

आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

श्री जॉसन पीबोज ., लेखा सदस्य एवं श्री पवन सिंह, न्यायिक सदस्य के समक्ष।

Before Shri Jason P. Boaz, AM and Shri Pawan Singh, JM

आयकर अपील सं./ITA No. 3180/Mum/2012
(निर्धारण वर्ष/Assessment Year: 2007-08)

Shri Lalit Mohan Dhanda
A-703, Shree Krishna Mahavir Nagar
Kandivali (W), Mumbai 400067

अपीलार्थी/Appellant

बनाम/ Vs.

DCIT, Central Circle -39
Mumbai

प्रत्यर्थी/Respondent

स्थायी लेखा सं./PAN - AACPD4292R

अपीलार्थी की ओर से / Appellant by: Shri Vijay Mehta
प्रत्यर्थी की ओर से/ Respondent by: Ms. Amrita Misra

सुनवाई की तारीख /Date of Hearing : 26.11.2015
घोषणा की तारीख/Date of Pronouncement : 30.11.2015

आदेश / **ORDER**

Per Jason P. Boaz, AM

This appeal by assessee is directed against the order of CIT(A)-36, Mumbai dated 18.10.2011 for A.Y. 2007-08.

2. The facts of the case, briefly, are as under: -

2.1 There was a search and seizure action under section 132 of the Income Tax Act, 1961 (in short 'the Act') on 05.03.2009 in the cases of the Jai Corp group, its employees and close associates, one of whom was the assessee in the case on hand. In the order of

assessment it was observed that assessee and Shri Jeevan Anant Surve directly supervised the group's transactions of aggregation of land through one Shri Madan Kolambekar. Apart from this, there appears to be no other allegation against assessee in the order of assessment.

2.2 For A.Y. 2007-08, assessee filed return of income on 14.01.2007 declaring income of ₹3,64,480/-. Consequent to notice issued under section 153A of the Act, issued after the search action under section 132 of the Act, assessee requested that the original return of income filed on 14.01.2007 be treated as filed in response to the aforesaid notice under section 153A of the Act. Assessing Officer (in short AO) completed the assessment under section 143(3) r.w.s. 153A of the Act vide order dated 29.12.2010 wherein the income of the assessee was determined at ₹5,14,480/- in view of AO making an adhoc addition of ₹1,50,000/- to the returned income on account of low and insufficient withdrawals towards assessee's household expenses taking into account the size and status of assessee's family.

2.3 Aggrieved by the order of assessment for A.Y. 2007-08 dated 29.12.2010, assessee preferred an appeal before CIT(A)-36, Mumbai. The learned CIT(A) disposed the appeal allowing assessee partial relief, by sustaining the addition on an adhoc basis to the extent of 30% thereof and thereby deleting 70% of the addition of ₹1,50,000/-.

3. Aggrieved by the order of the CIT(A)-36, Mumbai dated 18.10.2011 assessee has preferred this appeal raising the following grounds: -

"Ground No. 1:

On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred confirming the action of the Learned Assessing Officer of initiating proceedings u/s.153A of the Income Tax Act, 1961 ('the Act') even though no assessment or re-assessment proceedings in relation to this year were pending as on the date of the search u/s.132 of the Act. The appellant prays that such action of the Learned Assessing Officer may please be treated as had in law and the same may please be deleted.

Ground No.2:

On the facts and in the circumstances of the case and in law, the Hon'ble CJT(A) erred in confirming the addition (i.e. 30% of Rs. 1,50,000) made by the Learned Assessing Officer on account of alleged low household expenses. The appellant prays that the confirmation by Hon He CIT(A) of 30% of addition made by the Learned Assessing Officer on account of alleged low household household expenses may please be deleted.

Ground No. 3:

On the facts and in the circumstances of the case and in law, the Hon'ble CIT (A) erred in confirming the action of the Learned Assessing Officer of charging interest u/s 234B and 234C of the Act, having regard to the fact of the case. The appellant denies its liability for payment of interest u/s. 234B and 234C of the Act."

3.1 In the course of proceedings, assessee, vide letter dated 24.11.2015, filed the following additional grounds of appeal: -

"1. The appeal for the aforesaid assessment year was filed before your honours on 08.05.2012 by the appellant. In the said appeal, Ground No. 1 was raised, challenging the proceedings initiated u/s 153A of the Act. In this regard, it is submitted that the said ground was erroneously, phrased, whereby the validity of assessment order was challenged instead of the addition made.

2. During the course of search action undertaken u/s 132 of the Act on 05.03.2009, no incriminating material was found in respect of the household expenses made by the appellant during the year. However, inspite of the said fact, addition was made in the assessment order u/s 143(3) r.w.s. 153A on account of insufficient household expenses.
3. It is worthwhile to note that, the Return of income u/s 139(1) of the Act for the captioned assessment year was filed on 14.12.2007. Further, the return was accepted u/s 143(1) of the Act [i.e. prior to search action undertaken on 05.03.2009] and no notice u/s 143(2) of the Act was issued in case of the appellant. Chart showing relevant dates in relation to the additional ground to be filed is reproduced under:

Sr. No.	Particulars	Date
1	Date of filing return u/s 139(1) of the Act	14.12.2007
2	Due date for issuing notice u/s 143(2) of the Act	30.09.2008
3	Date of Search	05.03.2009

4. Thus, it is submitted that, in absence of any incriminating material found during the search, the addition so made by the A.O. on account of low household expenses is bad-in law and thus should be deleted.
5. In this regard, we would like to place reliance on the decision of jurisdictional Bombay High Court in the case of **Commissioner of Income Tax vs. All Cargo Global Logistics Ltd** reported in **374 ITR 645**.
6. It is submitted that the additional ground of appeal raised is purely a question of law and no new facts are required to be brought on record. It is humbly prayed that the additional ground of appeal may kindly be admitted and adjudicated by Your Honours. In this regard, we rely upon the following decisions rendered by various Courts.
- i. *National Thermal Power Corporation v. CIT* [229 ITR 383 (SC)]
 - ii. *Jute Corporation of India Ltd. v. CIT* [187 ITR 688 (SC)]
 - iii. *Ahmedabad Electricity Co. Ltd. v. CIT* [199 ITR 351 (Bom) (FB)]

7. *In view of the above, it is most humbly submitted that the enclosed additional ground may kindly be admitted, adjudicated and decided by Your Honours."*

4. Additional grounds of Appeal: In the course of proceedings, before us, the learned A.R. for the assessee submitted that the additional grounds of appeal raised by the assessee vide letter dated 24.11.2015 (supra) are not being pressed and has signed the acknowledgement thereof on the said letter. In view of the additional grounds not being pressed before us in this appeal, they are rendered infructuous and accordingly dismissed.

5. Ground No. 1: Before us, the learned A.R. for the assessee did not urge or press ground No. 1 and hence the same is dismissed as infructuous.

6. Ground No. 2: In respect of this ground, the learned A.R. for the assessee submitted that assessee and his family members had withdrawn sufficient money for household expenses during the year under consideration. It is submitted that AO did not consider the withdrawals made by assessee's family members while making the adhoc addition of ₹1,50,000/- on this count. It was further submitted that assessee and his family members had withdrawals amounting to ₹5,65,632/- which were sufficient in the assessment year under consideration; out of which assessee's withdrawals were approximately ₹4.33 lakhs. It is contended by the learned A.R. for the

assessee that the addition made by AO was unwarranted and that even the learned CIT(A)'s order confirming the above adhoc addition to the extent of 30% of ₹1,50,000/-, i.e. 45,000/-, is unsustainable in the facts of the case as the combined withdrawals of assessee and his family members at ₹5.65 lakhs is far in excess of the withdrawals for household expenses determined at ₹4.78 lakhs as per the impugned order of the learned CIT(A).

6.1 In these factual circumstances of the case as narrated above (supra), in our considered opinion, the learned CIT(A)'s order confirming the addition on account of low withdrawals for household expenses to the extent of 30% of ₹1,50,000/- (viz., ₹45,000/-) is factually unsustainable and is therefore to be deleted. We find that the authorities below have not brought on record any material evidence to establish that assessee has incurred insufficient withdrawals; especially by ignoring the size and status of assessee and his family members and their respective withdrawals. Both the AO in making the adhoc addition of ₹1,50,000/- on account of low withdrawals and the learned CIT(A) in upholding the same to the extent of 30% thereof, in our opinion, have not given any convincing justification or reasons for their finding/action and have made the same purely on estimate and without any basis. In these circumstances, we are of the view that the addition made by the AO

and partly upheld by the learned CIT(A) has no legs to stand and therefore direct the AO to delete the said addition on account of low withdrawals for household expenses. Consequently ground No. 2 of assessee's appeal is allowed.

7. In ground No.3 assessee challenges the action of the authorities below in charging him interest under sections 234B and 234C of the Act. The charging of interest is consequential and mandatory and the AO has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum H. Ghaswala in 252 ITR 1 and we therefore uphold the action of the AO in charging the said interest. The AO is, however, directed to re-compute the interest chargeable under sections 234B and 234C of the Act, if any, while giving effect to this order.

8. In the result, assessee's appeal for A.Y. 2007-08 is partly allowed.

परिणामतः निर्धारिती की अपील आंशिक स्वीकृत की जाती है ।

Order pronounced in the open court on 30th November, 2015.
आदेश की घोषणा खुले न्यायालय में दिनांक: 30.11.2015 को की गई ।

Sd/-
(Pawan Singh)
न्यायिक सदस्य/**Judicial Member**

Sd/-
(Jason P. Boaz)
लेखा सदस्य/**Accountant Member**

मुंबई Mumbai, दिनांक Dated 30th November, 2015

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) - 34, Mumbai
4. आयकर आयुक्त / The CIT - 24, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, "A" Bench ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ By Order

सत्यापित प्रति //True Copy//

सहायक पंजीकार /Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई/ITAT, Mumbai

n.p.