

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

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय 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.1025/Chny/2022**  
**(निर्धारण वर्ष / Assessment Year: 2016-17)**

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| <b>Shri Duraisamy Parameswaran</b><br>No.205, Krishna Nagar, Alagapuram,<br>Kattur, Salem-636 016. | <b>बनम</b><br>/ Vs. | <b>ACIT</b><br>Central Circle-2(4),<br>Chennai |
| स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AJLPP-1999-D</b>   |                     |  |
| (पीलार्थी/ <b>Appellant</b> )  | :                   | (प्रत्यर्थी / <b>Respondent</b> )              |

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| अपीलार्थीकीओरसे/ <b>Appellant by</b>   | : | Shri V. Padmanabhan (CA) &<br>Shri R. Venkat Raman (CA) – Ld.ARs |
| प्रत्यर्थीकीओरसे/ <b>Respondent by</b> | : | Shri S. Senthil Kumaran (CIT)- Ld. DR                            |

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| सुनवाईकीतारीख/ <b>Date of Hearing</b>       | : | 03-08-2023 |
| घोषणाकीतारीख / <b>Date of Pronouncement</b> | : | 23-08-2023 |

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of order dated 19.09.2022 passed by learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] in the matter of an assessment framed by Ld. AO u/s 143(3). r.w.s. 153C of the Act on 16.08.2021. In the original grounds of appeal, the assessee has assailed quantum addition of Rs.200 Lacs as confirmed by Ld.CIT(A). The assessee is also aggrieved by the fact that agricultural income of Rs.10 Lacs belonging to HUF entity has been considered in the hands of the

assessee. The assessee has filed additional grounds of appeal on 03.07.2023 wherein the assessee has submitted that in the absence of any incriminating material, the addition of Rs.10 Lacs on account of agricultural income and disallowance u/s 37(1) for Rs.8.16 Lacs is without jurisdiction. The additional ground no.1 has not been pressed before us.

2. The Ld. AR advanced arguments and submitted that the terms of the agreement which form the basis of impugned addition of Rs.200 Lacs were not acted upon. For the same, Ld. AR drew out attention to various documents as placed in the paper-book. The Ld. CIT-DR, on the other hands, submitted that the additions are based on incriminating material found during the course of search operations. Having heard rival submissions and upon perusal of case records, our adjudication would be as under. The assessee being resident individual is stated to be engaged in road transportation.

### **Assessment Proceedings**

3.1 From the case records, it emerges that a search and seizure operation u/s.132 of the Act was conducted in the case of Shri Danda Brahmanandam and Shri Javvaji Ramanjaneyulu on 21.02.2019. During those proceedings, the assessee was also subjected to search proceedings and consequently, an assessment was framed u/s. 143(3) r.w.s 153C of the Act wherein impugned additions were made and the same is under challenge before us.

3.2 During the course of search, certain incriminating materials were seized vide Annexure ANN/KAR/PAR/LS/S dated 21.02.2019 which, inter-alia, contained details of alleged unexplained investment of Rs.200

Lacs by the assessee for purchase of certain property during financial year 2015-16. Accordingly, notice u/s.153C was issued to assessee. In response, the assessee offered income of Rs.3 Lacs and filed requisite details as called for by Ld. AO.

3.3 The loose sheets were seized vide annexure ANN/KAR/PAR/LS/PAGES 1-254 dated 21.02.2019. The page nos. 222 to 248 of the said seized material was a set of sale agreement executed on 04.02.2016 and the same contained the details of advance paid by the assessee to the tune of Rs.200 Lacs for purchase of certain property situated at Survey no. 15/94, VGP Golden Beach Part-1. Post search, the same was confronted to the assessee u/s 131(1A) of the Act on 03.07.2019 and the assessee was directed to explain the source of the payment. The reply of the assessee was under: -

A8. During the financial year 2015-16, I proposed to purchase this property. The sellers were known to me through my personal friend Mr. Ashok Kumar. Hence, I do not verify authenticity of the seller and based on oral agreement and trust I gave an token advance of Rs.5 lakh. Subsequently when I verified original documents I came to know that sellers were not genuine and in fact has forged the original document. When I tried to contact the seller, I came to know that they have vacated their premises and were absconding. I did not have any proof to establish that I had given Rs.5 lakh as advance. Hence, based on the advice of some of my police friends, I prepared this agreement myself for the purpose of filing an FIR with the police. The same is present in page no. 222 to 248. In this regard I also wish to state that in order to secure my investment of Rs.5 lakhs I took a settlement deed from Mrs. Pardwaz who is sister of Mrs. Daulat Beagum who cheated me in this transaction. I would like to state that I have paid only Rs.5 lakhs and not Rs.2 crores.

The assessee thus submitted that he proposed to purchase the said property and advanced a sum of Rs.5 Lacs to the seller who cheated the assessee since the original documents were not genuine and the same were forged. In order to secure the investment, the assessee took settlement deed of Mrs. Pardwaz who is stated to be the sister of Mrs.

Daulat Beagum who cheated the assessee in the transaction. The statement of the assessee was again recorded during the course of assessment proceedings on 04.02.2021 wherein the aforesaid facts were reiterated. The Ld. AO held that it was very much evident that the assessee gave advance for purchase of property. The sale consideration was Rs.420 Lacs out of which the assessee paid advance of Rs.200 Lacs on the date of agreement and balance Rs.220 Lacs was agreed to be paid on the day of registration.

3.4 The loose sheets at page nos.230 to 236 were the copy of complaint filed by the assessee on 02.03.2020 before police authorities. In the complaint, it was stated by the assessee that he paid advance of Rs.200 Lacs for purchase of said property. The Ld. AO held that the assessee did not produce any evidence that the advance of Rs.5 Lacs only was paid and not Rs.200 Lacs. The assessee failed to produce evidence for his claim of advancing Rs.5 Lacs only. The loose sheets also contained promissory note signed by Shri A.M. Jinna along with his wife and son in favor of the assessee. It reads as pledging document no. 14739/2013 registered at SRO, Thiruporur pertaining to certain property worth Rs.54 Lacs situated at No.44, Kallasanathar Koil Street, Kovalam, Thiruporur, Kancheepuram District till the amount of Rs.200 Lacs is repaid to the assessee.

3.5 Upon perusal of complaint, it was to be seen that the assessee had been cheated in the aforesaid transaction. In the stated transaction, Shri A.M. Jinna was the middle man. In order to protect the interest of the assessee, he not only complained to the police but also gave title deed of property. The assessee made sure that Shri A.M. Jinna shall repay

the advance of Rs.200 Lacs to the assessee in the form of promissory note reconfirming that the assessee had invested Rs.200 Lacs for purchase of property at VGP Golden Beach. Accordingly, Ld. AO treated the amount of Rs.200 Lacs as unexplained investment u/s 69 and added the same to the income of the assessee.

### Agricultural Income

3.6 It transpired that the assessee claimed agricultural income of Rs.10 Lacs in hands of HUF entity. It was explained by the assessee that HUF was formed amongst family members for agricultural operations only. The agricultural land was inherited property by way of settlement deed. Since the income of HUF was less than taxable limit, no return of income was filed for HUF and there was no necessity to obtain PAN for HUF. The assessee acquired the property in 2011 through family settlement. However, rejecting the same Ld. AO held that there was no HUF and accordingly, the income of Rs.10 Lacs pertaining to this year was treated as unaccounted income u/s 68 and added to the income of the assessee.

### Gift to wife

3.7 The assessee claimed to have gifted to his wife a Honda City car worth Rs.8.16 Lacs. The Ld. AO held that the same could not be accepted as an expenditure u/s 37(1) and therefore, the same was added to the income of the assessee.

### Proceedings before Ld. CIT(A)

4.1 During appellate proceedings, the assessee reiterated that the seller i.e., Smt. Daulat Begum (a fictitious person) was known to him through his personal friend Shri Ashok Kumar. Therefore, he did not

verify the authenticity of the seller and based on oral agreement and trust, he gave token advance of Rs.5 Lacs. However, when the original documents were verified, it was known that the seller was not genuine and the documents were forged. The seller kept absconding. Based on the advice of some of police friends, the assessee prepared this agreement himself for the purpose of filing an FIR with the police. In order to secure the investment of Rs.5 Lacs, the assessee took settlement deed executed by Mrs. Pardwaz who is the sister of Mrs. Dhoulat Begum who cheated the assessee in this transaction. The assessee reiterated that he paid only Rs.5 Lacs and not Rs.200 Lacs as alleged by Ld. AO.

4.2 The assessee also submitted that since Mrs. Dhoulat Begum was not the legal owner of the aforesaid plots, the sale deed could not be executed and therefore, he had requested for refund of the aforesaid advance amount. Finally, cancellation deed was executed on 01.03.2016 and advance of Rs. 5 Lacs was recovered from alleged seller's sister.

4.3 However, not convinced, Ld. CIT(A) held that the addition was based on seized material. The assessee failed to prove that it advance only Rs.5 Lacs and therefore, impugned addition of Rs.200 Lacs was confirmed.

4.4 Regarding agricultural income, Ld. CIT(A) held that the assessee obtained agricultural land only through settlement deed. Once the settlement deed is executed, the assessee becomes individual owner of the property and therefore, the income arising there-from has to be assessed in the status of individual only. Accordingly, impugned addition made u/s 68 was to be deleted. The Ld. AO was directed to treat the

agricultural income in the individual capacity of the assessee rather than in the hands of HUF and consider the same in computing the tax.

4.5 Regarding gift to wife, the assessee submitted that it offered income on presumptive basis u/s 44AE and therefore, there exist no Profit & Loss account claiming this amount to be expenditure u/s 37(1). Concurring with the same, this addition was deleted by Ld. CIT(A) in para 5.7 of the order. Accordingly, the appeal was partly allowed against which the assessee is in further appeal before us.

### **Our findings and Adjudication**

5. From the fact, it emerges that during search operation on assessee, certain material was found and seized. The material include a sale agreement dated 04.02.2016 which, inter-alia, contain the details of advance paid by the assessee to the tune of Rs.200 Lacs for purchase of certain property situated at Survey no. 15/94, VGP Golden Beach Part-1. The property was proposed to be purchased for Rs.420 Lacs. The translated version of the same has been placed on page nos. 1 to 6 of the paper-book. We have gone through the same. During the course of assessment proceedings, it was submitted by the assessee that he proposed to purchase the said property under oral agreement since the seller was known to a personal friend. The assessee did not verify the authenticity of the seller and based on oral agreement and trust, he gave token advance of Rs.5 Lacs. However, it came to light that the seller was not genuine and the original documents were forged. The assessee was cheated and the alleged seller was absconding. On advice and to put pressure on alleged seller, the assessee prepared this agreement and preferred Police Complaint for recovery of the advance amount of

Rs.200 Lacs. In such a case, the assessee would have no proof to establish that advance of Rs.5 Lacs was given. In order to secure the payment, the assessee obtained settlement deed from the middle man for a property which is worth Rs.54 Lacs only as noted by Ld. CIT(A) which weakens the conclusion of Ld. AO that the assessee made advance of Rs.200 Lacs as mentioned in the sale agreement and to secure the payment to that extent, the assessee obtained pledge of title deed. It could also be seen that the conclusion of Ld. AO is based merely only on this sale agreement and the complaint filed with the Police Authorities for recovery of advance amount of Rs.200 Lacs. However, the complaint to Police Authorities has not yielded any result and finally, no FIR has been lodged. Further, there is no concrete evidence on record to suggest that the assessee paid said alleged sum of Rs.200 Lacs at agreement stage itself. It is also inconceivable that the assessee would part with approx. 48% of sale consideration at agreement stage itself when the sale transaction was to be completed within 6 months from the date of the agreement.

6. It could further be seen that no independent enquiry has been conducted by Ld. AO from any of the parties to establish the flow of fund to the extent of Rs.200 Lacs. The assessee's case is further substantiated by the fact that the assessee entered into cancellation agreement on 01.03.2016 with the sister of the alleged seller. As per the terms of this agreement, the assessee was to receive back the said advance amount of Rs.5 Lacs. The same lend credence to the submissions of the assessee. The Hon'ble Gujarat High Court in the case of **CIT vs. Vivek Prahladbhai Patel (66 Taxmann.com 41)**, in

similar circumstances, held that since the revenue failed to bring on record reliable evidence to prove that the assessee had made actual investment, the additions would not be sustainable. Similar is the case law of Jaipur Tribunal in **Smt. Renu Agarwal vs. ACIT (88 Taxmann.com 872)** which supports the case of the assessee. This decision has also been rendered on similar circumstances.

7. In the light of above stated facts and circumstances, the impugned addition, in our considered opinion, is not sustainable to full extent of Rs.200 Lacs. It is admitted fact by the assessee that it has paid only sum of Rs.5 Lacs to the sellers and therefore, the investment, to that extent, could be considered as undisclosed investment by the assessee. Accordingly, the impugned addition stand restricted to the extent of Rs.5 Lacs. We order so. The corresponding grounds stand partly allowed.

8. So far as the addition of agricultural income is concerned, we find that the assessee has been searched on 21.02.2019. It is undisputed fact that on the date of search, no assessment proceedings were pending against the assessee for the year under consideration. Therefore, this is a year of unabated assessment. We also find that the impugned addition is not based on any incriminating material as found by the department during the course of search proceedings. In such a case, no addition could have been made by revenue in terms of the recent decision of Hon'ble Apex Court in **DCIT vs. U.K. Paints (Overseas) Ltd. (150 Taxmann.com 108)**. In this decision, Hon'ble Court followed its earlier decision rendered in **Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (149 Taxmann.com 399)** and held that where no incriminating material was found in case of any of assessee either from assessee or from third

party, High Court rightly set aside assessment order passed under section 153C. In the present case, the facts are similar. There is nothing on record which would show that any incriminating material was found during search operation which would show that the agricultural income belonged to the assessee instead of HUF. Therefore, respectfully following the binding judicial precedent, we would hold that the aforesaid agricultural income is not to be considered in the hands of the assessee. The corresponding grounds raised by the assessee stand allowed. The addition on account of gift to wife has already been deleted in the impugned order.

9. The appeal stand partly allowed in terms of our above order.

*Order pronounced on 23<sup>rd</sup> August, 2023.*

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

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

चेन्नई Chennai; दिनांक Dated : 23.08.2023  
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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