

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:924/CHNY/2020

निर्धारण वर्ष/Assessment Year:2005-06

The Income Tax Officer,
Corporate Ward – 2(3),
Chennai – 34.

Shri V.G. Rajendran,
Vs. No.19, Old No.43,
Govindan Street,
Ayyavoo Colony,
Aminjikarai,
Chennai – 600 029.

(अपीलार्थी/Appellant)

PAN: AABPR 8106R

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Clement Ramesh Kumar, CIT

प्रत्यर्थी की ओर से/Respondent by

: Shri T. Banusekar, Advocate

सुनवाई की तारीख/Date of Hearing

: 20.08.2024

घोषणा की तारीख/Date of Pronouncement

: 06.11.2024

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-6, Chennai in ITA No.128/CIT(A)-6/2018-19 dated 13.09.2020. The assessment was framed by the Income Tax Officer, Corporate Ward-2(4), Chennai for

the assessment year 2005-06 u/s.143(3)/147 r.w.s. 254 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 26.12.2018.

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by AO while giving effect to the order of Tribunal u/s.143(3) r.w.s. 147 r.w.s. 254 of the Act dated 26.12.2018, wherein the income assessed u/s.143(3) r.w.s. 147 of the Act dated 02.04.2013 was adopted at Rs.26,03,26,145/-. The Revenue has raised the following grounds for the same:-

(b) Whether on the facts and circumstances of the case and in law, is it correct on the part of learned CIT(A)-6 to rely on CIT(A)-2 (the first round of appeal) order dated 12.11.2014 in the case of assessee's father Shri V. Gurunathan and to delete the identical addition in the hand of the assessee Shri V.G. Rajendran without appreciating the fact the in the case of the assessee Shri V.G. Rajendran the CIT(A)-12 (the first round of appeal) vide order dated 22.12.2014 has confirmed the identical addition earlier?

(c) Whether on the facts and circumstances of the case and in law, is it correct on the part of learned CIT(A)-6 to rely on the CIT(A)-2 order dated 12. 11.2014 in the case of assessee's father Shri V. Gurunathan where it has been held that the deposit through cheque and bank transfer in the undisclosed bank accounts are explained as source of the credit in one undisclosed bank account is corresponding debits in other undisclosed bank accounts, on the contrary, in this case the ultimate inflow/source or out flow/destination is unexplained, bank accounts are undisclosed, then how the routed transaction through undisclosed bank accounts can be explained?

(d) Whether on the facts and circumstances of the case and in law, is it correct on the part of learned CIT(A)-6 to rely on the CIT(A)-2 order dated

12. 11.2014 in the case of assessee 's father Shri V. Gurunathan where it has been held that the deposit through cheque and bank transfer in the undisclosed bank accounts are explained as source of the credit in one undisclosed bank account is corresponding debits in other undisclosed bank accounts, whereas the assessee Shri V.G. Rajendran vide Sl.No. 8 of his letter dated 28.03.2013 admitted his inability to correlate all the deposits and drawings routed through the bank accounts to any specific person or source of income?

(e) Whether on the facts and circumstances of the case and in law, is it correct on the part of learned CIT(A)-6 to interpret that as per the ITAT order if the deposits in the bank account of father Shri V. Gurunathan, operated by son Shri V.G. Rajendran, has been considered for peak credit calculation of Rs. 2.99 Crore (for AY 2006-07) in the hand of Shri V.G. Rajendran then no further addition (For AY 2005-06) is warranted, in case of the assessee Shri V.G. Rajendran for deposits other than cash deposit also?

(f) Whether on the facts and circumstances of the case and in law, is it correct on the part of learned CIT(A)-6 to delete the additions without appreciating the fact that benefit of peak credit has been given for cash deposit and withdrawal only whereas addition of Rs.46,54,548/- and Rs.24,59,12,368/- represents unexplained deposit by way of cheque and bank transfer in different undisclosed bank accounts and to/from different persons.

3. At the outset, the Id.CIT-DR stated that the original assessment was completed u/s.143(3) r.w.s. 147 of the Act dated 02.04.2013 for the relevant assessment year 2005-06 and this assessment was challenged before the CIT(A). The CIT(A) vide his order in ITA No.1843/2013-14 dated 22.12.2014 dismissed the issue of assessee's appeal vide para 8 as under:-

9 Ground Nos.6 & 7: Addition of Rs.24,59,12,368/-: This being undisclosed income of his father added in the hands of the appellant. In this regard, the appellant's AR submitted that this was already considered in the assessment of his father. In the assessment order, the AO has brought out this fact as follows :

Para.2 of Page-3:

"As could not correlate all the deposits and drawings routed through the bank account, I am advised to offer additional income related to Peak Credit in several bank accounts as per statement. (No statement found to be attached). Accordingly, a sum of Rs.20,35,727/- offered for asst year 2005- 06 and on this taxes duly paid. Further requested that since additional Income offered, no separate proceedings to be initiated in respect of Sri V. Gurunathan, Smt. R. Indira and M/s. Indira Foundations Pvt. Ltd. Along with this letter of request, he has filed a Revised Return for the asst year 2005-06 on 28.03.2013 offering additional income of Rs.20,35,727/- "

9.1 Further, from Page-4 of the assessment order, it is seen that the Investigation Authorities have quantified the undisclosed income for the A.Y. 2005-06 of Shri V. Gurunathan, F/o Shri V.G. Rajendran and forwarded it the jurisdictional officer concerned i.e. ITO, Salary Ward-II(1), Chennai. The relevant portion of the assessment order is reproduced hereunder:

Para.1 of Page-4:

"The DDIT (Inv.) quantified Rs.6,68,15,725/- as undisclosed income of Shri V. Gurunathan (father of Shri V.G. Rajendran) and forwarded it to the Income Tax Officer, Salary Ward-l(1), Chennai for the A.Y. 2005-06..... The Income Tax Officer, Salary Ward-l(1), Chennai forwarded a letter to this office saying that after reworking the undisclosed cash credit of Shri Gurunathan works out to Rs. 24,59,12,368/- as against the DDIT(Inv.) report i.e.Rs.6,68,15,725/- and also requested that the amount of Rs.24,59,12,368/- may be added in the hands of the assessee, who also agreed to offer the undisclosed income of his father i.e. Shri V. Gurunathan. Hence, unexplained deposits of Rs.24,59,12,368/- is added in the hands of the assessee."

9.2 There are catena of decisions which say that on agreed addition, there can be no appeal: Now, the appellant taking this issue in the grounds and disputing the same which was agreed before AO is not sustainable in the absence of valid reasons. Hence, the addition made by the AO is upheld and the grounds dismissed.

The Id.CIT-DR then took us through the Tribunal order in first round in ITA No.661/Mds/2015, order dated 23.11.2017, para 8 of the Tribunal order, which reads as under:-

“8. AO has to verify as to whether the amount of Rs.53,74,548/- added in the hands of Shri V.G.Rajendran is in respect of bank account No. 5679 with Karnataka Bank and as to whether the same has been included when computing the peak credits addition of Rs.2.99 Cr. If the same is not included in the addition of Rs.2.99 Cr., the pre-credit in respect of the said bank account is to be added if the same is included, no further addition is to be made. The AO has to verify whether the amount of Rs.75.00 lakhs added is in respect of any of the undisclosed bank accounts which have been found in the course of search and the peak credits added representing Rs.2.99 Cr. If the answer is YES, no further addition is called for, if the answer is NO, then the addition on this account is to be restricted to Rs.7.50 lakhs as confirmed by the assessee in his letter dated 05.10.2012 addressed to the ACIT, Unit-IV(2), Chennai. If the addition of Rs.2.99 Cr. includes the peak credits in respect of the bank accounts considered in the hands of Shri V.Gurunathan then no further addition is liable to be made in the hands of Shri V.Gurunathan, With these directions, the appeals in both the assessee's cases are restored to the file of the AO for re-adjudication.”

In view of the above, the Id.CIT-DR stated that there are three additions directed to be verified and to be considered by Tribunal in above para 8 of the Tribunal's order but now, only one issue remains is the third issue as regards to addition of Rs.2.99 crores includes peak credit in respect of the bank accounts considered in the hands

of Shri V. Gurunathan. The Id.CIT-DR again repeated these findings for the issue and for the sake of clarity, we are reproducing again,

If the addition of Rs.2.99 Cr. includes the peak credits in respect of the bank accounts Considered in the hands of Shri V.Gurunathan then no further addition on is liable to be made in the hands of Shri V.Gurunathan, With these directions, the appeals in both the assessee's cases are restored to the file of the AO for re-adjudication.

The Id.CIT-DR then took us through the order giving effect to the order of Tribunal passed u/s.143(3) r.w.s. 147 r.w.s. 154 of the Act dated 26.12.2018, wherein the AO has considered this issue and added a sum of Rs.26,03,26,145/- and after considering the direction, framed assessment as under:-

"12.3 The Hon'ble Tribunal by present order directed the Assessing Officer as under:

"If the addition of Rs. 2. 99 Cr. includes peak credit in respect or the bank accounts considered in the hands of Shri V.Gurunathan then no Further addition on the same is liable to be made in the hands of Shri V.Gurunathan. "

12.4 On verification, it is found that only cash deposits made in the savings bank account of Shri V.Gurunathan (4912500100495901) has been included for peak credit calculation. The negative credit balance of Rs.2,72,46,400/- in the peak credit calculation was offered as income by Shri V.G.Rajendran and same was assessed to tax for AY 2006-07. The cheque deposits and deposits by bank transfer made during FY 2004-05 totalling to Rs.24,59,12,368/- remaining unexplained was added as unexplained income in the hands of Shri V.G.Rajendran for AY 2005-06. On verification of assessment order of Shri V.Gurunathan, it was also found that no peak credit addition were made for AY 2005-06 by the Income Tax Officer, erstwhile Salary Ward-II(1), Chennai. Hence, it is ascertained that

there was no further addition of peak credit in the hands of Shri V. Gurunathan.

13. The assessee had filed a Miscellaneous Petition on the present order of the Hon'ble Tribunal seeking for some specific direction on 29.6.2018. The Income Tax Officer(HO), "D" Bench, ITAT, Chennai informed to this office vide letter in ITA No.661/2015/"D" Bench, dated 27.8.2018 as under:

"The Hon'ble ITAT, "D" Bench has directed to communicate the contents of the miscellaneous petition filed by the assessee Shri V.G.Rajendran, and act as per law so that no addition is taxed twice."

The above direction of the Hon'ble ITAT "D" Bench is taken on record.

14. With the above discussions, the assessment order is completed by arriving at the assessed income as under:

<i>Income assessed as per order u/s 143(3)</i>	<i>:</i>	<i>Rs.26,03,26,145/-</i>
<i>r.w.s.147 dated 02.04.2013</i>		
<i>Less: 1. Relief allowed as discussed in Para 11</i>	<i>:</i>	<i>Rs. 7,20,000/-</i>
<i>above</i>		
<i>2. Relief allowed as discussed in Para 12</i>	<i>:</i>	<i>Rs. 67,50,000/-</i>
<i>Income assessed as per present order</i>	<i>:</i>	<i>Rs.25,28,56,145/-</i>

Aggrieved, assessee preferred appeal before CIT(A) on this issue.

4. The Id.CIT-DR then took us through the order of CIT(A) (impugned order) passed in ITA No.128/CIT(A)-6/2018 dated 18.09.2020, wherein the CIT(A) has deleted the addition made by AO of Rs.26,03,26,145/- by observing in paras 4.10.2 to 4.10.7 as under:-

4.10.2 As has been elaborately explained in the above referred CIT(A) Order, the appellant followed a practice of "cyclic/circular" transactions, wherein, whenever the appellant was in need of funds, he would present

cheques of various persons (from the unaccounted Bank accounts managed by him) into the Bank account which required funds. Further, few entries were contra entries since the cheques presented had bounced. The CIT(A)-2, Chennai, thus came to a conclusion that the credit entries by way of cheque deposits/bank transfers are concerned, the sources for these credits are the corresponding debits in the other unaccounted bank accounts, and vice versa, operated in the same fashion. Hence, the CIT(A)-2, Chennai had concluded w.r.t. Account no495901, the source of funds for credit by way of cheque deposits/bank transfers stands explained and not liable for taxation.

4.10.3 It is conclusively known from the Order of CIT(A)-2, Chennai, passed in the case of Shri.V.Gurunathan and upheld by the Hon'ble ITAT, that the addition in the case of appellant has to be made by calculating the Peak Credit of all the undisclosed Bank accounts and the derived peak credit has to be added in the case of the appellant. The Hon'ble ITAT has very clearly directed the A.O. to verify if the appellant's father's bank account being Bank A/c No.4912500100495901 in Karnataka Bank, Anna Nagar Branch, Chennai, has been considered for the purpose of calculating the peak credit amount of Rs 2.99 Crs. The A.O. in his order has given the finding that this Bank account of the appellant's father has already been considered for the purpose of calculation of Peak credit of Rs. 2.99 Crs. The Deputy Director of Income-tax (Inv) - Unit IV(2), Chennai in his Survey Report and the order of CIT(A)-2, Chennai, in the case of Shri.V.Gurunathan had independently worked out the peak credit at Rs. 2.99 Crs and this computation has already considered the said Bank account of the appellant's father. Hence as per the direction of the Tribunal, no additional amount should be considered for the purpose of taxation as it has already been taxed in peak credit income offered by the appellant. Therefore, action of the A.O. to again categorize the Bank Credit entries as a separate group of transactions and the cash entries in these Bank accounts which had been considered for computation of peak credit as a separate group of transactions is in due contravention of the directions of Hon'ble ITAT. So, no addition is sustainable for the Bank account of appellant's father as it is already considered for the purpose of addition to be made as per peak credit of Rs.2 99 Crs. The Hon'ble ITAT has upheld that the addition to be made in the case of the appellant is the peak credit calculated by considering all the undisclosed Bank accounts, including the Bank accounts of Shri.V. Gurunathan. The very specific reason for which this issue was set aside to the A.O. was to verify if the said Bank Account

discussed supra was included in the Peak Credit computation or not. The Hon'ble ITAT has further clarified that no addition should be made twice.

4.10.4 This issue has to be guided by the directions of Hon'ble ITAT as stated earlier. The Hon'ble ITAT in its Order dated 23.11.2017 had, while jointly adjudicating the interrelated cases of the appellant and appellant's father, held that the total income which is to be taxed is the Peak Credit of Rs. 2.99 Crs and the matter on this issue was set aside to A.O, to verify if the Peak Credit amount has been calculated after considering the bank account of appellant's father. Based on the calculation of Peak Credit which was thoroughly analysed in the Order of CIT(A)-2, Chennai, in the case of the appellant's father, it is seen that the said Bank account has been duly considered for the purpose of calculating peak credit, which has been assessed in the hands of the appellant. Further, all the Bank statements that have been used to make the circular transactions are before the Assessing Officer. It is on this basis that the peak credit has been arrived at ₹2.99 Crs. If one were to take into account the transactions not merely of cash but also those routed through cheques from all the accounts and the peak credit arrived at, the peak will be a sum of 34,52,466/- while the assessee has already offered a sum of 2.99 Crs, which is even higher. Having taken the peak credit in the manner upheld by the Hon'ble ITAT, one cannot again take into account the entire credits also and in any case, it is not in line with the directions from the Hon'ble ITAT vide order dated 23.11.2017 in ITA No.661/Mds/2015.

4.10.5 Further, during the course of hearing, the AR of the appellant has submitted that the father's Bank account has been duly considered while calculating the Peak Credit amount and the Peak Credit of Rs. 2.99 Crs has been computed after inclusion of the Bank account of appellant's father. Even DDIT (Inv)-IV(2), Chennai in his Survey Report had worked out the peak credit of Rs. 2.99 Crs. Hence, the total peak credit after considering the Bank account of Mr. V Gurunathan and others is Rs 299 Crs. Further, the A.O. in his Order at Para 12.4 of Page no, 8 has stated as under:

"12.4. On verification it is found that only Cash deposits made in savings bank of Shri V Gurunathan (4912500 1 0049 5901) has been included for peak credit calculation. The negative credit balance of Rs. 2,72,46,400/- in the peak credit calculation was offered as income by Shri. VG Rajendran and the same was assessed to tax for A. Y. 2006-07. The Cheque deposits and deposits by bank transfer made during FY 2004-05 totalling to Rs.

24,59,12,368/- remaining unexplained was added as unexplained income in the hands of Shri V. G. Rajendran for A.Y. 2005-06. On verification of assessment order of Shri V Gurunathan, it was also found that no peak credit addition were made for A.Y. 2005-06 by the income-tax officer erstwhile Salary Ward - 1(1), Chennai. Hence, it is ascertained that there was no further addition of peak credit in the hands of Shri V. Gurunathan"

4.10.6 It can be duly ascertained from the A.O.'s finding that the peak credit of the Bank account of the appellant's father Shri.V.Gurunathan is duly considered for the purpose of calculating Peak Credit in the hands of the appellant and the Hon'ble ITAT had set-aside this issue for the same to be verified and then instructed that the same issue should not result in double addition. But the A.O has erred on this issue while concluding the Order and it is not in line with the directions issued by Hon'ble ITAT. Moreover, it must be emphasized that the peak credit of Rs.2. 99 Crs has already been added and offered to tax by the appellant in AY. 2005-06 and A.Y.2006-07 put together, based on the working of the Peak Credit mentioned supra.

4.10.7 Considering the above discussion and as per the directions of Hon'ble ITAT, since the A.O. has found that the said Bank account is considered for the purpose of computing the Peak Credit Balance of Rs. 2.99 Crs, no further addition is to be made on this issue. Hence, as directed by the Hon'ble ITAT, as his Bank account has already been considered for the purpose of Peak Credit computation of Rs.2.99 Crs, no further addition is to be made on this account."

Aggrieved, now Revenue is in appeal before us.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the Tribunal in its order dated 23.11.2017 has adjudicated the interrelated cases of the assessee and assessee's father, wherein it is held that the total income is to be taxed including the peak credit of Rs.2.29 crores.

The CIT(A) in this round and earlier rounds also and AO's remand report and even DDIT (Inv)-IV(2), Chennai in his report worked out the peak credit at Rs.2.99 crores. Based on peak credit calculated after considering the bank account of assessee's father, the peak credit is at Rs. 2.99 crores. The lower authorities have given a concurrent finding that the bank account has been duly considered for the purpose of computing peak credit which has been assessed in the hands of the assessee. We noted from the facts of this case and paper-book filed before us that all the bank statements that has been used to make the circular transactions were before the AO and on that basis, peak credit has been arrived at Rs.2.99 crores. We noted that the CIT(A) has considered and duly ascertained the peak credit of bank account of the assessee's father Shri V. Gurunathan, which is duly considered for the purpose of computing peak credit in the hands of the assessee. We noted that the AO has verified this fact and CIT(A) while giving finding has considered the assessee's father's bank account and circular transactions entered into the assessee's bank accounts, which are part of assessee's paper-book, we find no infirmity in the order of CIT(A) directing the AO to assess only the peak credit at Rs.2.99 crores and no further addition is to be made. Hence, the ground raised by Revenue is accordingly dismissed.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 6th November, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 6th November, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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