

THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 3087/Mum/2018 (Assessment Year 2012-13)

DCIT, CC-3(1) Room No. 1924 Air India Building 19 th Floor Nariman Point Mumbai-400 021.	Vs.	M/s. Nirmal Life Style (Pune) Pvt. Ltd. 3 rd Floor, Multiplex Building, LBS Marg Mulund-West Mumbai-400 080. PAN : AACCN4986H
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Rahul Raman
Date of Hearing	24.08.2021
Date of Pronouncement	25.08.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned CIT(A) dated 13.2.2018 and pertains to assessment year 2012-13.

2. Grounds of appeal read as under :

1. "On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition made by the AO on account of deemed notional interest income and disallowance made on account of loan processing fee by holding that no incriminating material was available in respect of the said addition and the said disallowance".

2. "On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deciding that the assessment u/s 143(3) rws 153A as invalid by holding that the assessment was non-abetted and no incriminating material unearthed during search action to make the re-assessment without appreciating the incriminating circumstances and incriminating material collected during the Nirmal Group Search"

The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be.

The appellant, therefore, prays that on the ground stated above, the order of the Ld.CIT(A)-51, Mumbai, may be set aside and that of the Assessing Officer restored.”

3. Brief facts of the case are as under :

A search & survey action under section 132&133A of the Income-tax Act, 1961 was carried out on 23rd October, 2013 in the case of M/s. Nirmal Lifestyle Ltd and its associated concerns at office address i.e. 3rd Floor, Multiplex Building, Nirmal Lifestyle Mall, L.B.S. Marg, Mulund (West), Mumbai- 400080, its branch offices, site offices, office of the subsidiaries and associate concerns and residences of main persons. Some of the related entities were also covered under section 133A of the Income-tax Act, 1961. Consequent to search assessment, the case of assessee was centralized with this office vide order No. Pr. CIT-15/Juris-127/Transfer/2015-16 dated 26-11-2015. Since the warrant of search authorization was issued in the name of assessee-company, assessment in this case is required to be made in manner laid out in chapter XIV of the I.T. Act, 1961 to be précised under section 153A of the I.T. Act. Accordingly notice under section 153A of the Act for the A.Y. 2008-09 to 2013-14 and notice under section 143(2) for A.Y. 2014-15 were issued on 30.11.2015.

4. In the assessment order for this assessment year, the Assessing Officer proceeded to make addition amounting to Rs. 7,30,72,000/- on account of disallowance of loan processing fees and interest. The above addition was made without reference to any seized material found during the search.

5. Upon assessee's appeal learned CIT(A) quashed the assessment by giving a finding that this assessment order was non-abated and has attained finality. Hence, assessment under section 153A of the Act without based upon anything found in search is untenable. He held as under :-

“From the aforesaid, it can be observed that a non-abated assessment can be interfered with by the AO while making assessment u/s 143(3) r.w.s. 153A only on the basis of some incriminating material unearthed during the search action. In the instant case, the assessee had received intimation u/s

143(1) and the time limit available for selection of the case for scrutiny had lapsed when the search action took place. Therefore, the assessment for the relevant year was non-abated which had attained finality. It is further observed that no incriminating material was found to make the said addition on account of deemed notional interest income and the said disallowance of loan processing fee. Therefore, the action of the AO of making the said addition and the said disallowance in absence of seized material is clearly incorrect. Accordingly, the additional ground of appeal raised by the assessee is allowed.”

6. Against this order the Revenue is in appeal before us.
7. We have heard learned Departmental Representative and perused the record. None appeared on behalf of the assessee. learned Departmental Representative relied upon the grounds of appeal.
8. Upon careful consideration, we are of the considered opinion that the issue is squarely covered in favour of the assessee. learned CIT(A) has taken correct view of the matter. Assessment under section 153A of the Act in the case of non-abated assessment cannot be made without any reference of seized material. This provision is duly covered by Hon'ble Bombay High Court in the case of M/s. All Cargo Global Logistics Ltd (137 ITD 287). Accordingly we uphold the order of learned CIT(A).
9. In the result, this appeal filed by the Revenue is dismissed.

Pronounced in the open court on 25.8.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 25/08/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

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M/s. Nirmal Life Style (Pune) Pvt. Ltd.

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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