

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

I.T.A. No. 884/Mum/2015 (Assessment Year 2006-07)
I.T.A. No. 7390/Mum/2014 (Assessment Year 2007-08)
I.T.A. No. 885/Mum/2015 (Assessment Year 2008-09)
I.T.A. No. 886/Mum/2015 (Assessment Year 2009-10)
I.T.A. No. 1508/Mum/2015 (Assessment Year 2010-11)
I.T.A. No. 4423/Mum/2015 (Assessment Year 2010-11)
I.T.A. No. 1507/Mum/2015 (Assessment Year 2011-12)

Shri Pankaj P. Saraiya Flat No. 801, 8 th Floor Shiv Prisha Plot No. 65, JVPD Link Road Scheme Vile Parle West Mumbai-400 049. PAN : AMZPS1044F	Vs.	ACIT, CC-31 Range-7 4 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. S. Padmaja
Date of Hearing	30.10.2017
Date of Pronouncement	31.10.2017

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. The assessee has filed one more appeal (ITA No.4423/M/2015) challenging the penalty levied u/s 271(1)(c) of the Act in AY 2010-11. 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. The assessee was subjected to search along with the group companies 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 153A of the Act. The common issues urged in these appeals are:-

- (a) Validity of special audit ordered u/s 142(2A) of the Act.
- (b) Addition made u/s 68 of the Act for cash deposits and cheque deposits
- (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.

The assessee has also raised two more grounds in AY 2010-11 and one ground in AY 2011-12.

3. The first issue relates to the validity of special audit ordered u/s 142(2A) of the Act. The case of the assessee is that there is no complexity in the accounts and hence the AO should not have ordered for special audit.

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 there was complexity in the accounts due to undisclosed bank accounts and the unaccounted cash transactions. Accordingly the Ld CIT(A) has held that the validity of special audit ordered u/s 142(2A) of the Act is 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 and cheque deposits were noticed. The assessee failed to offer explanations to the satisfaction of the AO. 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 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. Now we shall take up two other grounds urged in AY 2010-11. The first issue relates to the disallowance of expenses of Rs.5,71,977/- claimed against commission income. The assessee declared commission income of Rs.8,56,000/-. In the provisional computation, he claimed expenses to the tune of Rs.1,13,649/-, but it was revised to Rs.5,71,977/-. However, the assessee did not furnish any details of expenses and hence the AO disallowed the entire expenses of Rs.5,71,977/-. Before Ld CIT(A) also, the assessee did not furnish any details and hence he also confirmed the same.

11. Before us also, no material was placed to support the claim of expenses. Accordingly we have no other option but to confirm the order passed by Ld CIT(A) on this issue.

12. The next ground urged in AY 2010-11 and the ground urged in AY 2011-12 relates to the addition relating to bogus transactions. These additions relate to bogus transactions entered with a person named Dilip Shah. The AO added Rs.66.91 lakhs in AY 2011-12 on the basis of peak credit workings. The assessee submitted before Ld CIT(A) that a sum of Rs.44.91 lakhs, being the peak credit as on 31.3.2010, could not be assessed in AY 2011-12. The Ld CIT(A) accepted the same accordingly gave relief of Rs.44.91 lakhs in AY 2011-12, but added the said amount in AY 2010-11 by way of enhancement. Though the assessee is contesting this addition made in both the years before us, no material was placed to contradict the findings given by the tax authorities. Accordingly we confirm the order passed by Ld CIT(A) on this issue in both the years, viz., AY 2010-11 and 2011-12.

14. We shall now take up the penalty appeal relating to AY 2010-11. Since we have restored certain issues to the file of Ld CIT(A), we are of the view that the order passed by Ld CIT(A) on the penalty order would require reconsideration in the light of decision taken by him in the set aside proceedings. Accordingly we set aside the order passed by Ld CIT(A) in the penalty appeal and restore the same to his file for adjudicating it afresh.

15. 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