

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

BEFORE HON'BLE SHRI SANJAY GARG, JUDICIAL MEMBER

ITA No. 1619/Mum/2021

(Assessment Year 2011-12)

ITA No. 1620/Mum/2021

(Assessment Year 2012-13)

Shri Kevin Ramaniklal Patel
C-403, Dharma Nagar, Opp. Yogi
Nagar, Near Link Road, Borivali
West, Mumbai-400 091

Vs.

The ITO
32(2)(2)Kautilya Bhavan,
BKC, Bandra (East),
Mumbai-400 051

(Appellant)

(Respondent)

PAN No. AIMPP4973H

Assessee by : Shri Pramod Kumar Parida &
Mrs. Kiran Vadher; ARs
Revenue by : Shri Anil Gupta, Dr

Date of hearing: 19.05.2022

Date of pronouncement : 19.05.2022

ORDER

01. The captioned appeals have been preferred by the assessee against the separate orders dated 27.07.2021 & 23.07.2021 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') respectively.

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02. The assessee for Assessment Year 2011-12 in ITA No. 1619/Mum/2021 has taken the following grounds of appeal:-

"TECHNICAL GROUND: Failure of jurisdictional tests

Defective Notice u/s. 148 -served beyond limitation -

Absence of tangible materials change of opinion -

borrowed information not coming out of AO's own volition-Notice may be quashed.

The Id. CIT(A) erred in not appreciating the valid jurisdictional tests: the entire re assessment proceeding is consequently vitiated for want of proper legal sanction and consequently, the Order impugned may be vacated for the following reasons

(a) that the notice u/s 148 dated 30.03.2018 was served beyond the period of limitation,

(b) that the notice u/s. 148 cannot act as substitute in place of proper notice u/s. 153C.

(c) That the reasons to suspect cannot be the reasons to believe.

consequently, on jurisdictional failure at the root level, it becomes non-curable defect, therefore, the notice may be quashed.

2. Addition of alleged capital contribution as Income from Other sources Rs.4,37,770/-

(a) The Id. CIT(A) erred in confirming the addition without appreciating that mere mention of PAN does not automatically subject the Appellant as contributor of capital transactions therefore, the addition out of presumption has no merits and the same may be deleted.

(b) The Id. CIT(A) failed to appreciate that the Appellant had neither booked nor allegedly paid for any plot nor earned any alleged profit, therefore, the addition made out of doubt may be deleted.

3. *Levy of penal interest u/s. 234B & 234C.*

The Appellant, on merits, denies his liability to penal interest.

4. *The Appellant craves leave to add, amend or alter all or any of the above Grounds of Appeal."*

03. At the outset, the learned counsel for the assessee has submitted that as per the facts narrated in the assessment order in this case, a search action was carried out at the premises of one KKP Marketing Pvt. Ltd. and during the search action certain documents were found, on the basis of which the learned Assessing Officer was of the view that the assessee had made certain payments for purchase of a plot at Bhuj. The Assessing Officer of the searched person sent the alleged papers to the Assessing Officer of the assessee. Based on this search and after considering the incriminating material, the Assessing Officer reopened the assessment in the case of the assessee under section 147 of the Act. Now, the plea of the assessee is that relating to the procedure to be adopted in case of search action, separate chapter has been given in the income tax Act, as per which, the proceedings if any, can be carried out against the assessee that could be done under section 153A read with section 153C of the Act. The learned Counsel has further invited my attention to the opening line of Section 153A of the Act which provides "(1) *Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated...."* On perusal of the above opening lines, I observe that

notwithstanding anything contained in Section 147 or 148 of the Act, provision of Section 153A read with Section 153C of the Act would prevail in case of assessment relating to any search action carried out under section 132 of the Act. Since, in this case neither any notice under section 153C of the Act has been issued nor the assessment has been done under the provision of Section 153A read with section 153C of the Act, hence, the assessment carried out under section 147 of the Act is not sustainable.

04. The learned Departmental Representative also could not rebut the above legal position.
05. In view of this, the impugned assessment order passed under section 147 of the Act is hereby quashed. The appeal stands allowed.

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06. Since, the facts and issue involved in assessee's appeal for A.Y. 2012-13 is identical. In view of my findings given above, the assessment order in assessee's appeal for this year assessment year i.e. A.Y. 2012-13 is quashed.
07. In the result, both the appeal of the assessee stand allowed.

Order pronounced in the open court on 19.05.2022.

Sd/-
(SANJAY GARG)
(JUDICIAL MEMBER)



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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai