

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

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA Nos. 4381 to 4387/MUM/2018
Assessment Years: 2008-09 to 2014-15

Shri Kannan Kashi
Vishwanthan, Vishwam, 8/B,
Postal Colony, Chembur,
Mumbai-400071.

PAN No. ADJPV 4912 G
Appellant

Vs.

Dy. CIT. CC-5(2),
Room No. 1908, 19th floor,
Air India Building Nariman
Point, Mumbai-400020.

Respondent

Assessee by : Mr. Nilesh Joshi
Revenue by : Mr. Neehar Ranjan Pandey, CIT-DR

Date of Hearing : 29/05/2023
Date of pronouncement : 31/05/2023

ORDER

PER BENCH

These appeals by the assessee are directed against separate orders, each dated 02.02.2018, passed by the Ld. Commissioner of Income-tax (Appeals)-53, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2008-09 to assessment year 2014-15 respectively. As common grounds of appeal are involved, therefore, these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.



2. These appeals have been filed with delay of 58 days. The Ld. Counsel of the assessee drawn our attention to the application of the contention of delay for filing appeals and the affidavit filed by the assessee. In the application for condonation of the delay, the assessee has mainly submitted that he was not well and suffering from mental depression, anxiety and panic attacks, and he was treated for two years, since October 2016, under guidance of Dr. Manjit Singh Palaned, MD. The assessee also furnished a photocopy of the prescription issued by 'the doctor' from time to time. In view of medical reasons and evidences enclosed ,we are of the opinion that there is a sufficient and bonafide cause for delay in filing the appeal, hence the delay of 58 days is condoned and these appeals are admitted for adjudication.

3. Briefly stated, facts of the case are that the assessee was a director of 'M/s Aanjaneya Lifecare Ltd'. [now known as Dr. Datson Labs Ltd. (DDL),] which is claimed to be currently under liquidation proceedings. Said company was engaged in the business of manufacturing of drugs and medicines. The assessee also had a proprietorship concern namely 'M/s Benzolife'. A search and seizure action u/s 132(1) of the Income-tax Act, 1961 (in short 'the Act') was carried out in the case of "Aanjaneya Group" along with other group concerns on 24.09.2013. A notice u/s 153A of the Act was issued and served upon the assessee for assessment years 2008-09 to 2014-15, asking the assessee to file returns of income for relevant



assessment years. The assessments for assessment years 2008-09 to 2014-15 have been completed on 31.03.2016 u/s 153A of the Act, wherein various additions for total deposits in bank accounts, cash deposits in bank accounts, unexplained cash credit, commission for circular fund movement etc. have been made. During the assessments in some years, the assessee agreed that circular fund movement to the company 'DDLL' has been made through assessee, for which the assessee offered 0.5 percentile as commission income, which has been increased by the Assessing Officer to 0.75 percentile of fund moved.

3.1 The assessee filed appeals before the Id CIT(A) and challenged various additions on merit. The assessee also challenged validity of proceedings u/s 153A on the ground, **firstly**, that no warrant was issued in the case of the assessee. This contention of the assessee has been rejected by the Ld CIT(A) and in the impugned order, he has duly referred the warrant and panchnamas prepared in the name of the assessee. **Secondly**, the assessee challenged that no incriminating material was found or seized in the case of assessee qua the additions made, hence no addition could have been made in case of unabated assessment years, relying on the decision of the Hon'ble Bombay High Court in the case of **CIT vs Continental Warehousing Corporation (Nhava Sheva) Ltd [58 taxmann.com 78] (BombayHC)**. The Id. CIT(A), however rejected this challenge of the assessee and held that various material has been found in the



search of the group cases, which are incriminating in the nature, hence, no relief was granted relying the ratio of hon'ble Jurisdictional High Court in the case of Continental warehousing Corporation (supra). On merit, the Ld. CIT(A) partly sustained the additions and directed relief, wherever addition was made twice in respect of same deposit, firstly, under the entries of banks and secondly as cash deposited in bank. Aggrieved, with the additions sustained, the assessee is in appeal before the Tribunal.

3.2 In the appeals before us, validity of invoking section 153A has not been challenged on the ground that *no warrant was issued in the case of the assessee*. The appeals have challenged only on the ground that *no incriminating material was found qua the additions made, hence no addition could have been made in the assessments*. We find that Hon'ble Bombay High Court in the case of Continental warehousing Corporation (supra) has held that in case of unabated assessments or completed assessments, no addition could have been made without the aid of incriminating material found during the course of search. Thus, it is relevant for us to analyze the assessment years, which are unabated and the which are abated, out of the assessment years involved before us. It is settled law that if in any of the assessment year, assessment proceedings see u/s 143(3) or 147 etc are pending as on the date of search, then those assessments are treated as abated in terms of second proviso to section 153A(1) of the Act. Further, if as on the date of search, the



limitation for issue of notice u/s 143(2) of the for selection of case under scrutiny has not expired, then those assessments could have been validly taken for scrutiny. The CBDT Circular No. 549 dated 31st October, 1989, has clarified that *when there was a failure to issue a notice to an Assessee under Section 143(2) of the Act within six months from the end of the month in which the return is furnished or during the financial year in which the return is furnished, whichever is later, then the Assessee “can take it that the return filed by him has become final and no scrutiny proceedings are to be started in respect of that return.”* Therefore, those assessment years, where limitation for issue of notice u/s 143(2) has not expired, also get abated. But for the assessment years, if assessment proceedings u/s 143(3) or u/s 147 etc , is already completed before the date of search or limitation for issue of notice u/s 143(2) already expired as on the date of search, those assessments would be unabated assessments.

3.3 In the case of assessee, search has been conducted on 24.09.2013. There is no dispute between the parties on the fact that no assessments were pending either u/s 143(2) or u/s 147 of or any other section as on the date of search in relation to assessment years under reference, so the question of abatement has to be examined as to whether the limitation for issue of notice u/s 143(2) was available on the date of search qua each assessment year. Under the provisions of the Act, the limitation for issue of notice



u/s 143(2) for each of the assessment year has been provided, which is summarised in below table:

AY	Due date of filing return of income in salary case of assessee	Expiry of Limitation for issue of notice u/s 143(2) of the Act in the case of assessee
08-09	31/07/2008	30/09/2009
09-10	31/07/2009	30/09/2010
10-11	31/07/2010	30/09/2011
11-12	31/07/2011	30/09/2012
12-13	31/07/2012	30/09/2013
13-14	31/07/2013	30/09/2014
14-15	31/07/2014	30/09/2015

3.4 The assessment years 2008-09 to 2011-12 were completed u/s 143(1) of the Act and limitation for issuing notice u/s 143(2) had expired prior to 24.09.2013, thus, those are the abated assessment years. For assessment year 2012-13 onwards, the limitation for selection of cases under scrutiny was not expired as on the date of search, hence those are in the nature of abated assessment. **In case of unabated assessments, it is held by the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (supra) that only addition could have been made with the aid of the incriminating material.**

3.5 Therefore, now we take up the appeals for assessment years 2008-09 to 2011-12, which are unabated, for adjudication. The grounds raised for assessment year 2008-09 are reproduced as under:

1. *The learned Assessing Officer has erred in undertaking the assessment u/s 153A of the Income Tax Act, 1961*



(hereinafter referred to as 'the Act'); despite the fact that no search was undertaken on the appellant. The appellant prays that the assessment us 153A is bad in law and it be quashed.

2. *2. The learned Assessing Officer has erred in taxing the entire deposits in two Canara Bank accounts amounting to Rs. 12,16,39,728/- u/s 68 of the Act. The learned Assessing Officer has blindly taxed the entire deposits in the bank account. The learned Commissioner of Income Tax (Appeals) has erred in upholding the same on merits subject to quantum being re-verified.*
3. *3. The learned Assessing Officer erred in making addition of the cash deposits in bank account of Rs. 13,38,000/- w/s 68 of the Act. The Fearned Assessing Officer failed to appreciate that the source of cash deposits and withdrawals was submitted. The learned Commissioner of Income Tax (Appeals) has upheld the addition which is already considered and part and parcel of addition made in Ground No. 2 mentioned herein above.*
4. *4. The learned Assessing Officer has erred in making addition of the unsecured loans u/s 68 of the Act of Rs. 3,20,18,059/-. The learned Assessing Officer failed to appreciate that the appellant had submitted a revised Balance Sheet netting off the loans. The learned Commissioner of Income Tax (Appeals) has given a partial relief and sustained addition of Rs. 1,14,22,000/-.*

4. This is the year of unabated assessment, hence, as held in the case of Continental ware housing corporation (supra), addition could have been made only on the basis of any incriminating material found during the course of search in the case of the assessee. As far as the issue of no incriminating material qua the addition is concerned, the Ld. CIT(A) has observed as under:

“4.4 I am unable to accept the appellant's aforesaid plea, because this is not a case where no incriminating material was found during the course of search. As regards the issue of abatement of assessment, it is noticed that there was no



prior assessment u/s. 143(3) in this case. The return was only processed u/s. 143(1). As such, the Assessing Officer can look at all the issues while framing the assessment order and is not constrained by only the issues arising from the findings of the search action. As regards the claim that there was no incriminating documents found in the course of search, the facts are entirely different. Shri Kannan K. Vishwanath had promoted M/s. Aanjaneya Lifecare Ltd. later known as M/s. Dr. Datsons Labs Ltd. (DDLL) which was incorporated on 03-01-2006. This company became public listed company for the year 2011 when it raised capital amounting to Rs. 117 crores through Initial Public Offering. The company appointed M/s. Anand Rathi Advisors Ltd. as book running lead managers. In the case of DDLL, the appellant filed revised return for AY 2012-13 in which the original returned income of Rs. 32.56 crores was reduced to Rs. 1.68 crores and the book profit was reduced from Rs. 55.47 crores to Rs. 7.36 crores. Irregularities were noticed in the IPO and the matter was enquired by SEBI. The share price of DDLL went upto Rs. 850/- per share on 18-01-2013 which thereafter came down to Rs. 30/- per share on 02-09-2013. Hence, based on various other information, search & seizure action was carried out in the appellant group comprising of DDLL and the appellant. It was found that depreciation was claimed on bogus capex purchases, circular trading transactions were carried out by DDLL without delivery of any material. Bad debts were claimed by DDLL. Documents were found showing cash transactions by M/s. Sudar Industries Ltd., a group concern promoted by the appellant, whose papers and cheque books including cancelled cheques were found and seized from the residential premises of the appellant which indicated the number of instances of cash transactions related to Sh. Kashi Vishwanath and Shri Kannan Vishwanath. Evidence was found that the appellant has a proprietary concern M/s. Benzolife which was used as conduit to transfer funds to DDLL. This has been admitted by the appellant in his submission dated 26.3.2016 in the assessment proceedings. Bank account of the appellant with Axis Bank at Panel and Nariman Point Branches showed transactions with entities with whom bogus transactions were carried out. Documents showing unaccounted transactions of Sh. Kashi Vishwanath with M/s. All Ammar Developers were found suggesting out of books cash transactions.



4.5. Thus, it can by no means be said that no incriminating material was unearthed in case of the appellant during the course of search. In view of this, no fault can be found with the action of the A.O. in issuing notice u/s. 153A to the appellant proposing to make assessments for all six A.Ys. Reliance is placed in this regard on the judgement of Hon'ble Delhi High Court in the case of CIT v. Anil Kumar Bhatia 352 IT 493 (Del) wherein on similar facts, action of the Assessing Officer in invoking the provisions of section 153A of the Act and making additions on various grounds was upheld. In that case, the A.Ys. involved were 2000-01 and 2002-03 to 2006-07. During the course of search, a written undertaking of loan of Rs. 1,50,000/- dated 10.02.2003 given by the assessee in that case to a lady had been recovered pertaining to A.Y.2003-04. In A.Ys.2001-02 and 2002-03 and even subsequent years, the Assessing Officer had made additions on account of unexplained deposit, agricultural income and unexplained gift. After considering the legal provisions as well as the new scheme of post search block assessments introduced w.e.f.01.06.2003, the Hon'ble High Court held that the Tribunal was not justified in holding that no addition could be made for agricultural income, gift received and unexplained deposits as stated above on the ground that in respect of these additions, no material was found during the search carried out u/s. 132 and also on the ground that for all the A.Ys. under consideration, the returns filed by the assessee before the search had been processed u/s. 143(1)(a) of the Act. It was also held that the Assessing Officer has the power u/s.153A to make assessment for all the six years and compute the total income of the assessee including the undisclosed income notwithstanding that the assessee filed returns before the date of search which stood processed u/s. 143(1)(a). In view of the broad parity of facts and issue involved, the ratio of aforesaid judgment will apply with full force in case of the appellant. Therefore, it is held that the A.O. was justified in making the impugned assessment in case of the appellant by invoking the provisions of section 153A of the Act and his action in doing so being in accordance with law is upheld. In view of the above position, the contentions raised by the appellant are found to be devoid of merit and are dismissed. Ground of Appeal No.2 is dismissed.”



4.1. We have heard rival submissions on the issue of no incriminating material found during the course of the search. The Ld. CIT(A) formed the opinion of existence of incriminating material on many observations. **Firstly**, the Ld. CIT(A) has referred to facts related to the company 'DDLL'. He has referred that 'DDLL' was promoted by the assessee and irregularities were noticed in the initial public offering (IPO) raised by the said company, which led to search in the case of the company along with the assessee. **Secondly**, the Ld. CIT(A) has referred to claim of depreciation by the said company on bogus capex purchase, circular trading transactions etc. We are of the opinion that certainly, no incriminating material qua the assessee has been referred in these two observations. **Thirdly**, Ld. CIT(A) has referred to cash transactions by M/s Sunder Industries Ltd, whose cheque-book and other papers were seized from the residence of the assessee. These evidences being related to the said company, same cannot be treated as incriminating material found related to the assessee. **Fourthly**, the Ld. CIT(A) has referred to use of proprietary concern M/s Benzolife as conduit for transferring funds to DDLL. But, the Ld. CIT(A) himself has mentioned that this fact was admitted during the course of the assessment proceeding. Thus, this material also cannot be treated as incriminating material found during the course of the search. **Fifthly**, the Ld. CIT(A) has referred to bank accounts of the assessee, which cannot be treated as incriminating material as same are part of the regular books of accounts of the assessee.



Sixthly, the Ld. CIT(A) has referred to documents of unaccounted transactions of the assessee with M/s All Ammar Developers, however, neither any reference of particular seized material has been made nor any addition has been made by the AO on the basis of the said seized material in the case of the assessee. Thus, the finding of ld CIT(A) reproduced above is factually incorrect to hold existence of incriminating material.

4.2 Now, examine reference of any seized material in additions made by the Assessing. We find that in assessment year 2008-09, the Assessing Officer has made three additions. **Firstly**, the addition of Rs.12,16,39,728/- u/s 68 of the Act on the basis of credit entries of the bank accounts maintained with Canara bank i.e. a saving bank account No. 0232101101571 and another current account No. 0232201002250. The Assessing Officer held that the entire credit entries of those bank accounts as unexplained u/s 68 of the Act. The relevant finding of the Assessing Officer is reproduced as under:

“6.5 During the course of assessment proceedings. it has been found that the assessee is having two accounts in the Canara Bank, having account No. 0232101101571 and CA no. 0232201002250, However, the assessee has not furnished the nature and source of the credit entries in that bank account. Therefore, he has failed to prove the identity and creditworthiness of the source along with the genuineness of this transactions. The credit entries of Rs. 5.01.039/- and Rs.12.11,38,689/- as appearing in the Canara Bank, having account 10. 02.12101.101571 and CA no. 0212201002250 respectively are treated as income of the assessee as the assessee has not furnished nature and source of these entnies.



The working of the unexplained income has been done on the basis of bank statement of these bank accounts running in 44 pages. Further, it has been noticed that there is absence of continuity in the dates of the bank statement. Therefore, it might be possible that there may be other credit entries pertaining to A.Y under consideration. The 44 pages of both bank accounts are annexed as annexure 'A' of this order.

In light of above discussion, an aggregate addition of Rs. 12,16,39,728/- is made to the total income of the assessee. Further I am satisfied that the assessee has furnished the inaccurate particulars of income and concealed the particulars of income therefore, penalty u/s. 271(1)(c) of the I. T. Act is initiated.”

4.3 The relevant finding of Id CIT(A) is reproduced as under:

“5.4 I have considered the submissions carefully. It is noted that the appellant has merit in as much as the quantum of total credits in the bank a/c appears to be incorrectly computed by the assessing officer perhaps due to the fact that the bank statements annexed to the assessment order shows some pages containing repetition for same period (e.g. May 2007) and perhaps not carefully excluding the opening balance for each month. On test check basis, the appellant's contentions appears to be correct. However, the assessing officer is directed to check and verify the computation and restrict the addition to only credits received as reflected in the bank statements. However, as regards the explanation and justification of the credits, the appellant has failed to furnish the same. The addition made is, therefore, upheld on merits subject to quantum being re-verified. Ground of Appeal No.3 is partly allowed.”

4.4 During the course of hearing before us, the Ld. Departmental Representative (DR) was specifically asked to refer and produce the incriminating material qua this addition of unexplained credit into bank accounts. The Ld. DR despite providing sufficient time of more than one month, he failed to produce or link the addition with any incriminating material. We may note that neither the



Assessing Officer nor the ld. CIT(A) has specifically linked this addition with any incriminating material found and seized during the course of search, therefore, in absence of any incriminating material qua this addition, same cannot be sustained. The ground No. 2 of the appeal is accordingly allowed.

5. The ground No. 3 of the appeal relates to the addition of Rs.13,38,000/-, which was wrongly mentioned by the Assessing Officer at Rs.48,72,000/-. Before us the Ld. Counsel of the assessee submitted that Ld. CIT(A) has already directed the Ld. AO for deleting the double addition of cash deposit and the ld AO has accordingly allowed relief, so the assessee was not aggrieved qua the ground, hence ground was not pressed before us. The ground No. 3 is accordingly dismissed.

6. The ground no. 4 relates to the addition of Rs. 3,20,18,059/- made by the Assessing Officer in respect of unexplained cash credit on the basis of the revised balance sheet furnished by the assessee. The relevant finding of the Ld. Assessing Officer is reproduced as under:

8.2 The submission of the assessee has been considered, however, the same is not found to be tenable as in the earlier balance sheet there have been matching between the asset and liabilities. The assets shown in the balance sheet filed earlier were having direct relationship with the assessee. Further, the plea of the assessee does not have force as the assessee has not furnished the supporting evidences to prove his point. It is to be noticed here that the loan has been shown to be taken from only two lenders i.e, M/s. Shree Ganesh Enterprises



&M/s. Trimula Corporation in both balance sheets, however the amount has been changed which is represented in tabular form herein as under:

Sr. No.	Name of the Lenders	Amount of loan in earlier B/S	Amount of loan in later B/S
1.	Tirumala Corporation	1,14,22,000	1,14,22,000
2.	Shree Ganesh Enterprises	2,05,96,059	74,85,186
		Rs.3,20,18,059/-	1,89,07,186/-

6.1 The Ld. CIT(A) has allowed part relief to the assessee on this issue. The relevant finding of the Ld. CIT(A) is reproduced as under:

“7.4 I have considered the submission carefully. It is noted that the appellant did not require to have his accounts audited since the turnover of the business was below the prescribed limits and the balance sheet prepared and submitted was only in the course of assessment proceedings. It is noted that in the submission dated 23.3.2016 in the assessment proceedings, it was informed that bank statements of Dr. Datsons Labs Ltd. were not available as it was under liquidation and the earlier assessing officer had insisted to submit balance sheet and capital accounts on as is where is basis. After the subsequent assessing officer provided the bank statements, a revised balance sheet and capital accounts was submitted. The amount of Rs. 1,89,07,186 /- was supported by the confirmations filed by the appellant. The AO did not carry out any independent verification of these unsecured loans. Thus, there is no basis to reject the subsequent submissions and make the addition based on the initial submission when the same is not in the form of an audited balance sheet. Further, as regards the amount of Rs. 1,89,07,186/-, as per the appellant, this comprises of an amount of Rs. 1,14,22,000/- from Tirumala Corporation and Rs.74,85,186/- from Shree Ganesh Enterprises. In the case of Shree Ganesh Enterprises total credits received is Rs.9,37,49,875/- and after accounting for the journal entries, including that for sales of Rs.8,62,64,689/-, the closing balance is shown as Rs.74,85,186/-. The AO has taken only the closing balance as the unexplained cash credit. It is further noted that the credit of Rs.9,37,49,875/- is reflected as credits in the current a/c of the appellant with Canara Bank. The total amount of credits appearing in the bank statements



with Canara Bank has already been added u/s.68 by the Assessing Officer. Thus, to that extent, any addition in respect of unsecured loans from Shree Ganesh Enterprises amounts to double addition. Hence, addition in respect of 74,85,186/- comprised in Rs. 1,89,07,186/- amounts to double addition and is, therefore, deleted. As regards the amount of Rs. 1,14,22,200/- shown to be received from Tirumala Corporation, it is noted that the amount received is not reflected in the bank statements with Canara Bank. Instead, this credit is reflected in the current a/c of the appellant with HDFC Bank. Hence, the addition u/s.68 is sustained in respect of the amount shown as received from Tirumala Corporation. In effect, as against the addition made by the AO of Rs.3,20,18,059/-, addition is sustained only to the extent of Rs. 1,14,22,000/-. Ground of Appeal No.5 is partly allowed.”

6.2 We have perused the relevant material on records, however, we do not find any reference of incriminating material qua the addition either by the Ld. Assessing Officer or by the Ld. CIT(A). The Ld. DR was also provided enough opportunity to produce any incriminating material qua the addition. It is evident from the finding of the Assessing Officer that the addition made is on the basis of the balance sheet and profit and loss accounts furnished by the assessee during the course of the assessment proceedings. Therefore, in our opinion this addition is not based on incriminating material found during the course of the search and accordingly same cannot be sustained relying on ratio in the case of Continental Warehousing Corporation (supra). Since the additions cannot be sustained on the legal ground of no incriminating material and therefore, we are not required to adjudicate upon the merit of the addition. The ground No. 4 of appeal of the assessee for assessment year 2008-09 is accordingly allowed.



7. The grounds raised for AY 2009-10 are reproduced as under:

1. *The learned Assessing Officer has erred in undertaking the assessment us 153A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'); despite the fact that no search was undertaken on the appellant. The appellant prays that the assessment u/s 153A is bad in law and it be quashed.*
2. *The learned Assessing Officer has erred in taxing the entire deposits in two Canara Bank accounts amounting to Rs. 9,78,54,912/- u/s 68 of the Act. The learned Assessing Officer has blindly taxed the entire deposits in the bank account. The learned Commissioner of Income Tax (Appeals) has erred in upholding the addition on merits subject to quantum being re-verified.*
3. *The learned Assessing Officer erred in making addition of the cash deposits in bank account of Rs. 1,50,000/- u/s 68 of the Act. The learned Assessing Officer failed to appreciate that the source of cash deposits and withdrawals was submitted. The learned Commissioner of Income Tax (Appeals) has erred in upholding the addition on merits which forms part of the addition made in Ground No. 2 mentioned herein above.*
4. *The learned Assessing Officer has erred in making addition of the unsecured loans us 68 of the Act of Rs. 6,75,26,716/-. The learned Assessing Officer failed to appreciate that the appellant had submitted a revised Balance Sheet netting off the loans. The learned Commissioner of Income Tax (Appeals) has erred in sustaining the addition while restricting the addition to Rs. 1,37,10,619/-.*
5. *The learned Commissioner of Income Tax (Appeals) has erred in enhancing the income of the appellant by Rs. 39,800/- on account of credit in the HDFC Bank account of the appellant.*

7.1 In AY 2009-10, the ground Nos. 1 to 4 are identical to ground nos. 1 to 4 for AY 2008-09, therefore same are decided *mutatis mutandis*.



8. In ground No. 5, the assessee has challenged enhancement of income by the ld CIT(A) of Rs. 39,800/-. The finding of ld CIT(A) is reproduced as under:

“9. In the course of appellate proceedings, the appellant was asked to furnish the bank statements in respect of its accounts with HDFC Bank account no. 00132320003567 at Anchorage Building, 170/171 Central Avenue, Chembur, Mumbai and to explain the credit entries. He was also informed that the failure to do so may result in enhancement of income. The appellant submitted the copy of bank statement with HDFC Bank as per which the total credits during the year is 60,39,800/-. This shows credit of Rs60,00,000 on 4.4.2008 from Shree Ganesh Enterprises. The other credit is Rs39,800/- on 5.8.2008. The addition of Rs60,00,000/- has been upheld in ground of appeal no 5 earlier. There is no explanation in respect of Rs 39,800/- Hence enhancement of income of Rs 39,800/- is considered necessary based on the bank account with HDFC Bank. The income is therefore enhanced by Rs 39,800/-.”

8.1 On perusal of above finding, we find that there is no reference of any incriminating material found during the course of search qua the income enhanced by the Ld CIT(A), therefore, no addition could have been sustained being unabated assessment, relying on the decision of Hon'ble Bombay High Court in the case of Continental warehousing corporation (supra). The ground No. 5 of the Appeal is accordingly allowed.

9. Now, we take up the Appeal for AY 2010-11. The grounds raised by the assessee are reproduced as under:

- 1. The learned Assessing Officer has erred in undertaking the assessment u/s 153A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'); despite the fact that no*



search was undertaken on the appellant. The appellant prays that the assessment u/s 153A is bad in law and it be quashed.

2. 2. The learned Assessing Officer has erred in taxing the entire deposits in two Canara Bank accounts amounting to Rs. 8,71,40,866/- u/s 68 of the Act. The learned Assessing Officer failed to appreciate that the source of the deposits was explained. The learned Commissioner of Income Tax (Appeals) has erred in sustaining the addition while allowing relief subject to verification of claim of the appellant of interest income being offered to tax.
3. 3. The learned Assessing Officer has erred in taxing the deposits in Axis Bank accounts amounting to Rs. 9,44,99,000/- u/s 68 of the Act. The learned Assessing Officer failed to appreciate that the source of the deposits was explained.
4. 4. The learned Assessing Officer has erred in taxing the unexplained income out of circular fund movements amounting to Rs. 7,26,000/-. The learned Assessing Officer ought to have accepted the disclosure made by the appellant of 0.5%.
5. 5. The learned Assessing Officer has erred in making addition of the unsecured loans u/s 68 of the Act of Rs. 29,54,95,384/-. The learned Assessing Officer failed to appreciate that the appellant had submitted a revised Balance Sheet netting off the loans. The learned Commissioner of Income Tax (Appeals) has erred in sustaining the addition while restricting the amount to Rs. 3,35,98,005/- subject to re-verification of quantum.

9.1 Before us the Ld. Counsel submitted that the Ground No. 4 of the appeal was not pressed by the assessee, therefore, same is dismissed as infructuous. The other ground Nos. 1 to 3 and 5 are identical to ground Nos. 1 to 4 of the appeal for Ay 2008-09, therefore, same are decided mutatis mutandis.

10. Now, we take up appeal for AY 2011-12. The grounds raised are produced as under:



1. *“1. The learned Assessing Officer has erred in undertaking the assessment us 153A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'); despite the fact that no search was undertaken on the appellant. The appellant prays that the assessment u/s 153A is bad in law and it be quashed.*
2. *2. The learned Assessing Officer has erred in taxing the three deposits in the bank accounts amounting to Rs. 15,29,91,693/- u/s 68 of the Act. The learned Assessing Officer failed to appreciate that the source of the deposits was explained. The learned Commissioner of Income Tax (Appeals) has erred in sustaining the addition subject ot verification of quantum and exclusion of transactions of internal bank transfers from one account to another.*
3. *3. The learned Assessing Officer has erred in taxing the unexplained income out of circular fund movements amounting to Rs. 36,83,715/-. The learned Assessing Officer ought to have accepted the disclosure made by the appellant of Rs. 23,34,500/-.*
4. *4. The learned Assessing Officer has erred in making addition of the cash deposits in bank account of Rs. 14,80,000/- u/s 68 of the Act. The learned Assessing Officer failed to appreciate that the source of cash deposits and withdrawals was submitted. The learned Commissioner of Income Tax (Appeals) has erred in upholding the addition which is included in the amount of addition in Ground No. 2 mentioned herein above.*
5. *5. The learned Assessing Officer has erred in making addition of the unsecured loans u/s 68 of the Act of Rs. 64,31,40,977 / -. The learned*

10.1 Before us the Ld. Counsel submitted that the Ground No. 3 of the appeal was not pressed by the assessee, therefore, same is dismissed as infructuous. The other ground Nos. 1to 2 and 4 to 5 are identical to ground Nos 1 to 4 of the appeal for Ay 2008-09, therefore, same are decided mutatis mutandis.



11. As far as assessment years 2012-13 to 2014-15 are concerned, the assessments are abated and hence, the assessing Officer is authorised to make any addition even based on otherwise than incriminating material. The relevant grounds raised challenging the validity of addition are accordingly dismissed. The grounds related to circular movement of funds were not pressed, hence same are dismissed as infructuous. In respect of other grounds, before us, the Ld. Counsel of the assessee has filed additional evidences in the form of confirmation, detailed address ledger accounts etc. in respect of credits appearing in the bank statements. The ld. Counsel submitted that no reasonable oppournity was granted by the lower authorities for producing those evidences, therefore same might be admitted and matter might be restored back to the ld. AO for deciding afresh.

11.1 We have heard rival submissions of the parties on the issue in dispute. Since, the additional evidences go to the root of the matter, therefore we feel it appropriate to restore the respective grounds raised in assessment year 2012-13 to 2014-15 to the file of the Ld. Assessing Officer for deciding afresh. Before us, the Ld. Counsel of the assessee has submitted that the Assessing officer held the entire credits in the bank statement as unexplained, and also made separate additions for the cash deposits in the bank statement and unexplained cash credit for the parties, which are already reflecting in the bank statement. Accordingly, he submitted that additions



which are in respect of same party for same deposit, but made once under credit in bank account and secondly under unexplained cash credit in books of account, same might be eliminated. We have considered the submission of the assessee. We are of the opinion that addition could not be made twice for the same entry of the deposit, once, appearing in the bank statement and secondly appearing in the books of accounts of the assessee and similar is the situation in respect of cash deposit in bank account. The Assessing Officer shall verify the contention of the assessee and accordingly take appropriate action in accordance with law. The grounds of appeal for assessment year 2012-13 to 2014-15 are accordingly allowed partly for statistical purposes.

9. In the result, the appeals of the assessee for assessment year 2008-09 to 2011-12 are partly allowed whereas the appeals for assessment year 2012-13 to assessment year 2014-15 are partly allowed for statistical purposes.

Order pronounced in the open Court on 31/05/2023.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 31/05/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT



4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai