

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.203/Chny/2020  
निर्धारण वर्ष/Assessment Years: 2012-13

Shri I. Gulam,  
No. 231, K.K. Nagar,  
Madurai 625 020.  
[PAN: BACPG6476P]

(अपीलार्थी/Appellant)

Vs. The Income Tax Officer,  
Non Corporate Ward 2(2),  
No. 2, V.P. Rathinasamy Nadar Road,  
Bibikulam, Madurai 625 002.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No.204/Chny/2020  
निर्धारण वर्ष/Assessment Years: 2012-13

Shri I. Fakhrudeen,  
No. 231, K.K. Nagar,  
Madurai 625 020  
[PAN: AAXPF5259M]

(अपीलार्थी/Appellant)

Vs. The Income Tax Officer,  
Non Corporate Ward 2(2),  
No. 2, V.P. Rathinasamy Nadar Road,  
Bibikulam, Madurai 625 002.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No.205/Chny/2020  
निर्धारण वर्ष/Assessment Years: 2012-13

Smt. Halima, W/o Shri A. Imitiaz,  
No. 231, K.K. Nagar,  
Madurai 625 020  
[PAN: AACPH1491G]

(अपीलार्थी/Appellant)

Vs. The Income Tax Officer,  
Non Corporate Ward 2(2),  
No. 2, V.P. Rathinasamy Nadar Road,  
Bibikulam, Madurai 625 002.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No.206/Chny/2020  
निर्धारण वर्ष/Assessment Years: 2012-13

Shri A. Imitiaz,  
No. 231, K.K. Nagar,  
Madurai 625 020  
[PAN: AADPI4938E]

(अपीलार्थी/Appellant)

Vs. The Income Tax Officer,  
Non Corporate Ward 2(2),  
No. 2, V.P. Rathinasamy Nadar Road,  
Bibikulam, Madurai 625 002.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Yeswanthram, CJ, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri V. Nandakumar, JCIT  
सुनवाई की तारीख/ Date of hearing : 11.07.2022  
घोषणा की तारीख /Date of Pronouncement : 29.07.2022

## **आदेश / O R D E R**

### **PER V. DURGA RAO, JUDICIAL MEMBER:**

These four appeals filed by different assesseees are directed against the common order of the Id. Commissioner of Income Tax (Appeals) 2, Madurai dated 14.11.2019 relevant to the assessment year 2012-13. Since the facts are identical and common issue has been raised, all the appeals were heard together and being disposed off by this common order for the sake of brevity. The common concise grounds raised by the assessee are as follows:

- “1. *The order of the Commissioner of Income Tax (Appeals) is erroneous, arbitrary and against the settled principles of law.*
2. *The Commissioner of Income Tax (Appeals) erred in confirming the addition which was made by taking only a portion of the statement recorded by the Assessing Officer.*
3. *The Commissioner of Income Tax (Appeals) erred in not extending the benefit of cross examination even though a statement recorded from the buyer is heavily relied upon to complete the assessment.*
4. *The Commissioner of Income Tax (Appeals) erred in confirming the addition without appreciating the fact that the Assessing Officer had not invoked section 50C of the Income Tax Act, 1961 to take guideline value as the value for the purpose of computing capital gain.*
5. *The Commissioner of Income Tax (Appeals) erred in confirming the addition without appreciating the fact that the tenancy right is the capital asset and therefore the amount paid by the buyer to the tenant*

*for the vacation of tenancy can be taxed only in the hands of the tenant and not in the hands of the owner of the capital asset.*

6. *The Commissioner of Income Tax (Appeals) erred in confirming the addition without considering the fact that the entire sale consideration was used for the purchase of a new residential house and thus qualifies for exemption under section 54 of the Income Tax Act, 1961.*

*The Appellant craves to adduce further grounds at the time of hearing.”*

2. Brief facts of the case are that all the four assesseees are members of the same family. Smt. Halima obtained the property measuring 4,400 sq. ft from her father Shri N. Aziz Noor Mohamed @ N. Abdul Aziz, through settlement deed dated 02.02.2007 registered in document No.563 of 2007 at SRO, Coimbatore. Subsequently, through another deed of settlement Smt. Halima divided the property into one-fourth each to herself, her husband and her two sons which is recorded in settlement, deed in Document No. 3606 of 2010 at SRO, Coimbatore. Subsequently, the property was sold on 01.07.2011 to M/s. Saravana Selvarathnam Retail Private Limited, Chennai for a deed value of ₹.1,14,00,000/-. During the course of search under section 132 of the Income Tax Act, 1961 [“Act” in short] conducted against Saravana Group, it was revealed that the on-money of ₹.2,39,21, 100/- was paid in cash to Shri A. Imtiaz and his family members in addition to the documented sale value. In case of all these four members of the family, no one filed income tax return for assessment year 2012-13 relevant to the previous year 2011-12 which

was due by 31.07.2012. Subsequently, notices under section 271F of the Act dated 11.02.2014 in case of Smt. Halima and her son Shri I. Fakhrudeen and on 10.02.2014 in case of Shri A. Imtiaz and son Shri I. Gulam were issued to show cause as to why penalty should not be imposed for not filing the Income Tax return for assessment year 2012-13. In consequence to the notice under section 271F of the Act, all the four family members filed their income tax return for assessment year 2012-13 on 27.02.2014. Subsequently, the Assessing Officer levied penalty under section 271F of the Act by his order dated 21.08.2014 in case of all the four family members imposing a penalty of Rs.5,000/- each for default of not filing the income tax returns by the due date allowed under section 139(1) of the Act. The returns filed were belated returns u/s 139(4) of the Act. In the meanwhile, the Assessing Officer received a confidential information from ACIT, Central Circle- IV(2), Chennai vide letter No. Conf./Information/Cent.Circle/IV(2)/13-14 dated 28.01.2014 enclosing a copy of the sale deed and sheet numbered 40 & 45 describing the payment made by M/s. Saravana Selvarathnam Retail Private Limited, Chennai to the four family members wherein it was stated that an amount of ₹.2,39,21,100/- was paid as on-money. After considering the submissions of the assesseees, the Assessing Officer completed the assessments in all the four cases by adding the on-money

for the purpose of computation of Long Term Capital Gains at ₹.87,58,114/- in case of each of the family members. The Assessing Officer also brought to tax the undisclosed interest receipt in case of assessees Shri A. Imtiaz and Smt. Halima. On appeal, by dismissing the ground of denial of receipt of on-money and confirming the assessment order as well as deduction claimed under section 54 and disallowance of interest income, the Id. CIT(A) has directed the Assessing Officer to recompute the indexed cost and partly allowed the appeals of the assessees.

3. On being aggrieved, all the assessees are in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessment in the case of all the assessees are based on a statement that has been recorded under section 132 of the Act in the case of M/s. Saravana Selvarathnam Retails Pvt. Ltd that they have paid an amount of ₹.3,53,21,100/- to the owners being the difference in sale price received in cash. The Id. Counsel heavily relied upon the statement dated 04.09.2011 recorded from the authorized person of Saravana Selvarathnam Retails Pvt. Ltd, which has been relied upon by the Assessing Officer by ignoring the actual fact mentioned in the statement that the payment was made to vacate tenants. The Id. Counsel further

submitted that the assesseees were not allowed for cross examine by calling the person who has deposed the statement and relied on the judgement of the Hon'ble Supreme Court in the case of Andaman Timber Industries v. Commissioner of Central Excise, Kolkata – II (Civil Appeal No. 4228 of 2006). He has further submitted that the addition made was solely based on third party information and relied on the judgement of the Hon'ble Supreme Court in the case of CIT v. Odeon Builders (P.) Ltd. (2019) 418 ITR 315. Ignoring the 50C value, the Assessing Officer adopted the value of the property at ₹.3,53,21,100/- is against the law.

4. On the other hand, the Id. DR strongly supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book. In this case, the assessment has been framed solely based on the statement recorded under section 132 of the Act in the case of M/s. Saravana Selvarathnam Retail Private Limited, Chennai, received by the Assessing Officer from the ACIT, CC-IV(2), Chennai, wherein, it was stated to have paid in cash of ₹.2,39,21,100/- as on-money for the purchase of property at Coimbatore from the assesseees. The first point

for adjudication is as to whether the amount paid by the buyer to the tenant for the vacation of tenancy can be taxed in the hands of the tenants or owner of the capital asset.

5.1 In para No. 6.2 of the assessment order, the findings of the Assessing Officer are reproduced as under:

6.2 During the course of search proceedings on 18.08.2011, sworn statement was recorded from Shri A.S. Arunkumar S/o K.N. Sekar who was in-charge for issue of vouchers and cheques for M/s. Sarvana Selvarathnam Retail Private Limited, Chennai wherein he stated the details of payment as under:

4400 sq.ft. = 10.09174311 @ 35 lakh per cent

Market value of the property	= ₹.3,53,21,100
Less: Guideline value paid in DD	= ₹.1,14,00,000
Balance	= ₹.2,39,21,100
Less: Already paid	= ₹. 86,00,000
Balance paid	= ₹.1,53,21,100

The above statement was accepted and confirmed by the Managing Director Shri S. Saravana Arul, M/s. Saravana Selvarathnam Retail Private Limited, Chennai by furnishing his reply on 04.09.2011.

5.2 The above assertion of the Assessing Officer is found to be incorrect for the reason that the purchaser of the property has not at all mentioned the above payment details in the reply dated 04.09.2011 of Shri S. Saravana Arul, Managing Director, Saravana Selvarathnam Retail Pvt. Ltd. and for ready reference, the reply letter dated 04.09.2011 is reproduced verbatim as under:

4<sup>th</sup> September, 2011

The Deputy Director of Investigation,  
Unit II,  
108, Mahatma Gandhi Road,  
Chennai 600 034.

Dear Sir,

*Sub: Search proceedings U/s. 132 of Income Tax Act, 1961, in the case of M/s. Saravana Selvarathnam Retail (P) LIMITED – reg.*

*Ref: Panchanama No. ANN/AVS/B&D/S*

*With reference to the subject matter cited above, we state that, during the course of proceeding U/s. 132, at premises at 14, Ranganathan Street, your officers expressed certain doubts regarding the purchase of land and building at Coimbatore, Tamil Nadu.*

*In this connection, we state that we have purchase land building during the financial year commencing from 1st April 2011, at Coimbatore for an amount of Rs.3.77 Crores, including registration for proposed expansion, which is accounted and duly verified by your good office. While making payment to the land owner, it was agreed to pay ₹.7.40 crores, for vacation of tenants of the premises, which was noted in the sized document by your good office. **However, we have made payment amounting to ₹.6.65 crore, only. However, while accounting the purchase of land and building, our accountant has made mistake of not accounting the payment of ₹.6.65 Crores paid to the land lord for vacation of tenants, under the pretext that under which head of account it has to be accounted.***

*During the course of the investigation your officers have alleged that the said amount represents additional income which is not recorded in the books of accounts. It is in this response, fully submitted that due to non updating the accounts in the system, the sold amount was not reflected in accounting of the purchase of said land and building at Coimbatore.*

*In view of the difficulties, which we would be put to in the event of proving the genuineness of the above said statements, and the balance of convince to officers, **the payment of ₹.6.65 Crores for vacation of tenants, which was not duly recorded in books of account at the time of search proceeding U/s. 132 of Income tax Act, 1961 is offered for tax.***

*We are offering this with a view that not to have any protected litigation with the department and with a hope that no penal proceeding will be levied against us.*



*We hope that no further finishing enquiries will be made in this connection.”*

5.3 From the above statement of the purchaser of the property viz., M/s. Saravana Selvarathnam Retail Private Limited, Chennai, it is very clear that the purchaser has agreed to pay ₹.7.40 crores for vacation of tenants of the premises, which was noted in the sized document by the Department and the purchaser has admitted to have made payment amounting to ₹.6.65 crores for vacation of tenants of the premises, which means, the purchaser has purchased encumbered property and in order to clear the encumbrances, the purchaser paid lump-sum amount to the tenants/occupants of the property. Moreover, in the above statement, in nowhere it was mentioned that the above sum of ₹.6.65 crores was paid either to the seller or through the seller of the property. From the above statement, it is also very clear that dealings are only between the purchaser of the property and tenants occupied in that premises. However, the purchaser has not given any details/break-up for arriving the figure of ₹.7.40 crores/₹.6.65 crores, which it was aggrieved to pay for vacation of tenants of the premises or how many tenants have occupied in that premises. Under the above facts and circumstances, we are of the considered opinion that whatever amount paid by the buyer to the tenant

for the vacation of tenancy should not be taxed in the hands of the owner of the capital asset.

6. The next point for consideration is with regard to adoption of value of the property sold by the assessee. In the assessment order, the Assessing Officer has given a finding that the registered value of the property sold by the assessee was ₹.1,14,00,000/-, whereas, the market value of the property is mentioned at ₹.3,53,21,100/-. The Assessing Officer shall, either adopt the value of the property under section 50C of the Act or DVO valuation of the property. Without any evidence, the Assessing Officer cannot adopt the value other than the above. In this case, the Assessing Officer has neither referred for the valuation of FMV to the DVO nor considered the guideline value adopted for the stamp duty purposes by the SRO of ₹.1,52,65,558/-. Admittedly, there was no search and seizure operation carried out in the premises of the assessee. There was absolutely no evidence to show that the assessee has received on-money for the sale of the property. When the Department is alleging receipt of on-money by the assessee, the onus cast upon the Department to prove either by way of unaccounted cash deposits in their bank accounts, or unaccounted purchase of any property or any other material evidence about the receipt of the on-money. No allegation shall

be sustained without evidence. In view of the above facts and circumstances, we set aside the order of the Id. CIT(A) in confirming the addition and direct the Assessing Officer to adopt the guideline value adopted for the stamp duty purposes by the SRO of ₹.1,52,65,558/- as FMV of the property under section 50C of the Act and accordingly compute the capital gain.

7. So far as claim of additional capital gain under section 54F of the Act is concerned, in the return of income for the assessment year 2012-13 filed on 27.02.2014, the assessee has claimed ₹.53,22,660/- as eligible deduction under section 54 of the Act for the purchase of a residential building for the four family members at No. 10, Managiri 4<sup>th</sup> Street, Madurai on 18.05.2012 for ₹.53,22,660/- and the individuals have claimed 1/4<sup>th</sup> of the above at ₹.13,30,665/-. For claiming additional capital gains under section 54F of the Act of ₹.59,77,340/-, the Assessing Officer called for details of cost of construction, etc. Since the assessee could not file the details of cost of constructions, plan approval, or PAN of Shri J. Suresh, Consultant Civil Engineer & Approved Value, the Assessing Officer rejected the claim of the assessee. On appeal, the assessee could not produce any details of cost of constructions, plan approval, etc.,

the Id. CIT(A) confirmed the order of the Assessing Officer in rejecting the claim of the assessee. Before us, the Id. Counsel for the assessee has submitted that the assessee's are ready to file all the details before the Assessing Officer and prayed for remitting the matter back to the file of the Assessing Officer for fresh consideration. By considering the submissions of the Id. Counsel, we set aside the order of the Id. CIT(A) on this issue and remit the matter back to the file of the Assessing Officer for *de novo* consideration afresh in accordance with law. The assessee is directed to furnish complete details before the Assessing Officer for verification and deciding the issue.

8. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on 29<sup>th</sup> July, 2022 at Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 29.07.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,  
3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR &  
6. गार्ड फाईल/GF.

