

आयकर अपीलीय अधिकरण, 'सी' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A. No. 3081/ Chny/ 2019

(निर्धारणवर्ष / Assessment Year: 2016-17)

Smt. Selvi Chittiraja 13/96, S.Block, 17 th Street, Anna Nagar West, Chennai-600 040.	Vs	The Income Tax Officer, Non-Corporate Ward-7(5), Chennai.
PAN: AKIPC 2389J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. D.Anand, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.Sajit Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	12.05.2022
घोषणाकीतारीख /Date of Pronouncement	:	22.06.2022

□ देश / **ORDER**

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the learned Commissioner of Income Tax (Appeals)-7, Chennai, dated 29.08.2019 and pertains to assessment year 2016-17.

2. The assessee has raised following grounds of appeal:-

"1. The order of the learned Commissioner of Income (Appeals)-7, is wrong, illegal and is opposed to law.

2. The learned CIT(A)-7 erred in sustaining the addition of Rs.4,71,74,600/- made by the Assessing Officer under section 69 of the income Tax Act, as unexplained investment only on the basis of suspicion and surmise.

3. The learned CIT(A)-7 erred in sustaining the addition made by the Assessing Officer under section 69 of the Income Tax

Act despite the fact that the appellant had explained the source for purchase of property.

4. The learned CIT(A) while affirming the order of Assessment and addition made under section 69 failed to see that all payments made towards purchase of property were made through proper banking channels and that the source of payments are also decipherable. In fact the parties who have made payments on behalf of the appellant have also confirmed the purpose for which the payment has been made.

5. The learned CIT(A) failed to see that the property although purchased by the company was registered in the name of the individual (who happened to be the Director) only for the purpose of convenience and out of business expediency.”

3. Brief facts of the case are that the assessee had filed her return of income for the assessment year 2016-17 on 25.01.2017 declaring total income of Rs.13,58,500/-. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has purchased property for a consideration of Rs.4,36,80,000/- and spent an amount of Rs.4,71,74,600/- including stamp duty and registration. The Assessing Officer has called upon the assessee to explain with necessary evidence source for purchase of property. In response, the assessee stated that property has been purchased out of own source of income, loan taken from Mahindrakumar Jain, advance received from Mrs.G.Jothi and Mr. L.Ravi. In this regard, the assessee has filed necessary

details, including confirmation letters from parties along with their bank statement etc. To verify claim of the assessee, notice u/s.133(6) of the Income Tax Act, 1961 was issued to all loan creditors. In response to notice u/s.133(6), loan creditors have submitted details. The Assessing Officer had also taken bank statement from concerned banks u/s.133(6) of the Act. The Assessing Officer noticed that although, loans have been received through cheques / demand drafts, but there is no clarity on whose name demand draft has been taken, therefore, rejected explanation of the assessee and made addition of Rs.4,71,74,600/- towards purchase of property as unexplained investments u/s.69 of the Income Tax Act, 1961. On appeal before the first appellate authority, the learned CIT(A) for the reasons stated in his appellate order confirmed additions made by the Assessing Officer .

4. The learned A.R for the assessee submitted that the learned CIT(A) erred in sustaining additions made by the Assessing Officer towards investments made in purchase of property u/s.69 of the Income Tax Act, 1961, without appreciating fact that the assessee has explained source for

purchase of property and also filed necessary details, including name and address of persons from whom loans have been taken along with their PAN and bank statements. The learned A.R for the assessee further submitted that the assessee claims to have invested own source of Rs.71,80,000 /- out of which a sum of Rs.40.00 lakhs has been received from M/s.Mainland Constructions, where the assessee and her husband were directors and said sum has been received by demand draft drawn from Axis bank account. The assessee had also received a sum of Rs.22,43,200/- from M/s.Mainland Associates. The AR further submitted that the assessee received a sum of Rs.1.00 crores through demand draft from Mrs.G.Jothi towards booking advance for purchase of property for which necessary details has been filed. The assessee had also received a sum of Rs.1,20,00,000/- from Mr. L.Ravi towards booking advance for purchase of property and said sum has been received through cheque. The assessee has received Rs.1,45,00,000/- from Mr. Mahindrakumar Jain for which explained that her husband of the assessee syndicated to buy property through Mr. Mahindrakumar Jain for his friends and received amount from 5 parties towards purchase of

property. All these evidences were placed before the Assessing Officer, however, the Assessing Officer has ignored evidences filed by the assessee and made additions towards total amount invested for purchase of property as unexplained investments u/s.69 of the Income Tax Act, 1961.

5. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that although, the assessee claims to have taken loans from various parties, but on perusal of bank statements, it was noticed that creditors does not have sufficient source of income to explain loans. Further, the creditors have transferred money from some other accounts for which no proper evidence has been filed before the Assessing Officer . Therefore, the Assessing Officer has rightly reached to conclusion that source claims to have explained for purchase of property is not genuine and thus, made additions towards amount invested for purchase of property u/s.69 of the Income Tax Act, 1961.

6. We have heard both the parties, perused material available on record and gone through orders of the authorities

below. The Assessing Officer has treated amount invested for purchase of property amounting to Rs.4,71,74,600/- as unexplained investments u/s.69 of the Income Tax Act, 1961. The Assessing Officer has assessed entire amount invested for purchase of property as unexplained investments solely for the reason that the assessee could not explain source for investments for purchase of property. According to the Assessing Officer, although, the assessee claims to have taken loans from various parties, but could not explain loans & advances with necessary evidences. Therefore, it is necessary to verify and understand whether the assessee has satisfactorily explained source for investments for purchase of property or not. It is an admitted fact that the assessee has invested a sum of Rs.4,71,74,600/- for purchase of property, which includes stamp duty and registration fees. The assessee claims to have invested a sum of Rs.71,80,000/- out of own source, which includes amount drawn from her own company M/s. Mainland Constructions Pvt Ltd amounting to Rs.40,00,000/-. The assessee has filed confirmation letter from M/s. Mainland Constructions Pvt Ltd. along with bank statement as per which, it is very clear that sum of Rs.40.00

lakhs has been transferred from M/s. Mainland Constructions Pvt Ltd. bank account to assessee's bank account. Further, said sum has been recorded in registered document for purchase of property. The assessee had also claims to have taken loan amounting to Rs.22,43,200/- from M/s. Mainland Associates, where her husband is sole proprietor. The amount has been taken through demand draft drawn from Indian Bank, North Usman Road branch and said demand draft has been referred to in sale deed for purchase of property. M/s. Mainland Associates had also filed necessary confirmation letter along with bank statements to establish transactions. The assessee had explained a sum of Rs.5 lakhs out of her own income and said sum has been paid by demand draft drawn on Indian Bank, North Usman Road branch. The assessee had also paid a sum of Rs.4,36,800/- towards TDS deducted on payment made to seller of the property and said amount has been paid through Indian Bank, North Usman Road branch. For above payments, the assessee has explained source for investments. From the above, what is evident is that the assessee has satisfactorily explained source for purchase of property to the extent of Rs.71,80,000/- with

necessary evidences. The Assessing Officer, without appreciating facts, simply rejected explanation furnished by the assessee. Therefore, we are of the considered view that the assessee has explained source for purchase of property out of her own source of income, which includes amount drawn from other group companies and income declared for current financial year to the extent of Rs.71,80,000/-.

7. Coming back to booking advance received from Smt.G.Jothi. The assessee has taken a sum of Rs.1 crore by demand draft drawn in favour of Mr.V.Karthik, seller of the property towards advance for purchase of residential flat proposed to be constructed by M/s. Main Land Constructions Pvt Ltd. at the impugned property purchased by the assessee during impugned assessment year. The amount has been received through demand draft drawn on Indian Overseas Bank, Valmiki Nagar branch. Smt.G.Jothi has filed confirmation letter in response to 133(6) notice issued by the Assessing Officer and filed necessary details. The assessee had also filed receipt issued by M/s. Mainland Constructions Pvt Ltd. for purchase of property. The creditor had also filed an

affidavit to the effect and reiterated her submissions made before the Assessing Officer. From the above, it is very clear that the assessee has established source for purchase of property out of booking advance received from Smt.G.Jothi amounting to Rs.1.00 crores. Similarly, the assessee claims to have received booking advance of Rs.1,20,00,000/- from Mr. L.Ravi and same has been received by demand draft drawn in favour of Mr. V. Karthik, seller of the property. Mr. L.Ravi paid said sum as booking advance for purchase of residential flat proposed to be constructed in the impugned land. The assessee had also filed necessary receipts issued by builder. The creditor has filed an affidavit and stated that he has paid booking advance of Rs.1,20,00,000/- to the assessee. The assessee had also filed necessary bank statements and PAN of creditor. From the above, it is very clear that the assessee has satisfactorily explained booking advance received from Mr. L.Ravi amounting to Rs.1,20,00,000/-. Therefore, we are of the considered view that out of source for purchase of property a sum of Rs.2,20,00,000/- (Rs.1.00 crore booking advance received from Mrs.G.Jothi + Rs.1,20,00,000/- booking advance

received from Mr. L.Ravi) has been satisfactorily explained with necessary evidences. Therefore, to this extent, the Assessing Officer has erred in rejecting explanation furnished by the assessee to explain source for purchase of property.

8. Coming back to loan received from Mr. Mahindrakumar Jain amounting to Rs.1,45,00,000/-. Although, the assessee claims to have taken loan from Mr. Mahindrakumar Jain, but could not file necessary evidences, including confirmation from parties during the course of assessment proceedings. The assessee claims to have filed confirmation letter before the learned CIT(A). However, the learned CIT(A) has recorded categorical finding that except confirmation letter, the assessee has neither furnished bank statement nor income tax returns copy of creditors. Even before us, the assessee could not file any evidences to explain loan claims to have taken from Mr. Mahindrakumar Jain amounting to Rs.1,45,00,000/-. Therefore, we reject arguments of the assessee that a sum of Rs.1,45,00,000/- has been explained out of loan taken from Mr. Mahindrakumar Jain for purchase of property.

9. As regards, cost of stamp paper and registration fees paid amounting to Rs.34,94,600/-, it was explanation of the assessee that cost of stamp paper and registration fees has been paid from M/s. Mainland Constructions Pvt Ltd. account. The assessee claims that it has sufficient source of income to explain amount paid towards cost of stamp paper and registration charges. However, no evidence, including cash flow statement has been filed before the authorities below or even before us. Therefore, we are of the considered view that this aspect needs further verification from the Assessing Officer to ascertain source of income for explaining amount paid for cost of stamp paper and registration charges. In fact, the learned A.R for the assessee also wants to go back to the Assessing Officer to file cash flow statement to explain source. Hence, we set aside this issue of source towards cost of stamp paper and registration fees paid by M/s. Mainland Constructions Pvt Ltd. to the file of the Assessing Officer and direct the A.O. to make necessary enquiries and take appropriate decision in accordance with law.

10. To sum up out of total investments of Rs.4,71,74,600/- towards purchase of property and additions made by the

Assessing Officer u/s.69 of the Income Tax Act, 1961, the assessee could explain source to the extent of Rs.71,80,000/- from own source and booking advance of Rs.2,20,00,000/- from Smt.G.Jothi and Mr.L.Ravi. Therefore, we are of the considered view that to the extent of Rs.2,91,80,000/- source has been explained with loans and booking advance taken from above parties and thus, the Assessing Officer cannot make addition towards purchase of property u/s.69 of the Income Tax Act, 1961, when the assessee has satisfactorily explained source to the extent of Rs.2,91,80,000/-. Thus, we direct the Assessing Officer to delete additions to the extent of Rs.2,91,80,000/-.

11. As regards loan taken from Mr. Mahindrakumar Jain, the assessee could not explain source with necessary evidence and thus, additions made by the Assessing Officer to the extent of Rs.1,45,00,000/- loan claims to have taken from Mr. Mahindrakumar Jain is sustained. Similarly, a sum of Rs.34,94,600/- spent towards cost of stamp paper and registration fees, the issue is set aside to the file of the

Assessing Officer for further verification and take appropriate decision in accordance with law.

12. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 22nd June, 2022

Sd/-	Sd/-
(वी. दुर्गा राव)	(जी. मंजुनाथ)
(V.Durga Rao)	(G.Manjunatha)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 22nd June, 2022

DS

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

- Appellant
- Respondent
- आयकर आयुक्त (अपील)/CIT(A)
- आयकरआयुक्त/CIT
- विभागीयप्रतिनिधि/DR
- गार्डफाईल/GF.