



आयकर अपीलीय अधिकरण "एफ" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
 श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं./ I.T.A. No.4543/Mum/2016
 (निर्धारण वर्ष / Assessment Year: 2010-11)
 &
 2. आयकर अपील सं./ I.T.A. No.4541/Mum/2016
 (निर्धारण वर्ष / Assessment Year: 2011-12)

Mr. Jivraj P. Surani B-2005, Chandanbala CHS RR Thakkar Marg Walkeshwar, Mumbai-400 006.	बनाम/ Vs.	ACIT-CC 15 & 16 Mumbai
स्थायी लेखा सं./ जीआइआर सं./ PAN/GIR No. AGUPS-7685-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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 3. C.O. No.68/Mum/2017
 (Arising out of ITA No.4543/Mum/2016)
 (निर्धारण वर्ष / Assessment Year: 2010-11)
 &
 4. C.O. No.69/Mum/2017
 (Arising out of ITA No.4541/Mum/2016)
 (निर्धारण वर्ष / Assessment Year: 2011-12)

DCIT-CC 3(1) Central Range-3, 19 th Floor Air India Building Mumbai-400 021.	बनाम/ Vs.	Mr. Jivraj P. Surani 1, Sundaram Bungalow Lambe Hanuman Road, Opp. Saify Society, Nr. Varachha Police Chowky Surat-395 006.
स्थायी लेखा सं./ जीआइआर सं./ PAN/GIR No. AGUPS-7685-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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 5. आयकर अपील सं./ I.T.A. No.4529/Mum/2016
 (निर्धारण वर्ष / Assessment Year: 2010-11)

Mr. Bhagwanbhai K. Kukadia Shivam Bungalow, Lambe Hanuman Road Opp Saify Society, Nr Varachha Police Chowky Surat-395 006	बनाम/ Vs.	ACIT-CC 15 & 16 Mumbai
स्थायी लेखा सं./ जीआइआर सं./ PAN/GIR No. AAUPK-4545-J		



(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
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6. C.O. No.78/Mum/2017
(Arising out of ITA No.4529/Mum/2016)
(निर्धारण वर्ष / Assessment Year: 2010-11)

DCIT-CC 3(1) Central Range-3, 19 th Floor Air India Building Mumbai-400 021.	बनाम/ Vs.	Mr. Bhagwanbhai K. Kukadia Shivam Bungalow, Lambe Hanuman Road Opp Saify Society, Nr Varachha Police Chowky Surat-395 006
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AAUPK-4545-J**

(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
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7. आयकरअपील सं./ I.T.A. No.4523/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2010-11)

Mr. Suresh V. Kukadia B-1406, Chandanbala CHS RR Thakkar Marg Mumbai-400 006.	बनाम/ Vs.	ACIT-CC 15 & 16 Mumbai
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AFDPK-4722-C**

(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
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8. C.O. No.75/Mum/2017
(Arising out of I.T.A. No.4523/Mum/2016)
(निर्धारण वर्ष / Assessment Year: 2010-11)

DCIT-CC 3(1) Central Range-3, 19 th Floor Air India Building Mumbai-400 021.	बनाम/ Vs.	Mr. Suresh V. Kukadia 1, Sundaram Bunglow Lambe Hanuman Road, Opp. Saify Society, Nr. Varachha Police Chowky Surat-395 006.
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AFDPK-4722-C**

(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
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9. आयकरअपील सं./ I.T.A. No.4526/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2010-11)

Mr. Virjibhai K. Kukadiya Satyam Bunglow Lambe Hanuman Road Opp. Saify Society, Nr. Varachha Police Chowky Surat-395 006.	बनाम/ Vs.	ACIT-15 & 16 Mumbai
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AFDPK-7421-B**

(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
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10. C.O. No.76/Mum/2017
(Arising out of I.T.A. No.4526/Mum/2016)
(निर्धारण वर्ष / Assessment Year: 2010-11)



DCIT-CC 3(1) Central Range-3, 19 th Floor Air India Building Mumbai-400 021.	बनाम/ Vs.	Mr. Virjibhai K. Kukadiya 1, Sundaram Bunglow Lambe Hanuman Road, Opp. Saify Society, Nr. Varachha Police Chowky Surat-395 006.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AFDPK-7421-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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11. आयकरअपील सं./ I.T.A. No.4527/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2010-11)

Mr. Vallabh Surani B-2005, Chandanbala CHS RR Thakkar Marg, Walkeshwar Mumbai-400 006.	बनाम/ Vs.	ACIT-15 & 16 Mumbai
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AJYPS-2262-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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12. C.O. No.77/Mum/2017

(Arising out of I.T.A. No.4527/Mum/2016)

(निर्धारण वर्ष / Assessment Year: 2010-11)

DCIT-CC 3(1) Central Range-3, 19 th Floor Air India Building Mumbai-400 021.	बनाम/ Vs.	Mr. Vallabh Surani 1, Sundaram Bunglow Lambe Hanuman Road, Opp. Saify Society, Nr. Varachha Police Chowky Surat-395 006.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AJYPS-2262-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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13. आयकरअपील सं./ I.T.A. No.4528/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2010-11)

Mr. Rajesh Surani B-2005, Chandanbala CHS RR Thakkar Marg, Walkeshwar Mumbai-400 006.	बनाम/ Vs.	ACIT-15 & 16 Mumbai
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AJYPS-2263-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Vijay Mehta –Ld. AR
Revenue by	:	Shri Manjunathaswamy- Ld. CIT DR

सुनवाईकीतारीख/ Date of Hearing	:	07/05/2019
घोषणाकीतारीख / Date of Pronouncement	:	16/05/2019



आदेश / ORDER

Per Bench: -

1. Aforesaid appeals by separate assessee and cross-objections by revenue, for ease of reference, could be tabulated in the following manner: -

No.	Name of Assessee	A.Y.	Assessee's appeal No.	Department's CO No.	Assessment Framed u/s
1.	Jivraj Surani	2010-11	4543/M/16	C.O. 69/M/17	143(3) r.w.s 153A
2.	Bhagvanbhai K.Kukadia	2010-11	4529/M/16	C.O. 78/M/17	143(3) r.w.s 153A
3.	Suresh Kukadia	2010-11	4523/M/16	C.O. 75/M/17	143(3) r.w.s 153A
4.	Virjibhai Kukadia	2010-11	4526/M/16	C.O. 76/M/17	143(3) r.w.s 153A
5.	Vallabh Surani	2010-11	4527/M/16	C.O. 77/M/17	143(3) r.w.s 153A
6.	Rajesh Surani	2010-11	4528/M/16	Nil	143(3) r.w.s 153C
7.	Jivraj Surani	2011-12	4541/M/16	C.O. 68/M/17	143(3)

The revenue's cross-objections are in support of the impugned order. The cross-objections also contest the assessee's action in raising new issues for the first time before the Tribunal.

2. Both the representatives, at the outset, converge on the point that assessee's appeals listed at serial nos. 1 to 6 above may be send back to Ld. CIT(A) in view of the additional grounds raised by the assessee as done by the Tribunal in the case of *Mrs. Kalavati Surani*, belonging to same group, vide ITA No.4530/Mum/2016 order dated 12/10/2018 on similar factual matrix. The copy of the order has been placed on record. It has been submitted that by way of additional grounds of appeal, the assessee has agitated the assessment proceedings on legal grounds for the first time. The Ld. first appellate authority had no opportunity to adjudicate the same since the same were not raised before Ld. first appellate authority. The attention has been drawn to the fact that additional grounds of appeal



raised in the cited decision as well as in the present appeals are identically worded.

3. We have carefully heard the same and find that both the representatives are in unanimity with each other on the point that the factual matrix in the cited decision of the Tribunal as well as in the present appeals are identical and therefore, the matter may be restored back to Ld. first appellate authority on similar lines, keeping in view the additional grounds of appeals raised by the assessee in all the above stated appeals.

4. In view of the admitted position, without delving much deeper into the issues, we admit the additional grounds of appeal in terms of judgment of Hon'ble Apex Court rendered in *National Thermal Power Corporation Ltd. Vs. CIT [229 ITR 383 SC]*, *Jute Corporation of India Ltd. Vs. CIT [187 ITR 688 SC]* & *Ahmedabad Electricity Company Ltd. Vs. CIT [199 ITR 351 Bom FB]* and send back the matter to the file of Ld. first appellate authority on similar directions as given by the Tribunal in cited decision of another assessee belonging to the same group. For ready reference, the relevant observation of the Tribunal, in the cited order, could be extracted in the following manner: -

5. Before the Tribunal, the assessee has filed an application requesting for admission of the following additional ground of appeals:

1. The learned CIT(A) ought to have held that the assessment order passed by the Assessing Officer u/s.143(3) r.w.s. 153C of the Act is void ab initio and bad in law.
2. Let CIT(A) ought to have held that Assessment Order passed by Assessing Officer u/s. 153C is bad in law for want of proper satisfaction notes recorded by the Assessing Officers.
3. On the facts and circumstances of the case and in law, the learned CIT(A) ought to have held that the assessment order passed by the Assessing Officer u/s. 143(3) r.w.s 153C of the Act is time barred and in violation of provisions of section 153 of the Act and hence, bad in law.
4. On the facts and circumstances of the case and in law, the learned CIT(A) ought to have held that the appointment made by the Assessing Officer of the Special Auditor is not in accordance with the provisions of section 142(2A) of the Act.

5.1 In application for admission of the above additional grounds of appeals, the assessee has submitted that since the assessment u/s 153C and the appointment of



the Special Auditor itself is bad in law, the consequential assessment order passed by the AO suffers from the legal infirmity, bad in law and void ab initio. It is further stated that the assessee had not raised the above ground challenging the validity of the assessment order passed by the AO u/s 143(3) r.w.s. 153C before the Ld. CIT(A) for want of proper advice. It is also submitted that the above additional ground of appeal raises purely a question of law and no new facts are required to be investigated. Finally, stating that legal grounds going to the root of the validity of the assessment can be raised at any stage of appeal, the assessee submits that the above additional grounds of appeal may be admitted and adjudicated.

5.2 Before us, regarding the issue of validity of notice u/s 153C, the Ld. counsel of the assessee relied on the decision in Pepsi Foods P. Ltd. v. ACIT (2014) 367 ITR 112 (Delhi), Pepsico India Holdings P. Ltd. v. ACIT (2015) 370 ITR 295 (Delhi), CIT v. M/s Arpit Land P. Ltd. (ITA No. 83 of 2014) & CIT v. M/s Ambit Realty Pvt. Ltd. (ITA No. 150 of 2014) (Bombay), ARN Infrastructure India Ltd. v. ACIT 394 ITR 569 (Delhi), CIT v. Sinhgad Technical Education Society 378 ITR 84 (Bombay) and CIT v. Sinhgad Technical Education Society (Civil Appeal No. 11080 of 2017) (SC).

Also in support of his contentions that the assessment made by the AO is barred by limitation, the Ld. counsel relied on the decision in CIT v. BJK Hotels Ltd. (2016) 382 ITR 110 (Karn), order of the Tribunal in Shanti Lal Godawad v. ACIT 126 TTJ 135 and M/s Haldia Petrochemicals Ltd. v. CIT in ITA No. 1743/Kol/2013 for AY 2008-09 (ITAT, Kolkata).

In support of his contentions regarding validity of special audit, the Ld. counsel relied on the decision in Sahara India (Firm) v. CIT (2008) 300 ITR 403 (SC), RPS Associates v. DIT (Inv) (2015) 280 CTR (All) 582, Alidhara Texpro Engg. P. Ltd. v. DCIT (2011) 332 ITR 115 (Guj), West Bengal State Coop Bank Ltd. v. JCIT (2004) 267 ITR 345 (Cal), order of the Tribunal in ITO v. Vilsons Particle Board Industries Ltd. (2017) 184 TTJ (Pune) 84 and M/s Jyoti Traders v. DCIT in IT(SS) 62/Mum/2008 and 111/Mum/2008 & others dated 20.05.201 (ITAT-Mumbai).

6. The Ld. DR, however, filed an application dated 19.07.2018 stating that certain details were called for from the AO and those details had not been received and therefore adjournment be given.

7. We have heard the rival submissions and perused the relevant materials on record. The case was initially heard on 05.03.2018. It was put up for clarification on 20.07.2018 in view of the recent decision of the Hon'ble Supreme Court in Tapan Kumar Dutta v. CIT (2018) 302 CTR (SC) 102.

When the case was initially fixed for hearing on 05.03.2018, the Ld. DR had also filed an application dated 01.03.2018 stating that considering the quantum of substantial additions involved in these cases, paper book and assessment records are required from the AO and therefore, adjournment may be given.

Thus it seems instead of presenting his case, the Ld. DR was keen on filing applications seeking adjournment.

7.1 The first issue to be decided is whether to admit the additional grounds of appeal filed by the assessee. We find that the question of law raised in the above additional grounds of appeal goes to the root of the matter. In National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383, 387 (SC), it has been held that the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below



and having a bearing on the tax liability of the assessee. The ratio laid down in the above decision is applicable in the instant case. Therefore, we admit the additional grounds of appeal filed by the assessee. However, as mentioned hereinabove the first appellate authority had no opportunity to adjudicate the additional grounds of appeal as these were not filed before him. In the interest of justice, we set aside the order of the Ld. CIT(A) and restore the matter to him to make a de novo order after giving the assessee reasonable opportunity of being heard. We direct the assessee to file these additional grounds of appeal along with relevant documents/evidence before the Ld. CIT(A).

As the matter has been restored to the file of the Ld. CIT(A), we are not advertent to the case laws relied on by the Ld. counsel on merits of the case.

8. In the result, the appeal is allowed for statistical purposes.

Therefore, taking a consistent stand, the impugned orders are set aside and the matters stands restored make to Ld. first appellate authority for *de novo* adjudication on similar lines. The assessee's appeal listed at serial nos. 1 to 6 stands allowed for statistical purposes whereas the revenue's cross objections, against the same, stand dismissed as *infructuous*.

5. So far as the appeal listed at serial no. 7 for AY 2011-12 is concerned, we find that the assessee has been assessed u/s 143(3) on 11/11/2013 at Rs.131.92 Lacs after certain additions. Before us, the assessee has agitated the additions of Rs.7,86,168/-, Rs.20,22,670/- & Rs.17,500/- on account of annual letting value of certain properties. Upon perusal, we find that Ld. first appellate authority has already restored back the first two additions to the file of Ld. AO to re-fix the Annual Letting value of the property. Therefore, there could be no occasion to be aggrieved by the same. Needless to add that, the assessee is free to agitate the same before Ld. AO, in any manner. The addition of Rs.17,500/- has been confirmed since the same was declared rent in AY 2006-07. No infirmity could be



found in the same. Therefore, the assessee's appeal stands dismissed whereas the revenue's appeal stands dismissed as *infructuous*.

Conclusion

6. The assessee's appeal tabulated at serial nos. 1 to 6 stands allowed for statistical purposes. The assessee's appeal tabulated at serial nos. 7 stands dismissed. The revenue's cross-objections stands dismissed as *infructuous*.

Order pronounced in the open court on 16/05/2019.

**Sd/-
(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-
(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16/05/2019
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ढ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**