

आयकर अपीलिय अधिकरण
मुंबई पीठ "एफ", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस रिफौर रहमान, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER

आ. अ. सं. 8498/मुं/2011 नि. व. 2006-07)
ITA No. 8498/Mum/2011 (A.Y. 2006-07)
आ. अ. सं. 8499/मुं/2011 नि. व. 2007-08)
ITA No. 8499/Mum/2011 (A.Y. 2007-08)
आ. अ. सं. 8500/मुं/2011 नि. व. 2008-09)
ITA No. 8500/Mum/2011 (A.Y. 2008-09)
आ. अ. सं. 8501/मुं/2011 नि. व. 2009-10)
ITA No. 8501/Mum/2011 (A.Y. 2009-10)

Shri Jugraj Pannalal Rathod,
3-A, Jain Hind Building,
4th Floor, Block No.2, Bhuleshwar,
Mumbai-400002.

PAN: AEXPR5866G

..... अपीलार्थी / Appellant

बनाम Vs.

ACIT, CC-33,
Ground Floor, Aayakar Bhavan,
M.K. Road, Mumbai-400020.

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : S/Sh. M. B. Sanghvi & P.D. Sanghvi
प्रतिवादी द्वारा/ Respondent by : Sh. Anchal Sharma, CIT-DR
सुनवाई की तिथि/ Date of hearing : 18/08/2022
घोषणा की तिथि/ Date of pronouncement : 30/08/2022

आदेश/ ORDER

PER BENCH :

These four appeals by the assessee are directed against the orders of Commissioner of Income Tax (Appeals)-36, Mumbai [in short 'the CIT(A)'] for the

Assessment Years (AY) 2006-07, 2007-08, 2008-09 & 2009-10, respectively. All the impugned orders are of even date i.e. 10.10.2011. Since, the facts germane to the issue raised in all the appeals are identical and identical grounds have been raised in all the appeals, these appeals are taken up together for adjudication and are decided by this common order.

2. Sh. M. B. Sanghvi appearing on behalf of the assessee submitted at the outset that the appeal in ITA No. 8498/Mum/2011 for A.Y. 2006-07 may be taken as lead appeal for culling out the facts. The facts in the other appeals are identical.

ITA No. 8498/Mum/2011 for A.Y. 2006-07

3. The Id. Authorized Representative (AR) submitted that he would be pressing only ground no. 4 & 5 of the appeal.

4. Narrating facts of the case, the Id. AR submitted that the assessee is an ex-employee of M/s Auro Gold Jewellery Pvt. Ltd. (for short 'Auro Gold'). A proprietary firm in the name of M/s Aruna Jewellers was floated by Auro Gold with assessee as a dummy proprietor. The said firm was entirely managed and controlled by Auro Gold. A search action was carried out in the case of Auro Gold on 24.09.2008. Consequent to the said search, a survey action was carried out at the business premises of the assessee, however, during survey, no incriminating document was found. The Assessing Officer (AO) in scrutiny assessment proceedings made addition of Rs. 7,00,000/- merely on estimation. The only reason for making addition was that the assessee has allegedly provided services of managing books of accounts and getting them audited. The Id. AR submitted that the assessee did not charge for any of the services, infact, no services were

provided by the assessee except for lending name for which the assessee was remunerated by way of net profit in the impugned AY. The assessee earned net profit of Rs. 1,61,912/- and the same was offered to tax.

The Id. AR submitted that M/s Auro Gold had floated proprietary concerns in the name of former/present employee, assessee was one of them. In the case of Auro Gold, the AO made ad-hoc addition of Rs. 28,00,000/- towards payments made to the proprietorship concerns i.e. Rs.7,00,000/- for each of the prop. concerns. The matter travelled to the Tribunal. The Tribunal in ITA No. 7256/Mum/2011 for AY 2005-06 deleted the addition. Appeals for subsequent AY i.e. ITA No. 7257, 7258, 7259 & 7260/M/2011 for AY 2006-07, 2007-08, 2008-09 & 2009-10 on similar grounds were filed. All the aforesaid appeals were decided *vide* common order dated 13.02.2005 with identical findings. Once the addition has been deleted in the hands of Auro Gold, the same would not survive in the hands of recipient i.e. the assessee. The Id. AR further placed reliance on the decision of Tribunal in the case of one of the similarly placed ex-employee of Auro Gold who was stated to be proprietor of M/s Manav Jewellers. The Tribunal in ITA No. 8336, 8337 & 8338/Mum/2011 for AY 2006-07, 2007-08 & 2008-09 decided *vide* order dated 17.06.2015 deleted the addition of Rs. 7,00,000/- made in each of the AYs. The Id. AR prayed for deleting the addition of Rs. 7,00,000/- in the impugned AY.

The Id. AR submitted that he would not be pressing ground nos. 1, 2, 3, 6 & 7 of the appeal, if the assessee succeeds on ground No. 4 & 5.

5. Per contra, Sh. Anchal Sharma representing the Department vehemently defended the impugned order. The Id. Departmental Representative (DR) submitted that the assessee must have been compensated by Auro Gold for using

his name and managing the affairs including maintenance & auditing of accounts etc. of the proprietorship concern for and on behalf of Auro Gold. The Id. DR prayed for sustaining the addition and dismissing appeal of the assessee.

