

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं

श्री अब्राहमपी.जॉर्ज, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

ITA No. 832/Mds/2011
Assessment Year: 2006-07

Mrs.K.Reshuma,
19, Srinivasapuram I Cross Street,
Thiruvanmiyur,
Chennai – 600 041.

v. The Deputy /Assistant
Commissioner of Income Tax,
Central Circle II (2),
Chennai – 600 034.

PAN : AEIPR3763D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

ITA Nos. 833 to 839/Mds/2011
Assessment Years: 2001-02, 2002-03, 2003-04,
2004-05, 2005-06, 2006-07 & 2007-08

Dr.K.Vanitha,
19, Srinivasapuram I Cross Street,
Thiruvanmiyur,
Chennai – 600 041.

v. The Deputy /Assistant
Commissioner of Income Tax,
Central Circle II (2),
Chennai – 600 034.

PAN : AACPV1968L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

ITA No.882/Mds/2011
& CO No.82/Mds/2011
Assessment Year: 2007-08

The Assistant Commissioner of
Income –tax,
Central Circle –II(2),
Chennai – 600 034.

v. Dr.K.Vanitha,
19, Srinivasapuram I Cross
Street,
Thiruvanmiyur,
Chennai – 600 041.

PAN : AACPV1968L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent/ Cross Objector)

Assessee by : Shri S.Sridhar, Advocate
Department by : Shri R.Durai Pandian, JCIT

सुनवाईकीतारीख/Date of Hearing : 15.09.2016

घोषणाकीतारीख/Date of Pronouncement : 28.10.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the assessee and revenue relates to two independent assesseees. Since common issue arises for consideration in all the appeals, we heard the same together and disposing off the same by this common order.

2. There was a search in the premises of Dr.K.Vanitha on 03.07.2006. The assessee filed return of income for the assessment year 2001-02 on 29.11.2001. The time limit for issue of notice under Section 143(2) expired on

30.11.2002. The learned counsel for the assessee further submitted that an assessment order was also passed under Section 143(3) on 22.03.2004. Therefore, no assessment proceeding was pending as on 03.07.2006 when the search was carried out. Since no assessment proceeding was pending, the income disclosed before the date of search cannot be taken as income for the block period. In other words, according to the learned counsel for the assessee, the assessing officer has to confine himself only to the material found during the course of search operation. Placing reliance on the order of this Tribunal in ITA Nos.559 to 564/Mds/2014 dated 16.06.2014, the learned counsel for the assessee submitted that when no assessment proceedings was pending on the date of search, reassessment can be made only if incriminating material are collected in the course of search material.

3. According to the learned counsel for the assessee, there was no incriminating material found during the course of search operation. Therefore, there cannot be any addition when the assessment proceeding was initiated under Section 153A and 153C of the Act. The learned counsel also placed his reliance on the order of this Tribunal in the case of Shri V.G.S.Rajesh in ITA Nos.2081 to 2086/Mds/2012 dated 03.07.2015.

4. Referring to the assessment year 2002-03, the learned counsel for the assessee submitted that the assessee filed the return of income under Section 139(1) of the Act on 29.07.2002. The time limit for issue of notice under Section 143(2) expired on 31.07.2003. The assessing officer issued intimation under Section 143(1) on 06.08.2003. Since the time limit for issue of notice under Section 143(2) expired, the assessment proceeding is terminated by operation of law. Therefore, on the date of search, no assessment proceeding was pending. Therefore, the assessing officer has to confine himself only to the material found during the course of search operation and the income disclosed in the regular return before the date of search cannot be a reason for making addition for the block period. Similarly, for the assessment year 2003-04, the assessee filed return of income on 22.09.2003 and the time limit for issue of notice under Section 143(2) expired on 30.09.2004. No assessment under Section 143(3) was passed. However, the assessing officer issued intimation under Section 143(1) on 05.03.2004. Therefore, on the date of search, no assessment proceeding was pending.

5. Referring to assessment year 2004-05, the return of income was filed in the regular course on 02.02.2005 and the time limit for issue of notice under Section 143(2) expired on 28.02.2006. In this order, according to the learned counsel, no intimation was issued under Section 143(1) and no assessment

order was also passed under Section 143(3). Therefore, the assessment proceeding was terminated on 28.02.2006. Hence, the block assessment for the assessment years 2001-02 to 2004-05 is not validly framed on the basis of the search materials. In the case before us, according to the learned counsel, no material was found during the course of search operation. What was disallowed by the assessing officer is expenditure claimed by the assessee for the medical profession and also gift received from close relatives. In fact, the expenditure and gift were disclosed in the profit and loss account filed by the assessee in the regular course of filing return before the date of search. The information available in the profit and loss filed before the assessing officer in the regular course along with return of income before the date of search cannot be a basis for making addition for the block period under Section 153A of the Act.

6. Referring to the assessment year 2005-06, 2006-07 and 2007-08, the learned counsel for the assessee submitted that the assessment proceeding for assessment years 2005-06, 2006-07 and 2007-08 was pending on the date of search. The first addition made by the assessing officer is disallowance of Rs.84,606/- towards expenses. According to the learned counsel, the assessee claimed before the assessing officer that expenses towards vehicle maintenance, telephone bill, staff salary, lighting charges, medicine expenses, etc. to the extent of Rs.1,61,554/-. The assessing officer disallowed 40% of the

total claim on adhoc basis without any material. On appeal by the assessee, the CIT(A) however, restricted the same to 25%. The learned counsel for the assessee submitted that the assessee is a medical practitioner by profession. After the death of her husband, the assessee is running the clinic with a skeleton staff. The assessee could not even meet the day to day expenditure. In fact, the assessee's close relative one Mr.A.Ravindran who is employed in United States of America was financially supporting the assessee by giving small monetary gift. Therefore, the CIT(A) instead of restricting the disallowance at 25% ought to have deleted the claim of the assessee. Similarly for other assessment years, the expenditures were disallowed by the assessing officer at 40%. However, the CIT(A) restricted the same at 25%. According to the learned counsel, the CIT(A) is not justified in restricting the disallowance at 25%. The CIT(A) ought to have deleted the entire disallowance. The other common ground raised by the assessee in other assessment years is the gift received by the assessee from Mr.A.Ravindran.

7. According to the learned counsel, Shri A.Ravindran is assessee's mother's own brother's son. Shri.A.Ravindran, studied in U.S.A. and he was residing there for more than 40 years. In fact, the said Shri A.Ravindran became a citizen of U.S.A. Since the assessee is a widow and suffering, he is extending financial support by giving monetary gift. Even though for the

assessment year 2005-06, the assessing officer made an addition of Rs.43,620/- towards unexplained gift, the CIT(A) deleted the same on appeal by the assessee. For the assessment year 2006-07, the CIT(A) sustained the gift of Rs.2,66,747/- out of the total gift of Rs.4,41,966/-. For the assessment year 2007-08, the CIT(A) deleted the entire gift of Rs.3,08,378/-. However, the assessee filed the appeal before the Tribunal challenging the correctness of the order of the CIT(A). The expenditure confirmed by the CIT(A) to the extent of 25% of the total claim was also been challenged by the revenue in the department appeal for the assessment year 2007-08. Furthermore, the assessee has incurred an expenditure of Rs.1,22,906/- on renovation of the building. The CIT(A) without giving any reason has confirmed the order of the assessing officer. The assessee according to the learned counsel incurred expenditure of Rs.1,22,906/- for renovation of the building from the professional income and the gift received from Shri A.Ravindran. The assessee has also received gift during her birthday celebrations. The assessee being a medical practitioner by profession, she used to receive small gift from various person and close relatives during her birthday. The details of gift were filed before the assessing officer. In spite of that the assessing officer made addition.

8. On the contrary, Shri Durai Pandian, the learned department representative submitted that for the assessment year 2001-02 to 2004-05, the

expenditure claimed by the assessee was found to be false by the assessing officer. On a query from the bench, what is the basis for concluding that the expenditure claim by the assessee in the regular assessment proceeding are false, the learned department representative submitted that the assessee being a medical practitioner was expected to maintain certain books of accounts. However, no such books of account were maintained. No vouchers and bills were also maintained by the assessee. Therefore, the assessing officer came to the conclusion that the expenditure claimed by the assessee is not correct. Hence, the assessment proceeding initiated by the assessing officer under Section 153A is justified. The learned department representative further clarified that the addition made by the assessing officer was with regard to the expenditure incurred by the assessee and also gift received. According to the learned representative for the department, no specific material was found during the search operation in respect of the so called expenditure and the gift. The disallowance was made mainly on the basis of the profit and loss account which was filed by the assessee in the regular course before the date of search. Since the assessing officer found that the expenditure claimed by the assessing officer is not correct, he rightly initiated the proceeding under Section 153A of the Act.

9. Referring to the Assessment Year 2005-06, 2006-07 and 2007-08, the department representative submitted that for these assessment years, the assessment proceedings were pending on the date of search. Therefore, the assessing officer has to pass a composite order including all the income disclosed by the assessee in the regular course and also the income which was found during the course of search operation. As rightly submitted by the learned counsel for the assessee, the assessing officer claimed expenditure for all the assessment years. However, the assessing officer on adhoc basis disallowed 40% of the claim made by the assessee. On appeal by assessee, the CIT(A) restricted the disallowance at 25% of the claim made by the assessee. Since the assessee is not maintaining any books of account, bills and vouchers, according to the learned representative, the CIT(A) ought not to have restricted the disallowance at 25% made by the assessing officer. The revenue has filed the appeal for the assessment year 2007-08 challenging the correctness of the order passed by the CIT(A) granting partial relief to the assessee. Referring to the unexplained marriage expenditure, the learned department representative submitted that the assessee has paid a sum of Rs.25,000/- by cash on 07.03.2006 to Hotel Le Meridien and another sum of Rs.2,50,000/- was also paid to the very same hotel. Apart from this, the assessee has purchased a diamond eartop and diamond necklace from M/s.VBJ Jewelleries and paid Rs.49,825/- on 15.05.2006. Out of the total addition of Rs.12,16,610/-, the

CIT(A) deleted the addition made by the assessing officer to the extent of Rs.8,91,785/-. However, there was an addition to the extent of Rs.3,24,825/-. Referring to the claim made by the assessee before the assessing officer that the marriage expenditure were met by the assessee's aunt and the assessee reimbursed the expenditure subsequently, the learned department representative submitted that the claim of the assessee was not supported by any material evidence. Therefore, the CIT(A) rejected the claim of the assessee to the extent of Rs.3,25,825/-. According to the learned department representative, when no evidence was available, the CIT(A) ought to have confirmed the entire addition made by the assessing officer to the extent of Rs.12,61,610/-. Therefore, the CIT(A) committed an error in restricting the addition to Rs.3,24,824/-.

10. Referring to the expenditure incurred by the assessee towards renovation of the building, the learned department representative submitted that the assessee could not produce any material for the source of earning the income of Rs.1,22,906/- which was said to be for invested for renovation of the building. The assessee claimed before the assessing officer and the CIT(A) that the entire expenditure was accounted in the return of income. The CIT(A) deleted the addition made by the assessing officer without any reason. According to the learned representative, when the assessee has not explained

the source for earning Rs.1,22,906/- the same has to be added to the income of the assessee.

11. Referring to the gift said to be received from A.Ravindran, admittedly, Shri A.Ravindran is a non resident Indian. Year after year, the assessee receiving gift from the said Shri A.Ravindran. Since the assessee is not reciprocating by offering any gift to said A.Ravindran, the assessing officer found that there is no genuineness in the so called gift said to be received from Shri A.Ravindran. Accordingly, the assessing officer made an addition. The CIT(A), however, without appreciating the material on record, deleted the addition made by the assessing officer.

12. We have considered the rival submissions on either side and also perused the material available on record. Let us first take the assessment years 2001-02 to 2004-05. From the material available on record, it appears that there was a search operation in the premises of the assessee, namely Dr.K.Vanitha on 03.07.2006. The time limit for issuing notice under Section 143(2) expired for Assessment Years 2002-03 and 2003-04. For the Assessment Year 2001-02, the assessing officer passed the order under Section 143(3) on 22.03.2004. Therefore, on the date of the search on 03.07.2006, no proceeding was pending before the assessing officer. Hence, the assessing

officer cannot re-open the assessment concluded before the date of search. In other words, the assessing officer may make a fresh assessment in respect of the income which was unearthed during the course of search operation on the basis of the material found by the revenue in the course of search operation. In the case before us, admittedly, no material was found during the course of search operation. Therefore, this Tribunal is of the considered opinion that there cannot be any assessment of income for the block period in the absence of any material found during the course of search operation. We have also gone through the order of this Tribunal in the case of Shri V.G.S.Rajesh (supra). In the case before this Tribunal in Shri V.G.S.Rajesh (supra), the time limit for issuing notice under Section 143(2) expired on the date of search. Therefore, this Tribunal found that the assessment proceedings are terminated by operation of law. Since no assessment proceeding was pending on the date of search, the Tribunal found that the assessment for the block period could be made only on the basis of the material found during the course of search proceedings. Accordingly, the assessment made by the assessing officer as confirmed by the CIT(A) was set aside. In this case also for the assessment year 2001-02 and 2002-03, the assessing officer has passed the order under Section 143(3). For the Assessment Year 2003-04 & 2004-05, the time limit for issuing notice under Section 143(2) expired. Therefore, for all the three assessment years, the assessment proceedings were not pending on the date

of the search. Hence, in the absence of any material found during the course of operation, this Tribunal is of the considered opinion, that there cannot be any assessment for the block period. Accordingly, the orders of the lower authorities are set aside for the assessment years 2001-02, 2002-03, 2003-04 and 2004-05, the entire addition made by the assessing officer is deleted.

13. Now coming to assessment year 2005-06, 2006-07 and 2007-08, it is not in dispute that the assessment proceeding was pending on the date of search. The first disallowance made by the assessing officer was disallowance of Rs.84,606/- towards expenditure. The assessing officer has also disallowed Rs.1,61,554/- towards telephone bill, staff salary, lighting charges, medicine expenses, etc. In fact, out of the total expenditure claimed by the assessee, the assessing officer disallowed 40% of the claim on adhoc basis. The assessing officer has not referred to any material found during the course of search operation. On appeal by the assessee, the CIT(A) restricted the disallowance at 25% of the total claim of the assessee. The assessing officer has also made an addition with regard to so called gift said to be received by the assessee from Mr.A.Ravindran. The said Shri A.Ravindran is a close relative of the assessee. After the death of the assessee's husband, the said Shri A.Ravindran is financially supporting the assessee by advancing gift occasionally. No material was found during the course of search operation to show that the transaction

of gift was not genuine. The assessee has also claimed that the marriage expenses were met by the assessee's aunt and the same was reimbursed subsequently. The assessing officer disbelieved the claim of the assessee on the ground that there was not material evidence. It is pertinent to keep in mind that this is a block assessment. Therefore, it is for the assessing officer to substantiate the addition made in the assessment. When the assessee claims that the marriage expenditure was met by the aunt and it was subsequently reimbursed, it is for the assessing officer to examine further and find out whether such claim was correct or not. In the absence of any further investigation and material before the assessing officer, this Tribunal is of the considered opinion that disallowing the marriage expenditure is not justified at all.

14. Now coming to the addition made in respect of fixed deposits in the hands of Mrs.Reshuma for the assessment year 2006-07, from the order of both the authorities below, it appears that the fixed deposit receipts were found during the course of search operation to the extent of Rs.27,40,313/-. However, no addition was made other than the gift credited in the capital account to the extent of Rs.4,91,414/-. The assessee claimed before the authorities below that Shri A.Ravindran, a non resident Indian living in U.S.A. gifted Rs.4,91,414/- on the occasion of the birthday. It is also a fact that the

said Shri A.Ravindran being a close relative of the assessee gifted money to the assessee and her sisters, etc. The financial capability of the said Shri A.Ravindran is not disputed by the revenue. The assessing officer disallowed the claim of the assessee only on the ground that the assessee has not reciprocated by making a return gift to said Shri A.Ravindran. When the assessee claims that the said Shri A.Ravindran is supporting the family, this Tribunal is of the considered opinion that non reciprocation of the gift by the assessee cannot be a reason for making doubting the genuineness of the gift. For accepting a gift, it is not necessary in law that such gifts need to be reciprocated by making another gift. It may be a moral responsibility of the recipient of the gift to reciprocate the same at the appropriate stage. When the assessee claimed to have received the gift from her maternal uncle Shri A.Ravindran when the assessee was under financial constraint, this Tribunal is of the considered opinion that the donor himself might not have expected such reciprocation from the assessee or from her family. Therefore, this Tribunal is of the considered opinion that rejection of the claim of the assessee with regard to gift said to be given by Shri A.Ravindran is not justifiable.

15. In view of the above discussion, this Tribunal is unable to uphold the addition made by the assessing officer for assessment years 2004-05, 2005-06, 2006-07 and 2007-08 also. In the absence of any material, this Tribunal is of

the considered opinion that the addition made by the assessing officer is not justified. Accordingly, the orders of the lower authorities are set aside and the entire addition made by the assessing officer is deleted.

16. In the result, all the appeals of the assessee is allowed and appeal of the revenue in ITA No.882/Mds/2011 is dismissed and the cross objection of the assessee in CO No.82/Mds/2011 is also allowed.

Order pronounced on 28th October, 2016 at Chennai.

Sd/-

(अब्राहमपी.जॉर्ज)

(Abraham P. George)

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 28th October, 2016.

sp.

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.