

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 458/Mum/2021

(A.Y: 2013-14)

Mrs. Kranti Bagad, 1302, Sidhivinayak CHS Ltd, Plot No. 3, Sector – 14, Khanda Colony, New Panvel, Panvel – 410206. Maharashtra	Vs.	DCIT, CC-1(1) 9 th Floor, Pratistha Bhavan, Old CGO Bldg Annexe, MK Road, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHPPB2241N		
Appellant	..	Respondent

Appellant by :	Ms.Hiral.D.Sejpal. C.A. AR
Respondent by :	Mr.K.K.Mishra. CIT.DR

Date of Hearing	09.12.2021
Date of Pronouncement	14.02.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-47, Mumbai passed u/s 143(3) r.w.s153A and 250 of the Act. The assessee has raised the following grounds of appeal;

Ground No. 1

1. *On the facts and circumstances of the case and in law, the*

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Hon'ble Commissioner of Income Tax (Appeals)-47 Mumbai [the CIT(A)], erred in upholding the additions made by the Deputy Commissioner of Income Tax, Central Circle - 1(1) (the AO) in his order issued u/s 143(3) r.w.s 153A of the Income Tax Act, 1961 (the Act), ignoring the fact that no incriminating material or evidence was found or seized during the search reflecting undisclosed income.

2. *He further erred in making a factual observation that the appellant's bank pass books and cheque books were found during the search and that it formed incriminating material.*

3. *The Appellant prays that the order be considered illegal, void and bad in law and be quashed.*

Without prejudice to the aforesaid Grounds No1 and 2:

1. *On the facts and circumstances of the case and in law, the Hon'ble CIT (A) erred in partially upholding the addition of Rs. 21,54,500 /- made by the AO with respect to the alleged unexplained credits by alleging that genuineness and creditworthiness of the lenders was not proved.*

2. *The Hon'ble CIT(A) further erred by:*

Violating jurisdiction u/s 68 by assuming and enquiring the income/expense of the lenders i.e. source of source in case of loans received during the year.

3. *The Appellant humbly prays that the AO be directed to delete addition amounting to Rs. 21,54,500/- u/s 68 of the Act.*

2. The brief facts of the case are that the assessee is an individual and is a partner in a firm M/s. Marvell Builder, engaged in the business of construction works. The assessee derives income from salary, house property and share of profit from business and income other sources. The assessee has

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filed the return of income for the A.Y 2013-14 on 31.07.2013 disclosing a total income of Rs.30,63,620/-. A search and seizure operations conducted on Balaji Group concerns on 28.01.2015 and the premises of the assessee was also covered in the search operations. Subsequently, notice u/s 153A of the Act was issued and in response to the notice, the assessee has filed the return of income electronically on 29.06.2016 u/s 153A of the Act disclosing a total income of Rs. 30,73,620/-. Subsequently the A.O has issued notice u/s 142(1) of the Act along with the questionnaire. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details.

3. On perusal of the facts and information, the A.O found that the assessee has obtained unsecured loans from several parties. During the course of assessment proceedings the A.O required the assessee to furnish the confirmation, copy of return of income and bank statements of the lenders to test check the identity, genuineness and creditworthiness. The assessee has filed a letter on 28.11.2016 in respect of unsecured loan creditors referred at Para 3.2 to 3.2.5 of the

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order. The A.O was not satisfied with the submissions, genuineness of the transaction and credit worthiness of the lender and made an addition of unsecured loans of Rs.24 lakhs u/s 68 of the Act and assessed the total income of Rs.54,73,616/- and passed the order u/s 143(3) r.w.s 153A of the Act dated 23.12.2016.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) has considered the grounds of appeal, findings of the scrutiny assessment and submissions of the assessee and in respect of ground of appeal on the validity of assessment u/s 143(3) r.w.s153A of the Act, the CIT(A) has dismissed the ground of appeal. Whereas in respect of unsecured loans addition of Rs 24 lakhs u/s 68 of the Act, the CIT(A) dealt on the facts and the provisions of law and the information submitted referred in the CIT(A) order and granted relief by sustaining the addition to the extent of Rs. 21,54,500/- and partly allowed the appeal of the assessee. Aggrieved by the CIT(A)order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld.AR emphasized on the ground of appeal no 1 that, the assessment framed u/s 143(3) r.w.s 153A of the Act is bad in law as no incriminating material or evidence was found or seized in the search proceedings considering as the undisclosed income. The Ld. AR also submitted that no bank pass book or cheque book of the unsecured loan lenders or creditors were found during the search at the premises to treat as undisclosed income. On the merits of the case, the Ld. AR submitted that the CIT(A) has erred in confirming the addition u/s 68 of the Act of Rs. 21,54,500/- though the identity, genuineness and creditworthiness are proved with the documentary evidence. The Ld.AR substantiated the submissions with the paper book and judicial decisions and prayed for allowing the appeal. Contra, the Ld.DR supported the order of the CIT(A).

6. We have heard the rival submissions and perused the material on record. The Ld. AR made submissions on Ground of appeal No. 1 as there is no incriminating material or evidence is found in connection with the advances/ unsecured loans

obtained was treated as unexplained income u/s 68 by the Act. The A.O. has wrongly presumed the books of accounts belong to the assessee as incriminating documents found in the course of search and made the addition. The Ld.AR submitted that the search has taken place on 28.01.2015 and is an unabated assessment and referred to the observations of the CIT(A). Further the Ld.AR has demonstrated the panchanama copy at page 14 to 16 of the paper book where the books of accounts of the assessee are found and seized during the search. The contentions of the Ld. AR are that the onus of proving the ownership of the documents is duly discharged by providing the information of books of accounts found and the mere disclosure of such evidences does not establish nexus with the undisclosed income and does not warrant the addition.

7. Further, the Ld. CIT(A) has wrongly observed that the appellant pass book and cheque books were found during the search is an incrimination material but, the fact remains that no pass book or cheque book of parties from whom advances were received or from creditors were found during the search at the

assessee's premises. The Ld. AR referred to the submissions made before the A.O and supported with the confirmations, bank statement, pan card in respect of the unsecured loan creditors at page 28 to page 126 of the paper book. The contentions raised by the Ld. AR are that the no incriminating material was found in respect of the loan creditors in the course of the search at the assessee's premises and relied on the judicial decisions as under:

1. *PR Metrani Vs. CIT [2006] 157 taxman 325.*
2. *CIT Vs. Continental Warehousing Corp Ltd, [2015] 58 taxmann.com 78.*
3. *PCIT Vs. Meeta Gutgutia [2018] 96 taxmann.com 468.*
4. *ITO Vs. Iraisaa Hotels P Ltd 97 taxmann.com 623.*
5. *Mr. Gaurav Triyugi Singh Versus ITO.*
6. *CIT Vs. Veedhata Tower Pvt Ltd [2018] (4) TMI 1004.*
7. *Mr. Kusum Jagdishkumar Gupta Vs DCIT, 2021 (8) TMI 897..*

8. We on perusal of the facts are of the opinion that the documents which are found in the course of search as per the panchanama pertains to the assessee's pass book, bank books and others as referred but does relate to any of the creditors which are forming part of advances/loans. We rely on the decision of the Hon'ble Jurisdictional High Court of

Bombay in CIT-II Vs. Continental Warehousing Corporation(Nhava Sheva) Ltd (2015) 58 taxmann.com 78 held as under:

Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of (Scope of) - Whether in a case where pursuant to issue of notice under section 153A assessments are abated, Assessing Officer retains original jurisdiction as well as jurisdiction conferred on him under section 153A for which assessments shall be made for each of six assessment years separately - Held, yes - Whether no addition can be made in respect of unabated assessments which have become final if no incriminating material is found during search - Held, yes [Paras 28, 29 & 30][In favour of assessee]

9. Further in the case of PCIT Vs.Meeta Gutgutia [2018] 96 taxmann.com 468(SC) has held as under:

I. Section [153A](#) of the Income-tax Act, 1961 - Search and seizure (General principles) - Assessment years 2001-02 to 2003-04 and 2004-05 - High Court in impugned order held that invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year - Whether SLP against said decision was to be dismissed - Held, yes [Para 2] [In favour of assessee]

II. Section [69](#), read with sections [132](#) and [153A](#), of the Income-tax Act, 1961 - Undisclosed investment (Franchise fees) - Assessment years 2001-02 to 2004-05 - During course of search, assessee made a disclosure on account of change in method of accounting of franchise fee and undisclosed franchise fees for relevant year - On basis of said statement, Assessing Officer opined that number of outlets for which franchise fee was received had more or less remained same in all assessment years from 2001-02 to 2006-07 and estimated

undisclosed income at a certain percentage of amount of disclosure made by assessee in her statement under section 132(4) - High Court in impugned order held that since no incriminating material was unearthed to show that there was failure by assessee to disclose franchise income, addition made by Assessing Officer was unjustified - Whether SLP against said decision was to be dismissed - Held, yes [Para 2] [In favour of assessee]

10. The Ld. AR relied on the decision of Mr. Gaurav Triyugu Singh Vs. ITO 2020(1)TMI 1153(Bombay).

Section 68 of the Income-tax Act, 1961 - Cash credit (Unsecured loan) - Assessment year 2010-11 - Whether in order to establish receipt of credit in cash, as per requirement of section 68, assessee has to explain three conditions, namely, identity of creditor; genuineness of transaction; and credit worthiness of creditor - Held, yes - Assessee individual had taken unsecured loan of certain amount from one ST - Assessing Officer observed that ST had given said loan amount from its bank account and prior to which this amount was credited to her bank account as gift from two persons, namely, RBS and SST who were her relatives - He was of view that sources RBS and SST were suspected - Consequently, he treated loan amount received by assessee from ST as unexplained cash credit and made additions under section 68 - It was noted that loan amount was given to assessee through cheque by ST - There was no dispute as to identity of creditor ST - There was also no dispute about genuineness of transaction - That apart, creditor had explained as to how credit was given to assessee as amount was received by it from RBS and ST - Further, revenue could not prove or bring any material to impeach source of credit - Whether, on facts, assessee had discharged its onus as per requirement of section 68 and it was not required for assessee to explain sources of source i.e. genuineness of receipt of amount by ST from RBS and SST - Held, yes - Whether, therefore, impugned addition under section 68 made to income of assessee was to be deleted - Held, yes [Paras 13 to 16] [In favour of assessee]

11. Considering the facts and circumstances, we find the submissions of the Ld.AR are realistic and duly supported with the evidences and judicial decisions. We find that no incriminating material was found during the search in respect of undisclosed income or unaccounted money where the A.O has made the addition u/s 68 of the Act. We follow the ratio of decision of the Hon'ble High Court and are of the opinion that in the absence of any incriminating material found on record, the invocation of Sec. 153A of the Act is not justified and accordingly we quash the assessment order. Since the legal issue has been decided and the assessment is annulled and again deciding on the merits of the case become academic and are left open. Accordingly, we allow the grounds of appeal in favour of the assessee.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14.02.2022.

SD/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

SD/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 14.02.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai