

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.1022/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. V. Sathyamoorthy & Co. 41, Patel Road, Near Blood Bank, Erode-638 001.	बनाम/ Vs.	DCIT Central Circle-2 Coimbatore.
स्थायी लेखा सं./जी आइ आर सं./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	:	09-10-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 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/250/2023-24/1063745820(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 over looked 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 erred in confirming the addition of Rs.4,05,91,502/- 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.

6. 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.

7. 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.

8. 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.

9. 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 thereby negating the related findings in the impugned order.

10. 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.

11. 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.

12. The CIT (Appeals) - 20, Chennai erred in sustaining the total addition of Rs.17,96,960/- on the presumption of salary payable as bogus without assigning proper reasons and justification.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. The CIT (Appeals)- 20, Chennai erred in sustaining the addition of Rs.11,90,00,000/- as unexplained investment u/s 69 of the Act in the hands of the Appellant firm based on certain loose sheet(s) found at the time of search without assigning proper reasons and justification.

20. The CIT (Appeals) - 20, Chennai failed to appreciate that the provisions of Section 69 of the Act had no application to the facts of the present case and further ought to have appreciated that the pre-requisite conditions for attracting the provisions in Section 69 of the Act was not satisfied in the present case thereby vitiating the disputed addition.

21. The CIT (Appeals) - 20, Chennai failed to appreciate that the seized material relied upon by the Assessing Officer had no evidentiary value and further ought to have appreciated that the addition made solely based on the statement recorded at the time of search and the loose sheet(s) in the absence of corroborative evidence should be reckoned as bad in law.

22. The CIT (Appeals) - 20, Chennai failed to appreciate that the contents of the seized material only relate to the projected figures in relation to TWAD project and further ought to have appreciated that the assessment of projected figures as unexplained investment on various facets was wrong, erroneous, incorrect, invalid and not sustainable both on facts and in law.

23. The CIT (Appeals) -20, Chennai failed to appreciate that the Assessing Officer had not brought on record any evidence establishing the movement of cash / flow of funds nor identified the disputed sum in the form of any asset there by vitiating the sustenance of the addition made by invoking the provisions of Section 69 of the Act.

24. The CIT (Appeals)- 20, Chennai failed to appreciate that the explanation offered by the Appellant were not considered in proper perspective while dealing with the grounds raised and further ought to have appreciated that the factual position was further clarified by the Partner of the Appellant firm during the post search proceedings there by vitiating the related findings in the impugned order.

25. The CIT (Appeals)-20, Chennai failed to appreciate that in any event the assessment of such presumed investment as unexplained in the hands of the Appellant firm there by negating the addition made in this regard and further ought to have appreciated that the sustenance of the disputed sum in the hands of the Appellant was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

26. 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.

27. 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. The issues that form the subject matter of present appeal are – (i) disallowance of wages payable & salaries payable for Rs.405.91 Lacs & Rs.17.96 Lacs respectively; (ii) Addition of unexplained investment u/s 69 for Rs.1190 Lacs.

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. This appeal was heard along with other appeals of the assessee for several assessment years. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

1.4 The assessee being resident firm filed return of income for this year 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. 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

It is evident that the assessee offered additional income of Rs.18.58 Lacs in this year.

2. Disallowance of Wages & Salaries Payable

2.1 This addition is based on notings found in Measurement books (M Books) for labor payments and excel sheets. Upon comparison of these documents with regular Tally Data, discrepancies were found and Ld. AO concluded that the assessee booked wages payable in the last month of various financial years to suppress profits. After rejecting assessee's submissions, Ld. AO made addition of Rs.405.91 Lacs on account of wages payable and another addition on account of salaries payable for Rs.17.96 Lacs. The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

2.2 We find that identical issue has been decided by us in assessee's appeal for AY 2017-18, ITA No.1021/Chny/2024 as under: -

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.

Facts being *pari-materia* the same in this year, taking the same view, we delete both the additions as made by Ld. AO.

