

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, VP AND MS. PADMAVATHY S, AM**

ITA Nos. 4352 to 4358/Mum/2023  
(Assessment Years: 2014-15 to 2020-21)

M/s. Rameshchandra Balachand 30, Jambulwadi, Kalbadevi Road, Mumbai-400 002	Vs.	JCIT(OSD)-Central Circle 4(1) Room No. 1916, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400 021
PAN/GIR No. AAAGR 2770 C		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Appellant by</b>	:	Shri Bhupendra Shah
<b>Respondent by</b>	:	Smt. Sanyogita Nagpal
<b>Date of Hearing</b>	:	26.11.2024
<b>Date of Pronouncement</b>	:	29.11.2024

**ORDER**

**Per Bench :**

The captioned appeals by the assessee arise out of separate orders of learned Commissioner of Income Tax (Appeals)-52, Mumbai ('ld.CIT(A) for short) and pertain to assessment years (A.Y.) 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21.

2. Since the dispute arising in these appeals are identical, they have been clubbed together and disposed of in a consolidated order, as a matter of convenience.

3. In addition to the main grounds, the assessee has raised the following additional grounds in all these appeals:

**Additional Ground Number 1:**

*In the facts and circumstances of the case and in law, the Assessing Officer erred in wrongly recording satisfaction u/s. 153A even though no incriminating documents were found from the premises of the Appellant which ought to have belonged to the Appellant.*

**Additional Ground Number 2:**

*In the facts and circumstances of the case and in law, the Assessing Officer erred in the said disallowance tantamount to double addition of same income in the hands of the Appellant even though the same is already taxed in the hands of the respective partners.*

**Additional Ground Number 3:**

*In the facts and circumstances of the case and in law, the Assessing Officer erred in passing the assessment order on the basis of approval granted u/s. 153D in a mechanical manner and without there being any incriminating material.*

4. Since the additional grounds raised by the assessee are purely on legal and jurisdictional issues going to the root of the matter and can be disposed of without making any fresh investigation into facts, we are inclined to admit the additional grounds for adjudication.

5. In ground no. 1 of the additional grounds, the assessee has challenged the validity of additions made in absence of incriminating material found as a result of search and seizure operation.

6. Briefly, the facts for deciding this issue are, the assessee is a resident partnership firm. A search and seizure operation u/s. 132 of the Income Tax Act, 1961 ('the Act' for short) was carried out in case of the assessee on 16.10.2019. Consequent upon such search and seizure operation, proceedings u/s. 153A of the Act were initiated for A.Ys. 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20. Insofar as A.Y. 2020-21 is concerned, regular proceedings u/s. 143(3) of the Act was undertaken.

7. Be that as it may, in course of assessment proceeding, the A.O. while examining the details noticed that two of the partners of the assessee firm, namely Ms. Chhaya D. Vora and Shri Yash Vora were paid remuneration. He further noticed that, in course of search and seizure operation, a statement was recorded from Shri Dhanraj Balachand Vora, one of the partners, wherein a query was made regarding the nature of the work done by Ms. Chhaya D. Vora and Shri Yash Vora to entitle them for the remuneration. He observed that in response to such query, the concerned partner had submitted that the partners shall get

remuneration as working partner. However, they did not come to office daily. It was stated that Ms. Chhaya D. Vora helps in accounts maintenance of the firm. Whereas, Shri Yash Vora helps in business. Relying upon such statement, the A.O. issued a show cause notice to the assessee, requiring to explain as to why the remuneration paid to Ms. Chhaya D. Vora should not be disallowed, as such expenditure is not for the purpose of business in terms of section 37 of the Act. Though, the assessee objected to the proposed disallowances, however, rejecting the explanation of the assessee, the A.O. disallowed the expenditures incurred by the assessee towards payment of remuneration to Ms. Chhaya D. Vora in all the assessment years under dispute.

8. Though, the assessee contested the afore-said disallowances before learned first appellate authority, however, such disallowances were sustained.

9. Before us, the primary contention of Id. Counsel appearing for the assessee was to the effect that the additions made in the assessment years under dispute were not with reference to any incriminating material found and seized in course of search and seizure operation. Thus, it was contended that in an assessment made u/s. 153A of the Act, no addition can be made in absence of any incriminating material found, as a result of search and seizure operation. In support of such contention, Id. Counsel relied upon the decision of the Hon'ble Supreme Court in the case of *Pr. CIT, Central v. Abhisar Buildwell (P.) Ltd.* [2023] 149 taxmann.com 399 (SC). Without prejudice, Id. Counsel submitted that even in respect of abated assessments, the additions made are unsustainable, as, the A.O. has made such additions simply based on a statement recorded u/s. 132(4) of the Act and no other material. He submitted, when the facts on record prove that the assessee had paid the remuneration to the concerned partner and such remuneration has already been taxed at the

hands of the concerned partner no further disallowance can be made at the hands of the assessee. Thus, he submitted, additions made should be deleted.

10. The learned Departmental Representative ('ld. DR' for short), strongly relied upon the observations of the A.O. and learned first appellate authority.

11. We have considered rival submissions and perused the materials on record. As could be seen from the facts on record, the search and seizure operation on the assessee took place on 16.10.2019. Therefore, as on the date of search and seizure operation, no assessment proceeding for A.Ys. 2014-15 to 2018-19 were pending. Therefore, for such unabated assessment years, the A.O. can have jurisdiction to assess or reassess any income purely based on incriminating material found as a result of search and seizure operation. In the facts of the present appeals, undisputedly, the only addition/disallowance made in all these assessments years are 'remuneration paid to the partner - Ms. Chhaya D. Vora'. It is the case of A.O. that the remuneration paid does not qualify as 'business expense' u/s. 37 of the Act. Though, the A.O. has referred to a statement recorded u/s. 132(4) of the Act, however, that cannot be considered as an incriminating material for enabling the A.O. to vest with himself the jurisdiction to make the disputed disallowances in assessments completed u/s. 153A of the Act. Thus, in view of the ratio laid down by the Hon'ble Supreme Court in the case of *Abhisar Buildwell (P.) Ltd.* (supra), the additions made in A.Ys. 2014-15 to 2018-19 are unsustainable. Accordingly, we delete such disallowances.

12. Even otherwise also, the assessee, in our view, has a strong case on merits as well. As could be seen from the observations of the A.O., initially he was of the view that remuneration is not allowable in terms of section 40(b) of the Act. However, ultimately, he

made the disallowance u/s. 37 of the Act, which, in other words, means that the expenditure incurred is not for the purpose of business. It is relevant to observe, in the statement recorded u/s. 132(4) of the Act, in response to a specific query raised, one of the partners of the assessee firm has specifically stated that Ms. Chhaya D. Vora helps in accounts maintenance of the firm and for that purpose she comes to the office once or twice a week. Therefore, the fact that Ms. Chhaya D. Vora comes to office and helps in maintenance of accounts is proved on record. Merely because she does not come to office on daily basis, cannot be a ground to hold that she is only a sleeping partner and, hence, not entitled to remuneration. In any case of the matter, the remuneration paid to partner is taxable at the hands of the partner u/s.28(v) of the Act. Undisputedly, the remuneration received has been offered to tax at the hands of the concerned partner. That being the factual position emerging on record, expenditure towards remuneration paid to the partner is certainly allowable at the hands of the assessee firm. Therefore, even for A.Ys. 2019-20 and 2020-21, which are abated assessments, the disallowances cannot be sustained. Accordingly, we delete the disallowances in all the assessment years under dispute. In view of our decision above, various other grounds raised by the assessee have been reduced to academic importance, hence, do not require adjudication.

13. In the result, the appeals are allowed as indicated above.

*Order pronounced in the open court on 29.11.2024*

Sd/-

(Padmavathy S)  
Accountant Member

Mumbai; Dated : 29.11.2024

Roshani, Sr. PS

Sd/-

(Saktijit Dey)  
Vice President

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai