

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Ravish Sood(JM)

I.T.A. No. 4337/Mum/2014 (Assessment Year 2006-07)
I.T.A. No. 4338/Mum/2014 (Assessment Year 2008-09)
I.T.A. No. 4339/Mum/2014 (Assessment Year 2009-10)
I.T.A. No. 4340/Mum/2014 (Assessment Year 2010-11)
I.T.A. No. 4341/Mum/2014 (Assessment Year 2011-12)
I.T.A. No. 7391/Mum/2014 (Assessment Year 2007-08)

Smt. Rupal P. Saraiya 15/B, Kamal Kunj S.V. Road, Irla Bridge Andheri West Mumbai-400 058. PAN : AMZPS1068D (Appellant)	Vs.	DCIT, CC-31 4 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	None
Department by	Ms. S. Padmaja
Date of Hearing	30.10.2017
Date of Pronouncement	31.10.2017

ORDER

PER BENCH:-

All the appeals of the assessee are directed against the orders passed by Ld CIT(A)-40, Mumbai and they relate to the assessment years 2006-07 to 2011-12. None appeared on behalf of the assessee even though the notice of hearing was sent by registered post and the case was adjourned on an earlier occasion at the request of the assessee. Hence we proceed to dispose of the appeal ex-parte, without the presence of the assessee. Since identical issues are urged in these appeals, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. The assessee belongs to Avon Corporation group of cases, which was subjected to search on 04-02-2011. The assessee is a director therein. Consequent to search operations, the present assessments have been

completed u/s 143(3) r.w.s 153C of the Act. The issues urged in these appeals are:-

- (a) Validity of assessments made u/s 153C of the Act.
- (b) Addition made u/s 68 of the Act
- (c) Non granting of corresponding relief against disallowance made u/s 40A(2)(a) of the Act in the hands of M/s Avon Corporation.

3. The first issue relates to the validity of assessments made u/s 153C of the Act. The case of the assessee is that no material relating to the assessee was found during the course of search and hence the present assessments are beyond the jurisdiction of sec. 153C of the Act.

4. We heard Ld D.R and perused the record. We notice that the Ld CIT(A) has passed detailed order on this issue pointing out the undisclosed bank accounts and the unaccounted cash transactions. Accordingly the Ld CIT(A) has held that the present assessment proceedings initiated u/s 153C of the Act are valid. Before us no other material was placed by the assessee to contradict the findings given by Ld CIT(A). Hence we have no other option but to confirm the order passed by Ld CIT(A) on this issue in all the years under consideration.

5. The next issue relates to the addition made u/s 68 of the Act. The revenue unearthed an undisclosed bank account standing in the name of the assessee, wherein cash deposits were noticed. The assessee simply stated that these deposits were made by her husband Shri Pankaj Saraiya. But no other document supporting the said claim was made. Hence the AO assessed the aggregate deposits as income of the assessee.

6. Before Ld CIT(A), identical claims were made. In addition thereto, it was stated that the huge additions made in the hands of company M/s Avon corporation Ltd should be given set off (telescoping benefit) against the deposits. It was also contended that only peak credit should have been added. However, the Ld CIT(A) was not convinced with the same and accordingly

confirmed the addition, except the deposits relating to dividend income received from M/s Avon Corporation Ltd.

7. We have heard Ld D.R and perused the record. We notice that the assessee has sought credit for withdrawals made from bank earlier, i.e., she has requested to assess peak credit balance. The assessee has also contended that these accounts are being operated by her husband and further the additions made in the hands of M/s Avon Corporation Ltd should be telescoped. In our view, there may be merits in these submissions. If this account could be linked to the business operations of M/s Avon Corporation Ltd, then there may be merit in the contentions of the assessee. Similarly, when there are withdrawals and deposits on alternate basis, the peak credit theory may be the right solution to determine the undisclosed income. Since all these aspects require examination, we restore this issue to the file of Ld CIT(A) for examining the same afresh.

8. The next issue relates to the claim of the assessee to reduce the salary income corresponding to the amount disallowed u/s 40A(2)(a) of the Act. The assessee received salary income from M/s Avon Corporation Ltd. The AO disallowed part of salary expenditure u/s 40A(2)(a) of the Act in the hands of M/s Avon Corporation Ltd. The assessee, herein, seeks reduction of salary income corresponding to the amount of disallowance.

9. We heard Ld D.R and perused the record. In the hands of M/s Avon Corporation Ltd, we had set aside the issue relating to disallowance made u/s 40A(2)(a) to the file of Ld CIT(A). In this case, the Ld CIT(A) has already expressed view that the disallowance made u/s 40A(2)(a) was for different purpose and hence corresponding reduction cannot be given to the recipient of the salary. We find merit in the said view. However, since we have set aside the issue of disallowance made u/s 40A(2)(a) to the file of Ld CIT(A), we prefer to restore this issue also to his file for adjudicating it afresh in all the years.

10. In the result, all the appeals of the assessee are treated as partly allowed.

Order has been pronounced in the Court on 31.10.2017.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 31/10/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai