



IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA no.2388/Mum./2011
(Assessment Year : 2004-05)

ITA no.2389/Mum./2011
(Assessment Year : 2005-06)

ITA no.2390/Mum./2011
(Assessment Year : 2006-07)

ITA no.2391/Mum./2011
(Assessment Year : 2007-08)

ITA no.2392/Mum./2011
(Assessment Year : 2008-09)

Shri Sanjay Kumar Jhunjhunwala
C/o Shri Prakash Jhunjhunwala, C.A.
5, Jolly Bhawan no.2, Ground Floor
7, New Marine Lines, Churchgate
Mumbai 400 020
PAN – AAFPJ7149G

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Central Circle-11, Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

..... Respondent

ITA no.36/Mum./2014
(Assessment Year : 2004-05)

ITA no.37/Mum./2014
(Assessment Year : 2005-06)

ITA no.38/Mum./2014
(Assessment Year : 2006-07)

ITA no.39/Mum./2014
(Assessment Year : 2007-08)

ITA no.40/Mum./2014
(Assessment Year : 2008-09)

Assessee by : Shri Prakash Jhunjunwala
Revenue by : Shri Manjunatha Swamy

Date of Hearing – 25.02.2016

Date of Order – 29.02.2016

ORDER

PER BENCH

Aforesaid bunch of ten appeals pertaining to the same assessee are against the order of the learned Commissioner (Appeals), confirming the additions made in the assessment order passed under section 143(3) r/w section 153A as well as penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2004-05 to 2008-09.

ITA no.2388 TO 2392/Mum./2011

2. The major common issue in all these appeals of the assessee relate to additions of various amounts by treating the unsecured loans received by the assessee as unexplained cash credit under section 68 of the Act. Of-course, there are couple of other additions under sections 2(22)(e) and 14A of the Act, challenged by the assessee in some of the assessment years. Further, assessee has raised additional

ground in all these appeals challenging the validity of the assessment made under section 153A of the Act, in the absence of any incriminating material.

3. Briefly stated the facts which are common in all these appeals are, the assessee is an individual. As stated, assessee is a director in several Private Limited Companies and basically carrying on business of textiles, brokerage in real estate and trading in shares and securities. A search and seizure operation under section 132 of the Act was conducted in case of the assessee on 13th March 2008, along with other related persons. As alleged by the Assessing Officer, in pursuance to notice issued under section 153A of the Act and subsequently, in spite of issuance of several notices, the assessee did not comply to any of them. Only after much effort of the Assessing Officer, assessee finally furnished his return of income in response to notices issued under section 153A on 12th November 2009, declaring positive income in assessment year 2004-05 to 2006-07 and loss in respect of assessment year 2007-08 and 2008-09. In the course of assessment proceedings, it was noticed by the Assessing Officer that assessee had received advances from a company namely Shri Narayani Apparels Ltd. where he was a director and holding more than 10% of equity shares. The said company was also having accumulated

profit in the assessment year 2004–05 and 2005–06. He, therefore, applying the provisions of section 2(22)(e) of the Act treated the advance received as deemed dividend and added back to the income of the assessee. Further, the Assessing Officer noticed that as per seized material and statement recorded under section 133(4) of the Act, assessee had raised loan of various amounts in different assessment years which were credited in his books of account. As alleged by the Assessing Officer, though, the assessee was repeatedly asked to furnish necessary details to establish the genuineness of the loans, but no details were furnished. Accordingly, the Assessing Officer treated the loans shown as unexplained cash credit and added back under section 68 of the Act. In some of the assessment years, Assessing Officer also made disallowance under section 14A of the Act.

4. Learned Commissioner (Appeals) also confirmed the additions made by the Assessing Officer while dismissing the appeals of the assessee.

5. Learned A.R. submitted before us, as the assessee was apprehending arrest at the relevant time when the assessment proceedings was going on, he could not appear before the Assessing Officer and furnish necessary details called for. He submitted, the same situation also existed when the appeal was heard by the learned

Commissioner (Appeals). Learned A.R. submitted, as the assessee was prevented in properly representing the case before the Departmental Authorities due to compelling situation, he should be given opportunity to represent his case properly with supporting evidences. He submitted, in assessment year 2009-10, wherein, similar additions were made, though, assessee submitted additional evidences, learned Commissioner (Appeals) refusing to admit the additional evidences disallowed assessee's claim. Learned A.R. submitted, in an appeal preferred against the said order of learned Commissioner (Appeals), the Tribunal considering the fact that in the related persons' case, under similar facts and circumstances, the Tribunal has restored the matter back to the file of the Assessing Officer, in assessee's case for assessment year 2009-10 also Tribunal expressing same view restored the matter back to the file of the Assessing Officer for deciding afresh after examining all facts and material on record and after giving reasonable opportunity of being heard to the assessee. Learned A.R. submitted, in case of assessee's wife Smt. Sangita Sanjay Jhunjunwala, under identical facts and circumstances, the Tribunal has restored the matter relating to additions made under section 68 of the Act to the Assessing Officer for adjudicating afresh. Learned A.R. submitted, in case of assessee's wife an additional ground was raised before the Tribunal, challenging the validity of

assessment made under section 153A of the Act in the absence of incriminating material. The learned A.R. submitted the Tribunal having found merit in the additional ground raised, admitted the same and directed the Assessing Officer to examine the issue. He submitted, in assessee's case also similar additional grounds have been raised. Learned A.R. submitted, facts and issues being identical, the matter should be restored back to the file of the Assessing Officer for fresh adjudication after giving fair opportunity to the assessee to represent his case.

6. Learned Departmental Representative has no objection for remitting all the issues back to the Assessing Officer for fresh adjudication.

7. We have considered the submissions of the parties and perused the material available on record. As is evident, the major common addition in all these assessment years under appeal is addition made on account of unexplained cash credit under section 68 of the Act. It is observed, similar additions were made in case of assessee's wife. Further, on a perusal of the order passed by the Tribunal in case of assessee's wife Smt. Sangita Sanjay Jhunjunwala, in ITA no.7929 to 7934/Mum./2010, for assessment years 2002-03 to 2008-09, dated 20th February 2013, it is noticed, the Tribunal appreciating the

contention of the assessee that due to compelling circumstances, he could not properly represent her case before the Departmental Authorities restored the matter back to the file of the Assessing Officer for deciding afresh after reasonable opportunity of being heard to the assessee. Further, the Tribunal, admitting the additional grounds raised in assessee's wife's case, challenging the validity of assessment under section 153A, in the absence of incriminating materials directed the Assessing Officer to adjudicate the same in accordance with law. It is evident, similar issues also arise in the present appeal preferred by the assessee. Further, as could be seen in assessee's own case for assessment year 2002-03 and 2003-04 and 2009-10 as well as in case of several other associate concerns, the Tribunal has passed orders restoring back the assessments to the file of the Assessing Officer for fresh adjudication after giving opportunity to produce documentary evidence. Therefore, on over all consideration of facts and material on record including the orders of the Tribunal in assessee's own case as well as in case of assessee's wife and other associate concerns where similar issue have been restored back to the file of the Assessing Officer for fresh adjudication, we deem it appropriate to set aside the impugned order of the learned Commissioner (Appeals) and restore all the issue back to the file of the Assessing Officer including, the ground raised challenging the validity

of assessment made under section 153A for fresh adjudication as, in our view, assessee deserves an opportunity to properly represent his case by producing necessary and relevant documentary evidence in support of his claim. Needless to mention, the Assessing Officer should provide reasonable opportunity of being heard to the assessee.

8. In the result, appeals are allowed for statistical purposes.

ITA no.36 to 40/Mum./2014

9. These appeals of the assessee are against the penalty imposed under section 271(1)(c) of the Act for the assessment years under appeal.

10. As could be seen, on the basis of additions made in the assessment order passed for the impugned assessment years, the Assessing Officer initiated proceedings for imposition of penalty under section 271(1)(c) and ultimately passed orders imposing penalty under the said provision. Though, the assessee challenged the imposition of penalty before the learned Commissioner (Appeals), but he confirmed the same. Being aggrieved, assessee is in appeal before the Tribunal.

11. We have considered the submissions of the parties and perused the material available on record. In the earlier part of this order, while deciding assessee's quantum appeals for the very same assessment years, we have restored the issues relating to additions made by the Assessing Officer to his file for fresh adjudication after affording reasonable opportunity of being heard to the assessee. Since the additions on the basis of which penalty under section 271(1)(c) was imposed, have been set aside, penalty imposed under section 271(1)(c) for the assessment year under consideration would not survive. Consequently, we set aside the order of the learned Commissioner (Appeals) confirming imposition of penalty. However, it will be open to the Assessing Officer to initiate penalty proceeding under section 271(1)(c), if warranted, after completion of assessment in pursuance of our directions as aforesaid.

12. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the open Court on 29.02.2016

Sd/-
RAMIT KOCHAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 29.02.2016

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai