

IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH : NAGPUR

[THROUGH VIRTUAL HEARING AT PUNE]

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

I.T.A.Nos.7, 129 & 130/NAG./2017  
Assessment Years 2006-2007, 2008-2009 & 2009-2010

Shri Premroop V. Sahu, Nagpur – 440 008. PAN AOEPS4542R C/o. M.S. Gupta, Advocate, 333, Darodkar Square, Central Avenue, Gandhibag, Nagpur – 440 032. Maharashtra	vs.	The Assistant Commissioner of Income Tax, Central Circle – 1(2), Room No.202, 2 <sup>nd</sup> Floor, Aayakar Bhavan, Civil Lines, Nagpur.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri Maurya Pratap, CIT-DR

Date of Hearing :	22.02.2024
Date of Pronouncement :	29.02.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M.**

These assessee's three appeals I.T.A.Nos.7, 129 & 130/NAG./2017, arise against the CIT(A)-3, Nagpur's twin orders i.e., dated 08.11.2016 in case no.CIT(A)-3/02/2013-14, [for assessment year 2006-2007] and his latter common orders dated 30.01.2017 in case nos.CIT(A)-3/04/2013-14 & CIT(A)-3/05/2013-14, [for assessment years 2008-2009 and 2009-2010], respectively;, involving proceedings u/s.143(3) r.w.s.153A of the Income Tax Act, 1961 (in short "the Act").

Cases called twice. None appears at assessee's behest. He is accordingly proceeded ex-parte.

2. We proceed assessment year-wise for the sake of convenience and brevity. It emerges at the outset that all these assessee's three appeals emanate from the departmental search action dated 16.03.2011 conducted u/sec.132 of the Act followed by initiation of sec.153A proceedings which have finally culminated in the impugned assessments, all dated 18.03.2013.

3. Coming to the first and foremost assessment year 2006-07 involving the assessee's appeal I.T.A.No.7/NAG./2017, we find with the able assistance coming from the Revenue side that the Assessing Officer's findings in para-5 of his assessment year had added undisclosed income of Rs.11,86,568/- followed by estimated disallowance of various expenses @ 20%, coming to Rs.3,30,412/-, respectively. Learned CIT(A) has upheld the Assessing Officer's action to this effect. It is in this factual backdrop that the assessee has pleaded his eight substantive grounds not only on merits but also validity of the sec.153A assessment itself.

4. We advert to this first and foremost legal issue of validity of the impugned assessment itself and note that the Assessing Officer had nowhere referred to any seized incriminating material forming basis of the foregoing twin

additions despite the fact that it was an instance of an “unabated” assessment since the assessee had duly filed his sec.139(1) return on 31.10.2006. We thus quote hon’ble apex court’s recent landmark decision in PCIT vs. Abhisar Buildwell P. Ltd., [2023] 149 taxmann.com 399 (SC) to quash the impugned assessment itself for want of incriminating material found/seized during the course of search. Ordered accordingly. This legal issue as well as the assessee’s instant first and foremost appeal I.T.A.No.7/NAG./2017 stand accepted in very terms.

5. Next comes assessment year 2008-2009 involving assessee’s appeal I.T.A.No.129/NAG./2017. Learned CIT-DR informs us that both the lower authorities have gone by the seized incriminating material i.e., ‘Annexure-B-28’ for the purpose of making the impugned addition of Rs.10 lakhs. There is no rebuttal to this clinching factual position in the assessee’s pleadings. We thus quote the foregoing landmark judicial precedent herein in PCIT vs. Abhisar Buildwell P. Ltd., [2023] 149 taxmann.com 399 (SC) to affirm both the learned lower authorities action making the impugned addition(s) not only by rejecting challenge to sec.153A assessments but also on merits. We reiterate that their lordships’ have settled the law that in case the departmental authorities come across any incriminating material, they are indeed entitled to consider any other material as well for the purpose of making an

addition during the course of assessment. The assessee fails in his instant second appeal i.e., I.T.A.No.129/NAG./2017 in very terms.

6. The assessee's last appeal I.T.A.No.130/NAG./2017 for assessment year 2009-10 raises the following substantive grounds :

1. *“That, the search conducted in the premises of the assessee is without having any reason to believe which is mandatory condition for proceeding u/s. 132 and hence, the entire proceeding is void-ab-initio. And, hence the order passed needs to be set-a-side.*
2. *That, in the facts and circumstances of the case and law applicable thereto, The Commissioner of Income Tax (Appeals) has erred in confirming the addition made by the Assessing Officer, particularly addition of Rs.15,10,085/- as profit earned by the assessee on sale and purchase of coal outside the books of account.*
3. *That, The Commissioner of Income Tax (Appeals) has erred in upholding the fact that figures noted in the dairies and dumb- documents, particularly annexure B-14 represents the sales and purchase transaction of the coal belonging to the assessee.*
4. *That the Commissioner of Income Tax (Appeals) has erred in making addition of Rs.1,32,451/- representing the*

*commission earned on sales and purchase of coal belonging to M/s. Sidheshwar Coal Corporation.*

- 5. That, in the facts and circumstances of the case and law applicable thereto, The Commissioner of Income Tax (Appeals) has erred in confirming the addition made by the Assessing Officer of Rs.70,567/- comprising of interest of Rs.16,567/-, Salary of Rs.30,000/- and Rent of Rs.24,000/- received from M/s. Sidheshwar Coal Corporation.*
- 6. That, without prejudice the ground No. 4, The Commissioner of Income Tax (Appeals) and Assessing Officer has failed to give standard deduction in respect of Rental Income.*
- 7. That, in the facts and circumstances of the case and law applicable thereto, The Commissioner of Income Tax (Appeals) has erred in confirming the additions made by the Assessing Officer which is passed on surmises and guesswork.*
- 8. That, the order passed by The Commissioner of Income Tax (Appeals)-3 Nagpur is contrary to the facts of case and the law applicable thereto and the same needs to be modified.*
- 9. That the assessee reserves his right to take any other ground or additional grounds at the time of hearing of the appeal.*

*PRAYER For the reasons stated hereinbefore; the appellant most humbly and respectfully prays for the following reliefs:*

- 1. It is therefore most humbly prayed that an addition of Rs.17,13,103/- made by the Assessing Officer needs to be deleted and to that effect the impugned order needs to be modified or quashed and/or set aside.*
- 2. To declare that the order passed by the Assessing Officer is contrary to the facts of the case and settled position of law and same needs to be modified and/or set-a-side.*
- 3. That the demand raised against the appellant may kindly be stayed till the disposal of appeal.*
- 4. That any other relief which this Hon'ble Appellate Authority may deems fits in the facts and circumstances of case and in the interest of justice may pleased be also granted."*

7. Suffice to say, it emerges from a perusal of the assessment order that the Assessing Officer had not only made various addition(s) of unexplained cash deposits; unexplained investments; undisclosed income and un-reported purchases; involving varying sums; but also he had quoted the very annexure-B-28 for the purpose of adding Rs.7,10,000/- as well. That being the case, we are of the considered opinion that the learned lower authorities have rightly made the impugned addition(s) in assessee's hands that forming subject matter of

his above extracted pleadings. We accordingly reject the assessee's all substantive grounds in very terms after placing reliance in the case of PCIT vs. Abhisar Buildwell P. Ltd., [2023] 149 taxmann.com 399 (SC).

8. The assessee's appeal I.T.A.No.7/NAG./2017 is allowed and the remaining twin appeals I.T.A.Nos.129 & 130/NAG./2017 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 29.02.2024.

Sd/-  
[DR. DIPAK P. RIPOTE]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 29<sup>th</sup> February, 2024

VBP/-

Copy to

1.	The appellant.
2.	The respondent
3.	The CIT(A)-3, Nagpur.
4.	The CIT (Central), Nagpur concerned
5.	D.R. ITAT, Nagpur Bench, Nagpur.
6.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,  
Pune.