

IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH, NAGPUR – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.85 to 87 & 210/NAG/2018  
निर्धारण वर्ष / Assessment Years : 2011-12 to 2014-15

M/s. Vatsalya Builders & Developers Pvt. Ltd., 202, Ganesh Chambers, Dhantoli, Nagpur- 440012. PAN : AABCV6745K	Vs.	ACIT, Central Circle- 1(2), Nagpur.
Appellant		Respondent

Assessee by : Shri Mukesh Agrawal  
Revenue by : Shri Kailash G. Kanojiya

Date of hearing : 17.10.2023  
Date of pronouncement : 31.10.2023

**आदेश / ORDER**

**PER BENCH :**

These are the appeals filed by the assessee directed against the different orders of Id. Commissioner of Income Tax (Appeals)- 3, Nagpur [‘the CIT(A)’] dated 26.02.2018 and 22.06.2018 for the assessment years 2011-12 to 2014-15 respectively.

2. Since the identical facts and common issues are involved in all the above captioned four appeals of the assessee, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.85/NAG/2018 for the assessment year 2011-12 are stated herein.

**ITA No.85/NAG/2018, A.Y. 2011-12 :**

4. Briefly, the facts of the case are that the appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of purchase and sale of land and plotting. The Return of Income for the assessment year 2011-12 was filed on 27.09.2011 disclosing the total loss of Rs.2,51,25,110/. Subsequently, the search and seizure operations were conducted in the business premises of the appellant on 09.01.2015. During the course of search and seizure operations, certain incriminating material was stated to have been found and impounded and, therefore, a notice u/s 153A was issued on 29.01.2016 requiring the assessee to file the return of income. In response to the said notice u/s 153A, the appellant filed return of income on 01.03.2016 declaring total loss of Rs.10,87,92,566/- and the same was revised on 09.12.2016 at total loss of Rs.2,19,86,444/-. On the basis of the seized material, the appellant had disclosed an amount of Rs.33,78,714/- on account of unexplained source of expenditure of commission paid in cash, which is deemed to be income under the

provisions of section 69C of the Act. While completing the assessment, the Assessing Officer had not allowed the set-off of loss against the deemed income u/s 69C by holding that the deemed income cannot be classified under any one of heads of income u/s 14 of the Income Tax Act, 1961 ('the Act') placing reliance on the decision of the Hon'ble Gujarat High Court in the case of Fakir Mohmed Haji Hasan vs. CIT, 247 ITR 290 (Gujarat) and on the decision of the Hon'ble Punjab & Haryana High Court in the case of Sarla Handicrafts (P.) Ltd. vs. Addl. CIT, 296 ITR 94 (P&H).

5. Being aggrieved, an appeal was filed before the ld. CIT(A), who vide impugned order confirmed the action of the Assessing Officer placing reliance on the decision of the Hon'ble Kerala High Court in the case of Kerala Sponge Iron Ltd., 379 ITR 330 (Kerala).

6. Being aggrieved, the appellant is in appeal before us in the present appeal.

7. It is submitted before us that the decisions relied upon by the Assessing Officer as well as by the ld. CIT(A) have been subsequently overruled by the Hon'ble Kerala High Court in the case of Vijaya Hospitality and Resorts Ltd. vs. CIT, 419 ITR 322 (Kerala). Similarly, even the decision of the Hon'ble Gujarat High Court in the case of Fakir Mohmed Haji Hasan (supra) has been subsequently overruled by the Hon'ble Gujarat High Court in the

case of DCIT vs. Radhe Developers India Ltd., 329 ITR 01 (Gujarat). He further submitted that there was no bar under the provisions of the Income Tax Act setting off the loss against the deemed income u/s 68 to 69 of the Act.

8. On the other hand, ld. CIT-DR placing reliance on the orders of the lower authorities submits that the assessment was completed under the provisions of section 143(3) r.w.s. 153A and all the assessments are unabated assessments. Therefore, he submits that the income assessed under the provisions pursuant to the return of income u/s 153A has to be taxed on standalone basis and the loss assessed under the normal provisions of assessment, cannot be allowed to be set-off against the income assessed pursuant to file the return of income u/s 153A of the Act.

9. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to the set-off of the losses against the deemed income u/s 69C of the Act. Prior to the amendment of section 115BBE of the Act, there is no bar under law to set-off of the losses against the income determined to be deemed income u/s 69C of the Act. On mere reading of the assessment order, it would be clear that the Assessing Officer had denied such set-off only on the ground that the deemed income u/s 69C does not fall within any category of income contained in

section 14 of the Act. The Hon'ble Supreme Court in the case of A. Govindarajulu Mudaliar vs. CIT, 34 ITR 807 (SC) held as under :-

*“there is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amounts of cash received during the accounting year, the Income Tax Officer is entitled to draw an inference that the receipts are of an assessable nature”. Following the said observations in Lakhmichand Baijnath (supra) the Honourable Supreme Court observes that, “when an amount is credited in the business books, it is not an unreasonable inference to draw that it is a receipt from business”.*

10. Similarly, the Hon'ble Supreme Court in the case of CIT vs. D. P. Sandhu Bros. Chembur (P.) Ltd., 273 ITR 1 (SC) and in the case of United Commercial Bank Ltd. vs. CIT, 32 ITR 688 (SC) held that the provisions of the Income Tax Act does not envisage taxing any income under any head not specified u/s 14 of the Act. The Hon'ble Madras High Court in the case of CIT vs. Chensing Ventures, 291 ITR 258 (Madras) as well as the Hon'ble Gujarat High Court in the case of CIT vs. Shilpa Dyeing & Printing Mills (P.) Ltd., 219 Taxman 279 (Gujarat) held that the income of such nature from undisclosed sources to be treated as income, should be assessed under “income from other sources”. Therefore, in the light of this legal position, there is no iota of doubt that the deemed income assessed u/s 69C of the Act should not be treated as income falling outside the ambit of classification contained in section 14 of the Act. Further, reliance placed by the Assessing Officer on the

decision of the Hon'ble Kerala High Court in the case of Kerala Sponge Iron Ltd. (supra) and the decision of the Hon'ble Gujarat High Court in the case of Fakir Mohmed Haji Hasan (supra) is incorrect in law, inasmuch as, the said decisions were overruled by subsequent decision of the Hon'ble Gujarat High Court in the case of DCIT vs. Radhe Developers India Ltd., 329 ITR 01 (Gujarat), similarly by the Hon'ble Kerala High Court in the case of Vijaya Hospitality and Resorts Ltd. vs. CIT, 419 ITR 322 (Kerala). Further, it is only from the assessment year 2017-18, the Parliament had introduced the amended provisions of section 115BBE prohibiting the set-off of the losses against such deemed income. Therefore, we are of the considered opinion that the lower authorities committed illegality in not allowing the set-off of the losses against the deemed income u/s 69C of the Act. Therefore, the orders of the lower authorities are hereby reversed, we direct the Assessing Officer to allow the set-off of the losses against the deemed income u/s 69C of the Act. Thus, the grounds of appeal filed by the assessee stand allowed.

11. In the result, the appeal filed by the assessee in ITA No.85/NAG/2018 for A.Y. 2011-12 stands allowed.

**ITA Nos.86, 87 & 210/NAG/2018, A.Ys. 2012-13 to 2014-15 :**

12. Since the facts and issues involved in remaining three appeals of the assessee are identical, therefore, our decision in ITA No.85/NAG/2018 for A.Y. 2011-12 shall apply *mutatis mutandis* to the remaining three appeals of the assessee in ITA Nos.86, 87 & 210/NAG/2018 for A.Ys. 2012-13 to 2014-15 respectively. Accordingly, the remaining three appeals of the assessee in ITA Nos.86, 87 & 210/NAG/2018 for A.Ys. 2012-13 to 2014-15 stands allowed.

13. To sum up, all the above captioned four appeals of the assessee stands allowed.

Order pronounced on this 31<sup>st</sup> day of October, 2023.

**Sd/-**  
**(S. S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> October, 2023.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-3, Nagpur.
4. The Pr. CIT (Central), Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर /  
DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.