

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **466, 467, 468, 469, 470, 471 &
472/Chny/2020**

निर्धारण वर्ष / Assessment Years: 2011-12, 2012-13, 2013-14, 2014-15,
2015-16, 2016-17 & 2017-18

S. Tulasidoss Nedunselian Assistant Commissioner of
No. 6, New No. 24, EB Colony, v. Income Tax,
First Main Road, Central Circle 3(2),
Adambakkam, Chennai.
Chennai – 600 088.

[PAN: ADRPN-8320-N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. K.G. Raghunath, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 19.07.2023

घोषणा की तारीख/Date of Pronouncement

: 23.08.2023

आदेश / O R D E R

PER BENCH:

This bunch of seven appeals filed by the assessee are directed against the common order passed by the Commissioner of Income-tax (Appeals) -18, Chennai dated 26.12.2019 and pertains to assessment years 2011-12 to 2017-18. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for all assessment years. Therefore, for the sake of brevity grounds of appeal filed for assessment year 2011-12 are reproduced as under:

"1. The Assessment Order for the Assessment Years of 2011-12 to 2016-17, passed under Sec. 153A rws 143(3) rws 144 of the Income Tax Act, 1961 and passed U/s 153B(1)(b) rws 143(3) rws 144 of the Act, 1961 is arbitrary and is against law and contrary to facts of the case and hence Erroneous and untenable in Law.

2. The Learned Assessing officer had made an cumulative addition of Cash deposits in bank account during the Assessment years of 2011-12 for a value of Rs. 70,68,000/- by stating that there is non clarity of the sources of deposits, and had invoked the provisions of Section 69A of the Act to treat the entire cash deposits as unexplained and to bring to tax the entire sum of Rs.70,68,000/- as addition U/s of Section 115BBE(1)(i) of the Act.

3. The Learned Assessing Officer did not consider that all the cash deposits were forming part of his business receipts and they were all duly accounted and admitted and included in the taxable income for each of the respective Assmt Years of 2011-12 to 2017-18

4. The Learned Assessing officer, did not consider the plea of telescoping and peak credit, that was explained to during the course of the Assessment proceedings .

5. Further , the appellant also states that . where there was no evidence of incriminating documents found during the course of search proceedings , to invoke neither the provisions of Section 153A of the Act nor the provisions of Section 153B(1)(b) of the Act, the action of the Learned Assessing Officer, had merely relied upon the statements U/s 132(4) of the Act, made during the course of search opeartions; and hence the same is unjustified and arbitrary.

6. The Learned Assessing Officer has completed the assessment by also invoking the provisions of Section 144 of the Act, without considering all the evidences and documents furnished during the course of assessment proceeedings

7. The Learned Assessing Officer has miserably failed to comprehend and appreciate the binding nature of the decisions

of the various Hon'ble High Courts on the same issue on hand and various associated aspects thereof.

In view of the above and in view of further grounds that may be advanced, as the circumstances may warrant, in the interest of deliverance of justice, during the course of hearings, it is prayed that the Honourable Commissioner of Income Tax (Appeals) may be pleased to grant suitable relief after considering all the evidences and explanations that the Assessee could produce before the Honourable Commissioner of Income Tax (Appeals), during the course of hearing on appeals, on the issues raised in the Assessment Order concerned."

3. The brief facts of the case are that, the assessee is a managing director of one company M/s. STN Properties Ltd. The assessee has filed his original return of income for all assessment years u/s. 139 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). A search and seizure operation u/s. 132 of the Act, was conducted on 16.11.2016 in the residential premises of the assessee. Consequent to search, notice u/s. 153A of the Act, dated 03.05.2018 was issued to the assessee. In response to notice u/s. 153A of the Act, the assessee has filed his return of income on 24.08.2018. The case was selected for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has made cash deposits into bank account. Therefore, the AO called upon the assessee to explain the nature and source for said cash deposits. The assessee vide letter dated 11.12.2018 explained nature and source for cash

deposits. The AO, after considering relevant submissions of the assessee, opined that the assessee could not explain source for cash deposits and thus, made addition towards cash deposits as unexplained money u/s. 69A of the Act.

4. The assessee carried the matter in appeal before the first appellate authority. Before the Id. CIT(A), the assessee neither appeared nor filed any explanation with regard to source for cash deposits, however, made submission on the issue of jurisdiction of the Assessing Officer in assessing cash deposits as unexplained money u/s. 69A of the Act. The Id. CIT(A), after considering relevant submissions of the assessee and also by following certain judicial precedents, decided the appeals filed by the assessee exparte on merits, on the basis of material available on record and rejected arguments of the assessee on the issue of jurisdiction of the Assessing Officer in assessing cash deposits u/s. 69A of the Act, on the ground that once search takes place, the AO shall have the power to assess/re-assess the total income of six assessment years immediately preceding the assessment year in which search takes place. Therefore, by following the decision of Hon'ble Kerala High Court in the case of E.N. Gopakumar vs CIT

[2016] 75 Taxmann.com 215 (Kerala), held that the provisions of section 153A are very clear and as per which, it is not necessary to have incriminating documents for the purpose of making assessment or re-assessment u/s. 153A of the Act. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

5. The Id. Counsel for the assessee, referring to the decision of Hon'ble Supreme Court in the case of PCIT vs Abhisar Buildwell (P) Ltd [2023] 454 ITR 212 (SC), submits that the issue involved in these appeals is squarely covered by the decision of the Hon'ble Supreme Court, where it has been clearly held that, in respect of completed assessment /unabated assessment no addition can be made by Assessing Officer in absence of any incriminating material found during the course of search u/s. 132 of the Act or requisition u/s. 132A of the Act. The Id. Counsel for the assessee, referring to assessment order for the assessment years 2011-12 to 2015-16 submitted that, the assessment for assessment years 2011-12 to 2015-16 are completed/ unabated as on the date of search, which is evident from the date of search conducted on 16.11.2016, because either the assessment for assessment

years 2011-12 to 2015-16 are completed or due date for issue of notice u/s. 143(2) of the Act, has been expired on 31.07.2016, which is much before the date of search i.e., 16.11.2016. Since, the assessments are unabated /concluded as on the date of search, in absence of any incriminating material found as a result of search, no addition can be made. In the present case, if you go through additions made by the Assessing Officer, towards cash deposits u/s. 69A of the Act, it is abundantly clear that said additions is based on regular books of accounts maintained by the assessee, but not based on any incriminating material found as a result of search. Therefore, assessment order passed by the AO and consequent additions cannot be sustained.

6. The Id. DR, Shri. Clement Ramesh Kumar, CIT, supporting the order of the Id. CIT(A) submitted that, although the issue now stands covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of PCIT vs Abhisar Buildwell (P) Ltd. (Supra), the fact remains that the department has filed review petition against the decision of the Hon'ble Supreme Court before the larger bench and said petition is pending for adjudication. Further, as per the

provisions of section 153A of the Act, when search is conducted, the AO shall have power to assess or re-assess the total income of six assessment years immediately preceding the assessment year, in which search takes place and said assessment proceeding is not dependent on incriminating material or otherwise found during the course of search. Therefore, he submits that there is no merit in the arguments of the assessee and same needs to be rejected.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The undisputed fact emerges from the facts brought on record by the Assessing Officer are that, a search and seizure operation u/s. 132 of the Act was conducted on 16.11.2016 in the residential premises of the assessee. It is further noted that, the additions made by the AO towards cash deposits to bank account u/s. 69A of the Act for assessment years 2011-12 to 2015-16 is not supported by any incriminating material found as a result of search. Therefore, the present issue needs to be examined in the light of various judicial precedents including the decision of Hon'ble Supreme Court in the case of PCIT vs Abhisar Buildwell (P) Ltd. (Supra). The

Hon'ble Supreme Court in the case of PCIT vs Abhisar Buildwell (P) Ltd. (Supra), had considered an identical issue in light of various decisions of Hon'ble High Courts, on the issue of search assessment and consequent additions made by the Assessing Officer without any reference to incriminating material found as a result of search and after considering relevant facts, the Hon'ble Supreme Court held that, in respect of completed assessment/unabated assessment, no additions can be made by Assessing Officer in absence of any incriminating material found during the course of search u/s. 132 of the Act or requisition u/s. 132A of the Act. In the present case, search is conducted on 16.11.2016 and as on the date of search, the assessment for assessment years 2011-12 to 2015-16, are completed/unabated, because either the assessment has been completed u/s. 143(1) or 143(3) of the Act or time limit for issue of notice u/s. 143(2) has been expired on 31.07.2016, which is much before the date of search on 16.11.2016. Since, the assessment for the assessment years 2011-12 to 2015-16 are unabated /concluded as on the date of search, no addition can be made in the assessment framed u/s. 153A of the Act, without any incriminating material found as a result of search. In the

present case, additions made by the AO towards cash deposits u/s. 69A of the Act, is not with reference to any incriminating material found as a result of search. Further, the AO has made additions towards cash deposits u/s. 69A of the Act, on the basis of bank statement for relevant assessment years which is part of regular books of accounts of the assessee and declared in return of income filed for those assessment years. Therefore, we are of the considered view that the additions made by the Assessing Officer u/s. 69A of the Act, for cash deposits to bank account without any reference to incriminating material found as a result of search cannot be sustained and thus, by following the decision of Hon'ble Supreme Court in the case of PCIT vs Abhisar Buildwell (P) Ltd. (Supra), we direct the AO to delete addition made towards cash deposits u/s. 69A of the Act, for assessment years 2011-12 to 2015-16.

8. In so far as, assessment years 2016-17 and 2017-18, it is not in dispute, that the assessments for these assessment years are abated as on the date of search, because time limit for issue of notice u/s. 143(2) is available up to 31.07.2018.

Therefore, we rejected arguments of the assessee for these two assessment years.

9. The next issue that came up for our consideration for assessment years 2016-17 & 2017-18, is addition made u/s. 69A of the Act towards cash deposits into bank account. The AO has made additions towards cash deposits u/s. 69A of the Act as unexplained money for the reason that, the assessee could not explain nature and source for cash deposits. It was the explanation of the assessee before the Assessing Officer that, the source for cash deposits is out of withdrawal from very same bank account on earlier dates. To this effect, the assessee has filed relevant bank statements along with date of cash withdrawals on earlier dates and claimed that the cash withdrawal on earlier dates has been recorded in books of accounts, which is sufficient to explain cash deposits to bank account in subsequent dates.

10. We have heard both the parties and considered relevant reasons given by the AO to make additions towards cash deposits u/s. 69A of the Act. After carefully considering the arguments of both the sides, we ourselves do not subscribe to the reasons given by the AO to make addition towards cash

deposits u/s. 69A of the Act, for the simple reason that the assessee has filed relevant details including bank statement to prove that he has withdrawn cash from very same bank account on earlier dates and the same has been recorded in the books of accounts maintained for the relevant assessment year. We further noted that the assessee has filed details of cash withdrawal on earlier occasions for assessment year 2016-17 and as per the details filed by the assessee, cash withdrawal from bank account was at Rs. 35 lakhs, whereas cash deposits to bank account was at Rs. 21,60,000/, which is much lower than the amount of cash withdrawal from his bank account. From the above, it is very clear that the assessee has filed necessary evidences to prove nature and source for cash deposits to bank account. When the assessee is having sufficient withdrawals in earlier dates from same bank account to explain source for subsequent cash deposits in very same bank account, in our considered view, the AO ought to have accepted the explanation of the assessee, unless the AO proves that earlier cash withdrawals from bank account is utilized for some other purpose. In the present case, the AO made addition towards cash deposits, ignoring explanation furnished by the assessee without bringing on record how cash

withdrawal from earlier dates is not available to the assessee to explain source for cash deposits in subsequent dates. Similarly, for assessment year 2017-18, total cash deposits considered by the AO was at Rs. 23,19,500/- and as against this, cash withdrawal from very same bank account was at Rs. 32,05,000/-, which is more than amount of cash deposits considered by the AO for addition. Since, the assessee has filed necessary evidence to explain nature and source for cash deposits u/s. 69A of the Act, we set aside the order passed by the CIT(A) and direct the AO to delete addition made towards cash deposits u/s. 69A of the Act, for assessment years 2016-17 and 2017-18.

11. In the result, appeals filed by the assessee for assessment years 2011-12 to 2017-18 are allowed.

Order pronounced in the court on 23rd August, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 23rd August, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF