

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

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA No.37/Chny/2023
निर्धारण वर्ष /Assessment Year: 2009-10

Gnanasambantham
Shanmuganathan,
7/8, Lakshmi House,
Palakkad Main Road, Kuniamuthur,
Coimbatore – 641 008.
[PAN: AQEPS-4036-J]

The Asst. Commissioner of
Income Tax,
Circle-2,
Coimbatore.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri S. Sridhar, Advocate (Erode)
: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 18.05.2023

घोषणा की तारीख /Date of Pronouncement

: 14.06.2023

आदेश / ORDER

PER MANOMOHAN DAS, J.M:

This appeal filed by the assessee is directed against order of the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter "CIT(A)"] dated 14-11-2022 and pertains to Assessment Year [AY] 2009-10. The assessee has raised following grounds of appeal:-

"1) The order of the learned CIT(A) is bad and erroneous in law and against the principles of natural justice.

2) *The learned CIT(A) erred in not considering the written submissions filed by the appellant in proper perspective.*

3) *Additional Grounds of Appeal:*

(a) The learned CIT(A) erred in not considering the vital fact that the entire assessment proceedings are null and void, for the very issue of notice w/s. 148 dated 25/08/2011 was premature, when there was time to issue and serve notice w/s. 143(2) for the return of income filed on 20/09/2010.

(b) The learned CIT(A) erred in not considering the vital fact that the Assessing Officer resorted to the issue of notice u/s. 148 dated 25/08/2011 just to get the extended period of limitation for assessment under the then Section 153(2), while the assessment should have been completed on or before 31/03/2012 based on the return of income filed on 20/09/2010.

3) *The learned CIT(A) erred in not considering the material fact that the CIT(A) in the case of another assessee, Shri. V.Dhanabal, involving SIMILAR ISSUE, allowed the appeal of that assessee in ITA No: 65/15-16 dated 27/05/2016.*

And for other grounds of appeal that may be adduced at the time of hearing, the appellant prays that the appeal be admitted, submissions be considered and justice be rendered."

2. Brief facts of the case are that the assessee filed the return of income for the assessment year 2009-10 in response to the notice under section 148 of the Income Tax Act, 1961 [the Act] on 03-11-2011 admitting a total income of Rs. 11,27,390/- and agricultural income of Rs.3,00,000/-. The assessment under section 143(3) r.w.s.147 of the Act was completed on 30-03-2013 by Ld. Assessing Officer [AO] by making an addition of Rs.5,20,50,130/- and assessing the income at Rs. 5,27,33,455/-.

3. The assessee alongwith other 4 (four) persons purchased 50.58 acres of land at Sestrampalayam Village. The assessee organized for all the purchases of land from 50 persons and negotiated for a total selling price for all of them. Based on the survey and further enquiries conducted, it was found that the assessee got 148 Lacs from Mr. Nataraj Ganesh, one of the co-purchasers, who gave 70 Lacs by way of demand draft to the assessee. Similarly, Rs. 60 Lacs also paid to Mr. V. Dhanpal, brother-in-law of the assessee. Mr. Nataraj Ganesh through an affidavit claimed that, the amount paid to the assessee was towards arrangement of purchase and sale by way of a venture. However, the claim of the assessee is that the said amount was received by him to make further investment for purchase of some other property on behalf of Mr. Nataraj Ganesh. The Ld. AO added Rs. 1.48 Crores as the income of the assessee u/s 68 of the Act against which appeal was filed before the Ld. CIT(A) who allowed the appeal of the assessee. Thereafter, the Department filed appeal before the Tribunal. The Tribunal remitted the issue of transaction of Rs. 1.48 Crores between Nataraj Ganesh and the assessee to the file of the Ld. AO for fresh consideration.

In compliance to the order of the Tribunal, the Ld. AO conducted fresh hearing wherein the assessee stated that Rs. 70 Lacs was offered in A.Y. 2015-16 after receipt of reply of Nataraj Ganesh to the notice which was sent by the Advocate of Dhanpal. The Ld. AO verified the assessment order of Nataraj Ganesh for A.Y. 2009-10 and observed that Rs. 70 Lacs was claimed by Nataraj Ganesh as purchase cost of land and the same was allowed as expenses in the same A.Y. itself. Accordingly, the Ld. AO vide order dated 29-12-2017 has added Rs. 70,00,000/- to the total income of the assessee.

4. Being aggrieved, the assessee filed 1st appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 14-11-2022 confirmed the order passed by the Ld. AO.

Aggrieved, the assessee filed the present appeal before the Tribunal.

5. Heard the representatives of both the parties and perused the materials on record. The Ld. AR reiterated the claim that Nataraj Ganesh gave the amount of Rs. 70,00,000/- to find another property for his investment. The assessee made

submissions before the Ld. A.O that, Mr. Nataraj Ganesh had paid Rs. 60 Lacs to Mr. Dhanpal. Mr. Dhanpal claimed before the Assessing Officer of Mr. Nataraj Ganesh that the said amount of Rs. 60 Lacs is not his income, the same is holding by him as the money in trust. No enquiry or summons was received by the assessee on the sum of Rs. 70 Lacs and allowance of the said amount of Rs. 70 lakhs as an expenditure in the file of Nataraj Ganesh is a surprise to the assessee. On the other hand, the Ld. DR supports the findings of the Ld. CIT(A).

6. The assessee did not appear before the Ld. CIT(A) despite sufficient opportunities were given to him. The Ld. CIT(A) decided the matter against the assessee. While doing so, the Ld. CIT(A) has rested on the observations of the Ld. AO as the assessee failed to appear before him. The Ld. AO noticed that, in the reply to the legal notice of Dhanpal, Nataraj Ganesh clearly narrated the transaction, part of which are read as under:-

"The averments made in Para 3 of your notice that my client had paid a sum of Rs 60,00,000/- by way of Banker's Cheques/Demand Drafts and the same were credited in your client account is admitted herein. The further averments made in that paragraph that my client had paid the money for

investment purpose to our client is not admitted. The amount paid by my client to your client is on the instruction of G Shanmuganathan and my client had not paid the money as a loan/advance for purchase of any other land to your client for the future purchase of land as claimed in your letter. My client had never directed your client or Mr G Shanmuganathan to purchase any other land. My client on receipt of the sale consideration received by him from ALMCO Properties Pvt Ltd had paid Rs 60, 00, 000/- in the name of your client and Rs.70,00,000/- in the name of G Shanmuganathan plus Rs 18,00,000/- in cash towards the expenses rendered by them as required by Mr G.Shanmuganathan who has arranged the whole deal.

The averments made in Para 4 of your notice that the Assistant Commissioner of Incometax, Coimbatore had issued a notice to your client is not known to my client. It is true that my client had had confirmed the above facts early in 2008 when such sums have been given to both of them and the financial arrangement between the in laws and also partners is best known to your client and Mr G Shanmuganathan.

The averments made para 5 of your notice that the declaration given by my client before the Income Tax Officials is contrary to the truth is not admitted by my client. The statement given by my client before the Income Tax Officials is true and my client had made the correct statement according to the transactions. Your client has to look after his remedy for the amount received from my client which was given as direct by Mr G. Shanmuganathan."

7. The observations of the Ld. CIT(A) are read as under:-

"6. I have considered the facts mentioned in the assessment order and the grounds of appeal and statement of facts. The appellant has not given any reply in response to various hearing notices issued by this office. Therefore, it is deemed fit to dispose the appeal based on materials available on record.

6.1 The present order u/s 143(3) r.w.s. 254 was passed by the AO making addition of Rs. 70,00,000/- after the ITAT has remitted the issue relating to the addition of Rs. 1.48 crores to the file of the AO for fresh consideration. In the relevant assessment proceedings which took place before the AO in pursuance of order of the ITAT, the assessee admitted that the said income has been offered in A.Y. 2015-16 after receipt of reply from the advocate of Shri Natraj Ganesh in response to the notice sent by the advocate of shri Dhanaplal. The AO has also reproduced a portion of reply given by advocate of Shri Natraj Ganesh at page 6-7 of the assessment order.

6.2 On perusal of reply given by advocate of Shri Natraj Ganesh reproduced at page 6-7 of the assessment order, it is found that Shri N. Ganesh has denied to have given the amount in question for investment purpose in another piece of land in future. It has been clarified that Shri Ganesh had never directed the assessee or Mr. Dhanpal to purchase any land and the said sum was paid to the assessee and Mr. Dhanpal towards the expenses rendered by them in arranging the whole deal.

6.3 The appellant has also offered the sum of Rs. 70,00,000/- as income in A.Y. 2015-16. In doing so, the assessee placed reliance on the aforesaid reply of the advocate of Shri N. Ganesh. However, the said reply is not supporting the contention of the appellant. In fact, it fully supports the view taken by the AO since the reply given by the advocate of Shri N. Ganesh specifies clearly that the money was not given as loan or advance but for services towards arranging the whole deal and there was no instruction to purchase any piece of land. In view of above, it is held that the AO had correctly added the amount of Rs. 70,00,000/- as income of assessee in assessment year 2009-10 and the same is hereby confirmed. All the grounds of appeal are dismissed.

7. Accordingly, the appeal of the assessee treated as dismissed.

8. After carefully considering the aforesaid, we are of the view that Ld. CIT(A) has correctly decided the matter. Because, Nataraj Ganesh, the payer of the amount claimed that the amount of Rs. 70,00,000/- was paid to the assessee as cost of the property. Claim of Nataraj Ganesh cannot be ignored as he was the payer of the money. As a payer of the money, N. Ganesh's decision about the purpose of the payment of the money to the assessee ought to be prevailed. Secondly, his said claim has already been allowed by his Assessing Officer during A.Y. 2009-10. The assessee has

offered the said amount of RS. 70 Lacs in A.Y. 2015-16. Lastly, the Ld. AO has decided the matter against the assessee for the second time also. Thus, we decide the appeal against the assessee.

Order pronounced on 14th June, 2023.

Sd/-
(मंजुनाथ. जी)
(Manjunatha. G)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 14.06.2023.

EDN/-

Sd/-
(मनोमोहन दास)
(Manomohan Das)
न्यायिक सदस्य/Judicial Member

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

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