

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1762, 1763, 1764 & 1765/Mds/2014

निर्धारण वर्ष / Assessment Years : 2006-07 to 2009-10

Shri K. Sivakumar,  
C/o M/s Subbaraya Aiyar  
Padmanabhan & Ramamani  
Advocates,  
New No.75A (Old No.105A),  
Dr. Radhakrishnan Salai,  
Mylapore, Chennai - 600 004.

v. The Deputy Commissioner of  
Income Tax,  
Central Circle – IV(1),  
Chennai - 600 034.

PAN : AJTPS 5869 H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Sh. Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing : 04.04.2016

घोषणा की तारीख/Date of Pronouncement : 01.06.2016

### **आदेश /O R D E R**

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

All the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals), Central-I, Chennai and pertain to assessment years 2006-07, 2007-08, 2008-09 and 2009-10. Since common issue arises for

consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that for assessment year 2006-07, the assessee has raised an additional ground with regard to jurisdiction to frame assessment under Section 153A of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. counsel, for the assessment year 2006-07, the assessee filed return of income in the regular course on 29.12.2006 and the regular assessment was completed under Section 143(3) of the Act on 31.12.2008. There was search in the partnership firm M/s Rm. K.V. group of concerns in which the assessee was a partner. Consequent to the search, a notice under Section 153A was issued. The Assessing Officer completed the assessment by making several additions without any incriminating material found during the course of search. According to the Ld. counsel, the regular assessment was completed on 31.12.2008 under Section 143(3) of the Act before the date of search. No assessment proceeding was pending as on 18.02.2009 when the search was conducted. Therefore, according to the Ld. counsel, the impugned assessment will not abate. The completed assessment

cannot be reopened under Section 153A of the Act. If at all any new material was found, the Assessing Officer can make further addition under Section 153A of the Act. In the absence of any material found during the course of search operation, the Assessing Officer cannot reopen the completed assessment under Section 143(3) of the Act, in the guise of making assessment under Section 153A of the Act. At the best, the assessment can be reopened under Section 147 if at all any income was omitted to be considered in the regular assessment. The Ld.counsel further submitted that since admittedly no material was found during the course of search operation, the Assessing Officer cannot make any assessment under Section 153A of the Act for the assessment year 2006-07. According to the Ld. counsel, addition can be made to the income rather assessed only on the basis of incriminating material found during the course of search operation. Since no material was unearthed during the course of search operation, according to the Ld. counsel, the assessment completed under Section 143(3) of the Act cannot be disturbed.

3. On the contrary, Shri Srinivas, the Ld. Departmental Representative, submitted that this issue was not raised before the

lower authorities. The assessee is raising this issue for the first time before this Tribunal. On a query from the Bench, the Ld. D.R. clarified that no seized material appears to be found for the assessment year under consideration and the Assessing Officer has not referred any search material in the assessment order. According to the Ld. D.R., even though the pending assessment proceeding alone abate, the Assessing Officer can compute the income on the basis of the material available on record even in case no material was found during the course of search operation.

4. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that no incriminating material was found during the course of search operation. We have carefully gone through the provisions of Section 153A of the Act. Section 153A of the Act clearly says that all the pending assessment proceedings on the date of search would abate and the Assessing Officer has to pass a composite assessment order under Section 153A of the Act including all the income disclosed in the regular return of income. In the case before us, the return filed in the regular course was scrutinized by the Department and the assessment order was passed under Section

143(3) of the Act on 31.12.2008. On the date of search, admittedly, no assessment was pending and it was completed. Once the assessment proceeding was completed, the Assessing Officer was expected to pass assessment order under Section 153A of the Act on the basis of seized material found during the course of search operation. In other words, the material unearthed during the course of search operation can alone be basis for making assessment under Section 153A of the Act.

5. The Revenue now contends before this Tribunal that this issue was not raised before the lower authorities. This Tribunal is of the considered opinion that the issue raised by the assessee goes to the very root of the jurisdiction of the Assessing Officer to complete the block assessment. In other words, the Assessing Officer has no jurisdiction to pass assessment order under Section 153A of the Act in the absence of incriminating material found during the course of search operation. This Tribunal is of the considered opinion that the issue of jurisdiction can be raised even before this Tribunal. The matter would be different if any material was found during the course of search operation. Remitting back the matter to the file of the Assessing Officer for reconsideration,

would not serve any purpose at all. Therefore, this Tribunal is of the considered opinion that in the absence of any material found during the course of search operation, no assessment can be made under Section 153A of the Act, especially when the assessment was not pending on the basis of return filed before the date of search. A similar view was taken by this Tribunal in the assessee's own case for assessment year 2003-04 in I.T.A. No. 1090/Mds/2014 dated 05.02.2015.

6. In view of the above, this Tribunal is unable to uphold the orders of the lower authorities for the assessment year 2006-07. Accordingly, the orders of the lower authorities for assessment year 2006-07 are set aside and the entire addition made by the Assessing Officer is deleted.

7. Now coming to other assessment years, the first issue arises for consideration is classification of rental income.

8. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the Assessing Officer classified 30% of rental income as income from other sources. According to the Ld. counsel, the entire income has to be classified as income from house property.

The CIT(Appeals) confirmed the order of the Assessing Officer on the ground that for the earlier assessment year, a similar income was considered and 30% of the same was classified as income from other sources. Referring to the order of this Tribunal in respect of other co-owners of the same property, the Ld.counsel submitted that the CIT(Appeals) directed the Assessing Officer to consider the entire rental income as income from house property. Since in respect of the very same property, the rental income was classified as income from house property in respect of other co-owners, there is no reason for taking a different view in the hands of the present assessee. The Ld.counsel placed on record a copy of the order of the CIT(Appeals) dated 30.11.2012 in the case of one of the co-owners, namely, Smt. V. Dhanalakshmi. The Ld.counsel submitted that the Revenue has accepted this decision of the CIT(Appeals) and not filed any appeal against this order before this Tribunal.

9. On the contrary, Shri Srinivas, the Ld. Departmental Representative, submitted that the assessee let out the building along with amenities like lift, air-conditioner, etc. Therefore, the charges collected for lift and amenities have to be classified as income from other sources. The Ld. D.R. has also submitted that in

the case of one of the co-owners, namely, Smt. V. Dhanalakshmi, the CIT(Appeals) deleted the classification made by the Assessing Officer and directed the Assessing Officer to consider the entire rental income as income from house property. No further appeal was filed before this Tribunal against the order of the CIT(Appeals).

10. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee appears to have 1/6<sup>th</sup> interest as co-owner of the property. In the case of Smt. V. Dhanalakshmi, the issue of rental income was considered and the CIT(Appeals) found that there was no evidence to indicate that the assessee provided any amenities except letting out the property on rent. Accordingly, the CIT(Appeals) directed the Assessing Officer to take the entire income as income from house property and allow the statutory deduction provided under Section 24 of the Act. No appeal was filed against this order of the CIT(Appeals) in respect of one of the co-owners Smt. V. Dhanalakshmi. It is not in dispute that the assessee is also one of the co-owners of the property, therefore, there is no reason to take a different view in respect of the assessee. When the property is same and it was let out by all the co-owners, and when the

classification of income in the hands of Smt. V. Dhanalakshmi attained finality, this Tribunal is unable to uphold the impugned order of the CIT(Appeals) wherein 30% of the rental income was treated as income from other sources. This Tribunal is of the considered opinion that the authorities below have to take a consistent view in the classification of income from the very same property. Therefore, the orders of the authorities below are set aside and the Assessing Officer is directed to take the entire income as income from house property and allow deduction under Section 24 of the Act.

11. The next ground of appeal is regarding disallowance of expenditure under Section 69C of the Act.

12. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the Assessing Officer found that there was inadequate drawing for household expenditure. According to the Ld. counsel, the assessee claimed opening cash balance of ₹24,56,500/-. The Assessing Officer estimated the expenditure at ₹3,60,000/- for the assessment year 2003-04 and increased the same by 15% year after year. According to the Ld. counsel, the

assessee has filed a revised estimation of family expenditure which indicates the accumulated drawings from other family members also. The assessee's family consists of his wife and his son. The CIT(Appeals), without considering the drawings disclosed by the assessee and the size of the family of the assessee, simply confirmed the addition made by the Assessing Officer. According to the Ld. counsel, when the assessee's family consists of his wife and son, the drawings shown by the assessee for the assessment year under consideration to the extent of ₹2,10,500/- is justified. Therefore, no further addition is called for.

13. On the contrary, Shri Srinivas, the Ld. Departmental Representative, submitted that for the assessment year 2006-07, the assessee has disclosed drawing of ₹3,61,750/- and the Assessing Officer estimated at ₹6,30,000/- and the difference was found to be ₹1,86,250/-. For the assessment year 2007-08, the assessee has disclosed only a sum of ₹2,10,500/-. According to the Ld. D.R., every year there was inflation and the assessee has to necessarily meet more expenditure for their liabilities. Therefore, the expenditure for the assessment year 2007-08 would not go below the expenditure disclosed for the assessment year 2006-07.

Since the Assessing Officer estimated the expenditure at ₹6,30,000/-, the same was estimated for the assessment year 2007-08 also. The balance of ₹4,19,500/- was added to the total income of the assessee. Similarly, for other assessment years also, the Assessing Officer made addition.

14. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee is engaged in the business of textiles in Chennai and Tirunelveli. The assessee has shown the expenditure for meeting the household expenses. The Assessing Officer found that there was shortfall in relation to source of meeting of expenditure. For the assessment year 2007-08, the Assessing Officer estimated the expenditure at ₹4,19,500/-. As rightly submitted by the Ld. D.R., for the assessment year 2006-07, the assessee has disclosed drawing for household expenditure at ₹3,61,750/-, however, for the assessment year 2007-08, the assessee has disclosed only ₹2,10,500/-. This Tribunal is of the considered opinion that the same expenditure as was incurred for assessment year 2006-07 ought to have been incurred for the assessment year 2007-08 also. Estimation of expenditure at ₹6,30,000/- without any material is

unjustified. This Tribunal is of the considered opinion that the assessee's family consists of only himself, his wife and his son. Therefore, taking into consideration of the business activity of the assessee and size of the family, the assessee would have incurred an expenditure of ₹3,61,750/- as it was disclosed by the assessee for the assessment year 2006-07. Therefore, the difference between ₹3,61,750/- and ₹2,10,500/- can at the best be estimated as expenditure for household during the assessment year 2007-08. In view of the above factual situation, this Tribunal is of the considered opinion that the addition of ₹4,19,500/- is not justified. Hence, the Assessing Officer is directed to restrict the addition only to ₹1,51,250/-. Accordingly, the orders of the lower authorities are modified and the Assessing Officer is directed to make addition to the extent of ₹1,51,250/- instead of ₹4,19,500/-.

15. The next ground of appeal is with regard to proportionate disallowance of interest on the housing loan.

16. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee is one of the co-owners of the property. They have borrowed a sum of ₹5 Crores for construction. The

Assessing Officer found that a sum of ₹83,50,000/- was not used for construction. According to the Ld. counsel, a sum of ₹70,00,000/- was paid to various temples as per the direction of the HR&CE to the firm Rm.K.V. & Sons. According to the Ld. counsel, the cost of construction has to be reimbursed by the assessee from the loan borrowed. Instead of paying to the partners, the same was paid to the temples as directed by the HR&CE. Therefore, according to the Ld. counsel, proportionate interest has to be allowed while computing notional income.

17. On the contrary, Shri Srinivas, the Ld. D.R. submitted that an identical issue was considered by this Tribunal in the case of other co-owners. The Ld. D.R. submitted that the dispute before this Tribunal was not with regard to claim of ₹83.50 lakhs, but the dispute was only with regard to ₹70 lakhs paid to the temples as donation. This Tribunal found that there was no reference in the lease deed with regard to liability of the assessee to reimburse the expenditure incurred by Rm.KV & Sons, the partnership firm. Therefore, this Tribunal found that the claim of the assessee that Rm.K.V. has invested the funds for construction and the same has to be reimbursed is not supported by any evidence. According to

the Ld. D.R., a similar disallowance was confirmed by this Tribunal in respect of other co-owners in I.T.A. No.234/Mds/2013 by order dated 07.08.2015.

18. We have considered the rival submissions on either side and perused the relevant material available on record. An identical disallowance of interest was considered by this Tribunal in respect of other co-owners. This Tribunal, as rightly pointed out by the Ld. D.R., found that there was no material to support the claim of the assessee that instead of reimbursing the cost of construction, donation was given to temples. This Tribunal found that there was no mention about the liability of the assessee in the lease agreement. In the absence of material, this Tribunal found that the assessee has diverted the sum of ₹70 lakhs borrowed for construction. In view of this, this Tribunal is of the considered opinion that the decision taken in respect of other co-owners is also equally applicable in the case of present assessee. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

19. The assessee has raised one more ground with regard to disallowance of ₹17 lakhs for the assessment year 2009-10.

20. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that a sum of ₹17,48,400/- was found at the residence of the assessee during the course of search operation. The assessee explained before the Assessing Officer that these are all cash balance available with the assessee from and out of drawings from the business concerns after meeting out the domestic expenses. According to the Ld. counsel, the assessee and his brother were living together. Since it is a common family, according to the Ld. counsel, the expenses would be met by drawings commonly from the business firm and a portion of the same would be handed over to other younger brothers Shri K. Ponanand and Shri K. Mahesh. The money withdrawn for family expenditure of all the brothers were kept in the residence of the assessee. Therefore, according to the Ld. counsel, there cannot be any addition under Section 69A of the Act. The Ld.counsel further submitted that what was found during the course of search operation is only accumulated drawings from the business firm, therefore, the addition made by the authorities below are not justified.

21. On the contrary, Shri Srinivas, the Ld. Departmental Representative, submitted that the assessee filed return of income in his individual status. No cash flow statement was filed before the Assessing Officer and during the course of search operation. The assessee has income only from the firm in which he happened to be a partner in the status of individual. The interest / notional income and profit earned from the firm was credited in the current account of the assessee. The assessee draws from this current account and maintains the expenditure for the purpose of meeting day-to-day expenses. Whenever there was surplus, the assessee is opening fixed deposit in the bank. The interest earned on such fixed deposit is once again ploughed into fixed deposit. Referring to the claim of the assessee that his brother used to give his money, the Ld. D.R. submitted that the assessee's elder brother Shri K. Viswanathan died on 26.01.2006. Even after his death, the assessee continued the same practice. Therefore, the Assessing Officer has rightly found that the explanation of the assessee was not satisfactory. Accordingly, he made addition under Section 69A of the Act in respect of the cash found during the course of search operation.

22. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee is engaged in the business of textile in Chennai and Tirunelveli. The assessee-firm consists of four brothers and the elder brother Shri K. Viswanathan died on 26.1.2006. Even though the assessee is filing returns individually, being a partner of the partnership firm, the assessee now claims that the money would be drawn commonly and distributed among the brothers to meet the family expenditure. It is common practice in South Indian families to withdraw money from business concern by elder brother and the same would be distributed among the younger brothers so that a uniform status can be maintained in the society by all the family members. The assessee explains that the money withdrawn in the earlier year, which was accumulated, was kept in the house of the assessee. The fact that Shri K. Viswanathan, died on 26.01.2006 is not in dispute. Therefore, the assessee has to naturally take care of all the family affairs, including the families of the brothers. The assessee also claimed before the authorities below that the elder brother Shri K. Viswanathan gave a sum of ₹1 lakh each for the last four assessment years. By taking

into consideration the status of the family and business, this Tribunal is of the considered opinion that the accumulated drawings could have been available in the residence of the assessee. In the absence of any allegation that the assessee has any source of income other than the business of the partnership firm and drawings from partnership firm, this Tribunal is of the considered opinion that making addition of ₹17 lakhs is not justified. As rightly pointed out by the Ld.counsel for the assessee, the accumulated drawings by the partners for common family expenses might have been kept at the assessee's residence for distribution to other brothers of the assessee. After the death of Shri K. Viswanathan on 26.01.2006, the assessee is taking care of family affairs and therefore, the withdrawal of funds has to be necessarily kept at the residence of the assessee. Therefore, so long as there was no dispute that the common family expenditure was met by drawings from partnership firm, this Tribunal do not find any reason to make the addition of ₹17 lakhs in the hands of the assessee. Therefore, the CIT(Appeals) is not justified in confirming the addition made by the Assessing Officer. We are unable to uphold the orders of the lower authorities

and accordingly the same are set aside and the addition of ₹17 lakhs is deleted.

23. In the result, the assessee's appeal in I.T.A. No.1763/Mds/2014 is partly allowed and other appeals are allowed.

Order pronounced on 1<sup>st</sup> June, 2016 at Chennai.

sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 1<sup>st</sup> June, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A), Central-I, Chennai
4. आयकर आयुक्त/CIT, Central-I, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.