

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA Nos.7679, 7683 & 7685/M/2014
Assessment Years: 2004-05, 2008-09 & 2010-11**

Shri Jatin V. Savla, 402, Ravika Apartment, 2 nd Dadiseth X Lane, Babulnath, Mumbai – 400 007 PAN: AADPS6123M	Vs.	Dy. Commissioner of Income Tax, Central Cir.12, M.K. Road, Mumbai – 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Alok Johari, D.R.

Date of Hearing : 28.07.2016
Date of Pronouncement : 19.08.2016

ORDER

Per Sanjay Garg, Judicial Member:

The above captioned appeals have been preferred by the assessee against the separate orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2004-05, 2008-09 & 2010-11. Since the facts and issues involved in all the appeals are similar in nature, hence the same are disposed off with this common order. For the sake of convenience facts have been taken from ITA No.7679/M/2014 for A.Y. 2004-05.

2. None has come present on behalf of the assessee despite service of notice.

3. The Ld. D.R. Mr. Alok Johari has pointed out that in these cases the assessee has never appeared before the Assessing Officer (hereinafter referred

to as the AO) and exparte assessment orders were passed under section 144 of the Act. Though the assessee preferred appeals before the Ld. CIT(A), however the assessee failed to appear before the Ld. CIT(A) also and hence the Ld. CIT(A) has also passed an exparte order confirming the additions made by the AO.

4. He has further submitted that in view of the conduct of the assessee there is no likelihood that any representation will be made by the assessee in this case. We have further noted that the notice of the appeal fixing the hearing for today i.e. 28.07.16 has been duly received and acknowledged/signed by the assessee. Hence, despite notice the assessee has failed to appear and under these circumstances, we proceed to decide the appeals exparte of the assessee.

5. The Ld. D.R. has invited our attention to the assessment order to show that the AO has noted that the assessee had not filed returns for A.Y. 2009-10 to 2012-13 stating that the assessee had closed its business. Even the assessee had not filed the return of income for A.Y. 2008-09 stating that the books of accounts of the said period were lying with the Sales Tax Authorities. The AO noted that the assessee had not produced details of expenditure claimed along with supporting documents and even the assessee had not produced books of accounts for verification. In the absence of details and on account of non production of books of accounts for verification, the AO proceeded to complete the assessment under section 144 of the Act rejecting the books of accounts of the assessee. The AO further noted that during the year A.Y. 2004-05, the assessee had shown income from house property, profit and gains from business, capital gains and income from other sources. The assessee had claimed deduction of interest paid on housing loan of Rs.1,50,000/- on account of 50% right in the property. Since the assessee did not submit any documentary evidence in this respect, the AO disallowed the interest expenditure. The AO further noted that the assessee had shown short term capital gains of Rs.183934/- on account of sale of shares and securities against

which Rs.4,703/- were claimed as cost of acquisition. The AO, for want of necessary details and verification, disallowed the cost of acquisition and added the said sum of Rs.4,703/- into the income of the assessee. In respect of claim of long term capital gains of Rs.23,19,092/- and the sale of shares and securities, assessee had claimed deduction under section 54F of Rs.23,19,092/-. For want of the necessary evidences, the AO disallowed the said deduction claimed under section 54F of Rs.23,19,092/-. The AO also disallowed certain interest expenditure paid on loans amounting to Rs.1,27,711/- for want of necessary details and evidences. The AO also made addition of Rs.20 lakhs on the assumption that might be having certain bank accounts, the deposit relating to which might have been concealed by the assessee. The said addition was made by the AO on adhoc basis being unexplained cash credit under section 68. The AO further noted that the assessee had purchased a flat on 17.06.03 for Rs.45 lakhs. Since the assessee has not proved the source of investments, the AO made the addition of Rs.78 lakhs into the income of the assessee on that account. The AO therefore assessed the total income of the assessee at Rs.1,25,43,200/- as against total income declared of Rs.1,22,030/-. Being aggrieved by the above order of the AO, the assessee preferred appeal before the Ld. CIT(A).

6. None appeared on behalf of the assessee before the Ld. CIT(A). The Ld. CIT(A) examined the additions made by the AO in relation to each of the issue. He considering that there was no representation on behalf of the assessee and that no books of accounts were produced, upheld the action of the AO for invoking the provisions of section 144 of the Act. Regarding the interest expenditure on housing loan of Rs.1,50,000/-, the Ld. CIT(A) observed that since no explanation has been offered by the assessee and nor any details have been filed, he confirmed the disallowance in relation to the interest expenditure on housing loan. Similarly, he confirmed the disallowance of Rs.1760/- on account of disallowance of professional tax for want of evidence

and necessary details. Regarding the disallowance of Rs.4,703/- on account of cost of acquisition of the shares was concerned, the Ld. CIT(A) observed that since no documentary evidence was produced in this respect, he accordingly confirmed the addition made by the AO in this respect. The Ld. CIT(A) also confirmed the addition regarding the disallowance of Rs.23,19,092/- regarding the deduction claimed under section 54F for want of details and evidences. He also confirmed the disallowance of interest expenditure of Rs.1,27,711/- incurred on the loan taken for earning of interest income.

7. However, So far as the addition of Rs.20 lakhs on adhoc basis is concerned, the Ld. CIT(A) found that since no such deposit was ever found in any bank account of the assessee, hence the action of the AO on making addition of Rs.20 lakhs on assumptions and presumptions without any material before him were wrong. He therefore deleted the addition made by the AO of Rs.20 lakhs.

8. So far as the addition of Rs.78 lakhs on account of undisclosed source of investment is concerned, the Ld. CIT(A) noted that the AO himself had noted that the assessee had purchased the flat for Rs.45 lakhs on 17.06.03. However, the AO had made an addition of Rs.78 lakhs as unexplained investment under section 69. He asked the AO to clarify in this respect but no reply was received. He therefore held that at the most, addition can be made for Rs.45 lakhs and not at Rs.78 lakhs. He, therefore, restricted the addition to Rs.75 lakhs only as against the addition of Rs.78 lakhs made by the AO in this respect.

9. From the perusal of the above record, we find that the Ld. CIT(A) has rightly deleted the addition of Rs.20 lakhs made by the AO on adhoc basis under section 68 and of Rs.33 lakhs made by the AO under section 69 on account of undisclosed source of investment in flat. We further find that the assessee had claimed short term capital gains of Rs.1,83,934/- on sale of shares

and securities. The assessee has claimed an amount of Rs.4,703/- as cost of acquisition. It cannot be said that the assessee would have acquired the shares free of cost. The cost of acquisition claimed by the assessee of Rs.4,703/- seems to be quite reasonable. Hence, we do not find justification on the part of lower authorities in making the addition on this account. However, since neither anyone come present before us, even no details or evidences have been submitted before the AO or even before the Ld. CIT(A), hence, in our view, the lower authorities were justified in making the rest of the additions.

10. In view of our above observations, the disallowance of Rs.4,703/- in relation to short term capital gains is hereby ordered to be deleted. Rest of the disallowances confirmed by the Ld. CIT(A) are hereby upheld.

11. This appeal of the assessee is treated as **partly allowed**.

12. Now coming to the appeal of the assessee for A.Y. 2010-11.

ITA No.7685/M/2014 for A.Y. 2010-11

13. The facts are identical. The assessee neither appeared before the AO nor produced any books of account or any other details and evidences, hence the AO passed the order under section 144 read with section 153A of the Act. The AO had made additions of Rs.20 lakhs on adhoc basis assuming that the assessee had not filed any details of bank account and the assessee might be having certain deposits in the bank account. The AO further noted that during the search action carried out at the premises of the assessee, it was found that the assessee had to receive Rs.7724/- from Mann Paper and Rs.7450/- from Metro Paper. Since the assessee had failed to give the details of any transactions in respect of the amount of total consideration received of Rs.15,174/- was added to the income of the assessee. The AO further noted that certain gold and diamond jewellery was also found during the course of search action. The assessee had failed to give any details to prove his claim that the said jewellery was already declared under VDIS return in earlier years.

He, therefore, made the addition on account of jewellery at Rs.26,86,506/- under section 69A of the Act. The Ld. A.O also found that the assessee was the owner of certain properties. The total value of the same was at Rs.5,06,00,000/-. These properties were given as collateral security by the assessee to the State Bank of India for availing working capital facilities of Rs.45 crore in the name of M/s. Bright Global Paper Pvt. Ltd. Since the assessee has failed to give any explanation regarding the source of acquisition of these properties, the AO added the total value of the immovable properties amounting to Rs.5,06,00,000/- into the income of the assessee under section 69 of the Act. The AO further noted that the assessee had sold a flat situated at village Lakadia, district Kutch for a sum of Rs.7 lakhs. However, in the return filed by the assessee, no disclosure regarding the sale transaction has been made. In the absence of any details the AO added Rs.7 lakhs of the above transaction in to the income of the assessee. The AO also added a sum of Rs.79,650/- being the cash found at the premises of the assessee during the search action. The AO, therefore, assessed the total income of the assessee at Rs.5,61,56,780/-.

14. In appeal, no one appeared before the Ld. CIT(A). The Ld. CIT(A) therefore decided the appeal exparte of the assessee. The Ld. CIT(A) separately considered each of the issue/addition made by the AO. The Ld. CIT(A) upheld the action of the AO in making the assessment under section 144 read with section 153 of the Act.

15. So far as the addition of Rs.7 lakhs as long term capital gains on sale of land was concerned, the Ld. CIT(A) upheld the action of the AO in making the above disallowance for want of any evidence or details from the assessee. However, the Ld. CIT(A) deleted the addition of Rs.20 lakhs made by the AO on adhoc basis on the assumption that the assessee might be having certain deposits in the bank accounts. So far as the addition on account of jewellery etc. was concerned, the Ld. CIT(A) relied upon the CBDT Instruction No.1916

dated 11.05.94 and further relying upon the certain decision of the Tribunal, held that the norms set in the said circular should be applied and the jewellery to that extent should not be treated as unexplained. He accordingly held that 500 gms of gold jewellery per married lady and 100gms per male member and about 1350 gms can be treated as received on occasion of marriage and other functions. He further observed that even otherwise income assessed in earlier years can cover the gold jewellery found. As regards the diamond jewellery of 16.90 CTS valued at Rs.3,00,750/-, he observed that the same was not covered by the CBDT instruction and the assessee had not filed any wealth tax returns nor has any evidence in support of the same. He, therefore, restricted the addition to the extent of Rs.3,00,750/- in relation to the gold and diamond jewellery found. He confirmed the remaining additions made by the AO for want of proper evidences and details etc. After going through the above order of the Ld. CIT(A), we do not find any infirmity in this order and the same is accordingly upheld.

16. Now coming to the appeal for A.Y. 2008-09.

ITA No.7683/M/2014 for A.Y. 2008-09

17. Since there was no representation on behalf of the assessee and nor any books of accounts or evidences were furnished, the AO in all these years also proceeded to make the assessment under section 144 read with section 153A of the Act. The AO had made similar addition of Rs.20 lakhs on adhoc basis assuming that the same might be the amount deposited in any bank account of the assessee. The AO further noted that during the search action it was found that documents relating to the transaction of a loan of Rs.10 lakhs given by Navneet Publication by cheque to Yash Enterprises was found. The assessee during the search action had explained that the loan was given by Navneet Publication to Yash Enterprises by cheque but was transferred through the assessee because the assessee knew both the parties and that the assessee had not received any commission on the same. However, the AO estimated the

commission of the assessee at the rate of 2% of the loan amount and made addition of Rs.20,000/- on this account into the income of the assessee. The AO further found that the assessee had incurred a total loss of Rs.81,81,842/- in trading in shares. Since the assessee has not given any details of the transactions, he therefore added the amount of Rs.81,81,842/- on account of cash received by the assessee from his friends for trading in shares. Certain documents relating to the loan taken by the assessee from relatives and friends were also found. The assessee had explained during the search action that the said amounts were obtained as loan at the interest rate ranging between 0.8% and 0.9% per month i.e. 10% per annum and 11% per annum. Since the assessee had failed to give any details of the loan taken and the evidences of the genuineness of the transactions etc. and the identity of the payers, the AO added the amount of cash loan of Rs.1,52,000/- under section 68 of the Act. The AO further noted that documents relating to the loans given of Rs.5 lakhs by Sanjay Shayar by cheque to Yash Enterprises were found; the AO estimated the commission income of the assessee for arranging of such loan at Rs.10,000/- and added the same into the income of the assessee. Similar addition of Rs.3000 on account of commission was added by the AO in respect of loan of Rs.1,50,000/- given by Pankaj Shah to Yash Enterprises. The AO therefore assessed the total income of the assessee at Rs.1,03,66,842/-.

18. In appeal, the Ld. CIT(A) deleted the adhoc addition of Rs.20 lakhs on the similar footing as observed above. The Ld. CIT(A) confirmed the remaining additions made by the AO.

19. Since neither anyone has come present on behalf of the assessee nor any submissions have been made and in view of the issue-wise finding given by the Ld. CIT(A), we do not find any infirmity in the same. The order of the Ld. CIT(A) is therefore upheld.

20. In view of our findings given above, the appeal of the assessee bearing ITA No.7679/M/2014 for A.Y. 2004-05 is treated as partly allowed whereas ITA Nos.7683 & 7685/M/2014 for A.Y. 2008-09 & 2010-11 are hereby dismissed.

Order pronounced in the open court on 19.08.2016.

Sd/-
(D. Karunakara Rao)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 19.08.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

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By Order

Dy/Asstt. Registrar, ITAT, Mumbai.