3. Addition of unexplained investment u/s 69

3.1 This addition stem from excel sheet titled as '15%' and "12%' found during search. The same allegedly contained entries of capital introduction of Rs.12.75 Crores by the partners. As per description, the entries pertained to cash loans received by the three partners of the firm (Shri S. Anandavadivel, Shri S. Aravindan and Shri V. Sathyamoorthy) and a relative (Smt. Geeta w/o Shri S. Anandavadivel) of one of the partners. The amount of Rs.11.90 Crores was introduced in this year. Shri S. Anandavadivel deposed that the cash was introduced out of unaccounted cash generated in the firm. The copy of image of excel sheet has been reproduced in para-11 of assessment order.

3.2 During the course of assessment proceedings, the assessee assailed the allegation of Ld. AO and submitted that the relevant seized material was explained by Shri P. Vinoth (Q No.14-I) (an employee of the firm) during search proceedings. He deposed that these amounts were loans taken by the individuals and utilized for non-business purposes. When put forth before, Shri S. Anandavadivel, (Q No.28), said that part of the amount spent was accounted in the books and admitted Rs.8.80 Crores unaccounted cash utilized for the civil contract projects. Post

search proceeding when the same question was posed to Shri S. Anandavadivel, he stated that these were unaccounted loans refunded by the parties and interest earned from these loans and unaccounted cash generated in the firm. However, post search, no statement was recorded from Shri Vinoth who had said that the source was loan borrowed by the individual which has not been confirmed by the partner of the firm in his sworn statement recorded during search proceedings. Post-search proceedings, in statement recorded from Shri Anandavadivel (Q.No.3), he stated that the source was from refund of unaccounted loans with interest to the family member whereas neither the officer has questioned the utilization nor it has been answered. Pertinently, Sh. Vinoth was not questioned during post search operations especially when Sh. Anandavadivel has given a different version of source and application with that of his original statement during search proceedings. It was, therefore, submitted that the addition based on single excel sheet as maintained by Sh. Vinoth had no evidentiary value and no corroborative documents were seized for the source or application as stated in the sworn statements of both Sh. Vinoth and Sh. Anandavadivel. Neither the excel sheet nor the sworn statement would indicate any investment either by the firm or by the partners of the assessee-firm. All these were merely estimated project cost and expenditure for a particular project that may be forthcoming from TWAD project and the source which could be made and the cost of such source at 12% per annum or 15% per annum just to estimate the profits from the then forthcoming TWAD project during 2017-18. Hence, the proposed addition was merely only on surmise without an iota of evidence and therefore, it should not be considered as unaccounted income of the

assessee especially when the assessee has income from the source of government projects alone. To support the submissions, the assessee relied on the decision of Hon'ble High Court of Madras in the case of **CIT vs. J. Dinesh Mehta (TCA No.84/2020)**.

3.3 However, Ld. AO alleged that the partners introduced unaccounted money generated by the firm through unaccounted cash generated, unaccounted interest received and repayment receipt of unaccounted loans given by the firm. The assessee did not explain as to why the names of partners were noted in the sheet and the amount was divided between the partners and why it was clearly written as capital and the sheet show the application of this capital for various expenditures. Shri Anandavadivel clearly stated that this capital was introduced from the unaccounted cash generated from the firm which was introduced as capital in the firm. Therefore, the explanation was an afterthought only. Finally, the aforesaid amount was added as unexplained investment u/s 69.

3.4 During appellate proceedings, the assessee stated that the loose sheet had no evidentiary value and there was no corroborative evidence except for contrary statements given during search as well as post search proceedings. When the query about the seized material was analyzed by the partners with the accountant, it was recalled that this excel sheet was prepared for a project for TWAD board and for which the requirement for the project cost and the estimated interest was worked for the discussion purposes only. Since there was no financial transaction involved either by the assessee or by the partners, there was no question of tangible investment by the firm or by its partners and no iota of evidence was available during search proceedings for investment

as per the seized material. The Ld. AO, while alleging unexplained investment, has not even identified a single loan party and did not make any attempt to cross-examine any of the party in this regard. The Ld. AO failed to consider that the details in the loose sheet had no relevance to income or investment either by the firm or by the partners. All the details in the loose sheets were nothing but estimated project cost and expenditure for a particular forthcoming project from TWAD. The sheet was merely a dumb document having no evidentiary value and could not be taken as a sole basis for making the addition. Reliance was placed on various judicial decisions to support the submissions. The assessee referred to the decision of Hon'ble High Court of Madras in the case of **CIT vs. J. Dinesh Mehta (TCA No.84/2020)**. Reliance was also placed on the decision of Hon'ble Delhi High Court in **CIT vs. Praveen Juneja (ITA No.56/2017 dated 14.07.2017)**. The other decisions include the decisions of Mumbai Tribunal in **ITO Vs Kranti Impex Pvt. Ltd. (ITA NO.1229/Mumbai/2013)** and the decision of Delhi Tribunal in **Shri Neeraj Goel Vs ACIT (ITA NO.5951/Del/2017)**.

3.5 The Ld. CIT(A), considering the factual matrix, noted that Sh. Anandavadivel, in sworn statement recorded on 30-04-2021, stated that source for amount in hands of partners and family member was unaccounted cash generated by assessee firm and unaccounted loans of assessee firm refunded etc. The AO made addition u/s 69 based on statements made by Sh. Vinoth (GM) and Sh. Anandavadivel (MD). The assessee contended that the expenditure recorded in the excel sheet represents estimated expenditure for TWAD project during AYs 2018-19 and 2019-20. Another contention was that Ld. AO could not establish unaccounted loans by examining relevant parties. The seized excel

sheet was without any corroborative evidence and therefore, would not hold any evidentiary value. The seized document does not specify whether transactions recorded are loans or investments. Further, entries in seized sheet had no relevance to income or investment either by firm or partners.

3.6 The Ld. CIT(A) rejected the submission on the ground that the seized document clearly showed that the transactions recorded were capital introduced by three partners Sri Anandavadivel (referred to as 'B' in seized sheet) , Sri Aravindan (referred to as 'A' in seized sheet), Sri V. Satyamurthy (referred to as 'V' in seized sheet) and family member Smt. Geetha w/o Sri Anandavadivel (referred to as 'G' in seized sheet). Their respective shares were also mentioned. Therefore, the transactions were investment only. The ownership of the document was not in question. The fact that the details mentioned in seized sheet pertain to the assessee was also not in dispute. Shri Vinoth clearly explained the transaction was investment by persons as mentioned in the seized documents. Though it was stated that the source for investment was loan taken by partners from some unknown persons. It was also stated that the amount was utilized for payment of unaccounted expenditure. The heads of expenditure towards which investment was utilized was also mentioned in seized sheet. He clarified that above payments were unaccounted non-business expenditure. Therefore, investment by partners and family was for unaccounted payments.

3.7 Shri Anandavadivel, in sworn statement dated 31-10-2020, agreed that the amounts as mentioned in seized sheet represents cash (investment / capital) introduced by partners and family member. Regarding utilization of cash introduced, he stated that only Rs.8.8

Crores mentioned under the head 'Mini' was unaccounted whereas rest of the expenditure was already recorded in the books of accounts. In sworn statement recorded on 30-04-2021, he still agreed that amounts mentioned in seized sheet represents actual cash (investment / capital) introduced by partners and family member. He, in fact, explained source for investment in hands of partners and family member as unaccounted cash generated by the assessee firm from business and unaccounted loans of assessee firm refunded and unaccounted interest received by firm etc. However, only during assessment proceedings, it was argued that the transactions were nothing but projected figures for TWAD project and these were not actual transactions. The aforesaid claim was merely an after-thought which could not be considered. There was no retraction of statement by any of the persons. Accordingly, the impugned addition was confirmed against which the assessee is in further appeal before us.

Our Adjudication on this issue

4. We find that the impugned issue emanates from certain loose sheets which have been kept on Page Nos. 113 to 118 of Paper book Volume II wherein tabulation with certain details specified as capital and investment is mentioned. The Accountant, Shri Vinoth at the time of search (Page No. 46 & 47 of Volume I) had stated that the above sums were received as loan by the promoters in their individual capacity from Private Financiers for the purpose of TWAD WSIS, Namakkal Construction Project. It was further stated by him that the expenses / cash payments specified in the disputed loose sheet were not for business purposes. However, he also mentioned that though interest entries were there in the loose sheets, such entries were mere calculations made by him the same were not actual interest payments

made. Upon perusal of the same, the only conclusion, if any, that could be drawn was that the mentioned sums could have been received in individual capacity from private financiers for TWAD construction project. Further, the sums were expended for non-business purpose. He also stated that the computations were not actual interest payments but mere computations. Going by this statement, even if presumed to be true, in any eventuality such sums as mentioned in the sheets could not be considered to be the income of the assessee firm since the amounts, at the most, were received in individual capacity and the same were expended for non-business purposes only. Therefore, this statement would not lend any credence to the case of Ld. AO while making impugned additions in the hands of the assessee-firm. Going by this statement, no case of impugned addition could be made out against the assessee-firm.

5. Proceeding further, Managing Partner, Shri Anandavadivel, at the time of search (Page No. 120 & 121 of Volume I) stated that part of the disputed amount was already accounted for in the books of accounts. However, he admitted that Rs.8.8 Crores was unaccounted cash utilized for the civil construction project. This statement run contrary to the statement of Shri Vinoth. The partner stated that partial amount was accounted whereas partial amount was unaccounted. In such a case, no addition to the extent of accounted portion could have been made in the hands of the assessee. Nevertheless, no exercise has been carried out by Ld. AO to verify the statement of the partner and bring on record evidences to fortify the same. Further, nothing has been said by the partner on the source of investment and there is no admission with respect to the same. In any case, the statement of Shri Vinoth as well as

the statement of the partner runs contrary to each other. Also, the statement made by managing partner is without any corroborative evidence. This statement also does not support confirmation of impugned addition in the hands of the assessee-firm.

6. Post search proceedings, the Managing Partner stated that the cash was introduced by the individual partners out of their unaccounted loans and unaccounted cash generated from the assessee-firm. No statement was recorded from Shri Vinoth. Even going by this statement, no inference of unaccounted income could be made against the assessee. The assessee was subjected to search proceedings and after considering every incriminating material as found therein, the assessee already admitted additional income and Ld. AO made further additions in earlier years. Therefore, whatever unaccounted income has been earned by the assessee-firm in earlier years, the same has already been brought to tax and therefore, no further addition could be made in the hands of the assessee at the time of expansion thereof. This statement also does not support the case of Ld. AO in making impugned additions.

7. We also find that during the course of the assessment as well as appellate proceedings, the appellant had taken a stand that these sheets would have no evidentiary value since the same merely contain projections to examine the project feasibility of a construction project which has been carried out in subsequent years. As per the statement of Shri Vinoth, these are not actual interest payment but mere calculations of interest. The said statement, in our considered opinion, strengthens the version put forth by the assessee before lower authorities. When the loose sheets contains mere calculations and not actual interest payment

then the same would lose its evidentiary value and no concrete conclusion could be drawn on the basis of the same.

