

आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।

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

सर्वश्री राजेन्द्र, लेखा सदस्य एवं संजय गर्ग ,न्यायिक सदस्य

Before S/Shri Rajendra, A.M. and Sanjay Garg,J.M.

आयकर अपील सं./ITA No.2114/Mum/2016, निर्धारण वर्ष /Assessment Year: 2011-12

Mr. Rajesh Poddar 42, Gautam apartment 31, Juhu Road, Santacruz (W) Mumbai-400 054. PAN: AAFPP 3092 C	Vs.	DCIT, Central Circle-7(4) Room No.659, 6th Floor Aayakar Bhavan, M.K. Road Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri R.P. Meena-DR

Assessee by: Shri Devendra H. Jain

सुनवाई की तारीख / **Date of Hearing:** 08.02.2017

घोषणा की तारीख / **Date of Pronouncement:**22.02.2017

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य,राजेन्द्र के अनुसार -Per Rajendra,AM:

Challenging the order dated 29.01.2016 of CIT(A)-48, Mumbai the assessee has filed the present appeal.

2.A search and seizure action u/s.132(1) of the Act was carried out in Loha Ispaat Group of cases on 22/2/12.The notice u/s. 153A was issued to the assessee on 16.10.2012.The assessee filed its return of income on 27.11.2012,declaring income of Rs.25.48 lakhs.The AO completed the assessment u/s.143(3) r.w.s.153A of the Act on 27.03.2014,determining his income at Rs.30.48lakhs.

3.During the assessment proceedings the AO observed that the assessee had a family of six members, that he was staying in a self owned two 2BHK flats of total area of 2200 sq.ft in Santacruz(W) Mumbai,that both his children were going to college,that the father of the assessee was a senior citizen.He tabulated the drawings made by assessee and members of the family from AY 2006-07 to 2011-12 as under :-

AY.	Self drawings (Rs.)	Wife drawings	Parents drawings (Rs.)	Children drawings (Rs.)	Total drawing (Rs.)
2006-07	1,83,143/-	1,38,751/-	53,601/-	NIL	3,77,495/-
2007-08	3,44,174/-	1,24,010/-	55,401	22,612/-	5,46,197/-
2008-09	7,12,816/-	2,20,781/-	20,000/-	843/-	9,54,440/-
2009-10	19,85,487/-	8,26,448/-	52,084/-	3,371/-	28,67,390/- (includes foreign travel expense of Rs.11,89,000/-)
2010-11	4,90,768/-	1,39,323/-	1,12,702/-	NIL	7,42,793/-

2011-12	1,32,939/-	2,64,623/-	41,949/-	NIL	4,39,511/-
2012-13	1,57,350/-	77,903/-	21,323/-	NIL	2,56,578/-

He further observed that the assessee had gone abroad and had spent Rs.12.00 lakhs approx for foreign visit, that the drawing shown by him would not be sufficient to suffice the expenses actually borne by any family staying in such a locality of Mumbai, that the assessee had shown drawing of Rs.3000-4000 per month,per person.Considering the increase in inflation,family size he held that the drawing shown by the assessee were not adequate. Invoking the provisions of section 69C of the Act,he held that an addition of Rs.5.00 lakhs to the income of the assessee for the year under consideration on estimated basis.

4.Aggrieved by the order of the AO,the assessee preferred an appeal before the First Appellate Authority (FAA).During the appellate proceedings before the FAA the assessee made elaborate submissions, who in turn confirmed the addition made by AO observing that assessee had spent a good deal of money on the education of children,maintenance of residence etc.

5.Before us,the Authorised Representative(AR)stated that the year under consideration was unabated year, that no incriminating material was found during the search with regard to low house hold withdrawal.The Departmental Representative (DR) left the issue to the discretion of the Bench.

6.We have heard the rival submissions we find that an action u/.s132(1) was taken in case of group entities, that AO had made certain additions invoking provisions of section 69C of the Act, that the year under consideration is unabated year, that no action could be taken u/s153A for assessments of unabated years.We would like to refer to the case of All Cargo Global Logistics Ltd.(374ITR645). The relevant portion of the judgment reads as under.

“Under section 153A of the Income-tax Act, 1961, which enables carrying out of search or exercise of power of requisition, assessment in furtherance thereof is contemplated. There is a mandate to issue notices under section 153(1)(a) and assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Thus, the crucial words “search” and “requisition” appear in the substantive provision and the provisos. That would throw light on the issue of applicability of the provision. True it is that the assessment which has to be made in pursuance of the notice is in relation to the six years. An order will have to be made in that regard. While making the order, the income or the return of income filed for all these assessment years is to be taken into account. A reference will have to be made to the income disclosed therein. However, the scope of enquiry though not confined essentially revolves around the search or the requisition under section 132A , as the case may be. The provision deals with those cases where assessment or reassessment, if any, relating to the assessment

years falling within the period of six assessment years referred to in sub-section (1) of section 153A were pending. If they were pending on the date of the initiation of the search under section 132 or making of requisition under section 132A , as the case may be, they abate. It is only pending proceedings that would abate and not where there are orders made of assessment or reassessment and which are in force on the date of initiation of the search or making of the requisition.”

Respectfully following the above judgment we decide effective Ground of appeal in favour of the assessee.

As a result appeal filed by assessee stands allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.

Order pronounced in the open court on 22nd February, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 22 फरवरी, 2017 को की गई।

Sd/-

(संजय गर्ग /Sanjay Garg)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक/Dated : 22.02.2017.

Jv.Sr.PS.

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

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR “ A ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.