

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" 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 No.1175/PUN/2015

निर्धारण वर्ष / Assessment Year : 2005-06

Laxmi Civil Engineering Services
Pvt. Ltd.
1148E, Sykes Extension,
Kolhapur-416 001.
PAN : AAACL5602N

.....अपीलार्थी / Appellant

बनाम / V/s.

The Asst. Commissioner of Income Tax,
(Central) Circle, Kolhapur.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos. 1241 to 1243/PUN/2015

निर्धारण वर्ष / Assessment Years: 2005-06 to 2007-08

The Asst. Commissioner of Income Tax,
Central Circle, Kolhapur.

.....अपीलार्थी / Appellant

बनाम / V/s.

Laxmi Civil Engineering Services
Pvt. Ltd.
1148, E-Ward, Sykes Extension,
Takala, Kolhapur-416 001.
PAN : AAACL5602N

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni,
Shri S.N. Puranik & Shri Kiran M.
Doshi

Revenue by : Shri S. B Prasad, CIT

सुनवाई की तारीख / Date of Hearing : 04.12.2018
घोषणा की तारीख / Date of Pronouncement : 27.02.2019

आदेश / ORDER

PER VIKAS AWASTHY, JM

ITA No.1175/PUN/2015 for the assessment year 2005-06 has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-1 & 2, Kolhapur dated 01.06.2015.

The Department has filed appeals in ITA Nos.1241 to 1243/PUN/2015 against aforesaid order of Commissioner of Income Tax (Appeals)-1 & 2, Kolhapur, common for the assessment years 2005-06, 2006-07 and 2007-08.

2. Shri M.K. Kulkarni appearing on behalf of the assessee submitted at the outset that on instruction from assessee, he is not pressing the appeal and wishes to withdraw the same. The ld. Counsel filed a request letter to withdraw appeal in ITA No.1175/PUN/2015.

3. Shri S.B. Prasad representing the Department raised no objection in assessee's withdrawal of appeal.

4. In view of the request made by ld. Counsel for the assessee, the appeal of the assessee in **ITA No.1175/PUN/2015 is dismissed as withdrawn.**

ITA No.1241/PUN/2015 (By Department)**Assessment Year 2005-06**

5. Brief facts of the case as emanating from records are: The assessee is a Civil Engineer and Mechanical Contractor. A search and seizure action u/s.132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was carried out at the premises of the assessee on 15.06.2010. Notice u/s.153A(a) of the Act was issued to the assessee on 30.05.2011. The assessee vide letter dated 19.07.2011 informed that the return already filed u/s.139 of the Act be treated as return in response to notice u/s.153A(a) of the Act. During the course of search action, cash aggregating to Rs.2,73,70,860/- was found. Further, jewellery valued at Rs.46,82,110/- was also found, out of which jewellery worth Rs.7,97,181/- was seized. The statement of Shri Vijay Rajaram Shah and Shri Hemant Vijay Shah, Directors of the assessee company were recorded u/s.132(4) of the Act. Shri Hemant Vijay Shah admitted unaccounted income of assessee at Rs.29,15,76,000/- and offered the same as income of the assessee for assessment years as under:

<i>Assessment year</i>	<i>Amount</i>
<i>2009-10</i>	<i>7,00,00,000/-</i>
<i>2010-11</i>	<i>17,90,76,000/-</i>
<i>2011-12</i>	<i>4,25,00,000/-</i>
Total	29,15,76,000/-

As regards the assessment year 2005-06, no income was offered. During the course of assessment proceedings, the Assessing Officer observed that the assessee has claimed deduction u/s.80IA(4) on various

miscellaneous receipts which are not eligible for claiming deduction. Consequently, the Assessing Officer disallowed deduction u/s.80IA(4) in respect of miscellaneous receipts aggregating to Rs.1,28,59,681/-. Apart from above disallowance of deduction u/s.80IA(4) of the Act, no other addition was made in the hands of the assessee for the assessment year 2005-06.

6. Aggrieved by the assessment order dated 07.03.2013 passed u/s. 143(3) r.w.s.153A(b) of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals) challenging the addition on two grounds:

- a. No incriminating material was found during the search for the assessment year 2005-06, therefore, no addition can be made.
- b. Original assessment for assessment year 2005-06 was completed before date of search. Since the assessee had claimed deduction u/s.80IA(4) in the return of income filed u/s.139 of the Act, the issue had reached finality, therefore, cannot be raked up again in assessment proceedings u/s.153A of the Act in the absence of any incriminating material.

7. The Commissioner of Income Tax (Appeals) after examining the facts of case came to the conclusion that no incriminating material was found during search and seizure operation for the assessment year 2005-06. The assessment for assessment year 2005-06 was completed u/s.143(3) of the Act. The assessee had claimed deduction u/s.80IA(4) in return of income filed u/s.139 of the Act and after examining assessee's claim, the same was allowed by the Commissioner of Income Tax (Appeals). Since at the time of

search, no assessment was pending, the Assessing Officer could not have made any addition in proceedings u/s.153A of the Act.

7.1 Dehors, the legal position, the Commissioner of Income Tax (Appeals) examined alleged miscellaneous receipts on which deduction u/s.80IA(4) was disallowed by the Assessing Officer and came to the conclusion that assessee was eligible to claim deduction u/s.80IA(4) of the Act on all such receipts. Thus, Commissioner of Income Tax (Appeals) allowed the claim of assessee and deleted the addition.

8. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue has filed appeal before the Tribunal by raising following grounds:

"1) On the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the AO had not jurisdiction u/s 153A for the impugned Assessment Years once Assessment was completed for those years, when the return of income filed in response to notice u/s 153A can be assessed or reassessed by the AO u/s 153A(b) of the Act.

2) On the facts and the circumstances of the case and in law. the Ld. CIT(A) has erred in propounding that availability of incriminating material was prelude to assess u/s.153A once assessments had been completed for the impugned Assessment Years.

3) On the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in accepting the assessee's contention that completed assessments could not be revisited whereas as per Section 153A(2) of the Act has given the mandate to revisit cases annulled by higher judicial authorities.

4) On the facts and the circumstances of the case and in law, the Ld.CIT(A)has erred while allowing the assessee appeal or eligibility of miscellaneous Receipts of Rs.1,28,59,681/- without controverting the facts enumerated by the AO in his order and further erring in treating the said receipts as profits and gains derived from eligible business as required by Section 80IA(4) of the Act.

5. The order of the Ld.CIT(A) may be vacated and that of the Assessing Officer be restored.

6. The appellant craves leave to add, alter, amend and modify any of the above grounds of appeal."

9. The ld. Counsel for the assessee vehemently supporting the order of Commissioner of Income Tax (Appeals) submitted at the outset that the case of the assessee is squarely covered by the decision of Hon'ble Bombay High Court in the case of CIT Vs. Continental Warehousing Corporation (Nhava Sheva) reported as 374 ITR 645. It is an undisputed fact that assessment for assessment year 2005-06 was completed at the time of search and seizure operation. No incriminating material whatsoever was found by the Department for the impugned assessment year. The assessee in its return of income filed u/s.139 of the Act had claimed deduction u/s.80IA(4) of the Act. The return of the assessee was subject to scrutiny and the Assessing Officer found the claim of the assessee in order and allowed the same. Now the assessment proceedings consequent to search, Assessing Officer cannot fiddle with the assessee's claim of deduction u/s.80IA(4), where assessment has not abated and no incriminating material is found.

10. On the other hand, Shri S.B. Prasad representing the Department vehemently defended the action of Assessing Officer in disallowing assessee's claim u/s.80IA(4) in respect of miscellaneous receipts. The ld. DR in support of his submissions placed reliance on the decision of Hon'ble Kerala High Court in the case of E.N.Gopakumar Vs. CIT-Central, 75 taxmann.com 15 (Kerala).

11. We have heard the submissions made by the representatives of rival sides and have perused the orders of the Authorities below. The un-rebutted facts in the instant case are:

- No incriminating material was found during the course of search and seizure action carried out by the Department against the assessee for the assessment year 2005-06.

- In the return of income filed u/s.139 of the Act, the assessee had claimed deduction u/s.80IA(4) of the Act, hence assessment for assessment year 2005-06. The assessment under regular provisions was completed in the case of the assessee and claim of the assessee was accepted by the Assessing Officer.

- There was no pending assessment when search and seizure action was carried out by the Department.

12. It is a well settled law that when there is no incriminating material, no addition can be made where original assessments have not abated. The Hon'ble Jurisdictional High Court in the case of CIT Vs. Continental Warehousing Corporation (Nhava Sheva) (supra.) has held that no addition can be made in respect of assessments which have become final if no incriminating material is found during search.

13. The Hon'ble Bombay High Court in the case of CIT Vs. Murli Agro Products Ltd. reported as 49 taxmann.com 172 has held as under:

“12) Once it is held that the assessment finalized on 29.12.2000 has attained finality, then the deduction allowed under section 80 HHC of the Income-tax Act as well as the loss computed under the assessment dated 29-12-2000 would attain finality. In such a case, the A.O. while passing the independent assessment order under Section 153A read with Section 143(3) of the I.T. Act could not have disturbed the assessment/ reassessment order which has attained finality, unless the materials gathered in the course of the proceedings under Section 153A of the Income-tax Act establish that the reliefs granted under the finalized assessment/reassessment were contrary to the facts unearthed during the course of 153 A proceedings.”

14. The ld. DR has placed reliance on the decision of Hon'ble Kerala High Court in the case of E.N. Gopakumar Vs. CIT- Central (Supra.). We are of considered view that the aforesaid decision would not support the cause of Revenue, as there is binding decisions of Hon'ble Jurisdictional High Court directly on the issue in hand.

In view of the facts of the case and the decisions of the Hon'ble Bombay High Court, we do not find any infirmity in the order of the Commissioner of Income Tax (Appeals), resultantly the same is upheld. **The appeal of the Revenue for the assessment year 2005-06 is dismissed being devoid of any merit.**

ITA Nos. 1242 & 1243/PUN/2015 (By Department)

Assessment years 2006-07 & 2007-08

15. The Revenue in both the aforesaid appeals has assailed the order of Commissioner of Income Tax (Appeals) by raising identical grounds as were raised in the assessment year 2005-06. Both sides are unanimous in stating that the facts in assessment years 2006-07 and 2007-08 are identical to the facts in assessment year 2005-06. Since grounds of appeal in the appeals by the Department for the assessment years 2006-07 and 2007-08 are identical to grounds of appeal in assessment year 2005-06 and facts are also identical, the findings given by us in assessment year 2005-06 would mutatis-mutandis apply to the appeals of the Revenue for assessment years 2006-07 and 2007-08. Accordingly, both the appeals of the Revenue i.e. appeals **for the assessment years 2006-07 and 2007-08 are dismissed.**

16. To sum up, appeal filed by assessee for assessment year 2005-06 is dismissed as withdrawn. The appeals by Revenue for assessment years 2005-06 to 2007-08 are dismissed.

Order pronounced on Wednesday, the 27th day of February, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. KARUNAKARA RAO)	(विकास अवस्थी /VIKAS AWASTHY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 27th February, 2019

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-1 & 2, Kolhapur.
4. The CIT-I & II, Kolhapur,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	15.02.2019	Sr.PS/PS
2	Draft placed before author	25.02.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		