

**IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH,
MUMBAI
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.4293/MUM/2024
(A.Y. 2018-19)
ITA No. 4295/MUM/2024
(A.Y. 2017-18)
ITA No. 4297/MUM/2024
(A.Y. 2015-16)
ITA No. 4298/MUM/2024
(A.Y. 2014-15)
ITA No. 4300/MUM/2024
(A.Y. 2013-14)
ITA No. 4302/MUM/2024
(A.Y. 2012-13)**

Ramee Hotels Pvt. Ltd. Plot. No. 3, Kohinoor Road, Dadar (East), Mumbai-400014	v/s. बनाम	ACIT, CC-6(2), Mumbai Room No. 1903, 19 th Floor, AIR India Building, Nariman Point, Mumbai-400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCR3369M		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	Shri. Mandar Vaidya
Revenue by :	Smt. Sanyogita Nagpal

Date of Hearing	05.12.2024
Date of Pronouncement	11.12.2024

आदेश / ORDER

PER OM PRAKASH KANT [A.M.] :-

The captioned appeals by the assessee are directed against separate orders passed by the Learned Commissioner of Income-tax (Appeals), Mumbai- 54 [hereinafter referred to as “CIT(A)”] for respective assessment

years in relation to search assessments. As common issue and dispute is involved in these six appeals, therefore, same were heard together and disposed off together by way of this common order for convenience and avoid repetition of facts.

2. Briefly stated facts of the case are that a search and seizure action u/s 132 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] was carried out at the premises of “Shri Uday Shetty and others” on 23.01.2019. In said search and seizure action, certain documents belonging/related to assessee were seized. The AO of the searched person i.e. Shri Uday Shetty group & others and the AO of assessed person i.e. the assessee Shri Ramee Hotels Pvt. Ltd., being the same officer, he recorded satisfaction on 06.12.2021 under the provisions of section 153C of the Act to the effect that certain documents/information received in search of ‘Udai shetty group’ were related to assessee and having bearing on the determination of the total income in the case of the assessee. Accordingly, the AO issued notice u/s 153C r.w.s 153A for six assessment years proceeding to the assessment year in which search was carried out i.e. AY 2018-19 to 2013-14. The AO, further, invoked 4th proviso to section 153A of the Act, which provided reopening the assessment beyond six assessment years but within 10 assessment years subject to fulfillment of the condition that the AO had in his possession incriminating evidence represented in the form of asset which revealed income of value Rs.



50,00,000/- or more and had escaped assessment. In view of this proviso, the AO also reopened AY 2012-13 and issued notice u/s 153C r.w.s 157A of the Act.

3. The AO completed the reassessments u/s 153C for the assessment years for which he issued notice u/s 153C of the Act, but in those assessments, he did not make any addition on the basis of documents for which satisfaction was recorded while initiating proceedings u/s 153C of the Act. For ready reference, the addition made for disallowance of interest expenditure on lease hold land made (bold letters) in AY 2018-19 is reproduced as under:

6. Accordingly, the total income of the assessee is computed as under:

	Particulars	Amount (in Rs.)	Amount (in Rs.)
i.	Income from Business and Profession		4,14,13,122/-
Add:	Disallowances as per order u/s. 143(3) dated 23.04.2021	95,84,996/-	
Add:	Interest expenditure on lease hold land (as discussed in Para 4 above)	35,37,725/-	5,45,35,843/-
ii	Income from Other Sources		19,46,276/-
	Gross Total Income		5,64,82,119/-
	Set off Brought Forward Loss (Ay 2012-13) (1,70,53,245/- minus 1,29,26,382/-)	41,26,863/-	
	Set off Brought Forward Loss (AY 2013-14) (only to the extent of available business income after set off loss from AY 2012-13)	5,04,08,980/-	5,45,35,843/-
	Total Income		19,46,276/-

4. The discussion Relevant to the addition for lease hold expenses in the assessment order is also reproduced as under for ready reference:

“4.1 From the accounts of the assessee it is seen that under the Finance Cost (Note 30), the assessee has claimed an amount of Rs. 35,37,725/- being the deferred



payment. Further, it is reported by the assessee that the same is the interest on the instalments paid to Indore Development Authority (IDA) for purchase of leasehold land. Moreover, in the submission made by the assessee, the principal amount paid in relation to the purchase of flat was reported as capital advances under the head 'long term advances', however, interest has been claimed under the Revenue.

4.2 From the above facts it is evident that the interest expenditure has been incurred for acquisition of the property, the possession of which has not been received by the assessee. Though it has not received the possession, however, claimed the relatable expenditure under the revenue head i.e., in the profit and loss account.

4.3 In light of the above, in the course of assessment proceedings the assessee has been issued showcause dated 27.02.2023 as to why the interest expenditure of Rs. 35,37,725/- shown under 'deferred payment and claimed as revenue should not be disallowed and added to the total income.

4.4 In response, the assessee made its submission through email dated 02.03.2023 citing that the assessee is unable to file its response through the e- proceeding option as it is directing them to the e-filing portal for filing of Return of Income. The submission of the assessee has been reproduced here for reference:

"The company had bid for a 90 years leasehold land of Indore Development Authority (IDA) situated at Indore which was awarded to the Company by IDA. The total cost of the leasehold plot was Rs. 8,92,97,600/- of which 10% of the cost of the plot was paid by the Company. In terms of the letter of reservation, out of balance 90% of the total cost of the plot, 15% is payable by the company on or before 27th May, 2011 and thereafter the balance 75% is required to be payable in 40 equal instalments with an interest of 10.50% annum. As the said plot is being acquired for the purpose of expansion of business and was to be used solely for business purposes the interest paid on the EMIs is in the nature of business expense. Further, the interest expenses claimed are for the period under consideration."

4.5 The submission of the assessee has been considered, however, there is no merit in it. The fact is in relation to interest incurred on the payment made for acquisition of the property, the possession of which has not been received till date. Since the assessee has not obtained the possession the expenditure in relation to the same has to be capitalized and not to be claimed as revenue. Moreover, the assessee has not given any submission as to how the same was allowable specifying the section under which the same is allowable as business expenditure. As per the records and the submission given the assessee has given advances for purchase on which it has incurred interest expenditure and the possession of the same was not received till date. Therefore the relatable expenditure in relation to the acquisition of the property till the complete possession of the asset has to be capitalized. Accordingly, the claim of interest expenditure of Rs. 35,37,725/- is disallowed. Thus, an addition of Rs. 35,37,725/- is made to the total income of the assessee. Penalty proceedings under section 270A r.w.s 274 of the Act is hereby initiated for under-reporting of Income."

5. Aggrieved, the assessee filed appeals before the Ld. CIT(A) and challenged the additions on merits, however, could not succeed, and thus, is in



appeal before Tribunal by way of raising grounds as reproduced above. For ready reference, grounds raised in AY 2018-19 are reproduced as under:

“1. The Ld. CIT(A) fell in error of law in not appreciating that the assessment for the Asst.year in question was not pending and hence, had not abated u/s.153A r/w.153C.

2. The Ld. CIT(A) failed to appreciate that the scrutiny assessment u/s. 143(3) had been concluded in April 2021 and concluded assessments were beyond the scope of section 153C r/w.s. 153A.

3. The Ld. CIT(A) misdirected himself in ignoring the fact that there was no undisclosed income found on the basis of any incriminating material and hence the assessment is bad, illegal and without jurisdiction.

4. It is submitted that the issue of jurisdiction goes to the root of the cause and such an issue can be raised at any stage of the proceedings.

5. Without prejudice, on merits, the Ld.CIT(A) erred in not appreciating that interest paid towards Installment Facility of lease amount would be 'revenue' in nature.

6. The Ld. CIT(A) erred in pressing into service, section 36(1)(iii) which has no application to the facts at hand.

The appellant craves leave to add, alter, amend, modify any grounds of appeal.”

6. The assessee has also raised additional grounds challenging the validity of the proceedings u/s 153C r.w.s. 153A in all the appeals. For ready reference, the additional grounds raised in AY 2018-19 are reproduced as under:

“1) no incriminating material was found during the search and hence the assessment u/s. 153C is bad, illegal and without jurisdiction.

2) the original assessment u/s. 143(3) had already been completed/concluded and concluded assessments would not abate section 153C r/w.s. 153A.”

7. Before us, Ld. Counsel for the assessee has referred to the additional ground and submitted that the Ld. AO was not justified in extending the reassessment u/s 153C r.w.s. 153A beyond six assessment years and initiating reassessment for Ay 2012-13 for the reason that the assessee was not liable for such extensions being no income exceeding Rs. 50,00,000/- representing in the form of the asset which had escaped assessment was found in possession of the assessee. He referred to the satisfaction note recorded by the AO of the



assessee wherein reference of document i.e. agreement to sale dated 12.05.2011 between the assessee and the persons Shri Uday Shetty group, has been made. The said agreement to sale is regarding immovable property situated at Pootur village of Udupi. As per the agreement to sale, total consideration of Rs. 3,70,00,000/- is mentioned. Further, as per the documents at Serial No. 21 to 24 found from the premises of Shri Uday Shetty cash component of the transaction of purchase of said property was worked out to Rs. 1,26,78,125/- and cheque component was worked out to Rs. 4,46,00,000/-. Accordingly, the AO recorded that there was difference of Rs. 2,02,78,125/- in price paid and recorded in agreement to sale. The Ld. Counsel, however, emphasized that the AO did not hold the said income as escaped assessment in the impugned assessment orders, and therefore, the condition required for extending the assessment u/s 153C r.w.s 153A beyond the period of six years was not fulfilled. Accordingly, he submitted that the assessment u/s 153C r.w.s 153A passed for AY 2012-13 is without jurisdiction, and accordingly, need to be quashed *ab initio*.

8. Further, the Ld. Counsel for the assessee referred to another additional ground and submitted that in view of the satisfaction recorded on 06.12.2021 , the period of six assessment years preceding the assessment year in which satisfaction was recorded would be from AY 2021-22 to 2015-16. Ld. Counsel submitted that in case of 153C proceedings, search assessment years have to be reckoned from the year in which the satisfaction is recorded as against the



search year in case of proceedings u/s 153A of the Act. He submitted that out of the six assessment years preceeding to the assessment year in which satisfaction was recorded i.e. AY 2015-16 to AY 2020-21, only three assessment years i.e. AY 2015-16, AY 2017-18 & AY 2018-19 are available for consideration in present set of appeals. He submitted that reopening of the assessment years beyond the AY 2015-16 are being without jurisdiction and same need to be quashed as *ab initio*.

9. As regard to AY 2015-16, AY 2017-18 & AY 2018-19, Ld. Counsel for the assessee submitted that in all these cases no assessments were pending as on the date of the recording the satisfaction, and therefore, same being unabated assessment, no addition could have been made otherwise then the aid of incriminating material. Ld. Counsel for the assessee in support, relied on the decision of the Hon'ble Supreme Court in the case of **PCIT v. Abhisar Buildwell P. Ltd. (2023) 454 ITR 212 (SC)**. The Ld. Counsel for the assessee has also relied on the decision of the co-ordinate bench in the case of **Hilton Infrastructure v/s DCIT, CC-4(2) in ITA No. 3456/Mum/2023 & others**. Accordingly, he submitted that in the assessments in all above assessment years, no addition has been made relying on any incriminating material, and therefore, in absence of such incriminating material, no addition is justified in those assessment years. Accordingly, in those years, the additions need to be deleted, following the findings of the Hon'ble Supreme Court in the case of Abhisar Build Well Pvt. Ltd. (Supra).



10. On the contrary, Ld. DR relied on the orders of lower authorities and submitted that proceedings u/s 153C were validly initiated, in view of the agreement to sale of an assets having value of exceeding Rs. 50,00,000/- referred by the AO of the assessee.

11. We have heard rival submissions of the parties and perused the relevant material on record. As far as, the additional ground challenging extension of the assessment years for the purpose of reopening u/s 153C is concerned, the Ld. Counsel for the assessee has challenged the action of the AO on the ground that the alleged asset in the form of agreement to sale of a property is not in the nature of asset where income escaped has been determined.

12. If for a moment we leave this issue aside and only examine the conditions of the decision of Hon'ble Supreme Couert in the case of Abhisar Build Well Pvt. Ltd. (Supra), we find that in view of the satisfaction recorded on 06.12.2021 by the AO of the assessee, the six years preceding the assessment year in which satisfaction is recorded would be from AY 2020-21 to 2015-16. The Ld. Counsel for the assessee submitted that in all the assessment years assessments were already completed, and therefore, same being unabated assessments no addition could have been made without the aid of the incriminating material. The ld DR has not disputed that all those assessment year stand unabated. In this regard, the ratio of the decision of the Hon'ble Bombay High court in the case of **CIT vs Continental**



Warehousing Corporation (Nhava Sheva) Ltd [58

taxmann.com 78] (BombayHC) is reproduced as under:

“ (i) On a plain reading of Section 153A of the Income-tax Act, it becomes clear that on initiation of the proceedings under Section 153A, it is only the assessment / reassessment proceedings that are pending on the date of conducting search under Section 132 or making requisition under Section 132A of the Act stand abated and not the assessments/reassessments already finalised for those assessment years covered under Section 153A of the Act. By a circular No. 8 of 2003 dated 18-9-2003 (See 263 ITR (St) 61 at 107) the CBDT has clarified that on initiation of proceedings under Section 153A, the proceedings pending in appeal, revision or rectification proceedings against finalised assessment/reassessment shall not abate. It is only because, the finalised assessments/reassessments do not abate, the appeal revision or rectification pending against finalised assessment/reassessments would not abate. Therefore, the argument of the revenue, that on initiation of proceedings under Section 153A, the assessments/reassessments finalised for the assessment years covered under Section 153A of the Income-tax Act stand abated cannot be accepted. Similarly on annulment of assessment made under Section 153A (1) what stands revived is the pending assessment / reassessment proceedings which stood abated as per section 153A(1);

(ii) Once it is held that the assessment has attained finality, then the AO while passing the independent assessment order under Section 153A read with Section 143 (3) of the I.T. Act could not have disturbed the assessment / reassessment order which has attained finality, unless the materials gathered in the course of the



proceedings under Section 153A of the Income-tax Act establish that the reliefs granted under the finalised assessment/ reassessment were contrary to the facts unearthed during the course of 153A proceedings. If there is nothing on record to suggest that any material was unearthed during the search or during the 153A proceedings, the AO while passing order under Section 153A read with Section 143(3) cannot disturb the assessment order;”

13. The ratio of the Hon'ble Bombay High court in the case of Continental Warehousing Corporation(supra) has been upheld by the Hon'ble Supreme Court in the case of Abhisar BuildWell P. Ltd. (supra). Thus, in view of the settled principle, no addition could have been made in case of the unabated assessment years in all the impugned assessment years before us as not a single addition has been made on the basis of incriminating material, and therefore, following the finding of the Hon'ble Bombay High court in Abhisar Build Well Pvt. Ltd. (Supra) no addition could have been made in the relevant assessment years contested before us. Accordingly, additions made in all these appeals are hereby deleted and all the relevant additional ground raised by the assessee in all the assessments is, accordingly, allowed. Since the additions in the impugned assessment orders already stand deleted, the regular grounds on merit are rendered academic and hence we are not required to adjudicate at this stage.



14. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 11.12.2024.

Sd/-

KAVITHA RAJAGOPAL

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

OM PRAKASH KANT

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक/Date. 11.12.2024

अनिकेत सिंह राजपूत/स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

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उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

