

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “D”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.3244/M/2022
Assessment Year: 2017-18**

Asst. Commissioner of Income Tax, Central Circle-2(1), Old CGO Building, 804, 8 th Floor, M.K. Road, Mumbai - 400020 (Appellant)	Vs.	Shri Ramesh Kumar Jain, B-502 Oberoi Skyheights, Cross Road, Lokhandwala, Andheri (W), Mumbai – 400 053 PAN: ADIPJ4196P (Respondent)
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Present for:

Assessee by : Shri Akshay Jain, A.R. &
Shri Mahaveer Jain, A.R.

Revenue by : Smt. Riddhi Mishra, D.R.

Date of Hearing : 13 . 06 . 2023

Date of Pronouncement : 28 . 06 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Asst. Commissioner of Income Tax, Mumbai (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 17.10.2022 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2017-18 on the grounds inter-alia that :-

"1. Whether on the facts and circumstances of the case and in law, the Ld CIT(A)-48, Mumbai is right in holding that no incriminating material was found to sustain the addition.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)-48, Mumbai is right in deleting the entire additions of Rs. 5,42,35,250/- made in the assessment order only on the ground that no incriminating material was found to sustain the addition without appreciating the facts that the assessment order was passed after carefully analysing the seized material and evidences found during the course of search and survey proceedings and seized..

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)-48. Mumbai is right in deleting the entire additions of Rs. 5,42.35,250/- made in the assessment order without appreciating the facts that the identity, genuineness and creditworthiness of the lenders were not established after giving ample opportunity to the assessee.

4. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A)-48, Mumbai is right in allowing the appeal filed by the assessee by relying on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation[2015 374 ITR 645] ignoring the fact that appeal is pending before the Hon'ble Supreme Court of India on this issue of 'power conferred by section 153A of the Act' which was not adjudicated upon."

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : initially the assessee being an individual filed a return of income declaring total income of Rs.2,26,80,580/-. Thereafter on receipt of notice under section 153A of the Income Tax Act, 1961 (for short 'the Act') the assessee again filed the same return of income declaring total income of Rs.2,26,80,580/-. Then notices under section 143(2) and 142(1) along with questionnaire were issued and the assessee filed requisite details/submissions. Assessing Officer (AO) on the basis of information available on insight portals showing that the assessee is a beneficiary of accommodation entry of loan of Rs.5,41,00,000/- from M/s. Aneri Fincap Ltd. A search and seizure operation was carried out under section 132 of the Act in case of

One World Group of cases on 06.11.2019 and it has come on record that various One World Group of entities have shown purchases and sales from and to the entities controlled and managed by one Mr. Rajesh G. Mehta, who was earlier arrested by GST Department for fraudulent activity. In his statement Mr. Rajesh G. Mehta admitted that he was only providing bogus sales and purchase bills to various entities having no actual supply of goods. Statement of one Shri Urvil A Jani on oath who is key person of the One World Group company was also recorded wherein he has admitted that various One World Group entities have made bogus purchases/bogus sale transactions with various entities controlled and managed by Mr. Rajesh G. Mehta. Then summons under section 131 of the Act were issued to Ms. Shweta Manoj Sharma, Shri Bhavesh and Shri Bhavesh Ramesh Vora directors of the assessee company, however none of them appeared which apparently proves that M/s. Aneri Fincap Ltd. is a paper company and not doing any genuine business activities. The AO reached the conclusion that the assessee is a beneficiary of accommodation entry of loan from M/s. Aneri Fincap Ltd. which is only a paper entity without carrying out any business activities and thereby made an addition of Rs.5,41,00,000/- received as loan to the total income of the assessee under section 68 of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the addition by partly allowing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly search and seizure operation was carried out on the assessee on 13.11.2019. It is also not in dispute that during the course of search proceeding no “incriminating material” was found and seized. It is also not in dispute that the AO based his entire case on the fact that on the basis of search conducted in case of One World Group on 06.11.2019 it has come on record that the assessee has received a loan from M/s. Aneri Fincap Ltd. which is a bogus entity, hence it is an admitted fact that addition in question in this case has been made on the basis of material found during the course of search in the case of third party.

6. In the backdrop of the aforesaid undisputed facts the Ld. CIT(A) deleted the addition on the premise that since no assessment proceedings were pending as on date of search under section 132 of the Act no nexus has been proved between the addition made in the assessment order vis-à-vis incriminating material found and seized on the basis of search operation. The Ld. CIT(A) has duly thrashed the facts of this case on the basis of legal proposition laid down by the Hon’ble Bombay High Court in case of M/s. Continental Warehousing Corporation 374 ITR 645, decision rendered by Mumbai Special Bench in case of All Cargo Global Logistics Ltd. vs. DCIT (2012) 23 taxmann.com 103 (Mum)(SB), also relied upon the case of PCIT vs. Meeta Gutgutia

(2018) 96 taxmann.com 468 (SC) and the decision rendered by Hon'ble Delhi High Court in case of CIT vs. Kabul Chawla (2016) 380 ITR 573 (Delhi) and reached the following conclusion:

“6.15 Conclusion-The aforesaid detailed discussion with respect to various judicial decisions clearly laid down the following principles –

(i) the assessments which have been concluded u/s 143(3) of the Act and not pending at the time of search proceedings, do not abate.

(ii) for this purpose, intimation u/s 143(1) would constitute an assessment, relying on the decision of Hon'ble Bombay High Court in CIT V/S Gurinder Singh Bawa (79 taxmann.com 398)

(iii) the proceedings u/s 153A of the Act do not empower the Assessing officer to re-adjudicate the settled issues again, unless fresh incriminating material for the relevant year is found during the course of search proceedings.

(iv) the Assessing officer does not have jurisdiction to make additions/disallowances which are not based on relevant incriminating material found during the course of search proceedings.

(v) in the case of completed/un-abetted assessments, where no incriminating material is found during the course of search, the assessment u/s 153A of the Act is to be made on originally assessed/returned income and no addition or disallowance can be made de hors the incriminating evidences for the relevant year are recovered during the course of search.

(vi) Any admission or confession needs corroboration with evidences. In order to make a genuine and legally sustainable addition on the basis of admission or confession during search action, it is necessary that some incriminating material must have been found to correlate the undisclosed income with such statement.

(vii) Any statement recorded under section 132(4) cannot be considered as incriminating material found in the course of search as these are recorded to elicit more information/explanation of the search person on the incriminating documents/gold/jewellery found during search.

6.16 Conclusion- In the present case, additions have been made on account of accommodation entry from sale of penny scrip added u/s 68 of Rs.50,35,000/-, (addition in this case is Rs.5,41,00,000/-) and as unexplained expenditure u/s. 69C due to commission for arranging accommodation entry of unsecured loan of Rs.1,51,050/- As stated above, the AO has not brought on record through the assessment order or through any communication regarding any incriminating document

or material found or seized during the Search and Seizure action u/s 132 of the Act, which can be linked /correlated with the impugned additions made. Considering the totality of the facts and circumstances of the issues involve, I am of the considered opinion that these additions cannot survive de hors the incriminating evidences as held in the above binding judicial decisions. The AO is accordingly directed to delete the impugned additions made in the assessment order. Thus, the grounds of appeal no. 1 & 2 are allowed.”

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“20. The appellant has made identical submissions as that made in Appeal No. CIT(A)-48, Mumbai/10720/2013-14 for AY 2014-15, as reproduced above/ Other facts and backgrounds of the case remain the same. Since all the grounds Involved in Appeal No. CIT(A)-46, Mumbai/10523/2016-17 for A.Y. 2017-18 are identical to the one that is discussed above in Appeal No. CIT(A)H8. Mumbai/10720/2013-14 for A.Y. 2014-15, the undersigned findings for AY. 2014-15 with respect to these grounds would mutatis mutandis apply to this appeal for AY 2017-18 as well.

21. Hence, It is held that in the absence of any incriminating material the additions made ie., (1) Addition on account of unexplained cash credit u/s 68 as loan taken from M/s. AneriFincap Limited of Rs. 5,41,00,000/-10 Addition on account of unexplained expenditure u/s 69C on account of interest of Rs. 1,35,250/- for A.Y. 2017-18 deserved to be deleted.”

7. So perusal of the impugned order passed by the Ld. CIT(A) goes to prove that the AO proceeded to make the addition without establishing any nexus between addition made to that of the incriminating material found/seized on the basis of search operation. Moreover, when assessment under section 143(3) of the Act has already been concluded, thus not pending at the time of search proceedings any addition in the absence of incriminating material is not sustainable in the eyes of law as has been repeatedly held by the Hon’ble Bombay High Court in case of M/s. Continental Warehousing Corporation (supra), Special Bench of the Tribunal in case of All Cargo Global Logistics Ltd. (supra)

and the decision rendered by the Hon'ble Delhi High Court in case of Kabul Chawla (supra) and the decision rendered by the Hon'ble Supreme High Court Meeta Gutgutia (supra). When admittedly no incriminating material has been found on the basis of search carried out on the premises of the assessee, rather the AO proceeded to make the addition merely on the basis of an information available on Insight portal indicates that the Assessee is beneficiary of accommodation entry of loan of Rs.5,41,00,000/- from M/s. AneriFincap Limited.

8. Furthermore, it is an admitted fact on record that One World Group entities are not related to the assessee. The AO relied upon the information available on the "Insight portal". Rather it is incomprehensible as to how the AO has proceeded to make the addition on the basis of information available on the portal which has already been examined by the Revenue Authority and held to be in order while framing assessment under section 143(3) of the Act.

9. In view of what has been discussed above, we are of the considered view that there is no infirmity, illegality or perversity in the impugned order passed by the Ld. CIT(A), hence appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 28.06.2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 28.06.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.