

**IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR BENCH,
NAGPUR**

BEFORE SHRI SANDEEP GOSAIN, JM & SHRI O.P. KANT, AM

ITA Nos. 326, 327, 328, 329, 330, 331 & 332/NAG/2019
Assessment Years: 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-
15 & 2015-16

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	Shri Narendra Maganmal Kothari 1164, Kothari Enclave, Bhaji Mandir, Nikalas Mandir Road, Sarafa Bazar, Itwari, Nagpur- 440002.
PAN No. AATPK 4111 B		
Appellant		Respondent

Revenue by : Shri Pradeep Hedao (CIT-DR)
Assessee by: Shri Hitesh P Shah (CA)

Date of Hearing: 27/10/2021
Date of Pronouncement: 20/12/2021

ORDER

PER: SANDEEP GOSAIN, J.M.

These are the appeals filed by the Revenue against the separate orders of the Id. CIT(A)-3, Nagpur dated 30/09/2019 for the A.Y. 2009-10 to 2015-16 respectively.

2. Common issues have been involved in all these appeals, therefore, for the sake of convenience and brevity, a common order is being.

3. Firstly, we take ITA No. 326/Nag/2019 for the A.Y. 2009-10 as a lead case for deciding the appeals of the A.Y. 2009-10 to 2015-16. In this appeal, the Revenue have raised following grounds of appeal:

- “1. On the facts and circumstances of the case , the Id. CIT(A) erred in deleting the addition of Rs. 5,93,707/- made by the AO on account of interest received by the assessee @ 36% p.a. as per the seized document identified as B/4 a ‘gahan’ printout taken from computer in the business premises of the assessee which gave figures of interest calculation in money lending business of the assessee.*
- 2. On the facts and circumstances of the case, the Id. CIT(A) erred in holding that the document B/4 is not verified by the AO failing to appreciate that Id. CIT(A) possesses the power coterminous with AOP as per Kanpur Coal Syndicate 53 ITR 225 (SC) and she could verify the document independently, instead of outright deleting the addition.*
- 3. On the facts and circumstances of the case, it is urged to set aside the matter to the file of AO for adequate enquiry relying on the decision of the Hon’ble Ahmadabad Tribunal in the case of M/s Omnilens Pvt. Ltd. in ITA No. 2818/Ahd/2017 dated 16/10/2018 wherein it is held that if the AO has failed to discharge his responsibility to conduct a proper enquiry, it is the duty of the ITAT to ensure that effective inquiry is carried out.*
- 4. It is submitted that monetary limit of CBDT Circular No. 17/2019 will not apply as prosecution u/s 276CC & 276(1) of the IT Act is filed.*
- 5. It is humbly prayed to set aside the order of CIT(A) and restore the order of the AO.*

4. The brief facts of the case are that the assessee is having business income from money. The assessee had filed his return of income U/s 139(1) of the Act on 21/01/2010 declaring total income of Rs. 10,86,630/-. Search and Seizure operations u/ s.132 of the Act were carried out at the residential premises of the assessee on 10/09/2014. Notice U/s 153A of the Act was issued on 19/05/2015. The assessee filed his return of income

in response to the notice u/s. 153A on 27/09/2016 for the year under consideration declaring total income of Rs. 11,86,630/-. Finally the assessment was completed U/s 143(3) r.w.s 153A of the Act on 28/12/2016 determining total income of the assessee at Rs. 17,87,097/- by making addition on account of undisclosed interest income of Rs. 5,93,707.

5. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of the parties and material placed on record, deleted the addition so made by the A.O.

6. Against the said order of the Id. CIT(A), the Id. assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

7. All the grounds raised by the Revenue are interrelated and interlinked and relates to challenging the order of the Id. CIT(A) in deleting the addition of Rs. 5,93,707/-. In this regard, the Id. CIT-DR has vehemently supported the order of the A.O.

8. On the contrary, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A)and

also relied on the written submissions filed before the Id. CIT(A). For the cost of repetition, there is no need to reproduce the same here.

9. We have considered the rival contentions and carefully perused the material placed on record. We have also perused the written submissions filed by the assessee before the Id. CIT(A) and the orders passed by the lower authorities. From perusal of the record, we observed that the Id. CIT(A) has dealt with the issue in para 5 to 5.9 of its impugned order and the same is reproduced below:

"5. *I have perused the documents submitted and the explanations offered by the AR of the appellant. The appellant is a money lender holding valid license under the Money Lending (Regulation) Act, 2014, since last 15-20 years. He is operating his business of money lending from Sarafa Bazar, Itwari, Nagpur, in accordance with the strict rules and regulations as laid down by the Maharashtra Money Lending (Regulation) Act, 2014 and Bombay Money Lenders Act, 1946. The appellant charges interest at the rate of 12% to 15% per annum i.e. 1% or 1.25% per month to his customers which is prescribed under Money Lending Act. The detailed interest account, that was regularly maintained for the year under consideration was produced before the A.O. as required by him. During the search proceedings, a printout identified as "gahan" and numbered as B/4 giving figures of interest calculation in money lending business was seized. In the said seized printout, the rate of interest charged to the customers, was shown at 3% per month.*

5.2 *Whereas, the document B/1 is receipt book containing the details of amounts received back under 'gahan' and are duly signed*

*by both the parties i.e. the lender as well as borrower. The said voucher is issued to the borrower by the lender after the loan is repaid by the borrower and it is in prescribed format under Bombay Money Lenders Act 1946. The document B/2 is a voucher book containing terms and conditions of loans given under 'gahan' and duly signed by both the parties i.e. the lender as well as borrower. The said voucher is issued to borrower by the lender and it is in prescribed format under Bombay Money Lenders Act 1946. **These two documents were also seized and in the possession of the AO and these two documents were not controverted by any adverse information or evidences to show that these were false.***

- 5.3 *The said seized voucher books are primary evidences and contained all the information of the said money lending business **including name and address of the parties, the amount of loan given, the description of assets pawned by the said party, rate of interest charged and the period of loan.** The copy of the said registers B/1, B/2 and the ledger accounts for all the relevant assessment years, including the year under consideration, were submitted before me and perused. These two documents show that interest was charged at 12% to 15% annually and not @ 36% as assumed by the A.O. From the perusal of the seized documents B-1 and B-2, I find that the AO was not justified in assuming additional interest income merely on the basis of B-4 document which is unverifiable evidence, and by completely disregarding the **primary evidence in form of B-1 and B-2** documents, especially when no other incriminating documents were found during the course of search, and also as no other adverse*

material was obtained subsequently during assessment proceedings.

5.4 *The AR has drawn attention to the fact that the A.O. had directly charged interest at 36% on the average debtors for the respective year even though not a single paper other than the B/4 document, was found during the search which could establish that the assessee had actually received the additional interest from any of the borrowers. In fact, in my opinion, the document B/4 is not verified by the AO as containing authentic information by cross checking, before using it against the appellant. It is necessary always to ascertain the contents of any document found so as to rule out any arbitrariness while applying/ using the same to prove suppression of income, more so, since such documents have to finally stand the test of rules of evidence and law. I agree with the contentions of the AR that the assessee could not have charged an interest at a rate higher than that of the rate prescribed under the Money Lending Act as there was no direct and corroborated evidence of such rate charged, and that the additional income in the later year AY 2015-16 was offered just to buy peace and avoid protracted litigations.*

5.5 *As regards the seized document B/4, I find force in the arguments of the A.R. that except the said seized material (B/4), no other incriminating material was found during the search action for the year under consideration. Whether a document is incriminating or not is a question of fact and can only be ascertained through proper enquiry. The AO has also not proved his case with any independent inquiry made in this matter that can justify the stand taken by him. In such a circumstances, the judgment in the case of **CIT Vs C.J. Shah & Co., 246 ITR 671 (Bom)**, is squarely applicable to the facts of the case,*

wherein it was held that "there is no material seized to justify any sales figure to be included for a period earlier to the said period of three months for which the loose paper, were found. The estimation made by the A.O, for earlier period was deleted by Tribunal and the order of the Tribunal was confirmed by Bombay High Court.

5.6 *Further, the Hon. Mumbai ITAT's judgement in the case of **ALIT Vs. Thakkar Popatlal Velji Sales Ltd. ITA No. 4812 of 2010** is also applicable to the appellant's case wherein it was held that "Considering the above, we are opinion that it is a reasonably settled issue that no estimation can be made by the AO for which no incriminating material were discovered and no estimations were made based on the theories of extrapolation and multiplication. In the absence of any material of evidence found during the course of search to suggest that assessee was all along indulging in such unaccounted transactions, we are of the opinion that the decision of the CIT(A) to all the issues raised in all the three appeals does not call for any interference..." **The Hon. Bombay High Court has affirmed the above judgement in ITA No.2266 of 2013.***

5.7 *The appellant has rightly relied on Mumbai ITAT's decision in the case of **Uday C. Tamhankar** vs. DCIT, wherein it is held that the fact that the assessee admitted undisclosed income for one year does not mean that AO can assume similar undisclosed income is earned in earlier year as well.*

5.8 *Hence, respectfully following the Jurisdictional High Court and Mumbai ITAT's judgment, which has been affirmed by the Bombay High Court, wherein it is held that "Considering the above, we are of the opinion that*

it is a reasonably settled issue that no estimation can be made by the AO for which no incriminating material were discovered and no estimations were made based on the theories of extrapolation and multiplication", I hold that the said addition which was merely based on extrapolation and not on any incriminating material found during the search, is against the Principles of Law and therefore is unsustainable.

5.9 I find force in the above submissions of the AR that the interest income added by the AO without any incriminating material being found during the search for the FY 2008-09 to 2011-12, is not sustainable. The Ld. AR also vehemently argued that no other evidence worth its name was brought on record for the year under reference, proving that the said interest income was undisclosed by the appellant. The AR has also relied on the Judgements in favour of the assessee which are acceptable on the ground that in case of completed assessments, assessment u/s 153 A should be made on the basis of incriminating material i.e. (a) the books of accounts and other documents found in the course of the search but not proceeded in the course of original assessment and (b) undisclosed income or property discovered in the course of search.

5.10 Considering the facts of the case, the addition made of Rs. 5,93,707/- for A. Y. 2009-10, Rs. 7,27,366/- for A. Y. 2010-11, Rs. 13,67,354/- for A. Y. 2011-12 and Rs. 15,32,863/- for A. Y. 2012-13 are hereby directed to be deleted."

10. From perusal of the record, we observed that the assessee is a money lender holding valid license under the Money Lending (Regulation) Act, 2014, since last 15-20 years. He is operating his business of money

lending from Sarafa Bazar, Itwari, Nagpur, in accordance with the rules and regulations as laid down by the Maharashtra Money Lending (Regulation) Act, 2014 and Bombay Money Lenders Act, 1946. The assessee charges interest at the rate of 12% to 15% per annum i.e. 1% or 1.25% per month to his customers which is prescribed under Money Lending Act. The detailed interest account, which was regularly maintained for the year under consideration, was produced before the A.O. as required by him. During the search proceedings, a printout identified as "gahan" and numbered as B/4 giving figures of interest calculation in money lending business was seized. In the said seized printout, the rate of interest charged to the customers, was shown at 3% per month.

11. We also observed that the document B/1 is receipt book containing the details of amounts received back under 'gahan' and were duly signed by both the parties i.e. the lender as well as borrower. The said voucher is issued to the borrower by the lender after the loan is repaid by the borrower and it is in prescribed format under Bombay Money Lenders Act, 1946. The document B/2 is a voucher book containing terms and conditions of loans given under 'gahan' and duly signed by both the parties i.e. the lender as well as borrower. The said voucher is issued to borrower by the lender and it is in prescribed format under

Bombay Money Lenders Act, 1946. The said seized voucher books are primary evidences and contained all the information of the said money lending business including name and address of the parties, the amount of loan given, the description of assets pawned by the said party, rate of interest charged and the period of loan. The copy of the said registers B/1, B/2 and the ledger accounts for all the relevant assessment years, including the year under consideration, were submitted before the lower authorities. These two documents show that interest was charged at 12% to 15% annually and not @ 36% as assumed by the A.O. From the perusal of the seized documents B-1 and B-2, we find that the AO was not justified in assuming additional interest income merely on the basis of B-4 document which is unverifiable evidence and by completely disregarding the primary evidence in form of B-1 and B-2 documents, especially when no other incriminating documents were found during the course of search and also as no other adverse material was obtained subsequently during assessment proceedings.

12. The Id. AR has drawn our attention to the fact that the A.O. had directly charged interest at 36% on the average debtors for the respective year even though not a single paper other than the B/4 document was found during the search which could establish that the

assessee had actually received the additional interest from any of the borrowers. In fact, in our view, the document B/4 is not verified by the AO as containing authentic information by cross checking, before using it against the assessee. It is necessary always to ascertain the contents of any document found so as to rule out any arbitrariness while applying/using the same to prove suppression of income, more so, since such documents have to finally stand the test of rules of evidence and law. We agree with the contentions of the AR that the assessee could not have charged an interest at a rate higher than that of the rate prescribed under the Money Lending Act as there was no direct and corroborated evidence of such rate charged, and that the additional income in the later year AY 2015-16 was offered just to buy peace and avoid protracted litigations. As regards the seized document i.e. B/4, we find force in the arguments of the A.R. that except the said seized material (B/4), no other incriminating material was found during the search action for the year under consideration. Whether a document is incriminating or not is a question of fact and can only be ascertained through proper enquiry. The AO has also not proved his case with any independent inquiry made in this matter that can justify the stand taken by him. In such a circumstances, we draw strength from the judgment of the Hon'ble Bombay High Court in the case of **CIT Vs C.J. Shah & Co., 246 ITR 671 (Bom)**, wherein it was held that "there is no material seized

to justify any sales figure to be included for a period earlier to the said period of three months for which the loose paper, were found." The estimation made by the A.O, for earlier period was deleted by Tribunal and the order of the Tribunal was confirmed by Bombay High Court. We also drawn strength from the decision of Coordinate Bench of the Mumbai ITAT in the case of **ACIT Vs. Thakkar Popatlal Velji Sales Ltd. ITA No. 4812 of 2010**, wherein it was held by the Coordinate bench that "Considering the above, we are opinion that it is a reasonably settled issue that no estimation can be made by the AO for which no incriminating material were discovered and no estimations were made based on the theories of extrapolation and multiplication. In the absence of any material of evidence found during the course of search to suggest that assessee was all along indulging in such unaccounted transactions, we are of the opinion that the decision of the CIT(A) to all the issues raised in all the three appeals does not call for any interference..." The Hon'ble Bombay High Court has affirmed the decision of the Coordinate Bench of the Mumbai ITAT in ITA No.2266 of 2013.

13. We find force in the submissions of the Id. AR that the interest income added by the AO without any incriminating material being found during the search for the FY 2008-09 to 2011-12 are

not sustainable. The Ld. AR also vehemently argued that no other evidence worth its name was brought on record for the year under reference, proving that the said interest income was undisclosed by the assessee. The AR has also relied on the Judgements in favour of the assessee which are acceptable on the ground that in case of completed assessments, assessment u/s 153A of the Act should be made on the basis of incriminating material i.e. (a) the books of accounts and other documents found in the course of the search but not proceeded in the course of original assessment and (b) undisclosed income or property discovered in the course of search. No new facts and circumstances of the case has been put forth by the Id. CIT-DR. The Id. CIT(A) has passed a well speaking order discussing all the material facts and circumstances as well as legal proposition of law, therefore, considering the totality of the facts and circumstances, we do not find any reason to interfere or deviate from the findings so recorded by the Id. CIT(A), accordingly, we uphold the same.

14. In the result, this appeal of the revenue is dismissed.

15. Now we take ITA No. 327, 328, 329, 330, 331 and 332/Nag/2019 for the A.Y. 2010-11 to 2015-16.

In all these appeals, grounds of appeal, facts of the case and submissions of both the parties are identical to the grounds, facts and submissions of ITA No. 326/Nag/2019 for the A.Y. 2009-10, therefore, our finding given in ITA No. 326/Nag/2019 for the A.Y. 2009-10 shall apply mutatis mutandis in all these appeals of the Revenue also.

16. In the results, all these appeals of the Revenue are dismissed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-
(O.P. KANT)
Accountant Member

Sd/-
(SANDEEP GOSAIN)
Judicial Member

Nagpur

Dated:- 20/12/2021

*Ranjan

Copy of the order forwarded to:

1. The Appellant- The A.C.I.T., Central Circle-2(2), Nagpur.
2. The Respondents- Shri Narendra Maganmal Kothari, Nagpur.
3. CIT
4. The CIT(A)
5. DR, ITAT, Nagpur
6. Guard File (ITA No. 326, 327, 328, 329, 330, 331 & 332/NAG/2019)

By order,

Asst. Registrar