

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

Before

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri Laliet Kumar, Judicial Member

ITA Nos.112 & 113/Hyd/2020		
Assessment Years: 2004-05 & 2006-07		
Anurag Gupta, Hyderabad. PAN : ACGPG1952K. (Appellant)	Vs.	The Asst.Commissioner of Income Tax, Central Circle – 3, Hyderabad. (Respondent)
Assessee by:	Sri P. Murali Mohan Rao, C.A.	
Revenue by:	Sri K.P.R.R. Murthy.	
Date of hearing:	30.06.2022	
Date of pronouncement:	30.06.2022	

ORDER

Per Laliet Kumar, J.M.

These are the two connected appeals filed by the assessee feeling aggrieved by the separate orders of Id. Commissioner of Income Tax (Appeals) – 6, Hyderabad, (hereinafter referred as “Id.CIT”) passed on 02.12.2019 for A.Y. 2004-05 and 2006-07, respectively.

2. We first take up ITA No.112/Hyd/2020 for A.Y. 2004-05.

1. *The Ld.CIT(A) has erred in both on facts and in law in completing the assessment under sec 143(3) r.w.s 153A of the Act.*

2. (a) *The Ld.CIT (A) ought to have appreciated the fact that no assessment u/s 143(3) r.w.s 153A can be done without finding any incriminating material belonging to the assessee during the search assessment.*

(b) *The Ld CIT(A) has erred in upholding the AO's contention in completing the Assessment u/s 143(3) r.w.s 153A on 24.12.2011*

without issuing the statutory notice u/s 143(2) of the Act, which is without Jurisdiction and thus is invalid.

(c) The Ld. CIT (A) ought to have followed the ratio laid down by the Apex Court in the case of ACIT & Anr. v M/s. Hotel Blue Moon in Civil Appeal No.1198 of 2010 dated 02.02.2010 and annulled the impugned assessment before completion of which no notice u/s 143(2) of the Act has been issued and served on the assessee for the assessment year under consideration.

(d) The Ld. CIT (A) erred in not considering the fact that no notice u/s 143(2) of the Act was issued as per the order sheet copies.

(e) Without prejudice to the above ground the L.d erred in issuing one notice u/s 143(2) for all assessment years.

(f) Without prejudice to the above ground The Ld. CIT ought to have fairly appreciated the fact that the has erred in issuing the over written notice u/s which is not valid in law.

(g) Without prejudice to the above ground The Ld.CIT(A) erred in not appreciating the fact that Notice Under section 143(2) is not served upon assessee.

3. The Ld.CIT(A) erred in adding an amount of Rs. 4,80,080/u/s 68 of the I.T. Act as unexplained income.

4. The Ld.CIT(A) erred in not considering the facts regarding addition of Rs. 4,80,080/- as unexplained income setting aside the assessee's explanation in this regard.”

3. The brief facts of the case are that a search was carried out at the residence of assessee on 11.03.2010. In response to the notices u/s 153A, assessee filed return on 29.06.2011 declaring income of Rs.1,73,209/-. Along with notices u/s 143(2) and 142(1) of the Act, questionnaire was issued to the assessee on 18.11.2011 calling certain information. During the F.Y. 2003-04, assessee was in receipt of Licensee fee of Rs.4,80,000/- for his flat at Mumbai. However, as seen from the return of income filed and the information furnished, assessee had not disclosed the same. Hence, the same was treated as undisclosed income and was added to the income of the assessee and accordingly, the Assessing Officer completed the assessment u/s 143(3) r.w.s 153A of the Act.

4. Feeling aggrieved by the order of Assessing Officer, assessee carried the matter before Id.CIT(A), who also confirmed the addition made by the Assessing Officer by holding as under :

“10.1 In regard to merits of the case, it is contended by the assessee that the assessee had entered into a Leave and License Agreement with Mrs.Rajani, W/o.Suresh Mohan Gidwani on 18.01.2003 allowing her to use the property owned by the assessee at Mumbai for a temporary period of 14 months and on a monthly compensation of Rs.40,000 /- per month. However, it is contended by the assessee that, within a span of 6 days after entering into the agreement i.e ., on 24.01.2003, a deed of cancellation was entered into by the assessee and Mrs.Rajani cancelling the original Leave and License Agreement (supra).

10.2 In support of the assessee's claim, a copy of the deed of cancellation was produced during the course of appellate proceedings. In view of this, the assessee contended that by virtue of cancellation of the original agreement itself, the amount of Rs.4,80,000/- ipso facto becomes infructuous and, hence, the addition made in respect of undisclosed income cannot be sustained.

10.3 I have carefully considered the contentions of the assessee and additional evidence filed thereof, and examined the same in the light of the documentary evidence placed on record. It is true that the original agreement has been terminated or cancelled within a period of 7 to 8 days. However, there is no evidence on record to show that the assessee has returned back the amount of Rs.4,80,000/- received from the licensee. Under the circumstances, I am of the considered opinion that, the assessee had actually received license fee and the same was retained notwithstanding the fact that the original agreement was terminated. In view of this, the grounds of appeal raised by the assessee on this issue are dismissed.”

5. Feeling aggrieved by the order of Id.CIT(A), assessee is now in appeal before us.

6. Before us, Id.AR submitted that the Assessing Officer had made addition on account of Licensee Fee as the assessee was found in receipt of Licensee Fee of Rs.4,80,000/- during the course of search carried out at the residence of assessee. As the assessee did not disclose the same in the return of income and also not furnished any information to that effect, AO had treated the same as undisclosed income and made the addition of Rs.4,80,000/- to the returned income.

6.1. At the time of arguments, ld.AR had made the following submissions :

(1) A consolidated notice u/s 142(1) of the Act was issued by the Assessing Officer and no separate notice u/s 143(2) of the Act was issued as contemplated in law .

(2) The alleged receipt of Licensee Fee at Rs.4,80,000/- found during the course of search as per licence agreement dated 18.1.2003 pertains to earlier assessment year i.e., 2003-04 and therefore, no addition can be made in the hands of the assessee during the year under consideration.

6.2. ld.AR further submitted that Leave and License Agreement was entered into on 18.01.2003 and therefore, the amount, if any, was required to be accounted for in the said A.Y. 2003-04. However, the Leave and License Agreement was cancelled on account of non-usability of the flat by the licensee through the cancellation deed dt.24.01.2003. Therefore, no receipt was received even in the assessment year 2003-04. It was submitted that no addition can be made in the hands of assessee either for A.Y. 2003-04 or 2004-05. The cancellation deed was duly placed on record before the lower authorities. However, neither the Assessing Officer nor the ld.CIT(A) had bothered to cross verify the same, either by examining the licensee or from the registration authority.

7. Per contra, ld.DR for Revenue has drawn our attention to the order of ld.CIT(A) whereby the ld.CIT(A) had dealt with the issuance of notice u/s 143(2) of the Act to the assessee in a composite manner for A.Y. 2004-05 to 2009-10. On other aspects, ld.DR has relied upon the orders of lower authorities.

8. We have heard the rival submissions and perused the material on record. With respect to the addition made by the Assessing Officer on the basis of the Leave and License Agreement, we may notice that the said Leave and License Agreement was executed between the parties on 18.01.2003 for

a period of 14 months and the upfront amount was paid by the user to the assessee. Nonetheless, the amount paid by the licensee to the assessee would fall in A.Y. 2003-04 and not in A.Y. 2004-05. Admittedly, the assessment year 2003-04 did not come within the purview of section 153A of the Act and the assessment had already attained finality. In our view, the addition on the basis of Leave and License Agreement can only be made for A.Y. 2003-04 and not for A.Y. 2004-05 which is impugned before us. In light of the above, we do not find any reason to sustain the order passed by the ld.CIT(A). Accordingly, the addition made by the Assessing Officer to the extent of Rs.4,80,000/- is deleted. As we have deleted the addition on account of the addition made in wrong assessment, hence, we refrain from making any adjudication in respect of the other grounds urged before us namely, issuance of consolidated notice u/s 143(2) / 142(1) and service thereof. Accordingly, the appeal of the assessee is allowed.

9. In the result, the appeal of assessee in ITA No.112/Hyd/2020 for A.Y. 2004-05 is allowed.

10. Now we take up appeal in ITA No.113/Hyd/2020 for A.Y. 2006-07.

10.1. The brief facts of the case are that during the course of search carried out at the residence of assessee, Assessing Officer found that assessee had taken loan from his brother Sukesh Gupta for a sum of Rs.4,80,000/- for purchasing the alleged land, which was not disclosed in the return of income. Hence, the same was treated as undisclosed investment income and was added to the income of the assessee and accordingly, the Assessing Officer completed the assessment u/s 143(3) r.w.s 153A of the Act.

11. Feeling aggrieved by the order of Assessing Officer, assessee carried the matter before ld.CIT(A), who confirmed the order of Assessing Officer by holding as under :

“10.7 Coming to the affidavit filed by the assessee, it is once again stated in the affidavit that Mr.Sukesh Gupta had given an amount of Rs.4,80,000/- to the assessee as unsecured loans during the FY 2005-06. However, there is no mention with regard to date of payment and the mode of payment. Further, the format of affidavit is not as per the regular affidavit format, inasmuch as there is no formal affirmation taken by the party concerned before the judicial authority confirming that he had paid the unsecured loan to the assessee. It is simply stated that "I had given an amount of Rs. 4,80,000/- unsecured loan to Mr. Anurag Gupta, Hyderabad".

11.1. Later, before the ld.CIT(A), the assessee had produced the affidavit given by said Mr. Sukesh Gupta in support of the loan taken by him along with confirmation letter. However, the ld.CIT(A) had not believed the confirmation letter and the affidavit filed by the assessee and confirmed the addition made by the Assessing Officer.

12. Aggrieved by the order of ld.CIT(A), assessee carried the matter before us.

13. Before us, ld.AR submitted that this appeal pertains to the acceptance of the cash loan by the assessee from his brother. Ld.AR further submitted that before the lower authorities, assessee had produced the confirmation letter between himself and his brother Sukesh Gupta and also the affidavit in support of loan received by the assessee.

13.1. It was the contention of the ld.AR that the matter is required to remand back to the lower authorities for denovo verification about the loan received by the assessee from his brother in accordance with the law.

14. On the other hand, ld.DR supported the order of lower authorities and has submitted that ld.CIT(A) has given apt finding on merit.

15. We have heard the rival submissions and perused the material on record. In this appeal, the Id.CIT(A) had rejected the explanation given by the assessee with respect to the alleged loan received by the assessee from his brother Sukesh Gupta on the premise that the documents i.e. covering letter dt.21.04.2006 and the affidavit of Sukesh Gupta dt.26.12.2013, produced by the assessee cannot be considered as admissible evidence. As there is no contradiction between the affidavit and the covering letter, the Id.CIT(A) has uphold the addition. In our view, the confirmation letter and the affidavit can be reconciled merely by examining the brother of the assessee namely Sukesh Gupta by exercising the power vest in Id.CIT(A) under the Income Tax Act. However, no efforts were made by the lower authorities for the purpose of verification whether the loan was actually given by Sukesh Gupta or not during the year under consideration. In light of the above, we deem it appropriate to remand back the matter to the file of Assessing Officer with a direction to conduct the denovo verification of the cash loan given by brother of the assessee. In the light of the above, the appeal of the assessee is allowed for statistical purposes. As we are remanding back the matter for factual verification to the file of Assessing Officer, therefore, we are not adjudicating the remaining grounds raised by the assessee. Needless to say that the Assessing Officer while passing denovo assessment order, shall afford sufficient opportunities of hearing to the assessee. Accordingly, the appeal of the assessee is allowed for statistical purposes.

16. In the result, the appeal of assessee in ITA No.113/Hyd/2020 for A.Y. 2006-07 is allowed for statistical purposes.

17. To sum up, the appeal of assessee in ITA No.112/Hyd/2020 is allowed and the appeal in ITA No.113/Hyd/2020 is allowed for statistical purposes. A copy of this common order be placed in the respective case files

Order pronounced in the Open Court on 30th June, 2022.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
--	--

Hyderabad, dated 30th June, 2022.

TYNM/sps

Copy to:

S.No	Addresses
1	Anurag Gupta, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad – 500082.
2	ACIT, Central Circle – 3, Hyderabad.
3	The Commissioner of Income Tax (Appeals) – 6, Hyderabad.
4	Pr.CIT (Central), Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order