

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI

Before Shri B R Baskaran, Hon'ble Accountant Member,
& Shri Narender Kumar Choudhry, Hon'ble Judicial Member

ITA No.1401/Mum/2022
(Assessment Year: 2010-11)

DCIT4(1)(1), Mumbai	Vs.	Ajmera Associates Ltd., 63/67, Ajmera House, 4 th Floor, L T Marg, Pathakwadi, Mumbai 400 002.
(Appellant)		PAN AADCA7062J (Respondent)

CO No.36/Mum/2023
(Arising out of ITA No.1401/Mum/2022 for Assessment Year: 2010-11)

Ajmera Associates Ltd., Mumbai 400 002.	Vs.	DCIT4(1)(1), Mumbai
PAN AADCA7062J (Cross-Objector)		(Respondent)

For the Assessee : Ms. Dinkle Hariya
For the Revenue : Smt Shailja Rai

Date of Hearing : 27.04.2023	Date of Pronouncement : 28.06.2023
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ORDER

Per B R Baskaran, Accountant Member: The appeal filed by the revenue and the cross objection filed by the assessee are directed against the order dated 14.01.2022 passed by Ld CIT(A)-48, Mumbai and they relate to the assessment year 2010-11.

2. The revenue is aggrieved by the decision of Ld CIT(A) in deleting the addition of Rs.6.00 crore, being the loans taken by the assessee from Praveen Jain group of companies, u/s 68 of the Act. In the cross objection, the assessee is contesting the validity of addition made in an unabated assessment year in the absence of any incriminating material.

3. The registry has noted that the appeal filed by the revenue is delayed by 53 days. However, we notice that the revenue has filed appeal on 27-05-2022, i.e., within the limitation period extended suo motu by the Hon'ble Supreme Court. Accordingly, it has to be held that the appeal has been filed by the revenue in time.

4. The registry has also noted that the cross objection filed by the assessee is also time barred by 234 days. It has been explained by the assessee that it did not receive the copy of appeal filed by the revenue and it came to know of the said appeal only when it received notice from the ITAT. Thereafter, the copies of papers filed by the revenue were obtained. It is further submitted that, pursuant to search proceedings, various appeals were pending at various stages. Further, one of the key persons Shri Jasmin K Ajmera passed away. Hence proper attention could not be given to this appeal by the CA and directors. At the time of preparation of appeal filed by the revenue, it was opined that the issue of jurisdiction on making addition u/s 153A of the Act in case of unabated assessment. Accordingly, the cross objection was filed belatedly. It is submitted that the assessee has raised a pure legal issue in the cross objection and accordingly, it is prayed that the delay in filing the CO may be condoned. Having heard the parties on this preliminary issue and having regard to the submissions made by the assessee coupled with the fact that the assessee has only raised a legal issue, which it is entitled to raised before any

authority as per the decision rendered by Hon'ble Supreme Court in the case of NTPC Ltd, we are of the view that there was reasonable cause for the assessee in filing the cross objection belatedly. Accordingly, we condone the delay in filing the cross objection and admit the same.

5. The facts relating to the case are stated in brief. A search action u/s 132 of the Act was conducted in the hands of the assessee on 25.7.2013. Prior to the search, the assessment of the assessee for the year under consideration was completed u/s 143(3) of the Act on 17.12.2012. Accordingly, the AO completed the present assessment u/s 143(3) r.w.s 153A of the Act. The AO noticed that the assessee has received loans aggregating to Rs.6.00 crores from entities belonging to a person named Shri Praveen Jain, who has been alleged to have been indulging in providing only accommodation entries. The details of loan availed by the assessee from Praveen Jain group are given below:-

Kush Hindustan Entertainment Ltd	-	50.00 lakhs
Kush Hindustan Entertainment Ltd	-	50.00 lakhs
Javda India P Ltd	-	75.00 lakhs
Alka diamond Industries Ltd	-	75.00 lakhs
Yashita Trading Co P Ltd	-	100.00 lakhs
Accurate Multi Trade P Ltd	-	100.00 lakhs
Aashritha Trading Co P Ltd	-	100.00 lakhs
Familiar Trading P Ltd	-	50.00 lakhs

Total		600.00 lakhs
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Accordingly, the AO made addition of Rs.6.00 crores relating to above said loans u/s 68 of the Act.

6 In the appellate proceedings, the Ld CIT(A) deleted the above said addition and hence the revenue has filed the appeal challenging the relief

granted by Ld CIT(A). In the cross objection, the assessee is contending that the above said addition is bad, illegal and without jurisdiction.

7. Since the legal issue contested by the assessee goes to the root of the matter, we heard the parties on the legal issue. We noticed earlier that the original assessment was completed for this year (AY 2010-11) on 17.12.2012, whereas the search has taken place on 25.7.2013, i.e., subsequent to the completion of regular assessment. Hence the present year falls under the category of unabated assessment year.

8. It is well settled principle of law that in case of unabated assessment years, the addition could be made only on the basis of any incriminating material found during the course of search, as per the decisions rendered by Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (374 ITR 645) and CIT vs. Gurinder Singh Bawa (386 ITR 483). The above said ratio has since been upheld by Hon'ble Supreme Court in the case of Abhishir Buildwell Ltd (Civil Appeal No.6580 of 2021 dated 24th April, 2023). The relevant observations made by Hon'ble Supreme Court are extracted below:-

"13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of completed assessments in absence of any incriminating material.

14. In view of the above and for the reasons stated above, it is concluded as under:-

i) to iii).....

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Section 147/148 of the Act, subject to fulfillment of the conditions as envisaged/mentioned under section 147/148 of the Act and those powers are saved.”

9. In the instant case, we notice that the AO has made the impugned addition of Rs.6.00 crores on the basis of information already available in the return of income/completed assessment. It is not the case of the revenue that the search officials have unearthed any incriminating material, which revealed that the impugned loans are bogus in nature. The AO has made the addition on the basis of report of investigation wing, which cannot be considered as the incriminating material found during the course of search. Accordingly, in the absence of any incriminating material relating the above said addition of Rs.6.00 crores, the same could not have been added by the AO u/s 68 of the Act in the assessment completed u/s 153A r.w.s 143(3) of the Act during the year under consideration, as it falls in the category of unabated assessment year. Accordingly, we confirm the decision of Ld CIT(A) in deleting the impugned addition on the reasons discussed above.

10. In the result, the appeal filed by the revenue is dismissed and the cross objection filed by the assessee is allowed.

Order pronounced in the open court on this day of 28th June, 2023.

Sd/-

(Narender Kumar Choudhry)
JUDICIAL MEMBER

Sd/-

(B R Baskaran)
ACCOUNTANT MEMBER

Mumbai, Dated : 28th June, 2023
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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'A' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai