

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

BEFORE SHRI NARENDRA KUMAR CHOUDHRY, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 1848/MUM/2018 (A.Y: 2011-12)

ITA NO. 4620/MUM/2019 (A.Y: 2012-13)

Mr. Umesh A. Mishra 511, Building No. 3 Dheeraj Valley Compound Near Sai Baba Complex, Goregaon (E) Mumbai- 400063 PAN: AAGPM0190F	v.	Income Tax Officer-10 (3)(3) 2 nd Floor, Aayakar Bhavan Mumbai- 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Shri K. Gopal & Shri S. L. Jain
Department Represented by	:	Shri Ujjwal Kumar Chavhan
Date of conclusion of Hearing	:	10.01.2024
Date of Pronouncement	:	13.03.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. These appeals are filed by the assessee against different orders of Learned Commissioner of Income-Tax (Appeals)-17, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 29.12.2017 for the A.Ys. 2011-12 and 2012-13.

2. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 4620/MUM/2019 for Assessment Year 2012-13 as a lead appeal.

ITA No. 4620/MUM/2019 (A.Y. 2012-13)

3. Brief facts of the case are, Assessee is an individual and filed his return of income on 31.03.2013 declaring his total income at ₹.12,45,798/- for the A.Y. 2012-13. The Assessee has been consistently earning income from the agricultural land which is situated at Kudal, Sindhudurg and jointly held by him along with other family members since 2006 and 2007. For the year under consideration, the Assessee has derived exempt agricultural income, remuneration from M/s. Prama Instruments P. Ltd. and M/s. Prama Intech Pvt. Ltd., interest on Fixed Deposits, LIC Commission as well as share of profit from partnership firm M/s. Drug Monitoring Research Institute.

4. The return filed by the Assessee was selected for scrutiny. During the scrutiny, the Assessee had provided all the details and documents in response to the notices issued under section 142(1) of Income-tax Act,

1961 (in short "Act"). Further, it was also submitted that the said agricultural land was being managed on day-to-day basis by one Mr. Ashutosh Shukla was managing the said land on behalf of the Assessee's family. Thus, the Assessee contended that the said land was being utilized purely for the purpose of agriculture and to substantiate the same, 7/12 extract of the said land pertaining to the year 2006 was provided during the assessment proceedings. The Assessing Officer, after relying on the Assessee's submissions, took a view that assessee is not able to furnish any documentary evidence to substantiate the sale of agricultural produce. Thus, Assessing Officer treated the cash deposited in the bank account of the Assessee, being proceeds out of disposal of agriculture produce, as unexplained cash credit under section 68 of the Act of the impugned Assessment Year.

5. Further, Assessee also submitted the ledger account of one Mr. Shailesh Raval, Memorandum of Understanding (MOU) between Mr. Raval and the Assessee, cancellation deed dated 31.12.2011, copy of cheque No.427049 dated 03.08.2011, MOU dated 13.03.2011 and letter from Mr. Raval to the Assessee dated 12.09.2011.

6. Subsequently, the assessment was finalized under section 143(3) of the Act vide order dated 04.03.2014 wherein the Assessing Officer made addition amounting to ₹.22,70,610/- under section 68 of the Act by treating the agriculture income derived from the agricultural land as unexplained cash credit. In addition to the above, the Assessing Officer also made addition amount to ₹.2,50,00,000/- under section 68 of the Act by treating the amount received from Mr. Shailesh Raval as unexplained cash credit. The relevant finding at Para No. 4.4 to 4.6 at Page Nos. 3 to 5 of the assessment order, for the sake of brevity, the same are not reproduced below.

7. Aggrieved with the above order, Assessee preferred an appeal before the Ld. CIT(A) and filed other details/documents, had also filed affidavit of Mr. Ashutosh Shukla to substantiate the genuineness of the agricultural income. However, the Ld. CIT (A) doubted the genuineness of the agricultural income by holding that the documents submitted by the Assessee pertaining to agricultural land pertained to the earlier and not for the contemporary period. Thus, the Ld. CIT(A) upheld the addition made by the Assessing Officer. The relevant finding is in Paras 4.2.2-4.2.12 at Pages 4-11 of the Ld. CIT(A) order, for the sake of brevity, the same are not reproduced below.

8. Assessee has raised following grounds in its appeal: -

"1. The Ld. Commissioner of Income Tax (Appeals) - 17, Mumbai [hereinafter referred to as the Ld. CIT (A) erred in upholding the action of the Ld. A.O. in making addition of Rs.22,70,610/- under section 68 of the Act without appreciating that the said amount is received by the Appellant on account of Agriculture income. Thus, the same is exempt under section 10(1) of the Act. Thus, the addition of Rs.22,70,610/- is unjustified and the same may be deleted.

2. The Ld. CIT(A) erred in confirming the action of the Ld. A.O. in making addition of Rs.2,50,00,000/- under section 68 of the Act without appreciating the facts and circumstances of the case. Thus, the addition of Rs.2,50,00,000/- under section 68 of the Act is unjustified and the same may be deleted.

3. The Ld. CIT(A) erred in making addition of Rs.1,85,691/- under section 23(4) (b) without appreciating the facts and circumstances of the case."

9. At the time of hearing, Ld.AR of the assessee submitted that the ground challenging the "converting the limited scrutiny into complete scrutiny" is not pressed, accordingly, the same is dismissed as not pressed.

10. With regard to ground relating to Addition under section 68 of the Act pertaining to agricultural income, Ld. AR of the assessee submitted that Assessing Officer had made the said addition on account of alleged failure on the part of the assessee to produce the 7/12 extracts of the said agricultural land pertaining to the said period as well proof/details

to substantiate that agricultural activities were being carried out on the said land and the produce cultivated from the said land has been sold. Further, Ld.AR of the assessee submitted that Assessing Officer is not justified in invoking the provisions of section 68 of the Act for the purpose of making the said addition without appreciating the facts of the case. Ld. AR submitted that the abovementioned agricultural land is situated at Kudal, Sindhudurg and the same is jointly owned by assessee along with his family members i.e., Usha Mishra (wife), Madan Mishra (brother) and Vimla Mishra (sister-in-law). It is brought to our notice that 7/12 is prepared and signed by the Talathi (annexed at Page no. 117-162 of the Additional evidence paper book). From the said extracts, it can be clearly seen that the said land was owned by Umesh Mishra (Appellant), Usha Mishra, Madan Mishra and Vimla Mishra. Ld. AR submitted that there are various trees on the said land and income is generated out of the produce / yield from the same. He further submitted that, the contention of the assessee is supported by the 7/12 extracts and land surveyor report from Bhoomi Surveyors (annexed at Page no. 163-164 of the Additional evidence paper book). Ld. AR submitted that assessee has successfully discharged the onus cast upon him by the provisions of section 68 of the Act by furnishing all the

relevant documentary evidence relating to the said income. Thus, Ld. AR prays and submits that the addition made under section 68 of the Act is not justified and the same may be deleted.

11. Furthermore, Ld.AR of the assessee submitted that assessee had relied upon the decision in his own brother's case [also a co-owner of the said land] i.e., Madan Mohan Mishra v. ITO [ITA No. 796/Mum/2023] for the A.Y. 2012-13 wherein the similar issue was raised before the ITAT and the same was restored to the file of the Assessing Office for de-novo consideration.

12. On the other hand, Ld. DR submitted that Assessee is not a farmer by profession, had income from salary, HP, LTCG and other sources. Further, Ld. DR brought to our notice that Assessee submitted in writing in front of Assessing Officer that it is not possible for him to submit /produce details of expenses relating to agriculture activities; sale bills for agricultural produces; transport bills/road challans. Assessee chose not to submit these details in front of Ld. CIT(A) and ITAT as well. Assessee relies on ownership of land and certificate from talati/tahsildar to explain cash credit in the bank. Ld. DR relied on the order of the lower authorities.

13. Considered the rival submissions and material placed on record, we observe that the assessee alongwith his family members holds considerable land and does the agriculture with the help of Mr. Ashutosh Shukla. The assessee deposited cash in his bank account declaring as the income from agriculture. The information submitted by the assessee mostly relating to earlier assessment years and not able to produce any documents for the current assessment year for the reason that this activity was carried on by Mr. Shukla. On the other hand, the revenue was not in a position to accept the above submissions and of the view that the assessee is not the regular agriculturist, there is no evidence to show that the cash deposits are from the above source. After careful consideration, we are of the view that the assessee has not declared the agriculture income first time but declared the income in the earlier assessment years also and it is also substantiated by the agricultural land alongwith the other family members. All the family members have declared the agricultural income. The Assessing Officer cannot deny the benefit merely on the basis of documentation. It was submitted before us that in the case of another family member, the coordinate bench has remitted the issue back to the file of Assessing Officer to denovo assessment. After careful consideration, we are of the view that the

assessee declares the income over the years. We direct the Assessing Officer to consider the agriculture income declared by the assessee in the earlier year and factor the same on the basis of agricultural land held by the assessee. Let us say that the assessee declared the agriculture income in the past four years a consolidated income of ₹.45 lakhs and held the land at say 20 acres of land. Then income per acre would be ₹.0.56 lakhs. The Assessing Officer may estimate the income for the year at ₹.11.25 lakhs. The additional income declared by the assessee may be disallowed or in case, the assessee able to produce the actual documents to substantiate the agriculture income, he may consider the same. Accordingly, the issue under consideration is remitted back to the jurisdictional Assessing Officer to consider the above directions to redo the assessment. Accordingly, the ground raised by the assessee is allowed for statistical purpose.

14. With regard to Ground No. 2 which is in respect of Addition under section 68 of the Act amounting to ₹.2,50,00,000/- pertaining to alleged unexplained cash credit from Mr. Shailesh Raval, Ld.AR of the assessee submitted that Assessing Officer had made the said addition on account of alleged failure on the part of the assessee to substantiate the cash credit of ₹.2,50,00,000/- as well as the identity and genuineness of

Mr. Shailesh Raval. Ld. AR of the assessee submitted that Assessing Officer is not justified in invoking the provisions of section 68 of the Act for the purpose of making the said addition without appreciating the facts of the present case. On appeal before the Ld. CIT(A), the Ld. CIT(A) upheld the additions made by the Assessing Officer under section 68 of the Act observing as under: -

"4.3.3 Conclusion:

The core issue involved in this ground is relating to the additions made u/s. 68 of the Act. Let us have a look at the prescription of section 68, the relevant part of which provides that:

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

This section has received the attention of the Hon'ble Supreme Court and almost all the High Courts in numerous cases. It has been almost unanimously held that the burden under this section is discharged by the assessee only when the assessee proves three things to the satisfaction of the AO, viz., identity of the creditor, capacity of the creditor and genuineness of the transaction. The Hon'ble Calcutta High Court in CIT v. Korlay Trading Co. Ltd. [1998] 232 ITR 820 (Cal) has held that mere filing of the income-tax file number of the creditors is not enough to prove the genuineness of the cash credit. The creditor should be identified. There should be creditworthiness. There should be a genuine transaction. In K.M. Sadhukhan & Sons (P.) Ltd. v. CIT [1999] 239 IT 771 (Cal), it has been held that the burden lies on the assessee to prove the genuineness of loan. The Hon'ble High Court has held that the initial burden is on the Assessee to prove the identity of the creditor, the capacity of the creditor to advance the wheelcan

and the genuineness of the transaction. In CIT v. Precision Finance (P.) Ltd. 11694] 208 ITR 465/ (Cal), the Tribunal deleted the addition on the footing that since the transactions were through bank account, hence it was to be presumed that those were genuine. Setting aside the tribunal order, the Hon'ble High Court has held that: 'It is for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. Mere furnishing of the particulars is not enough.' Similar view has been taken in several cases. On going through the above judgments, it is explicit that the onus u/s 68 can be said to have been discharged only when the assessee proves identity and capacity of the creditor along with the genuineness of transaction to the satisfaction of the AO. All the three constituents are required to be cumulatively satisfied. If one or more of them is absent, then the AO can lawfully make addition. It is a well settled legal position that every case depends on its own facts. Even a slightest change in the factual scenario alters the entire conspectus of the matter and makes one case distinguishable from another. The crux of the matter is that the ratio of any judgment cannot be seen divorced from its facts.

At this juncture, the assessee having not discharging its onus, it is relevant to refer to the case of A. Govindarajulu Mudaliar v. CIT (1958) 3 4 ITR 807 (SC) where in the Hon'ble Apex Court has held that there is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipt are of an assessable nature. The Hon'ble Delhi High Court in the case of CIT vs NR Portfolio Pvt Ltd [2013] 29 taxmann.com 291 (Delhi) has held that Permanent Account Number is allotted as a facility to revenue to keep track of transactions. The PA Number cannot be blindly and without consideration of surrounding circumstances treated as sufficiently disclosing the identity of the individual. The identification of a person includes the place of work, the staff and the fact that it was actually carrying on business and further recognition of the said company/individual in the eyes of public. We have further noticed that PAN Numbers are allotted on the basis of applications without actual de facto verification of the identity or ascertainment of the active nature of business activity.

The Hon'ble Calcutta High court in case of Maithan international [2015] 375 IT 123 (Calcutta) held that the Assessing Officer could not accept genuineness of loan taken by the assessee from various creditors merely on basis of their bank statements and letter of confirmation as he was required to examine creditworthiness of said creditor as well.

Similarly, the decision in the case of Hon'ble Apex Court in CIT Vs P. Mohankala (2007] 291 TR 278 (SC), CIT Vs Divine leasing and Finance Ltd [2008] 299 ITR 68(SC), decision of Mumbai Tribunal in Royal Rich Developer Vs DCIT ITA No. 1836/M/2014 dated 24.08.2016, Disha N. Lalwani Vs IT in ITA No.6398/M/2012, decision of Hon'ble Calcutta High Court in Rajmandir Estato Pvt Ltd Vs PCIT (2016) 386 ITR 162 (Calcutta) also support the position that addition u/s. 68 of the Act was justified.

In view of the above discussed facts, I do not find any justification to interfere with the addition made by the A.O. Hence, the addition of Rs.2,50,00,000/- made by the A.O. is confirmed and the grounds of appeal are dismissed."

11. In our opinion, in absence of any documentary evidence to support identity, creditworthiness and genuineness of the transaction, the Ld. CIT(A) is justified in sustaining the addition. We do not find any error or infirmity in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly, we uphold the same. The grounds raised by the assessee are accordingly dismissed."

15. Ld.AR of the assessee brought to our notice that Mr. Raval is a builder/developer by profession engaged in the business of construction and development. The assessee and Mr. Raval had entered into an Memorandum of Understanding ("MoU") dated 31.03.2011 for the sale of Flat No.23 admeasuring built up area 1171 sq. ft. on 2nd floor, situated at B/23, Dattani Tower CHS Ltd, Kora Kendra, S.V. Road, Near Mc Donald restaurant, Borivali (W), Mumbai 400092 (hereinafter

referred to as said flat) for a total consideration of ₹.2,50,00,000/- and the same was to be paid as per the terms and conditions specified in the said agreement. Out of the total Consideration, the assessee paid a sum of ₹.1,35,00,000/- to Mr. Raval in pursuance to the abovementioned MoU from his Punjab and Sind Bank.

16. However, Mr. Raval was unable to deliver the possession of the said flat due to certain difficulties and therefore, both the parties entered into Cancellation Deed dated 25.07.2011. As per the terms and conditions of the said deed, Mr. Raval issued a cheque being Cheque no. 427049 of Punjab & Sind Bank, dated 03.08.2011 for ₹.2,50,00,000/- in favour of the assessee. The said cheque was deposited by the assessee in his HDFC bank and the same was cleared. It seems that Mr. Rawal did not have any real intention to honour the said cheque. He had issued instructions of 'Stop Payment' with respect to the said cheque. However, due to some miscommunication, the cheque got cleared.

17. Subsequently, the Punjab and Sind Bank filed a written complaint regarding this before the Reserve Bank of India (hereinafter referred to as RBI). To resolve the dispute, a joint meeting was held at the office of HDFC Bank, Versova, Andheri West, Mumbai on 13.09.2011 as well as

05.12.2011. However, the dispute is not resolved and the same is pending. The Punjab and Sind Bank has filed an Application on 15.04.2013 under section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 before the Debt Recovery Tribunal III, Mumbai in Original Application No. 440 of 2013 in which the assessee has been made a party. The affidavit of Mr. Shailesh Raval has been annexed at Page 165-170 of the additional evidence paper book. In this affidavit, Mr. Raval has affirmed all the above- mentioned facts. Thus, the affidavit is crucial to discharge the onus cast upon the assessee under section 68 of the Act.

18. Further, Ld.AR of the assessee submitted that addition made under section 68 of the Act is not justified as the assessee has proved the following:

"a. Identity of the creditor: The identity of the creditor i.e., Mr. Shailesh Raval stands established on account of the legal proceedings filed and pending before the Hon'ble DRT wherein Mr. Raval has been made a party thereto. Further, Mr. Raval had himself directed his bank to 'Stop Payment vide his letter dated 06.08.2011. However, on account of mistrust and deteriorating relations between Appellant and Mr. Raval because of the said transaction, Mr. Raval could not appear before Assessing Officer. Thus, the Appellant submits that notwithstanding the inability of Mr. Raval to appear during the proceedings below, his identity cannot be doubted.

b. Genuineness of the transaction: The fact that the said transaction has taken through banking channel cannot be doubted in wake of the proceedings pending before the Hon'ble DRT wherein the Applicant Bank has duly acknowledged the above transaction in its application filed before the Hon'ble ITAT. Hence, the genuineness of the said transaction also stands established.

c. Creditworthiness of the creditor: As far as the creditworthiness of the creditor is concerned, Mr. Raval had deposited deficit amount of Rs.1,35,00,000/- in Punjab and Sind Bank based on a joint meeting held at the office of HDFC Bank, Mumbai on 13.09.2011. Hence, the Creditworthiness of Mr. Raval also stands established.

In view of the above, no addition under section 68 of the Act is warranted as the Appellant has duly discharged the onus under section 68 of the Act by providing all the relevant documentary evidence to substantiate the identity and creditworthiness of the creditor as well as genuineness of the transaction. Thus, the Appellant submits that the Ld. A.O. is not justified in making addition under section 68 of the Act and hence, the same is arbitrary, unlawful, and therefore, ought to be deleted"

19. In view of the above submissions, Ld.AR of the assessee prays for deletion of the addition made by the Assessing Officer.

20. On the other hand, Ld. DR submitted that the exact nature of transaction is not submitted. Ledger of Mr Shailesh Raval contradictory as it mentions the cash payments of ₹.1.35 Cr to him. Section 269 SS and 69A are violated if the ledger is considered as true, as cash loan is not permitted and source of cash in not explained. Nothing is verifiable from the counter party Mr Raval and Assessee choose to remain silent

regarding establishing identity, genuineness and creditworthiness of Mr Raval in front of Assessing Officer, Ld.CIT(A) and ITAT. Ld. DR relied on the order of the lower authorities.

21. Considered the rival submissions and material placed on record, we observe from the record that the assessee has entered into a contract to purchase a flat from Mr. Raval at preagreed cost of ₹.2.50 crores on 31.03.2011, due to failure on the part of Mr. Raval, with the mutual agreement, they agreed to cancel the same on 25.07.2011. Meantime, the assessee claims that he has paid a sum of ₹.1.35 crores to Mr. Raval. As per the cancellation deed, Mr. Raval agreed to compensate ₹.2.50 crores by issue of cheque to the assessee. As per the MOU submitted before us, it says that the assessee has paid ₹.1.35 crores and the balance was compensation towards the financial loss suffered by the assessee. From the above, it is not clear on what basis the assessee was compensated for not honoring the promised flat for which the sale agreement was entered on 31.03.2011 and cancellation deed was entered on 25.07.2011, for a period of just 4 months. This itself unusual compensation. However, let that be as it is, this clearly shows that the assessee was likely to get the compensation of ₹.1.15 crores. Technically, on realization of the cheque, the assessee

should have declared the same of capital income of the assessee. However as per records, Mr. Raval was not intend to make such compensation and just a lip service, which demonstrates that he issued stop payment to his bank. It is submitted before us that the same was disputed sum and both the assessee and Mr. Raval has filed appeal before the DRT, which is still pending before the appellate authorities. The assessee has filed the relevant case papers as a part of paper book.

22. From the above, it is clear that the assessee has encashed the cheque of ₹.2.50 crores due to miscommunication. Therefore, the above credit amount has to be dealt in two parts, first part is the claim of the assessee that he has paid ₹.1.35 crores and the second part towards compensation or disputed issues of ₹.1.15 crores.

23. With regards to first issue, he has paid ₹.80 lakhs on 31.03.2011, ₹.33.15 lakhs on 21.07.2011 and subsequently ₹ 21.85 lakhs. This is not clear why the assessee has to make the payment of ₹.55 lakhs just prior to cancellation of sale agreement. However, taking note of the submission made before us, we note that the assessee has to prove that he has actually made the above payment through bank or by cash. This issue needs to be verified by the Assessing Officer, in case it is found

that the assessee has actually paid the sum either through bank or by cash, it proves that the assessee has actually paid the money then the assessee proves its stand of making the payment, in that case, the payment made was to be treated as genuine and also the conditions prescribed under section 68 is fulfilled, wherein the identity is already proved, credit worthiness also proved due to the fact that the relevant bank of Mr. Raval has filed a case before the DRT and genuineness of the transaction is left to the Assessing Officer to verify whether the assessee has actually made the payment. Once it is found that the actual payment is made by the assessee, the genuineness also proved. In case not proved, the consequence is to sustain the addition only to the extent of ₹.1.35 crores.

24. Coming to the second issue, as per the documents filed before us, it clearly shows that the compensation payment received by the assessee is due to miscommunication and the income has to be on the basis of actual receipt. In this case, the issue is pending before DRT, it depends upon the outcome of the findings of DRT, we direct the Assessing Officer to delete the addition at this stage in the hands of the assessee, as and when the issue is resolved by the DRT, in case, the compensation is decided in favour of the assessee, it can be added to

the income of the assessee in the year of actual award. In case it is decided against the assessee to repay the same then there cannot be any source of income to the assessee. Accordingly, we direct the Assessing Officer to delete the addition proposed to the extent of ₹ 1.15 crores. Accordingly, the Ground No 2 raised by the assessee is partly allowed for statistical purpose.

25. With regard to ground raised by the assessee relating to making addition of ₹.1,85,691/- under section 23(4)(b) of the Act, we observe that this issue was not argued before us, therefore, the same is dismissed as not pressed.

26. In the result, appeal filed by the assessee is partly allowed as per above directions.

ITA No. 1848/MUM/2018 (A.Y. 2011-12)

27. Assessee has raised following grounds in its appeal

"(1) On The Facts and Circumstances of The Case, The Hon'ble Commissioner of Income Tax (Appeals) has erred in Law, in Confirming the Addition made under sec 68 of cash Income of Agricultural land of Rs. /- to the assessee's Income which is most unjustified and arbitrary.

(2) On the Facts and Circumstances of case, the Hon'ble Commissioner of Income Tax (Appeals)-17 Confirming the Addition on Account of house Property

(3) On the Facts and Circumstances of the Case. The Commissioner of Income Tax (Appeals)-17, Mumbai has erred in law in Confirming the initiation of Penalty Proceedings under Section 271(C) of the Income Tax 1961.

(4) On the Facts and Circumstances of case, The Commissioner of Income Tax (Appeals) has erred in law in Confirming the Charge Interest under Section 234A, 234B and 234C of the Income Tax Act 1961, Which is most Arbitrary.

(5) The Appellant, Craves to Add, Delete Alter, addition to the above Grounds of Appeal."

28. Ground Nos. 1 and 2 are similar to Ground No. 2 of grounds of appeal raised by the assessee for the A.Y. 2012-13 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y.2011-12. We order accordingly.

29. With regard to Ground No. 3, on the issue of penalty proceedings, which is premature and ground no. 4 on the issue of levy of interest u/s.234A, 234B and 234C of the Act, which is consequential in nature. Therefore, both the above grounds raised by the assessee is dismissed.

30. Ground No. 5 is general in nature, accordingly, it does not requires specific adjudication.

31. In the result, appeal filed by the assessee is partly allowed as per above direction.

32. To sum-up, appeals filed by the assessee are partly allowed for statistical purpose.

Order pronounced in the open court on 13th March, 2024.

Sd/-
(NARENDRA KUMAR CHOUDHRY)
JUDICIAL MEMBER

Mumbai / Dated 13.03.2024
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