

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
MS. KAVITHA RAJAGOPAL, JM

**ITA Nos.2599 to 2601/Mum/2023**

(Assessment Year: 2013-14 to 2015-16)

Anand Veena Twisters Pvt.  
Ltd.  
Office No.802, Floor-8, Plot-  
213,  
Raheja Chambers,  
Free Press Journal Marg,  
Nariman Point  
Mumbai-400 021

**(Appellant)**

Dy. Commissioner of  
Income tax,  
Central Circle-7(1),  
Room No.653,  
6<sup>th</sup> Floor, Aayakar Bhavan,  
M.K. Road, Mumbai-400  
020

**(Respondent)**

**PAN No. AAACA4272F**

**Assessee by** : Shri Vimal Punmiya, AR  
**Revenue by** : Shri Ajay Chandra, CIT DR

**Date of hearing:** 15.11.2023  
**Date of pronouncement :** 17.11.2023

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. All these three appeals are filed by the assessee against the appellate order passed by the Commissioner of Income-tax (Appeals)-49, Mumbai [the learned CIT (A)] dated 26<sup>th</sup> May, 2023, for A.Y. 2013-14, 2014-15 and 2015-16, wherein the appeal filed by the assessee against the assessment orders passed by the Asst. Commissioner of Income Tax, Central Circle 7(1) (the learned Assessing Officer) under Section 153A of the Income-tax Act, 1961 (the Act), was dismissed.

02. The two issues contested by the assessee is

[1] Disallowance under Section 14A of the Act in normal computation of income and in computation of book profit u/s 115 JB of the Act

[2] Disallowance of carried forward loss on long-term capital gain, gain of which is exempt under Section 10(38) of the Act denied by the lower authorities.

03. On the first issue of disallowance u/s 14A in normal computation assessee's claim is to restrict disallowance to the extent of expenses incurred and further book profit cannot be increased by the disallowance u/s 14 A of the Act .

04. The claim of Ld DR is that there is no provision of restricting disallowance to the extent of income earned or expenses incurred. In book profit he referred that section 115JB has specific clause of addition of such expenses

05. On the issue of long term capital loss on sale of shares gain of which is exempt u/s 10 (38) of the Act, he submits reliance on the decision of the coordinate bench in case of Raptakos Brett & Co. Ltd. Mumbai in ITA No. 3317 / Mum / 2009 & 1692 / Mum / 2010 dated 10/06/2015 and several other decisions of DCIT, Central Circle - 2 (3 ) vs. Avinash Nivrutti Bhosale and Ors . ( 11 . 01 . 2022 - ITAT Mumbai )

06. The Id DR states that this issue is covered against the assessee by virtue of three decisions of Honorable high courts.

- i. Apollo Tyres Ltd V CIT [2021] 130 taxmann.com 295 (Kerala)
- ii. Kishorbhai Bhikhabhai Virani vs. ACIT (2014) 367 ITR 261. (Guj)
- iii. CIT V ANG Securities Limited [2013] 37 taxmann.com 123 (Punjab & Haryana)

07. The brief fact of the case shows that for

- i. A.Y. 2013-14, the assessee filed its return of income on 27<sup>th</sup>September 2013, at a total income of ₹7,65,550/-. Search and seizure operation under Section 132 of the Act was carried out on 17<sup>th</sup>April 2018.
- ii. For A.Y. 2014-15, the assessee filed its return of income on 29<sup>th</sup>September 2014, at a total income of ₹15,44,390/- and
- iii. For A.Y. 2015-16, the return was filed on 30<sup>th</sup>September 2015 at a total income of ₹21,33,760/-.
- iv. Search and seizure operation under Section 132 of the Act was carried out on 17<sup>th</sup>April 2018.

08. Admittedly, in all these three assessment years no notice under Section 143(2) was issued by the learned Assessing



Officer. As there is no assessment pending in any of the three assessment years, those years are concluded assessments, so assessment shall not abate.

09. Before us, the assessee has raised ground that in case of concluded assessment, the addition can be made only if there is any incriminating material found during the course of search belonging to that assessment year. He submits that this ground is not raised before the lower authorities and therefore, raised before the Tribunal. This is a legal ground, which can be raised at any time during the course of proceedings.
010. The learned CIT Departmental Representative vehemently objected and stated that this ground has not been raised before the lower authorities and therefore, should not be admitted.
011. We have carefully considered the rival contentions and find that the assessee has raised additional ground stating that in absence of any incriminating material found during the course of search in case of concluded assessment which shall not abate and therefore, in absence of any such material, no addition could have been made. We find that this is legal ground, which can be raised at any time during the course of appellate proceedings. Further, it is also admittedly a jurisdictional issue, as the date of search and the date of filing of the return of income as well as picking up those returns for all these assessment years for scrutiny are evident from the assessment order itself. Therefore, there is no fresh investigation of the facts



required to be carried out. In view of this, we admit the additional ground raised by the assessee.

012. On hearing both the parties and on the merits of the additional ground and on looking at the assessment order and the order of the learned CIT (A), we find that search was conducted on 17<sup>th</sup> April, 2018, but with respect to the above two additions/ adjustments, i.e. disallowance under Section 14A and not allowing carried forward of the long term capital loss under Section 10(38) of the Act, were not based on any incriminating material found during the course of search but as such on the appreciation of the return of income originally filed by the assessee. Thus, admittedly as aggrieved by both the parties that there is no incriminating material with respect to both the above additions which are contested by the assessee. This issue has been decided by the Hon'ble Supreme Court in case of *Abhisar Buildwell P. Ltd.* that in absence of incriminating material, return of income of the assessee cannot result into any addition if the assessment is not pending on the date of search. The assessment order itself shows that the assessment is not pending in any of the three assessment years as on the date of search.

013. As all these three assessment years are concluded assessment year, there is no incriminating material found during the course of search with respect to both addition/ disallowance made, therefore, as held by the Hon'ble Supreme Court in case of *Abhisar Buildwell P. Ltd.*, we



allow the additional ground raised by the assessee and allow all the grounds of appeal.

014. In the result, all these three appeals filed by the assessee are allowed.

Order pronounced in the open court on 17.11.2023.

Sd/-  
(MS. KAVITHA RAJAGOPAL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 17.11.2023  
*Sudip Sarkar, Sr.PS*



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai