

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.476 to 478/Bang/2014
Assessment years : 2008-09, 2009-10, 2010-11

Shri. R. Krishna, #648, E & F Block, Kuvempunagar, Mysore. PAN : ADXPK 1237 D	Vs.	The Assistant Commissioner of Income Tax, Central Circle, Mysore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. C. H. Sundar Rao, CIT-DR

Date of hearing	:	06.02.2019
Date of Pronouncement	:	03.04.2019

ORDER

Per Shri Jason P Boaz, A.M. :

These three appeals by the assessee are directed against the orders of CIT(A)-IV, Bengaluru, dated 31.01.2014 for Assessment Years 2008-09 to 2010-11. These appeals were originally disposed off vide orders of even number dated 13.05.2016 and recalled in terms of Miscellaneous Petitions (MP) filed in MP Nos. 71 to 73/Bang/2016 vide order dated 19.10.2016 for disposal of certain grounds raised by the assessee in respect of which material filed was not considered by the Tribunal in its order dated 13.05.2016.

2. Briefly stated, the facts of the case are as under:

2.1 The assessee, an individual, is a partner in M/s. Vasu Agarbattis and other firms. Search action under section 132 of the Income Tax Act, 1961 (in short 'the Act') was conducted in the case of the Vasu Agarbattis ground on 18.06.2010, in the course of which the residential premises of the assessee at Mysore was also searched. Based on documents found in the course of search, proceedings under section 153C r.w.s. 153A(1)(a) of the Act were initiated in the case of the assessee for Assessment Years 2008-09 to 2010-11. In these assessment proceedings, the assessee declared the same income as shown in the original returns of income filed by the assessee before search action. After considering the assessee's contentions / claims, the Assessing Officer (AO) concluded the assessments for Assessment Years 2008-09 to 2010-11 under section 143(3) r.w.s. 153C of the Act all vide orders dated 31.12.2012. In these orders of assessments, the AO made the following additions / disallowances:-

Assessment Year 2008-09

1. Cash Credits	-	Rs.29,80,000/-
2. Unexplained Liability	-	Rs. 5,00,000/-

Assessment Year 2009-10

1. Purchase of immovable property	-	Rs.21,60,000/-
2. Cash credits	-	Rs.46,58,000/-
3. Cost of improvement claimed against LTCCG	-	Rs.1,37,314/-
4. Unexplained liability	-	Rs.5,00,000/-

Assessment Year 2010-11

1. Cash credits	-	Rs.17,30,000/-
2. Unexplained Liability	-	Rs.62,78,203/-

2.2 Aggrieved by the orders of assessment for Assessment Years 2008-09 to 2010-11; all dated 31.12.2012, the assessee filed appeals before the CIT(A)-VI, Bengaluru. One of the grounds raised in all these appeals challenged the assumption of jurisdiction under section 153 of the Act which was rejected by the CIT(A) in the common impugned order dated 31.11.2014 for all three Assessment Years. On merits, **for Assessment Year 2008-09**, the CIT(A) deleted the addition of Rs.29,80,000/- towards cash credits, but sustained the addition of Rs.5,00,000/- made as unexplained liability. **For Assessment Year 2009-10**, the CIT(A) deleted the addition of Rs.21,60,000/- in respect of purchase of immovable property by the assessee's son; Rs.5,00,000/- towards unexplained liability (which was confirmed in Assessment Year 2008-09) and sustained the additions of Rs.46,58,000/- towards cash credits and Rs.1,37,314/- towards long term capital gains (LTCG). **For Assessment Year 2010-11**, the CIT(A) deleted the addition of Rs.17,30,000/- towards cash credits but sustained an amount of Rs.57,78,203/- in respect of unexplained liability after deleting a sum of Rs.5,00,000/- that was confirmed in Assessment Year 2008-09.

3. The assessee, being aggrieved by the common order dated 31.10.2014 for Assessment Years 2008-09 to 2010-11 has filed the present appeals before the Tribunal raising the following grounds:-

Assessment Year 2008-09

1. *The order of the learned CIT[A] in so far as it sustains additions impugned in this appeal and only allowing the appeal partly instead of totally is opposed to law, equity, weight of evidence, facts and circumstances of the appellant's case.*
2. *The learned CIT[A] has erred in upholding the order of assessment u/s.143[3] rws 153C of the Act, which is bad in law and void-ab-initio, since there is a search in the residential premises of the appellant and in the personal chamber of the appellant in M/s. Vasu Agarvathi premises, of which the appellant is a Managing Partner, which cabin is in his personal possession and control and consequently, the appellant ought to have been assessed u/s.143[3] rws 153A and by issuance of notice u/s.153A[1][a] of the Act, as mandatorily required and that in the absence of a jurisdictional notice, the assessment made by invoking the provisions of section 153C of the Act, instead is misconceived and the consequential assessment requires to be annulled and accordingly the learned CIT[A] ought to have annulled the assessment.*
3. *The learned CIT[A] failed to appreciate that the notices issued u/s.153C rws 153A[1][a] of the Act, is patently illegal and the returns filed in response to that notice is also illegal and consequently, the assessments made without issuance of the notice u/s.153A of the Act, is also illegal and liable to be annulled.*
4. *The seizure of the cash and documents found in the personal chamber of the appellant, which is under his exclusive possession and control without a separate warrant initiating search in his name is illegal and consequently, the assessment requires to be cancelled.*
5. *The learned CIT[A] failed to appreciate the appellant having filed the return in response to notice u/s.153C of the Act, as and when the case came to be posted it was being pleaded time and again that the notice issued was illegal and the notice which ought to have been issued was not issued and such participation was only to emphasis about the illegality of assumption of jurisdiction and such a participation should not be considered as having acquiesced to the*

jurisdiction or curing the defect of such illegality in the assumption of jurisdiction for making such assessment.

6.1 Without prejudice to the above, the learned CIT[A] is not justified in sustaining the addition of a sum of Rs.5,00,000/- as unexplained liability for the year under appeal under the facts and in the circumstances of the appellant's case.

6.2 The learned CIT[A] failed to appreciate that this sum was drawn by the appellant from the firm of M/s. Vasu Vikram Arcade, which came to be constituted under the deed dated 21/01/2007 by cheque No.497452 on 13/03/2007, which was debited to his account and the amount so drawn was deposited with M/s. Heritage Agarbathis [PAN : AAAFH9920L] and the appellant showed the amount drawn as a liability in his personal Balance Sheet and the circumstance M/s.Vasu Vikram Arcade has not filed the return of income in time is totally irrelevant circumstance to consider whether the liability shown by the appellant in his Balance Sheet, which is drawn by cheque is genuine or not and accordingly, the finding is vitiated.

6.3 The addition is purely on suspicion and surmise, assumptions and presumptions and considering an irrelevant circumstances which has no bearing factor to consider the genuineness of the liability shown and accordingly vitiated.

6.4 The learned A.O. failed to appreciate that the aforesaid sum was opening balance for the year under appeal and there was no fresh cash credit at all and consequently, the addition made for the year under appeal requires to be deleted as one made on erroneous appreciation of facts.

7. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-B and 234-D of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be

awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

Assessment Year 2009-10

1. *The order of the learned CIT[A] in so far as it sustains additions impugned in this appeal and only allowing the appeal partly instead of totally is opposed to law, equity, weight of evidence, facts and circumstances of the appellant's case.*

2. *The learned CIT[A] has erred in upholding the order of assessment u/s.143[3] rws 153C of the Act, which is bad in law and void-ab-initio, since there is a search in the residential premises of the appellant and in the personal chamber of the appellant in M/s. Vasu Agarvathi premises, of which the appellant is a Managing Partner, which cabin is in his personal possession and control and consequently, the appellant ought to have been assessed u/s.143[3] rws 153A and by issuance of notice u/s.153A[1][a] of the Act, as mandatorily required and that in the absence of a jurisdictional notice, the assessment made by invoking the provisions of section 153C of the Act, instead is misconceived and the consequential assessment requires to be annulled and accordingly the learned CIT[A] ought to have annulled the assessment.*

3. *The learned CIT[A] failed to appreciate that the notices issued u/s.153C rws 153A[1][a] of the Act, is patently illegal and the returns filed in response to notice is also illegal and consequently, the assessments made without issuance of the notice u/s.153A of the Act, is also illegal and liable to be annulled.*

4. *The seizure of the cash and documents found in the personal chamber of the appellant, which is under his exclusive possession and control without a separate warrant initiating search in his name is illegal and consequently, the assessment requires to be cancelled.*

5. *The learned CIT[A] failed to appreciate the appellant having filed the return in response to notice u/s.153C of the Act, as and when the case came to be posted it was being pleaded time and again that the notice issued was illegal and the notice which ought to have been issued was not issued and such participation was only to emphasis about the illegality of assumption of jurisdiction and such a participation should not be considered as having acquiesced to the jurisdiction or curing the defect of such illegality in the assumption of jurisdiction for making such assessment.*

6. *Without prejudice to the above, the learned CIT[A] is not justified in sustaining the addition of a sum of Rs.46,58,000/- as the unexplained cash credit being deposits in his bank account under the facts and in the circumstances of the appellant's case.*

6.1 *The addition is purely on suspicion and surmise, assumptions and presumptions and by rejecting the factual substantiated explanation on record unreasonably as after-thought and therefore vitiated and therefore, liable to be deleted.*

7. *The learned CIT[A] is not justified in sustaining the disallowance of a sum of Rs.1,37,314/- as unsubstantiated expenditure claimed in respect of the capital gains under the facts and in the circumstances of the appellant's case. The addition is purely on suspicion and surmise, assumptions and presumptions and liable to be deleted.*

8. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

9. *For the above and other grounds that may be urged at the time of earing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be*

awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

Assessment Year 2010-11

- 1. The order of the learned CIT[A] in so far as it sustains additions impugned in this appeal and only allowing the appeal partly instead of totally is opposed to law, equity, weight of evidence, facts and circumstances of the appellant's case.*

- 2. The learned CIT[A] has erred in upholding the order of assessment u/s.143[3] rws 153C of the Act, which is bad in law and void-ab-initio, since there is a search in the residential premises of the appellant and in the personal chamber of the appellant in M/s. Vasu Agarvathi premises, of which the appellant is a Managing Partner, which cabin is in his personal possession and control and consequently, the appellant ought to have been assessed u/s.143[3] rws 153A and by issuance of notice u/s.153A[1][a] of the Act, as mandatorily required and that in the absence of a jurisdictional notice, the assessment made by invoking the provisions of section 153C of the Act, instead is misconceived and the consequential assessment requires to be annulled and accordingly the learned CIT[A] ought to have annulled the assessment.*

- 3. The learned CIT[A] failed to appreciate that the notices issued u/s.153C rws 153A[1][a] of the Act, is patently illegal and the returns filed in response to that notice is also illegal and consequently, the assessments made without issuance of the notice u/s.153A of the Act, is also illegal and liable to be annulled.*

- 4. The seizure of the cash and documents found in the personal chamber of the appellant, which is under his exclusive possession and control without a separate warrant initiating search in his name is illegal and consequently, the assessment requires to be cancelled.*

5. *The learned CIT[A] failed to appreciate the appellant having filed the return in response to notice u/s.153C of the Act, as and when the case came to be posted it was being pleaded time and again that the notice issued was illegal and the notice which ought to have been issued was not issued and such participation was only to emphasis about the illegality of assumption of jurisdiction and such a participation should not be considered as having acquiesced to the jurisdiction or curing the defect of such illegality in the assumption of jurisdiction for making such assessment.*

6. *Without prejudice to the above, the learned CIT[A] is not justified in sustaining the addition of a sum of Rs.57,78,203/- being the amounts transferred to the appellant's account in the books of M/s.Vasu Vikram Arcades under the facts as set-out in detail in **Annexure-1**, and in the circumstances of the appellant's case by considering factors which are irrelevant to conclude whether the credit is genuine or not and thus vitiated and therefore, requires to be deleted.*

6.1 *The addition is purely on suspicion and surmise, assumptions and presumptions and liable to be deleted and as one made on erroneous appreciation of facts and accordingly principles of double entry and by considering irrelevant circumstances, which are not relevant and genuine to consider whether the credit is genuine or not.*

7. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

8. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

3.4 These appeals were initially disposed off by this Tribunal vide order of even number dated 13.05.2016 dismissing all the grounds raised by the assessee. The assessee then moved MP Nos. 71 to 73/Bang/2016 pointing out that the materials filed before the Tribunal in the Paper Book were not examined and that a finding had been recorded by the Bench that there were no materials placed before the Tribunal in support of the assessee's case on merits of the additions made. Thereafter, the Tribunal vide order in MP Nos.71 to 73/Bang/2016 dated 19.10.2016 recalled its order dated 13.05.2016 for the limited purpose of adjudicating these grounds of appeal. From a perusal of the Tribunal's order dated 13.05.2016 and the grievances put forth in the MPs filed by the assessee, it is clear that the Tribunal's order in respect of these appeals have been recalled for the limited purpose of adjudicating ground Nos.6.1 to 6.4 for Assessment Year 2008-09; ground Nos. 6, 6.1 and 7 for Assessment Year 2009-10; and ground Nos. 6 and 6.1 for Assessment Year 2010-11 and we are therefore confining our order to disposal of these grounds raised by the assessee.

4. Ground Nos. 6 to 6.4 – Assessment Year 2008-09

Ground Nos. 6 and 6.1 – Assessment Year 2010-11

4.1 The common issue raised in the above grounds (supra) for these two Assessment Years is in respect of additions of Rs.5,00,000/- and Rs.57,78,203/- have been sustained by the CIT(A) as unexplained liability for Assessment Years 2008-09 and 2010-11 respectively.

4.2.1 In respect of this issue, the learned AR for the assessee submitted that the assessee had shown a sum of Rs.5,00,000/- in his Balance Sheet as on

31.03.2008 as due to M/s. Vasu Vikram Arcade. Similarly in the Balance Sheet as on 31.03.2010, the assessee has shown liability of Rs.62,78,203/- as due to M/s. Vasu Vikram Arcade. In the orders of assessment, the AO held that the firm M/s. Vasu Vikram Arcade had not filed any returns of income for these Assessment Years and therefore the credit worthiness of the said firm was not established. In that view of the matter, the aforesaid amounts were treated as unexplained cash credits and the additions were made.

4.2.2 Before the CIT(A), the assessee submitted that the firm M/s. Vasu Vikram Arcade was constituted under partnership deed dated 01.01.2007 between M/s. Vasu Agarbattis (Partners, Shri. R. Krishna, Shri. R. Venkatesh and Shri. R. Mohan representing the firm) and a company by name M/s. Vikram Arcades and Hotels Pvt. Ltd. Both these entities owned certain adjoining property which was contributed to the said firm for development. After this firm was constituted, it entered into a registered Joint Development Agreement (JDA) dated 21.01.2007 with Shri. B. L. Nagendra Prasad for development of the aforesaid property; whereby Shri. B. L. Nagendra Prasad paid a sum of Rs.1,00,00,000/- to the firm M/s. Vasu Vikram Arcade and agreed to pay a further sum of Rs.1,00,00,000/- within a period of 60 days. It was submitted that the firm M/s. Vasu Vikram Arcade received Rs.2,00,00,000/- from Shri. B. L. Nagendra Prasad and has made payments to the extent of Rs.1,73,34,610/- to M/s. Vasu Agarbattis as on 31.03.2008. Further, the firm M/s. Vasu Vikram Arcade has also paid an amount of Rs.5,00,000/- to one M/s. Heritage Agarbattis, on behalf of the assessee in the case on hand. In this regard, the assessee has recorded the liability of Rs.5,00,000/- in his balance sheet as on 31.03.2008 and also passed a journal entry on 01.04.2009 to take over 1/3rd of the amount of Rs.1,73,34,610/- paid

by M/s. Vasu Vikram Arcade to M/s. Vasu Agarbattis; which works out to Rs.57,78,203/-. Therefore, the assessee showed a liability to M/s. Vasu Vikram Arcade as on 31.03.2010 of Rs.62,78,203/- (i.e., Rs.57,78,203/- plus Rs.5,00,000/-).

4.2.3 In support of the above explanation, the learned AR of the assessee drew the attention of the Bench to various documents / details placed in the Paper Book (pages 1 to 174) certified to have been filed before the authorities below and containing copies of the partnership deed, the JDA, bank statement of M/s. Vasu Vikram Arcade, the return of income filed by M/s. Vasu Agarbattis for the Assessment Year 2008-09 on 30.09.2008 along with the Balance Sheet of M/s. Vasu Agarbattis showing the liability of Rs.1,73,34,610/- as on 31.03.2008 to M/s. Vasu Vikram Arcade. The learned AR also pointed out that M/s. Vasu Vikram Arcade filed belated returns of income for Assessment Years 2008-09 to 2010-11 on 02.01.2013 along with the Balance Sheets for these years in which it had shown the amounts advanced to the assessee. Therefore, it was submitted by the learned AR that in view of the above, the creditworthiness of M/s. Vasu Vikram Arcade stands established and the additions of Rs.5,00,000/- and Rs.57,78,203/- ought to be deleted.

4.3 The learned DR for Revenue opposed the assessee's contentions, stating that no such explanations were furnished before the AO. According to the learned DR, the assessee furnished the above explanations only before the CIT(A) and from the material on record it cannot be conclusively established that M/s. Vasu Vikram Arcade had in fact made an advance of Rs.1,73,34,610/- to M/s. Vasu Agarbathis as on 31.03.2008. It was also

submitted that from an examination of the bank account, it was not clear as to when M/s. Vasu Vikram Arcade received Rs.2,00,00,000/- from Shri. B. L. Nagendra Prasad since only the initial advance of Rs. 1 Crore could be correlated with the JDA. Referring to the Memo dated 04.04.2016 filed by the learned AR, the DR submitted that the JDA entered into by M/s. Vasu Vikram Arcade was cancelled subsequently and the said firm had only repaid Rs. 1 Crore being the refundable deposit and the non-refundable deposit of Rs. 1 Crore was not repaid. The learned DR submitted that in view of the above, no interference was called for in the order of the CIT(A).

4.4 In rejoinder, the learned AR submitted that the bank statement of M/s. Vasu Vikram Arcade clearly brings out the fact of receipts from Shri. B. L. Nagendra Prasad; since all the amounts totalling Rs. 2 Crore; were received as follows:

- (i) Rs.1,00,00,000/- on 21.01.2007 through cheque No.0031082;
- (ii) Rs.50,00,000/- on 21.02.2007 vide cheque No.0031083 and
- (iii) Rs.50,00,000/- on 17.03.2007 vide cheque No.0031804; which are part of the running serial number of cheques. Since the initial amount of Rs.1 Crore referred to in the JDA is verifiable, it would indicate that the subsequent cheques are also received from the same party. In regard to the other two objections raised, the learned AR filed a Memo dated 06.02.2019 enclosing the ledger accounts of M/s. Vasu Vikram Arcade reflecting the advance of Rs.1,73,34,610/- as on 31.03.2008. He also filed copy of letter dated 25.12.2010 written by Shri. B. L. Nagendra Prasad to M/s.

Vasu Vikram Arcade in connection with the cancellation of the JDA and refund of the deposits paid earlier to the extent of Rs.2.25 Crores; which is inclusive of interest. The learned AR submitted that M/s. Vasu Vikram Arcade has repaid the entire sum of Rs.2 Crores on cancellation of the JDA by making payment of Rs.1,22,05,495/- inclusive of interest to Shri. B. L. Nagendra Prasad directly and a further sum of Rs.1,02,94,505/- to KSFC for the loan taken by Shri. Nagendra Prasad.

4.4.1 We have considered the rival submissions / contentions and the material on record. From an appraisal of the documents / details placed by the assessee before the CIT(A) and before us, it is evident that M/s. Vasu Vikram Arcade had in fact received a sum of Rs.2 Crores from Shri. B. L. Nagendra Prasad for the JDA of its property as refundable and non-refundable deposits. From an examination of the bank account of the firm M/s. Vasu Vikram Arcade, it is clear that a sum of Rs.5,00,000/- was paid to M/s. Heritage Agarbattis and debited to the account of Shri. R. Krishna, the assessee, in its books as per the voucher filed before us. This advance of Rs.5 lakhs is also reflected in the Balance Sheet of M/s. Vasu Vikram Arcade as on 31.03.2008 and the source of this payment is from out of the amount of Rs.2 Crores received from Shri. B. L. Nagendra Prasad.

4.4.2 Revenue's main objection is that the returns of income of M/s. Vasu Vikram Arcade has been filed belatedly, after search proceedings in the group cases had commenced and therefore its Balance Sheet cannot be relied upon. However, on this ground alone it cannot be held that the said Balance Sheet is unreliable. We find that M/s. Vasu Vikram Arcade had also

advanced Rs.1,73,34,610/- and debited the same to the account of M/s. Vasu Agarbattis as on 31.03.2008; which is reflected as a liability in the Balance Sheet of M/s. Vasu Agarbattis as on 31.03.2008 filed along with its return of income for Assessment Year 2008-09 filed on 30.09.2008; i.e., much before the search action on this group was conducted on 18.06.2010 and assessment proceedings were taken up in the case of the assessee. Therefore, there is sufficient indication of the correctness of the Balance Sheet of M/s. Vasu Vikram Arcade, though filed belatedly.

4.4.3 The assessee has also produced before us the journal entries passed in the books, transferring the liability of Rs.1,73,34,610/- of M/s. Vasu Vikram Arcade to the three partners of Vasu Agarbattis equally at Rs.57,78,203/-. This liability has been reflected by the assessee in the Balance Sheet as on 31.03.2010 and is also reflected in the Balance Sheet of M/s. Vasu Vikram Arcade as advance given to the assessee. From an appraisal of the documentary evidence / details produced by the assessee, it is clear that the liability of Rs.5,00,000/- shown by the assessee as on 31.03.2008 and of Rs.62,78,203/- as on 31.03.2010 to M/s. Vasu Vikram Arcade stands substantiated. In our view, the assessee has established the identity and capacity and genuineness of the transactions with the aforesaid creditor M/s. Vasu Vikram Arcade and we therefore delete the additions of Rs.5,00,000/- for Assessment Year 2008-09 and Rs.57,78,203/- for Assessment Year 2010-11. Consequently, grounds raised by the assessee in these issues are allowed.

Assessment Year 2009-10**5. Ground No.7 – Disallowance of Rs.1,37,314 against LTCG**

5.1 At the outset of proceedings, the learned AR of the assessee submitted that this ground (supra) challenging the disallowance of Rs.1,37,314/- against LTCG is not being pressed by the assessee in this appeal. In these circumstances, this ground No.7 is rendered infructuous and is accordingly dismissed as not pressed.

6. Ground No.6 – Unexplained cash credits – Rs.46,58,000/-

6.1 The other ground for consideration in this appeal is in relation to the addition of Rs.46,58,000/- as unexplained cash credits / deposits in the bank account of the assessee in the period relevant to Assessment Year 2009-10 which is under consideration. On being queried in this regard by the authorities below, it was submitted that these deposits were out of advances recovered during the year. It was submitted that the advances were in fact cash withdrawn by the assessee; kept with him and not advanced to third parties. Since the cash-in-hand exceeded Rs.50,000/-, the assessee filed Returns of Net Wealth Tax for Assessment Years 2008-09 to 2010-11 reporting taxable wealth; including the cash in hand as part of the assessee's net wealth. It is submitted that the very same AO had accepted the assessee's returns of net wealth for this Assessment Year by passing an order under

section 16(3) r.w.s. 17 of the Wealth Tax Act, 1957 on 31.12.2012; i.e., the same day on which she passed the impugned order of assessment for this Assessment Year. According to the learned AR, having regard to the extent of cash on hand on 31.03.2008 of Rs.57,12,839/- shown in the Wealth Tax Return, the addition made on account of cash deposits by the AO amounting to Rs.46,58,000/- is unjustifiable and ought to be deleted.

6.2 On the other hand, the learned DR for Revenue contends that mere acceptance of cash on hand in the Wealth Tax assessments, does not mean that there was sufficient source on the dates the cash deposits were made in the bank account. According to the learned DR, the assessee had filed returns of net wealth for these three Assessment Years 2008-09 to 2010-11 only because he could not explain the source thereof when queried after the search action was conducted. Therefore, no credence should be given to the wealth tax assessment orders passed by the AO for these years.

6.3 In rejoinder, the learned AR for the assessee submitted that the cash on hand shown as on 31.03.2008 is available with the assessee and the search conducted by the Department did not detect / reveal any outgoings and therefore, the presumption is that the cash balance available as on 31.03.2008 is available to explain the cash deposits.

6.4.1 We have considered the rival submissions / contentions and perused the material on record. There is no doubt that on being queried, the assessee had initially furnished the explanation that the cash deposits in the bank accounts were from out of advances given earlier and later explained that

the source of these deposits was in fact money withdrawn by the assessee and kept in his custody. Be that as it may, an appraisal of the Balance Sheet of the assessee as on 31.03.2008 shows that sufficient funds were available to the assessee to explain the source of the cash deposits in question. Consistent with the explanation tendered for withdrawals towards the cash on hand available with the assessee, we find that the assessee has also filed wealth tax returns showing the cash balance of Rs.57,12,839/- as on 31.03.2008. This has been accepted in the orders of assessment of Wealth Tax passed under section 16(3) r.w.s. 17 of the Wealth Tax Act dated 31.12.2012 by the very same AO who has framed the impugned orders of assessment. Considering the undisputed fact of the acceptance of the availability of requisite cash balance by the AO in wealth tax assessment orders, it would be futile to contend that there was no cash balance with the assessee on 31.03.2008 as claimed. As pointed out by the learned AR, there is no material on record to evidence that the cash balance available as on 31.03.2008 has been spent or invested elsewhere and therefore the availability of cash balance of Rs.57,12,839/- as reflected in the assessee's Balance Sheet on 31.03.2008 for explaining the deposits made in the financial year 2008-09 relevant to Assessment Year 2009-10 cannot be rejected. In this factual matrix of the case, as discussed above, we are of the view that the addition of Rs.46,58,000/- on account of cash deposits in the assessee's bank account is factually unsustainable and therefore delete the same. Consequently, ground No.6 raised by the assessee is allowed.

7. In the result, the assessee's appeals for Assessment Years 2008-09 to 2010-11 are partly allowed and consequently, Tribunal's order of even number dated 13.05.2016 stands modified accordingly.

Order pronounced in the open court on this 3rd day of April, 2019.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 3rd April, 2019.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.