

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**IT(SS)A Nos.38, 39, 40, 41, 42 & 43/RJT/2018
A.Ys.: 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15
ITA No.68/RJT/2018
A.Y. : 2015-16**

Shri Inayatalikhan A. Pathan
Plot No.2, Aziz Villa,
Shahigara Colony,
Veraval.
[PAN – AARPP 3242 N]
(Appellant)

vs. The Assistant Commissioner of
Income Tax, Central Circle-2,
Rajkot.

(Respondent)

Appellant by : Shri Mehul Ranpura, A.R.
Respondent by : Shri Ajay Pratap Singh, CIT(D.R.)

Date of hearing : 04.01.2022
Date of pronouncement : 01.02.2022

ORDER

PER BENCH :

These seven appeals are filed by the same assessee against a consolidated order dated 23rd January, 2018, passed by the CIT(A)-11, Ahmedabad for the Assessment Years 2009-10 to 2015-16.

2. Since the assessee has raised common grievance in all these appeals for A.Ys. 2009-10 to 2014-15, therefore, the grounds as well as additional ground raised in IT(SS)A No.38/RJT/2018 for Assessment Year 2009-10 are reproduced as under :-

- “1.0 The grounds of appeal mentioned hereunder are without prejudice to one another.
- 2.0 The learned Commissioner of Income Tax (Appeals)-11, Ahmedabad [CIT(A)] erred on facts as also in law in retaining addition of Rs.1,50,000/- made on account of alleged unexplained salary received

from Gopal Sea Foods. The addition retained is totally unjustified and uncalled for which deserves to be deleted and may kindly be deleted.

3.0 *Your Honor's appellant craves leave to add, amend, alter or withdraw any or more grounds of appeal on or before the hearing of appeal.*

Additional Ground:

"The Ld. CIT(A) erred in not deciding ground of appeal regarding finalizing the assessment proceeding u/s 153A of the Act by making adjustments to the returned income in absence of any incriminating document found during the course of search. Action of the AO in making variation in the already completed assessment is totally invalid and illegal, which may kindly be annulled."

Grounds in ITA No. 68/Rtj/2018 for A.Y. 2015-16

"1.0 The grounds of appeal mentioned hereunder are without prejudice to one another.

2.0 The learned Commissioner of Income-tax (Appeals)-11, Ahmedabad [CIT(A)] erred on facts as also in law in retaining addition of Rs. 3,00,000/- made on account of alleged unexplained salary received from Gopal Sea Foods. The addition retained is totally unjustified and uncalled for which deserves to be deleted and may kindly be deleted.

3.0 Your Honor's appellant craves leave to add, amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal."

3. Since for Assessment Years 2009-10 to 2014-15 the factual aspects are common/identical, therefore, we are taking the facts of Assessment Year 2009-10.

4. The assessee is an individual working as a General Manager of M/s. Gopal Sea Foods, Veraval and earning salary income. He is also engaged in the business of trading of fishes and also deriving income from other sources i.e. interest income etc. Return of income for A.Y. 2009-10 was filed under Section 139 of the Income Tax Act on 26.08.2009 declaring total income at Rs.3,15,310/-. Search and seizure action under Section 134(1) of the Act was carried out at the business premises of M/s Gopal Sea Foods and other concerns/persons of M/s. Gopal group on 03.03.2015. Being an

employee of the said group, residential premises of the assessee was also covered in the search. Consequent upon the search, proceedings under Section 153A of the Act was initiated while issuance of notice under Section 153A of the Act dated 12.10.2015. During the course of recording statement under Section 132(4) of the Act, the assessee was asked to state the income/emoluments received by him from M/s Gopal Sea Foods. In response, the assessee has given a vague answer. During the search no document was found which can be stated as incriminating in nature. The Assessing Officer relying upon the statement of the assessee completed the assessment thereby making the addition of Rs.30,00,000/- as undisclosed salary income.

5. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. The Ld. A.R. submitted that the assessee has filed additional grounds for Assessment Years 2009-10 to 2014-15 thereby stating that the CIT(A) erred in not deciding regarding finalising the assessment proceedings under Section 153A of the Act by making adjusted returned income in absence of incriminating documents found during the course of search. The Ld. A.R. relied upon the decision of the Hon'ble Gujarat High Court in the case of PCIT vs. Soumya Construction (P) Ltd. (2017) 81 taxmann.com 292. The Ld. A.R. also relied upon the decision of Hon'ble Gujarat High Court in the case of Pr. CIT vs. Rameshbhai Jivarbhai Desai (2020 Taxmann.com 333. On merit, the Ld. AR submitted that during the course of search carried out at the various business premises of the Gopal Group, not a single document or data was recovered evidencing any unaccounted payment made to the assessee. In fact, during the search, no amount of cash or other valuable/ asset/ investment were recovered from the assessee. Thus, the addition under Section 68 does not sustain and the proceedings under Section 153A does not survive.

7. The Ld. D.R. relied upon the Assessment Order and the order of the CIT(A).

8. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that during the search and seizure operation, the Revenue has not found any incriminating documents or any cogent document or

evidence relating to the assessee directly or indirectly. The addition made by the Assessing Officer as relates to unaccounted salary does not sustain in the eyes of law as the salary vouchers which was presented before the Assessing Officer clearly shows the actual salary paid to the assessee which was verifiable from the records of the assessee's bank account and other relevant documents. Merely relying on the statement which the Assessing Officer as well as the CIT(A) though admitting that the said statement is vague and inconsistent cannot be the basis for addition. The reliance of the decision in case of Saumya Construction (supra) by the Ld. AR is apt in the present case. The Hon'ble Gujarat High Court held as under:

"19. On behalf of the appellant, it has been contended that if any incriminating material is found, notwithstanding that in relation to the year under consideration, no incriminating material is found, it would be permissible to make additions and disallowance in respect of all the six assessment years. In the opinion of this court, the said contention does not merit acceptance, inasmuch as, the assessment in respect of each of the six assessment years is a separate and distinct assessment. 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 v. Assistant Commissioner of Income Tax (supra). Besides, as rightly pointed out by the learned counsel for the respondent, the controversy involved in the present case stands concluded by the decision of this court in the case of Commissioner of Income-tax-1 v. 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.

20. For the foregoing reasons, it is not possible to state that the impugned order passed by the Tribunal suffers from any legal infirmity so as to give rise to a

*question of law, much less, a substantial question of law, warranting interference.
The appeal, therefore, fails and is, accordingly, dismissed.”*

In the present case also, no incriminating documents were found and the only basis for the addition was that of statement which was not confronted to the assessee at all. Thus, assessment itself is not just and proper. Therefore, the additional ground raised by the assessee for Assessment Years 2009-10 to 2014-15 is allowed and the addition does not sustain in all these appeals.

9. In the result IT(SS)A Nos.38 to 43/RJT/2019 for Assessment Years 2009-10 to 2014-15 are allowed.

10. As regards ITA No.68/RJT/2018 for Assessment Year 2015-16, it is pertinent to note that the addition made by the Assessing Officer under Section 143(3) proceedings is solely based on the search and seizure wherein no document contrary to the assessee's records were found. The salary income was properly explained by the assessee with the support of the evidences put up before the Assessing Officer as well as before the CIT(A). Therefore, in this year i.e. .A.Y. 2015-16 addition does not sustain relating to unaccounted salary income.

11. As regards unexplained investments, the assessee from the records and the evidences put up before the CIT(A) as well as Assessing Officer has given the details about the investments which were not doubted by the Assessing Officer during the assessment proceedings and merely on the vague ground the said addition was made. ITA No.68/RJT/ 2018 for A.Y. 2015-16 is also allowed.

12. In the result, all the appeals of the assessee are allowed. Order pronounced in the open Court on this 1st day of February, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 1st day of February, 2022

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*