

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA Nos. 53 & 54/Coch/2022

(Assessment Years: 2011-12 & 2013-14)

Asst. CIT, Central Circle -1
7th Floor, Aayakar Bhawan
Mananchira
Kozhikode 673001

(Appellant)

K.C. James
19-FAJ Housing Colony
vs. Madel, Tivim
Goa 403502
[PAN:ADIPK8105D]

(Respondent)

CO Nos. 01 & 02/Coch/2023

(Assessment Years: 2011-12 & 2013-14)

K.C. James
19-FAJ Housing Colony
Nadala, Tivim
Bardez Goa 403502
[PAN:ADIPK8105D]

(Cross Objector)

Asst. CIT, Central Circle -1
7th Floor, Aayakar Bhawan
vs. Mananchira
Kozhikode 673001

(Appellant)

Appellant by: Shri Surendranath Rao, CA
Respondent by: Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing: 04.07.2023

Date of Pronouncement: 31.07.2023

ORDER

Per:Bench

This is a set of two Appeals by the Revenue directed against the appellate order dated 29.11.2021 by the Commissioner of Income Tax (Appeals)-3, Kochi ('CIT(A)') allowing the assessee's appeals contesting his assessments under section 153A read with section 143(3) of the Income Tax Act, 1961 ('the Act') for Assessment Years (AYs.) 2011-12 and 2013-14, a combined order for AYs. 2011-12 to 2013-14, vide

separate orders of even date, i.e., 29/12/2017. The corresponding cross objections (COs) by the assessee are supportive of the impugned orders.

2.1 Shri Surendranath Rao, the learned counsel for the assessee, on being queried in respect of the assessee's COs., filed on 15/6/2023, i.e., at a delay of 441 days, would submit that in view of the recent decision by the Hon'ble Apex Court in *Pr. CIT vs. Abhisar Buildwell Pvt. Ltd.*, rendered on April 24, 2023 (reported at [2023] 454 ITR 212 (SC)), the Revenue's appeals are not maintainable. This explains the assessee's COs agitating the same. This, he would continue, is for the reason that the only addition/s made in assessment/sand, consequently, the only issue in appeal/s, is *qua* deemed dividend u/s.2(22)(e) of the Act, in view of the assessee, a partner in M/s. Reena Metals(RM) (with 40% share), which firm stands extended sums by M/s. Reena Engineers and Contractors Pvt. Ltd. (RECL), a company in which public is not substantially interested, and of which the assessee is an Executive Director with 97% shareholding. The said sum finds clear reflection in the Balance-Sheet of the said company as at the end of the relevant years, and toward which he would take us to para 8 of the assessment order (for AY 2011-12), where the Assessing Officer (AO) states of observing, on a perusal of RECL's Balance-Sheet as on 31.03.2011, a huge surplus of Rs.847.88 lakhs, as well as loan/s advanced to RM at Rs.175 lakhs. That is, the genesis of the said addition is the disclosure of the relevant transactions, and has nothing to do with the discovery of any material found or unearthed during search, which was carried on in Reena group cases on 10.6.2015. The Hon'ble Apex Court has per it's said decision clarified that the jurisdiction to assess income u/s. 153A of the Act for an unabated assessment would only be on the basis of incriminating material found during search u/s.132 or requisition u/s.132A of the Act. That is, the jurisdiction to assess income under section 153A of the Act, notwithstanding that the provision requires the AO to assess total income, defined u/s. 2(45), could only be in relation to an incriminating material/s found and seized during search proceedings.

The only addition in the instant case/s is in respect of deemed dividend, rejecting the assessee's explanation, since accepted by the Id. CIT(A), that the same is a trade advance/s, to which therefore the provision of sec. 2(22)(e) of the Act does not apply. It is, however, in view of the clear position of law explained in *Abhisar Buildwell Pvt. Ltd.* (supra), not necessary to travel to the merits of the addition/s made. The assessee's COs, he would add, raise this issue, i.e., in view of the decision in *Abhisar Buildwell Pvt. Ltd.* (supra) delivered on 24.4.2023, reversing the law as understood and explained by the Hon'ble jurisdictional High Court, and which explains both the assessee's COs as well the delay attending their filing.

2.2 Smt. Devi, the Id. Sr. D.R., would, on the other hand, submit that the assessee had no case on merits, though would concede that the sole addition in assessment for both the years under reference is on the basis of duly recorded, disclosed transactions and, further, that for both the years no assessment was pending on the date of search.

3. We have heard the rival contentions, and perused the material on record.

3.1 As apparent from the assessment order/s, through which we were taken during hearing, the Revenue's case, it's merits apart, survives no longer in view of the decision in *Abhisar Buildwell Pvt. Ltd.* (supra) inasmuch as no proceedings were pending for the years under reference as on the date of search and, two, the addition/s made in the impugned assessments does not owe its origin, or is relatable, to the material found during search. We extract the relevant part of the said decision to exhibit the statement of law in *Abhisar Buildwell* (supra), as under: (pgs. 247-248)

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

(i) that in case of search under section 132 or requisition under section 132A, the Assessing Officer assumes the jurisdiction for block assessment under section 153A;

(ii) all pending assessments/reassessments shall stand abated;

(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the Assessing Officer would assume the jurisdiction to

assess of reassess the "total income" taking into consideration the incriminating material unearthed during the search and the other material available with the Assessing Officer including the income declared in the returns; and

(iv) in case no incriminating material is unearthed during the search, the Assessing Officer 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 Assessing Officer in the 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 reopened by the Assessing Officer in exercise of powers under section 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under section 147/148 of the Act and those powers are saved.

3.2 The assessee was, in our view, not required to file the COs inasmuch as it is in law fully entitled to defend the impugned orders by taking a legal ground, the facts and circumstances incident whereof are not in dispute, or are otherwise borne out by the record. Reference in this context may made to Income Tax (Appellate Tribunal) Rules, 1963 which, making specific reference to rr. 11 & 27 of the said Rules, were held in *Hukumchand Mills Ltd. v. CIT* [1967] 63 ITR 232 (SC) as not exhaustive of the powers of the Tribunal. The primary fact of disclosure of the loan or advance transaction/s between the two stated entities, is a given. The assessee's COs, filed only to press into service the binding decision by the Hon'ble Apex Court in *Abhisar Buildwell Pvt. Ltd.* (supra), i.e., raise a legal issue with reference thereto – which the law envisages even otherwise, are only supportive of the impugned order. The delay in their filing, particularly given the decisions by the Hon'ble jurisdictional High Court at the relevant time taking a contrary view, since accepted, cannot be explained in terms thereof. The COs are thus not maintainable, and are accordingly dismissed as not admitted.

4. In the result, the Revenue's appeals and the assessee's COs are dismissed.

*Order pronounced on July31,2023 under Rule 34 of The Income Tax (Appellate
Tribunal) Rules, 1963.*

Sd/-
(Manomohan Das)
Judicial Member

(Sanjay Arora)

Sd/-
Accountant Member

Cochin, Dated: July31, 2023

Copy to:

1. Appellant
2. The Respondent
3. The CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin

n.p.