

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA Nos.2902, 2898 & 2899/Mum/2022
(A.Ys. 2012-13 to 2014-15)**

Shri Shirish Chandrakant Shah, 21, 4 th Floor, Meghdoot Apartment Marine Drive Mumbai – 400002	Vs.	DCIT/ACIT, CC-2(2) 8 th Floor, Pratishtha Bhawan, Mumbai - 400002
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ACFPS7005L		
Appellant	..	Respondent

Appellant by :	Neeraj Mangla
Respondent by :	Dr. Kishore Dhule

Date of Hearing	13.06.2023
Date of Pronouncement	20.06.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

These three appeals filed by the assessee are directed against the different order of CIT(A)-48, Mumbai, for assessment year 2012-13 to 2014-15 in turn arises from the order of assessing officer. Since common issue on identical facts are involved in these appeals, therefore, for the sake of convenience all these appeals are adjudicated together by taking ITA No. 2902/Mum/2022 as a lead case and its finding will be applied mutatis mutandis to the other two appeals.

2. There was a delay of 50 days in filing these appeals. The assessee has filed affidavit dated 29.12.2022 along with application for condonation of delay in filing the appeal. In the affidavit and in the

application the assessee submitted that he had been attacked with a knife, therefore, he was admitted in the hospital. The assessee has also filed copy of first information report u/s 154 Cr.PC dated 04.09.2022 along with photographs showing the injury sustained from the attack.

3. Heard both the sides and perusal of relevant material on record. The assessee has demonstrated as discussed supra that there was bonafide cause for delay in filing these appeals by 50 days. Therefore, the delay in filing these appeals are condoned.

ITA No.2902/Mum/2023

- “1. That the assessment order passed w/s 143(3) rws. 153A of the Act as well as the appellate order passed by Ld. CIT(A) are perverse to the law and to the facts of the case because of not following proper law and procedure while completing the assessment proceedings.
2. That the additions of Rs. 19,57,513/- made by Ld. AO and upheld by Ld. CIT(A) are unjustified and not tenable under the law because of being made despite the fact that no incriminating evidence suggesting the said additions was ever found and seized during the course of search action.
3. That the Ld AO grossly erred in law and in facts of the case in making additions of Rs. 5,56,702/- u/s 69C being alleged unexplained credit card expenses despite the fact that source of said payments was duly explained.
4. That the Ld AO grossly erred in making additions of Rs. 6,45,000/- u/s 68 of the Act without allowing any opportunity of being heard prior drawing adverse inference in the case of the assessee and no incriminating evidence in respect of addition made was found during the course of search action.
5. That the Ld. CIT(A) grossly erred in law and in facts of the case in rejecting the additional evidences furnished by the assessee to discharge the onus cast upon him u/s 68 of the Act.
6. That the addition of Rs. 7,55,811/- made u/s 69C by the Ld. AO being the amount of alleged unexplained expenditure is laconic, ironic and harassing in nature because the said expenses were incurred out of bank accounts and being personal in nature were not debited to Profit and Loss account.
7. That the AO erred in law in charging of interest under Section 234B and initiating penalty proceedings u/s 271(1)(c).
8. That the appellant seeks leave to amend, alter, change any grounds of appeal or take any further ground at any time even during the course of hearing of instant appeal.”

4. Fact in brief is that pursuant to the information received from the CBI authorities, DDIT Investigation Unit-7(2), Mumbai had seized amount of Rs.28,00,000/- on 29.07.2017 from the resident of Shri Chandrakant Shah namely 21, Meghdoot Apartment, 4th Floor, Marine Drive, Mumbai. The assessing officer stated that statement of Shri Chandrakant Shah was recorded u/s 131 of the Act and he could not explain the source of cash found. In pursuant to search action, a notice u/s 153A of the Act was issued and served on the assessee on 10.09.2018. In response to the notice the assessee filed return of income on 17.02.2019 declaring total income at Rs.1,78,850/-. Thereafter a notice u/s 143(2) was issued on 12.09.2019.

5. During the course of assessment the assessing officer stated that as per AIR information it was observed that assessee had made credit card payment amounting to Rs.5,56,702/-. On query, the assessee explained that credit card expenses were incurred on behalf of the client availing data hub services. The AO has not agreed with the explanation of the assessee stating that detail of client incurring such expenses were not submitted, therefore, the credit card expenditure of Rs.5,56,702/- was disallowed u/s 69C of the Act.

6. The AO further stated that during the course of assessment the assessee was also asked to explain the source of deposit made in the bank account to the amount of Rs.645,000/-. In response the assessee explained that it has availed loan from 4 parties as mentioned in the assessment order, however, AO has not agreed with the submission the assessee and stated that no supporting evidences have been furnished. Therefore, the amount of Rs.6,45,000/- added u/s 68 of the Act.

7. The AO also stated that during the course of assessment the assessee was asked to explain the expenses of Rs.7,55,811/- over and

above expenses deposited to the profit and loss account. The assessee explained that none of the expenses deposited in the bank account was unexplained and the same was paid through bank account which has already been explained. Therefore no disallowance is called for. However, AO has not agreed with the submission of the assessee and treated the expenses as unaccounted and added to the total income of the assessee.

8. Aggrieved, the assessee has filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

9. During the course of appellate proceedings before us at the outset the ld. Counsel vehemently contended that all the aforesaid additions have been made without any incriminating material found and seized during the course of search action pertaining to these assessment years which were unabated assessment years. Therefore, no any addition can be made in the case of the assessee which are not based on the incriminating material. The ld. Counsel has placed reliance on the decision of jurisdictional High Court in the case of CIT vs. Continental Warehousing Corporation Ltd. (2015) 374 ITR 0645 (Bom) and also relied on the decision of Hon'ble Supreme Court in the case PCIT Vs. Abhishek Buildwall P. Ltd. (2023) 116 CCH 6307 dated 24.04.2023.

On the other hand, the ld. D.R contended that Rs.28,00,000/- seized was the incriminating material and supported order of lower authorities and also referred the decision of Hon'ble Supreme Court in the case of PCIT Vs. Abhishek Buildwall P. Ltd. (2023) 116 CCH 6307 dated 24.04.2023.

10. Heard both the sides and perused the material on record. It is undisputed fact that during the course of search and seizure action no incriminating material was found and seized except the cash of Rs.28,00,000/- found on 29.07.2017 from the residence of the assessee

as discussed supra in this order. We have perused the decision of Hon'ble jurisdictional High Court in the case of CIT vs. Continental Warehousing Corporation Ltd. (2015) 374/ITR/0645 (Bom) and decision of Hon'ble jurisdictional High Court of Bombay in the case of Murali Agro Products Ltd. Vs. CIT(A) 49 taxmann.com 172 wherein held that addition can be made by the AO in the assessment order u/s 153A r.w.s 153 of the Act only on the basis of incriminating material found and seized during the course of search. Since, search action was made in the case of the assessee on 29.07.2017 and all the assessment year pertaining to these 3 appeals i.e 2012-13 to 2014-15 are the unabated assessment. The AO has not demonstrated that any incriminating material was found and seized during the course of search action pertaining to these 3 assessment years. In the recent judgment the Hon'ble Supreme Court in the case of PCIT Vs. Abhishek Buildwall P. Ltd. (2023) 116 CCH 6307 dated 24.04.2023 held that in respect of completed assessment/unabated assessment the AO to make assessment is confined to incriminating material found during the course of search u/s 132 or requisition u/s 132A of the Act. In respect of completed/unabated assessment 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. The Hon'ble Supreme Court also held that completed/unabated assessment can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act. In the light of the above facts and findings that in the case of the assessee no incriminating material was found and seized, in respect of the unabated assessment therefore the addition made by the A.O is deserve to be deleted, therefore ground no. 2 of the appeal of the assessee is allowed.

11. The grounds of appeal No. 1 is general and the same stand dismissed.

12. The grounds of appeal 3 to 6 were not discussed therefore left open to adjudicate in future if it is required. Accordingly, the appeal of the assessee is partly allowed.

ITA No. 2898/Mum/2022

13. Since the facts and issue involved in this appeal are similar to the ITA No. 2902/Mum/2022 which we have adjudicated supra therefore applying its finding as mutatis mutandis this appeal of the assessee is also partly allowed.

ITA No. 2899/Mum/2022

14. Since the facts and issue involved in this appeal are similar to the ITA No. 2902/Mum/2022 which we have adjudicated supra therefore applying its finding as mutatis mutandis this appeal of the assessee is also partly allowed.

15. In the result, all the appeals of the assessee are partly allowed.

Order pronounced in the open court on 20.06.2023

Sd/-

(Sandeep Singh Karhail)
Judicial Member

Place: Mumbai

Date 20.06.2023

Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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