

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.1025/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2021-22)

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	:	17-10-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by assessee for Assessment Year (AY) 2021-22 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) 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/250/2023-24/1063746696(1) for the above-mentioned Assessment Year is contrary to law, fact and in circumstances of the case.

2. The CIT (Appeals) -20, Chennai erred in sustaining the order passed in consequence to the search and further ought to have appreciated that the assessment order under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.
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) erred in sustaining the disallowance to the tune of Rs.11,68,34,443/- being the purchases claimed in the books of accounts maintained by the Appellant based on the excel sheet found at the time of search without assigning proper reasons and justification.
5. The CIT (Appeals) failed to appreciate that the disputed purchases were genuine and further ought to have appreciated that the confirmations were furnished from all the parties pertaining to the disputed purchases establishing its genuineness there by vitiating the related findings in the impugned order. 1
6. The CIT (Appeals) failed to appreciate that the disputed purchases were made through proper banking channels and further ought to have appreciated that in the absence of any conclusive evidence with respect to the flow of money returned to the Appellant, the presumption of bogus purchases is wholly unjustified and not sustainable both on facts and in law.
7. The CIT (Appeals) failed to appreciate that the Appellant had placed on record the relevant documents establishing the actual purchases made from the disputed parties and further ought to have appreciated that having not disputed the turnover reported by the Appellant, the denial of claim of purchases relatable to such sale should be reckoned as nullity in law.
8. The CIT (Appeals) failed to appreciate that in any event the assessment of disputed purchases in its entirety is wholly unjustified and further ought to have appreciated that in any event the profit embedded on such purchases alone can be subjected to tax there by vitiating the partial addition sustained in this regard.
9. The CIT (Appeals) erred in sustaining the disallowance of Rs.1,31,20,755/- being the payments made to sub-contractors as bogus without assigning proper reasons and justification.
10. The CIT (Appeals) failed to appreciate that the having taken on record the relevant documents for establishing the genuineness of the subcontracts at every stage of the proceedings of assessment as well as the appellate proceedings, the findings recorded for sustaining the disputed sum as bogus payments was wholly unjustified.
11. The CIT (Appeals) failed to appreciate that the GST component embedded on such payments were not debited to the Profit & Loss Account and further ought to have appreciated that the disallowance made in the absence of any claim for deduction was wholly unjustified and unwarranted.
12. The CIT (Appeals) failed to appreciate that in any event the disputed GST component was remitted to the Government there by vitiating the assessment of such sum in the hands of the Appellant firm in the impugned order.
13. The CIT (Appeals) erred in sustaining the addition of Rs.14,01,00,000/- as unaccounted interest income on the presumption of unaccounted loans advanced by the Appellant which component was sustained in the immediately preceding assessment year as well disputed by the Appellant in filing a separate appeal for the said assessment year without assigning proper reasons and justification.

14. The CIT (Appeals) failed to appreciate that the presumption of unaccounted interest earned by the Appellant was wholly unjustified especially in the absence of any unaccounted financial transactions coupled with the admitted position of the Revenue placing reliance on a dumb document there by vitiating the findings recorded in relation there to.

15. The CIT (Appeals) failed to appreciate that further in absence of any evidence either direct or indirect for the actual flow of cash, the presumption of earning unaccounted interest in such circumstances should be reckoned as bad in law.

16. The CIT (Appeals) - 20, Chennai failed to appreciate that the excel sheet relied upon by the Assessing Officer should not be construed as '*incriminating seized material*' and further ought to have appreciated that the contents of the seized material had no evidentiary value in the absence of any corroborative evidence so as to justify the addition made in this regard.

17. The CIT (Appeals) - 20, Chennai failed to appreciate that there was no independent examination carried out by the Revenue to examine the said parties to test the stand of the Appellant and ought to have appreciated that there was no unaccounted financial transaction which could be deduced from the disputed seized material for making the addition.

18. The CIT (Appeals) - 20, Chennai failed to appreciate that financial transactions entered into by the Appellant during the financial year relevant to the assessment year under consideration were duly recorded in the books of accounts forming part of the return of income filed and hence ought to have appreciated that the addition made based on the invalid evidence backed by the Revenue's suspicion and surmises should be reckoned as nullity in law.

19. The CIT (Appeals) - 20, Chennai failed to appreciate that the explanation offered by the Appellant was 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.

20. The CIT (Appeals) - 20, Chennai failed to appreciate that in any event the assessment of such presumed unexplained investment in the hands of the Appellant firm there by negating the addition made in this regard.

21. 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.

22. 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 – (i) Addition of Bogus Purchases for Rs.1168.34 Lacs; (ii) Disallowance of sub-contractor's expenses for Rs.131.20 Lacs; (iii) Addition of undisclosed interest income for Rs.1401 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 was subjected to search action u/s 132 on 28-10-2020. Accordingly, an assessment was framed u/s 143(3) on 04-05-2022 making certain additions in the hands of the assessee which are subject matter of this appeal. The assessee filed return of income for this year on 31-03-2022 admitting income of Rs.67.59 Crores.

2. Addition of Bogus Purchases

2.1 This addition is based on certain excel sheet as found from personal computer used by Shri Vinoth, GM. The same was seized vide Annexure ANN/KKM/VSCO/LS/S-2. The excel sheets titled as 'AA' and '1920' were maintained and these had entries SUPER and TOPER. Shri Vinoth, in sworn statement dated 30-10-2020, admitted that one of the excel sheets titled SUPER contain cash received from various parties against whom bogus purchases were entered in regular books of accounts. Though the payments were made through banking channels but subsequently cash was received back from them. On examination of excel sheet titled 'AA', cash received from bogus suppliers was updated for the period till 31-03-2020. Few of the parties were admitted by Shri Vinoth to be 100% bogus parties i.e., no material was received from these parties and only purchase invoices were received without delivery of any material. In few cases, part of the purchases was found to be

genuine whereas part of the purchases was found to be without any supporting documents. All such alleged bogus purchases for this year were quantified at Rs.1168.34 Lacs as tabulated in para 3.4 of the assessment order.

2.2 The assessee denied having made any bogus purchases and submitted that such inference was on mere presumption. However, Ld. AO noted that Shri Vinoth admitted that some of the parties were 100% bogus parties whereas some parties provided few bogus invoices. Therefore, Ld. AO added the amount of Rs.1168.34 Lacs to the income of the assessee.

2.3 During appellate proceedings, the assessee submitted that it furnished complete details of inward in this year and Ld. AO made addition without any verification. The Ld. AO did not identify any party as bogus supplier and did not examine any of the suppliers to support its allegations.

2.4 The Ld. CIT(A) noted that Ld. AO could make one-to-one link in one or two cases between bogus purchases recorded in seized loose sheets in names of few parties and purchase bills raised in their names without supporting documents. Shri Vinoth identified 100% bogus purchases from few of the parties. Shri Anandavadivel, in sworn statement, accepted that those bills with either signature of respective site-in-charge or seal of respective sites were genuine invoices and the remaining invoices having no supporting documents, were bogus purchases. As per seized document, the bogus purchases for this year were quantified at Rs.629.69 Lacs. After examining the factual position vis-à-vis seized material and explanation furnished by the assessee, Ld.

CIT(A) supported the conclusion of Ld. AO and upheld the addition. Aggrieved, the assessee is in further appeal before us.

2.5 This issue is a recurring issue and the same has been adjudicated by us in assessee's appeal for AY 2020-21, ITA No.1024/Chny/2024. In that year, we have held that during the course of search proceedings, adequate evidences were found that the assessee booked bogus purchases from certain parties. The purchases so made lacked supporting documents and the money as paid through banking channels were received back by the assessee. However, this year is on a slightly different footing since the search has happened on the assessee on 28-10-2020 and complete evidence of alleged bogus purchase is not on record. The assessee has filed ledger extracts and confirmation of all the suppliers in the paper-book to support the submissions that the purchases are genuine for this year. We also observe that the findings of Ld. AO are primarily based on findings given for AY 2020-21 wherein the assessment has been framed u/s 153A on the basis of incriminating material. However, for this year, no enquiry from any of the suppliers has been made by Ld. AO. In this year, the assessment has been framed u/s 143(3). Therefore, for the present year, it was incumbent on the part of Ld. AO to make necessary verification / enquiries from alleged bogus suppliers. The Ld. AO could not proceed merely on the basis of findings of earlier years. The search has happened in the middle of the year and there are not adequate evidences to hold that the purchases made throughout the year are bogus purchases. The assessee is engaged in construction activity and would require purchase of raw material to carry out construction activities. In the light of all these facts and to plug the leakage of revenue, we estimate addition of 5% against alleged bogus

purchases for Rs.11,68,34,443/-. The same comes to Rs.58,41,722/-. The impugned addition stands restricted to that extent. The corresponding grounds stands partly allowed.

3. Disallowance of sub-contractor's expenses for Rs.131.20 Lacs

3.1 The assessee was found booking bogus sub-contractors' expenses also. Though the payment was made through banking channels, cash was received subsequently. Shri Senthil, Accounts Head, admitted that bogus expenses were booked to reduce the profit of the firm. Going by the search findings, Ld. AO made addition of Rs.131.20 Lacs.

3.2 During appellate proceedings, the assessee submitted that it furnished complete details of expenditure and Ld. AO made addition without any verification. The Ld. AO did not identify any party as bogus contractor and did not examine any of the suppliers to support its allegations. Upon further appeal, Ld. CIT(A), considering the factual position as well as sworn statements, confirmed the same. Aggrieved, the assessee is in further appeal before us.

3.3 We are of the opinion that our adjudication for alleged bogus purchases would have an equal application for this addition also. It could be seen that this year is on a slightly different footing since the search has happened on the assessee on 28-10-2020 and complete evidence of alleged bogus expenditure is not on record. We also observe that the findings of Ld. AO are primarily based on findings given for AY 2020-21 wherein the assessment has been framed u/s 153A on the basis of incriminating material. However, for this year, no enquiry from any of the sub-contractors has been made by Ld. AO. In this year, the assessment has been framed u/s 143(3). Therefore, for the present year, it was incumbent on the part of Ld. AO to make necessary verification /

enquiries from alleged bogus sub-contractors. The Ld. AO could not proceed merely on the basis of findings of earlier years. The search has happened in the middle of the year and there are not adequate evidences to hold that the expenditure as incurred throughout the year is bogus. Considering the nature of assessee's business, the assessee would require services of sub-contractors. In the light of all these facts and to plug the leakage of revenue, we estimate addition of 25% against this item. The same comes to Rs.32,80,189/-. The impugned addition stands restricted to that extent. The corresponding grounds stands partly allowed.

4. Addition of undisclosed interest income

4.1 In assessment proceedings for AY 2020-21, it was alleged by Ld. AO that the assessee advanced undisclosed loans for Rs.91.90 Crores in that year. As a consequence, thereof, Ld. AO computed interest on the same for Rs.1401 Lacs for this year and added the same to the income of the assessee. The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

4.2 We find that the quantum addition as made by Ld. AO for alleged loans in AY 2020-21 has been deleted by us in ITA No.1024/Chny/2024. This is consequential addition. Since the basis of the addition goes, the consequential addition would not have any legs to stand. Therefore, this addition stands deleted. The grounds raised by the assessee stand allowed.

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

Conclusion

6. The appeal stands partly allowed.

Order pronounced on 17th October, 2024

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

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

चेन्नई Chennai; दिनांक Dated :17-10-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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