues in other two appeals are pari-materia the same. Consequently, our adjudication as above shall *mutatis mutandis* apply to these appeals also.

11. All the appeals stand partly allowed for statistical purposes.

Order pronounced on 24th February, 2025

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखक सदस्य / ACCOUNTANT MEMBER
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चेन्नई Chennai; दिनांक Dated : 24-02-2025
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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