8. Also, from the statement of Shri Vinoth, it is clear that he did not have complete knowledge of the transactions. He merely stated the above sum was received by the promoters in their individual capacity from private financiers for the purpose of construction project. He also mentioned that interest calculations made by him were not actual interest payments made. Apparently, that person lack complete knowledge of these transactions. No particulars of financiers as stated by him have been brought on record. This statement is not corroborated with any independent evidences forming part of the search records. Not even single financiers have been identified during proceedings before lower authorities. There is no direct evidence for borrowing money and utilization of the same for the TWAD project which has taken place in subsequent years. No enquiry has been made from Shri Vinoth post search proceedings. Under these circumstances, his statement would not hold much evidentiary value in the absence of any other evidence corroborating the same. The reference made in the projections should be construed as projections for monetizing the funding of the project and there could not be any presumption of unaccounted loans / cash being introduced unless details thereof have been brought on record. There is no evidence for actual borrowing of money by the partners.

9. Similarly, the statement of Managing Partner has contradictions. During search, he has stated that part of the amount spent was accounted for in the books of accounts. There is no such evidence brought on record by any of the lower authorities. Post search proceedings, the partner stated that the source of cash introduction was

unaccounted loans refunded by the parties and interest earned from these loans and unaccounted cash generated in the firm. Thus, there is clear contradiction in these statements and no addition could be made merely by relying upon the same unless the same is supported by any corroborative evidence on record.

10. Upon perusal of loose excel sheet as extracted in the assessment order, it could be seen that these sheets lacks sufficient details to form an opinion of actual cash introduction by the partners of the firm. The same merely contain certain computation of interest only without suggesting anything more. The complete details of the transactions could not be deciphered from the same. The same do not have any details as to source of alleged capital introduction by the partners. Under these circumstances, not much credence could be given to this document to make impugned additions in the hands of the assessee in the absence of corroboration of entries as contained therein.

11. The Hon'ble Karnataka High Court in its recent decision titled as **CIT vs. Sunil Kumar Sharma (159 Taxmann.com 179; 22.01.2024)**, rendered in the context of Sec.153C, held that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. The Hon'ble Court referred to the decision of Hon'ble Supreme Court in the case of **CBI vs. V.C. Shukla (3 SCC 410)** as well as another decision in **Common Cause vs. UOI (supra)** while arriving at such a conclusion. The Hon'ble Supreme Court in the case of **CBI vs. V.C. Shukla (3 SCC 410)** held that every transaction as recorded in the regular books needs to be independently corroborated and proved when some liability is to be fastened in respect

of such transactions. The legal principle as laid down by Hon'ble Supreme Court is that independent corroborative evidence is required in respect of entries in regular books of accounts and the same would apply in the present case. Pertinently, Special Leave Petition (SLP) of revenue against this decision has been dismissed by Hon'ble Supreme Court on 20-08-2024 which is reported as 165 Taxmann.com 846. We are of the opinion that aforesaid principle as laid down by Hon'ble Court would apply to the facts of the present case before us and same strengthens the arguments of Ld. AR. Similarly, Mumbai Tribunal, in the case of **ITO vs. Kranti Impex Pvt. Ltd. (ITA No.1229/Mum/2013)** held that when the seized papers were undated having no acceptable narration and did not bear the signature of any party, they are in the nature of dumb documents having no evidentiary value and could not be taken to be the sole basis for determination of undisclosed income of the assessee. The onus would be on revenue to collect cogent evidences to corroborate the nothings therein. The ratio of other decisions as cited by the assessee during first appeal also supports the case of the assessee.

12. Upon cumulative consideration of aforesaid facts and reasoning, we would hold that impugned additions as made by Ld. AO, merely on the basis of loose sheets without corroboration thereof, was not adequate enough to draw adverse inference of cash flows against the assessee. Therefore, we delete the same and allow the corresponding grounds as raised by the assessee. The Ld. AO is directed to recompute the income of the assessee in terms of our adjudication.

13. No material arguments have been advanced on legal grounds and no defect has been shown to us in the jurisdiction of Ld. AO. The corresponding legal grounds raised by the assessee stand dismissed.

14. The appeal stands partly allowed in terms of our above order.

Order pronounced on 9th October, 2024

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

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

चेन्नई Chennai; दिनांक Dated :09-10-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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