

आय अधकरण, "डी+यायपीठ, चेनई
PELLATE TRIBUNAL 'D' BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदय एवं श्री धुवु आर.एल रेडी, यायक सदय के सम
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

I T.A. Nos. 1333/Mds/2014 & 371/Mds/2015
Assessment Years: 2009-10 and 2010-11

Shri R. Govindarajulu,
No. 15, Sikkandar Batsha Street,
Gandhinagar (PO), Udumalpet.
[PAN:AHCPG9679A]

The Income Tax Officer,
Vs. Ward I(1),
Pollachi.

(अपीलाथ /Appellant)

(यथ/Respondent)

अपीलाथ का ओर से / Appellant by : Shri T. Banusekar, C.A.

यथ का ओर से/Respondent by : Shri Mathivanan, JCIT

सुनवाई का तारख / Date of hearing : 21.04.2016

घोषणा का तारख /Date of Pronouncement : 15.07.2016

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

Both the appeals filed by the same assessee are directed against separate orders of the Id. Commissioner of Income Tax (Appeals) II, Coimbatore dated 26.02.2014 and 29.09.2014 for the relevant assessment years 2009-10 and 2010-11 respectively. For the assessment year 2009-10, the first common ground raised in the appeal is with regard to confirmation of addition of . 20,00,000/- made under section 69 of the Income Tax Act, 1961 [Act+ in short] as unexplained investment in repayment of housing loan, (2) confirmation of estimation of income from fast moving goods at

in the bank account of the assessee without any basis and (3) confirmation of addition of . 2,50,000/- towards income from real estate business relying on the sales made as power agent.

2. Brief facts of the case are that the assessee is an individual and filed his return of income for the assessment year 2009-10 on 08.10.2009 admitting income of .3,22,857/- and agricultural income of .4,40,000/-. The return filed by the assessee was processed under section 143(1) of the Act. The case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued on 26.08.2010. After considering the submissions of the assessee, the assessment was completed under section 143(3) of the Act on 30.12.2011 by determining total income of the assessee at . 30,81,752/- after making various additions in respect of .20,00,000/- with regard to repayment of housing loan, income from commission at .1,59,003/-, discrepancy in lease rental at .99,892/- and brokerage income from real estate transaction of .5,00,000/-.

3. Aggrieved, the assessee is in appeal before the Id. CIT(A). By considering the submissions of the assessee, the Id. CIT(A) partly allowed the appeal filed by the assessee.

4. On being aggrieved, the assessee is in appeal before the Tribunal.

5. We have heard both sides, perused the materials on record and gone through the orders of authorities below. With regard to repayment of housing

Counsel for the assessee is that the assessee has repaid the housing loan to the extent of .20,00,000/- on 28.08.2008. The assessee has shown total income of .3,22,857/- and agricultural income of .4,40,000/- during the year under consideration. Therefore, the Assessing Officer added .20,00,000/- as undisclosed investment. On this aspect, the contention of the assessee is that the assessee has received advance of .20,00,000/- for sale of agricultural land. However, the Assessing Officer has not accepted the submissions of the assessee for the following reasons:

- (a) The assessee has not disclosed any sale of land in his return of income.
- (b) The withdrawal of cash of .36.00 lakhs by the purchaser Shri V. Muralitharan from his bank account by cash is on 30.12.2008 cannot be the source for cash deposited 4 months earlier i.e., on 28.08.2008.
- (c) If indeed there is a source from sale of agricultural land nothing would have prevented Shri Muralitharan by transferring this amount by cheque to the assessee.

With these findings, the Assessing Officer added .20,00,000/- as unexplained investment and the same was confirmed by the Id. CIT(A). Before us, the Id. DR submits that the Id. Counsel for the assessee failed to furnish evidence for the advance receipt of money for sale of agricultural land. However, Shri V. Muralitharan, a non-resident furnished a letter stating that he has withdrawn .36,00,000/- from Indian Bank, Udumalpet NRO Account on 30.12.2008 towards settlement of land purchase consideration,

the amount of .20,000/- on 28.08.2008.

Therefore, the order passed by the Id. CIT(A) should be confirmed.

6. Before us, the Id. Counsel for the assessee submits that the Assessing Officer has not given any opportunity to the assessee to rebut the contents of the letter obtained from the purchaser and therefore, he prayed that an opportunity should be given to the assessee to substantiate his claim. After considering the facts and circumstances of the case and to meet the ends of justice, we are of the firm view that it is a fit case to remit the issue back to the Assessing Officer and accordingly, we direct the Assessing Officer to verify the details and decide the issue afresh after allowing sufficient opportunity of hearing to the assessee.

7. As far as estimation of commission income from fast moving goods at 10% of the credits appearing in the bank account is concerned, the Assessing Officer has noticed that the total cash credits in the ICICI Bank Account was .24,72,750/- out of which, the income from Suguna Poultry Farm was .8,82,712/-. With regard to the balance cash credit of .15,90,038/- when specifically asked to furnish the details of business done and the resultant transactions in the bank, the assessee vide its letter dated 27.12.2011 mentioned that the assessee was doing trading in fast moving goods and for this business, he has received an amount of .16,36,938/- to his bank account and would like to offer an income of 5% as commission on

Assessing Officer asked to furnish the details of business done, the assessee could not furnish any details. Therefore, the Assessing Officer disallowed ₹ 1,59,003/- being 10% of unexplained cash credits of ₹ 15,90,038/-. On appeal, the Id. CIT(A) confirmed the disallowance since the assessee could not file any evidence before him. Even on appeal before this Tribunal, the assessee has not furnished any details of business done with regard to the income from fast moving goods. Thus, we find no reason to interfere with the order passed by the Id. CIT(A) and accordingly, we sustain the addition made by the Assessing Officer and confirmed by the Id. CIT(A). Hence, the ground raised by the assessee is dismissed.

8. The next ground raised in this appeal is with regard to confirmation of addition of ₹ 2,50,000/- towards income from real estate business relying on the sales made as power agent. The assessee was doing the real estate business of buying and selling of properties, but no income was offered under this head in the return of income filed. The assessee has signed certain documents as power agent at Sub-Registrar's Office, Udumalpet and the details were given in the assessment order. The Assessing Officer has estimated an amount of ₹ 5.00 lakhs from these transactions. Considering the volume of transactions, the Id. CIT(A) restricted the earning from the real estate transaction to ₹ 2,50,000/-, which in our opinion is found to be

infirmity in the order passed by the Id. CIT(A)

and the ground raised by the assessee is dismissed.

9. So far as appeal filed by the assessee for the assessment year 2010-11 is concerned, the appeal of the assessee is found to have been filed late by 55 days in filing the appeal. The assessee filed petition for condonation of delay in filing the appeal in support of affidavit. By referring to the petition for condonation of delay, the Id. Counsel for the assessee has submitted that the assessee could not file the appeal before the Tribunal due to the unavoidable circumstances explained in the petition as well affidavit. Therefore, he pleaded that there is no willful delay in filing the appeal and prayed for condonation of delay in filing the appeal. We have perused the records and found that there is sufficient cause for delay in filing the appeal. The Id. DR did not object to the plea of the Id. Counsel for the assessee. Accordingly, we condone the delay and admit the appeal for hearing and adjudication.

10. The only ground raised in the appeal of the assessee is with regard to confirmation of addition of .44,00,000/- made under section 69 of the Act. During the course of assessment proceedings, the Assessing Officer has noticed that the assessee has introduced fresh capital to the tune of .44 lakhs during the previous year relevant to the assessment year 2010-2011. With regard to the source for the introduction of fresh capital, the AR of the

the Assessing Officer that the assessee has sold agricultural land belonging to him and the fresh capital introduced was out of the sale proceeds received by the assessee. However, on verification of the sale deed, it was noticed that the sale was executed on 31st December 2008 for a consideration of ₹.36.70.000/-. The assessee had only 1/3rd share in the property sold. Therefore, the share of the assessee from the above sale will only be ₹.12.23 lakhs. Moreover, the assessee should have brought it to the balance sheet for the year ended on 31-03-2009. When these discrepancies were pointed out by the Assessing Officer, it was explained by the AR of the assessee that the actual sale consideration was ₹.1,06,50,000/-. Considering the request made by the purchaser, the property was under-valued in the sale deed at ₹.36,70,000/- so that the purchaser might get the benefit of stamp duty to the tune of ₹.5,58,400/-. It was further explained that at the time of finalization of the accounts the assessee did not furnish the details of sale of agricultural land and the sale deed to the auditor. Consequently, it got omitted in the balance sheet for the year ended on 31.03.2009.

11. The case was under scrutiny for the assessment year 2009-10 also. During the previous year relevant to the assessment year 2009-10, the assessee had repaid housing loan to the tune of ₹.20,00,000/- (Twenty lakhs only). While explaining the source for the loan repayment it was stated that the loan was repaid from the advance received in connection with the sale of

and scrutiny this contention was rejected on the ground that the purchaser of the property had not agreed to having given any such advance to the assessee. When an explanation was sought in this regard the AR of the assessee produced a copy of the agreement for a consideration of .1,06,50,000/-. The date of the stamp paper and the signature of the witness as well as the purchaser appeared to be tampered in the copy of the agreement furnished. Even if it was considered as a true agreement the assessee was not in a position to explain the sources. The assessee will get only .35,50,000/- (Rupees thirty five lakhs and fifty thousand only) as his share in the property. Loan repayment together with the fresh capital introduced worked out to .64 lakhs. Still there is a shortage of .28,50,000/-. Taking into consideration of all the above facts, the Assessing Officer has held that the agreement cannot be accepted overlooking the registered sale deed which has more evidentiary value. The purchaser also had not agreed to have given any amount of money to the assessee by way of advance on the said transaction. Therefore, the fresh capital introduced to the tune of .44,00,000/- was treated as income from Other Sources and added to the total income of the assessee under section 69 of the Income-tax Act.

12. On appeal before the Id. CIT(A), confirmed the addition made by the Assessing Officer.

13. On being aggrieved, the assessee is in appeal before the Tribunal.

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es, perused the materials on record and gone through the orders of authorities below. In this case, the assessee has claimed to have sold the agricultural land for a consideration of .1,06,50,000/-. However, the purchaser has not agreed the above amount as sale consideration paid to the assessee. Moreover, when the Assessing Officer verified the sale deed, he has noticed that the sale deed was executed on 31st December, 2008 for a consideration of .36,70,000/- and the assessee had only 1/3rd share in the property sold. Therefore, the share of the assessee from the above sale would only be .12.23 lakhs. It is clear from the above facts that the sale was took place during the financial year 2008-09 relevant to the assessment year 2009-10. In the assessment year 2010-11, the assessee has admitted income of .3,11,850/- and agricultural income of .2,50,000/- only. However, the Assessing Officer noticed that the assessee has introduced fresh capital to the tune of .44.00 lakhs during the financial year 2009-10 relevant to the assessment year 2010-11 for which the assessee has not produced any evidence before the authorities below or even before the Tribunal. The main contention of the assessee is that the sale consideration was .1,06,50,000/- and the same was mentioned in the agreement of sale, and in order to reduce the stamp duty, the purchaser has reduced the sale consideration. However, the same was not considered by the Assessing Officer. Before us, the Id. Counsel for the assessee reiterated the submissions. Even if it is considered as true, the assessee is not in a

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ce because, admittedly, the share of the assessee is only 1/3rd and it amounts to .35,50,000/- only out of the total alleged sale consideration of .1,06,50,000/-, whereas, the assessee has stated to have repaid the loan amount of .20,00,000/- and the fresh capital introduced at .44,00,000/- out of the above sale consideration. Therefore, we are unable to accept the contentions of the assessee. Accordingly, the addition made under section 69 of the Act by the Assessing Officer was rightly confirmed by the Id. CIT(A) and we have no reason to interfere with the order of the Id. CIT(A). Thus, the ground raised by the assessee is dismissed.

15. In the result, the appeal filed by the assessee for the assessment year 2009-10 is partly allowed for statistical purposes and the appeal filed for the assessment year 2010-11 is dismissed.

Order pronounced on the 15th July, 2016 at Chennai.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 15.07.2016

Vm/-

आदेश का प्रतिलिपि अर्पण/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. प्रभागीय प्रशासक/DR & 6. गार्डफाईल/GF.