

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.2074/Chny/2018

(निर्धारणवर्ष / Assessment Year: 2009-10)

The Assistant Commissioner of Income Tax, Non-Corporate Circle-20(1) Chennai.	Vs	Mr. Ramcharan Tej Konidala, 98, Kamdar Nagar, Mahalingapuram, Chennai-600 034.
		PAN: ALIPK 5347D
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr.G.Chandrababu, Addl.CIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Vikram Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of hearing	:	18.02.2021
घोषणा कीतारीख/Date of Pronouncement	:	28.04.2021

आदेश / ORDER

PER G.MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against order of the learned CIT(A)-14, Chennai dated 28.03.2018 and pertains to assessment year 2009-10.

2. The Revenue has raised the following grounds of appeal:-

1. *The order of the learned CIT(A) is contrary to facts and circumstances of the case.*

2.1 *The learned CIT(A) erred in deleting the addition of ₹1,54,50,000/- on account of unexplained investment in villa plot.*

2.2 *The learned CIT(A) ought to have appreciated the fact that addition was made on the basis of charge*

sheet and supplementary charge sheet filed by the CBI based on the facts findings by CBI.

2.3 The learned CIT(A) ought to have decided the case before disposal of appeal by the CBI Special Court as the issue has not attained finality and is still pending.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.”

2. Brief facts of the case are that the assessee is an individual and film artist by profession, filed his return of income for the assessment year 2009-10 u/s.139 of the Income Tax Act, 1961. The assessment for the impugned assessment year has been originally completed u/s.143(3) of the Act vide order dated 21.12.2011. The assessment has been subsequently reopened u/s.147 of the Act for the reasons recorded, as per which income chargeable to tax had been escaped assessment on account of on money payment for purchase of property. Accordingly, notice u/s.148 dated 31.03.2013 was issued and served on the assessee. The case was taken up for scrutiny and during the course of assessment proceedings, the Assessing Officer, on the basis of information

received from the DCIT, Circle-2(3), Hyderabad, opined that the assessee has paid on-money for purchase of property from M/s. Emaar Hills Township Pvt. Ltd. and accordingly, by taking note of various facts including charge sheet filed by CBI before the Court of Special Judge for CBI held that the assessee has paid a sum of ₹ 1,54,50,000/- towards on-money payment for purchase of residential Villa flat admeasuring 4000 sq.yard. The relevant findings of the Assessing Officer in the assessment order are as under:-

“After completion of the assessment u/s.143(3) for assessment year 2009-10 information was received from the DCIT, Circle-2(3), Hyderabad, that while completing scrutiny assessment in the case of M/s.Emaar Hills Townships Pvt.Ltd for the assessment year 2009-10 an amount of ₹ 101,22,14,777 was added back to the total income on account of on-money received by M/s.Emaar Hills Townships Pvt.Ltd towards sale of villa plots. Aggrieved against the said assessment order EHTPL filed further appeal to the CIT(A) III Hyderabad and during the course of appellate proceedings EHTPL filed copies of charge sheet dated 17.8.2011 and supplementary charge sheets dated 23.04.2012 filed by CBI before the court of Hon’ble Special Judge for CBI cases as additional evidence before CIT(A) . On an examination of the said charge sheet it was noticed that some of villa plot buyers have paid on money in addition to what was stated in sale agreement . As EHTPL was relying on the above charge

sheets it is clear that the fact of extra consideration was paid is accepted by EHTPL. As per charge sheet and supplementary charge sheets it was noticed that Shri Tummala Ranga Rao, Director of M/s. Stylish Holmes Real Estates Pvt.Ltd. had confirmed that some of the villa plots were sold by collecting excess amount ranging from Rs 4000 per sq.yard to Rs.45,000 per sq.yard over and above the registered rate of Rs.5000 per sq.yard. The relevant extracts of the charge sheet and supplementary charge sheets were also forwarded to this office. It was seen from charge sheets filed that as per instructions of Mr. Koneru Rajendra Prasad, Shri T.Ranga Rao Director of M/s. Stylish Holmes Real Estates Pvt.Ltd sold 82 villa plots of which one villa plot was purchased by the assessee Shri Ramcharan Tej Konidala by collecting excess amounts from the buyers ranging from ₹4000/- per sq.yard to Rs.45,000 per sq.yard over and above the rate of Rs.5000 per sq.yard. The details of land purchased by Mr. Ramcharan Tej Konidala were shown were shown at sl.No.53 of the charge sheet, the details of which are reproduced as under for convenience:-

Sl.No.	Plot No.	Extent in Sq.Yards	Amt.,paid through cheques in ₹	Excess paid per Sq.Yd. in ₹	Excess payment in ₹	Total payment made by buyer in ₹
53	B30	1545	73,38,750	10,000	1,54,50,000	2,27,98,750

It was stated in the charge sheet that the excess money was collected by Shri T.Ranga Rao from buyers in cash only except from Sri P.S.Parthasarathy Rao and Shri Challa Suresh who had deposited money in US dollars

towards part of excess payment in the bank accounts of Shri Madhu Koneru S/o. Koneru Rajendra Prasad maintained at Dubai.

In view of the above reasons, the assessment was reopened by issue of notice u/s.148 as stated above. In response to the notice assessee filed written submissions on this issue on 20.03.2014 and the same was considered carefully.

The contentions of the assessee are not acceptable since the information about payment of on-money in cash by assessee was clearly brought out in original and supplementary charge sheets filed in the case of Emaar Hills Townships Pvt.Ltd by the CBI. Even in the submissions made by EHTPL before learned CIT(A) against the assessment order in their case it has been clearly pointed out by EHTPL that the excess money in cash was paid by buyers which establishes the fact. The claim of EHTPL was that they have not received the excess money in cash instead it was M/s. Stylish Holmes Real Estates Pvt.Ltd. / Koneru Rajendra Prasad / Sunil Reddy This also clearly corroborates the fact the assessee has paid an amount of ₹ 1,54,50,000 in cash over and above the agreed value of the villa plot No.B-30.”

3. Being aggrieved by the assessment order, the assessee preferred appeal before learned CIT(A). Before the learned CIT(A), the assessee has submitted that the Assessing Officer had made additions towards on-money only on the basis of

charge sheet filed by the CBI before the Court of Special Judge for CBI in the case of M/s.Emaar Hills Township Pvt. Ltd. without bringing on any evidence to prove that the assessee has paid on-money for purchase of the flat. The assessee has also taken support from the decision of ITAT., Chennai in the case of Mr.R.Saibabu in ITA No.2933/Chny/2016, where under identical set of facts and on the basis of same CBI enquiry conducted in the case of M/s.Emaar Hills Township Pvt.Ltd. held that the Assessing Officer has not established on the basis of evidence gathered that the assessee has paid on-money to the extent quantified by the Assessing Officer . The learned CIT(A), after considering relevant submissions of the assessee and also by following the decision of the ITAT., Chennai in the case of Mr.R.Saibabu in ITA No.2933/Chny/2016 held that the conclusion arrived at by the Assessing Officer that assessee has paid on-money for purchase of flat is not based on any document or independent enquiry carried out during the course of assessment proceedings, accordingly, deleted the additions made by the Assessing Officer. The relevant findings of the learned CIT(A) are as under:-

“4.3.1 I have carefully considered the AO’s observation mentioned above under para 4.1 and the appellants submission before the CTT(A) mentioned above under para 4.2.

4.3.2 Based on Cars search in Emaar Group, the AO came to the conclusion that the appellant had paid on-money in cash to the tune of Rs.1.54 Cr for the purchase of Villa plot. The AO’s observation in the assessment order was based on charge-sheet filed by the 081 in a court in connection with its search. Before the CIT(A), the appellant’s AR has strongly contended that the AO has made the above addition based on surmise and conjecture. The AR has clarified that the CBI’s case has not established the appellant’s on-money payment as mentioned above. The AR has relied on a favourable decision in the case of R. Saibabu V. DCIT in AY 2010-11 vide ITA No.2933/Mds/2016 dated 9.3.2018 in which on identical facts and circumstances the ITAT Chennai has deleted the Assessing Officer addition of unexplained investment.

4.3.3 I have considered both the points of view. It is ascertained that the CBI’s case filed in the court is still pending and there is no finding by the Court th regard to the appellants unexplained investment in Villa plot as held by the AO, It is further noticed that the AO’s conclusion is based only on the charge sheet filed by the CR1 in connection with its search operation in Emaar Group. The AG’s conclusion is not based on any document or independent enquiry carried out by the AC himself. I have perused the decision of Hon’ble ITAT Chennai in the case of Shri R.Saibabu which has been reproduced above

under pars 4.2. In the said case, under identical facts and circumstances, the Hon'ble ITAT has held that no peace of evidence against the assessee having paid on-money was brought on record and instead made up a case on surmise and conjecture and deleted the addition.

4.3.4 Respectfully following the decision of the Hon'ble ITAT Chennai on identical facts and circumstances, the AO's aforesaid addition is deleted. The appellant's grounds are allowed"

4. The learned DR submitted that the learned CIT(A) has erred in deleting the addition of ₹ 1,54,50,000/- on account of unexplained investment in villa flat without appreciating the fact that addition was made on the basis of charge sheet and supplementary charge sheets filed by the CBI based on the facts and findings of the CBI during the course of search in the case of M/s.Emaar Hills Township Pvt.Ltd. The DR further submitted that learned CIT(A) ought not to have decided the case before the disposal of appeal by the CBI Special Court, as the issue has not attained finality and is still pending.

5. The learned AR, on the other hand, strongly supporting the order of learned CIT(A) submitted that the issue is squarely covered in favour of the assessee by series of decisions of the

Tribunal in the case of R.Saibabu in ITA No.2933/Chny/2016 and the decision of ITAT.,Hyderabad in the case of G.Samyutha in ITA No.356/Hyd/2017 dated 28.02.2018, where the Tribunal has recorded categorical finding that unless the Assessing Officer has brought on record some independent evidences to prove that on-money payment has been made for purchase of property, he cannot make additions solely on the basis of charge sheet filed by the CBI before CBI Special Court, when the proceedings in the CBI Special Court is still pending.

6. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. We find that an identical issue has been considered by co-ordinate Bench of the ITAT., Chennai in the case of R.Saibabu in ITA No.2933/Chny/2016, where the Tribunal, after considering charge sheet filed by the CBI in the case of M/s.Emaar Hills Township Pvt.Ltd. held that unless the Assessing Officer brought on record some additional evidences to corroborate the findings recorded by CBI in the case of M/s.Emaar Hills Township Pvt.Ltd. to arrive at a conclusion

that the assessee has paid on-money for purchase of property, no addition can be made only on the basis of charge sheet filed by the CBI, when proceedings are still pending before the CBI Special Court. The relevant findings of the Tribunal are as under:-

“6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. In this case, it is an undisputed fact that the assessee is an individual and the source of the income of the assessee was only income from salary and no other source of income with corroborative material established in support of the statement of the third parties is available on record either in the assessment order or in the appellate order. Further, the source for purchase of flat from M/s. EHTPL at ₹.65,25,000/- was not disputed. However, the Assessing Officer made the addition towards on money payment only on the basis of the investigation conducted by the CBI in the case of EHTPL and reference received from the DCIT, Circle 2(3), Hyderabad. It may be a fact that CBI has observed that the villa buyers have paid on money over and above ₹5000/- per sq. yard to Mr. T. Ranga Rao of M/s. Stylish Homes or to the representative of Stylish Homes. The statute provided sufficient powers to call for information under section 133 of the Act and to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by various authorities of the Department. But, on perusal of the orders of authorities below, it is clear that no corroborative evidence is available with the Department or the

Department made any extensive enquiry to conclude that the assessee might have paid on money towards purchase of flats.

6.1 In the case of CIT v. N. Swamy 241 ITR 363, the Hon'ble Jurisdictional High Court has held that the burden of showing that the assessee had undisclosed income is on the Revenue and the burden cannot be said to be discharged by merely referring to the thirty party statements. Alternatively, with a view to assist the Assessing Officer and to reduce the rigour of the burden that lay upon the Assessing Officer, provisions of sections 68, 69, 69A to 69D of the Act have provided for certain deeming provisions, where, an assumption of income is raised in the absence of satisfactory explanation from the assessee. As these are deeming provisions, the conditions precedent for invoking such provisions is required to be strictly construed. The facts and circumstances giving rise to the presumption of having undisclosed income to make investment have to be established with reasonable certainty. In this case it was not done by the Department.

6.2 In this case, the Assessing Officer has not established on the basis of evidence gathered that the assessee has paid on money to the extent quantified by him. In fact, the Department has no piece of evidence against the assessee directly link the assessee towards payment of on money. Yet, merely on the basis of the fact that some other buyers have accepted payment of on-money, the Assessing Officer cannot made addition under section 69 of the Act.

6.3 Moreover, mere acceptance of addition made in the assessment of ₹.2,04,500/- on undisclosed cash deposits in Standard Chartered Bank and undisclosed payments on credit

card bills of ₹.2,96,960/- issued by the Union Bank of India, cannot be a ground that the assessee has made huge on money of ₹.93,53,000/- warranting addition under section 69 of the Act.

6.4 At last, the concept of preponderance of probability cannot be applied in this case because, in ground reality, the Department failed to make any enquiry in terms of provisions of section 133 of the Act with Shri Konnaru Rajendra Prasad, Shri T. Ranga Rao, Directors of M/s. Stylish Homes Real Estate (P) Ltd. and recorded their statement of having collected excess amount from the assessee over and above the cost of plot at ₹.5000/-per sq. yard; there was no material evidence to show that the assessee had enough source to make huge undisclosed investments, where, in this case, the source of income of the assessee was only income from salary and no other source of income was detected; or there was any search or survey in the case of the assessee or the plot seller and acquired any piece of evidence of having paid on-money by the assessee. Each case has to be decided according to the facts and based on the material evidence contemplated against the assessee.

6.5 Considering the entire gamut of the case, we find that the Revenue has failed to discharge its duties; no piece of evidence against the assessee having paid on money was brought on record and instead, made up a case on surmise and conjectures which cannot be allowed. Under the above facts and circumstances, we set aside the order of the Id. CIT(A) and direct the Assessing Officer to delete the addition made under section 69 of the Act.”

7. In this view of the matter and consistent with the view taken by the co-ordinate Bench in the case of R.Saibabu in ITA No.2933/Chny/2016 vide order dated 09.03.2018, we are of the considered view that findings recorded by the learned CIT(A) in light of the decision of ITAT., Chennai Bench is uncontroverted. The Revenue has failed to bring on record any evidence to prove that findings of fact recorded by learned CIT(A) is incorrect or opposed to the facts. Hence, we are inclined to uphold the findings of learned CIT(A) and dismiss the appeal filed by the Revenue.

8. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 28th April, 2021

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President

Sd/-
(जी. मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 28th April, 2021
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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