6. We have heard the submission made by rival sides, the only grounds that have been pressed before us in the present appeal are as under:

"4. The Ld. CIT(A) erred in confirming addition of Rs.7 lacs made on purely estimated basis without appreciating that no such amount was received by the appellant from M/s. Auro Gold Jewellery P. Ltd. and in fact the expenses of maintaining the books of account and auditing were duly incurred and claimed in the profit and loss account of the appellant and accepted by department and hence, the addition made of Rs.7 lacs as additional income/compensation received from M/s. Auro Gold Jewellery P. Ltd. is without any justification and liable to be deleted.

5. The Ld. CIT(A) further failed to appreciate that addition in assessment u/s.153C of the Act ought to have been made on the basis of evidences / incriminating material and not merely on surmises and conjectures and assumptions and presumptions and hence, the estimated ad hoc addition made of Rs.7 lacs is without any justification and liable to be deleted."

7. We find that no incriminating material was found during the survey action on the assessee. The addition of Rs. 7,00,000/- has been made merely on presumption. The Revenue in the case of Auro Gold had made addition of Rs. 28,00,000/- on account of ad-hoc payments made to the four proprietorship concerns in the name of its employees/ex-employees. The issue travelled to the Tribunal, the Co-ordinate Bench in ITA No. 7256/Mum/2021 (supra) deleted the ad-hoc addition by observing as under:

"25. We have considered the rival contentions of the parties. So far as the contention of the assessee that the transactions in question were genuine transactions is concerned, we do not find any force in the same. It was found during the survey that the office address given by the said entities was that of a chawl. All these persons shown as proprietors of these concerns were men of no

means. No books of accounts or any valuable stock was found in their premises. In the statements recorded during the course of survey, all these persons had admitted that books of accounts or any gold stock had not been maintained in their room and all the transactions were paper transactions made in their names on behalf of the assessee company. The above evidences on the file are sufficient to hold that the said entities were only paper entities created by the assessee to inflate turnover. The assessee has miserably failed to prove that the transactions done by the assessee with these entities were genuine transactions. However, the Ld. A.R. has alternatively submitted that even if the gross profit of these four entities is added to the income of the assessee, then there is no basis for further adhoc/estimated addition of Rs.28 lakh for each year. In view of the above submissions of the Ld. AR. and our discussions made above, the order of the Ld. CIT(A) confirming the addition of gross profits earned by these four bogus concerns into the income of the assessee is upheld. **So far as the addition of Rs 28 lakh in each year on adhoc basis on account of expenditure incurred to create these paper entities is concerned, we find that there is no evidence that the assessee has incurred such an expenditure to create these entities warranting adhoc additions of Rs.28 lakh each. It is also the case of the assessee that the net profits of these entities have also been taxed. Further, we have upheld the addition of gross profits of the said entities, hence further adhoc addition of Rs.28 lakh for each year merely on assumptions is not warranted and the same is accordingly ordered to be deleted. This issue is decided accordingly.**

8. We further find that in the case of Jagdish Maghwal, one of ex-employee of the assessee and in whose name a proprietorship concern in the name of M/s Manav Jewellers was floated by Auro Gold similar addition was made, the Tribunal deleted the addition holding as under:

"8. We have earlier noticed that the assessing officer has assessed a sum of Rs.7.00 lakhs in each of the year under consideration only on presumptions that too on estimated basis. The Ld CIT(A) has confirmed the addition only on the reasoning that the corresponding addition made in the hands of M/s Auro Gold Jewellery (P) Ltd has been confirmed by the first appellate authority. We noticed that the corresponding addition made in the hands of M/s Auro Gold Jewellery (P) Ltd has since been deleted by the co-ordinate bench of Tribunal. As observed by the co-ordinate bench, the revenue has not brought on record

any material to substantiate the view entertained by the assessing officer in respect of this addition. Under these set of facts, we do not find any merit in the assessment of Rs.7.00 lakhs in each of the years under consideration. Accordingly, we set aside the order of Ld CIT(A) on this issue passed in each of the years under consideration and direct the AO to delete the same in all the years under consideration.”

9. We find that the case of the assessee is on similar footing. Even otherwise the addition is made without their being any incriminating material. The Co-ordinate Bench has deleted the addition in the hands of the payer i.e. Auro Gold, therefore, the corresponding addition in the hands of the recipient i.e. assessee would not survive. The ground no. 4 & 5 of the appeal are thus, allowed.

10. The Ld. AR of the assessee has made statement at Bar that he is not pressing ground no. 1, 2, 3, 6 & 7, therefore, these grounds are dismissed as not pressed.

11. In the result, appeal of the assessee is partly allowed.

ITA No. 8499/Mum/2011 (A.Y. 2007-08)

ITA No. 8500/Mum/2011 (A.Y. 2008-09)

ITA No. 8501/Mum/2011 (A.Y. 2009-10)

12. Both sides are unanimous in stating that the facts in all these three appeals are identical to the facts in appeal for A.Y. 2006-07 (supra), therefore, the submissions made in respect of said appeal would equally apply to the present set of appeals.

13. The grounds of appeal and facts being identical, the findings given while adjudicating the appeal of assessee for A.Y. 2006-07 would *mutatis mutandis* apply to the present set of appeals. For parity of reasons, all the three appeals by the assessee are partly allowed.

14. To sum up, appeal of the assessee for A.Y. 2006-07 to 2009-10 are partly allowed.

Order pronounced in the open court on Tuesday, the 30th day of August, 2022.

Sd/-

Sd/-

(S. RIFAUR RAHMAN)

(VIKAS AWASTHY)

लेखा सदस्य/ACCOUNTANT MEMBER
मुंबई/Mumbai, दिनांक/Dated: 30/08/2022
SK, Sr.PS

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय. अपी. अधि. , मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai