

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ in I.T.A.Nos.1804 to 1808/CHNY/2019

(निर्धारण वर्ष / Assessment Years:2010-11 to 2014-15)

Shri Vasantha Vikas, No.43A, Kalamman Kovil Street, Sivakasi, Virudhunagar District – 626 123	v.	The Deputy Commissioner of Income Tax, Central Circle – 1, Madurai.
PAN: ADGPV6980K		
(प्रार्थक /Petitioner)		(प्रत्यर्थी/Respondent)

प्रार्थक की ओर से/Petitioner by	:	Shri B. Ramakrishnan, FCA
प्रत्यर्थी की ओर से/Respondent by	:	Mr.S.Bharath, CIT D.R

सुनवाई की तारीख/Date of Hearing	:	29.08.2019
घोषणा की तारीख/Date of Pronouncement	:	29.08.2019

आदेश /O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

These five appeals are filed by the assessee against the separate orders of the Commissioner of Income-tax (Appeals)-19, Chennai in appeal No.139/16-17 dated 00.04.2019 for assessment year 2010-11, in appeal No.140/16-17 dated 00.04.2019 for assessment year 2011-12, in appeal No.141/16-17 dated 02.04.2019 for assessment year 2012-13, in appeal No.142/16-17 dated 02.04.2019 for assessment year 2013-14, & in appeal No.143/16-17 dated 00.04.2019 for assessment year 2014-15.

2. Shri B. Ramakrishnan represented on behalf of the assessee and Ms. M. Subashri represented on behalf of the Revenue.

3. It was submitted by Id.AR that the assessee is an individual, who is a partner and director of the various companies and firms, which are in the business of manufacture and selling fire-works. There was a search on the group of companies and firms, and the partners being Shri V.Arumugasamy group on 09.07.2013. As a consequence of search, all the assessees in the group filed Petition before the Settlement Commission. On account of peculiar state of affairs in the case of assessee, the Settlement Commission rejected the application of assessee for settlement vide order dated 05.04.2016. It was submitted that for assessment years 2010-11 & 2011-12, the issue was in respect of Savings bank account maintained by the assessee with Indian Bank, Sivakasi Branch, at new road, branch code No.1484 being Account No. 881752106. It was a further submission that admittedly this bank account was an undisclosed bank account. It was submitted that the bank manager of the said bank also knew that the said bank account was an undisclosed bank account and consequently, the Bank Manager used the said account of the assessee for certain unaccounted transactions of other customers of said branch. It was a submission that for assessment year 2010-11, the total credit in the said bank account was to an extent of Rs.2,68,88,176/-. As

against this, the credits belonging to the assessee was only in respect of credits of Rs.32,88,176/- and 11 credits totaling to Rs.2.36 crores in the said bank account were not relating to the assessee, but pertained to different customers, operated by the Bank Manager. In respect of assessment year 2011-12, the total credit in the said account was to an extent of Rs.4,01,43,869/-. As against this, the credits belonging to the assessee was only of Rs.2,59,70,330/- and the balance of Rs.1,41,73,539/- related to transaction of others, operated by the Bank Manager. It was submitted that before the Settlement Commission, the assessee had stated these facts and had admitted the gross profit addition of 24% on the said transactions relating to the assessee, but the Settlement Commission had rejected the assessee's application on the ground that assessee was unable to prove that the other transactions in the bank account had been done by the Manager of the branch. The Id.AR further drew our attention to page Nos.101 to 102 of the paper book, which was a copy of statement recorded u/s.131 of the Act by the Dy.C.I.T from the Indian Bank, Assistant Manager, Shri Parbhat Kumar Gupta. The statement recorded is extracted herein below:-

"SWORN STATEMENT RECORDED (IN THE CASE OF SHRI A.VASANTHAVIKA\$) FROM SHRI PARBHAT KUMAR GUPTA, AGED 31 YEARS,WORKING AS ASSISTANT MANAGER IN INDIAN BANK AT SIVAKASI BRANCH, TAMILNADU BY SMT. ARUNA BAGAVATHY, IRS DEPUTY COMMISSIQNER OF INCOME-TAX, CENTRAL CIRCLE -1, MADURAI U/S.131 OF THE I.T. ACT, 1961 ON 26.05.2016.

Sd/-
OATH ADMINISTERED

Sd/-
OATH TAKEN

Q.1. Please introduce yourself.

Ans. I am Shri Parbhat Kumar Gupta, Slo Ashok Kumar, aged 31 years, working as Assistant Manager in Indian Bank, Sivakasi Branch, Tamil Nadu. I have been working in this branch since August, 2015.

Q.2. On 30th & 31st of March, 2010, Rs.2,48,88,176/. was credited as 'BATCH CREDIT' , in the Account No.881752106 of Shri A Vasanthavikas with Indian Bank, Sivakasi. Shri Vasantha Vikas has stated before me that the credits and debits do not relate to him or his business. He claimed that the debits and credits were made by the Bank without his knowledge, for boosting advances and deposits figures. What do you say about this? Kindly provide us the underlying vouchers on the basis of which the batch credits were made and explain us how this was done.

Ans. (i) On 30th of March 2010 Shri Vasanthavikas has deposited bulk number of clearing cheques total amounting to Rs.32,88,176/- for which I am producing computer screenshot and copy of voucher. On the same day cash of Rs.20,00,000/- was withdrawn and I am producing copy of voucher bearing the signature of Shri Vasanthavikas at the back of the voucher.

(ii) With regard to transactions on 31.03.2010, I stand by the reply of my branch Manager furnished vide letter dated 28.03.2016 as under:-

"On 31.03.2010 several credits amounting to Rs.236.00 lakhs were credited to the subject account and reversed by way of debits on 03.04.2010. On verification of the records, we infer that these two transactions on 31.03.2010 and 03.04.2010 amounting to Rs.236.00 lakhs each were not relating to Mr A. Vasanthavikas, but to different customers. On perusal of the statement of accounts of these customers we find that the sums were debited on 31.03.2010 and credited back to their accounts on 03.04.2010."

Q.3. In the above reply, you have stated that the transactions on 31st March and 3rd April amounting to Rs.236.00 lakhs do not belong to Shri A.Vasanthavikas but to different customers and that the sums were debited on

31st March 2010 and credited back to their respective accounts on 3rd April 2010. You have also provided us the copies of statement of accounts of the 9 customers. However, it is noticed from the account statement of Shri Vasanthavikas and the account statement of above 9 customers that the break-up amounts credited on 31- March 2010 do not exactly match with the break-up debits re, the reply given by the Branch does not fully explain the entries in the account statement. Kindly explain with full break-up details and necessary evidence.

Ans: I am not aware of what exactly happened at that time. However, after verifying the Voucher reports for 31st March 2010 and 3rd April 2010 and identifying the journal number of each entry, I will clarify the issue at the earliest with the permission of Zonal office.

Q.4. Shri A.Vasanthavikas has stated credits made on 17.08.2010 as "voucher transfer" aggregating Rs.1,41,73,539/- and debits on 17.08.2010 and 18.08.2010 "by way of transfer and withdrawal" aggregating Rs. 1,41,73,539/- were made by the bank without his knowledge. What do you have to say about this? Kindly provide us the underlying vouchers on the basis of which the "voucher transfer" and "transfer and withdrawal" were made and explain us how this was done.

Ans. As per the account statement and vouchers relating to Shri Vasanthavikas, on 17.08.2010 hundreds of RIPs (reinvestment plan) in the names of various persons were closed and credited to his account. Hundreds of new RIPs were also opened on the same date. I am producing the copies of consolidated transfer vouchers for closing RIPs and opening RIPs.

Q.5 The consolidated transfer vouchers do not contain the complete details. Therefore, the complete details relating to the old and new RIPs including the details of person(s) from whom the money has come and the person(s) to whose account the money has been transferred may be provided before 31.05.2016.

Ans: The details will be provided after getting permission of the Zonal office.

Q.6 Do you wish to say anything else?

Ans. Nothing.”

It was submitted by the Id.AR that there was a letter of Bank Manager, dated 28.03.2016, a copy of which was not available with the assessee, which related to above extracted portion in the said statement in reply to Question No.2. It was submitted that in the said letter it has been admitted by the Manager that for the year ended 31.03.2010, several credits amounts to Rs.236 lakhs were reversed by way of debits on 03.04.2010 and such transactions did not relate to the assessee. Similarly, also in Qn.No.4 in respect of Rs.1.41 crores. It was submitted that this evidence was available with the Revenue, when the Settlement application was even rejected by the Settlement Commission on 05.04.2016. It was submitted that as it has been admitted by the Branch Manager that the transactions did not belong to the assessee, the addition representing the same was liable to be deleted. It was a prayer in respect of the transaction relating to the assessee for the relevant two assessment years, that GP rate of 24% may be at the worst be confirmed.

4. In reply, Id.DR vehemently supported the order of the Assessing Officer and the order of the Id.CIT(A). Ld.DR submitted that the transactions in the said bank account having clearly been found as unaccounted transactions, the capital required for the said transaction was liable to be added. It was submitted that on an estimate basis, the GP rate be fixed at 30% of the unaccounted transactions being of Rs.32,88,176/- for assessment year 2010-11 and Rs.2,59,70,330/- for the assessment year 2011-12.

5. We have heard the rival contentions and perused the material available on record. A perusal of the statement recorded by the DCIT u/s.131 of the Act from the Assistant Manager of Indian Bank, Sivakasi branch on 26.05.2016 clearly shows from the letter of the Bank Manger dated 28.03.2016 admitting to the transactions have been done by the Bank Manager in the assessee's account and not relating to the assessee stands clearly established. We refuse to go into the issue as to why the Revenue did not produce the said letter before the Settlement Commission as we are not an Appellate Authority in respect of proceedings from the Hon"ble Settlement Commission. However, the fact that Branch Manager has categorically admitted in his letter and the same has also been reiterated by the Assistant Manager in his statement recorded u/s.131 of the Act by the DCIT, we are inclined to accept the same and consequently the Assessing Officer is directed to delete the addition

representing the credits to an extent of Rs.2,36,00,000/- for assessment year 2010-11 and Rs.1,41,73,539/- for the assessment year 2011-12 in the assessment of the assessee. In respect of balance credits, admittedly what is liable to be added only peak credit as this is an unaccounted bank account and a perusal of the bank account clearly shows that there are withdrawals and deposits. However, it is noticed that the assessee has filed an application admitting its GP for the purpose of addition before the Hon"ble Settlement Commission at 24%. The assessee has not shown any addition having been offered on account of the initial capital. Consequently, we are of the view that the interest of justice would be served, if the GP rate is adopted at 30% in respect of unaccounted credits in the Indian Bank account, which is the unaccounted bank account and has been accepted by the assessee. In these circumstances, the addition made by the Assessing Officer in respect of the said bank account stands modified and the Assessing Officer is directed to restrict the addition to 30% representing the GP and initial capital required in respect of the credit of Rs.32,88,176/- accepted by the assessee for the assessment year 2010-11 and 30% as GP in respect of the credits accepted by the assessee to an extent of Rs.2,59,70,330/- for the assessment year 2011-12.

6. In the result, the appeals filed by the assessee for the assessment years 2010-11 & 2011-12 stands partly allowed.

7. In respect of assessment years 2012-13, 2013-14, and 2014-15, it was submitted by Id.AR that the additions in the said assessment years represented the unexplained expenditure. It was submitted that the said unexplained expenditure admittedly had been incurred by the assessee out of the said unaccounted income for the assessment years 2010-11 & 2011-12. The said income was available to the assessee for meeting the expenses for the assessment years 2012-13, 2013-14 & 2014-15. It was submitted that for assessment year 2012-13, the unexplained expenditures were an amount of Rs.1,50,000/- on account of foreign travel expenses, an amount of Rs.14,60,960/- paid to M/s.Vadivel Pyrotech Pvt Ltd and of Rs.13,900/- paid to Shri T.Muruganandham for purchase of land. It was submitted that for the assessment year 2013-14, the additions were Rs.1/- lakh towards foreign travel expenses, and Rs.35 lakhs invested in HDFC Life insurance. It was submitted that for assessment year 2014-15, additions were Rs.1/- lakh as unexplained expenditure u/s.69 of the Act for foreign travel expenses, and Rs.27,50,000/- invested in HDFC Life insurance. It was submitted that the assessee may be granted set off of income for the assessment years 2010-11 & 2011-12 against the unexplained expenditure added by invoking the Section 69C of the Act for the assessment years 2012-13, 2013-14 & 2014-15.

8. In reply, the Id.DR vehemently supported the orders of the Assessing Officer and the Id.CIT(A).

9. We have heard the rival contentions and perused the material available on record. Admittedly, GP addition of 30% in respect of unexplained credits accepted and appearing in the unaccounted bank account with Indian Bank Sivakasi, has been directed for the assessment years 2010-11 & 2011-12. This being so, admittedly there would be income available to the assessee on account of the said GP addition. This income would very much be available to the assessee for the purpose of set off of the unexplained expenses which have been added for the assessment years 2012-13, 2013-14 & 2014-15. This being so, the Assessing Officer is directed to grant assessee the benefit of set off of the undisclosed income added for the assessment years 2010-11 & 2011-12 as source for the unexplained expenditures added by invoking the provisions of sections 69 & 69C of the Act for the assessment years 2012-13, 2013-14 & 2014-15.

10. In the result, the appeals filed by the assessee for the assessment years 2012-13, 2013-14 & 2014-15 stands partly allowed.

11. To sum up, all the appeals filed by the assessee for the assessment years 2010-11, 2011-12, 2012-13 2013-14 & 2014-15 are partly allowed.

Order pronounced in the open court after conclusion of hearing on 29th August, 2019 at Chennai.

Sd/-
(एस जयरामन)
(S. Jayaraman)
लेखा सदस्य /Accountant Member

Sd/-
(जॉर्ज माथन)
(George Mathan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 29th August, 2019

K.S.Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. प्रार्थक /Petitioner
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.