

THE INCOME TAX APPELLATE TRIBUNAL
“B” Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Kuldip Singh (JM)

I.T.A. No. 837/Mum/2020 (A.Y. 2001-02)
I.T.A. No. 838/Mum/2020 (A.Y. 2002-03)
I.T.A. No. 839/Mum/2020 (A.Y. 2003-04)
I.T.A. No. 840/Mum/2020 (A.Y. 2004-05)
I.T.A. No. 841/Mum/2020 (A.Y. 2005-06)
I.T.A. No. 842/Mum/2020 (A.Y. 2006-07)
I.T.A. No. 843/Mum/2020 (A.Y. 2007-08)

Lata Sanap 2 nd Floor Ramkunvar Mansion Valli Peer Road Kalyan-421 301. PAN : ANLPS6372B (Appellant)	Vs.	DCIT, Central Circle-1 Ashar IT Park 6 th Floor, Road No. 16Z, Wagle Industrial Estate Thane(W)-400604. (Respondent)
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I.T.A. No. 844/Mum/2020 (A.Y. 2004-05)
I.T.A. No. 845/Mum/2020 (A.Y. 2007-08)

Nilesh Sanap 2 nd Floor Ramkunvar Mansion Valli Peer Road Kalyan-421 301. PAN : BGRPS8079K (Appellant)	Vs.	DCIT, Central Circle-1 Ashar IT Park 6 th Floor, Road No. 16Z, Wagle Industrial Estate Thane(W)-400604. (Respondent)
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Assessee by	None
Department by	Shri C.T. Mathew
Date of Hearing	16.06.2022
Date of Pronouncement	21.06.2022

ORDER

PER BENCH:-

All these appeals filed by the respective assessees are directed against the orders passed by Ld CIT(A)-11, Pune. The appeals filed by Smt. LataSanap relate to the assessment years 2001-02 to 2007-08. The appeals filed by Shri

Nilesh Sanap relate to the assessment years 2004-05 and 2007-08. All these appeals are being disposed of by this common order, for the sake of convenience.

2. None appeared on behalf of the assessee. The notices sent by registered post to these assesseees have been returned back unclaimed. Hence we proceed to dispose of the appeals ex-parte, without the presence of the assesseees.

3. Smt. Lata Sanap is wife of Shri Narahari Mahadu Sanap and Shri Nilesh Sanap is their son. Shri Narahari Mahadu Sanap was an employee of Maharashtra State Government working as Tehsildar in Panvel, against whom the Anti Corruption Bureau carried out a search operation. Consequent thereto the present assessments were completed in the hands of both the assesseees.

4. We shall first take up the appeals filed by Smt. Lata Sanap. The first issue urged in all the years relates to legal issues, wherein the assessee has contended that the proceedings initiated u/s 153A of the Act is not valid, even though the notices were issued was u/s 153A read with sec. 153C of the Act. Further, it is contended that the satisfaction recorded u/s 153C of the Act was vague and does not satisfy the well settled parameters in this regard. However, we notice that the Ld CIT(A) has addressed both the issues by his detailed order, which we find to be reasonable and in accordance with law. Accordingly, we reject both the legal grounds urged by the assessee.

5. The next issue relates to the addition of agricultural income declared by the assessee treating it as income from other sources. This issue is common in all the assessment years from 2001-02 to 2007-08. The details of agricultural income declared by the assessee, accepted by the AO, disallowed by the AO and that confirmed by Ld CIT(A) are tabulated below:-

Asst. Year	Declared by assessee	Accepted by AO	Disallowed and assessed as income	Confirmed by CIT(A)
2001-02	1,00,416	Nil	1,00,416	1,00,416
2002-03	3,43,388	69,274	2,74,114	2,74,114
2003-04	1,20,000	Nil	1,20,000	1,20,000
2004-05	1,85,450	13,179	1,72,271	1,72,271
2005-06	3,21,090	Nil	3,21,090	2,15,114
2006-07	3,06,426	1,44,946	1,61,480	23,544
2007-08	397,910	46,695	3,51,215	1,99,638

6. We heard Ld D.R and perused the record. We notice that the assessee Smt. Lata Sanap has started filing returns of income u/s 139 of the Act only from AY 2005-06, wherein the agricultural income had been declared. Subsequently, in the returns of income filed in response to the notices issued u/s 153A for AY 2001-02 to 2007-08, the assessee has declared agricultural income for AY 2001-02 to 2004-05 also. The agricultural income declared in the returns filed u/s 139 as well as u/s 153A were same for AY 2005-06 to 2007-08. Since no return of income was filed u/s 139 of the Act for AY 2001-02 to 2004-05, the Ld CIT(A) confirmed the disallowances made in these four years. For other years, the assessee filed certain sale bills and the Ld CIT(A) accepted 40% of the sales bills and granted relief in respect of the same. He confirmed the disallowance of 60% of the amount of sale bills.

7. From the common order passed by Ld CIT(A) for all these years, we notice that the assessee has purchased 4.10 hectares of agricultural land prior to AY 2001-02. She has purchased 0.20 hectares in FY 2001-02 and 1.15 hectares in FY 2003-04. In total, the assessee is holding 5.45 hectares of land equivalent to 13.625 acres. We notice that the AO as well as the Ld CIT(A) has accepted the agricultural income upto 40% of the amount of sale bills produced before them. However, the fact remains that the assessee is holding agricultural lands and the fact that cultivation was going thereon was also

accepted. There may be genuine difficulty for the assessee in producing bills of past years, when the assessments were completed in 2008, in view of the fact that the agriculture market is mostly unorganised in our Country. We are also of the view that it is unreasonable not to accept the availability of agricultural income in AY 2001-02 to 2004-05, when the assessee is holding agricultural land. In fact, the AO has accepted part of agricultural income in AY 2002-03 and 2004-05. Accordingly, we are of the view that there is no reason to restrict the agricultural income to 40% of the bills produced. The generation of agricultural income without bills cannot be ruled out. Since there was failure on the part of the assessee in substantiating the quantum of agricultural income, in the facts and circumstances of the case, we are of the view that the entire income cannot be accepted. Accordingly, we are of the view that the agricultural income may be accepted to the extent of 70% of the amount declared by the assessee in all the years, i.e., from AY 2001-02 to 2007-08. Accordingly, we modify the orders passed by Ld CIT(A) on this issue in all the years under consideration and direct the AO to accept agricultural income to the extent of 70% of the amount declared by the assessee in each of the years.

8. We shall now take up individual issues in each of the assessment years. In AY 2001-02, the assessee is challenging the addition of Rs.8.00 lakhs made u/s 68 of the Act. The AO noticed that the assessee has shown advance of Rs.13.00 lakhs for purchase of a property. It was submitted that the said property was proposed to be purchased jointly by the assessee along with others. It was submitted that other persons have contributed Rs.8.00 lakhs. Since the assessee could not prove credit worthiness of other contributors, the AO assessed the above said amount of Rs.8.00 lakhs and the Ld CIT(A) has confirmed the same.

9. We heard Ld D.R. and perused the record. We notice that it is the submission of the assessee that the property was proposed to be purchased jointly and the amount of Rs.8.00 lakhs was contributed by other co-owners

for the land proposed to be purchased, meaning thereby, it is not a case of loans being taken by the assessee. If that is found to be true, in our view, the assessee cannot be assessed u/s 68 of the Act in respect of this amount, since the amount of Rs.8.00 lakhs cannot be considered to be investment made by the assessee. However, the factual position in this regard is required to be examined. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining it afresh. If the assessee is considered to have made the entire investment of Rs.13.00 lakhs, then the assessee is liable to prove the cash credits of Rs.8.00 lakhs in terms of sec. 68 of the Act. Since the assessee has failed to prove the cash credits, the addition of Rs.8.00 lakhs is liable to be confirmed. On the other hand, if the assessee is not considered to have made the investments to the extent of Rs.8.00 lakhs, then the same is not assessable u/s 68 of the Act. Accordingly, we restore this issue to the file of AO.

10. We shall now take up the appeal filed for AY 2002-03. The AO assessed investment of Rs.24,000/- made in land at CTS No.159. We notice that the AO had made addition of unexplained investment of Rs.3,24,000/-. The Ld CIT(A) has accepted the sources to the extent of Rs.3.00 lakhs from out of agricultural income. However, the assessee had declared agricultural income of Rs.3,43,388/-, which has been accepted partly as agricultural income and partly as income from other sources. We notice that the investment of Rs.24,000/- also stands explained by the amount of agricultural income. Accordingly, we direct deletion of Rs.24,000/-.

11. We shall now take up the appeal filed for AY 2003-04. The AO assessed unexplained investment in KVPs to the extent of Rs.3,75,000/-. The assessee had declared interest income of Rs.30,000/- from KVPs in AY 2003-04. The AO noticed that the Balance Sheet did not contain investments in KVPs. Accordingly, the AO computed the corresponding amount of investment relatable to the interest income of Rs.30,000/- taking the interest rate @ 8%, which was computed at Rs.3,75,000/-. The AO assessed the same as

unexplained investment in the hands of the assessee. The Ld CIT(A) upheld the addition to the extent of Rs.2,50,000/-. It is the submission of the assessee in the grounds of appeal that the KVPs were purchased in the year 1997 and the said investment was reflected in the Balance Sheet till 31.3.2002. It is also submitted that the said KVPs were found physically during the course of search. We notice that these factual aspects have not been properly appreciated by the tax authorities. We also noticed that the addition has been made by computing the possible value of investment on the basis of interest income declared by the assessee. If the investment has not been made during the year under consideration, there is no requirement of making any addition. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of AO for examining the submissions of the assessee and for taking decision in accordance with the law in the light of discussions made supra.

12. We shall now take up the appeal filed for AY 2004-05. The assessee had purchased galas for a sum of Rs.5,95,000/- and claimed the sources to be amount received from her husband. In turn, the husband of the assessee claimed that he has received loan of Rs.6.00 lakhs from some other person. Since the sources have not been properly explained, the AO assessed the amount of Rs.5.00 lakhs in AY 2004-05.

13. Before Ld CIT(A), the assessee claimed that the investments have been made in two years, viz., Rs.2,95,000/- in AY 2004-05 and Rs.3.00 lakhs in AY 2005-06. The sources were claimed to be withdrawals from Abhinav Bank and further submitted that the withdrawals and investments are reflected in the books of accounts. Since the books have been prepared after the date of search, the Ld CIT(A) did not give credence to the books and accordingly directed the AO to assess Rs.2,95,000/- in AY 2004-05 and Rs.3,00,000/- in AY 2005-06.

14. We heard Ld D.R and perused the record. If the investments have been made out of cash withdrawals from Abhinav Bank and the funds available in the banks have been accepted, in our view, such withdrawals could be accepted as sources. In that case, there is no requirement for making any addition as unexplained investment. However, it is required to be shown that the funds available with Abhinav Bank has been accepted by the AO. We notice that relevant details are not available on record. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of AO for examining it afresh in the light of discussions made supra.

15. We shall now take up the appeal filed for AY 2005-06. We noticed earlier that the Ld CIT(A) has directed the AO to assess a sum of Rs.3.00 lakhs in AY 2005-06 and Rs.2.95 lakhs in AY 2004-05. We have restored the issue of addition of Rs.2.95 lakhs to the file of AO. Since the facts relating to the addition of Rs.3.00 lakhs are linked to the above said addition and since we have restored the same to the file of AO in AY 2004-05, we restore the addition of Rs.3.00 lakhs to the file of AO with similar directions.

16. The next issue urged in AY 2005-06 relates to the addition of unexplained sundry creditors balance of Rs.4,65,412/-. The assessee did not furnish the details of sundry creditors on the reasoning that his books of accounts have been washed away by floods. Hence the AO assessed the sundry creditors balance as income of the assessee. The Ld CIT(A) also confirmed the same. In the interest of natural justice, we are of the view that the assessee may be provided with one more opportunity to prove the sundry creditors by obtaining confirmation from them. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of AO. After affording adequate opportunity to the assessee, the AO may take appropriate decision in accordance with law.

17. We shall now take up the appeal filed for AY 2006-07. The AO made addition of sundry creditors balance of Rs.2,74,119/- in AY 2006-07 on

identical reasoning discussed by him in AY 2005-06. We have set aside the order passed by Ld CIT(A) in AY 2005-06 for the reasons discussed in the preceding paragraph. Accordingly, on identical reasoning, we restore this issue to the file of AO. After affording adequate opportunity to the assessee, the AO may take appropriate decision in accordance with law.

18. The next issue urged in AY 2006-07 relates to the addition of Rs.86,500/-. The AO had made the addition of Rs.86,500/- in AY 2005-06. It was noticed by Ld CIT(A) that the above said loan was taken during the financial year relevant to AY 2006-07. Hence the Ld CIT(A) deleted the addition in AY 2005-06 and directed the AO to assess the same in AY 2006-07. We notice that the assessee has taken loan from Housabai Society and the addition has been made for want of confirmation. In our view and in the interest of natural justice, we are of the view that the assessee may be provided with an opportunity to get confirmation from the Society. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of AO. After affording adequate opportunity to the assessee, the AO may take appropriate decision in accordance with law.

19. We shall now take up the appeal filed for AY 2007-08. The issue relates to the addition of Rs.72,000/-. The AO assessed the same in AY 2006-07. It was noticed by Ld CIT(A) that the loan of Rs.72,000/- was taken from Baktapur Society during April 2006 falling in AY 2007-08. Accordingly, he directed the AO to assess the above said sum of Rs.72,000/- in AY 2007-08. We notice that the assessee has claimed to have taken loan from Baktapur Society and the addition was made for want of confirmation letter. In our view and in the interest of natural justice, we are of the view that the assessee may be provided with an opportunity to get confirmation from the Society. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of AO. After affording adequate opportunity to the assessee, the AO may take appropriate decision in accordance with law.

20. We shall now take up the appeal filed by Shri Nilesh Sanap for AY 2004-05. The only issue urged by the assessee in this year relates to the addition of payment of LIC premium of Rs.31,466/- as unexplained investment. Since the payment of LIC premium referred above was not reflected in the books of account, the AO assessed the same as unexplained amount. Before Ld CIT(A), the assessee claimed that he has withdrawn a sum of Rs.51,480/- from his capital account and the said withdrawal was used to make the LIC payment. Since the explanation was found to be too general, the Ld CIT(A) confirmed the disallowance. In our view also, the explanation so furnished by the assessee does not explain the sources for making LIC payment of Rs.31,466/- Accordingly, we confirm this addition.

21. We shall now take up the appeal filed by Shri Nilesh Sanap for AY 2007-08. The AO made addition of Rs.1,54,750/- relating to the value of computer and domestic equipments shown in Balance sheet. Before Ld CIT(A), the assessee submitted that the deposit of Rs.1,00,000/- received and rental income of Rs.90,000/- together explain the sources for purchase of above assets. The Ld CIT(A) confirmed addition to the extent of Rs.1,00,000/- observing that the assessee has not explained the details of deposits.

22. We heard Ld DR on this issue and perused the record. The assessee has explained the sources to be deposit of Rs.1,00,000/- and rental income of Rs.90,000/- received by the assessee. Both these receipts and the investments are reflected in the Balance Sheet. Accordingly, the assessee submitted that even if the Balance Sheet is not accepted, then the deposit amount of Rs.1,00,000/- and rental income of Rs.90,000/- would explain the sources for purchase of computer and domestic appliances. We notice that the AO has accepted the genuineness of deposit of Rs.1,00,000/-. Accordingly, we are of the view that the aggregate amount of Rs.1,90,000/- would explain the sources for making investments in computer and domestic appliances to the extent of Rs.1,54,750/-. Accordingly, we set aside the order passed by Ld

CIT(A) on this issue and direct the AO to delete the addition of Rs.1,00,000/- confirmed by Ld CIT(A).

23. In the result, all the appeals filed by Smt Lata Sanap is treated as partly allowed. The appeal filed by Shri Nilesh Sanap for AY 2004-05 is dismissed and the appeal filed by him for AY 2007-08 is allowed.

Order pronounced in the open court on 21.06.2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 21/06/2022

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

PS