

आयकर अपीलीय अधिकरण
मुंबई पीठ "ए", मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री भगीरथ माल बियानी, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " A ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं. 98/मुं/ 2022 (नि.व. 2011-12)
ITA NO. 98/MUM/2022(A.Y.2011-12)
आअसं. 102/मुं/ 2022 (नि.व. 2017-18)
ITA NO. 102/MUM/2022(A.Y.2017-18)
आअसं. 1426/मुं/ 2022 (नि.व. 2015-16)
ITA NO. 1426/MUM/2022(A.Y.2015-16)

Dy. Commissioner of Income Tax,
Central Circle – 6(4),
Room No.1925, 19th Floor,
Air India Building, Nariman Point,
Mumbai 400 021

..... अपीलार्थी /Appellant

बनाम Vs.

Airmid Aviation Services Limited,
M-62 & 63, First Floor,
Connaught Place, New Delhi -110 001.
PAN:AAGCA-4214-K

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Smt. Shailja Rai
प्रतिवादी द्वारा/Respondent by : S/Shri K.Gopal & Om Kandalkar
सुनवाई की तिथि/ Date of hearing : 14/02/2023
घोषणा की तिथि/ Date of pronouncement : 17/02/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These three appeals have been filed by the Revenue for the Assessment Years 2011-12, 2017-18 and 2015-16, respectively. Since, the

grounds raised in all these appeals and the facts germane to the grounds are identical, these three appeals are taken up together for adjudication and are decided by this common order.

ITA NO.98/MUM/2022-A.Y. 2011-12:

2. This appeal by the Revenue is directed against the order of Commissioner of Income Tax(Appeals)-54, Mumbai [in short 'the CIT(A)'] dated 20/10/2021 for the Assessment Year 2011-12.

3. This appeal by the Revenue is time barred by two days. The delay in filing of the appeal is condoned on the oral request of Id. Departmental Representative and the appeal is admitted for adjudication on merits of the grounds raised.

4. The Revenue in appeal has raised as many as five grounds. The grounds No.1 to 3 of appeal are in respect of addition on account of unexplained cash u/s. 69A of Income tax Act 1961 [in short 'the Act'] deleted by the CIT(A). The ground No.4 and 5 of appeal are against the findings of CIT(A) in deleting addition on account of accrued interest on FDRs.

5. Smt. Shailja Rai representing the Department vehemently supported the assessment order and prayed for reversing the findings of CIT(A). The Id. Departmental Representative submits that a search action u/s.132 of the Act was carried out in the case of Indiabulls group on 13/07/2016. The assessee is a subsidiary of Indiabulls group and is one of the sixteen entities covered in the search. Certain documents were seized vide Annexure -A1/13 and A-17 from the chamber of Shri Ashok Sharma at Indiabulls House, Gurgaon. The documents seized pertain and contain information relating to the assessee. On

the basis of said documents the Assessing Officer made addition of Rs.2.00,25,000/- for the impugned assessment year. The Id. Departmental Representative further submits that during the course of assessment proceedings the Assessing Officer found that the assessee has failed to offer to tax interest accrued on FDRs. No valid explanation was furnished by the assessee for not offering the said interest to tax on accrual basis, hence, the Assessing Officer made addition of the same. The CIT(A) has deleted the aforesaid additions, hence, the present appeal by the Revenue.

6. On the contrary, Shri K. Gopal appearing on behalf of the assessee vehemently supported the findings of CIT(A). The Id. Counsel for the assessee submits that CIT(A) in the impugned order has recorded that, the facts in the case of assessee are identical to the facts involved in the case of M/s. Indiabulls Financial Services Ltd. for Assessment Year 2011-12. The CIT(A) following the decision in the case of M/s. Indiabulls Financial Services Ltd. deleted the addition in respect of unexplained cash u/s. 69 of the Act. In the case of M/s. Indiabulls Financial Services Ltd., the Revenue carried the issue before the Tribunal in ITA No. 1433/Mum/2022 for Assessment Year 2011-12. The Tribunal vide order dated 31/10/2022 upheld the findings of CIT(A). Thus, ground No.1 to 3 of the present appeal by Revenue is covered against the Department by the aforesaid order of Tribunal.

6.1 The Id.Counsel for the assessee further submitted that a perusal of satisfaction note would show that there is no mention of any issue with respect to accrued interest on FDR. Even in the assessment order there is no reference to any incriminating material on the basis of which addition has been made. **It is an year of unabated assessment.** In the absence of

incriminating material no addition could have been made in assessment u/s. 153C r.w.s. 143(3) of the Act.

7. Rebutting the submissions made by Id. Counsel for the assessee, the Id DR submitted that while making assessment u/s. 153C of the Act, it is not necessary for the Assessing Officer to restrict on those issues which emanates from the evidences found during search. There is no requirement of existence of incriminating material either for invoking provisions of section 153A/153C or for re-visiting the assessment which stood completed as on the date of search either u/s. 143(1) or 143(3) of the Act. In support of her above arguments the Id DR placed reliance on the following decisions:

- (i) CIT vs. Raj Kumar Arora, 52 taxmann.com 172 (All.);
- (ii) E N Gopakumar vs. CIT, 75 taxmann.com 215 (Kerala);
- (iii) Canara Housing Dev. Co. vs. DCIT, 49 taxmann.com 98 (Kar); &
- (iv) CIT vs. K.P.Ummer, Income Tax Appeal No.174 of 2013 decided on 19/02/2019 by Hon'ble Kerala High Court.

8. Both sides heard, orders of authorities below examined. It is unrebutted that the assessee is a subsidiary of Indiabulls Ltd. and is one of the 16 group entities, wherein disclosure was made during the search and finally settled before the Settlement Commission. Thus, the amount which is brought to tax u/s. 69A of the Act is purportedly offered as additional income in settlement before the Settlement Commission. The CIT(A) has deleted the addition u/s. 69A of the Act following the order of CIT(A) in the case of M/s. Indiabulls Financial Services Ltd. for Assessment Year 2011-12 another one of the 16 group entities. The Co-ordinate Bench vide order dated 31/10/2022 has upheld the findings of CIT(A) in deleting the addition on the ground the amount has already been considered in income of the assessee and other

entities, before the Settlement Commission. Thus, in facts of the instant case, we do not find any infirmity in the findings of CIT(A) on this issue, hence, the same are upheld and ground No.1 to 3 of the appeal are dismissed.

9. In ground No.4 and 5 of appeal, the Revenue has assailed the findings of CIT(A) in respect of deleting addition on account of accrued interest on FDR. It is an undisputed fact that on the date of search no assessment was pending for the impugned assessment year. A bare perusal of the assessment order shows that there is no reference to any incriminating material. The Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd., 374 ITR 645(Bom)] has held that where there is no pending assessment and no incriminating material is found during search, no addition can be made in assessment proceedings u/s. 153C r.w.s. 143(3) of the Act. The Department filed SLP against the said judgment. The Hon'ble Apex Court after admitting SLP, dismissed the Civil appeal of the Department [Re. CIT vs. Containing Corporation of India Ltd., 93 taxmann.com 31 (SC)]. Similar view was expressed by Hon'ble Bombay High Court in the case of CIT vs. Murli Agro Products Ltd., 49 taxmann.com 172 and CIT vs. Deepak Kumar Agrawal, 398 ITR 586. The Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, 380 ITR 573 has reiterated the same view as that of Hon'ble Bombay High Court.

We have also considered the decisions cited by Id. DR. The said decisions are rendered in particular facts of each case, hence, distinguishable. In the case of CIT vs. Kabul Chawla (supra) the Hon'ble High Court has considered the decision in the case of Canara Housing Dev. Co. (supra) and has thereafter followed the ratio laid down in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd. Following the law expounded by Hon'ble Jurisdictional High

Court on this issue, we see no infirmity in the findings of CIT(A). Consequently, ground No.4 & 5 of the appeal are dismissed.

10. In the result, appeal by the Revenue is dismissed.

ITA NO.102/MUM/2022-A.Y.2017-18:

11. This appeal by the Revenue is directed against the order of CIT(A) -54, Mumbai dated 20/10/2021 for the Assessment Year 2017-18.

The appeal is time barred by 10 days. The Id. Departmental Representative submits that impugned order was passed during COVID period. The Hon'ble Supreme Court of India had extended the period of limitation for filing of the appeals during the Pandemic. The appeal has been filed within the extended period. Hence, there is no delay in filing of the appeal. We are satisfied with the reasons explained by Id. Departmental Representative resulting in delay of filing appeal by 10 days. The delay is condoned and appeal of Revenue is admitted for hearing on merits.

12. The Revenue in this appeal has raised only three grounds assailing the findings of CIT(A) in deleting the addition on account of unexplained cash u/s. 69A of the Act. The grounds raised by the Revenue are identical, to ground No.1 to 3 for Assessment Year 2011-12. The facts germane to the addition in the impugned assessment year are identical to Assessment Year 2011-12. Thus, the findings given by us while deciding grounds No.1 to 3 in Assessment Year 2011-12 would mutatis mutandis apply to the present set of grounds. For parity of reasons, grounds No.1 to 3 of appeal is dismissed.

13. In the result, appeal of Revenue for Assessment Year 2017-18 is dismissed.

ITA NO.1426/MUM/2022-A.Y.2015-16:

14. This appeal by the Revenue is directed against the order of CIT(A) -54, Mumbai dated 20/10/2021 for the Assessment Year 2015-16.

15. The appeal is time barred by 130 days. The Revenue has filed an application citing reasons for delay in filing of the appeal. After perusal of the same, we are satisfied that the delay in filing of appeal is for bonafide reasons. The Id.Counsel for the assessee has also not objected to the condonation of delay in filing of appeal. Taking into consideration entirety of facts, the delay of 130 days in filing of appeal is condoned and the appeal is admitted for adjudication on merits.

16. The Revenue has raised six grounds of appeal. In ground No.1 to 3 of appeal, the Revenue has assailed the findings of CIT(A) in deleting the addition on account of unexplained cash u/s. 69A of the Act. In ground No. 4 to 6 of the appeal, the Revenue has assailed the findings of CIT(A) in deleting the addition made by Assessing Officer invoking the provisions of section 79 of the Act.

17. Both sides are unanimous in stating that in so far as ground No.1 to 3 of appeal are concerned, the facts are identical(except amounts) to Assessment Year 2011-12. We find that the grounds raised by the Revenue are verbatim to the grounds raised in appeal for Assessment Year 2011-12. Thus, the findings given while deciding aforesaid grounds in Assessment Year 2011-12 would

mutatis mutandis apply to the of grounds of appeal for the impugned assessment year. For parity of reasons, the ground No. 1 to 3 are dismissed.

18. In respect of grounds No.4 to 6 of appeal, the Id. Departmental Representative submits that the CIT(A) has erred in holding that it is a case of unabated assessment.

19. Per contra, the Id. Counsel for the assessee submits that the Assessing Officer has made addition invoking proviso to section 79 of the Act in assessment proceedings u/s 153C of the Act. The proviso to section 79 of the Act is in respect of change in share holding pattern of the company. No incriminating document has been referred to by the Assessing Officer while making said addition. The Id. Counsel for the assessee reiterated the submissions made before the CIT(A). The Id. Counsel for the assessee prayed for dismissing the appeal of Revenue and upholding the findings of CIT(A).

20. Both sides heard. The assessee is a subsidiary of Indiabulls group. A perusal of the assessment order would show that the addition made u/s. 79 of the Act is not based on any incriminating material found and seized during the course of search. In so far as the argument of the Id. Departmental Representative that it is a case of abated assessment, the same is unsubstantiated, hence rejected. In absence of any incriminating material coupled with the fact that it is a case of unabated assessment, no addition could have been made by the Assessing Officer based on any material which was already available on record at the time of regular assessment [*Re. CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd.* (supra)]. Thus, ground No. 4 to 6 of appeal are dismissed.

21. In the result, appeal by the Revenue is dismissed.

22. To sum up, Revenue's appeals for assessment year 2011-12,2017-18 and 2015-16 are dismissed.

Order pronounced in the open court on Friday the 17th day of February, 2023.

Sd/-

(BHAGIRATH MAL BIYANI)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 17/02/2023
 Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar), ITAT, Mumbai