

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T(SS)A.No's.83 to 86/AHD/2017

निर्धारण वर्ष/Assessment Years : 2007-08 to 2010-11

Shri Amitbhai Manubhai Kachadiya, 128, Mamta Park Society-1, Varachha Road, Surat. [PAN: AMQPK 4491 D]	Vs.	The Deputy Commissioner of Income Tax, Central Circle-2, Surat.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T(SS)A.No's.57 to 60/AHD/2017

निर्धारण वर्ष/Assessment Years : 2007-08 to 2010-11

Shri Ankit Manubhai Kachadiya, 128, Mamta Park Society-1, Varachha Road, Surat. [PAN: AYUPK 8096 N]	Vs.	The Deputy Commissioner of Income Tax, Central Circle-2, Surat.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T(SS)A.No's.63 to 66/AHD/2017

निर्धारण वर्ष/Assessment Years : 2007-08 to 2010-11

Shri Bharatbhai Manubhai Baldha, 13-18, Shiv Row House, Aai Mata Chow, Nr. Parvat Jakat Naka, Surat. [PAN: AHWPB 3830 G]	Vs.	The Deputy Commissioner of Income Tax, Central Circle-2, Surat.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by:	Shri Mitish Modi - CA & Shri Akshay Modi - CA
राजस्व की ओर से /Revenue by:	Shri Srinivas T.Bidari - CIT-DR

सुनवाई की तारीख/ Date of hearing:	14.05.2019
उद्घोषणा की तारीख/Pronouncement on:	14.05.2019

आदेश / O R D E R

PER BENCH:

1. All the above appeals by three assesseees are directed against common orders of Learned Commissioner of Income (Appeals)-4 [CIT(A)], Surat dated 25.11.2016, 13.12.2016 and 14.12.2016 for above assessment years. All appeals are decide through this common consolidated order.
2. We have heard the Learned Representatives of both the parties and perused the material available on record.
3. Briefly stated facts of the case are that a search action u/s.132 of the Income Tax Act was carried out on 17.07.2012 in the group cases of Dalia(Badshah) – Babariya Group of Surat. The assesseees are also covered in search u/s.132 of the Income Tax Act. The Assessing Officer issued notices to all the three assesseees u/s.153A of the Income Tax Act. The assesseees have submitted that original return of income filed u/s.139 of the Act may be treated as return filed in compliance to the notices issued u/s.153A of the Income Tax Act. The Assessing Officer in the case of assessee Shri Amitbhai Manubhai Kachadiya noted that assessee has shown commission income in the return of income from diamond churi. The assessee was asked to furnish details, documentary evidences and addresses of the parties from whom commission income has been received. In absence of any reply and documentary evidences, the Assessing Officer was of the view that the commission received from diamond churi in cash by the assessee is unexplained cash received which

were treated as unexplained cash credit u/s.68 of the Income Tax Act. In all the assessment orders u/s.153A / 144 of the Income Tax Act, the Assessing Officer made the additions u/s.68 of the Income Tax Act. The Learned CIT(A) dismissed the appeals of the assessee.

3.1. Similarly, in the case of assessee Shri Ankit Manubhai Kachadiya the Assessing Officer similarly noted that this assessee has also earned commission income on diamond churi. In absence of any explanation from the side of the assessee cash receipt shown by the assessee was treated as unexplained cash credit u/s.68 of the Income Tax Act. The Assessing Officer passed assessment orders u/s.153A / 144 of the Income Tax Act in all the years. The Learned CIT(A) dismissed all the appeals of the assessee.

3.2. Similarly, in the case of assessee Bharatbhai Manubhai Baldha the Assessing Officer noted that assessee has received brokerage in cash and in absence of any explanation of details, same was treated as unexplained cash credit u/s.68 of the Income Tax Act. The Assessing Officer passed the assessment orders u/s.153A / 144 of the Income Tax Act in all the above assessment years. The Learned CIT(A) dismissed all the appeals of the assessee. The three assesseees have challenged the additions in the appeals.

4. All the assesseees have also filed applications for admission of the following additional ground of appeals:-

“On the facts and in the circumstances of the case as well in law, the order of the assessment of the impugned year passed by the AO u/s 153A r.w.s 144 of the Act, for which, no proceedings were

pending on the date of search, is without jurisdiction, bad in law and void ab initio as the same has been passed in the absence of any incriminating material for the impugned assessment year found/seized as a result of search.

5. The Learned Counsel for the assessee submitted that there were no recovery of any incriminating material / documents during the course of search and no assessment proceedings were pending in all the above assessment years under appeals on the date of the search on 17.07.2012. Therefore, no additions can be made u/s.68 of the Income Tax Act in all the assessment years u/s.153A of the Income Tax Act. He has submitted that original returns were filed in all the cases of three assesseees for all the assessment years which have already been processed u/s.143(1) accepting the returned income and the time limit to issue notice u/s.143(2) has expired much before the date of search. Since no incriminating material was found during the course of search, as regards the additions made u/s.68 of the Income Tax Act, therefore, no additions could be made. He has submitted that additional grounds are legal in nature in all the appeals and go to the root of the matter, therefore, same may be admitted for hearing. In support of contention, he has relied upon following decisions i) Pr.CIT Vs. Meeta Gutgutia (2018) 96 taxmann.com 468 (SC) ; ii) CIT Vs. Saumya Construction Ltd. (2016) 387 ITR 529 (Guj) ; iii) Pr. CIT-1 Vs. Devangi (2017) 88 taxmann.com 610 (Gujarat) and iv) Pr. CIT Vs. Jay Infrastructure and Properties Pvt. Ltd. (In Tax Appeal No. 740 of 2016, order dtd. 10-10-2016) and CIT Vs. Kabul Chawla 61 taxmann.com 412(Delhi).

6. He has further submitted that no new facts are required to be investigated because all materials available on record. He, therefore prayed that above additional grounds may be admitted in all the appeals of three assesseees. He has relied upon the judgment of the Supreme Case in the case of National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC).

7. The Learned Departmental Representative submitted that this issue was not raised before the authorities below.

8. We have considered the rival submissions and perused the material available on record. In all the assessment years under appeals in the case of three assesseees above, the assesseees have already filed original return of income prior to the search and same have been accepted by the Revenue Department. No assessment proceedings were pending on the date of search in all the years under appeals. The Assessing Officer in absence of explanation from the side of the assesseees have treated the cash receipts of commission / brokerage as shown in the return of income as unexplained cash credit u/s.68 of the Income Tax Act. It would show no incriminating material was found during the course of search, as regards the addition made u/s.68 of the Income Tax Act. The issue is therefore covered by above judgements relied upon by Learned Counsel for the assessee. It is a legal issue and goes to the root of the matter. No new facts shall have to be investigated, therefore, additional grounds raised above in all the appeals are admitted for the purpose of disposal of the appeals. Applications allowed.

9. As regards the additions made on merit, the Learned Counsel for the assessee similarly relied upon judgment of the Delhi High Court in the case of CIT Vs. Kabul Chawla (2016) 380 ITR 573 (Delhi) in which it was held as under :

"IT: Completed assessments can be interfered with by Assessing Officer while making assessment under section 153A only on basis of some incriminating material unearthed during course of search which was not produced or not already disclosed or made known in course of original assessment."

10. The Learned Counsel for the assessee also relied upon the following decisions : In Pr.CIT Vs. Meeta Gutgutia (2018) 96 taxmann.com 468 (SC) in which it was held as under:

"Invocation of section 153A to re-open concluded assessments of assessment year earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year: SLP dismissed"

10.1 In the case of CIT Vs. Saumya Construction Ltd. (2016) 387 ITR 529 (Guj) in which it was held as under :

"Under section 153A of the act, an assessment has to be made in relation to the search or requisition, namely, in relation to material disclosed during the search or requisition. If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated. In this regard, this court is in complete agreement with the view adopted by the Rajasthan High Court in the case of Jai Steel (India), Jodhpur (supra). Besides, as rightly pointed out by the learned counsel for the respondent, the controversy involved in the present case of Jayaben Ratilal Sorathia (supra) wherein it has been held that while it cannot be disputed that considering section 153A of the Act, the Assessing Officer can reopen and/or assess the return with respect to

six preceding years; however, there must be some incriminating material available with the Assessing Officer with respect to the sale transactions in the particular assessment year."

10.2 In the case of Pr.CIT-1 Vs. Devangi (2017) 88 taxmann.com 610 (Gujarat) in which it was held as under:

"After the search conducted at the assessee's premises, the Assessing Officer initiated proceedings under section 153A on the basis of the incriminating material seized for the period of the assessment year 2004-05 onwards, and made the addition for the assessment years 2000-01 to 2004-05. The Tribunal deleted the addition holding that only undisclosed income and undisclosed assets deducted during the search could be brought to tax and in assessee's case no incriminating material was found with respect to the assessment years 2000-01 to 2004-05, at the time of search.

Held that the Tribunal was correct in law in holding that the scope of section 153A was limited to assessing only search related income."

11. On the other hand, the Learned Departmental Representative relied upon the orders of the authorities below.

12. Considering the facts of the case in the light of the above decisions, we are of the view the issue is covered by the decisions relied upon by Learned Counsel for the assessee. In all the cases under appeals, assessees have admittedly filed original returns of income which were accepted and no assessment proceedings were pending on the date of search. No incriminating material was found during the course of search so as to make addition u/s.68 of the Income Tax Act. The assessees have shown commission / brokerage income received in cash in the original return of income. The Assessing Officer, however in the orders

passed u/s.153A / 144 of the Income Tax Act in absence of explanation from the side of the assessee treated this said receipt of cash as commission / brokerage unexplained cash credit u/s.68 of the Act. Thus, no incriminating material was found during the course of search against all the three assesees for making addition u/s.68 of the Income Tax Act. The issue is therefore covered by above judgments reproduced above. No addition could be made of this nature in the assessment order u/s.153A of the Income Tax Act.

13. In view of the above discussions, we set-aside the impugned orders and delete all the additions u/s.68 of the Income Tax Act.

14. In the result, appeals of the all the assesseees are allowed.

15. The order pronounced in the open court 14-05-2019.

Sd/-

(O.P.MEENA)

(लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER) (न्यायिकसदस्यतथा/JUDICIAL MEMBER)

सुरत/ Surat, दिनांक Dated: 14th May , 2019 / S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat