

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2515/Chny/2024

&

C.O No.77/Chny/2024

निर्धारण वर्ष /Assessment Year: 2018-19

The Asst. Commissioner of
Income Tax,
Circle-1,
Puducherry.

Velayudame Ponnambalame
Vs. Ramalingame,
72-74, Perumal Koil Street,
Puducherry – 605001.
[PAN: AAIPR 7831G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent/CrossObjector)

अपीलार्थी की ओर से/Assessee/Cross
Objector by
प्रत्यर्थी की ओर से /Respondent by

: Shri T. Banusekar, Advocate &
Shri H. Yeshwanth Kumar, C.A
: Ms. Sheila Parthasarthy, CIT

सुनवाई की तारीख/Date of Hearing

: 13.03.2025

घोषणा की तारीख /Date of Pronouncement

: 23.05.2025

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid appeal filed by the Revenue and cross objections (CO) filed by the assessee for Assessment Year (AY) 2018-19 arises out of the order of Learned Commissioner of Income Tax (NFAC), Delhi [hereinafter "CIT(A)"] dated 29.07.2024 in the matter of assessment

:- 2 -:

framed by the Assessing Officer [AO] u/s. 143(3) r.w.s 144B of the Income-tax Act,1961 (hereinafter “the Act”) on 26.04.2021.

2. The ground of appeal raised by the Revenue are as under:

“1. The order of the CIT (A) is contrary to the facts and circumstances of the case.

2. The Id. CIT (A) erred in holding that the addition u/s 56(2)(vii)(b) shall be only Rs.13,24,353/- (being the 50% of the sustained addition of Rs. 26,48,706) in the hands of the assessee, as the assessee brother has paid part of purchase price.

2.1 The Id. CIT (A) erred in holding that the addition u/s 56(2)(vii) (b) shall be only Rs. 13,24,353/- (being the 50% of the sustained addition of Rs. 26,48,706) in the hands of the assessee, without appreciating the fact that as per the conveyance deed the assessee is the single purchaser.

2.2 The Id. CIT (A) erred in holding that the addition u/s 56(2)(vii)(b) shall be only Rs. 13,24,353/- (being the 50% of the sustained addition of Rs. 26,48,706) in the hands of the assessee, without appreciating the fact there is no such provision in the IT Act 1961.

3. The Id. CIT (A) erred in deleting the addition of Rs. 1,46,91,098/- made by the AO on account of undisclosed sales, without appreciating the facts and circumstances of the case.

3.1 The Id. CIT(A) has erred in not appreciating the fact that the assessee deposited Rs.24,16,88,635/- in his various bank account as against offered gross sales of Rs.8,30,000/-. The assessee has not produced any documents / books of account either before the Assessing Officer or Id.CIT(A) to evidence that the assessee has disclosed the said sales advance as Sales in the subsequent year or the sale advance was returned in subsequent years when the sale did not materialize.

3.2 The Id. CIT(A) has erred in deleting undisclosed sales of Rs. 1,46,91,098/- in the absence of copy of agreement/MOU, copy of sale deed subsequently registered, details of parties from whom advance received, details of plot in respect of which advance received and proof for property taxes paid etc.

3.3 The Id. CIT(A) has erred in accepting the assessee's contention that due to corona pandemic people who were with the assessee during those days are not working with him and finding it difficult to furnish the details required by the CIT(A) since obtaining

:- 3 -:

the copy of registered documents is not a hard one for a real estate person.

3.4 The Id. CIT(A) has erred in deleting undisclosed sales of Rs.1,46,91,098/-, whereas the assessee sought from some more time to furnish the required details. The CIT(A) has erred in deleting the addition made by the AO of Rs.1,46,91,098/- as undisclosed sales without analyzing the same.

3.5 The contention of the Id. CIT(A) that the assessee has submitted that the said receipts from the buyers were recorded in the Balance Sheet of the assessee as Trade advance and further the same were incorporated in the subsequent year as sales is without any basis and of any valid documents.

4. The Id. CIT (A) erred in deleting the disallowance of Rs.96,73,687/- made by the AO in assessment order, on account of disallowance of expenses.

4.1 The Id. CIT(A) has erred in not appreciating the fact that the assessee himself admitted that for some instances, the advertisement is given for family members appellant's kids or grandkids birthday or for some other family functions also. This way they solicit customers and develop the brand name. Also, some of the bills are in the name of the appellants employees. Hence, it is clear that expenditure is not allowable u/s.37(1) of the IT Act.

4.2 The Id. CIT(A) has erred in allowing the interest and finance charges to the tune of Rs.69,38,106/- by accepting ledgers, bills and documentary evidences submitted by the assessee. The Id.CIT(A) has not appreciating the fact that the loan was not taken by the assessee and the transaction is not related to the assessee and the assessee has not produced any details to prove the utilization of loan in his real estate business.

4.3 The Id. CIT(A) has erred in not appreciating the fact that the donation receipt filed before the AO was not mentioned that the donation was eligible for claiming deduction under 35(1)(iii). However, the receipt submitted before the Id. CIT(A) comprising of details of 80G. Hence, it is contrary with the original submission. In case, the donation is

4.4 eligible for 80G only 50% can be allowed as deduction. The Id. CIT(A) has erred in not appreciating the fact that the AO in his remand report stated that it is found that the bills and vouchers produced are not clear and not satisfactory that were used for the purposes of the assessee's proprietary business. The bills

:- 4 -:

produced in respect of advertisement expenses only to the tune of Rs.87,887/- were found in order.

For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the Assessing Officer be restored.”

3. Ground No.1 is general in nature and therefore, does not require adjudication.

4. Ground No.2 is against confirming the addition of Rs.13,24,353/- u/s. 56(2)(vii)(b) of the Act.

4.1 The assessee has purchased immovable property in the name of his wife Smt. Nursevi for a consideration of Rs.7,50,00,000/-, while the market value as per SRO was Rs.12,60,00,000/-. The A.O has made the addition of the differential amount of Rs.5,10,00,000/- u/s.56(2)(vii)(b)(ii) of the Act. Aggrieved by this addition, the assessee filed an appeal before the Ld. CIT(A) and submitted additional evidences under Rule 46A(3) of the Income Tax Rules, 1962 (hereinafter “the Rules”). The Ld. CIT(A) called for a remand report and found that the assessee has paid total consideration of Rs.11,25,000/- to the sellers through the registered documents as detailed below:

:- 5 -:

Sale deed No.	Date of Transaction	Extent of Land	Survey No.	Name of the Person to which Amount Paid	Consideration Paid
Sale deed Doc. No. 7778 of 2017	16.06.2017	1,93,142 sq.ft in R.S. No. 154 and 1,66,242 sq.ft in R.S. No. 155/2	R.S. No. 154 & 155/2	(1) Shri. Mir Sultan Mohidine (2) Smt. Saadattunisa	Rs.7,50,00,000
Consent Deed Doc. No. 7780 of 2017	16.06.2017	57,600 sq.ft out of 1,66,242 sq.ft in R.S. No. 155/2	R.S. No. 155/2	Shri. M. Souresh	---
Correction deed Doc. No. 9535 of 2017	19.07.2017	-do-	-do-	-do-	Rs.3,75,00,000
Total					Rs. 11,25,00,000

4.2 The Ld. CIT(A) after considering the submissions of the assessee, accepted that the assessee along with his brother, had paid consideration of Rs.12,33,51,294/-, whereas the stamp duty value of the property was Rs.12,60,00,000/-. Accordingly, he held that the difference of Rs.26,48,706/- should be considered u/s.56(2)(vii)(b)(ii) of the Act. However, since the assessee's share was 50%, the Ld. CIT(A) confirmed the addition to the extent of Rs.13,24,353/-. The Revenue is aggrieved by this and is in appeal, contending that the entire addition should be made in the hands of the assessee as, according to the conveyance deed, the assessee is the sole purchaser.

4.3 The Ld. Authorized Representative (AR) of the assessee has contended that no addition u/s. 56(2)(viii)(b)(ii) of the Act is warranted,

as the difference between the stamp valuation and the actual consideration paid is less than 5% and is covered by the third proviso to section 50C of the Act. The Ld AR relied on the case of *Maria Fernandes Cheryl vs ITO* , ITA no 485/Mum/2019 dated 15-01-2021 and other case laws.

4.4 On the other hand, the Ld. Departmental Representative (DR) has not agreed the averments made by the Ld. AR.

4.5 We have heard the rival submissions, and perused the materials available on record. The A.O has made the addition of Rs.5,10,00,000/- being difference of consideration paid and stamp valuation of the property, u/s. 56(2)(viii)(b)(ii) of the Act. The Ld. CIT(A) has reduced it to Rs.13,24,353/- after considering the additional submission made by the assessee that the assessee along with his brother has paid Rs.12,33,51,294/- as against stamp valuation of property of Rs. 12,60,00,000/-. We agree with the submission of the Ld. A.R that section 56(2)(vii)(b) of the Act has no application as the difference in consideration paid and stamp valuation of property is less than 5% and as per third proviso to section 50C of the Act consideration received is deemed to be the full value of consideration.

:- 7 -:

Accordingly, the addition confirmed by the Ld CIT(A) of Rs.13,24,353/- is deleted.

5. Ground No.3 is against deletion of addition of Rs.1,46,91,098/- made by the A.O on account of undisclosed sales.

5.1 The assessee had received Rs. 86,56,000/- and Rs. 60,35,009/- as advance for the sale of plots, but did not submit any evidence during assessment proceeding to prove that these sale transactions were recorded in the books of accounts. The A.O therefore, made the addition of Rs. 1,46,91,098/- as undisclosed sales of the assessee. On appeal, the Ld. CIT(A) has held that the sale receipts from the buyers were recorded in the balance sheet as trade advances and the same were incorporated in the subsequent year as sales and hence, the Ld. CIT(A) deleted the addition.

5.2 The Ld. DR, has submitted that the assessee did not produce any documents/books of accounts either before the A.O or before Ld. CIT(A) to establish that the assessee has disclosed the said sales advance as sales in the subsequent year or the sale advance were returned in the subsequent years when the sale did not materialize. The Ld. DR further submitted that the observation of Ld. CIT(A) that

the sale receipt from the buyers were recorded in the balance sheet of the assessee as trade advance and further, same were incorporated in the subsequent year as sales is without any basis and of any valid documents. Therefore , the order of Ld CIT(A) be reversed.

5.3 On the other hand, the Ld. AR supported the order of Ld. CIT(A) and submitted that the transactions are duly recorded in the books of account.

5.4 We have heard the rival submissions and examined the material available on record. The Ld. CIT(A) has held that the receipt of Rs.1,46,91,098/- from the buyers was recorded in the balance sheet as trade advances and partly recognized as sales in the subsequent year. However, we find that the assessee has not produced books of account or entries of these transaction, either before Ld CIT(A) or A.O to substantiate his claim. The Ld AR asserted that same can be produced before authorities. In view of this, we remit the matter back to the file of the A.O. for verification whether the said receipts were, in fact advances towards sale and subsequently recorded as sales or sales returned in the books of account. In case it is found that the

receipts were duly accounted for, the addition made shall stands deleted.

6. Ground No.4 is against in deleting the disallowance of Rs.96,73,687/- made by the A.O on account of disallowance of expenses.

6.1 The A.O has made disallowance of following expenditure as the assessee has not been able to file proper and complete evidence:

Sr. No.	Description	Amount
1	Advertisement	4,54,151
2	Sales Promotion	1,33,950
3	Commission	2,92,258
4	Depreciation	7,58,376
5	Insurance	2,55,690
6	Repair and Maintenance	5,88,656
7	Interest & Bank Charges	69,38,106
8	Donation	2,52,500
	Total	96,73,687

6.2 During the appellate proceedings, the assessee has submitted addition evidence and the Ld. CIT(A) has called for remand report based on which the Ld. CIT(A) deleted the disallowance by accepting the ledgers, bills and documentary evidences.

:- 10 -:

6.3 The Ld. DR has argued that the assessee himself has admitted that for some of the expenses, such as advertisement, were incurred for family members and some of the bills were issued in the name of assessee's employees. Therefore, according to the Ld. DR, the Ld. CIT(A) was not justified to allow said expenditure. Further, the Ld. DR has submitted that the Ld. CIT(A) has allowed the interest and financial charges to the tune of Rs.69,38,106/- by accepting the ledger bills and documentary evidences submitted by the assessee, without appreciating the fact that assessee has not taken the loan and the transaction was not related to the assessee. and no details was produced to prove the utilization of the loan in real estate business. The Ld. DR has further submitted that the Ld. CIT(A) has allowed the donation without verifying whether the donation to Puducherry cancer trust and hospital was allowable u/s. 35(1)(iii) of the Act. The Ld. AR has submitted that the receipts submitted before the Ld. CIT(A) comprising of details of donation under Section 80G of the Act and therefore, only 50% of the deduction can be allowed u/s. 80G of the Act.

6.4 The Ld. AR has supported the order of Ld. CIT(A) and submitted that all the expenses were incurred in cheque and for external

evidences like bills were submitted before. A.O . The Ld AR submitted that only for some expenses bill could not be produced due to staff and corona problem.

6.5 We have heard the rival submissions, and perused the materials available on record. We find that Ld CIT(A) has deleted the addition by making general observation that the assessee has elaborately substantiated all the expenses disallowed, without discussing each expenses disallowed by the A.O. The Ld DR has raised the issues which needs verification. We, therefore remit this matter back to the file of the A.O. The A.O shall decide the issue after providing proper opportunity to the assessee to produce all evidences in support of the claim of expenditure.

C.O No.77/Chny/2024:

7. The assessee has filed cross objection against the confirmation of the addition of Rs. 13,24,353/- u/s. 56(2)(vii)(b)(2) of the Act. We have already held in Revenue's appeal that no deduction is warranted u/s. 56(2)(vii)(b)(2) of the Act, the C.O filed by the assessee has become infructuous and is accordingly dismissed.

:- 12 -:

8. In the result, the appeal filed by the Revenue is partly allowed and the C.O filed by the assessee is dismissed.

Order pronounced on 23rd May, 2025.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)
न्यायिक सदस्य / Judicial Member

Sd/-
(जगदीश)
(Jagadish)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 23rd May, 2025.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF