IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, VP AND MS. PADMAVATHY S, AM

ITA No. 5194/Mum/2024 (Assessment Year: 2015-16)
ITA No. 5195/Mum/2024 (Assessment Year: 2014-15)
ITA No. 5196/Mum/2024 (Assessment Year: 2013-14)
ITA No. 5197/Mum/2024 (Assessment Year: 2012-13)
ITA No. 5200/Mum/2024 (Assessment Year: 2011-12)

ACIT-19(3) 513, 5th Floor, Piramal Chambers, Near Lal Baug, Parel, Mumbai-400 12	Vs.	Ronak Gold 148, Shop No. 14, Ground Floor, Mumbadevi Road, Kalbadevi, HO, Mumbai-400 002
PAN/GIR No. AAKFR 7444 K		
(**Appellant**)	:	(**Respondent**)

Appellant by	:	Shri Nishit Gandhi
Respondent by	:	Smt. Sanyogita Nagpal

Date of Hearing	:	28.11.2024
Date of Pronouncement	:	03.12.2024

O R D E R

Per Bench:

These are bunch of five appeals filed by the Revenue, challenging separate orders of learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), pertaining to assessment years (A.Y.) 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

2. The primary issue arising for consideration in all these appeals is, whether in absence of any incriminating material found, as a result of search and seizure operation, additions can be made in assessments made u/s. 153A r.w.s. 143(3) of the Act.

3. Necessary facts for deciding this issue are, the assessee is a resident partnership firm. For the assessment years under dispute, the assessee filed its return of income in

regular course u/s. 139(1) of the Act. As narrated by the Assessing Officer (AO), an appraisal report was received from the office of Additional Director of Income Tax (Investigation), Unit-7, Mumbai, wherein, it was stated that information in writing was received from Sr. Inspector of Police, D N Nagar Police Station, Andheri West, Mumbai, stating that during nakabandi at Juhu Tara Road on 16.12.2016, a Toyota Etios vehicle bearing registration number MH 48 AC 5152 was intercepted and on verification, cash amounting to Rs.1,40,00,000/- (currency note in denomination of Rs.2,000/-) was found in the possession of Shri Jayendra Jhaveri and Shri Vishal Jayendra Jhaveri. In the said vehicle, one more person, by name, Shri Hitesh Anupchand Bawisi was also sitting. Upon receiving such information, the Assistant Director of Income Tax (Investigation), Unit-7(4), Mumbai requisitioned the amount of Rs.1,40,00,000/- on 19.12.2016 u/s. 132A of the Act from the custody of Sr. Inspector of Police, D N Nagar Police Station, Andheri (W), Mumbai. Summons u/s. 131 of the Act were issued to Shri Pravinchandra Jhaveri, Shri Vishal Jayendra Jhaveri, Shri Hitesh Anupchand Bawisi and the driver – Shri Jyoti Swami on 17.12.2016 and, their statements u/s. 131(1) of the Act were recorded in the Police Station in the presence of Sr. Inspector of Police, D N Nagar Police Station, Andheri (W), Mumbai. In the said statement, Shri Vishal Jayendra Jhaveri, one of the partners of assessee firm admitted of having carrying the cash of Rs.1,40,00,000/- to purchase gold bar from a party based in Versova, Andheri (W), Mumbai.

4. Based on such statement, proceedings u/s. 153A of the Act were initiated against the assessee. In course of assessment proceeding, the A.O. relied upon the statement

recorded u/s. 131 of the Act, as noted above, and concluded that the assessee had purchased gold worth Rs.3 crores every month in cash during the financial years 2010-11 to 2016-17. Thus, he worked out the alleged annual purchase of gold in cash from various parties, at Rs.36 crores. Accordingly, he issued a show cause notice, calling upon the assessee to explain why an amount of Rs.36 crores, allegedly used for purchase of gold, should not be added back to the income of the assessee in the relevant assessment years. In response to the show cause notice, the assessee furnished its reply vehemently objecting to the proposed addition. It was submitted by the assessee that the statement recorded u/s. 131 of the Act was subsequently retracted by the concerned partner furnishing an affidavit and it was stated in the Affidavit that the statement was recorded under threat of prosecution and torture. Thus, it was submitted that simply based on the statement recorded u/s. 131 of the Act, additions could not have been made.

5. The assessee further submitted that in the statement recorded u/s. 131 of the Act, it was never stated that cash of Rs.1,40,00,000/- found in the vehicle was for purchase of gold. Rather, it was stated that cash found represents sale proceeds and that too relating to Financial Year 2016-17, corresponding to A.Y. 2017-18. However, rejecting the submissions of the assessee, the A.O. held that the alleged cash purchase of gold, amounting to Rs.36 crores has to be disallowed u/s. 40A(3) of the Act. Further, the AO observed that in course of assessment proceeding, the assessee was asked to furnish the details of the immovable properties held/owned by it during the Financial Years 2010-11 to 2016-17. In response to the query raised, the assessee, vide letter dated

01.12.2018, furnished the details of the immovable property held/owned during the afore-stated financial years. After going through the details furnished, the A.O. observed that Annual Lettable Value (ALV) in respect of the properties held/owned has to be determined and brought to tax. Alleging that the assessee failed to furnish the details, the A.O. estimated ALV (notional rent) @ 8% and made additions in all the assessment years under dispute.

6. Against the assessment orders so passed, the assessee preferred appeals before learned first appellate authority.

7. After examining the facts and materials on record, and being convinced with the submissions made by the assessee, the learned first appellate authority held that since additions made are in absence of any incriminating material found, as a result of any search and seizure operation, they cannot be made in assessments completed u/s. 153A of the Act. Proceeding further, learned first appellate authority held that even going by the statement recorded u/s. 131 of the Act (subsequently retracted), the assessee had clearly stated that the cash found represented cash sales during the Financial Year 2016-17 corresponding to A.Y. 2017-18. Hence, they are not related to the impugned assessment years. Therefore, based on such statement, additions could not have been made in these assessment years. More so, when no cash in addition to the amount of Rs.1,40,00,000/- was found. Learned first appellate authority further held that, since the assessee has not claimed any expenditure, no disallowance u/s. 40A(3) of the Act could be made. Thus, on the aforesaid analysis of facts, learned first appellate authority deleted the additions made in the impugned assessment years.

8. Before us, learned Departmental Representative ('ld. DR' for short) relied upon the observations of the A.O. Whereas, ld. Counsel appearing for the assessee strongly relied upon the observations of learned first appellate authority.

9. We have considered rival submissions and perused materials on record. We have also applied our mind to the judicial precedents cited before us. A reading of the impugned assessment orders clearly reveal that the only material which forms the basis of the additions made while completing the assessments u/s. 153A of the Act is the statement recorded u/s. 131 of the Act. The undisputed facts culled out from record clearly reveal that the said statement u/s. 131 of the Act was recorded in the Police Station, in presence of Sr. Inspector of Police. It is a further fact on record that subsequently the assessee has furnished an Affidavit retracting the statement and also explaining the situation under which the statement u/s. 131 of the Act was recorded from one of the partners. In the said Affidavit, the partner has clearly stated that the statement was taken in duress, under threat of prosecution and torture. On a specific query being made regarding availability of any incriminating material, apart from the statement record u/s. 131 of the Act, the ld. DR fairly submitted that neither any such material has been referred to by the A.O. nor are they available on record.

10. Thus, it is evident, except the statement recorded u/s. 131 of the Act, no other incriminating material was found during the requisition made u/s. 132A of the Act. Undisputedly, assessments for the impugned assessment years have been completed

u/s. 153A of the Act. The Hon'ble Supreme Court in the case of Hon'ble Supreme Court in the case of *Pr. CIT, Central v. Abhisar Buildwell (P.) Ltd.* [2023] 149 taxmann.com 399 (SC) has laid down the ratio that, in respect of unabated assessment, power of the A.O. to make addition u/s 153A of the Act is only with reference to incriminating material found as a result of search and seizure operation. In the facts of the present appeals, the additions made by the A.O. are on account of alleged cash purchase of gold, which have been disallowed u/s. 40A(3), of the Act and the other addition is on account of notional rent on estimation of ALV at 8%. Thus, neither of the additions are with reference to any incriminating material found and seized at the time of search and seizure operation. In our view, the statement recorded u/s. 131 of the Act, which got subsequently retracted, under no circumstances can be considered as a valid piece of evidence, much less an incriminating material found as a result of search and seizure operation. Thus, based on such statement, no addition can be made in an assessment framed u/s. 153A of the Act. We may further add, as rightly observed by learned first appellate authority, even based on the statement recorded u/s. 131 of the Act, no addition can be made in the impugned assessment years, as the person concerned from whom the statement was recorded, has clearly stated that the cash found represented cash sales pertaining to Financial Year 2016-17, corresponding to A.Y. 2017-18 and not to the impugned assessment years.

10. The learned first appellate authority is also correct in holding that no disallowance u/s. 40A(3) of the Act can be made, as the assessee has not claimed any such expenditure. Thus, in our considered opinion, neither the disallowance made u/s.

40A(3) of the Act nor on account of notional rental income are sustainable in assessments made u/s. 153A of the Act. In view of the aforesaid, we do not find any infirmity in the decision-making process of learned first appellate authority. Accordingly, we dismiss the grounds.

11. In the result, all the appeals are dismissed.

Order pronounced in the open court on 03.12.2024.

Sd/-	Sd/-
(Padmavathy S)	(Saktijit Dey)
Accountant Member	Vice President

Mumbai; Dated : 03.12.2024
Roshani, Sr. PS

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