

आयकर अपीलिय अधिकरण, मुंबई "ई" खंडपीठ
Income-tax Appellate Tribunal -"E" Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं सी. एन. प्रसाद,न्यायिक सदस्य
Before S/Shri Rajendra,Accountant Member and C.N. Prasad,Judicial Member
आयकर अपील सं./ITA.s/4518,4519,4520&4521/Mum/2014,
निर्धारण वर्ष /Assessment Years: 2003-04,2006-07,2008-09&2009-10

Smt.Subhadra Atmaram Mokashe Flat No.6/2B,Dhanraj Complex Near Ahsok Theater,Pimpri,Pune. PAN:ATSPM 1044K	vs.	DCIT Central Circle-39 Mumbai
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by:Shri -DR

Assessee by: None

सुनवाई की तारीख / **Date of Hearing: 18.07.2016**

घोषणा की तारीख / **Date of Pronouncement: 18.07.2016**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the orders dated 18/03/2014 and 28/03/2014 of the CIT(A)-41,Mumbai, the assessee has filed the appeals for the above-mentioned four AY.s(AY.s.).As the issues involved in all the appeals are almost similar,so,for sake of convenience,we are adjudicating the appeals by a single order.A registered notice of hearing was sent to the assessee on the address given in the form number 36 filed by her..The letter sent by the registry has been returned back by the postal authorities with the comment "refused". Nobody appeared before us,during the course of hearing nor any letter for adjournment was filed.Therefore,we are deciding the appeals on merits on the basis of available material.

The assessee had filed the returns of income for all the four AY.s.on 21/10/2010 and the AO completed all the assessment order,u/s.143(3)r.w.s. 153C of the Act,on 29.12.2010.The remaining details of the assessments can be tabulated as under:

AY.	i.Business income	ii. Agricultural income,as per ROI	Assessed income
2003-04	i.Nil .	ii.Rs.4.41 lakhs	Rs.19,20,358/-
2006-07	i.Rs.24,038/-,	ii.Rs.6,85,200/-	Rs.29,14,948/-
2008-09	i.Rs.1,75,140/-,	ii.Rs.8,65,520/-	Rs.64,77,837/-
2009-10	i.1,96,520/-,	ii.4,12,100/-	1,63,34,605/-

ITA/4518/Mum/2014-AY.2003-04 :Brief Facts:

2.A search and seizure action u/s.132 of the Act was carried out on 05/03/2009 in the case of Jai Corp Group and in the case of Ganesh Mokashe.Assessee,mother of Ganesh Mokashe,is

running business as proprietor of Jogeshwari Auto Consultants that is engaged in the business of buying and selling of old vehicles on commission basis. The office of the assessee was covered under survey operation on 05/03/ 2009. It was found that she had never filed a return of income nor had she maintained any books of accounts in respect of business activities. Consequent to the search action, a notice u/s.153C, dated 17/09/2010, was issued and duly served on the assessee requiring her to file return of income within 10 days of receipt of the said notice. In response to the notice, she filed a return on 21/10/2010. The AO issued notices u/s.143(2) and 142 (1) along with the questionnaire and completed the assessment as per the details given in the table above. We find that first two grounds are general in nature, so, same are not being adjudicated.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Before him she claimed that during the year she did not have any income except for the agriculture income, that no business activity was carried out during the year under consideration. Regarding the agriculture income she submitted copies of certain bills of agriculture income on 22/12/2010 as per which her agricultural income for the AY.s. 2007-08, 2008-09 and 2009-10 was shown at Rs. 3.25 lakhs, Rs. 3.90 lakhs and Rs.30,000 respectively. She further argued that the AO had made to additions under the head undisclosed business income (Rs.45,000/-) and credits/cash deposits in account number 752 (Rs.18.75 lakhs). Before the FAA, the assessee argued that she was unable to understand as to how the AO had calculated the figure of undisclosed business income at Rs. 45, 000/-, that the estimation made by the AO was arbitrary perverse and was based on no evidence.

3.1. After considering the submission of the assessee, the FAA held that the assessee had not maintained any books of accounts in respect of its business of commission agency, that she had claimed to have purchased second-hand vehicles from Sehgal Autoriders, that no purchase bills was produced, that there was nothing on record to support the claim of the assessee that the average sale price of vehicles sold was Rs.15,000/- per vehicle, that the assessee had taken a self-contradictory stand with regard to the business, that on the one hand she claimed that she was earning average commission of Rs. 500 per vehicle and that on the other it was contended that the assessee had to incur expenditure on repair of the vehicles to get good price, that there was no error in the action of the AO in computing the undisclosed business income at Rs. 45,000/-.

3.2.With regard to addition of Rs.18.75 lakhs on account of cash deposits/credits in savings bank account number 752,the FAA held that the AO had found that said bank account was not reflected in the balance sheet/return of the income filed by her, that the source of credit/deposits in the bank account was not explained by her before the AO or during the appellate proceedings,that initially she denied to have carrying out any business activity during the year under consideration, that the assessee was confronted with the bank account, that she came out with the plea that deposited in the said bank account represented sale proceeds of the vehicle, that perusal of the rent account revealed that cash was first proposed in the same bank account against the cheques which were issued to Sehgal Autoriders, that in absence of books of accounts and supporting documents it was not possible to ascertain the nature and source of various cash deposits,that owing to lack of evidence coupled with non-submission of supporting document,before the AO, the assessee had not been able to convince him to allow the set off of investments/ expenses against the income sought to be taxed,that she had not been able to demonstrate that total credits in the bank account aggregated to Rs. 16.74 lakhs as against 18.75 lakhs worked out by the AO. He further held that there was no merit in the case of the assessee that only peak credit of the said saving bank account should be taxed, that she had not withdrawn cash from her bank on the basis of which it could be argued that the same cash was deposited in the bank account and therefore peak credit of bank deposit should be worked out.Finally, he upheld the order of the AO.

4.As stated earlier,no one appeared before us,on behalf of the assessee.The Departmental Representative(DR)supported the order of the FAA.

4.1.We have considered the material available on record.It is found that the business premises of the assessee was surveyed as per the provisions of section 133 A of the Act, that she filed a return showing nil income,that agricultural income was shown in the return,that she did not file any details before the AO though he had given him ample opportunities of hearing,that the AO made additions under the head business income and unexplained cash deposits/credits in bank account no.752 maintained by her,that before the FAA she did not file any detail to substantiate her claim about both the additions.As the assessee has not been able to prove that the order of the FAA is perverse.Therefore,confirming his order,we decide both the effective grounds of appeal(GOA 3-4)against the assessee.

ITA/4519/Mum-2014-AY.2006-07:

5.First two grounds of appeal,for the year under consideration, are of general nature and hence are not being adjudicated.

6.Third ground of appeal is about addition made of Rs. 3.54 lakhs on account of undisclosed business income.We find that similar addition was made by the AO and confirmed by the FAA for the AY.2003-04.Following our order for that year, we dismiss ground number three, as there is no change in the facts-the only difference is of amount involved.

7.Next ground of appeal is about addition made on account of credits/cash deposits in bank account number 6022 of Sewa Vikas Cooperative Bank Ltd.,amounting to Rs. 17.62 lakhs. The assessee did not explain the source of credits/deposits in the bank account. During the assessment proceedings the AO found that the said bank account was not part of the return of income/balance sheet filed by her. Therefore, he made an addition of Rs. 17,60,480/- as undisclosed income/deemed income of the assessee as per the provisions of section 69A of the Act.

7.1.During the appellate proceedings, the FAA held that a perusal of the bank account revealed that cash was first deposit in the bank against which cheques were issued, that in the absence of any books of accounts and supporting documentary evidences it was not possible to ascertain the true and exact nature and sources of various cash deposits, that there was no merit in the way of the assessee that only the credit of the said bank account should be taxed, that the assessee had not withdrawn cash from the bank account on the basis of which it could be argued that same case was redeposit in the bank account. He upheld the addition made by the AO amounting to Rs. 17.62 lakhs.

7.2.Before us nothing has been brought on record to controvert the findings of the FAA. Therefore,confirming his order ground number four is decided is the assessee.

8.Next ground is about confirming the addition made on account of unexplained cash credit u/s.68,due to increase in capital balance, amounting to Rs. 6.21 lakhs. We find that the ground is not arising out of the order of the FAA and therefore we are dismissing it.

9.Next four grounds, i.e. GOA 6,7,8 and nine are about additions of Rs. 1,00,349/-, Rs. 14.46 lakhs, Rs.19.44 lakhs and Rs.40,000/-. We find that all these grounds of appeal or not arising out of the order of the FAA for the year under consideration. Therefore we dismiss the above grounds.

ITA/4520/Mum-2014-AY.2008-09:

10.First two grounds are general in nature, so, they are not being adjudicated.

Grounds 3&4 deals with undisclosed business income of Rs. 3.24 lakhs and the ground for is about confirmation of addition of Rs. 18.26 lakhs on account of credits/cash deposit in bank account number 6022. We find that the facts the deliberated upon by the FAA with regard to these two grounds are similar to the facts of the AY.2003-04, that the only differences about the amounts involved under both the heads. Nothing has been brought on record to contradict the findings given by the FAA. So, confirming his order we decide ground number three and four against the assessee.

11.Ground number five is about addition of Rs. 9.46 lakhs, on account of unexplained cash credits, u/s.68 of the Act, due to increase in capital balance. During the assessment proceedings, the AO observed that the assessee had shown her capital account at Rs. 34.01 lakhs in the balance sheet filed along with the return of income, that the capital account had gone up by an amount of Rs. 10.11 lakhs, as compared to the capital account of the earlier year, that she had shown an income of Rs. 1.75 lakhs in her P&L account. As the assessee failed to furnish any evidence regarding her claim for increase in the capital account, so, he held that it was only of balancing figure not supported by any evidence, that as per the provisions of section 68 the onus was on the assessee to prove genuineness of such credit entries in her books, that she had failed to discharge the onus. Considering the above facts, and amount of Rs. 6.21 lakhs (Rs. 10.1 lakhs(-) Rs. 3.90 lakhs) was held as cash credit u/s.68 of the Act and was added to the total income of the assessee.

11.1.Aggrieved by the order of the AO, the assessee preferred an appeal before the FAA and submitted copies of balance sheet and profit and loss account and argued that the amount in question was reflected in the books, that the AO had failed to appreciate that she was in possession of agricultural land of approximately 10 acres, that she had submitted copies of 7/12 extracts along with the copies of the bills towards sale of agriculture produces, that the increase in capital was due to agriculture income earned by her in earlier years. After considering the submission of the assessee and the assessment order, the FAA held that the assessee was not able to prove the genuineness of the claim made about increase in the capital despite various opportunities were afforded to her. He upheld the order of the AO.

11.2.Before us, nothing has been produced to prove that the order of the AO/FAA is not based on facts. The assessee did not produce documentary evidences to prove the claim made by

her. Therefore, in our opinion the order of the AO/FAA does not need any interference our side. Confirming the order of the FAA ground number five is decided against the assessee.

13. Last ground of appeal is about confirming the addition made on account of unexplained credit, in Udharnagari Sahkari patsanstha, amounting to Rs. 4.06 lakhs, u/s. 69A of the Act. During the assessment proceedings, the AO found that deposits/credits amounting to Rs. 1,00,349/- were appearing in the bank account maintained by the assessee with Udharnagari Sahkari patsanstha, that Rs. 14.46 lakhs were deposited in account number 734 with the State bank of India, Pimpri,, that the said accounts were not reflected in the airline sheet/return of income filed by the assessee, that she did not explain the sources of credit/deposits in the said bank accounts. The AO added the amounts in question to the total income of the assessee.

13.1. Before the FAA, the assessee did not file an explanation about the deposits appearing in the bank accounts. Therefore he upheld the order of the AO.

13.2. Before us, nothing has been brought on record to prove that order of the FAA is without any merits or that the assessee had filed the facilities before any of the authorities. Therefore, endorsing the order of the AO/FAA we decide ground number six against the assessee. Here we would also like to mention that the FAA had confirmed the addition of Rs. 18.26 lakhs, Rs. 19.44 lakhs, Rs. 1,00,349/- and Rs. 14.46 lakhs as undisclosed income of the assessee on account of unexplained deposits/credits in the bank accounts. We do not find any mention of addition of Rs. 4.06 lakhs in the order of the FAA. For that reason also, the ground raised by the assessee has to be rejected.

ITA/4521/Mum-2014-AY.2009-10:

14. First ground of appeal is about under explain investment of Rs. 56.90 lakhs. During the assessment proceedings the AO observed that page number 58 of annexure A-2 of the seized documents, contended notings regarding construction of a penthouse at the cost of Rs. 56.93 lakhs. The assessee did not offer any explanation about the source of the investment. Therefore, he added the said amount to the income of the assessee under the head undisclosed income for the year under consideration.

14.1. Before the FAA, the assessee submitted she had made enquiry for purchase of a penthouse for one of her friends and the said enquiry form stated the total cost of the property, that the AO had made addition without appreciating the fact that no purchase had been made. After considering submission of the assessee, the FAA held that the son of the assessee, while furnishing details of the document about the penthouse, had categorically

mentioned that transaction in regard to investment pertain to the proprietary concern of the assessee, that the argument of the assessee that it was only in enquiry on behalf of one of her friends had to be dismissed as a self-serving statement, that the son of the assessee had admitted that the transaction had taken place, that the addition made by the AO had to be upheld.

Considering the fact that nothing has been furnished before us to negate the finding given by the FAA, we dismiss ground raised by the assessee.

15.Next ground of appeal is about the traditions made on account of unexplained cash expenditure, amounting to Rs. 12.48 lakhs under the head unexplained cash expenditure. With regard to cash payment of Rs. 12.48 lakhs to Galaxy Developers, the assessee contended that she had given the said cash for deposit in the bank account to issue for stated cheques to the developer for children of shop, that the fact was recorded in one of the diaries maintained by the assessee in which all such outgoings of cash were recorded, that the AO had ignored the submission made by her.

15.1.The FAA, during the appellate proceedings, held that the assessee had not explain the source of investment made to the developer towards the purchase of shop, that the AO were justified in making the addition.

As nothing is available on record to reverse the stand taken by the FAA, so, confirming his order we dismiss ground number four, raised by the assessee.

16.Grounds number 5, 6 and 7 deal with addition made on account of undisclosed business income (Rs. 5.59 lakhs), cash deposits/credits in bank account number 6022 (Rs. 59,397/-), and increasing capital balance (Rs. 1.84 lakhs). While deciding the appeals for the earlier years we have dismissed the similar grounds raised by the assessee. Following the same all the three grounds are decided against her.

17.Grounds number 8 to 11 are about additions made on account of unexplained credits in banks/fixed deposits/payment of LIC premium. During the assessment proceedings, she did not file any explanation regarding the investments in question. Therefore, the AO made additions of Rs. 5,00,039/-, Rs. 31.91 lakhs, Rs. 46.84 lakhs and Rs. 20,000/- respectively. The FAA confirmed the additions as the assessee did not discuss the onus cast upon her.

Before us,nothing has been brought on record to prove that orders of the AO/FAA were suffering from any legal or factual infirmity.Confirming the orders of the FAA, we decide all the four grounds against the assessee.

As a result,appeals filed by the assessee for all the four AY.s stand dismissed.

फलतः निर्धारिती द्वारा दाखिल की गई चारों निर्धारण वर्षों की अपीलें नामंजूर की जाती हैं

Order pronounced in the open court on 18th,July, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 18 ,जुलाई, 2016 को की गई ।

Sd/-

(सी. एन. प्रसाद / C.N. Prasad)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांकDated : 18.07.2016.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "E " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.