

**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM**

आयकर अपील सं/ I.T.A. No.7622/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 1989-90)

&

आयकर अपील सं/ I.T.A. No.7623/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 1990-91)

Shri Bakul Kunverji Rajal 116, Mulji Devsi Building, Ground Floor, New Chinch Bunder Road, Mumbai- 400009.	<b>बनाम/</b> Vs.	ACIT, CC-3(3) Aayakar Bhavan, Room No. 401, M. K. Road, Mumbai-400020.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPR4005M</b>		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Haresh Shah	
Revenue by:	Smt. Madhumalti Ghosh (DR)	

सुनवाई की तारीख / Date of Hearing: 04/01/2023

घोषणा की तारीख /Date of Pronouncement: 28/02/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

The assessee had preferred the aforesaid captioned appeals against the order of the Ld. CIT(A)-51, Mumbai dated 13.09.2019 for AY. 1989-90 & 1990-91. Since the issues involved in these appeals are common, they are being taken up together.

2. The first ground of the appeal has not been pressed. Accordingly Ground No.1 of the appeals for AYs 1989-90 & 1990-91 is dismissed.

3. The next two grounds of appeal in all the four (4) appeals are against the addition/s made by the AO in the assessment orders impugned before us, which are summarized below: -

(in Rs.)



*ITA Nos. 7622 to 7623  
A.Ys. 1989-90 & 1990-91  
M/s. Bakul K. Rajal*

Particular / Issue	AY 89-90	AY 90-91
Addition in relation M/s Bakul Enterprises	13,29,587	33,47,628
Credit entries in Bank account held with Mandvi Co-op Bank	20,10,511	20,10,511
Addition on account of disclosure made in Settlement Application	2,63,397	1,71,743

4. Brief facts as noted by the AO is that, the assessee who is an individual was engaged in the business of trading in cattle feeds on whole-sale basis. It was noted to be a family business which were mainly carried out through three (3) partnership firms/concerns namely (i) M/s Kunverji Vishram & Co., (ii) M/s Hemant Kumar Chaturbhuji co., (iii) M/s Naresh Trading Co. and a Proprietary Concern of Shri Naresh K. Rajal namely M/s Shobhana Enterprise. The assessee procured cattle feed from various States and it was supplied in and around Mumbai to farmers who reared cattle. The entire business was jointly operated by the common family members. Apart from income from trading activities, the assessee also derived income by way of commission on sale of cattle feeds stock.

5. Search operation was carried out against this Group on 05.09.1994; and during the search action u/s 132 of the Income Tax Act, 1961 (hereinafter "the Act") statements of various family members and accountant of the group concerns were recorded. Also, books of accounts and several documents which included loose papers were impounded by the Investigating authorities. For AYs 1989-90 &



*ITA Nos. 7622 to 7623  
A.Ys. 1989-90 & 1990-91  
M/s. Bakul K. Rajal*

1991-92, the the assessee filed return of income declaring the same income which was declared in the original return of income i.e. Rs.34,870/- & Rs.29,700/- respectively. It is noted that, during the pendency of reassessment, the assessee along with other persons of the Group filed applications before the Settlement Commission u/s 245C(1) of the Act on different dates in the years 1998, 1999 and 2001. The Ld. AR invited our attention to Page no. 2 of the assessment order, wherein the AO has set out a chart of fifteen (15) different assesses belonging to the Group who all had approached Settlement Commission u/s 245D(1) of the Act, pursuant to the search. It is noted that, the orders could not be passed by the Settlement Commission on or before 01.06.2007 and therefore, (due to amendment of relevant law) it was necessary to verify the position of payment of taxes and interest prior to 31.07.2007. Upon verification it was revealed that eight (8) assesses including the appellant, had short-paid their taxes and interest. Hence, citing the non-compliance with the provisions of Section 245D(2D) of the Act, the Settlement Commission declared vide order dated 19.03.2014 that those eight (8) cases got abated as per the provisions of Section 245HA(1)(ii) of the Act. Therefore, the reassessment proceedings stood revived before the AO w.e.f. 19.03.2014 and thereafter continued by issuance of statutory notices u/s 148 of the Act. The assessee objected to the validity of the reopening of assessment but the same is noted to have been rejected by the AO vide letter dated 16.02.2015.



ITA Nos. 7622 to 7623  
A.Ys. 1989-90 & 1990-91  
M/s. Bakul K. Rajal

6. In the course of reassessment, upon analysis of the seized material and the statements of the partners of the above-named firms which were recorded u/s 132(4) of the Act, the AO observed that assessee had employed various methods to evade taxes on a large scale which inter alia included, *to facilitate the unaccounted business and inflation of expenses, the assessee group has been maintaining duplicate sets of books of accounts for all their declared concerns. Over and above the duplicate books of accounts of various concerns, the group maintains completely unaccounted cash books in the name of M/s Bakul Enterprises or cash books with marking 'BE'.* According to AO, M/s Bakul Enterprises was a fictitious entity and the entries found in its books were completely unaccounted for. According to AO, the entity M/s Bakul Enterprises was fully managed by the assessee and therefore the receipts (as tabulated above) were added by way of unaccounted income of the appellant. The AO further noted that the appraisal report of the Investigation Wing revealed that M/s Bakul Enterprises had maintained a bank account with Mandvi Cooperative Bank, which as per the appraisal report of the Investigation Wing, had aggregate credit entries of Rs.20,51,111/- for the period 1<sup>st</sup> November 1988 and 16<sup>th</sup> April 1990. Since the assessee could not furnish the bank statement, the AO the sum of Rs.20,51,111/- mentioned in the appraisal report, both in AYs 1989-90 & 1990-91. Apart from the foregoing, the AO also added the income which was offered by the appellant in the abated Settlement



*ITA Nos. 7622 to 7623  
A.Ys. 1989-90 & 1990-91  
M/s. Bakul K. Rajal*

Application in AYs 1989-90 & 1990-91. Aggrieved by this action of the AO, the assessee preferred appeal before the Ld. CIT(A).

**7.** The Ld. CIT(A) in the appellate order, is noted to have confirmed the additions made in relation to the income Suo moto disclosed and offered by the appellant in the Settlement Application. With regard to the credit entries in the Mandvi Cooperative Bank, the Ld. CIT(A) was pleased to confirm the addition made by the AO in AY 1989-90 and had set aside the addition made in AY 1990-91 back to the AO with directions, for the purposes of verification.

**8.** In respect of the addition made on account of M/s Bakul Enterprises, it was pointed out by the appellant before the Ld. CIT(A) that, (i) the books seized started from the period 01-04-1989 and therefore no addition was warranted in AY 1988-89 and (ii) the credit entries for the period 01-04-1989 to 31-03-1990 was only Rs.13,29,003/- and therefore the addition of Rs.33,47,628/- was excessive and incorrect. Taking note of these contentions, the Ld. CIT(A) directed the AO to verify the same and make the correct addition, having regard to the actual cash book found & seized in the course of search.

**9.** Being aggrieved by the order of Ld. CIT(A), the appellant is now in appeal before us.

**10.** We have heard both the parties. At the time of hearing, the Ld. AR appearing on behalf of the assessee did not press the ground taken against the additions of Rs.2,63,397/- & Rs.1,71,743/- made by the AO with reference to the disclosure made by the appellant in the



*ITA Nos. 7622 to 7623  
A.Ys. 1989-90 & 1990-91  
M/s. Bakul K. Rajal*

abated Settlement Applications for AYs 1989-90 & 1990-91 and therefore these additions are hereby confirmed.

**11.** We now take up the addition made in relation to M/s Bakul Enterprises in AY 1989-90. It is noted that, the Ld. CIT(A) had taking cognizance of the contention of the assessee that the actual cash book/rojmel of M/s s Bakul Enterprises impounded in the course of search was from 01-04-1989 and onwards, had therefore set aside the issue back to the AO to make limited verification into this contention of appellant. We agree with this direction given by the Ld. CIT(A). Accordingly, if no cash book of M/s Bakul Enterprises pertaining to the period AY 1988-89 is found, then as a corollary, no addition would be warranted in the given facts of the present case. However, if any cash-book/rojmel pertaining to the period 01-04-1988 to 31-03-1989 was impounded in the search, then only to the extent of credit entries found therein that addition would be sustained.

**12.** Similarly for AY 1990-91, the assessee had furnished the translated version of the actual cash book seized for the period FY 1989-90 and showed that the credit entries therein totaled only to Rs.13,29,003/- and not Rs.33,47,628/- as noted by the AO in the assessment order. The assessee had accordingly prayed that addition, if any, be restricted to that extent. It is noted that the Ld. CIT(A) taking cognizance of these averments had set aside the issue for verification to the AO and directed him to make addition only to the extent of credit entries found in actual cash book which was impounded in search. We therefore do not see any infirmity in the



*ITA Nos. 7622 to 7623  
A.Ys. 1989-90 & 1990-91  
M/s. Bakul K. Rajal*

above direction given by the Ld. CIT(A) and concur with the same. Needless to mention, the AO shall afford sufficient opportunity of hearing to the appellant, in this regard, in both the AYs 1989-90 & 1990-91.

**13.** Now we proceed to examine the addition of Rs.20,51,111/- made by the AO in both the AYs 1989-90 & 1990-91 in respect of credit entries found in the bank account maintained with Mandvi Cooperative Bank. For ease, we first deem it appropriate to extract the findings recorded by the AO in AY 1989-90, which was as follows:

7.0. Addition on account of Credit entries in the Bank Account maintained at Mandvi Cooperative Bank.

During the course of search it was seen that the assessee had maintained an overdraft account No. 48307 in Mandvi Co-operative Bank, P.d' Mello Road, Bombay in the name of Bakul Enterprises, Total credit available for the period 1<sup>st</sup> November 1988 to 16<sup>th</sup> April 1990 is Rs 20,10,511/- (as per the appraisal report prepared by the investigation wing). In this regard, the assessee was required to submit the copy of the Bank statement. However, the assessee has failed to submit the bank statement till date. Reply for the notice u/s 133(6) asking for the statement for the relevant year is awaited. Hence, in the absence of specific information vis-à-vis the total credit available in the Bank A/c for this assessment year, the entire amount of Rs. 20,10,511/- is added back to the total income of the assessee as unexplained money u/s 69A.”



*ITA Nos. 7622 to 7623  
A.Ys. 1989-90 & 1990-91  
M/s. Bakul K. Rajal*

**14.** It is noted that identical findings were recorded by the AO while framing the impugned assessment order for AY 1990-91.

**15.** The Ld. AR brought to out notice that, both the additions of Rs.20,10,511/- in AYs 1989-90 & 1990-91, was made on account of total credits of Rs.20,50,111/- for the period from 1<sup>st</sup> Nov, 1988 to 16<sup>th</sup> April, 1990, which was a clear case of double addition. He further pointed out that, the AO had simply relied upon the appraisal report prepared by Investigation Wing to make the impugned addition in as much as the AO did not bother to verify/corroborate the information contained in appraisal report with the bank statement for the relevant period. Instead, the AO had shifted the onus on the appellant and for his failure to furnish the bank statement, had made the impugned addition. To this, the Ld. AR explained that since substantial time had elapsed from the date of search and that the bank statement sought for in the course of assessment, was more than 27 years old, the assessee had faced difficulty in procuring them and due to circumstances beyond their control, they were unable to furnish it before the AO. Before us, the Ld. AR had placed the relevant bank statements which were impounded in the course of search which is found placed at Pages 44 to 51 of the Paper book and showed us that the credit entries for the period 1<sup>st</sup> Nov, 1988 to 31<sup>st</sup> March 1989 i.e. AY 1989-90 was Rs.79,392/- for the period 1<sup>st</sup> April 1989 to 31<sup>st</sup> March 1990. He thus urged that addition, if any, in relation to the credit entries found in the Mandvi Cooperative Bank could not exceed Rs.79,392/-. He further



*ITA Nos. 7622 to 7623  
A.Ys. 1989-90 & 1990-91  
M/s. Bakul K. Rajal*

claimed that, since there were debit & credit entries on different dates, the peak credit theory ought to be applied.

**16.** Having perused the material placed before us, we find it fit to remit this issue back to the file of the AO for *de novo verification*. The AO shall examine the bank statements furnished by the assessee (Page 44 to 51 of paper book) and above contentions raised before us. Needless to say, the AO shall afford the appellant sufficient opportunity to explain his case. And, the addition in this regard, shall under no circumstances exceed the total of credit entries found in the bank statement for the period 1<sup>st</sup> April 1989 to 31<sup>st</sup> March 1990.

**17.** In AY 1990-91, we note that the Ld. CIT(A) had in principle accepted the contention of the appellant that only the credit entries pertaining to the period 01-04-1989 to 31-03-1990 found in the bank book could be taxed in the relevant year. The Ld. CIT(A) had examined from the bank book of Madvi Cooperative Bank furnished by the assessee, that the net credit entries found therein was Rs.14,12,266/- for the relevant period. The Ld. CIT(A) accordingly held that under any circumstances, the addition on this issue could not exceed Rs.14,12,266/-. With these observations, the Ld. CIT(A) had set aside the issue back to the AO for verifying the bank statement and accordingly make correct addition as per law. According to us, in principle these directions given by the Ld. CIT(A) in AY 1990-91 does not warrant interference, however the AO is directed to examine the bank statement de-novo and work out the permissible addition on the principle of peak-credit theory. And as held by Ld CIT(A) the addition



ITA Nos. 7622 to 7623  
A.Ys. 1989-90 & 1990-91  
M/s. Bakul K. Rajal

under any circumstance should not exceed Rs 14,12,266/- while working out the peak credit. Needless to mention, the AO shall afford sufficient opportunity of hearing to the appellant, on this issue.

**18.** In light of the above directions, the AO is directed to re-work the taxable income of the appellant for AYs 1989-90 & 1990-91. Accordingly, Ground Nos. 2 & 3 of both the appeals stands partly allowed for statistical purposes.

**19.** In the result, the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on this 28/02/2023.

Sd/-

(OM PRAKASH KANT)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28/02/2023.  
Vijay Pal Singh, (Sr. PS)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai