

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI

Before Shri Mahavir Singh(JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.3974 to 3978/Mum/2013  
(Assessment years: 2006-07 to 2010-11)

|   |    |                           |
|---|----|---------------------------|
| Shankar A Goddam<br>B/302, Pratima Co.op Hsg<br>Society, Gali No.1, Koldongri,<br>Mumbai- 400 069<br>PAN : ABKPG9674R | vs | ACIT, Cent.Cir.43, Mumbai |
| <b>APPELLANT</b>  |    | <b>RESPONDENT</b>         |

I.T.A No.3971 to 3973/Mum/2013  
(Assessment years: 2006-07, 2005-06 & 2004-05)

|                             |    |   |
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| Dy.CIT, Cent.Cir.43, Mumbai | vs | Shankar A Goddam<br>B/302, Pratima Co.op Hsg Society,<br>Gali No.1, Koldongri, Mumbai- 400<br>069 |
| <b>APPELLANT</b>            |    | <b>RESPONDENT</b>   |

|             |                         |
|-------------|-------------------------|
| Revenue by  | Shri R Manjunatha Swamy |
| Assessee by | Shri K Gopal            |

|                       |             |
|-----------------------|-------------|
| Date of hearing       | 09 -08-2018 |
| Date of pronouncement | 21 -08-2018 |

**ORDER**

Per Bench:

This bunch of 8 appeals, out of which 3 appeals filed by the revenue and 5 appeals filed by the assessee are directed against the order of the CIT(A)-38, Mumbai dated 14-02-2013 for the assessment

year 2004-05 to 2010-11. Since facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed of by this common order.

2. The revenue has raised more or less common grounds of appeal for all 3 assessment years. For the sake of brevity, grounds of appeal raised for AY 2004-05 in ITA No.3973/Mum/2013 are reproduced below:-

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting addition of Rs.38,50,000/- made on protective basis on account of amounts received from Free Trade Union Multipurpose Trust(FTUMPT), without giving any decision in the case of Ms. Chandbibi Zaidi wherein substantive addition was made by the Assessing Officer."*

2. *"On the facts and in the circumstances of the case and in law, the Ld. CITfA) erred in deleting addition of Rs.38,50,000/- made on protective basis on account of amounts received from Free Trade Union Multipurpose Trust(FTUMPT), without indicating year-wise breakup and basis for his estimation that the alleged expenditure on the repairs would not be more Than Rs. 25 lakhs."*

3. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CITfA) was justified in deleting addition of Rs.38,50,000/~ made on protective basis on account of amounts received from Free Trade Union Multipurpose Trust(FTUMPT), by having regard to the additional fact that appellant was assessed to tax u/s 44AD of the Act?"*

3. The assessee has raised more or less common grounds of appeal for all years. For the sake of brevity, grounds of appeal taken for AY 2006-07 in ITA No.3974/Mum/2013 are reproduced below:-

1. On the facts and in the circumstances of the case and in law the Ld. CIT(A)-38 erred in confirming the addition of Rs. 9,72,000/- on account of unexplained cash deposits.

2. On the facts and in the circumstances of the case and in law the Ld. CIT(A)-38 erred in not accepting that the cash deposits of ₹3,56,000/- were shown as assessee's income which was disclosed at the time of filing return u/s. 153A of the IT Act.

3. On the facts and in the circumstances of the case and in law the Ld. CIT(A)-38 erred in not accepting that the cash deposits of ₹2,36,000/- were shown as assessee's income which was disclosed at the time of filing return u/s, 153A of the I T Act and an amount of ₹3,00,000/- was towards re-deposits.

4. On the facts and in the circumstances of the case and in law the Ld. CIT(A)-38 erred in not accepting the fact that there was clear evidence of cash withdrawn which was re-deposited and of income disclosed at the time of filing return u/s. 153A of the IT Act.

4. The brief facts of the case are that the assessee is an individual, engaged in the business of civil construction in the name and style of two proprietary concerns, viz. M/s Sai Civil Décor and M/s Mahalaxmi Enterprises. A search and seizure action u/s 132 of the Income-tax Act, 1961 was carried out on Chandbibi Zaidi group of cases on 20-08-2009. The main person of the group is Ms.Chandbibi Zaidi, who is president of two prominent trade unions, viz. MMS( Mumbai Mazdoor Sabha) & Engineering Mazdoor Sabha (EMS). She is also managing trustee of Free Trade Unions Multi Purpose Trust, a public charitable trust closely associated with two trade unions. During the course of search, certain incriminating materials were found and seized revealed that Ms.Chandbibi Zaidi is siphoning off funds of the trust through various means including alleged bogus expenditure and accordingly, a statement u/s 132(4) of the Income-tax Act, 1961 was recorded. The assessee being a civil contractor, rendered services to Free Trade Unions Multi Purpose Trust was also covered under section 132 action

and accordingly, a statement u/s 132(4) of the Income-tax Act, 1961 was recorded. During the course of search, it was noticed that Ms.Chandbibi Zaidi, managing trustee of Free Trade Unions Multi Purpose Trust has paid money to assessee's two proprietary concerns, M/s Sai Civil Décor and M/s Mahalaxmi Enterprises for alleged repair works carried out at the ground floor of Kennedy House building owned by Engineering Mazdoor Sabha was claimed as a deduction by Free Trade Unions Multi Purpose Trust on the ground that the alleged repair work to the building was not carried out and the money has been siphoned off by the managing trustee Ms.Chandbibi Zaidi. Consequent to search, assessee's case was taken up for assessment and accordingly notice u/s 153A was issued. In response to notices, the assessee has filed his return of income on 14-07-2010. The case was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act were issued. In response to notices, assessee has filed various details, as called for. The assessment has been completed u/s 143(3) r.w.s. 153A of the Income-tax Act, 1961 for AYs 2004-05 to 2010-11 on 29-12-2011, wherein the AO has made addition towards amount received from Free Trade Unions Multi Purpose Trust for AYs 2004-05, 2005-06 & 2006-07 amounting to R.38,50,000, Rs.24,50,000 and Rs.18 lakhs towards repair work carried out at ground floor of Kennedy House on protective basis

as a similar addition has been made in the hands of Ms.Chandbibi Zaidi on substantive basis on the allegation that no repair work was carried out and it is only a mean to siphon off funds from Free Trade Unions Multi Purpose Trust. The AO also made addition towards unexplained cash credit found in bank accounts maintained by the assessee at Bharat Co-operative Bank Ltd, Ude Kalina Branch in the name of Mahalaxmi Enterprises and M/s Sai Civil Décor on the ground that the assessee failed to explain sources of income for credits found in bank account for AYs 2006-07 to 2010-11.

5. Aggrieved by the assessment order, assessee preferred appeals before the CIT(A) for all assessment years. Before the CIT(A), the assessee has filed elaborate written submissions on the issue to explain addition made by the AO towards amount received from Free Trade Unions Multi Purpose Trust and also unexplained credits found in two bank accounts. Insofar as amount received from Free Trade Unions Multi Purpose Trust, the assessee filed various details including income-tax return copies to prove that amount received from the said trust has been included in his income-tax return and profit has been derived by following the principles of deeming net profit provided u/s 44AD of the Income-tax Act, 1961. The assessee also filed various details to match year-wise amount received from the trust and amount considered in its

books of account. The assessee also filed various details to prove expenditure incurred towards carrying out repair works to Kennedy Bldg. Insofar as cash deposits in bank accounts, assessee explained before the CIT(A) that he has deposited cash out of his own source of income drawn from 2 proprietary concerns, M/s Sai Civil Décor and M/s Mahalaxmi Enterprises and accordingly filed a chart explaining amount deposited in bank account. The Ld.CIT(A), after considering relevant submissions of the assessee deleted protective additions made by the AO towards amount received from Free Trade Unions Multi Purpose Trust on the ground that the assessee has filed necessary evidences to prove that the amount received from the said trust is included in his income-tax returns and also filed various details to prove expenditure incurred for carrying out necessary repair works at Kennedy House bldg. Insofar as addition made towards cash credits found in two bank accounts, the CIT(A) has allowed partial relief towards unexplained cash credit found in bank accounts wherever the assessee was able to explain sources with evidence; however, confirmed remaining amount on the ground that the assessee has not explained sources of cash deposit found in bank account with cogent evidences. Aggrieved by the order of CIT(A), assessee as well as the revenue are in appeals before us.

6. The first issue that came up for our consideration from revenue's appeal for AYs 2004-05 to 2006-07 is protective addition made by the AO towards amount received from Free Trade Unions Multi Purpose Trust. The Lde.AR for the assessee at the time of hearing submitted that the issue is more or less covered in favour of the assessee by the decision of ITAT, Mumbai Bench "C" in the case of Ms.Chandbibi Zaidi where the ITAT has deleted substantive addition made by the AO towards amount received from Free Trade Unions Multi Purpose Trust on the allegation that the managing trustee has siphoned off the funds of the trust under the guise of bogus expenditure incurred on repairs to Kennedy House Bldg, therefore, protective addition made in the hands of the assessee cannot survive when substantive addition has already been deleted in the hands of alleged beneficiary. The Ld.AR further submitted that the ITAT, in yet another case, in Free Trade Unions Multi Purpose Trust has considered the issue and after considering relevant facts has deleted additions made by the AO towards amount paid to the assessee proprietary concerns, M/s Mahalaxmi Enterprises and M/s Sree Sai Decors. The Ld.AR further submitted that even otherwise the assessee has filed various details before the AO as well as the Ld.CIT(A) to prove that the said amount had been considered in his income-tax returns for the purpose of estimation of net profit under the

provisions of section 44AD of the I.T. Act, 1961. The Ld.AR further explained with reference to paper book filed containing details of his income-tax returns that the year-wise amount paid by the trust has been matched with receipts considered by the assessee in his income-tax returns and, therefore, there is no reason for the AO to make any addition on adhoc basis towards said amount and accordingly argued that the Ld.CIT(A) has rightly deleted addition made by the AO on protective basis and his order should be upheld.

7. On the other hand, the Ld.DR submitted that the Ld.CIT(A) was erred in deleting additions made on protective basis on account of amount received from Free Trade Unions Multi Purpose Trust without giving any decision in the case of Ms.Chandbibi Zaidi wherein substantive addition was made by the AO. The Ld.CIT(A) simply deleted addition made by the AO without recording his reasons in the light of facts brought out by the AO during the course of assessment proceedings that the amount received by the assessee has been routed back to Ms.Chandbibi Zaidi, therefore, without ascertaining the facts and result of addition made in the hands of Ms.Chandbibi Zaidi, deleted addition in the hands of the assessee.

8. We have heard both the parties and perused the material available on record. The Ld. AR has filed various details to prove that the

assessee has considered amount received from Free Trade Unions Multi Purpose Trust in his income-tax returns for the relevant assessment years and estimated net profit on such receipts under the provisions of section 44AD of the Act. The assessee also filed various details before the lower authorities to prove expenditure incurred in connection with repair work carried out at Kennedy House Bldg. This undisputed fact has been categorically recorded by the Ld.CIT(A) in his appellate order. In respect of this addition, the Ld.AR for the assessee filed further evidence in the form of orders of ITAT in the case of Ms.Chandbibi Zaidi, where substantive addition made by the AO towards amount received from Free Trade Unions Multi Purpose Trust has been deleted. We, therefore, are of the opinion that once substantive addition made in the case of alleged beneficiary has been deleted by the ITAT, there is no reason to sustain addition made by the AO towards protective addition in the hands of the assessee more particularly, when assessee has demonstrated with evidence that such receipt has been part of his income-tax returns and also he has carried out necessary repair works to the trust. The Ld.CIT(A), after considering relevant facts has rightly deleted addition made by the AO. We do not find any reason to interfere with the findings of the Ld.CIT(A). Hence, we are inclined to uphold the findings of Ld.CIT(A) and dismiss appeal

filed by the revenue for AYs 2004-05, 2005-06 & 2006-07.

9. The next issue that came up for our consideration from assessee's appeals for AYs 2006-07 to 2010-11 is addition made towards unexplained cash deposits found in two bank accounts u/s 68 of the Income-tax Act, 1961. The AO has made addition towards unexplained cash deposit found in the Bharat co-operative Bank Ltd, Kalina Branch and ICICI Bank, Vile Parle (E) Branch in the name of assessee on the ground that there are huge credits in two bank accounts for which the assessee has not filed any explanation to prove sources of income. According to the AO, there is mismatch between credits found in two savings bank accounts maintained at Bharat co-operative Bank Ltd, Kalina Branch and ICICI Bank, Vile Parle (E) Branch when compared to assessee's declared source of income. Accordingly, he has made addition towards total credits found in the bank account as unexplained credit u/s 68 of the Income-tax Act, 1961. It is the contention of the assessee that credits found in savings bank account maintained in two banks are explained with known source of income and such source of income is derived from two proprietary concerns, M/s Mahalaxmi Enterprises and M/s Sai Decors for which necessary evidences have been filed before the AO. The assessee further contended that there are instances where the assessee has withdrawn cash from one bank

account and deposited in another bank account, but the AO has not considered withdrawal from other banks to explain credits found in another bank account. The AO also not considered withdrawals found in some bank account in earlier occasions. The assessee further contended that even the AO has made addition towards cheque transfers between assessee's individual bank account from assessee's HUF bank account. The AO also not considered amount found credited in assessee's wife's account. The assessee has filed a paper book explaining each and every credit found in two bank accounts with corresponding withdrawals from his two proprietary concerns, M/s Mahalaxmi Enterprises and M/s Sai Decors. According to the assessee, each and every credit found in two bank accounts is having corresponding withdrawals from his two proprietary concerns or there is source of income in the form of amount transferred from his HUF account or from his wife's account. The AO has ignored all these evidences to make addition towards total credits found in two bank accounts u/s 68 of the Income-tax Act, 1961.

10. We have heard both the parties and perused the material available on record. It is an undisputed fact that the assessee has not filed necessary evidences before the AO at the time of assessment proceedings to explain credits found in savings bank account maintained

in maintained Bharat co-operative Bank Ltd, Kalina Branch and ICICI Bank, Vile Parle (E) Branch. The assessee has made a generalized explanation in the light of its income-tax returns to argue that credits found in bank accounts are explained out of withdrawals from his two proprietary concerns, M/s Mahalaxmi Enterprises and M/s Sai Decors without any explanation with regard to each and every credit found in the bank account. But, now the assessee has filed a paper book which contains bank accounts maintained in the name of M/s Mahalaxmi Enterprises and M/s Sai Decors to match credits found in two savings bank account to corresponding withdrawals from two proprietary concerns, M/s Mahalaxmi Enterprises and M/s Sai Decors. The assessee also filed certain other evidences in the form of I.T. returns of his HUF to argue that he has received loans from HUF's bank account. The assessee also filed certain evidences to explain sources for credits found in bank account. The AO has erroneously made additions towards deposits found in bank accounts maintained in the name of Naresh Kadam. We find that the assessee has filed paper book containing bank statements of two proprietary concerns and bank statements of savings bank account maintained in Bharat co-operative Bank Ltd, Kalina Branch and ICICI Bank, Vile Parle (E) Branch to explain credits found in bank accounts with corresponding withdrawals

from other bank accounts, but fact remains that the assessee has not filed a chart explaining date-wise credit found in two bank accounts and corresponding withdrawals from two proprietary concerns' bank accounts. Therefore, we are of the considered view that the issue needs to be examined by the AO in the light of evidence filed by the assessee. Hence, we set aside the issue to the file of the AO to consider the issue afresh. In case the assessee is able to explain sources for credits, then the AO is directed to delete additions towards cash credits found in bank accounts. In case source is not explained, then the AO is directed to work out peak credit and sustain addition to the extent of peak credit found in two bank accounts.

11. In the result, appeals filed by the assessee for AYs 006-07 to 2010-11 are allowed for statistical purpose.

12. As a result, appeals filed by the revenue are dismissed and appeals filed by the assessee are allowed, for statistical purpose.

Order pronounced in the open court on 21<sup>st</sup> August, 2018.

Sd/-

sd/-

|                 |                   |
|-----------------|-------------------|
| (Mahavir Singh) | (G Manjunatha)    |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Mumbai, Dt : 21<sup>st</sup> August, 2018

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Sr.PS, ITAT, Mumbai