

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH : NAGPUR

[THROUGH VIRTUAL HEARING AT PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A No.106/NAG./2022
&
C.O.No.1/NAG./2022
Assessment Year 2015-2016

ACIT, Central Circle-2(3), 3 rd Floor, Room No.412, Aayakar Bhawan, Telangkhedi Road, Civil Lines, Nagpur-440 001. State of Maharashtra.	vs	Shri Mukesh D. Gupta, Gupta Bhawan, Temple Bazar Road, Sitabuldi, Nagpur – 440 001. Maharashtra. PAN AATPG8811E
Appellant		Respondent/Cross Objector

For Revenue :	Shri Kailash Kanojiya, Sr. DR
For Assessee :	Shri Shikha Loya, C.A.

Date of Hearing :	25.01.2024
Date of Pronouncement :	30.01.2024

ORDER

PER BENCH :

This Revenue's appeal ITA.No.106/NAG./2022 and assessee's cross-objection CO.No.1/NAG./2022, for assessment year 2015-16, arise against the CIT(A)-3, Nagpur's order dated 14.03.2022, in case no.CIT(A)-III/11102/2012-13, involving proceedings u/s.143(3) r.w.s.153A of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties at length. Case files perused.

2. The Revenue's appeal ITA.No.106/NAG./2022 pleads the following substantive grounds :

1. *“On the facts and the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs.2,81,00,000/- made by the Assessing Officer on account Undisclosed Income ignoring the fact that the Assessing Officer had made the substantive additions in the hands of M/s Grace Industries Limited and addition of the same amount on protective basis in the hands of the assessee, based on the incriminating documents seized in Annexure-2, item No. 1/pages 42, 44 and 45, which clearly showed that the assessee was the ultimate beneficiary of the money laundering activities carried out by the M/s. Grace Industries Ltd.*
2. *On the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.2,81,00,000/- made by the Assessing Officer on protective basis on account of Undisclosed Income ignoring the fact that the assessee was the ultimate beneficiary of the money laundering activity carried out through M/s. Grace Industries Ltd. and that the said addition was made on the basis of incriminating documents seized in Annexure-2, item No.1/Page 42, 44 and 45.*

3. *On the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of agricultural income of Rs.2,59,309/- made by the Assessing Officer on account of denial of exemption of agricultural income ignoring the fact that the assessee failed to produce evidences such as 7/12, bills for sale of agricultural produce and not appreciating the fact mere claim of agricultural income does not substantiate the claim that such income has been earned.*
4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of deduction of Rs.40,947/- claimed u/s 24 of the Act made by the Assessing Officer on account of disallowance of interest paid on borrowed loan ignoring the fact that the assessee failed to produce bank certificate in support of his claim that the loan was for the purpose of house property and not appreciating the fact that mere claim does not substantiate the claim that purpose of loan was house property.”*

3. The assessee's cross objections C.O.No.1/NAG/2022 on the other hand supports the CIT(A)'s findings holding that the Assessing Officer had not framed a valid assessment thereby making the corresponding above stated additions as under :

- “1. That the order of the learned Assessing Officer-u/s, 143(3) r.w.s. 153A is bad in law and the additions made in the proceedings u/s 153A are illegal in absence of any incriminating document. The learned CIT(A) should have deleted all the additions considering the afore-mentioned provisions of the law.
2. That the learned Assessing Officer erred in law and on facts in making the addition of Rs.2.81 crore to the income on account of share application money invested in Grace Industries Ltd and CIT(A) was justified in deleting the addition so made. On the facts and circumstances of the case, the investment in Grace Industries Ltd is from the regular bank account which the assessing officer failed to consider and therefore the action of AO was based on conjectures and surmises. The learned CIT(A) was justified in setting aside the same.
3. That the learned Assessing Officer erred in law and on facts in making addition of Rs.2,59,309/- denying the exemption to the agricultural income and CIT(A) was justified in setting aside the action of the AO. On the facts and circumstances of the case, in absence of any incriminating document, the action of the AO is

arbitrary, baseless and is highly unjustified and the learned CIT(A) was justified in setting aside the same.

4. *That the learned Assessing Officer erred in law and on facts in disallowing the claim of deduction of interest of Rs.40,947/- u/s 24 of the Act from house property income and the learned CIT(A) was justified in allowing the claim and deleting the addition. On the facts and circumstances of the case, in absence of any incriminating document, the action of the AO was bad in law and wrong on facts and the learned CIT(A) was justified in setting aside the same.*
5. *That for any other cross-objection with kind permission of Hon'ble Members at the time of hearing of cross objection."*

4. It emerges during the course of hearing that there arises the first and foremost issue of validity of impugned sec.153A r.w.s.143(3) assessment itself dated 28.12.2011, framed in furtherance to the department's search action in assessee's group of cases on 29.07.2009, for want of any incriminating material found or seized during the course thereof.

5. It is in this factual backdrop that the first and foremost substantive issue which arises for our apt adjudication is that of correctness of the CIT(A)'s action holding Assessing Officer's sec.153A r.w.s.143(3) assessment as not a valid one as under :

“4.4. In ground of appeal no.4, the appellant has challenged the addition of Rs.2.81 crores made by AO holding the same to be undisclosed income. As per the AO, Grace Industries Ltd. had received share application money of Rs.2.81 crores during the year under consideration and the same has been added as undisclosed income in hands of Grace Industries Ltd. Thus, the AO held that the appellant is the ultimate beneficiary of the said amount of Rs.2.81 crores, through money laundering activity and he made said addition to income of appellant on protective basis. On the other hand, the AR vehemently objected to the action of the AO and submitted that the said amount of share application money was given to Grace Industries Ltd by unrelated entities and that there was no direct/indirect nexus of the appellant with such amounts and transactions. Further, the AR submitted that without any basis the AO has held that the appellant is the ultimate beneficiary of the said amount credited in books of Grace Industries Ltd. He

further stated that nothing was brought on record by AO during search and post search action to establish or prove that the money received by Grace Industries Ltd. belonged to the appellant. The AR further relied on decisions of various authorities and pleaded before me that since the assessment was completed u/s. 143(1) and had attained finality fresh additions could be made u/s. 153A only on basis of any incriminating material unearthed during search.

I have considered the order of the AO, the submissions made by the AR, case laws and other facts of the case and in my considered opinion, the addition made by the AO is not justified. Firstly, the AO has failed to bring on record any evidence to show that the share application money received by Grace Industries Ltd belonged to the appellant. There is no discussion in the assessment order and there is nothing on record to show on what basis the AO has formed this opinion. Secondly, and more importantly, there is no discussion of any evidence found during search operation to show that appellant introduced his own unaccounted and undisclosed money as share application money in Grace Industries Ltd. Since the opinion formed by the AO that share application money belonged to the applicant is not

based on any evidence whatsoever, the opinion formed by the AO is merely a conjecture and no addition can be made on that basis. The AO has mentioned in para 8 of the assessment order that the addition of Rs 2.81 Crores has already been added in the hands of M/s Grace Industries Ltd on account of unexplained credits. Then making the same addition in the hands of the appellant amounts to double addition. The reason given by the AO for the above-said addition in appellant's case is that the appellant is 'the ultimate beneficiary of the whole money laundering activity carried out through M/s Grace Industries. But the AO has not shown what is this 'money laundering activity' is and how the appellant has done it. The AO has merely made baseless assumptions and allegations without bringing any evidence on record to show why he has formed this opinion. Therefore, I firmly believe that the addition of Rs.2,81,00,000/- made on account of share application money received by M/s. Grade Industries Ltd is illogical and unjustified.

Hence, this ground of appeal is 'allowed'."

6. Ld. CIT(A)-DR vehemently argued during the course of hearing that the CIT(A) herein has erred in law and on facts in accepting not only the assessee's legal as well as his factual grounds on merits thereby reversing the impugned assessment

findings made by the Assessing Officer qua all the three additions of share application/premium; denial of agricultural income exemption and disallowance u/sec.24 of the Act; respectively.

7. Learned counsel on the other hand submits that the Assessing Officer had not quoted any incriminating material found or seized during the course of impugned search dated 29.07.2009 forming basis of the foregoing three heads/disallowances/additions (supra), despite the fact that it was an “unabated” assessment u/sec.153A of the Act. She quotes hon’ble apex court’s recent landmark decision in PCIT vs., Abhisar Buildwell P. Ltd., [2023] 149 taxmann.com 399 (SC) that the instant legal issue is no more *res integra*. She lastly highlights the fact that this is a case of sec.68 addition made on “protective” basis only wherein the substantive addition made in the hands of M/s. Grade Industries Ltd. already stands deleted.

8. We have heard the vehement rival submissions of both the parties and find no merit in Revenue’s arguments. Suffice to say, there is hardly any dispute that we are dealing with an “unabated” assessment pertaining to assessment year 2005-06 followed by the impugned search action conducted in assessee’s case dated 29.07.2009. The Revenue could not take us to any specific seized incriminating material found during

the course of search which could throw light on the assessee's corresponding undisclosed income under all these three heads during the course of hearing. Faced with the situation, we accept the assessee's legal submissions to affirm the CIT(A)'s findings under challenge to this effect. Ordered accordingly.

No other ground or argument has been pressed before us.

9. This Revenue's appeal ITA.No.106/NAG./2022 is dismissed and assessee's cross-objection C.O.No.1/NAG./2022 is accepted in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 30.01.2024.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Pune, Dated 30th January, 2024

VBP/-

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-3, Nagpur.
4. The CIT (Central), Nagpur
5. The DR, ITAT, "Nagpur" Bench, Nagpur.
6. Guard File.

BY ORDER,

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.