

IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 3053/Mum/2022

(Assessment Year: 2010-11)

ITA No. 3054/Mum/2022

(Assessment Year: 2016-17)

ITA No. 3070/Mum/2022

(Assessment Year: 2008-09)

ITA No. 3071/Mum/2022

(Assessment Year: 2009-10)

ITA No. 3072/Mum/2022

(Assessment Year: 2013-14)

ITA No. 3073/Mum/2022

(Assessment Year: 2014-15)

ITA No. 3074/Mum/2022

(Assessment Year: 2017-18)

ITA No. 3075/Mum/2022

(Assessment Year: 2011-12)

ITA No. 742/Mum/2023

(Assessment Year: 2008-09)

ITA No. 743/Mum/2023

(Assessment Year: 2009-10)

ITA No. 744/Mum/2023

(Assessment Year: 2010-11)

ITA No. 745/Mum/2023

(Assessment Year: 2011-12)

ITA No. 746/Mum/2023

(Assessment Year: 2013-14)

ITA No. 747/Mum/2023

(Assessment Year: 2014-15)





Bhagwati Suresh Modi
Vinayak Bungalows,
Opp. Banas Bhavan, Near
Mahesh Bajaj, Deesa Highway
Road,
Palanpur, Gujarat-385001

(Appellant)

Income Tax Officer
Ward 3(2)(1)
Room No.1627,
16th Floor,
Air India Building,
Nariman Point,
Mumbai-400 021

(Respondent)

PAN No. AQBPM3981F

Assessee by : Shri Kishor R. Gheewala, AR
Revenue by : Shri Purushottam Tripuri, CIT DR

Date of hearing: 26.04.2023
Date of pronouncement : 28.04.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are fourteen appeals filed by the assessee from A.Ys. 2008-09 to 2017-18 with respect to similar issue. Therefore, all these appeals are argued by the learned Authorized Representative on similar lines and the learned Departmental Representative also responded identically and therefore, these appeals are disposed off by the common order.
02. Brief facts of the case shows that assessee is an individual who has not filed her return of income for A.Y. 2008-09.
03. Search took place under Section 132 of the Income-tax Act, 1961 (the Act) on 6th March, 2018 in case of Satyam, Sangani, Shaligram group of companies. During search



residential premises of Viral K Patel, Ahmadabad, was also covered as he is the key person handling the cash transaction relating to M/s Satyam Developers Limited. During the course of search certain incriminating documents and digital data was found and seized.

04. According to the data found it revealed that Mrs. Bhagwati Suresh Modi (Assessee) has purchased unit A33 and 34, having built up area of 756.03 sq. mts. in Project 'Satyam Sentossa Gtreenland', on 31st July, 2010 for a total cost of ₹2,07,57,500/- out of which ₹1,64,57,500/- has been paid in cash.
05. Therefore, the information in the seized documents related to the assessee. Accordingly, a satisfaction note by the Income Tax Officer (IT) 3(2)(1), Mumbai was recorded on 31st March, 2021 and respective notice under Section 153(3) of the Act were issued to the assessee for A.Y. 2008-09 to A.Y. 2017-18.
06. For A.Y. 2008-09 , assessee has not filed any return of income under Section 139 of the Act.
07. In this case, the satisfaction of the learned Assessing Officer i.e. Joint Commissioner of Income Tax, Central Circle, 2(2), Ahmadabad, being the Assessing Officer of the searched person was recorded on 18th February, 2021 and satisfaction of the learned Assessing Officer of the assessee was recorded on 31st March, 2021 for all these years.



08. The respective reasons were provided to the assessee. On 15th November 2021, the assessee was also provided with seized material found being a ledger account of the assessee from the Tally data. The assessee was also provided with satisfaction note of the learned Assessing Officer. Assessee filed objections which were disposed off by the learned Assessing Officer on 9th December, 2021. Assessee was given many opportunities but did not elicit any response and therefore, finally show cause notice dated 16th December, 2021 was issued.
09. According to the show cause notice it was stated as per the seized Tally data of ledger account for the year ended on 31st March, 2008, that the assessee paid 1,11,00,000/- in cash to Shri Suresh Bhai for the purchase of the above property.
010. Assessee submitted that she is a senior citizen and the matter is too old but she denied that she paid any sum in cash. She also requested for further additional evidences.
011. The learned Assessing Officer made the addition of ₹1,11,00,000/- as unexplained cash credit under Section 69 of the Income-tax Act, 1961 (the Act). As assessee having house property income and also the income from other sources, the draft order under Section 143(3) read with section 144C of the Act was passed on 30th September , 2021.



012. Assessee filed objection before the learned Dispute Resolution Panel which issued direction and accordingly, the order under Section 144 read with section 144C (13) read with section 153C of the Act was passed on 19th October, 2022 determining the total income of ₹1,14,76,500/-.
013. Before the learned Dispute Resolution Panel assessee sent email on 25th January, 2022 in the form of objection in form no.35A. On 29th January, 2022, assessee submitted revised objections before the learned Dispute Resolution Panel. On 19th September, 2022, the submissions were filed before Dispute Resolution Panel and on 30th September, 2022, the Dispute Resolution Panel passed the direction.
014. Based on this direction on 19th October, 2022, final assessment order was passed by the learned Assessing Officer for A.Y. 2008-09 to 2011-12, 2013-14 to 2014-15 and 2016-17 to 2017-18.
015. Meanwhile, as there was a confusion in the mind of assessee that whether the Assessing Officer has passed a 'draft assessment order' or 'final assessment order', the assessee was under the impression that the learned Assessing Officer has passed the final Assessment order, preferred appeal before the learned CIT (A) on 27th January, 2022. These appeals were filed for A.Ys. 2008-09 to 2011-12, 2013-14 to 2014-15.



016. The assessee filed appeal on 5th December, 2022, against assessment order through Dispute Resolution Panel Route for eight years on 5th December, 2022.
017. Meanwhile, the appellate order were passed by the learned CIT (A)-57, Mumbai for six years on 13th January, 2023 and therefore, on 10th March, 2023, assessee filed these six appeals before the ITAT arising out of CIT (A) route.
018. Thus, there are fourteen appeals filed by the assessee.
019. In the present case, search on 6th March, 2018, was carried out on Satyam group. Satisfaction note in case of the assessee was recorded on 31st March, 2021 for A.Y. 2008-09 to A.Y. 2011-12 and A.Y. 2012-13 to A.Y. 2017-18. According to first proviso to section 153C of the Income-tax Act, 1961 (the Act) the date of search shall be the date of receiving the books of account or documents etc. by the Assessing Officer of the assessee. As there is no information available about the dates of receiving such material, the date of satisfaction note by the learned Assessing Officer of the assessee i.e. 31st March, 2021, shall be the date of search.
020. According to explanation 1 to section 153A of the Act the income of the assessee can be assessed from A.Y. 2011-12 to A.Y. 2020-21 being 10 assessment years from the date of recording of the satisfaction. Therefore, on this basis the assessment made for A.Y. 2008-09 to A.Y. 2010-

11 which are beyond 10 years block are barred by limitation.

021. Accordingly, following ITA numbers are allowed as the orders of the lower authorities are barred by limitation.

ITA No.	A.Y.
3070/Mum/2022	2008-09
742/Mum/2023	2008-09
3071/Mum/2022	2009-10
743/Mum/2023	2009-10
744/Mum/2023	2010-11
3053/Mum/2022	2010-11

022. Accordingly, all these six appeals are dismissed.

023. Further, as per information the assessee has made payment in cash as under:-

F.Y.	A.Y.	Amount paid
1.04.07 to 31.03.2008	2008-09	1,11,00,000
1.04.2008 to 31.03.2009	2009-10	50,00,000
1.04.2009 to 31.10.2010	2010-11	Nil
1.04.2010 to 31.03.2011	2011-12	3,57,500
1.04.2011 to 31.03.2012	2012-13	Nil
1.04.2012 to 31.03.2013	2013-14	Nil
1.04.2013 to 31.03.2014	2014-15	Nil
1.04.2014 to 31.03.2015	2015-16	Nil
1.04.2015 to 31.03.2016	2016-17	Nil
1.04.2016 to 31.03.2017	2017-18	Nil

024. As we have already held that assessment years prior to A.Y. 2011-12 are beyond the scope of provisions of section 153C of the Act and further in subsequent years the aggregate amount of undisclosed income does not exceed ₹ 50 lacs, therefore, the Assessing Officer loses his



jurisdiction for passing an order under Section 153C of the Act.

025. Accordingly, all other eight appeals filed by the assessee are allowed.

026. In the result, all fourteen appeals filed by the assessee are allowed.

Order pronounced in the open court on 28.04.2023.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.04. 2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai