आयकर अपीलीय अधिकरण, ''डी'' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./**I.T.A. No.2657/Chny/2019**
निर्धारण वर्ष/**Assessment Year:2015-16**

Shri Kishor Jagannath Dandekar, New No. 48, Old No. 34, Parinam, Flat No. 2A, Aspiran Garden, Kilpauk, Chennai 600 010.	Vs.	The Income Tax Officer, Non Corporate Ward 11 (3), Chennai 600 034.

[PAN: AAEPD2514N]

(**अपीलार्थी /Appellant**) (**प्रत्यर्थी/Respondent**)

अपीलार्थी की ओर से / Appellant by	:	Shri R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri R. Anita, JCIT
सुनवाई की तारीख/ Date of hearing	:	27.08.2020
घोषणा की तारीख /Date of Pronouncement	:	10.09.2020

आदेश /O R D E R

PER DUVVURUL RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals) 13, Chennai dated 21.08.2019 relevant to the assessment year 2015-16. The effective grounds raised in the appeal of the assessee relate to confirmation of disallowance of ₹.12,25,000/- being difference in sale consideration received and confirmation of unexplained investments of ₹.54,00,000/- under section 69 of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2015-16 on 30.09.2015 admitting an income of ₹.3,71,280/-. The return filed by the assessee was selected for scrutiny and against the statutory notices, the assessee furnished the details. On verification of the details filed by the assessee, the Assessing Officer completed the assessment under section 143(3) of the Act by assessing total income of the assessee at ₹.72,46,282/- after making addition of ₹ 12,25,000/- being difference in sale consideration received and addition on unexplained investment of ₹.54,00,000/- under section 69 of the Act.

3. From the details furnished by the assessee, the Assessing Officer noticed that the assessee has sold a property at New Door No. 9, Parasu Pillai Street, Kilpauk, Chennai on 29.01.2015 for an amount of ₹.8,11,00,000/- (assessee's share being 1/4th works out to ₹.2,02,75,000/-) to M/s. Vikranti Foundation Firm though the sale agreement dated 14.03.2014 and the assessee had also given a registered general power of attorney on 23.01.2015. On perusal of the ledger furnished by M/s. Vikranti Foundations it is seen that the assessee has in fact, received ₹. 8,50,00,000/- on sale of property. Hence, the difference of sale consideration of ₹.12,25,000/- being 1/4th of assessee's share [₹.49,00,000/- (₹.8,50,00,000 – ₹.8,11,00,000/-) was brought to tax under the head income from other sources and taxed

accordingly. On appeal, after considering the submission of the assessee and verification of details furnished by the assessee, the ld. CIT(A) confirmed the addition.

3.1 On being aggrieved, the assessee is in appeal before the Tribunal.

3.2 We have heard both sides through video conferencing, perused the materials available on record and gone through the orders of authorities below including brief paper book filed by the assessee. In this case, the assessee has admitted the sale consideration at ₹.8,11,00,000/- for the sale of property of the assessee along with three others, whereas, the Assessing Officer observed that the consideration for the property sold was ₹.8,50,00,000/-. On verification of the bank statement with HDFC Bank, the authorities below have observed that on 07.06.2014, a sum of ₹.50,00,000/- was received from Vikranthi Foundations Firm and on the very same day, a cheque was given in favour of Sunil Bhandari for the same amount of ₹.50,00,000/-. Apart from the above entry, the ld. CIT(A) has observed that there was another entry of ₹.50,00,000/- on 27.06.2014 received from M/s. Vikranthi Foundations Firm by funds transfer and this transaction was not reflected in the ledger account submitted by M/s. Vikranthi Foundations Firm. The ld. CIT(A) further observed that even if the above payment made on 07.06.2014 is ignored as balancing payments, still, the assessee had received a sum of ₹.50,00,000/- on

27.06.2014 and thereby confirmed the addition. Before us, the ld. Counsel for the assessee has submitted that before confirming the addition with regard to the entry of ₹.50,00,000/- on 27.06.2014 stated to have received from M/s. Vikranthi Foundations Firm by funds transfer and not reflected in the ledger account, the assessee was not given an opportunity of being heard. On perusal of the appellate order, we find that the assessee was not given any opportunity to explain about the entry of ₹.50,00,000/- on 27.06.2014 received from M/s. Vikranthi Foundations Firm by funds transfer which was not reflected in the ledger account submitted by M/s. Vikranthi Foundations Firm. Thus, this ground of appeal requires verification.

4. With regard to the second addition on unexplained investments of ₹.54,00,000/- under section 69 of the Act, the Assessing Officer has observed that the assessee has received ₹.50,00,000/- on 07.06.2014 and the same was debited to Shri Sunil Bhandari through journal entry. As the assessee has not given any break up for the payment of the amount towards UDS, this amount was taken as the source for the purchase of land and regarding the balance of ₹.40,00,000/ - plus registration of ₹.14,00,000/- and no details were available either in the ledger account or in the bank account. Regarding the land development charges of ₹.50,00,000/- paid to Shri Sunil Bhandari, it was seen from the bank account and ledger account that the assessee has

received ₹.50,00,000/- on 13.06.2014 and the same has been paid on 14.06.2014. Regarding the construction cost of ₹.40,00,000/- the same was debited in the account on 31.03.2015. Thus, out of the total cost of the new flat purchased, source for ₹.1,40,00,000/- stands explained and the balance of ₹.40,00,000/- plus registration charges of ₹.14,00,000/- was not explained and therefore, the Assessing Officer treated the same as unexplained investments of the assessee and the same was brought to tax under the head income from other sources as per the provisions of sec. 69 of the Act and taxed accordingly. On appeal, after considering the submissions of the assessee, the ld. CIT(A) confirmed the addition.

4.1 On being aggrieved, the assessee is in appeal before the Tribunal.

4.2 We have heard the rival submissions. In this case, it was the submission of the ld. Counsel that the undivided share of the property was sold and the assessee's share is 1/4th. It was sold to M/s. Vikranthi Foundation Firm and moreover, from the same firm, the assessee purchased new flat out of sale consideration after entering into agreement and these facts are not in dispute. Further, in this case, the buyer of the old property and seller of the new flat to the assessee are one and the same and the transactions were all routed through ledger accounts. Similar transactions in co-owner's case have been accepted without making any addition. It was further submission that in view of the above facts, the ld. CIT(A) was incorrect to give findings that each case has to be decided on its own merits and simply because in the co-owner's case the source for the investment was accepted it does not mean that the source for the assessee's case should also be accepted. After considering the submissions of the ld. Counsel for the assessee, we find that the ld. CIT(A) as well as the Assessing Officer have not passed any detailed order regarding the unexplained investment and also not given an opportunity to the assessee to explain about the unexplained investment of ₹.40 lakhs and registration charges of ₹.14 lakhs.

4.3 Thus, we set aside the order of the authorities below and remit the matters back to the file of the Assessing Officer to call for details from the assessee on the specific observations of the ld. CIT(A) with regard to the receipt of sum of ₹.50,00,000/- on 27.06.2014 received from M/s. Vikranthi Foundations Firm by funds transfer which was not reflected in the ledger account submitted by M/s. Vikranthi Foundations Firm as well as the issue of unexplained investments and after verification of the details of the assessee as well as co-owner's case, both the issues may be decided afresh in accordance with law after affording an opportunity of being heard to the assessee. Thus, the grounds raised by the assessee in the appeal are allowed for statistical purposes.

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

Order pronounced on the 10th September, 2020 at Chennai.

Sd/-	Sd/-
(S JAYARAMAN)	(DUVVURUL RL REDDY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 10.09.2020

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.