

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

माजनीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं
माजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI ABY T. VARKEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.119/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2021-22)

Shri Rajagopal Saravanan C/o. Shri T.N.Seetharaman (Advocate) 384 (Old No.196) Lloyds Road, Chennai-600 086.	बनाम/ Vs.	ACIT Central Circle-1(3), Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AMLPS-0030-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri T.N.Seetharaman (Advocate)-Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri P. Sajit Kumar(JCIT) -Ld. Sr .DR

सुनवाईकी तारीख/ Date of Hearing	:	24-06-2024
घोषणाकी तारीख / Date of Pronouncement	:	10-07-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2021-22 arises out of the order of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 20-11-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 23-12-2022. The sole grievance of the assessee is confirmation of addition of alleged on-money of Rs.5 Crores on sale of certain property. The grounds of appeal read as under: -

1. The order of the Commissioner of Income Tax (Appeals) is contrary to the facts and circumstances of the case and is bad in law.
2. The Commissioner (Appeals) erred in confirming the addition of Rs.5,00,00,000/- allegedly received by the appellant as "On Money" on sale of his property at Perambur and dismissing the appeal.
3. The Commissioner (Appeals) grossly erred in not taking proper note of the Grounds of Appeal before him and the Written Submissions (dated 30.10.2023) filed in support and holding that the addition of Rs. 5 crores as "On Money" is justified.
4. The Commissioner (Appeals) failed to see that the sale consideration for the property as per the registered sale deed (Document No.2917 /2020 dt. 11.12.2020) has been accepted by the Stamp Valuation Authority as the Market Value for Stamp Duty purposes and, prima facie, there is no basis to infer that anything more was paid by way of "On Money" as alleged. Further, no evidence has been gathered by the Department or value of the property otherwise determined to show that the actual value of the property is more to suggest probable payment of "On Money".
5. The Commissioner (Appeals) failed to see that no incriminating material/ document indicating the alleged payment of "On Money" of Rs.5 crores to the appellant has been found and the addition is based on the uncorroborated statement of one Shri Sabapathy alone.
6. The appellant humbly submits that a reference to the document (Annexure No. ANN/SR/SSLLP/B&D/S-2) seized during the search in the case of Saravana Stores Jewellery read with the statement of Shri. A. Julian (dated 04.12.2021) explaining and asserting that **"This loan of Rs. 25 Crores was taken in 2021, so all the dates are pertaining to the year 2021 only"** and the sworn statement of Shri. Sabapathy (dated 04.12.2021) that the cash loan of Rs. 25 Crores was taken to pay for the purchase of immovable property at Perambur (and Madurai) indicate the improbability of payment of the alleged "On Money" to the appellant for the Perambur property sold on 11.12.2020.
7. The Commissioner (Appeals) has gone wrong in not accepting the submission supported by judicial decisions that solely on the basis of evidence such as notings in loose sheets found with third parties and the statement of third parties, additions cannot be made without corroborative evidence and independent inquiries.
8. The Commissioner (Appeals) further failed to take note of the two circulars dated 10.03.2003/ 18.12.2014 issued by CBDT disapproving recording of confessional statements during search/ survey and the fact that in the present case such a confessional statement in contravention of CBDT's circulars having no evidentiary value has been recorded in the course of a search in a third party's case and wrongly applied in the present appellant's case.
9. The appellant states and declares that Rs.16,00,00,000/- as per the sale deed is the actual and true sale consideration for the Perambur property and no "On Money" was involved in the transaction.

As is evident, the sole issue that fall for our consideration is to deal with the addition of alleged on-money for Rs.5 Crores on sale of certain property.

2. The Ld. AR advanced arguments and submitted that the additions have been made merely on the basis of third-party statement and no valuation of property was done. The Ld. AR did not make any enquiry to ascertain the correct market value of the property to bolster the allegation of payment of on-money. The Ld. AR further submitted that the statement relied upon by Ld. AO was retracted later on. The stamp duty value of the property was nothing but sale consideration declared by the assessee. The Ld. Sr. DR, on the other hand, submitted that retraction was much later and therefore, not valid. In the statement, only explanation was changed qua the source of payment only. However, the additions are based on circumstantial evidences. The statement relied upon by Ld. AO was based on evidences on record. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 During assessment proceedings, it transpired that the assessee earned capital gains on sale of certain properties which are tabulated on Page No.2 of the assessment order. One such property located at Perambur, Chennai was sold to S. Selvakumari for Rs.16 Crores on 11-12-2020. However, pursuant to search action u/s 132 on Shri R.Sabapathy group, a small notebook was found from Saravana Store Jewellery, Pursasiwakkam. The same provided details of cash loans received by Shri R.Sabapathy during financial year 2020-21 for Rs.25 Crores for the purpose of investment in immoveable properties. A statement was also recorded from Shri A. Julian on 04-12-2021 who was Assistant General Manager of the concern. He explained the contents of the notebook. A statement was also recorded from Shri R.Sabapathy. In

reply to Q.No.56, he deposed that cash loans were taken by him to pay for the purchase of immovable properties at Perambur during December, 2020. He specifically stated that the property at Perambur was purchased for his sister Smt. Selvakumari for consideration of Rs.21 Crores and he paid Rs.5 Crores in cash over and above the registered value to the assessee (Shri Saravanan of Saravana Bhavan Hotels group). Out of cash loan of Rs.25 Crores as received from Shri Rakesh Kumar of Swarna Shilpi, an amount of Rs.5 Crores was stated to be paid as on-money over and above the sale consideration of the property. The assessee was thus said to have sold the property to Smt. Selvakumari for Rs.21 Crores including Rs.5 Crores which was paid in cash during FY 2020-21 as was evident from the seized material and sworn statement recorded from Shri Sabapathy during search. However, the assessee declared sale consideration of Rs.16 Crores only and accordingly, Ld. AO proceeded to add the differential of Rs.5 Crores to the income of the assessee.

3.2 The assessee refuted the allegation and submitted that the statement of Shri R.Sabapathy was retracted on 21-03-2022. The said retraction has been extracted in the assessment order. In the retraction, it was submitted that accumulated cash of Rs.17 Crores was received from Shri Rakesh whereas the balance of Rs.8 Crores was out of sale of excess stock.

3.3 The Ld. AO observed that Shri Sabapathy had not denied on-money payment for purchase of property. The assessee also did not ask for cross-examination of those persons. Finally, the capital gains were recomputed after adding amount of Rs.5 Crores to the income of the assessee.

Appellate proceedings

4.1 The assessee, inter-alia, submitted that sale consideration of Rs.16 Crores as mentioned in the Sale Deed was accepted by stamp duty valuation authority as the market value for stamp duty purposes. There was no basis to infer that anything more was paid by way of on-money as alleged by Ld. AO. No evidence was gathered by the department and no valuation was done to establish that the actual value of the property was more to suggest probable payment of on-money. The assessee also drew attention to statement of Shri A. Julain wherein in reply to Q. No.27, it was very clearly stated by him that this loan was taken in the year 2021 so all the dates were pertaining to the year 2021. Therefore, the stated loan could not form source of payment of alleged on-money for sale transaction which took place in December, 2020. The impugned addition was merely based on unsubstantiated statement of Shri Sabapathy alone. The assessee also took shelter of CBDT circulars disapproving recording of confessional statements during search / survey. Reliance was also placed on various judicial decisions to support the submissions.

4.2 However, Ld. CIT(A) upheld the action of Ld. AO by observing as under: -

6.2 In the light of the above undisputed facts, it is to be decided whether the addition of Rs.5 cr., received as on-money by the assessee, is justified or not. Admittedly, as per seized material, there were entries on different dates but the date relating to 25.00 is not mentioned. However, Shri R. Sabapathy in whose case the search was conducted, clearly explained the nature of the entries and also stated that repayments made on various dates acknowledged by the lender. He also stated that out of the above Rs.25 cr., Rs.5 cr., was given as on-money to the assessee in 2020. Even the retraction statement by Shri Sabapathy dt.21.3.2022 did not deny the payment of on-money to the assessee. The claim of the assessee is that the statement of Shri A.Julian and Shri R. Sabapathy are contradictory statements, but the statement of R. Sabapathy is credible one as he is the person in whose case, search was conducted and the entries in the seized slips were initialled by him as deposed by Shri A.Julien in answer to question No.28. He also deposed that further details were known to Shri Sabapathy in

answer to question No.29. In the circumstances, the statement of Shri R. Sabapathy given on the date of search, is credible and to be taken as true and correct. The reliance placed by the assessee in the Instruction issued by CBDT, is misplaced as there is recovery of seized material on which the searched person deposed the nature of entries and transactions. The above Instructions will be applicable only to the oral admission obtained regarding disclosure of additional income during survey/search without any material evidences and therefore, the above Instructions are not applicable to the facts of the case. For the same distinguishing reasons, the decisions cited are also misplaced and are not applicable to the facts of the instant assessee's case. Further, when the show cause notice was issued, the assessee did not ask for any cross examination of Shri Sabapathy whose statement was proposed to be used against the assessee. As the addition is based on the evidences contained in the seized materials and the explanation of Shri Sabapathy with respect to the entries in the seized materials, the addition is justified and the same is confirmed and the grounds are dismissed.

The Ld. CIT(A) thus relied on the statement of Shri Sabapathy in preference to the statement of Shri Julian and confirmed the addition on the ground that the impugned addition was based on evidences. Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

5. From the fact, it emerges that pursuant to search action u/s 132, a notebook was found which, inter-alia, contained notings of loans obtained by Shri R.Sabapathy. No dates were mentioned against these entries. Based on the statement of Shri R.Sabapathy, Ld. AO alleged that Shri R.Sabapathy received loan of Rs.25 Crores from Shri Rakesh of Swarna Shilpi out of which an amount of Rs.5 Crores was utilized as payment to assessee as on-money against purchase of impugned property by his sister. However, this statement was retracted within a span of 3 months and Shri R.Sabapathy stated that loan of Rs.17 Crores was received from Shri Rakesh whereas the balance of Rs.8 Crores was out of sale of excess stock. It could thus be seen that Shri R.Sabapathy has taken contrary stand and his statement could not be held to be credible one. As against this, Shri Julian, in statement recorded during

search, explained the contents of the notebook. He stated that "**This loan of Rs.25 Crores was taken in 2021, so all the dates are pertaining to the year 2021 only**". The same contradict the statement of Shri R.Sabapathy that payment of Rs.5 Crores was made in December, 2020 as on-money. However, as noted earlier, the statement of Shri R.Sabapathy was modified within a short span of time and therefore, the same could not be accepted as credible one. No concrete reliance could be placed on the same to make impugned addition in the absence of any other evidence on record.

6. We accept another argument of Ld. AR that the value as shown in the sale deed was accepted for stamp duty valuation purposes. No valuation whatsoever has been undertaken by Ld. AO and no exercise is shown to have been carried out by Ld. AO to establish that the market value of the impugned property was much more. In the absence of such a finding, the impugned additions are merely unsubstantiated additions which could not be sustained in law. It is trite law that no addition could be made on mere presumption and suspicion. The Ld. AO has to bring on record cogent positive evidences to sustain addition based on third-party statement / material. The assessee has, all along denied impugned payments and the assessee, therefore, could not be expected to prove the negative.

7. We find that on given facts, the ratio of case law of Hon'ble High Court of Madras in the case of **P.V.Kalyanasundaram (155 Taxman 454)** would apply. In this decision, Hon'ble Court held that where Ld. AO did not conduct any independent enquiry relating to the value of the property purchased or did not refer the valuation to valuation officer and

merely relied on the statement given by the seller, the same would be fatal to additions.

8. Considering the facts and circumstances of the case, we would hold that impugned additions are not sustainable in law. The same stand deleted. The Ld. AO is directed to re-compute the income of the assessee. We order so.

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

Order pronounced on 10th July, 2024

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :10-07-2024
DS

आदेश की प्रतिलिपि ँ ग्रेषित / Copy of the Order forwarded to :

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