

**आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI**  
**श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष**  
**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER**  
**AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**आयकरअपीलसं./I.T.A.Nos.385 to 388/Chny/2020**

(निर्धारणवर्ष / Assessment Years: (2011-12 to 2014-15))

Mr. V.Natarajan 64C, Rotary Nagar, Rasipuram-637 408.	Vs	The Assistant Commissioner of Income Tax, Central Circle, Salem.
PAN: ACGPN 1477Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. T.S.Lakshmi Venkataraman, C.A
प्रत्यर्थीकीओरसे/Respondentby	:	Mr. S.Palani Kumar,CIT

सुनवाईकीतारीख/Date of hearing	:	09.11.2021
घोषणाकीतारीख /Date of Pronouncement	:	15.11.2021

**आदेश / ORDER**

**PER G.MANJUNATHA, AM:**

These four appeals filed by the assessee are directed against common order passed by the learned CIT(A)-19, Chennai, all dated 18.12.2019 and pertain to assessment years 2011-12 to 2014-15. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for all assessment years, therefore, for the sake of brevity, grounds of appeal filed for the assessment year 2011-12 are reproduced as under:-

*“1. The learned CIT(A) is not justified in sustaining the disallowance of interest expenditure amounting to Rs.9,07,513/- made by the Assessing Officer.*

*2. The above disallowance has been made by the AO not on the basis of any incriminating materials found in the course of search. It has been judicially settled by number of judgments delivered by various High Courts, the assumption of jurisdiction u/s 153A, requirement of undisclosed income is necessary. The disallowance of Rs.9,07,513/- made by the AO without any incriminating materials which has been sustained by CIT (A) is bad in law.*

*3. In view of the above grounds and other submissions to be made at the time of appeal hearing, the disallowance of Rs.9,07,513/- sustained by CIT(A) may be cancelled and justice rendered.”*

3. Brief facts of the case are that the assessee is a Chartered Accountant and has derived income from profession, income from other sources and agricultural income. The assessee is a Chairman of M/s. Pavai Varam Educational Trust A search u/s.132 of the I.T. Act, 1961 was conducted in the residential premises of Shri V.Natarajan on 27.12.2016. During the course of search, books of account and other documents were seized from residential premises of the assessee. A statement u/s.132(4) was recorded. Consequent to search, assessment has been reframed u/s.143(3) r.w.s 153A of the Income Tax Act, 1961 on 29.12.2018, where the Assessing Officer has made additions towards disallowance of interest

u/s.37 of the Act on the ground that interest paid on SBI mortgage loan, LIC policy loan and interest paid to creditors is not wholly and exclusively expended for the purpose of income from profession. In addition, the Assessing Officer has also treated income disclosed under the head 'income from other sources' as unexplained cash credit u/s.68 of the Act and has levied tax u/s.115BBE of the Income Tax Act, 1961 for assessment year 2013-14 & 2014-15.

4. Being aggrieved by assessment order, the assessee preferred an appeal before learned CIT(A). Before learned CIT(A), the assessee has challenged additions made by the Assessing Officer towards disallowance of interest u/s.37 and assessment of income from other sources u/s.68 r.w.s 115BBE of the Act on the ground that additions made by the Assessing Officer is not supported by any incriminating materials found during course of search. The learned CIT(A), after considering relevant submissions of the assessee and also by following certain judicial precedents, including decision of the Hon'ble Kerala High Court in the case of E.N. Gopalkumar Vs. CIT (2016) 390 ITR 131 (Ker) rejected legal ground taken by the

assessee challenging validity of assessments order passed u/s.153A of the Act by holding that once search took place, the Assessing Officer shall have power to assess total income including undisclosed income if any, found as a result of search for six assessment years immediately preceding the assessment year in which search took place. The learned CIT(A) had also confirmed additions made towards disallowance of interest for all assessment years on the ground that the assessee has failed to establish nexus between interest paid on various loans and professional income. He had also confirmed assessment of income from other sources as unexplained cash credit u/s.68 r.w.s. 115BBE of the Act. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

5. The learned A.R for the assessee submitted that the learned CIT(A) has erred in confirming additions made by the Assessing Officer towards disallowance of interest u/s.37 of the Income Tax Act, 1961, in absence of any incriminating material found as a result of search, contrary to well settled principles of law by various decisions of High Courts, including

decision of the Hon'ble Supreme Court in the case of PCIT Vs.Meeta Gutgutia Prop. M/s. Ferns N Petals, 96 Taxmann.com 468 (SC), where it was clearly held completed assessments cannot be disturbed, unless there is incriminating material which suggest undisclosed income.

6. The learned DR, on the other hand, strongly supporting order of the learned CIT(A) submitted that the learned CIT(A) has brought out various facts in light of certain judicial precedents to reject legal ground taken by the assessee challenging validity of assessment framed u/s.153A of the Act and thus, there is no merit in arguments taken by the learned AR for the assessee that in absence of incriminating material, no addition could be made to completed assessment u/s.153A of the Income Tax Act, 1961.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. Admittedly, during course of search no incriminating material was found with respect to additions made by the Assessing Officer towards disallowance of interest expenses

u/s.37 of the Income Tax Act, 1961. It is also an admitted fact that there is no reference to any seized material / incriminating material in respect of assessment of income from other sources u/s.68 r.w.s 115BBE of the Act. It is well settled principles of law by the decisions of various Courts, including decision of the Hon'ble Supreme Court in the case of PCIT Vs. Meeta Gutgutia Prop. M/s. Ferns N Petals (supra) that in absence of incriminating material found as a result of search u/s.132 or requisition u/s.153A of the Act, completed assessments cannot be disturbed in the assessment framed u/s.153A of the Income Tax Act, 1961. This legal proposition is supported by plethora of decisions, including decision of the Hon'ble Bombay High Court in the case of CIT Vs.Continental Warehousing Corporation 374 ITR 645 (Bom), the Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla 380 ITR 573(Del) and the Hon'ble High Court of Gujarat in the case of PCIT Vs. Dipak Jashvanthalapunchal 397 ITR 153 (Guj). Further, the Hon'ble Supreme Court has dismissed SLP filed by the Revenue against order of the Hon'ble Delhi High Court in the case of PCIT Vs.Meeta Gutgutia 96 taxmann.com 468 (SC). The sum

and substance of ratios laid down by various High Courts is that unabated/completed assessments cannot be disturbed in absence of any incriminating material found as a result of search.

8. In this case, search took place on 27.12.2016. The assessments for assessment years 2011-12 to 2014-15 are unabated / completed as on date of search, because assessments either completed u/s.143(1) / 143(3) of the Act and further statutory time limit for issue of notice u/s.143(2) has been expired on 30.09.2015 i.e., much before date of search on 27.12.2016. Therefore, in our considered view, assessments for assessment years 2011-12 to 2014-15 are unabated / completed. Further, no reference of any incriminating material found as result of search in respect of additions made by the Assessing Officer towards disallowance of interest u/s.37 of the Act and for assessment of income from other sources u/s.68 r.w.s 115BBE of the Income Tax Act, 1961. In absence of any incriminating material found as result of search, completed / unabated assessments cannot be disturbed to make additions towards income which was already disclosed in regular return

filed for relevant assessment years. Therefore, we are of the considered view that additions made by the Assessing Officer towards disallowance of interest u/s.37 of the Act and further assessment of income from other sources u/s.68 r.w.s 115BBE of the Act cannot survive under law. Hence, we direct the Assessing Officer to delete additions made towards interest u/s.37 of the Act and assessment of income from other sources u/s.68 r.w.s. 115BBE of the Act for all assessment years.

9. In the result, appeals filed by the assessee for assessment years 2011-12 to 2014-15 are allowed.

Order pronounced in the open court on 15<sup>th</sup> November, 2021

Sd/-  
(धुव्वुरु आर.एल रेड्डी)  
(Duvvuru RL Reddy)  
न्यायिक सदस्य /Judicial Member

Sd/-  
(जी. मंजुनाथ)  
(G.Manjunatha)  
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,  
दिनांक/Dated 15<sup>th</sup> November, 2021  
DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.