

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

Before Shri SANDEEP GOSAIN (JUDICIAL MEMBER)

AND

Shri G.MANJUNATHA (ACCOUNTANT MEMBER)

I.T.A No.7591 to 7593/Mum/2016
(Assessment year: 1997-98, 2002-03 and 2003-04)

Shri. Baban Shivaram Kadam No. 34/32, RSC-13, Gorai Link Road, Borivali(W), Mumbai-400092 PAN: AGLPK3367M	vs	ACIT, -34(1)(2), Mumbai
APPELLANT		RESPONDENT

I.T.A.No.7594/Mum/2016 & 7595/Mum/2016
(Assessment year: 1997-98 and 2002-03)

Smt. Jaya Baban Kadam No. 34/32, RSC-13, Gorai Link Road, Borivali(W), Mumbai-400092 PAN: ABQPA3306A	vs	ACIT, -34(1)(2), Mumbai
APPELLANT		RESPONDENT

Appellant by	Shri Rajesh.B.Gupte, Advocate
Respondent by	Shri. Aravind Kumar,(DR)

Date of hearing	09-01-2019
Date of pronouncement	01-02-2019

ORDER

Per G Manjunatha, AM:

These five appeals filed by different assessee's are directed against separate, but identical and interconnected orders of the Ld. CIT(A)-46, Mumbai, all even dated 31-08-2016, 06-09-2016 and 07-09-2016 for the AY 1997-98, AY 2002-03 and AY 2003-04. Since, facts are identical and issues are interconnected, for the sake of convenience, these appeals were heard together and are disposed of by this consolidated order.

2. Both assessee's have taken number of grounds in their respective appeals, but, the issues involved in these appeals are mainly on additions towards unexplained investments in various assets and investments in their name and their children's name and also cash deposits in bank accounts, which are emerged from the panchanama drawn by the ACB (Anti Corruption Bureau) during the course of search in their residence. We, therefore, deem it appropriate not to reproduce grounds of appeal taken in each appeal, rather, proceed to dispose of appeals, on the basis of issues involved in these appeals.

ITA. No. 7591 to 7593/Mum/2016- Shri Baban Shivaram Kadam

3. The brief facts of the case are that the assessee is a State Govt. Employee deriving salary income. He is an accused in MPSC scam. The ACB conducted search in the residence of the assessee. During search, various documents and investments were found and a panchnama was drawn. The said information was passed on to the Assessing Officer. The assessee did not file regular returns of income. The AO reopened assessment on the basis information received from the ACB and accordingly, a notice u/s 148 dated 11-03-2014 was issued and served on the assessee. The assessee did not file return in response to 148 notice, because he was in judicial custody since 2-7-2002. Thereafter, the AO issued various notices u/s 142(1) along with questionnaire and called for various details. The assessee did not attend for hearing, but replied to show-cause notice issued by the AO and furnished explanation with

regard to various issues raised by the AO. The AO completed assessment u/s 144, r.w.s. 147 of the Income Tax Act, 1961, on 31-03-2005 by making various additions which are mainly based on panchnama drawn by the ACB during course of search conducted in the residence of the assessee.

4. The assessee carried the matter in appeal before first appellate authority. The assessee has filed certain additional evidences in support of his case in respect of various additions made by the AO. The main contention of the assessee before the Id. CIT(A) are that the AO has made additions towards various investments in the name of his family members, even though said investments are not belongs to him, and also sources for investments has been explained with complete details. The CIT(A) forwarded additional evidences to the AO for his comments and verification. The AO vide his remand report dated 6-4-2010 commented on additional evidences and its admissibility. The CIT(A), on the basis of evidences filed by the assessee and also taken into account remand report of the AO, partly allowed appeal of the assessee, where she had deleted certain additions wherever the assessee could file necessary details. However, she had confirmed certain additions wherever, no details has been filed in support of said additions. Aggrieved by the CIT(A) orders, the assessee is in appeal before us.

5. The first issue that came up for our consideration for AY 1997-98 from ground No. 1 of appeal is addition towards unexplained investments in the name of wife and children of the assessee for Rs. 11,42,202/-. The Id. CIT(A) confirmed addition of Rs. 11,42,202/- out of total addition of Rs. 25,34,400/- made by the AO towards various investments in IDBI bonds, UTI and IFCI bonds in the name of wife and children for the reason that the assessee could not file any evidences in support of source of income.

6. The Id. AR for the assessee submitted that the Id. CIT(A) was erred in confirming addition even though source of investments has been explained with necessary evidences. The Id. AR further submitted that, first up all there is totaling error in addition made by the AO as per which the AO had wrongly taken investment in the name of Rakesh Kadam at Rs. 4,14,800 instead of Rs. 2,34,760 which resulted in enhancement of addition to that extent and said mistake was continued before the CIT(A). Insofar as source of investments, it is explained that the assessee father in law Mr. N V Jadhav has made investments in the name of his daughter and grand children for which he had enough source from agricultural income and from sale of flats. The AR further submitted that some investments are made in the previous year 1994 and 1995, i.e. before reopening assessment, therefore the said investments cannot be considered as unexplained investment. The Id. DR on the other hand strongly supported order of the Id. CIT(A).

7. We have heard both parties and perused materials available on records. It is an admitted fact that the assessment has been made behind the back of the assessee which is evident from the fact that he was in judicial custody and hence could not represent his case before the AO. It is also an admitted fact that all additions are mainly on the basis of report of the ACB, where panchnama was drawn for various investments and expenditure. It is the contention of the assessee that, though he had filed various details before the CIT(A) in support his case, the Id. CIT(A) ignored certain details only for the reason that source of investment has not been explained. The assessee has filed certain details to prove that said investments are not belonging to him. He also filed certain details to explain source of investments. Therefore, we are of the considered view that the issue needs to be reexamined by the AO in light of evidences filed by the assessee. Hence, we set aside the issue to the file of the AO and direct him to cause necessary verification in light of evidences filed by the assessee.

8. The next issue that came up for our consideration is addition of Rs. 5,40,000/- towards investments in post office deposit scheme. The assessee claims that the post offices saving deposits are in joint name of his father in law N V Jadhav and his children and the source has been explained by his father in law out of his agricultural income. The assessee has filed copies of post office deposit accounts. We find that the said accounts have been opened in the year 1994 and 1995. Further, said

deposits are in the joint name of assessee father in law and his children. If said deposits are not in the name of the assessee and source of investment is not from the assessee, then the same could not be regarded as his unexplained income, provided the other party explains source for deposits from known source of income. In this case, it appears that the AO has made additions only on the basis of ACB report without carrying out further verification. Therefore, we are of the considered view that the issue needs to be reexamined by the AO in light of evidences filed by the assessee. Hence, we set aside the issue to the file of the AO and direct him to cause necessary verification in light of evidences filed by the assessee.

9. The next issue that came up for our consideration for AY 2002-03 from ground No. 1 of appeal is addition of Rs. 5,58,000/- towards investments in post office deposit scheme. The assessee claims that post offices saving deposits are in joint name of his father in law N V Jadhav and his children and the source has been explained by his father in law out of his agricultural income. The assessee has filed copies of post office deposit accounts. We find that the said accounts have been opened in the year 1994 and 1995. Further, said deposits are in the joint name of assessee father in law and his children. If said deposits are not in the name of the assessee and source of investment is not from the assessee, then the same could not be regarded as his unexplained income, provided the other party explains source for deposits from known source of

income. In this case, it appears that the AO has made additions only on the basis of ACB report without carrying out further verification. Therefore, we are of the considered view that the issue needs to be reexamined by the AO in light of evidences filed by the assessee. Hence, we set aside the issue to the file of the AO and direct him to cause necessary verification in light of evidences filed by the assessee.

10. The next issue that came up for our considerations for AY 2002-03 vide Gr. No. 2 is addition of Rs. 50,000/- towards unexplained tour expenses. The AO made additions towards Kerala tour expenses on the basis of ACB report. The assessee claims tour expenses has been sponsored by his brother in law Ganesh. We find that though assessee claims, his tour expenses are bore by his brother in law Shri. Ganesh, but no documentary evidence has been filed in support of his arguments. We, therefore, confirmed addition made towards unexplained tour expenses.

11. The next issue that came up for our consideration for AY. 2002-03 vide Gr. No. 3 is addition towards unexplained cash deposit in bank account. The assessee has deposited a sum of Rs. 88,000/- cash into bank, but could not explain source. Though, he explained that he had salary income of Rs. 1,96,000/- per annum and out which he had deposited cash into bank, considering the size of salary and other expenses, it is very difficult to accept arguments of the assessee that he had enough cash surplus to explain cash deposit. The Id. CIT(A) after

considering relevant facts has upheld addition made by the AO. We, therefore, do not find any reason to interfere with findings of Id. CIT(A) and hence reject ground taken by the assessee.

12. The next issue that came up for our consideration for AY. 2003-04 vide Gr. No. 1 & 2 is addition towards unexplained investments in house hold articles. The AO has made addition of Rs. 3,01,000/- towards house hold articles, like TV, fridge, furniture and fixtures and other articles on the basis of report of ACB. The assessee claims that the AO has made addition on the basis of Report of ACB, where they have estimated cost of house hold articles without any proof as to purchases. He further explained that those house hold items are purchased over a period out of salary income. He, further submitted that a similar addition is made in his wife name for house hold articles, therefore it amounts to double addition.

13. We have heard both sides and considered relevant materials available on record. No doubt, the addition towards household articles is on the basis of ACB report and such report has been prepared on estimate basis, therefore it is difficult to accept the value of articles determined by the AO in absence of any proof as to purchases of those items. But, fact remains, it is for the assessee to explain source for investment in any assets, when such assets are found in his place. In this case, the argument of assessee is that those house hold articles are purchased out of salary income and also some items are purchased by his

mother and brother, but such argument is not based on any evidence. Therefore, we are of the view that the assessee fails to prove source for investments in house hold articles and hence, to that extent we affirm the findings of the AO. Coming to another argument of the assessee that the value of house hold articles determined by the AO is not real value, but it is estimate made by the ACB. The one more argument is that similar addition has been made in his wife name. We find that the AO has made addition on the basis of report of ACB without there being any evidence to support such valuation. Therefore, we are of the view that, the issue needs to be set aside to the file of the AO for further verification and to determine correct value of house hold articles without being influenced by report of ACB. Further, if similar addition is made in his wife name, the addition made in the hands of assessee cannot be sustained as it amounts to double addition. The AO shall decide the issue in terms of our discussions hereinabove.

14. The next issue that came up for our consideration for AY. 2003-04 is addition of Rs. 5,04,783/- towards interest on post office investments. The AO has made addition towards interest on post office deposit on the ground that the assessee has invested a sum of Rs. 56,08,710/- in various family members name. It is the claim of assessee that out of total investment of Rs. 56,08,710/-, a sum of Rs. 30,62,000/- is belongs to him for which he had explained source. According to the assessee, out of Rs. 12,30,000/- investment in Chiplin post office, Rs. 6,30,000/- was

invested in AY 2002-03 and the same has been accepted in scrutiny assessment as not belongs to him. Further, a sum of Rs. 6,90,000/- is in his father in law name for which he had explained source. Similarly, a sum of Rs. 3,49,000/- is in his wife name, who is assessed to tax and hence the same could not be assessed in his name.

15. We have considered rival contentions and perused relevant materials available on record. No doubt, the sole basis for addition is panchnama drawn by the ACB. It is also an admitted fact that the assessee was in judicial custody during assessment proceedings and hence could not effectively represent his case before the AO. The assessee claims many investments not belong to him for which he had filed certain evidences. Although, he claims to have filed all evidences before the CIT(A), We do not aware whether those documents are available to the AO or not, because, the AO in his remand report did not accept arguments of the assessee. Therefore, we are of the view that, this issue needs to be set aside to file of the AO for further verification. Hence, we set aside the issue to the file of AO and direct him to cause necessary verification in light of claim of the assessee and to decide in accordance with law.

16. The next issue that came up for our consideration for AY 2003-04 is addition of Rs. 21,667/- towards unexplained fixed deposit. The assessee claims that FD is in joint name with his brother and source of investment is from his brother. The AO did not accept arguments of the assessee

because it was not based on any evidences. Facts remain unchanged. We, therefore, do not find any error in the findings of lower authorities and hence, uphold findings of Id. CIT(A) and reject ground taken by the assessee.

17. In the result, appeals filed by the assessee for AY 1997-98, 2002-03 and 2003-04 are partly allowed for statistical purpose.

ITA. NO. 7594/Mum/2016 and 7595/Mum/2016 –Smt. Jaya Baban Kadam

18. The only issue that came up for our consideration for AY 1997-98 is addition towards unexplained investment in interior work at house. The AO made addition for the reason that no source of income is explained towards investment is interior work and said addition is on the basis of report of ACB, where they have estimated cost of house hold articles without any proof as to purchases.. The assessee claims her father paid a sum of Rs. 7,50,000/- to builder and this fact was motioned in his will. The AO accepted the fact of investment in house construction, but did not accept investment in interior work even though the amount paid to builder is inclusive of interior work.

19. We have heard both sides and considered relevant materials available on record. No doubt, the addition towards household articles is on the basis of ACB report and such report has been prepared on

estimate basis, therefore it is difficult to accept the value of interior work determined by the AO in absence of any proof as to purchases of those items. But, fact remains, it is for the assessee to explain source for investment in any assets, when such assets are found in his place. In this case, assessee claims that her father has paid amount to builder which includes amount paid for interior work. In this regard she has filed copy of will executed by her father. The facts are not clear whether will executed by her father is before the date of search by the ACB or subsequent to the date of search, because it is very much relevant to decide the issue. Further, the orders of the AO as well as the Id. CIT(A) did not throw any light on this aspect. Therefore, we are of the view that, this issue needs to be set aside to the file of the AO for further verification. Hence, we set aside the issue to the file of AO and direct him to cause necessary verification in light of claim of the assessee and to decide in accordance with law.

20. The next issue that came up for consideration for AY 2002-03 is addition of Rs. 12,50,000/- in fixed deposits. The AO made addition towards fixed deposits in various bank for the reason that the assessee fails to explain source for investment. The assessee claims that her father had gifted a sum of Rs. 12,50,000/- for which copy of will is furnished to the AO. She further claims that said amount has been kept with Rajkumar Ralhan of M/s Ankur Constructions in the year 1995. After her father death, this amount was returned to her brother Ganesh Parasuram

Athwankar and in turn her brother had given money after her father death. This amount was invested in various fixed deposits.

21. We have heard both sides and considered relevant materials available on record. No doubt, the addition towards fixed deposit is primarily based on ACB report and copies of deposits found during search. The assessee claims that her father gifted a sum of Rs. 12,50,000/- before her marriage and said amount was kept with one Mr. Rajkumar Ralhan. She further claims that after her father death she got money back from the party through her brother which was invested in fixed deposits. Although, these are new line of arguments which was never taken before the AO, yet in the interest of justice, the claim made by the assessee needs to be examined by the AO as she has made a claim in light of will of her father. The facts are not clear whether will executed by her father is before the date of search by the ACB or subsequent to the date of search, because it is very much relevant to decide the issue. Therefore, we are of the view that, this issue needs to be set aside to file of the AO for further verification. Hence, we set aside the issue to the file of AO and direct him to cause necessary verification in light of claim of the assessee and to decide in accordance with law.

22. The next issue that came up for our consideration for AY 2002-03 is addition of Rs. 3,59,000/- towards cash deposit in bank. The AO made additions, when assessee could not explain source of income for cash

deposit. The assessee claims she had furnished cash flow statement where sufficient cash balance available to explain cash deposit.

23. We have heard both parties and perused materials available on record. No doubt, the assessee could not explain cash deposit with her know source of income. Though she claims that she had opening balance in cash flow statement, such opening balance is not supported by any documentary evidence so as to prove that she had declared source of income. We, therefore, find no reason to deviate from the findings of the lower authorities. Hence, we are inclined to uphold findings of the Id. CIT(A) and reject ground taken by the assessee.

24. The next issue that came up for consideration for AY 2002-03 is enhancement of short term capital gain and professional income by the Id. CIT(A). During appellate proceedings for AY 2003-04 the assessee has filed statement of STCG of Rs. 2,10,129/- for AY 2002-03. She had also filed details of income to be offered at Rs. 1,18,000/- under professional charges. The Id. CIT(A) on the basis of self admission of the assessee made enhancement of those two incomes.

25. We have heard both sides and perused relevant materials available on record. No doubt said additions are on the basis of self admission. In fact, even now the assessee fails to file any details about short term capital gain. Therefore, we do not see any reason to give benefit to the

assessee and hence addition of Rs. 2,10,129/- has been confirmed. Insofar as addition of Rs. 1,18,000/- the assessee claims she had already admitted said income in her cash flow statement and the AO has made additions for the same, therefore further addition is not warranted. We find, the Id. CIT(A), added impugned amount on the basis of assessee admission, whereas she claims that the AO had already considered this income for addition. Facts are not clear. We, therefore, set aside this issue to the file of AO for further verification.

26. In the result, appeal filed by the assessee for AY 1997-98 and AY 2002-03 are partly allowed, for statistical purpose.

27. As a result, all appeals filed by both assessee are partly allowed for statistical purpose.

Order pronounced in the open court on 01st February, 2019.

Sd/-

sd/-

(Sandeep Gosain)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 01-02-2019

Pk/-

Copy to :

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

/True copy/

By order

Sr.PS, ITAT, Mumbai