

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, CHENNAI**

**माननीय श्री वी.दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

1. आयकरअपील सं./ ITA No.951/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2006-07)
&
2. आयकरअपील सं./ ITA No.952/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2007-08)
&
3. आयकरअपील सं./ ITA No.953/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2008-09)
&
4. आयकरअपील सं./ ITA No.954/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2009-10)
&
5. आयकरअपील सं./ ITA No.955/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2010-11)
&
6. आयकरअपील सं./ ITA No.956/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2011-12)
&
7. आयकरअपील सं./ ITA No.957/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2012-13)

Smt. B.Kamakshi [L/H of Shri Bezwada Venkatram Reddy (deceased)] Flat F3, Prakruthi Apartments, 20, Dr.Ranga Road, Mylapore Chennai-600 004.	बनम/ Vs.	DCIT Central Circle -3(4), Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AGDPB-3601-R		

(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
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8. आयकरअपील सं./ ITA No.34/Chny/2023
(निर्धारण वर्ष / **Assessment Year: 2006-07**)

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9. आयकरअपील सं./ ITA No.35/Chny/2023
(निर्धारण वर्ष / **Assessment Year: 2007-08**)

&

10. आयकरअपील सं./ ITA No.36/Chny/2023
(निर्धारण वर्ष / **Assessment Year: 2008-09**)

JCIT Central Circle -3(4), Chennai.	बनम/ Vs.	Smt. B.Kamakshi, [L/H of Shri Bezwada Venkatram Reddy (deceased)] Flat F3, Prakruthi Apartments, 20, Dr.Ranga Road, Mylapore, Chennai-600 004.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AGDPB-3601-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी कीओरसे/ Appellant by	:	Shri B. Ramakrishnan (CA)- Ld.AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Smt. Komali Krishna (CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	27-02-2024
घोषणा की तारीख / Date of Pronouncement	:	17-05-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 The assessee is in further appeal for AYs 2006-07 to 2012-13 whereas the revenue is in further appeal before us for AYs 2006-07 to 2008-09. All the appeals arises out of a common order passed by Learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] on 07.10.2022 in the matter of separate assessments framed by Ld. Assessing Officer [AO] u/s 153A of the Act on 30.03.2014. The facts as well as issues are stated to be identical in all the years.

1.2 The Registry has noted delay of 9 days in revenue's appeals, the condonation of which has been sought by Ld. CIT-DR. Considering the period of delay, we condone the delay and proceed for adjudication of the appeals on merits.

1.3 The grounds taken by the assessee in AY 2006-07 read as under: -

1. For that the Order of the Learned Commissioner of Income Tax (Appeals) is contrary to the law, facts and circumstances of the case.
2. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.2,87,81,421/- assessed protectively in the appellant's hands as 'Income from undisclosed sources' without appreciating the explanation provided by the appellant.
3. For that the Learned commissioner of Income Tax (Appeals) erred in confirming the consequential levy of interest u/s 234A & B of the Act.

1.4 The grounds taken by the revenue in AY 2006-07 read as under: -

1. The Ld. CIT(A) erred in following the decision of the CIT(A) rendered in the case of Shri Sukumar Reddy vide order in ITA Nos. 259 - 263 CIT (A) -19/ 2017-18 dated 01.10.2018, without reasoning and confirming the protective addition as substantive addition to be made on the issue of deposits made in the undisclosed bank accounts to the tune of Rs.2.87 crores, and without appreciating that the revenue has preferred appeal against the decision of the CIT(A) in ITA Nos. 259-263 CIT(A) -19/ 2017-18 dated 01.10.2018, on this issue.
2. The Id. CIT(A) ought to have appreciated the fact that Shri. B.V. Reddy was only a name lender/commission agent and all the transactions in the undisclosed bank accounts actually belongs to Shri Sukumar Reddy, Director of Platinum group of companies, and assessable substantively in the hands of Shri. Sukumar Reddy.
3. The Ld. CIT(A) ought to have appreciated that the decision of the Hon'ble Supreme Court in the case of Juggilal Kamalapat Vs. CIT (1969) 73 ITR 702, is applicable to this case, wherein it was held that the income tax authorities are entitled to pierce the veil of corporate entity and look at the reality of the transaction and that in exceptional cases the court can lift the veil of corporate entity and to pay regard to the economic realities behind legal facade.
4. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order Id. CIT(A) may be set aside, after considering both the substantive and protective additions of the entire group together.

The Ld. AR advanced arguments supporting the case of the assessee. The Ld. CIT-DR also advanced arguments supporting the assessment orders. Having heard rival submissions, our adjudication would be as under.

Assessment Proceedings

2.1 The impugned assessments were framed against the assessee pursuant to search action u/s 132 by the department on Platinum Group of cases on 21.06.2011. During assessment proceedings, notice u/s 153A was issued to the assessee on 14.09.2012. The assessee offered original return of income as filed on 31.10.2007. It transpired that the assessee maintained a bank account with SBI which was not disclosed in the return of income.

2.2 It was noted by Ld. AO that Shri M. Sukumar Reddy (MSR) and the assessee Shri B. Venkatram Reddy (BVR) were two directors in seven group companies. MSR held 99% of shareholding in these companies whereas BVR was holding remaining 1% share. It was also noted that BVR was cousin of MSR and he had expired in May, 2013. During search proceedings, it was found that over and above the recorded sale consideration for land, some on-money was paid by Om Shakthy Agencies (Madras) Private Ltd. (OSAPL) to the assessee-director for sale of land of the group companies. The other director MSR denied to have received the same. Further investigations revealed that the payments were received in undisclosed bank accounts of the assessee. The same form subject matter of present appeals before us.

2.3 In sworn statement recorded on 07.12.2011, MSR stated that BVR was a business associates and handled the affairs at Chennai. However, in sworn statement dated 21.06.2011, BVR stated that his role was to take care of construction and purchase and sale of land as directed by Board of directors. On these facts, Ld. AO concluded that BVR merely acted as an executive on behalf of directors and he was more of an employee. The wife and legal heir of BVR also stated that BVR only

looked after the affairs of Platinum group companies and he did not carry out any other business activity. It also transpired that BVR resigned from directorship of the companies in December, 2009 but he continued to work for the companies even after he resigned as a director.

2.4 In the above background, Ld. AO noted that BVR had two undisclosed bank accounts i.e., one with Royal Bank of Scotland and another with State Bank of India wherein certain deposits were made. The wife of BVR, in sworn statement, stated that the monies deposited therein were from land dealings of Platinum group of companies only. However, MSR did not accept that the monies deposited in the two bank accounts were on-money received from the buyer of land. He also contended that these were the deposits from some other activities of BVR and he or his group concerns had no concern with these transactions.

2.5 The Ld. AO alleged that on-money of Rs.623.10 Lacs was received during FY 2007-08 through cheques and in cash for sale of land. The cheques were deposited in the above-mentioned undisclosed bank accounts. Therefore, there could be no different source of money. MSR, post-search cross-examination, had accepted the fact of accepting on-money. The Ld. AO also held that BVR acted for and on behalf of the assessee group and he deposited on-money or money from undisclosed sources in his personal name as they were not to be incorporated into the accounts and were not to be disclosed to the department. The same was also evidenced from the fact the many withdrawals / cheques issued found its way back in to the group companies as credits in some other name. Some of the payments had also gone to persons from whom these companies had purchased land or had given advances for land

purchases. Few of such instances have been recorded by Ld. AO in the assessment order.

2.6 Based on these findings, Ld. AO alleged that all such deposits were not to be disclosed but were to be utilized by MSR for the business of the companies. MSR also did not come up with any explanation owning up the amounts deposited. Therefore, the same was to be considered as unaccounted money of MSR since he was substantial shareholder and BVR was more like an employee receiving salary of Rs.2 Lacs per annum and was being used for activities of the group. MSR was using corporate composition of the group of companies and other director for veiled transactions. Colorable device was used in his case to avoid payment of tax by resorting to dubious method.

2.7 The Ld. AO, applying the ratio of Hon'ble Supreme Court in the case of McDowell & Co. Ltd vs. CTO (22 Taxman 11), held that though corporate entities had been created but from the shareholding pattern, it was clearly perceived that MSR was the only individual having controlling stake in the affairs of all the companies and he only would stand to gain from the transactions of the group even though two bank accounts were maintained in the name of a minor shareholder i.e., BVR and who worked more like an employee for the group. The ultimate gain was that of the MSR. Therefore, lifting corporate veil, Ld. AO held that all the transactions in the group of companies were undertaken for the benefit of MSR and therefore, the deposits were to be considered as unexplained income of MSR. BVR was only a name lender and accordingly, the amounts in the undisclosed bank accounts was to be considered as income of MSR substantively except for the amount of Rs.623.10 Lacs which was to be added in the hands of four companies.

The income added in the hands of MSR, on substantive basis, was added protectively in the hands of the assessee also. Similar protective addition was made in AYs 2007-08 to 2010-11. In AY 2008-09, Ld. AO also made protective addition of Rs.623.10 Lacs relating to four group companies.

2.8 In AY 2011-12, the only addition made by Ld. AO was substantive addition of unexplained investment u/s 69A for Rs.26.62 Lacs. The same represent additional deposits in the two bank accounts. In the absence of any satisfactory reply forthcoming from the assessee, the said amount was added substantively in the hands of the assessee. Similar addition of Rs.9.85 Lacs was made for AY 2012-13 also.

2.9 In AY 2012-13, Ld. AO made another addition of Rs.72.23 Lacs on account of unexplained jewellery. During search, 1792.30 grams of gold jewellery worth Rs.34.10 Lacs and 48.9 carats of diamond worth Rs.24.75 Lacs was found from a locker. Also, 25242 grams of silver articles valued at Rs.13.37 Lacs was found from the residence of the assessee. In the absence of any satisfactory reply forthcoming from the assessee, in this regard, the same was added to the income of the assessee.

3. Appellate Proceedings

3.1 The assessee assailed the impugned additions on the ground that he was minor shareholder and acted for and on behalf of the group companies. He merely acted as an employee receiving salary of Rs.2 Lacs per annum. From shareholding pattern, it was quite clear that MSR was having controlling stakes in the affairs of all the companies and he only would stand to gain from the transactions of the group even though undisclosed bank accounts were maintained in the name of minor

shareholder. The assessee relied on the decision of Hon'ble Supreme Court in the case of **Sir Kikabhai Premchand vs CIT (24 ITR 506)** for the submission that regard must be had to the substance of the transaction rather than its mere form.

3.2 The Ld. CIT(A) noted that the additions made on substantive basis, in the hands of MSR was deleted in the first appellate order. This being the case, the deposits in undisclosed bank accounts of BVR had to be assessed in the hands of BVR only. Therefore, the addition, on substantive basis, was confirmed in the hands of the assessee. Aggrieved the assessee is in further appeal before us. The addition of Rs.450 Lacs representing cheque payment out of aggregate payment of Rs.623.10 Lacs, as made on protective basis in AY 2008-09, was also confirmed on substantive basis by considering the first appellate order in the case of Platinum Holdings Private Ltd. The remaining payment of Rs.173.10 Lacs as received in cash was held to be belonging to four companies.

3.3 The addition of Rs.26.62 Lacs and Rs.9.85 Lacs as made by Ld. AO for AYs 2011-12 & 2012-13 was confirmed on the observation that the assessee resigned from the post of director from Platinum group of companies during December, 2009 itself. Therefore, the said deposits were to be considered as undisclosed income of the assessee,

3.4 On the issue of Jewellery, it was submitted that legal heir of the assessee filed evidences regarding seized jewellery. All the family members had sufficient sources of money to invest in the jewellery. However, rejecting the submissions, Ld. CIT(A) confirmed the addition against which the assessee is in further appeal before us.

Our findings and Adjudication

4. The material facts are not in dispute. The search action u/s 132 on assessee group revealed that the assessee maintained two undisclosed bank accounts in his own name. However, upon examination of assessee's role in the group concerns, it transpired that the assessee merely acted as an employee for the Platinum group of companies. Though the assessee was director in group companies up-to December, 2009, however, the shareholding of the assessee in these companies was miniscule to the extent of 1% only. The remaining 99% shareholding was held by other major shareholder MSR. The same is evident from tabulation made by Ld. AO at para-6 of the assessment order. The assessee earned meager salary income of Rs.2 Lacs per annum for his services. The assessee, in sworn statement recorded u/s 132, admitted that his role was to take care of construction and purchase and sale of land on behalf of group companies as directed by the Board of Directors. He was merely an executive who acted on behest of the Board of Directors. Mrs. B. Kamakshi, the wife and legal heir of the assessee, in sworn statement dated 11.03.2014, reiterated that her husband was looking after the affairs of Platinum group of companies and he did not carry any other business activity from which he could have earned income. It also transpired that post resignation from the directorship, the assessee continued to work for the group. It was quite evident that the assessee acted for and on behalf of the group companies owned by MSR and deposited on-money on land sold by the assessee group in bank accounts held in his personal name. The Ld. AO, in the assessment order, traced many payments from the aforesaid bank accounts which found their way back in the group. MSR could not furnish

any satisfactory reply to the same during the course of assessment proceedings. On these facts, we concur with the stand of Ld. AO that the credit in these bank accounts could not be considered to be the income of the assessee. The Ld. CIT(A) confirmed the additions, on substantive basis in the hands of the assessee, by considering first appellate order in the case of group concerns wherein impugned additions were deleted. However, the revenue has assailed those orders before us which are being disposed-off separately. Considering the entirety of facts and circumstances of the case, we would uphold the stand of Ld. AO and order that the impugned additions could not be considered to be the income of the assessee either substantively or protectively. The impugned additions made in all the years stand deleted except for the addition of Rs.26.62 Lacs in and Rs.9.85 Lacs in AYs 2011-12 & 2012-13 respectively which represent additional deposits in the two bank accounts. These two additions are sustained in the hands of the assessee.

5. So far as the addition of jewellery is concerned, it emerges that the assessee's submissions have not been considered by either of the lower authorities. This being the case, the issue of jewellery in AY 2012-13 stands restored back to the file of Ld. AO for fresh adjudication with a direction to the assessee to substantiate its case.

6. In the result, the assessee's appeal for AYs 2006-07 to 2010-2011 stands allowed. The assessee's appeal for AYs 2011-12 & 2012-13 stands partly allowed. The revenue is also aggrieved by conversion of protective assessment into substantive assessment. The revenue submits that it has preferred further appeal against first appellate orders in group concerns. These grounds stand partly allowed in view of our

adjudication that the additions, either protectively or substantively, would not be sustainable in the hands of the assessee for AYs 2006-07 to 2008-09. The appeals of the revenue also stand partly allowed.

7. The assessee's appeal for AYs 2006-07 to 2010-11 stands allowed. The assessee's appeal for AYs 2011-12 & 2012-13 stands partly allowed. All the three appeals of the revenue stand partly allowed.

Order pronounced on 17th May, 2024

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

चेन्नईChennai; दिनांक Dated :17-05-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF