

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**IT(SS)A Nos: 32 to 37/Ahd/2023
for Asst. Years: 2014-15 to 2019-20
&
IT(SS)A Nos: 99 & ITA 280/Ahd/2023
for Asst. Years: 2020-21 & 2013-14**

Rajiv Amritlal Patel, F/12 Green Villa Flat, Near H.B. Kapadia School, Mem Nagar, Ahmedabad-380052 PAN: ABXPP3660P (Appellant)	Vs	The DCIT, Central Circle-2(4), Ahmedabad (Respondent)
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**Assessee Represented: Shri Darshan Gandhi, A.R.
Revenue Represented: Shri Kamlesh Makwana, CIT-DR**

Date of hearing : 13-03-2024
Date of pronouncement : 20-03-2024

आदेश/ORDER

PER BENCH:-

These bunch of eight appeals are filed by the Assessee as against separate appellate orders passed by the Commissioner of Income Tax (Appeals)-12, Ahmedabad arising out of the assessment orders passed under section 153A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2014-15 to 2019-20 and reassessment order passed under section 147 of the Act relating to Asst. Year 2013-14.

2. The brief facts of the case is that the assessee is an individual and working as an Accountant in M/s. A. Shridhar Construction Pvt. Ltd. There was a search action under section 132 of the Act carried out in the premises of A.Shridhar Group of Companies and following the same, search action was initiated in the residential premises of the assessee on 28.01.2020 and concluded on 29.01.2020. Due to ill health, the assessee was not in sound state of mind, hence he had admitted of taking accounting charges in his wife's name and part of salary in his son's name. Immediate after the search action, due to heart attack, the assessee was admitted in Zydus Hospital on 18.02.2020 and under gone coronary artery disease and Stents were implanted.

2.1. The assessee's wife namely Mrs. Shruti R. Patel is a B.Com. Graduate with Advanced Accounting, Auditing and having good knowledge in writing of books of accounts on tally system as part time job work basis and filed her Return of Income u/s. 139(1) of the Act as follows:

Asst. Years	Date of Filing	Total Income
2013-14	26/07/2013	1,66,550/-
2014-15	21/07/2014	1,48,890/-
2015-16	24/08/2015	1,68,240/-
2016-17	27/07/2016	1,85,250/-
2017-18	17/07/2017	1,99,520/-
2018-19	19/07/2018	1,40,450/-
2019-20	28/07/2019	2,12,240/-

2.2. Similarly, assessee's son Shri Maulesh Raju Patel was filed his original Return of Income as follows:

Asst. Years	Date of Filing	Total Income
2015-16	28/08/2015	1,78,790/-
2016-17	27/07/2016	2,15,760/-

2.3. Based on the statements recorded u/s.132[4] of Shri Maulesh Raju Patel, the income of the assessee's wife and his son's income are clubbed in the hands of the assessee as follows:

Asst. Years	Order made under section	Wife's Income	Son's Income
2014-15	153A	1,48,894/-	-
2015-16	153A	1,68,240/-	1,78,790/-
2016-17	153A	1,85,250/-	2,15,760/-
2017-18	153A	1,99,520/-	2,68,170/-
2018-19	153A	1,40,450/-	2,84,300/-
2019-20	153A	2,12,240/-	-
2020-21	153A	56,840/- & 2,37,360/- gift from cousin	-
2013-14	147	1,68,044/-	-

2.4. In the absence of any incriminating material found during the course of search and only based on the statements recorded u/s. 132(4) of the Act, the above additions were made in the hands of the assessee without taking note of the Retraction Affidavit filed by the assessee and his wife on 30/03/2021 before the Ld A.O.

3. Aggrieved against the assessment orders, the assessee filed appeals before Ld. CIT(A) who confirmed the additions made by the Assessing Officer and dismissed the appeals filed by the assessee.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal in IT(SS)A No. 32/Ahd/

2023 relating to the Asst. Year 2014-15 [common Grounds with only change in figures for other Asst. Years]:

1. *The ld. AO has erred in passing assessment order u/s. 153A r.w.s. 143(3) of the Income Tax Act, 1961. The order passed is bad-in-law, null, void and without jurisdiction.*

2. *The ld. CIT(A) has erred in confirming addition of wife's income in the hands of appellant, whereas, no incriminating documents found and seized in search. The addition is not in spirit of provisions of section 153A, therefore, it is prayed that addition of Rs.1,48,890/- may kindly be deleted.*

3. *The ld. CIT(A) has erred in confirming addition of wife's income in the hands of appellant, merely on the basis of statement in search, which was recorded under duress, fear and not in proper state of mind. The statement was retracted by filing Retraction Affidavit. Therefore, it is prayed that addition of Rs.1,48,890/- may kindly be deleted.*

4. *The ld. CIT(A) has erred in law and on facts by confirming addition of Rs.40,000/- earned by Appellant's wife from Accounting Work done by her for the appellant's client, whereas, the appellant's wife possesses qualification and knowledge to execute such accounting work. Therefore, it is prayed that addition of Rs.40,000/- may kindly be deleted.*

5. *The ld. CIT(A) has erred in law and on facts by confirming addition of Other Incomes of Rs.1,08,894/-, which was earned by wife from bank FDR interest, saving bank interest, Post Office Interest, Bond Interest, dividend, etc. which are appellant's wife's personal incomes. Therefore, it is prayed that addition of Rs.1,08,894/- may kindly be deleted.*

6. *Your appellant also reserves its right to submit details in connection with the aforesaid additions/disallowances as fresh evidence as per Rule 46A of the I.T. Rules, 1962 at the time of hearing of this appeal.*

7. *Your appellant craves liberty to add, to alter, to modify, to amend or to withdraw/delete any of the grounds of appeal at any time, on or before the hearing of appeal.*

6. We have heard the rival submissions extensively and perused the materials available on record including the Paper Book filed by the assessee. Since Assessment Years 2014-15 to 2018-19 are unabated assessment years and No incriminating material was seized during the course of search by the Revenue from the assessee's residential premises, the appeals in IT(SS)A Nos. 32 to 36 are disposed of as follows:

6.1. Date of Search was conducted on 28.01.2020, therefore all these asst. years 2014-15 to 2018-19 were concluded and in the absence of any incriminating material seized from the assessee's premises they are unabated. It is settled proposition of law that for the unabated/concluded assessment years, no addition can be made in the absence of any incriminating material. Though the same was admitted in statement recorded under section 132[4] of the Act. Therefore the additions namely clubbing of income made in the hands of the assessee for these assessment years are without jurisdiction and bad-in-law.

6.2. Hon'ble Gujarat High Court in the very recent judgement in the case of PCIT(Central) -Vs- Kaushik Devjibhai Patel reported in [2023] 152 taxmann.com 462 (Guj) and after considering Hon'ble Supreme Court judgement in the case of Abhisar Buildwell (P.) Ltd. held as follows:

"... 4.1 The Supreme Court in Abhisar Buildwell (P.) Ltd. (supra) answered the question as to whether in respect of completed assessment/un-abated assessment, the jurisdiction of the Assessing Officer to make assessment is confined to incriminating material found during the course of search under section 132 of the Act or the requisition

under section 132A and whether additions made by the Assessing Officer in absence of any incriminating material found during the search, could be sustained or not.

4.2 The Supreme Court confirmed the view taken by this court in Pr. CIT v. Saumya Construction (P.) Ltd. [\[2017\] 81 taxmann.com 292/\[2016\] 387 ITR 529](#) well as that of Delhi High Court in CIT v. Kabul Chawla [\[2015\] 61 taxmann.com 412/234 Taxman 100/\[2016\] 380 ITR 573](#), which were in favour of the assessee. The Supreme Court held that no addition can be made in respect of completed/unabated assessment in absence of any incriminating material.

4.3 The Supreme Court observed in Abhisar Buildwell (P.) Ltd. (supra) thus,

"....The lead judgment is by the Delhi High Court in the case of Kabul Chawla (supra), which has been subsequently followed and approved by the other High Courts, referred to hereinabove. One another lead judgment on the issue is the decision of the Gujarat High Court in the case of Saumya Construction (supra), which has been followed by the Gujarat High Court in the subsequent decisions, referred to hereinabove. Only the Allahabad High Court in the case of Pr. Commissioner of Income-tax v. Mehndipur Balaji, 2022 SCC Online All 444 : (2022) [447 ITR 517](#) has taken a contrary view." (para 7)

4.4 The Kabul Chawla (supra) was quoted for its ratio as under,

"In the case of Kabul Chawla (supra), the Delhi High Court, while considering the very issue and on interpretation of Section 153A of the Act, 1961, has summarised the legal position as under:

Summary of the legal position

38. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

- i. Once a search takes place under section 132 of the Act, notice under section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.
- ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

- iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".
- iv. Although section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."
- v. **In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made.** The word 'assess' in Section 153 A is relatable to abated proceedings (i.e., those pending on the date of search) and the word 'reassess' to completed assessment proceedings.
- vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.
- vii. **Completed assessments can be interfered with by the AO while making the assessment under section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."**

4.5 The decision of Saumya Construction (supra) of Gujarat High Court was also quoted for its paragraph Nos. 15 and 16 to held that the case of

completed assessment/unabated assessment in absence of any incriminating material will not permit making of addition by the Assessing Officer and that the Assessing Officer has no jurisdiction to reopen the completed assessment.

5. Finally, the supreme court confirmed the view taken by the Delhi High court in *Kabul Chawla* (supra) and of this Court in *Saumya Construction* (supra) laying down the law that no addition can be made in respect of completed assessment in absence of any incriminating material. The supreme court in laying down the proposition considered the object and purpose of insertion of section 153A of the Act.

6. In view of the above decision of the supreme court in *Abhisar Buildwell (P.) Ltd.* (supra), there is no gain saying that the issue sought to be raised and the substantial questions of law ought to be put forth in that context, are answered.

7. No case is made out in this appeal. No question of law much less any substantial question of law could be said to be arising in view of law laid down by the supreme court in *Abhisar Buildwell (P.) Ltd.* (supra). The appeal stands dismissed accordingly.”

6.3. Respectfully following the above judicial precedents, the asst. years 2014-15 to 2018-19 being unabated assessments and in the absence of any incriminating material seized from the assessee's premises, these assessment orders are without jurisdiction and bad-in-law and are hereby quashed. **In the result the appeals filed by the assessee in IT(SS)A Nos. 32 to 36/Ahd/2023 are hereby allowed.**

7. Now let us deal with abated asst. years namely 2019-20 and 2020-21. The Grounds of Appeal raised by the Assessee in IT(SS)A No. 37/Ahd/2023 for Asst. Year 2019-20 [common Grounds with only change in figures for other Asst. Year] reads as under:

1. The ld. AO has erred in passing assessment order u/s. 153A r.w.s. 143(3) of the Income Tax Act, 1961. The order passed is bad-in-law, null, void and without jurisdiction.

2. The ld. CIT(A) has erred in confirming addition of wife's income in the hands of appellant, whereas, no incriminating documents found and seized in search. The addition is not in spirit of provisions of section 153A, therefore, it is prayed that addition of Rs.2,12,240/- may kindly be deleted.

3. The ld. CIT(A) has erred in confirming addition of wife's income in the hands of appellant, merely on the basis of statement in search, which was recorded under duress, fear and not in proper state of mind. The statement was retracted by filing Retraction Affidavit. Therefore, it is prayed that addition of Rs.2,12,240/- may kindly be deleted.

4. The ld. CIT(A) has erred in law and on facts by confirming addition of Rs.1,45,000/- earned by Appellant's wife from Accounting Work done by her for the appellant's client, whereas, the appellant's wife possesses qualification and knowledge to execute such accounting work. Therefore, it is prayed that addition of Rs.1,45,000/- may kindly be deleted.

5. The ld. CIT(A) has erred in law and on facts by confirming addition of Other Incomes of Rs.67,239/-, which was earned by wife from bank FDR interest, saving bank interest, Post Office Interest, Bond Interest, dividend, etc. which are appellant's wife's personal incomes. Therefore, it is prayed that addition of Rs.67,239/- may kindly be deleted.

6. Your appellant also reserves its right to submit details in connection with the aforesaid additions/disallowances as fresh evidence as per Rule 46A of the I.T. Rules, 1962 at the time of hearing of this appeal.

7.1. As observed in the preceding paragraphs, impugned additions were made solely on the basis of Statement recorded under Section 132(4) of the Act. The Ld AO has not considered the Returns of Income filed by the assessee's wife and son under section 139[1] within the prescribed the due dates, which are discussed in paragraph 2.2 and 2.3 of this order. But based on the statement of

the assessee's son recorded u/s.132[4] of the Act and also without considering the Retraction Affidavits filed by the assessee, his wife and his son with relevant material evidences.

7.2. It is appropriate to quote the CBDT's Circular No.286/2/2013, which prohibits the department i.e. search party to take any confession in the search. The CBDT is of the view that often officials used to obtain confession from the assessee and stop further recovery of material. Such confessions have been retracted and then the addition could not withstand the scrutiny of higher authorities, because no material was found supporting such addition. Keeping in view the above principle, the Board has restrained the Search Authorities from taking confession under section 132(4) of the Income Tax Act. There are a large number of decisions which suggest that without corroborating evidence, addition ought not to be made on the basis of a declaration made under section 132(4) of the Income Tax Act.

7.3. It is settled Principle of Law that the disclosure or admission made under section 132(4) of the Act during the search proceeding is admissible evidence but not a conclusive one. In the case of DCIT -Vs- Narendra Garg & Ashok Garg (AOP) reported in [2016] 72 taxmann.com 355 (Guj) Hon'ble Jurisdictional High Court held that where assessee retracted from disclosure made in statement under section 132(4) which was not accepted by revenue, and if no undisclosed income was found during search, Revenue could not make addition on bare suspicion and presumption by observing as follows:

“Section [69C](#), read with section [132](#), of the Income-tax Act, 1961 - Unexplained expenditure (Addition on basis of retracted statement) - Assessment years 1990-91 to 1999-2000 - A search operation was carried out at premises of assessee - Assessee retracted from disclosure made in statement under section 132(4) - Retraction was not accepted by Revenue - Assessing Officer made additions of undisclosed income - In fact, there was no reference to any undisclosed cash, jewellery, bullion, valuable article or documents containing any undisclosed income during search - Whether Assessing Officer could not proceed on presumption under section 132(4) and there must be something more than bare suspicion to support assessment or addition - Held, yes - Whether Tribunal had rightly reduced additions made by Assessing Officer - Held, yes [Paras 5 and 6][In favour of assessee]

7.4. In the case of ACIT Vs JKD Pearl India Developers (P) Ltd (ITAT Jaipur) in ITA No. 324/ JP/2017 dated 09/09/2020 held as follows:

“... We are of the considered view that the mere admission is not conclusive as to the truth of the matter. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances in which it is made. It can be shown to be erroneous or untrue. Therefore, addition made merely and solely on the basis of confession without any corroborative evidence was not sustainable in law and moreover the said confession made by the assessee was subsequently retracted and since the addition was not supported by any cogent, convincing independent documentary evidence, therefore, the same was correctly found to be not sustainable by the Id. CIT(A). Hence, we uphold the same.

7.5. Respectfully following the above judicial precedents, the asst. years 2019-20 to 2020-21 being abated assessments and in the absence of any incriminating material seized from the assessee's premises but based only on the statements recorded u/s.132[4] of the Act and without taking note of the Retraction Affidavit with

relevant evidences filed by the assessee. Therefore the assessment orders are without jurisdiction and bad-in-law, the same are hereby quashed. **In the result the appeals filed by the assessee in IT(SS)A Nos.37/Ahd/2023 and IT(SS)A No.99/Ahd/2023 are hereby allowed.**

8. The Grounds of Appeal raised by the Assessee in ITA No. 280/Ahd/2023 for Asst. Year 2013-14 reads as under:

1. *The ld. AO has erred in passing assessment order u/s. 147 r.w.s. 143(3) of the Income Tax Act, 1961. The order passed is bad-in-law, null, void and without jurisdiction. Therefore, the assessment order may kindly be quashed.*

2. *The ld. CIT(A) has erred in law in confirming notice u/s. 147, whereas, the income earned by appellant wife from accounting charges is of Rs.70,000/- and other incomes are belonging to her own earned incomes from other sources. Therefore, the notice issued for escaped income of Rs.70,000/- is against the provisions of law. Therefore, the assessment order may kindly be quashed as notice is bad and illegal.*

3. *The ld. CIT(A) has erred in confirming AO addition of wife's income in the hands of appellant, merely on the basis of statement in search, which was recorded under duress, fear and not in proper state of mind. The statement was retracted by filing Retraction Affidavit. Therefore, it is prayed that addition of Rs. 1,68,044/- may kindly be deleted.*

4. *The ld. CIT(A) erred in law and on facts by confirming addition of Rs.70,000/- of earned by Appellants wife from Accounting Work done by her for the appellant's client, whereas, the appellants wife possesses qualification and knowledge to execute such accounting work. Therefore, it is prayed that addition of Rs. 70,000/- may kindly be deleted.*

5. *The ld. CIT(A) erred in law and on facts by confirming addition of Other Incomes of Rs.98,044/-, which was earned by appellant wife from bank FDR interest, saving bank interest, Post Office Interest, Bond Interest, dividend, etc. which is her personal income. Thus, the*

AO added other personal incomes. Therefore, it is prayed that addition of Rs. 98,044/- may kindly be deleted.

6. Your appellant also reserves its right to submit details in connection with the aforesaid additions / disallowances as fresh evidence as per Rule 46A of the I.T. Rules, 1962 at the time of hearing of this appeal.

7. Your appellant craves liberty to add, to alter, to modify, to amend or to withdraw/delete any of the grounds of appeal at any time, on or before the hearing of appeal.

9. The additions made in this asst. year 2013-14 are the accounts writing charges is of Rs.70,000/- and FD interest income of Rs.98,044/= belonging to assessee's wife were added as the income of the husband/assessee, denying the ITR filed by the assessee's wife. The above additions are based only on the statement recorded u/s.132[4] of the Act and without taking note of the Retraction Affidavit filed by the assessee with relevant evidences. This issue is already dealt by us in paragraph nos.7 to 7.5 of this order, which is squarely applicable to the facts of the present case also. Therefore, the reassessment order passed by the AO is without jurisdiction and bad-in-law, consequently the same is hereby quashed. **In the result, the appeal filed by the assessee in ITA No. 280/Ahd/2023 is hereby allowed.**

10. In the combined result, all the appeals filed by the assessee are hereby allowed.

Order pronounced in the open court on 20-03-2024
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 20/03/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद