

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

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 474/MUM/2022 (A.Y: 2010-11)

DCIT – Central Circle – 7(2) Room NO. 655, Aayakar Bhavan M.K. Road, Mumbai - 400020	v.	Shri Nitesh Shakra Flat No. 102, 1 st Floor 10 Sharda Building, A-Road Churchgate, Mumbai - 400020 PAN: ABJPS2642E
(Appellant)		(Respondent)

Assessee Represented by	:	Dr. P. Daniel
Department Represented by	:	Shri S. Srinivasu
Date of conclusion of Hearing	:	28.02.2024
Date of Pronouncement	:	29.02.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the revenue against order of Learned Commissioner of Income-Tax (Appeals)-49, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 09.12.2021 for the A.Y.2010-11.

2. Revenue has raised following grounds in its appeal: -

"i. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deciding the issue regarding treatment of Long-term Capital gain as business income of Rs. 17,47,41,080/- in favour of assessee and directed the AO to delete the addition of Rs. 17,47,41,080/- made in the impugned assessment order u/s 143(3) r.w.s 153A of the Act dated 09.03.2015 based on the decision of Hon'ble ITAT in ITA No. 624/Mum/2017, dated 17.10.2018 (in respect of the original assessment order u/s 143(3) dated 29.03.2013 in assessee's own case) ignoring the facts that the appeal of the revenue against the order of the Hon'ble ITAT in ITA No. 624/Mum/2017 was filed before Hon'ble Bombay High Court on the following substantial questions of law under section 260-A of the Income Tax Act, 1961 and the same is pending for adjudication:

"Whether on the facts and the circumstances of the case, the Hon'ble ITAT was right in deleting the addition of Rs 18,53,69,866 from business income and treating the same as Long Term Capital Gain without appreciating the fact that the profit on sale of shares of RIL is out of manipulated transactions by the assessee and his associates and should be treated as Income from business or profession?"

ii) On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deciding the issue regarding treatment of interest free loan as a perquisite amounting to Rs. 4,13,658/- in favour of assessee and directed the AO to delete the addition of Rs. 4,13,658/ made in the impugned assessment order u/s 143(3) r.w.s 153A of the Act dated 09.03.2015 ignoring the fact that the scope of assessment proceedings under section 153A of the Act is not limited to the incriminating material found during the search.

3. With regard to Ground No. 1 the relevant facts brought on record by both the parties are a search and seizure operation under section 132(1) of Income-tax Act, 1961 (in short "Act") was conducted in the

group case of Ruchi Soya Group on 29.01.2013. During the course of search the family members of the Directors of the group were also covered. Therefore, the assessee is one of the Directors in the group of companies was also covered during the search under section 132(1) of the Act and warrant of search was executed on the assessee also. After centralization of the case under section 127(2) of the Act, the case was assigned to the present Assessing Officer DCIT – Central Circle – 7(2) Mumbai. Accordingly, notices under section 143(2) and 142(1) of the Act were issued and served on the assessee. In response, Authorised Representative of the assessee attended and submitted the relevant information as called for.

4. The Assessing Officer reassessed the income of the assessee under section 143(3) r.w.s. 153A of the Act and discussed the issue of surplus received on account of sale of 48 Lac shares of Ruchi Soya Industries Limited at ₹.17,47,41,080/-. After discussing the above transaction, he proceeded to conclude the assessment by considering the addition made under section 143(3) of the Act dated 29.03.2013 from the computation of total income, the Assessing Officer computed the total income as under: -

Sr.NO.	Heads of income	Amount in ₹.	Amount in ₹.
1.	Income assessed as per order under section 143(3) dated 29.03.2013		₹.18,68,82,140/-
2.	Add. Perquisite on loan as discussed above		₹.4,13,658/-
		Net Total Income	₹.18,72,95,798/-
		Rounded Off	₹.18,72,95,800/-

5. From the above, we observe that Assessing Officer has not made any fresh addition relating to sale of shares of Ruchi Soya Industries Limited. Since there is no incriminating material brought on record and the original assessment passed under section 143(3) is not abated and at the time of revised assessment proceedings under section 153A the issue of surplus received on account of sales of shares of Ruchi soya Industries Limited was pending before Ld. CIT(A) and subsequently Ld.CIT(A) upheld the order of the assessment order. Subsequently assessee preferred appeal before ITAT and ITAT has decided the issue in respect of original assessment in favour of assessee directing the Assessing Officer to treat the profit derived from sale of shares as Long Term Capital Gain as claimed by the assessee. Therefore, as far as the issue under consideration is already decided in favour of assessee and as of now pending before Hon'ble High Court. This fact was also brought on record in the grounds of appeal filed by the revenue. Therefore, as far as the additions made in Ground No. 1 is already

decided and there is no incriminating material brought on record by the Assessing Officer. It is the same addition which was reconfirmed in the present revised assessment order. Therefore, Ground No. 1 raised by the revenue is Accordingly, dismissed.

6. With regard to Ground No. 2 which is in respect of treatment of interest-free loans as a perquisite amounting to ₹.4,13,658/-, we observe that the Ld. CIT(A) has observed that there is no incriminating material brought on record in this case and also no other incriminating material was brought on record even before us that certain incriminating materials were found in the search proceedings initiated in the case of the assessee. It is a settled position of law that unless there is an incriminating material brought on record, no addition can be made in the assessment passed under section 143(3) r.w.s. 153A of the Act. Therefore, we do not see any reason to disturb the findings of the Ld.CIT(A) that where no incriminating material is found during the course of search the assessment under section 153 of the Act is to be made on original assessed / returned income and no addition or disallowance can be made *de hors* the incriminating evidences recovered during the course of search. Accordingly, we sustain the findings made by the Ld. CIT(A) in directing the Assessing Officer to delete the

additions made in respect of interest-free loans as perquisite which was emanating from the return of income filed by the assessee. Accordingly, Ground No. 2 raised by the revenue is dismissed.

7. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 29th February, 2024.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Mumbai / Dated 29/02/2024
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum