

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. Nos. 604 to 607/Mum/2021
(Assessment Years 2007-08 to 2010-11)

Vijaya chandrapal Iyer 1001, Kshitij, Ghatla Road Chembur Mumbai-400 071 PAN : AADPI3367F (Appellant)	Vs.	DCIT, CC-6(2) Aaykar Bhawan, M.K.Road Mumbai-400 020 (Respondent)
--	-----	--

Assessee by	Shri Prateek Jain
Department by	Shri T.Sankar
Date of Hearing	11.01.2022
Date of Pronouncement	12. 01.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

These appeals by the assessee are directed against the order of learned Commissioner of Income Tax (Appeals)-54, dated 24.02.2021 pertain to the respective assessment years as above

2. Since the grounds are common and connected and the appeals were heard together, these have been consolidated and disposed of by this common order.

3. One common issue raised in this appeal read as under:-

On the facts and circumstances of the Appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in confirming the action of Ld. Assessing Officer in invoking the provisions of section 153A which is illegal, bad in law or otherwise void-ab-initio for the want of jurisdiction, on the ground that no incriminating document/ evidence was found for the year under consideration.

4. On merits, the grounds raised are read as under:-

1. On the facts and circumstances of the Appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in confirming the action of Ld. Assessing Officer in invoking the provisions of section 153A which is illegal, bad in law or otherwise void-ab-initio for the want of jurisdiction, on the ground that no incriminating document/ evidence was found for the year under consideration.

2. On the facts and circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the action of Ld, AO in not providing adequate opportunity of being heard.

3. On the facts and circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the action of Ld. AO of disallowing deduction under Chapter VI A to the extent of Rs. 74,2737- as per para 7 of the impugned order.

5. Brief facts of the case are that in this case assessment was framed by the AO under section 143(3) r.w.s. 153A pursuant to search and seizure operation. Upon assessee's appeal, Ld.CIT(A) has granted part relief.

6. Against this order, assessee is in appeal before ITAT.

7. I have heard both the parties and perused the records. Ld. Counsel of the assessee submitted that these are unabated assessment and the addition has been made without any incriminating material found during search. Hence, he submitted that the addition is liable to be deleted on the touchstone of Hon'ble jurisdictional High court decision in the case of CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 58 taxmann.com 78 (Bom)

8. Upon hearing both the parties, it is noted that this ground was not raised before the Ld.CIT(A). However, the Ld. Counsel of the assessee pleaded that this is a jurisdictional issue going to the root of the matter. Hence, he pleaded that the same

may kindly be admitted on the touchstone of Hon'ble Supreme court decision in the case of NTPC Ltd Vs CIT [229 ITR 383].

9. Upon careful consideration, I note that this is a legal issue going to the root of the matter. This was not before the authorities below. Hence, I deem it appropriate to remit issue to the file of Ld.CIT(A).

10. As regards, the issue on merits, I note that one common ground in this regard is the lack of proper opportunity. Since the issue of jurisdiction is remitted to Ld.CIT(A) and as the assessee is also raising the issue of lack of proper opportunity, the Ld.CIT(A) may also considered the merits of the case afresh.

11. In the result, these appeals by the assessee are allowed for statistical purposes.

Pronounced in the open court on 12 .01.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 12 /01/2022

Thirumalesh, Sr.PS

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.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai