

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 4035/MUM/2016
Assessment Year: 2002-03**

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**ITA No. 4036/MUM/2016
Assessment Year: 2003-04**

&

**ITA No. 4065/MUM/2016
Assessment Year: 2004-05**

&

**ITA No. 4037/MUM/2016
Assessment Year: 2005-06**

&

**ITA No. 4038/MUM/2016
Assessment Year: 2006-07**

&

**ITA No. 4039/MUM/2016
Assessment Year: 2007-08**

Ms. Geetha Mehra,
C/o Synergy Art Foundation Ltd.,
6/19 II Floor, Grants Building
Arthur Bunder Road, Colaba,
Mumbai-400 005.

Vs.

ACIT (3)(1)(1),
Room No. 607, Aayakar
Bhavan, Maharshi Karve
Road,
Mumbai-400020.
(Formerly Deputy
Commissioner of Income
Tax, Central Circle 44)

**PAN No. AAGPM 9039 H
Appellant**

Respondent

Assessee by : Mr. Ajay Ghone, AR
Revenue by : Mr. Kailash Kanojia, CIT-DR

Date of Hearing : 25/08/2022
Date of pronouncement : 21/11/2022



ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee have been preferred against separate orders of even date for assessment year 2002-03 to assessment year 2007-08, passed by the Ld. Commissioner of Income-tax (Appeals)-8, Mumbai [in short 'the Ld. CIT(A)']. Being common issue in dispute involved in these appeals, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. In all these appeals there is a common ground of appeal against addition sustained for low household withdrawal expenses by the assessee. In assessment years 2003-04 and 2007-08, there is one more ground in each of the year.

3. Briefly stated facts of the case are that assessee is, promoter director of M/s Synergy Art foundation Ltd. A search and seizure action under section 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out on 17/04/2007 at the premises of M/s Synergy art foundation Ltd along with the premises of the assessee



and consequently notices under section 153A of the Act were issued for assessment years 2002-03 to 2007-08, which were complied. The assessee filed return of income for each of the assessment year within the period covered under search assessments and declared income accordingly. The assessments under section 153A read with section 143(3) of the Act, were completed on 30/11/2009 determining total income after making various additions. The assessment year wise income declared in the return of income and assessed under section 153A of the Act for the search assessment period is summarized as under:

Assessment year	Returned Income(Rs.)	Assessed Income(Rs.)
2002-03	2,25,169/-	4,65,170/-
2003-04	3,62,065/-	20,74,570/-
2004-05	4,96,751/-	7,96,750/-
2005-06	4,04,042/-	7,54,040/-
2006-07	14,26,833/-	18,26,830/-
2007-08	22,19,815/-	1,02,42,370/-

4. On further appeal by the assessee, the Ld. CIT(A) adjudicated appeals for relevant assessment years. On further appeal against the order of Ld. CIT(A), the Income-Tax Appellate Tribunal (ITAT) passed a combined order on 31/07/2012 for assessment year 2002-03 to 2007-08 and 2008-09. In the said order, the



ITAT restored the issue of addition on account of the low drawings to the record of the Assessing Officer to consider the details, evidences and the electricity and telephone bills and then decide the issue afresh. In compliance to the direction of the ITAT, the Assessing Officer, after considering the submission of the assessee, passed assessment order for various years under reference. On further appeal, the Ld. CIT(A) upheld the finding of the Assessing Officer in various years. Aggrieved, the assessee is in appeal before the ITAT by way of raising grounds in respective appeals.

5. Before us, the assessee filed a combined paperbook containing pages 1 to 299 for assessment year 2002-03 to 2007-08. The assessee also filed a copy of the paperbook, which were filed in first round of proceeding before the ITAT.

5.1 In assessment year 2002-03, all the grounds (Ground Nos. 1 to 6) raised are in respect of addition of low withdrawal of ₹ 2 lakhs. In assessment year 2003-04, ground numbers 1 to 4 relate to addition of low withdrawal of ₹ 2.50 lakhs. The ground No.5 relate to addition of ₹14,65,500/-. The Ground Nos. 6 to 8 are general in



nature. In assessment year 2004-05, all the grounds (Ground No. 1 to 6) relate to sole issue of addition for low household withdrawals of ₹3.00 lakhs. In assessment year 2005-06, the Ground No. 1 to 6 relate to addition of ₹3,50,000/-for the low household withdrawals. In assessment year 2006-07, all the grounds (No. 1 to 6) relate to addition of ₹4.00 lakhs for low household withdrawals. In assessment year 2007-08, the ground No. 1 to 4 relate to addition of ₹3 lakhs for low household withdrawal. The Ground No. 5 and 6 relate to addition of the 60.15 lakhs against unexplained capital accretion.

6. The ground of low household withdrawal is common in all the assessment years involved and therefore same is taken first for adjudication.

7. The ITAT while adjudicating ITA No. 5018 to 5021 of 2011 and ITA No. 360 & 361 of 2012 has summarized, the facts in respect of addition of low drawings as under:

“8.1 From the bank statement of the assessee, it was found by the Assessing Officer that the assessee have no cash



withdrawal even for personal expenses. The Assessing Officer also noticed that the assessee have not shown any withdrawals; therefore, he proposed to make an addition of ₹ 2 lakhs for the assessment year 2002-03, ₹ 2.5 lakhs for the assessment year 2003-04, ₹ 3 lakh for assessment year 2004-05, Rs. 3.5 lakhs for the assessment year 2005-06, ₹4 lacs for the assessment year 2006-07, ₹4.5 lakhs for the assessment year 2007-08 and Rs.. 5 Lacs for the assessment year 2008-09 under section 69C as unexplained expenditure for the respective years on account of unaccounted personal household expenses. Accordingly, the Assessing Officer made an addition of ₹2 lakh for the assessment year 2002-03 and further increment of ₹ 50,000/- each for subsequent years and added the same to the income of the assessee as unexplained expenditure on account of personal household expenses under section 69C.

8.2 On appeal, the CIT(A) held that the social status of the assessee indicates that ₹40,000/- to ₹50,000/- per month is a reasonable personal expenses and accordingly, sustained the addition made by the Assessing Officer.

9 Before us, the learned A.R. of the assessee has submitted that the Assessing Officer has mentioned that a sum of ₹4,36,555/- spent through credit card is paid by Synergy Arts Foundations towards restaurant and hotel bills. The Assessing Officer having linked the credit card payments to the question of drawings, did not proceed further to find out as to how much thereof was debited in the books of M/s Synergy Art foundations Ltd to project the entire credit card



payment out of context. The ld AR of the assessee has further submitted that the total expenditure through credit card is ₹2,95,168/- and not ₹4,36,555/- as alleged in the assessment order. He has further submitted that out of the total payment of ₹2,95,168/-, a sum of ₹93,376/- represents card payment towards personal drawings such as clothes books and payments to departmental store etc., which would more than suffice for the assessee to explain her status as single individual without encumbrances. He has further pointed out that the assessee had balance out of rental income received from property let out at Chennai to the extent of ₹72,000/- which is duly disclosed in the original return of income filed for the assessment year 2002-03 and this is available for personal drawings also.

9.1 Thus, the learned A.R. of the assessee has submitted that the addition, on account of unexplained personal expenses due to low drawings is unwarranted and made without due regard to the facts on record. He has further submitted that the addition on this account is not based on any seized material or sworn statement or any other material pursuant to the search to show that the drawings estimated in the assessment is sustainable. He has referred the details of drawings made by the assessee at page number 30 to 35 of the paper book and submitted that for all the years, the actual drawings of the assessee are more than the addition made by the Assessing Officer on estimate basis. The learned A.R. has also relied upon the decision of Special Bench of this Tribunal in the case of M/s All Cargo Global



Logistics Ltd DCIT dated 6 July 2012 and submitted that no addition can be made under section 153A without any incriminating material found in the course of search.”

8. After considering, the arguments of both parties, the ITAT, restored the issue to the file of the Assessing Officer. The relevant finding of the Tribunal is reproduced as under:

10 We have considered the rival submissions as well as relevant material on record. On the legal issue as raised by the learned A.R, there is no quarrel that only pending assessments are abated by the virtue of section 153A and not the completed assessment. Thus, in the assessment proceedings under section 153A, the Assessing Officer can proceed like a regular assessment with respect to the assessments, which are pending.

10.1 As regards the completed assessment, the addition to the income that has already been assessed, the assessment under section 153A will be made on the basis of incriminating material found during the search; but not produced in the course of original assessment or undisclosed income or property discovered in the course of search and seizure operation.

10.2 In the case in hand, it is not clear from the record available whether the original assessment was completed in any of the assessment years under consideration. Further, in view of the details of withdrawals filed by the assessee



except the rental receipts, which have already been considered by the CIT(A) for deleting the addition on account of cash deposited in the assessee's bank for the assessment year 2002-03, the issue requires a proper verification and examination at the level of Assessing Officer.

10.3 As regards the estimate of personal expenditure at ₹40,000/- to ₹50,000/- per month by the CIT(A) , the assessee is directed to produce the electricity bill and telephone bills for the relevant period before the Assessing Officer in this respect. Accordingly, we set aside this issue for all the assessment years to the record of the Assessing Officer. to consider the details, evidences and the electricity and telephone bills and then decide the issue afresh except for the assessment year 2008-09 for which the addition made by the Assessing Officer has been deleted by the CIT(A) and revenue has not challenged the same.”

8.1 In compliance to the direction of the ITAT, the Assessing Officer asked the assessee to file the necessary evidence to support the household withdrawals along with copy of electricity and telephone bills. The assessee has filed a common reply for all the assessment years involved. For ready reference said reply of the assessee reproduced in assessment order for assessment year 2007-08, is extracted as under:



"1. *Family Members*

I was staying gions as a paying guest at Sea View, Napearsea Road, Mumbai until April 2002 and the expenses jor stay and food was taken care of by the landlady at a consolidated sum of Rs.5000/ - per month.

.....

5. *Telephone expenses:*

As regards telephone expenses, by virtue of my being whole time director of Synergy art Foundation Ltd., the landline telephone is maintained by the company and so are the mobile telephone bill.

As regards expenses incurred for subsequent years the following are submitted:

I was an unmarried lady during the aforesaid period and the following personal expenses have been incurred by cash, cheques and credit cards.

Particulars	2002-3	2003-04	2004-05	2005-06	2006-07	2007-08
Total personal expenses through credit chards	93376	126957	111875	76955	73788	174586
Out of cash withdrawal	10000	75000	135000	237000	190000	371800
Out of cheque payment	35850	65450	58500	41385	141832	706780
Rental income received on property let out at Chennai by cash	72000	--	--	--	--	--

The above expenses form part of the details already submitted vide reply dated 02/09/2013.



6. *Entertainment Expenses*

As regards entertainment expenses, being an unmarried lady, I had no scope there for whatever expenses incurred on hotels etc. are in the discharge of my duties as a director of Synergy Art Foundation Limited etc.

7. *Medical Bills:*

With reference to medical expenses, by God's grace, there were no major ailments affecting me and no cause for expenses being made there under.

8. *Purchase of T.V etc.*

There is purchase of Television for Rs. 1,00,000/- which is part of seized record' no. Loose Paper file, 203, Deeraj, Annesure A-3 page No. 2 and the expenses incurred is pard andduly accounted for.

It is submitted that the above details are germane only to the extent of the illegal directions of the ITA.T.. which are subject matter of appeal before Bombay High Court and the larger issue of making additions on a search assessments, de hors seized materials is to be addressed by you in fairness as a quasi judicial authority to render a fair assessment.”

9. The Assessing Officer after considering the submission of the assessee upheld the addition for low withdrawals, which was made in the original assessment proceeding observing as under:



5.5 The explanation of the assessee has been considered and found the same to be untenable. The Honble ITAT in para 10.3 of its order directed the assessee to produce the electricity bills and telephone bills for the relevant period before the Assessing Officer. The assessee has failed to furnish the same even after affording sufficient time. In this regard, the assessee except for submitting a photo copy of ledger of drawings account for different years and not pertaining to year under consideration. Further even assessee's claim of personal expenditure made through credit cards is also not acceptable as on analysis of the credit card statement furnished by the assessee, it was seen that most of the expenses incurred were related to hotel expenses, travelling expenses etc. The assessee has even failed to furnish the details as per the directions given by the Honble ITAT. Further, the assessee has not brought any documentary evidence to prove that cheque amount of Rs. 7,06,780/- were incurred toward household expenses. It was also submitted that no electricity or telephone bill is incurred by the assessee. No copy of bill of telephone installed at the residence by the company, and no Paying Guest House bill is submitted by the assessee. During the search & seizure action, warrant of authorization was issued in the name of assessee at her residence i.e. 203, Dheeraj Vally, Tower-I, Sai Baba Complex, Mohan Gokhale Path, Goregaon(E), Mumbai-400063. At the time of search and even now also, assessee is unable to produce any supporting documents that she was staying in the Guest House and not at her own residence.

5.6 Considering the above facts and circumstances, it is hereby held that assessee's withdrawals for household expenses are very low. The assessee's contention that the household and other



expenses are met by M/s. Synergy Art. Foundation Ltd. on behalf of her is not supported with any evidences. Considering the above, sum of Rs. 4,50,000/- is added to the total income of the assessee as unexplained expenditure on account of household expenses u/s 69C. Penalty proceedings w/s 271(1)(c)is initiated for furnishing inaccurate particulars of income.”

9.1 The Assessing Officer has noted that the assessee failed to produce electricity bills and telephone bills for the relevant period. The claim of the assessee of personal expenditure through credit card was also rejected because most of the expenses incurred through credit card related to Hotel expenses, travelling expenses and not related to household withdrawals. The assessee further failed to substantiate that amount claim to be incurred through cheque were incurred for household expenses. In its submission assessee claim that she was staying in a paying guest house, however bills of the same were not submitted before the Assessing Officer. The Assessing Officer has noted that during the course of the search action, the assessee was staying at her residence only and no evidence to support that she was staying in paying guest house were submitted either during the course of the search action



or during the assessment proceedings. The contention of the assessee that household expenses were met partly by Company M/s Synergy Art foundation Ltd. was also rejected in absence of any documentary evidence.

10. On further appeal, the Ld. CIT(A) upheld the addition of observing as under:

“3.4 In response to the same the appellant made submission which was considered by the assessing officer but found the same untenable. The assessing officer as per the directions of ITAT order, asked the appellant whether any scrutiny assessment was completed earlier in respect of this assessment year. The appellant did not reply and, therefore, the assessing officer concluded that he was unable to hold that any assessment was completed in respect of this year prior to proceedings under section 153A completed on 30.11.2009. Accordingly in the absence of any details submitted by the appellant the A concluded that the assessment for the year had not been completed.

3.5 Further as per the directions of the Hon'ble ITAT the appellant was asked to produce electricity bills and telephone bills for the relevant period. The appellant failed to furnish the same and submitted a photo copy of Ledger of drawings upon for different years and not pertaining to the year under consideration. Also the appellant's claim of personal expenditure made through credit cards is also not acceptable as on analysis most of the credit card



statement furnished by the appellant was regarding the expenses incurred relating to hotel expenses, travelling expenses, etc. The appellant also failed to furnish the details as per the directions given by the Hon'ble ITAT.

Further, the appellant did not bring any documentary evidence to prove that cheque amount of Rs. 7,06,780/-were incurred towards household expenses. It was also submitted that no electricity telephone bill is incurred by the appellant. During the search and seizure action warrant of authorisation was issued in the name of the appellant at the residence. At the time of search and even during assessment proceedings the appellant was unable to produce any supporting documents that she was staying in the guesthouse and not at her own residence.

3.6 Thus, the assessing officer concluded that the appellant's withdrawals for household expenses were very low and the contention of the appellant that the household and other expenses were made by Mis. Synergy Art Foundation Ltd., on behalf of her, was not supported with any evidences. Therefore, the assessing officer added a sum of Rs. 4,50,000/- to the total income of the appellant as unexplained expenditure on account of household expenses u/s. 69C.”

10.1 Similar finding have been given by the lower authorities on the issue in dispute in respect of the other assessment years.

11. Before us, the Ld.counsel of the assessee has reiterated the submission made before the lower authorities and submitted that



there are sufficient withdrawal to justify the household expenses of the assessee. The Ld.DR on the contrary relied on the order of the lower authorities.

12. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In the order passed in compliance to the direction of the ITAT, The Assessing Officer has sustained the addition for low house withdrawal estimating household expenses at Rs. 4.50 lakhs, which was added in original assessment order in first round of proceedings. The Assessing Officer in second round , asked the assessee to explain whether original assessment was completed in any of the assessment years under consideration, however no reply with supporting evidence was filed as noted by the Assessing Officer. This finding of the Assessing Officer has not been rebutted by the Ld.counsel of the assessee before us. Regarding the source of withdrawals in different assessment year, the assessee has mainly explained three sources i.e. credit card, cash and cheque except rental income of ₹72,000/- in assessment year 2002-03. The year-



wise analysis of expenses incurred through credit has been placed by the assessee on P/B 115 to 127. On perusal of the analysis of credit card expenses before us, we concur with the finding of the Assessing Officer that same relate mainly to “Hotel and travel’ expenses. Some expenses are for dining out at Hotels and very nominal amount on personal items and not in relation to day-to-day household expenses including electricity & telephone. The source of the cash withdrawals has also not been explained properly by the assessee. The Ld. Counsel has referred to P/B 149 to 154 to explain cash availability. We find that in AY 2002-03, cash of ₹10,000/- has been claimed as withdrawn on 17.01.2002 from HDFC Bank (P/B 149) via cheque No. 713426, whereas on perusal of HDFC Bank statement placed on P/B 128, we find that cheque No. 713426 on 17.01.2002 has been issued to ‘Sandoz House’. Similarly, in AY 2003-04, three cheques of ₹25,000/- each have been claimed as withdrawn in cash (P/B 150), but on verification from Bank statement available on P/B 128, those cheques have been paid to ‘Sandoz House’. Similarly, in other years also cheques have been found to issued to ‘Sandoz House’ as against claim of cash



withdrawal from Bank. As far as contribution of household withdrawal by way of cheque is concerned, the assessee has not explained whether those expenses have been incurred on day-to-day household expenses. Regarding the rental income of ₹72,000/-, is concerned the Tribunal (supra) has noted that said receipt was considered against cash deposits in assessment year 2002-03.

12.1 In view of the detailed finding by the Assessing Officer regarding the inability of the assessee in justifying source of household expenses and upholding of the same by the Ld. CIT(A), we do not find any error in the order of the Ld. CIT(A) for relevant assessment years and accordingly we uphold the same.

13. The ground of appeal raised by the assessee in respect of low withdrawal in all the relevant assessment years are accordingly dismissed.

14. The Ground No. 5 in assessment year 2003-04 relate to addition of ₹14,65,500/-. The Assessing Officer on page 2 of the impugned assessment order has mentioned that addition of ₹14,62,500/- is an unexplained investment under section 69 of Act



for acquiring the paintings by taking the convertible rate of ₹ 45 for a dollar and ₹ 75 for GBP, is concerned, the Tribunal (supra) had upheld the order of the Ld. CIT(A) on the issue. We find the Tribunal (supra) in Para 11 of the order has mentioned the ground raised against the addition of ₹14,62,500/-. This issue has been finally adjudicated by the Tribunal in para 18.2 observing as under:

“18.2 Even before us, nothing has been produced to show the name and details of the costumers on whose behalf the purchases were allegedly made by the assessee. The assessee has not disputed the purchases of the paintings in question; but has taken a plea that these paintings were purchased on behalf of the prospective buyers and the actual bill is on the company who was received the commission in the transaction. When nothing has been produced to show that the paintings were ultimately sold to such and such person and who has made the balance payment, then we do not find any reason to interfere with the order of CIT(A) for the assessment year 2003 – 04 on this issue.”

15. Thus, this issue already stands adjudicated by the ITAT, therefore the ground raised is infructuous and accordingly dismissed.



16. The ground Nos. 6 to 8 of the appeal for the assessment year 2003-04 are general in nature and therefore accordingly same are dismissed as infructuous.

18. Regarding the ground No. 5 and 6 of the appeal for assessment year 2007-08 is concerned, same are reproduced as under:

“5. The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.60.15 lakhs as alleged unexplained capital accretion based on alleged false return.

6. The learned Commissioner of Income Tax (Appeals) is not justified in concluding that the issue of alleged false return is set at rest by the Income Tax Appellate Tribunal without due regard to the serious allegations made in the assessment order against the appellant which warrants proper investigation.”

19. The fact in brief qua the issue in dispute are that the assessee in the return of income claimed long-term capital gain of ₹46,15,000/-and short-term capital gain of ₹14,00,000/-totaling to ₹60,15,000/-on sale of paintings. In the first round of proceedings, the Assessing Officer rejected the contention of the assessee of creation of the capital by way of long-term and short-term capital



gain on sale of paintings. The ITAT (supra), in the first round of proceedings restored the matter back to the file of the Assessing Officer for verifying the correctness of purchase and sale of the paintings by the assessee. In the consequent assessment proceedings, before the Assessing Officer, it was claimed that those paintings were received by way of gifts. However, the assessee filed only list of the persons from whom the said paintings were alleged to be received by way of gift therefore the Assessing Officer treated the sum of ₹60,15,000/- as unexplained increase in capital account on account of alleged sale of paintings. The Assessing Officer also held the claim of regular return of income filed along with balance sheet by the assessee as false as the return filing acknowledgement No. claimed by the assessee as proof for filing the regular of income, was pertaining to return filed by another person. The relevant part of the order of the Assessing Officer is reproduced as under:

“7.5 During the course of set aside assessment proceedings, assessee was asked to furnish details of source of acquisition of paintings which have been sold and accordingly short term and long term gains were realized on the same. Assessee was also asked to furnish details of return of income filed for the year under



consideration and submit copy of computation of long term & short term capital gains respectively and also' file copy of revised return. The assessee was further asked to give the details of purchaser of paintings and the mode of receipt of payment of the same. Further, on being specifically asked to furnish names and addresses of the persons from whom the said purchases were made, the other details viz. description, amount, date, details of payment, copies of bills etc. and justification for the values assigned to those paintings with regard to long term capital and short term capital gain of Rs.46,15,000/- and Rs. 14,00,000/- in all totaling to Rs. 60,15,000/-. Assessee except for furnishing a list of persons from whom the said alleged purchases were made had furnished no other details.

7.6 in response to the same, assessee vide letter dated 02.09.2013 submitted in this office on 03.09.2013 has contended as under:

17. The ITAT vide para 27.5 at page 25 held that this is an invalid return which is not acceptable in the eye of law; Having said that, the ITAT has set aside the assessment to examine the claim of assessee afresh.

18. Despite the this illegal directions by the ITAT the assessee has to prove her bonafideas regards the correctness of the filing of the aforesaid return to prove that the department has deliberately misinterpreted facts in the assessment order.....

7.7.1 The explanation of the assessee has been considered and the same is found to be not acceptable. It can be seen that assessee did not offer any specific explanation with regard to purchase of paintings. The assessee failed to satisfactorily explain the return of



income filed with DCIT-7(2), Mumbai. Further, it is worth mentioning here that assessee all along was filing return of income at Chennai and even return for the year under consideration are filed there only disclosing salary and rent income. Assessee, as an afterthought, tried to furnish a false claim that gifts were received long back from various artists before search by claiming to have filed return for A.V. 2005-06. Further, the return register for F.Y. 2006-07 bearing receipt No. 0720000316 dated 23.11.2006 shows that return was filed in the name of Mr. Chedda Haresh Nagji and does not pertain to assessee. No return of income for the year under consideration was filed as per Return Register of DCIT-7(2), Mumbai. • Further, assessee has not brought any documentary evidence in the form of bank statement where such sale proceeds had been credited and to show that the same were reflected in the balance sheet. It is pertinent to mention here that assessee till A.Y. 2005-06 had shown only salary income and rental income and how gifts of earlier years had come into the balance sheet for the year under consideration had not been properly explained. Hence, it is clear that assessee was claiming alleged tax free receipts from purported sale of paintings to artificially inflate the capital account to balance the insertion of bogus figures on asset side representing value of paintings owned by the assessee. In the nutshell, it can be said that assessee has not been able to satisfactorily explain the filing of return of income at Mumbai and explain the source of investment in the painting by correlating the purchases and payments made.

.In view of the above, the sum of Rs. 60,15,000/- being unexplained increase in capital account on account of alleged sales of paintings is added to the total income.”



20. Before the Ld. CIT(A), the assessee refuted the claim of false return of income. Regarding source of purchase of painting, the assessee before the Ld. CIT(A) in second round of proceeding reiterated contention before the Ld. CIT(A) in the first round of the proceeding that the paintings were acquired during 1983 to 1990 which were sold for a sum of ₹46,15,000/- in the assessment year under consideration and treated the same as long-term capital gain. According to the authorized representative before the Ld. CIT(A) in second round of proceeding, the CIT(A) in first round of proceedings had misunderstood the failure to state the purchase price paid by the assessee between the years 1983 to 1990 as contumacious conduct when the assessee had worked out the capital gain by treating the cost incurred as Nil. The Ld. Authorized Representative further submitted that purchase of ₹2.50 lakhs shown under the purchase link to ₹29,08,337/-, for which a sale of ₹16.50 lakh was made resulting into short-term capital gain of ₹14 lakh. The Ld. CIT(A) however upheld the addition made by the Assessing Officer, observing as under:



“5.5.1 These grounds are against alleged unexplained increase in capital Rs. 60.15 lakhs. As regards the addition of Rs. 60.15 lakhs added as unexplained capital accretion and the assessing officer's conclusion that the appellant has tampered with the department records to file a false return, I find that the matter has been laid to rest by the order of Hon'ble ITAT in para 27.5 wherein it is clearly stated that the impugned return filed by the appellant cannot be taken into account. Therefore, the findings of facts made by the assessing officer in the instant set aside assessment have to be relied upon. In his regard, the assessing officer at para 7.7.1 has observed, "Further, assessee has not brought any documentary evidence in the form of bank statement whereas such sale proceeds had been credited and to show that the same were reflected in the balance sheet..... In the nutshell, it can be said that assessee has not been able to satisfactorily explain the filing of return of income at Mumbai and explain the source of investment in the painting by correlating the purchases and payments.

5.5.2 During the course of appellate proceedings, the appellant did not offer any specific records details that would counter the above unambiguous observation made by the assessing officer. Accordingly, the addition of Rs. 60.15 lakhs made by the assessing officer is sustained. This ground of appeal is dismissed.”

21. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The assessee was required to explain source of investment in paintings, which have been claimed to be sold resulting into long-term capital gain



and short-term capital gain and accretion of capital of ₹60,15,000/- . Except, reiteration of arguments made before the lower authorities, no new evidence in support of purchase of the paintings were filed before us, therefore we don't have any alternative other than upholding the finding of the Ld. CIT(A) on the issue in dispute. We accordingly hold so. The ground No. 5 of the appeal of the assessee is accordingly dismissed. As far as grounds related to observation of the Assessing Officer in relation to return of income filed by the assessee held as false return of income, is concerned we find that in view of our finding on ground No. five adjudicated above, issue is rendered only academic in nature, Therefore, the ground Nos.6 and 7 of the appeal of the assessee are dismissal infructuous.

22. The Ground Nos. 8 to 9 of the appeal are general in nature and therefore same dismissed as infructuous.



23. In the result, the appeals of the assessee for assessment year 2002-03 to 2007-08 dismissed.

**Order pronounced under Rule 34(4) of the ITAT Rules, 1963, on
21.11.2022.**

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 21/11/2022

Dragon Legal/Rahul Sharma, Sr. P.S.

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,

(Sr. Private Secretary)
ITAT, Mumbai