

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'डी' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

श्री बी. आर. बास्करन, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI B.R.BASKARAN, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4023/M/13
(निर्धारण वर्ष / Assessment Year: 2004-05)

Shri Dharamshi G. Patel 10, Mithila Shopping Centre, V.M.Road, Juhu Scheme, Vile Parle(W), Mumbai - 400049	बनाम/ Vs.	Asst. Commissioner of Income Tax Cen. Cir. 22, Room No.465, Aaykar Bhavan, M.K.Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPP3539Q		

आयकर अपील सं/ I.T.A. No.4019/M/13, I.T.A. No.4020/M/13, I.T.A. No.4021/M/13 &
I.T.A.No.4022/M/13

(निर्धारण वर्ष / Assessment Year: 2005-06, 2006-07,2007-08, 2008-09)

Shri Narshi G. Patel 10, Mithila Shopping Centre, V.M.Road, Juhu Scheme, Vile Parle(W), Mumbai - 400049	बनाम/ Vs.	Asst. Commissioner of Income Tax Cen. Cir. 22, Room No.465, Aaykar Bhavan, M.K.Road, Mumbai - 400020
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आयकर अपील सं/ I.T.A. No.3955/M/13
(निर्धारण वर्ष / Assessment Year: 2009-10)

Shri Narshi G. Patel 10, Mithila Shopping Centre, V.M.Road, Juhu Scheme, Vile Parle(W), Mumbai - 400049	बनाम/ Vs.	Asst. Commissioner of Income Tax Cen. Cir. 22, Room No.465, Aaykar Bhavan, M.K.Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPP3538R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Krish B. Desai
Department by:	Shri K.B.Shukla (CIT-DR)

सुनवाई की तारीख / Date of Hearing: 09.09.2015

घोषणा की तारीख /Date of Pronouncement: 16.12.2015

आदेश / ORDER

PER AMARJIT SINGH, JM:

The above said appeals have been filed by the assessee against the separate impugned order dated 18.02.2013 & 15.02.2013 respectively passed by the learned Commissioner of Income Tax (Appeals)-39, Mumbai [hereinafter referred to as the learned "CIT(A)"] for the quantum assessment passed u/s. 143(3) r.w.s.153A of the Income Tax Act, 1961(in short "the Act") in the Assessment Year 2004-05 in case of Shri Dharamshi G. Patel and 2005-06 to 2009-10 in the other cases belonging to Shri Narshi G. Patel. Since common question of law and facts are involved in these appeals therefore they are being taken together for adjudication for the sake of convenience.

2. The facts of the case are that a search and seizure action u/s. 132 was conducted on 16.11.2009 in the case of M/s. M. R. Construction and M/s. Option Developers & Builders. Shri Dharamshi G. Patel and Shri Narshi G. Patel are the main person of M/s. Option Developers & Builders. The assessee Shri Dharamshi G. Patel and Shri Narshi G. Patel are partners in M/s. Baby Bell and M/s. Options Developers & Builders. During the course of search proceedings, copies of passport in the name of assessee's were found and examined. Assessee traveled number of times in the foreign countries in the assessment relevant years and was asked to explain about the travelling. Assessee was asked to explain their foreign travelling and in case of Shri Dharamshi G. Patel he replied vide letter dated 21.12.2011 which is hereby reproduced below:

Departure Date	Arrival Date	Location	No. of days stayed outside India	Exp.
1-Apr-03	6-Apr-03	Mumbai--->Bangkok--->Mumbai	5	18,650
17-May-03	22-May-03	Mumbai--->Bangkok--->Mumbai	5	18,000
27-Jul-03	8-Aug-03	Mumbai--->Italy--->Mumbai	12	59,000
6-Sep-03	13-Sep-03	Mumbai--->Italy--->Mumbai	7	49,000
2-Oct-03	11-Oct-03	Mumbai--->HongKong--->Bangkok--->Mumbai	9	32,500
26-Feb-04	6-Mar-04	Mumbai--->Bangkok--->HongKong--->Mumbai	9	39,000
6-Mar-04	13-Mar-04	Mumbai--->Italy--->Mumbai	7	49,000
				2,65,150

The assessee had been in Italy for around 61 days(including the days of travel). The assessee has not given the break up of cost of stay and travel and other details. No supporting documents in this regard like Travel bills, hotel bills etc were provided by the assessee. Therefore the Assessing Officer assessed the estimated expenses mentioned below:

Est. amt. spent on travel to and fro	Est. amt. spent on food@1000 per day	Stay @5000 per day	Misc. exp. Like purchase and entertainment	Total Amt. as per dept.est.	Amt. offered by assessee	Difference
5,00,000	61,000	3,05,000	1,75,000	10,41,000	2,65,150	7,75,850

Thus the income to the tune of Rs.7,75,850/- was enhanced in case of Dharamshi G. Patel however, in appeal a relief of 50% was granted by the learned CIT(A). Feeling not satisfied the assessee has filed the appeal before us.

3. Now coming to the other appeals relating the Shri Narshi G. Patel on the basis of facts and circumstances mentioned above the Assessing Officer assessed the estimated expenses effective in the foreign countries to the tune of Rs.5,24,950/- for A.Y.2005-06, Rs.5,18,940/- for A.Y. 2006-07, Rs.4,19,100/- for

A.Y.2007-08, Rs.3,38,300/- for A.Y.2008-09 and Rs.3,30,500/- for A.Y.2009-10 respectively. Subsequently, the assessee filed the appeal before learned CIT(A) and learned CIT(A) has granted relief to the extent of 50% in case of Shri Darmshi G. Patel for A.Y.2004-05 and in case of Shri Narshi G. Patel 50% for A.Y.2005-06,40% for A.Y.2006-07,30% for A.Y.2007-08,20% for A.Y.2008-09 & 10% for A.Y.2009-10 of the expenditure assessed by the Assessing Officer. The assessee was not satisfied hence the present appeals have been filed before us.

4. We have heard the rival contentions of the parties and have gone through the files carefully. The learned representative of the assessee has argued that in the case of assessee's brother Shri Suresh G. Patel whose search and seizure action u/s.132(1) was conducted on the same date i.e.16.11.2009. Hon'ble Tribunal has granted the relief to the extent of 60% of the expenditure assessed by Assessing Officer and the day of journey was also not included for the purpose of stay and food etc. therefore, in the said circumstances the said order passed by the Hon'ble Tribunal, Mumbai bench in case ITA No.4024&4025/Mum/13 for the A.Y.2004-05 & 2006-07 is quit applicable to the present case therefore accordingly the relief is required to be granted. On the other hand the learned representative for the Department strongly relied upon learned CIT(A) in question. Order dated 04.03.2015 passed by the co-ordinate bench, Mumbai in ITA No.4024&4025/Mum/13 for the A.Y.2004-05 & 2006-07 perused which speaks that the search & seizure action u/s.132(1) was conducted upon Shri Suresh G. Patel on 16.11.2009 on the same date when the search & seizure action u/s.132(1) was conducted against Shri Dharamshi G. Patel and Shri Narshi Patel assessee under appeal. The facts & circumstances of the present cases are quite similar to the present case. In the case of Shri Suresh G.Patel the learned CIT(A) has granted the relief to the extent of 60% of the expenditure assessed by Assessing Officer for

the A.Y.2004-05 & 2006-07. In the present case relating to Shri Dharamshi G. Patel for A.Y.2004-05, of learned CIT(A) has granted the relief to the extent of 50% expenditure assessed by the Assessing Officer and in case of Shri Narshi G. Patel learned CIT(A) has granted the relief to the extent of 50% for A.Y.2005-06, 40% for A.Y.2006-07, 30% for A.Y.2007-08, 20% for A.Y.2008-09 & 10% for A.Y.2009-10. There is no any cogent and convincing reason on record that why the parity in granting the relief was not maintained in all the cases. Search and seizure action was taken against all of them on the same date. All the assesseees are brothers. The facts and circumstances of the each case are same. All were not having proper documents on record to substantiate and to justify this claim. We find no reason for not relying upon the order passed by the co-ordinate bench, Mumbai. Therefore, by honoring the decision of the co-ordinate bench Mumbai in ITA No.4024&4025/Mum/13 titled as Shri Suresh G. Patel we are of the view that the assessee addition is hereby liable to be reduced by 60% in the each assessment year under question. So far as the non-counting of the days of traveling for the purpose of stay and food are concerned, we are of the view that the day under travelling for the purpose of stay and food are not required to be counted and accordingly the matter is required to be considered again by Assessing Officer in view of the observations made above.

5. In the result, all the appeals of the assessee are hereby partly allowed.

Order pronounced in the open court on 16th December, 2015.

Sd/-

(B.R.BASKARAN)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 16th December, 2015

MP

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai