

आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI ABY T. VARKEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. / ITA No.1021/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. V. Sathyamoorthy & Co. 41, Patel Road, Near Blood Bank, Erode-638 001.	बनाम/ Vs.	DCIT Central Circle-2 Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AACFV-0222-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Assessee by	:	Shri S. Sridhar (Advocate)- Ld.AR
प्रत्यर्थी की ओर से/ Revenue by	:	Shri R. Clement Ramesh Kumar (CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	29-07-2024
घोषणा की तारीख / Date of Pronouncement	:	20-09-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of an order passed by learned Commissioner of Income Tax (Appeals), Chennai-20, [CIT(A)] on 31-03-2024 in the matter of an assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 153A of the Act on 04-05-2022.

1.2 The grounds raised by the assessee read as under: -

1. The order of the CIT (Appeals) - 20, Chennai dated 31.03.2024 vide DIN & Order No. ITBA/APL/S/250/2023-24/1063745743(1) for the abovementioned Assessment Year is contrary to law, fact and in circumstances of the case.

2. The CIT (Appeals) - 20, Chennai erred in confirming the assumption of jurisdiction under Section 153A of the Act and further erred in confirming the search assessment order passed in terms of Section 153A of the Act without assigning proper reasons and justification.
3. The CIT (Appeals) - 20, Chennai failed to appreciate that the search assessment completed by making the disputed addition(s) in the absence of valid incriminating seized material relatable to such addition(s) should be reckoned as nullity in law and further ought to have appreciated that the judicial trend in this regard was completely overlooked and brushed aside in passing the impugned order there by vitiating the related findings.
4. The CIT (Appeals) - 20, Chennai failed to appreciate that the search assessment order under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.
5. The CIT (Appeals) - 20, Chennai failed to appreciate that in any event the addition originally made by the Assessing officer to the tune of Rs.4,00,000/- could not be assessed in the hands of the appellant and further ought to have appreciated that the disputed sum was already offered in the hands of the individual partners in the Returns of income filed by them for the Assessment year under consideration.
6. The CIT (Appeals) - 20, Chennai failed to appreciate that the original addition made in the hands of the appellant firm would tantamount to double addition especially in view of the admitted fact that the said sum being assessed in the hands of the Partners in their individual capacity there by negating the related findings.
7. The CIT (Appeals) - 20, Chennai failed to appreciate that the loose sheets relied upon by the lower authorities had no evidentiary value there by vitiating the related findings.
8. The CIT (Appeals) - 20, Chennai erred in confirming the addition of Rs.62,75,006/- on the presumption of wages payable claimed in the month of March of the relevant assessment year as bogus without assigning proper reason and justification.
9. The CIT (Appeals) - 20, Chennai failed to appreciate that the wages expenses were actually incurred by the Appellant in the normal course of business and the disallowance of such expenses as not genuine was wholly unjustified and not sustainable both on facts and in law.
10. The CIT (Appeals) - 20, Chennai failed to appreciate that the Appellant had rectified the return of income filed u/s 153A of the Act in claiming the actual expenses relatable to the assessment year under consideration and further ought to have appreciated that the Assessing Officer having considered the reversal of such provision in the said return of income, the action to deny the claim of actual expenses relatable to the assessment year under consideration would distort the financial results of the Appellant Company.
11. The CIT (Appeals) - 20, Chennai failed to appreciate that the wages expenses were wrongly denied both in the year of claim (as per original return of income) as well as in the actual year of outflow (as per 153A return) would defy the principles of fairness in taxation there by vitiating the related findings in the impugned order.
12. The CIT (Appeals) - 20, Chennai failed to appreciate that having not found any discrepancy in the expenditure incurred by the Appellant and further having not disputed the fact that the major portion of wages payable being paid through proper banking channels, the findings recorded in doubting the genuineness of such expenses was wholly unjustified and unwarranted there by negating the related findings in the impugned order.
13. The CIT (Appeals) - 20, Chennai failed to appreciate that the return of income filed in response to the notice issued u/s 153A of the Act should be construed as implied retraction to the statement recorded at the time of search and further ought to have

appreciated that the presumption of non retraction till date was wholly unjustified especially in view of its contention before both the lower authorities.

14. The CIT (Appeals) - 20, Chennai failed to appreciate that there was no independent examination carried out by the Revenue despite the availability of entire documents forming part of the search records and the sole reliance on the statement recorded in the absence of any corroborative evidence should be reckoned as bad in law.

15. The CIT (Appeals) - 20, Chennai erred in partly sustaining the total addition of Rs.29,53,685/- on the presumption of salary payable as bogus without assigning proper reasons and justification.

16. The CIT (Appeals) - 20, Chennai failed to appreciate that the salary payable was actually incurred by the Appellant in the normal course of business and the disallowance of such expenses as not genuine was wholly unjustified and not sustainable both on facts and in law.

17. The CIT (Appeals) - 20, Chennai failed to appreciate that the Appellant had rectified the return of income filed u/s 153A of the Act in claiming the actual expenses relatable to the assessment year under consideration and further ought to have appreciated that the Assessing Officer having considered the reversal of such provision in the said return of income, the action to deny the claim of actual expenses relatable to the assessment year under consideration would distort the financial results of the Appellant Company.

18. The CIT (Appeals) - 20, Chennai failed to appreciate that the salary expenses were wrongly denied both in the year of claim (as per original return of income) as well as in the actual year of outflow (as per 153A return) would defy the principles of fairness in taxation there by vitiating the related findings in the impugned order.

19. The CIT (Appeals) - 20, Chennai failed to appreciate that having not found any discrepancy in the expenditure incurred by the Appellant and further having not disputed the fact that the major portion of salary payable being paid through proper banking channels, the findings recorded in doubting the genuineness of such expenses was wholly unjustified and unwarranted thereby negating the related findings in the impugned order.

20. The CIT (Appeals) - 20, Chennai failed to appreciate that the return of income filed in response to the notice issued u/s 153A of the Act should be construed as implied retraction to the statement recorded at the time of search and further ought to have appreciated that the presumption of non retraction till date was wholly unjustified especially in view of its contention before both the lower authorities.

21. The CIT (Appeals) - 20, Chennai failed to appreciate that there was no independent examination carried out by the Revenue despite the availability of entire documents forming part of the search records and the sole reliance on the statement recorded in the absence of any corroborative evidence for denying the salary expenses should be reckoned as bad in law.

22. The CIT (Appeals) - 20, Chennai failed to appreciate that the entire re computation of the taxable total income on various facets was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

23. The CIT (Appeals) - 20, Chennai failed to appreciate that there was no effective/reasonable opportunity granted before passing the impugned order and search assessment order and further ought to have appreciated that any order passed in violation to the Principles of Natural Justice should be reckoned as nullity in law.

As is evident, the issues that fall for our consideration are addition arising out of search proceedings in the case of the assessee.

1.3 The Ld. AR advanced arguments and referred to various documents as placed on record. The Ld. CIT-DR also advanced arguments and supported the orders of lower authorities. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

2.1 The assessee being resident firm filed return of income u/s 139(1). The assessee was subjected to search action u/s 132 on 28-10-2020. Accordingly, an assessment was framed u/s 143(3) r.w.s. 153A on 04-05-2022 making certain additions in the hands of the assessee. The issues that form subject matter of this year are disallowance of wages payable for Rs.62.75 Lacs and disallowance of salaries payable for Rs.14.69 Lacs. Post search-proceedings, notice u/s 153A was issued to the assessee on 30-04-2021. The assessee filed return of income and disclosed certain additional income. The details of the same could be tabulated as under: -

No.	A.Y	Date of filing of return u/s 139(1)	Income returned u/s 139(1)	Income assessed u/s.143(3)	Returned Income u/s.153A Rs.	Additional Income disclosed Rs.
A	B	C	D	E	F	(F-D)
1	2015-16	08.09.2015	10,89,38,240		11,02,35,450	12,97,210
2	2016-17	10.02.2017	5,52,28,000	NA	5,72,95,360	20,67,360
3	2017-18	23.01.2018	15,78,68,530	NA	19,07,00,920	3,28,32,390
4	2018-19	15.12.2018	11,39,91,610	NA	11,58,49,610	18,58,000
5	2019-20	30.01.2020	14,40,23,110	NA	30,74,07,590	16,33,84,480
6	2020-21	31.03.2021	20,40,75,060	NA	36,16,07,280	15,75,32,220
7	2021-22	31.03.2022	67,59,66,220	NA	NA	NA

2.2 It transpired that the assessee made payments to casual laborer to carry-out work at various construction sites. The payments were made on weekly basis. The works undertaken by the laborer was recorded in Measurement books (M Books). Some of such M Books were seized during search. Based upon the entries in the M Books, labour excel sheets were prepared on weekly basis and the payment was made to the contractors through banking channels. These labour payments excel sheets for different financial years were maintained in the tally server of the assessee which was also seized.

2.3 On comparison of workers' wages expenses for FY 2018-19 as maintained in Tally system vis-à-vis actual wage payments as per excel sheets, it was found that for the month of April, 2018 to June, 2018, the workers' wages expenses accounted in the tally system was lesser than the actual payment made during the year. The payments that were made through banks were used to set-off the previous year wages payable even though the wages expenses were incurred during FY 2018-19. On examination of tally data, it was noted that huge amount of wages payable was entered in the last month of financial years and claimed as expense. For FY 2018-19, the wages payable entered in the tally system was not set-off as on the date of search. The partner of the firm Shri S. Anandavadivel admitted to booking of bogus wages payable in the last month of the year. It was stated that though the expenses were incurred for the Financial Year (FY) 2018-19, in order to balance the ledgers of bogus wages payable for FY 2017-18, entries of payments were made in FY 2018-19. On these facts, Ld. AO alleged that the same was done so as to suppress the profit. Similar practice was followed for booking salaries payable. The wages payable for this year was Rs.391.07 Lacs

whereas salaries payable was for Rs.29.53 Lacs. The Ld. AO proceeded to make appropriate disallowance against the same.

2.4 The assessee refuted the allegation of Ld. AO on the strength of ledger extracts and submitted that wages paid for subsequent years was inadvertently provided in the relevant previous year. The payment made in subsequent years was not claimed as expenditure but reversed against the provisions made in previous year. While submitting the return in response to notice u/s 153A, the assessee stated to have not considered the above provisions. Regarding salary, it was submitted that it was year-end provision which was subsequently paid. In other words, it was submitted that the amount of Rs.391.07 Lacs was already disallowed in the form of reduction in the claim of wages in the Profit & Loss account filed in response to notice issued u/s 153A. The provision of salary for Rs.29.53 Lacs was stated to be rightly claimed since the same was duly evidenced. Accordingly, the assessee opposed any disallowance as proposed by Ld. AO.

2.5 However, Ld. AO observed that the assessee offered additional income of Rs.328.32 Lacs for bogus wage issue but did not offer additional income of Rs.62.75 Lacs. Therefore, the addition of Rs.62.75 Lacs was sustained. The argument on salary payable was also not accepted on the ground that the same was merely an after-thought. At the time of search, the assessee had not submitted any evidence to prove the salary payment in next year. Therefore, the salary payable for Rs.29.53 Lacs was also disallowed.

2.6 The Ld. AO also made addition of Rs.4 Lacs as undisclosed income for sale of flats in 'Esha Apartments'. However, the same has

already been deleted by Ld. CIT(A) vide para 7.2.20 of the impugned order.

Appellate Proceedings

3.1 On the issue of wages payable, the assessee, inter-alia, submitted that the same is based on information available in regular books of accounts and not based on any incriminating material. The disallowance of Rs.62.75 Lacs represents actual wages paid by the assessee during the year which was evidenced by the ledger extracts. The said amount was claimed as provision in original return of income. Therefore, the same ought to have been allowed on actual payment basis during this year.

3.2 The Ld. CIT(A) rejected the legal arguments of the assessee and held that Ld. AO could make regular addition also with respect to any issue that comes to his notice. The Managing Director admitted that the wages were cleared on weekly basis. Further, at year-end wages payable were shown to reduce the profits. Therefore, wages payable would reflect wages artificially inflated by recording non-existent expenditure. The question of actual payment in subsequent year as claimed by the assessee would not arise at all. The findings of Ld. AO would lead to a presumption that actual expenditure incurred by the assessee for any financial year in initial three months towards wages is suppressed to the extent of provisions made for wages for previous year. Accordingly, the impugned addition was confirmed.

3.3 The addition on account of salary payable was also confirmed on the ground that the assessee did not provide the details of staff in whose case salary was shown to be outstanding. The Managing Director admitted of booking bogus salary expenses. If the amount recorded was

bogus, the question of payment of such bogus salary in subsequent year would not arise. Therefore, the addition of Rs.14.69 Lacs was sustained. With respect to balance provision of Rs.14.84 Lacs as stated to be reversed in AY 2016-17, the AO was directed to verify the claim and delete the addition to that extent, if the claim was found to be true. Aggrieved, the assessee is in further appeal before us.

Our findings and adjudication

4. Upon perusal of ledger extracts of wages payable and salaries payable as placed on record at Page Nos. 70 to 112 of the paper-book Volume-II, it could be seen that as on 01-04-2016, the wages payable are for Rs.62.75 Lacs which have fully been paid by the assessee by 30-04-2016. The assessee has made provision of wages payable for AY 2017-18 for Rs.391.07 Lacs which, as per the statements made during the course of search proceedings, are booked artificially to suppress the profit of this year. The assessee has reversed / not considered this provision while filing the return of income u/s 153A and it has already offered additional income to that extent. The Ld. AO has already concurred with this fact. Another finding of Ld. AO is that on comparison of workers' wages expenses for FY 2018-19 as maintained in Tally system vis-à-vis actual wage payments as per excel sheets, it was found that for the month of April, 2018 to June, 2018, the workers' wages expenses accounted in the tally system was lesser than the actual payment made during the year. The payments that were made through banks were used to set-off the previous year wages payable even though the wages expenses were incurred during FY 2018-19. On these facts, it was to be concluded that the expenditure, *per-se*, was not bogus but it was only a timing difference of making a claim. The assessee

made advance provision for wages in one year and adjusted the same in subsequent wages actually paid from such provisions without claiming the wages in next year. The motive was to suppress the profit of a particular year. This being so, when the provision itself has been reversed in a particular year, the payment thereof in the next year would be allowable to the assessee as expenses of subsequent year. If the same is not allowed, the assessee would suffer disallowance in both the years.

5. The assessee has reconciled the income as filed u/s 139(1) and as filed u/s 153A (placed on Page No.280 of Paper Book Volume-1) as under: -

Year	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21
Original Return of Income Filed u/s 139(1)	10,89,38,235	5,52,27,996	15,78,68,526	11,39,91,605	14,45,24,107	29,07,17,231	67,59,66,220
Wages Payable - Reversed	50,91,741	62,74,999	3,91,07,396	4,24,49,502	6,04,23,983		
Actual Wages Paid Claimed		-50,91,741	-62,74,999	-3,91,07,396	-4,24,49,502		
Salary Payable - Reversed		14,84,105			33,72,150	49,18,047	
Actual Salary Paid Claimed				-14,84,105		-33,72,150	
Sub Contractor - Reversed					11,85,29,029	1,40,18,600	
Purchase - Reversed					2,35,08,822	5,53,25,652	
Additions - Asst.143 (3)	30,05,474						
Esha Sales Reversed	-68,00,000	-6,00,000					
Revised Income as per Return Filed in response to Notice U/s 153A	11,02,35,450	5,72,95,358	19,07,00,923	11,58,49,606	30,79,08,589	36,16,07,280	67,59,66,220

It could be seen that the assessee has reversed provision of wages payable for Rs.62.75 Lacs in FY 2015-16 and claimed the same on actual payment basis in FY 2016-17. The same is very much clear from the above reconciliation. Since the provision as wrongly claimed in return of income filed u/s 139(1) has now been reversed in return of income filed u/s 153A, the payment made in subsequent year would be allowable as deduction in the subsequent year. If the same is not allowed, the assessee would suffer double disallowance which is wholly unjustified. Therefore, considering the fact of the case, the amount of Rs.62.75 Lacs would be allowed as deduction to the assessee during AY 2017-18. We order so.

6. Similarly, in respect of salaries payable, it could be seen that the assessee has reversed provision of Salaries payable for Rs.14.84 Lacs during FY 2015-16 and claimed deduction of the same on actual payment basis. Therefore, the disallowance, to that extent, could not be upheld. The balance provision of Rs.14.69 Lacs has been made on 31-03-2017. The aggregate provision as on 31-03-2017 was Rs.29.53 Lacs which has fully been paid by the assessee through banking channels in the month of April and May, 2017 which is evident from ledger of salaries payable as placed on Page No.109. Therefore, the impugned disallowance of Rs.29.53 Lacs, in *toto*, is not sustainable in law. We order so. The corresponding ground raised by the assessee stand allowed.

7. No material arguments have been advanced on legal grounds in this year. Further, no defect has been shown in the jurisdiction of Ld. AO. The corresponding grounds raised by the assessee stand dismissed.

8. The appeal stands partly allowed.

Order pronounced on 20th September, 2024

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :20-09-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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