

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.690 & 691/PUN/2016  
निर्धारण वर्ष / Assessment Years : 2010-11 & 2012-13

Mr. Navinchandra C. Nathani,  
Q-22, A.P.M.C. Market II,  
Dana Bazar, Sector 19-A,  
Vashi, Navi Mumbai – 400703

PAN : AAAPT3091N

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Dy. Commissioner of Income Tax,  
CC-1, Thane

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri Vipul Shah/Rahul Shah  
Revenue by : Shri A.K. Modi

सुनवाई की तारीख / Date of Hearing : 06-08-2018  
घोषणा की तारीख / Date of Pronouncement : 31-08-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-11, Pune dated 22-01-2016 common for the assessment years 2010-11 and 2012-13.

Since, the issues involved in both the appeals are interconnected and are arising from same set of facts, these appeals are taken up together for adjudication and are being disposed of vide this common order.

2. The brief facts of the case as emanating from records are : For the sake of convenience facts are extracted from the appeal of assessee in ITA No. 690/PUN/2016 for assessment year 2010-11. The assessee is trading in food grains and spices. A search and survey action was carried out on Thakkar Group on 22-02-2012. The assessee is an associate of said group. During the course of search a document was seized and the assessee was asked to explain the same. The statement of assessee was recorded on 22-02-2012. In reply to Q. No. 26, the assessee offered Rs.68,50,000/- over and above the regular income. The assessee in response to notice u/s. 153A filed return of income for assessment year 2010-11 declaring business income of Rs.6,17,721/-. The Assessing Officer inter alia made addition of Rs.61,69,167/- on account of undisclosed income as per document seized during search. The assessee assailed the addition of aforesaid amount in assessment year 2010-11 on the ground that the assessee has offered the said income in the return of income for assessment year 2012-13. If the same amount is added in the assessment year 2010-11 it would result in double taxation of the same amount. The Commissioner of Income Tax (Appeals) rejected the contentions of the assessee and confirmed the findings of Assessing Officer in making addition of Rs.61,69,167/- in assessment year 2010-11. The Commissioner of Income Tax (Appeals) further directed the Assessing Officer to reduce the amount to the extent of double addition in

assessment year 2012-13. Against the findings of Commissioner of Income Tax (Appeals), the assessee is in second appeal before the Tribunal.

3. Shri Vipul Shah and Shri Rahul Shah appearing on behalf of the assessee submitted that the authorities below have erred in making addition of Rs.61,69,167/- in assessment year 2010-11. The assessee had offered the said amount in the return of income for assessment year 2012-13. The ld. AR referring to the answer to Q. No. 26 in the statement recorded on 22-02-2012 submitted that the assessee had voluntarily offered Rs.68,50,000/- over and above the regular income in the current Financial Year i.e. 2011-12 relevant to the assessment year 2012-13. The ld. AR submitted that the amount mentioned in seized document refers to transaction which had not materialized. Therefore, no addition can be made qua said transaction. The ld. AR further to buttress his submissions placed reliance on the following decisions :

- i. Commissioner of Income Tax Vs. Navinbhai N. Patel, 41 taxmann.com 424 (Gujarat);
- ii. M/s. Abhishek Enterprises Vs. Dy. Commissioner of Income Tax in ITA Nos. 1008 to 1010/MUM/2016 for assessment years 2005-06 to 2007-08 decided on 04-06-2018;

The ld. AR further pointed that if the addition is made in assessment year 2010-11 and the same amount is reduced in assessment year 2012-13, the assessed income in assessment year 2012-13 would be less than the income returned for assessment year 2012-13. This is not permissible.

3.1 The ld. AR further submitted that in assessment year 2010-11 the assessee has also assailed disallowance of interest Rs.2,01,000/- and

addition of Rs.4,94,167/- u/s. 14A. The ld. AR submitted that during the period relevant to the assessment year 2010-11 the assessee had no income from partnership firm and hence, the assessee has not earned any tax free income. The ld. AR further contended that the addition u/s. 14A is not sustainable as the addition has not been based on any seized material. In original assessment proceedings the Assessing Officer accepted the return and made no addition/disallowance u/s. 14A. The assessment had attained finality. Thus, it is a case of abated assessment.

4. On the other hand Shri A.K. Modi representing the Department vehemently defended the impugned order and prayed for dismissing the appeals of the assessee. The ld. DR submitted that the document seized during search (page 5 of the paper book) bears the date 01-04-2010 after recording of the figure Rs.61,69,167/-. This clearly indicates that the amount pertains to the period prior to 01-04-2010 and not the assessment year 2012-13 as is claimed by the assessee. It is a well settled law that the income has to be assessed in the correct assessment year. The Commissioner of Income Tax (Appeals) has rightly confirmed the addition in assessment year 2010-11 and has directed the Assessing Officer to delete the double addition in assessment year 2012-13. It is not a case of double addition as has been alleged by the assessee.

**Findings of Tribunal:**

**ITA No. 690/PUN/2016 (A.Y. 2010-11)**

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The ground No. 1

raised in revised grounds of appeal for assessment year 2010-11 is general in nature, hence requires no adjudication.

6. During search action a document was seized by the Department from the premises of assessee which is at page 5 of the paper book. On the basis of seized document the assessee made declaration in the statement recorded u/s. 132(4) of the Act on 22-02-2012. In response to Q. No. 26, the assessee voluntarily offered Rs.68.5 lakhs over and above regular income for the current financial year i.e. period relevant to assessment year 2012-13. However, a perusal of the seized document reflects that the amount offered by the assessee pertains to the period prior to 01-04-2010. Therefore, the amount Rs.61,69,167/- which is part of disclosure is relatable to Financial Year 2009-10 relevant to assessment year 2010-11. The authorities below have thus rightly assessed the amount Rs.61,69,167/- as undisclosed income of the assessee for the period relevant to the assessment year 2010-11.

7. The Commissioner of Income Tax (Appeals) while considering the appeal of assessee for the assessment year 2012-13 has directed the Assessing Officer to give consequent effect to the income disclosed by the assessee in assessment year 2012-13 to avoid double taxation. The relevant extract of the findings of Commissioner of Income Tax (Appeals) in this regard are as under :

*“8. In asst year 2012-13 the effective relief sought by the appellant is exclusion of the undisclosed income already taxed in asst year 2010-11 from this year's assessed income. The facts in this regard have already been discussed above and it has been held that the additional income of Rs.61,69,167/- taxed by the AO in asst year 2010-11 is out of the income disclosed by the appellant in his statement during the search. The appellant had disclosed total income of Rs.68,50,000/- in his statement recorded during the search. The appellant has not given full break up of this*

*disclosure but the AO has taxed an amount of Rs.61,69,167/- out of this as income of the asst year 2010-11. The remaining amount of Rs.6,80,833/- can be taxed in the search year i.e. Asst Year 2012-13. As against this the appellant has credited in the P&L acct an amount of Rs.56,99,325/- as income offered during the survey/search. The same has been included in the assessed income for the asst year 2012-13. Thus it is seen that as against the total disclosure of Rs.68,50,000/, an amount of Rs.1,18,68,492/- (Rs.61,69,167 in asst year 2010-11 and Rs.56,99,325/- in asst year 2012-13) has been brought to tax. Thus there has been a double assessment of the income to the extent of Rs.50,18,492/-. As I have dismissed the appellant's appeal and confirmed the assessment in 2010-11, the relief on account of double addition would be allowable in asst year 2012-13. The AO is directed to reduce the income of Rs.50,18,492/- on the assessed income of asst year 2012-13, as the same income has been taxed in asst year 2010-11. The ground of appeal is thus partly allowed."*

Thus, the apprehension of the assessee that the same amount will be taxed twice is without any basis. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) in upholding the addition of Rs.61,69,167/- in assessment year 2010-11. Accordingly, the ground No. 2 raised in the revised grounds of appeal by the assessee is dismissed.

8. The ground Nos. 3 and 4 in the revised grounds of appeal are consequential to ground No. 2. Accordingly, both the grounds are dismissed.

9. In ground No. 5 of the revised grounds of appeal, the assessee has assailed addition of Rs.4,94,167/- u/s. 14A r.w. Rule 8D. The contention of the assessee is that no incriminating material whatsoever was found during the search to make disallowance u/s. 14A. The return filed by the assessee u/s. 139 was processed summarily u/s. 143(1) of the Act. The time limit for issuing notice u/s. 143(2) had already expired. These facts are undisputed. It is a well settled law that in the case of completed assessment, any addition made in proceedings u/s. 153A without incriminating material is not legally sustainable. We find merit in the

submissions of the assessee. Accordingly, the addition u/s. 14A r.w. Rule 8D is directed to be deleted and the ground No. 5 raised by the assessee is allowed.

10. In the result, appeal of the assessee is partly allowed.

**ITA No. 691/PUN/2016 (A.Y. 2012-13)**

11. In assessment year 2012-13 the only ground raised by the assessee is:

*“On the Facts and circumstances of the case and in law the action of learned Commissioner of Income Tax (A) in deleting a sum of Rs.50,18,492/-, wrongly treating it as Double Taxation of the same income, has resulted in reduction of income below returned income, which is not permitted under the provisions of Income Tax Act, 1961.”*

12. The ld. AR contended that by adding Rs.61,69,167/- in assessment year 2010-11 and reducing the corresponding amount in assessment year 2012-13 would result in assessed income falling below returned income, which is not permissible.

13. It is a well settled law that the income has to be assessed in right assessment year. The assessee in his statement recorded u/s. 132(4) has offered Rs.68.5 lakhs in the period relevant to the assessment year 2012-13. A perusal of seized document reveal that out of the aforesaid amount Rs.61,69,167/- pertain to Financial Year 2009-10 i.e. relevant to the assessment year 2010-11. Accordingly, the Assessing Officer assessed the said amount in 2010-11. In First Appellate proceedings the Commissioner of Income Tax (Appeals) has upheld the action of Assessing Officer and has further directed the Assessing Officer to give consequential effect in

assessment year 2012-13. Thus, no prejudice is caused to the assessee, as no income has been taxed twice.

14. In so far as anxiety of assessee that addition of Rs.61,69,167/- in assessment year 2010-11 would result in double taxation of the same amount in assessment year 2012-13 as the assessee has disclosed the same amount in return of income for assessment year 2012-13 is concerned, the Commissioner of Income Tax (Appeals) has given appropriate directions to Assessing Officer to give corresponding effect of the addition in assessment year 2010-11, in assessment year 2012-13.

The contention of the ld. AR that assessed income cannot be less than returned income is without any basis. The Hon'ble Gujarat High Court in the case of Commissioner of Income Tax Vs. Milton Laminates Ltd. reported as 218 Taxman 108 has held that while giving effect to order of Commissioner of Income Tax (Appeals), Assessing Officer can compute income lower than that returned by assessee.

The Co-ordinate Bench in the case of Assistant Commissioner of Income Tax Vs. Bajaj Finance Limited in ITA Nos. 288 to 291/PN/2014 for assessment years 2006-07, 2007-07, 2007-08 and 2008-09 decided on 29-01-2015 after examining the effect of amendment to section 143(3) by the Finance Act (No. 2) 1998 w.e.f. 01-10-1998 held:

*“As per the amendment, the assessment under section 143(3) of the Act, inter-alia, envisages the Assessing Officer to grant refund of any amount due to the assessee consequent to the assessment and therefore, the Assessing Officer is statutorily empowered to determine the revised income which can be lower than the returned income.”*

Thus, we do not find any merit in the appeal filed by the assessee. Accordingly, the same is dismissed.

15. In the result, the appeal of assessee in ITA No. 690/PUN/2016 is partly allowed and the appeal of assessee in ITA No. 691/PUN/2016 is dismissed.

Order pronounced on Friday, the 31<sup>st</sup> day of August, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> August, 2018  
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-11, Pune
4. The Pr. C.I.T. (Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune