

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA NOS. 1329 TO 1333/MUM/2016 : A.Ys : 2006-07, 2005-06,
2004-05, 2007-08 & 2008-09**

ACIT, Central Circle-2(4),
Mumbai (Appellant)

Vs. Ajit Chimanlal Shah
26/A, New Surya Kiran Co-op.
Housing Society, Huges Road,
Mumbai (Respondent)
PAN : AAFPS1984E

Appellant by : Shri R.P. Meena

Respondent by : None

Date of Hearing : 06/06/2018

Date of Pronouncement : 29/06/2018

ORDER

PER G.S. PANNU, AM :

The captioned are bunch of five appeals by the Revenue pertaining to the same assessee for Assessment Years 2004-05 to 2008-09. In all the appeals, the Grounds raised by the Revenue stand on an identical footing, therefore, the appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. At the time of hearing, it was noted that inspite of issuance of notice of hearing, the respondent-assessee did not make any appearance and, therefore, following Rule 25 of the Income Tax (Appellate Tribunal) Rules, 1963, the appeals are being disposed of *ex parte qua* the respondent-assessee after hearing the Id. DR on merits. Since the dispute in all appeals stands on a similar footing, appeal of the Revenue for Assessment Year 2004-05 vide ITA No. 1331/Mum/2016 is taken up as the lead case.

3. This appeal is directed against the order of CIT(A)-48, Mumbai dated 28.12.2015 pertaining to Assessment Year 2004-05, which in turn have arisen from the order passed by the Assessing Officer, Mumbai, dated 28.03.2013 u/s 143(3) r.w.s. 153A of the Income Tax Act, 1961 (in short 'the Act').

4. In this appeal, Revenue has raised the following Grounds of appeal :-

“(i) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that the same addition/disallowance cannot be made in respect of an unabated assessment in absence of any incriminating material having been found in the course of search and the same is beyond the scope and ambit of an assessment envisaged u/s.153A, without appreciating the fact that the provisions of the said section authorizes the Assessing Officer to assess or reassess the total income in respect of six assessment years immediately preceding the assessment year relevant to previous year in which search is conducted or requisition is made, without any exception.

(ii) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not deciding on merit the addition of Rs.97,33,574/- on account of unsecured loans; addition of Rs.1,42,41,596/- on account of security deposits; disallowance of expenses and rejecting assessee's claim of deduction u/s.80DD of Rs.75,000/-

iii) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in annulling the assessment proceedings u/s.153A by relying on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Continental Warehousing Corporation (2015) 120 DTR 89 and CIT Vs. All Cargo Logistics Limited, without appreciating the fact that the said decisions have not been accepted by the Department and SLP has been filed by the Department vide Special Leave to Appeal (C) No.18506 of 2015, which has been admitted by the Apex Court and SLP (Civil) CC No. 20858-20869 of 2015, which is pending?"

5. As a perusal of the aforesaid Grounds of appeal reveal, the sum and substance of the dispute revolves around the scope and ambit of an assessment envisaged u/s 153A of the Act. In this context, the precise point involved arises from the decision of CIT(A) to hold that in case of an assessment u/s 153A of the Act where the original assessment does not abate in terms of the second proviso to Sec. 153A(1) of the Act, the additions permissible are only those which are based on incriminating material found in the course of search relating to such additions. The said decision of the CIT(A) is founded on the judgment of the Hon'ble Bombay High Court in the case of *CIT vs. Continental Warehousing Corporation (Nhava Sheva Ltd)*, 374 ITR 645 (Bom.) The relevant finding of the CIT(A) in the background of the ratio laid down by the Hon'ble Bombay High Court in the case of *Continental Warehousing Corporation (Nhava Sheva Ltd) (supra)* is quite clear, which reads as under :-

"5.8 In the present case, I find that there is nothing on record to suggest that any material was found in the course of search which had connection with any issue discussed in the assessment proceedings. I find that there is no material referred to by the AO to say that any incriminating material was unearthed during the search. Therefore, in the factual background, I do not find any justification for the AO to make the impugned additions in

any assessment which was not pending on the date of initiation of search u/s. 132(1) of the Act and further in the absence of any incriminating material having been found during the course of search qua the impugned additions on various accounts made by the AO as mentioned in Para 5.7 of this order. I may categorically mention that on the date of initiation of search, qua the AY-2004-05 under consideration, assessment had attained finality, and accordingly, the assessment for this year did not abate in terms of second proviso to section 153A(1) of the Act. Therefore, the ratio of the judgments of the Hon'ble Bombay High Court in the case of CIT vs Continental Warehousing Corporation (2015) 120 DTR 89 (BOM) and CIT vs All Cargo Global Logistics Ltd. is clearly attracted and the impugned additions should not have been made in respect of an unabated assessment which had become final in the absence of any incrimination material having been found in the course of search, qua the impugned additions of unsecured loans, security deposits, expenses, dividend etc. I direct the AO to delete the addition of Rs.240,90,100/- as the same is beyond the scope and ambit of an assessment envisaged u/s 153A of the Act. Accordingly, these grounds of appeal are allowed."

6. In this background, we may now turn to the grievance of the Revenue as manifested in the aforestated Grounds of appeal. The relevant facts are that a search and seizure action u/s 132(1) of the Act was carried out in the cases of M/s. Shraddha Group on 23.02.2010, which also covered the respondent-assessee before us. In response to a notice issued u/s 153A of the Act calling for a return of income, assessee filed a return of income on 23.08.2010 declaring a total income of Rs.2,18,780/- which was the same as declared by him in the return of income originally filed u/s 139(1) of the Act on 30.10.2004 for the Assessment Year 2004-05. In the ensuing assessment u/s 143(3) r.w.s. 153A of the Act, the Assessing Officer, *inter-alia*, made various additions which have been tabulated by the CIT(A) also in his order in para 5.7, which read as under :-

<i>SN</i>	<i>Nature of additions</i>	<i>Rs.</i>	<i>Rs</i>
1	<i>Unsecured loans</i>		97,33,574
2	<i>Security deposit</i>		1,42,41,596
3	<i>Expenses :</i>		
	<i>Commission</i>	2,88,399	
	<i>Travelling</i>	48,956	
	<i>Staff welfare</i>	33,226	
	<i>Telephone Exp.</i>	28,900	
	<i>Motor car</i>	98,475	
	<i>Printing & stationary</i>	25,696	1,04,730
4	<i>Dividend</i>		10,200

7. Thus, as against the returned income of Rs.2,18,780/-, the total income was assessed at Rs.2,42,58,480/-. The additions so made by the Assessing Officer were carried in appeal before the CIT(A) before whom various Grounds were raised assailing the additions. The CIT(A) has principally set-aside the afore-tabulated additions on the ground that there was no material even in the course of search which had any connection with such issues. We have examined such factual assertion by CIT(A) in his order and find that the same is clearly borne out of the discussion made by the Assessing Officer in the assessment order regarding each of the above additions. In fact, the discussion in the assessment order with respect to each of the additions in the afore-tabulation reflects that it is entirely based on the Balance-sheet and Profit & Loss Account which was before the Assessing Officer and there is no reference to any material found during the course of search. Under these circumstances, in our view, the finding of the CIT(A) that there is no incriminating material found during the course of search *qua* the aforestated additions, is quite justified and deserves to be affirmed. At this point, we may also notice that such a finding of the CIT(A) is not even in challenge before us inasmuch as the Grounds of appeal raised

by the Revenue before us do not contain any such challenge. Factually speaking, the CIT(A) has also noted that on the date of search, i.e. 23.02.2010, no assessment was pending inasmuch as time limit for issuance of notice u/s 143(2) of the Act, i.e. 30.10.2005 had lapsed. Thus, in terms of the second proviso to Sec. 153A of the Act, the original assessment did not abate.

8. Be that as it may, the only point which has been raised in the Grounds of appeal is to the effect that the decision of Hon'ble Bombay High Court in the case of *Continental Warehousing Corporation (Nhava Sheva Ltd) (supra)*, which has been relied by the CIT(A), has not been accepted by the Department and a SLP has been filed in the Hon'ble Supreme Court, which is pending. Quite clearly, the ratio laid down by the Hon'ble Bombay High Court in the case of *Continental Warehousing Corporation (Nhava Sheva Ltd) (supra)* continues to subsist, and merely because an SLP against the decision of the Hon'ble Bombay High Court is pending before the Hon'ble Supreme Court is no ground to seek any interference in the impugned order of CIT(A).

9. At the time of hearing, the Id. CIT-DR appearing for the Revenue also submitted that there was a contrary view adopted by the Hon'ble High Court of Kerala in the following cases :-

- i) CIT vs ST. Francis Clay Decor Tiles, 385 ITR 624 (Kerala);
- ii) CIT vs Dr. P. Sasikumar, 387 ITR 8 (Kerala);
- iii) E.N. Gopakumar vs CIT, 390 ITR 131 (Kerala)

Nevertheless, in view of the binding judgment of the Hon'ble Bombay High Court in the case of *Continental Warehousing Corporation (Nhava Sheva Ltd) (supra)*, the decisions relied upon by the Revenue cannot be relied upon. Thus, in the final analysis, in the absence of any incriminating material *qua* the aforesaid additions, following the ratio of the judgment of the Hon'ble Bombay High Court in the case of *Continental Warehousing Corporation (Nhava Sheva Ltd) (supra)*, the decision of the CIT(A) is hereby affirmed, which is justified under the given facts and circumstances.

10. In the result, appeal of the Revenue for Assessment Year 2004-05 is dismissed as above.

11. So far as the appeals of Revenue for Assessment Years 2005-06 to 2008-09 are concerned, it was a conceded position that the facts and circumstances are *pari materia* to those considered by us in the appeal for Assessment Year 2004-05, therefore, our decision therein shall apply *mutatis mutandis* to the said appeals also.

12. Resultantly, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 29th June, 2018.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 29th June, 2018

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai