

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.2156/CHNY/2017
निर्धारण वर्ष /Assessment year : 2014-2015

Shri. G. Mallikarjuna Reddy,
No.6, Gangai Amman Koil
1st Street,
Sholinganallur,
Chennai 600 119.

Vs. The Income Tax Officer,
Non Corporate Ward 17(2)
Chennai.

[PAN AQOPM 3297R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Ms. J. Sreevidya, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Mr. ARV Sreenivasan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 21-03-2018

घोषणा की तारीख /Date of Pronouncement

: 09-04-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

Assessee in this appeal filed against an order dated 30.06.2017 of the Id. Commissioner of Income Tax (Appeals)-5, Chennai, has taken altogether five grounds of which ground No.1 is general needing no specific adjudication.

2. Vide its grounds 2 & 3, assessee assails an addition of ₹35,00,000/-, which amount was treated by the Id. Assessing Officer as unexplained fixed deposit.

3. Assessee a salaried employee had filed his return for the impugned assessment year disclosing income of ₹2,06,500/-. During the course of assessment proceedings, it was noted by the Id. Assessing Officer that assessee had made an investment of ₹35,00,000/- in fixed deposits. Assessee was required to explain the source of such deposit. Assessee thereupon produced a sale deed for sale of one immovable property for a consideration of ₹53,00,000/- and this was explained as the source of such fixed deposit. Id. Assessing Officer on verifying the sale deed found that assessee was only a power of attorney holder and not owner of the property. According to him, though assessee had produced a purchase agreement entered with one Ms. Iswariah in the year 2010 for proving the acquisition of the property claimed to have been sold, such purchase agreement was not registered. Further, as per the Id. Assessing Officer, assessee could not give any source for the payment of ₹45,00,000/- mentioned in such purchase agreement. Thus, he rejected the explanation given by the assessee for the fixed deposit, and made an addition of ₹35,00,000/-.

4. Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). Id. Commissioner of Income Tax (Appeals) however confirmed the addition noting that assessee could not produce any credible source for the sum of ₹45,00,000/-, claimed to have been paid for purchasing the property which was sold.

5. Now before us, Id. Authorised Representative relying on the sale deed dated 12th February, 2014 placed at paper book at 18 to 43 submitted that assessee had a power of attorney obtained from Ms.S. Ishwariah, original owner of the property. According to the Id. Authorised Representative, assessee had in his capacity as a power of attorney holder sold the property for a sum of ₹48,00,000/-. As per the Id. Authorised Representative, it was clear from the sale deed, that assessee had received cheque No.002417, dated 12.12.2014 drawn on Karur Vysya Bank Ltd, from the buyer. Further, as per the Id. Authorised Representative such sum was credited in assessee's account with ICICI Bank on 20.02.2014. Contention of the Id. Authorised Representative was that it was from this bank account, that assessee placed the fixed deposit of ₹35,00,000/- on 17.03.2014. Thus, according to him, source for the sum of ₹35,00,000/- stood fully explained.

6. Per contra, Id. Departmental Representative, strongly supporting the orders of the lower authorities submitted that assessee had executed the sale deed on 12.2.2014 in his capacity as a power of attorney holder of Ms.S. Ishwariah. As per the Id. Departmental Representative said power of attorney was registered on 03.12.2012 and by assessee's own admission, this was executed by Ms.S. Ishwariah on payment of ₹45,00,000/-. Contention of the Id. Departmental Representative was that assessee could not show any source for the sum of ₹45,00,000/- paid to Ms.S. Ishwariah on execution of the power of attorney. Hence, according to him, source of the fixed deposit was not explained.

7. We have considered the rival contentions and perused the orders of the authorities below. Addition has been made by the Id. Assessing Officer for a fixed deposit of ₹35,00,000/- placed by the assessee in his account with ICICI Bank. Statement of M/s. ICICI Bank has been placed on record at paper book, page 46. Such statement does show a credit of ₹48,00,000/- on 20.02.2014, with a narration REPCO 002417\KVB. A look at the registered sale deed dated 12.02.2014 clearly show that assessee had executed it as the power of attorney holder of Ms.S. Ishwariah. Consideration mentioned in such sale deed was as under:-

'That the receipt of total consideration is hereby acknowledged by the VENDOR for a sum of ₹48,00,000/- -

(Rupees Forty Eight Lakhs Only) paid by the PURCHASER to the VENDOR as follows:

The entire sale consideration of Rs.48,00,000/- (Rupees Forty Eight Lakhs Only) paid by Repco Home Finance Ltd., having its Registered Office No.33, North Usman Road, T; Nagar, Chennai 600 017 by way of Housing loan on behalf of the PURCHASER to the VENDOR herein through a Cheque bearing No.002417, dated 12.02.2014 drawn on The Karur Vysya Bank Ltd, Adyar Branch, Chennai - 600'020, at the time of execution of this indenture of Sale in the presence of the undermentioned witnesses the receipt of which sum in the aforesaid manner, the VENDOR does hereby admit, acknowledge and acquit PURCHASER free from any further payment whatsoever".

Thus, there can be no two opinion that the sum of ₹48,00,000/- credited in assessee's bank account on 20.02.2014 was the cheque received on sale of the property. Irrespective of the fact whether assessee, as a power of attorney holder, was entitled to such sum, it cannot be controverted that the fixed deposit made by the assessee on 17.03.2014, thus stood explained. The fixed deposit was placed by the assessee from the very same bank account through a transfer debit. It might be true that the power of attorney was registered on 03.12.2012 and assessee had no good source to explain the payment of ₹45,00,000/- to Ms.S. Ishwariah. However, source of such payment would be relevant only for previous year ending 31.03.2013 viz, assessment year 2013-2014. As far as assessment year 2014-15 is concerned, assessee had well explained source for making fixed deposit of ₹35,00,000/-. The addition stands deleted. Grounds 2 & 3 are allowed.

8. Vide its grounds 4 & 5, grievance of the assessee is on an addition of ₹25,06,000/- treated by the Id. Assessing Officer as unexplained cash credit.

9. Ld. Assessing Officer had made this addition for a reason that there was an unexplained credit of ₹25,06,000/- in the bank account of the assessee. Though in its appeal before the Id. Commissioner of Income Tax (Appeals), assessee had argued that the sum was transferred by his brother-in-law Shri. Bhuma Ramakrishna Reddy who was residing abroad, this was not accepted by the Id. Commissioner of Income Tax (Appeals). According to the Id. Commissioner of Income Tax (Appeals), assessee could not explain where Shri. Bhuma Ramakrishna Reddy was living nor his source of income.

10. Now before us, Id. Authorised Representative submitted that if given a chance assessee would be able to explain the source. According to her, it was a transfer from the bank account of Shri. Bhuma Ramakrishna Reddy and Shri. Bhuma Ramakrishna Reddy was a Non Resident closely related to the assessee.

11. Per contra, Id. Departmental Representative strongly supported the orders of the lower authorities.

12. We have considered the rival contentions and perused the orders of the authorities below. Ld. Commissioner of Income Tax (Appeals) had given a clearly finding that bank account Shri. Bhuma Ramakrishna Reddy with ICICI was not an NRI account. Assessee had failed to file any confirmation from Shri. Bhuma Ramakrishna Reddy. Assessee also could not give any details on the whereabouts of Shri. Bhuma Ramakrishna Reddy. In such circumstances, we are of the opinion that the addition was rightly made by the Id. Assessing Officer and confirmed by Id. Commissioner of Income Tax (Appeals). We do not find any reason to interfere with the orders of the lower authorities. Grounds 4 & 5 stand dismissed.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced on Monday, the 9th day of April, 2018, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:9th April, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |