

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA Nos.399-401/Mum/2024
(Assessment Year :2013-14, 2015-16 & 2016-17)**

Shyam Mahabirprasad Jatia G12, Raheja Centre 214, Free Press Journal Marg, Nariman Point Mumbai-400 021	Vs.	Income Tax Officer Central Circle-7(1) Mumbai
PAN/GIR No.AACPJ2619L		
(Appellant)	..	(Respondent)

Assessee by	Shri Siddharth Srivatatava,CA
Revenue by	Shri Biswanath Das, CIT DR
Date of Hearing	09/07/2024
Date of Pronouncement	03/10/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the assessee against separate impugned order of even date on 30/06/2023 passed by CIT(A)-49, Mumbai for the quantum of assessment passed u/s.153A r.w.s. 143(3) for the A.Y.2013-14, 2015-16 and 2016-17.

2. In all the years, one of the legal issue which has been raised that ld. AO has passed assessment order u/s.153A r.w.s. 143(3) thereby, making various additions which comprised of adhoc disallowance of various heads of expenses without any incriminating material found in the course of search.

3. The brief facts are that a search and seizure action u/s.132 was carried out in the case of the assessee on 17/04/2018 and as on date of search, the status of assessment for A.Y.2013-14, 2015-16 and 2016-17 were as under:-

Particulars	AY 2013-14	AY 2015-16	AY 2016-17
Date of filing return under section 139(1) of the Act	23.07.2013	28.08.2015	21.07.2016
Income as per ITR	Rs. 11,80,670/-	Rs. 88,85,450/-	Rs. 4,55,78,270/-
Taxes Paid	Rs. 188,612/-	Rs. 25,67,124/-	Rs. 1,54,43,529/-
Date of intimation u/s 143(1)of the Act	29.11.2013	07.10.2015	23.11.2016
Date of assessment u/s 143(3) of the Act, if any	No assessment order passed u/s 143(3) of the Act	No assessment order passed u/s 143(3) of the Act	No assessment order passed u/s 143(3) of the Act
Date of assessment u/s 147 of the Act, if any	No reassessment order passed u/s 147 of the Act	No reassessment order passed u/s 147 of the Act	No reassessment order passed u/s 147 of the Act

Last date to issue notice u/s 143(2) of the Act	30.09.2014	30.09.2016	30.09.2017
Date of conducting search & seizure u/s 132 of the Act	17.04.2018	17.04.2018	17.04.2018
Date of Notice issued u/s 153A of the Act	23.10.2019	23.10.2019	23.10.2019
Date of filing return in response to notice u/s 153A of the Act	05.11.2019 declaring total income as Rs. 11,80,670/-.	05.11.2019 declaring total income as Rs. 88,85,450/-.	05.11.2019 declaring total income as Rs. 4,55,78,270/-.
Date of order u/s 153Ar.w.s. 143(3) of the Act	24.06.2021	24.06.2021	24.06.2021
Variance made to the returned income	Addition of Rs. 2,57,604/- under the head Income from Salary	Disallowance of Rs. 3,06,618/- of Expenses claimed u/s 57 of the Act	Disallowance of Rs. 7,47,815/- of Expenses claimed u/s 57 of the Act

4. On perusal of the assessment order as well as the appellate order, it is seen that in all the years the ld. AO has made disallowance of expenses u/s. 57(iii) for the A.Y.2015-16 and

2016-17 for Rs.3,06,618/- & 7,47,815/- respectively; and addition of Rs.2,57,604/- under the head 'income from salary'. Nowhere, the ld. AO and ld. CIT (A) has stated or has referred to any seized or incriminating material found in the course of search in all these years as noted above at the time of search. The assessments for A.Y.2013-14, 2015-16 and 2016-17 had attained finality and in terms of *proviso* to Section 153A, and therefore, all the assessments are to be reckoned as unabated assessment. It is now a well settled proposition of law as held by the Hon'ble Supreme Court in the case of **PCIT vs. Abhisar Buildwell (P) Ltd in Civil Appeal No.6580 of 2021** wherein the Hon'ble Supreme Court held that the object of section 153A is to bring under tax undisclosed income which is found during course of search or pursuant to search or requisition, therefore, only in a case where undisclosed income is found on the basis of incriminating material, Assessing Officer would assume the jurisdiction to assess or reassess total income for entire six years block assessment period even in case of completed/unabated assessment. In case of search under section 132 or requisition under section 132A, Assessing Officer assumes jurisdiction for block assessment under section 153A and that all pending assessments/reassessments shall stand abated. In respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A.

5. Thus, as admitted all the additions which have been made by the AO are adhoc disallowance of expenses which are neither based on any incriminating material found in the course of search nor any seized document. Thus, these additions are beyond the scope of Section 153A and accordingly, the same are deleted.

6. In the result, all the appeals of the assessee are allowed.

Order pronounced on 3rd October, 2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai; Dated 03/10/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL 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, Mumbai