

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

BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.680/Mum./2020
(Assessment Year : 2003-04)

ITA No.681/Mum./2020
(Assessment Year : 2004-05)

ITA No.682/Mum./2020
(Assessment Year : 2007-08)

Amit Sanap
2nd Floor, Ramkunvar Mansion
Valli Peer Road, Kalyan 421 301
PAN – BGRPS8232G

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-1, Thane

..... Respondent

Assessee by : None
Revenue by : Smt. Shailja Rai

Date of Hearing – 14.06.2022

Date of Order – 24/06/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the impugned orders of even date 30/11/2019, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals) [*learned CIT(A)*], for the assessment year 2003-04, 2004-05 and 2007-08.

2. When these appeals were called for hearing, neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. Upon perusal of the record, we noticed that these appeals were listed for hearing on 6 previous occasions, and no one has appeared on behalf of the assessee despite service of notice of hearing. Therefore, we proceed to dispose off these appeals *ex-parte* qua the assessee, after hearing the learned Departmental Representative ("*learned DR*") and on the basis of material available on record.

3. Since all the appeals pertain to the same assessee and issues involved are, inter-alia, also common, therefore, these appeals were heard together as a matter of convenience and are being adjudicated by way of this consolidated order. Further, as the basic facts in all the appeals are same, except with variance in figures, we have elaborately mentioned only the facts for the first assessment year (i.e. 2003-04) before us, for the sake of brevity. However, if any particular issue is arising in other assessment year for the first time, the facts pertaining to the same are discussed accordingly.

ITA no.680/Mum./2020
Assessment Year : 2003-04

4. In its appeal for assessment year 2003-04, the assessee has raised following grounds: –

"1. The learned CIT(A) erred in law as well as on facts while rejecting Appellant's ground challenging validity of proceedings initiated by A.O. u/s 153A of the Act.

2.1 *WITHOUT PREJUDICE TO GROUND NO.1*

The learned CIT(A) erred in law as well as facts while not appreciating that the so called reasons recorded in Alleged Satisfaction Note dt. 04.08.2008 were vague and did not satisfy the well settled parameters to be fulfilled before issue of notice u/s 153C.

2.2 *The learned CIT(A) grossly erred in law as well as on facts while not appreciating that if Alleged Satisfaction Note itself was recorded on 04.08.2008, how could A.O. issue notice on 28.05.2008 on basis of which the learned CIT(A) has upheld the validity of proceedings allegedly initiated u/s 153C.*

3. *WITHOUT PREJUDICE TO GROUND-1 AND 2 ABOVE*

The CIT (A) erred in law while concluding that Appellant could not reflect exempt income in ITRs filed in response to notice u/s 153A of the Act even in cases when ITR u/s 139 was not filed due to income being below threshold limit.

4.1 *WITHOUT PREJUDICE TO GROUND-1, 2 AND 3 ABOVE*

The Learned CIT(A) erred in law as well as on facts while upholding the addition of Rs.2,93815/- made by AO by treating Agricultural income as income from other sources without there being any seized / incriminating material found as a result of search.

4.2 *The learned CIT(A) erred in law as well as on facts while not appreciating that the Appellant could not reflect this income earlier as his total income for this year was below taxable limit and he was not under obligation to file ITR u/s 139."*

5. The brief facts of the case, as emanating from the record are: The assessee is an individual and derives income from agriculture. On 27/07/2006, a search was conducted by the Anti Corruption Bureau, Thane, at the office and residents of the father of the assessee. Photocopy of the seized materials was handed over to the Income Tax Department and pursuant thereto notice under section 153A(a) of the Act was issued requesting the assessee to prepare a true and correct return of income. After various reminders, the assessee finally filed return of income on

21/11/2008, for the assessment year 2003-04, declaring total income of Rs.2,94,454. The Assessing Officer, vide assessment order dated 29/12/2008, passed under section 153A r/w section 143(3) of the Act for assessment year 2003-04, assessed total income of the assessee at Rs.2,24,445.

6. In appeal, the assessee raised grounds in respect of initiation of proceedings under section 153A of the Act as well as addition made on merits. The learned CIT(A), vide impugned order dated 30/11/2019, dismissed the appeal filed by the assessee on the issue of jurisdiction under section 153A of the Act, by observing as under: -

"8.0 I have perused the facts of the case, the arguments in support of the additional ground of appeal, the remand reports of the AO and the counter arguments of the appellant on the remand report, in deciding the additional grounds of appeal The additional grounds of appeal are common for the A.YS 2002-03 to 2008-07 and are disposed together. The first issue which needs examination is the objection by the appellant that no requisition was made u/s 132A in the name of the appellant but the assessment was evidently concluded by the AO u/s 143(3) r.w.s. 153A of the Act and therefore the proceedings are vitiated in law. In this regard, it is seen from the remand report submitted by the AD dated 10/02/2017 wherein a copy of Satisfaction Note for issue of Notice u/s 153A r.w.s. 153C of the Act in the case of the appellant for AY 2002-03 to 2008-07 have been enclosed. The reasons for issue of Notice u/s 163A wa 163C as recorded by the AO is reproduced an under:

.....

From the above reasons recorded by the AO, It is very much evident that satisfaction has been recorded by the AO u/s 153C of the Act. In any case, even in cases where proceedings are initiated u/s 153C, Notices are issued only under section 153A of the Act calling for the ROI, etc. Therefore, the claim of the AO that the mention of section 153A should be read as 153A r.w.s. 153C for the AYS 2002-03 to 2006-07 and the same was an inadvertent error which is rectifiable as per section 2928 of the Act appears to be acceptable, it is seen from the proceedings that the assessee has appeared in response to the Notices during the assessment proceedings and no objection in this regard has been raised before the AO

before completion of assessment proceedings. As there is due satisfaction recorded by the AO u/s 153C of the Act, as is evident from the copy of the Satisfaction Note enclosed in the remand report and reproduced above, and also considering the provisions of the Act that even in cases which are covered u/s 153C of the Act, section 153C(1) provides that the jurisdictional Assessing Officer shall Issue notices and assess or reassess the total incomes of such other person in accordance with the provisions of section 153A, if, that assessing officer is satisfied that the books of accounts or documents or assets seized or requisition have a bearing on the total income of such other person, therefore, the objection raised by the appellant that the proceedings mentioned in the assessment orders being 153A r.w.s. 143(3) is bad in law is rejected.

.....

8.2 As is evident from the details of assets listed in the AO's letter dated 28/05/2008 which is reconstructed on the basis of the details of assets and income in the Panchanama dated 27/07/2006 that there are details of assets and income which have been found in the case of Amit N. Sanap. Since the appellant has never filed a RO Is 139 (1) for AYS 2002-03 to 2006-07, before the date of execution of requisition u/s 132A (20/09/2000); the above details of assets and income found as a result of the requisition made shall qualify as incriminating in nature and therefore the Jurisdiction assumed by the AO u/s 153C of the Act is valid and the objection in this regard by the appellant is rejected for all the years."

7. Further, the learned CIT(A) in respect of addition on account of agricultural income, dismissed the appeal filed by the assessee by observing as under: –

"11.0. I have examined the facts of the case and the arguments taken in appeal by the appellant. It is seen that the appellant has not filed any ROI u/s 139 for the AYS 2002 03 and 2003-04 and the ROI filed for AY 2004-05 is nonest in law as the same has been filed beyond the permissible date u/s 139(6) of the Act. Also, the ROIs for A Ys 2005-06 & 2008-07 are filed only after the requisition u/s 132A (20/09/2006). The returned incomes and the date of ROIs for all the years in appeal are detailed in Table 1. A perusal of the ROIs filed by the appellant for AY 2003-04 to 2007-08 u/s 153A showed that the appellant has claimed income from agriculture in all these years. The appellant also showed agricultural income for AY 2005-06 to 2007-08 in the ROI filed u/s 139. The details of agricultural income shown by the appellant in the regular ROIs u/s 139 and ROIs filed u/s 153A and the addition made on this account are as under:

Table 5: Details of agricultural income shown and additions thereon

A.Y.	2003-04	2004-05	2005-06	2006-07	2007-08
Filed u/s 139	No ROI	No ROI	Rs.3,98,677	Rs.2,35,304	Rs.3,11,260
Filed u/s 153A	Rs.2,93,815	Rs.4,58,061	Rs.3,98,677	Rs.2,35,304	Rs.3,11,260
Addition (Rs.)	Rs.2,93,815	Rs.4,58,061	Rs.3,98,677	Rs.2,35,304	Rs.3,11,260

11.1. As may be seen from the facts of the case, there was no valid ROI filed by the appellant for AY 2003-04 and 2004-05. The claim of exempt agricultural income to the extent of Rs. 2,93,815/- and Rs. 4,58,061/- for AY 2003-04 and 2004-05 respectively has been claimed for the first time in the ROI filed in response to Notices u/s 153A of the Act. As no claim of exempt agricultural income was made by the appellant for AYS 2003-04 and 2004-05, the same cannot be claimed u/s 153A of the Act as the proceedings for AYS 2003-04 and 2004-05 are unabated proceedings. Reliance is placed on the judgments of various courts as under which have laid down the law that if any claim of exemption or deduction has not been made in the original ROI either u/s 139(1) or 139(5), the same is not allowable u/s 153A of the Act in unabated proceedings.

11.2 Judgment in *Jai Steel (India) Vs. ACIT (2013) 259 CTR (Raj) 287* held that in an assessment under section 153A, it is not open to the assessee to seek deduction or claim relief not claimed by it in the original assessment which already stands completed before the date of initiation of the search or making of requisition. The Hon'ble Rajasthan High Court held as under:

"The plea raised on behalf of the assessee that as the first proviso provides for assessment or reassessment of the total income in respect of each assessment year falling within the six assessment years, is merely reading the said provision in isolation and not in the context of the entire section. The words assess or reassess have been used at more than one place in the section and harmonious construction of the entire provision would lead to an irresistible conclusion that the word assess has been used in the context of abated proceedings and reassess has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only based on the Incriminating material found during the course of search or requisition of documents. The argument of the counsel for the assessee if taken to the logical end would mean that even in cases where the appeal arising out of the completed assessment has been decided by the CIT(A) or Tribunal and the High Court, on a notice issued under s. 153A the AO would have power to undo what has been concluded by the High Court. Any interpretation which leads to such conclusion has to be repelled and/or avoided. Consequently, it is held that it is not open for the assessee to seek deduction or claim expenditure which has not been claimed in the original assessment, which assessment already stands completed, only because an assessment under s 153A in pursuance of search or requisition is required to be made-*Suncity Alloys (P) Ltd vs. Asstt. CIT (2009) 124 TTJ (Jd) 674 (2009) 27 DTR (Jd) 139 affirmed. CIT vs. Smt Shalla Agarwal (2012) 246 CTR (All) 266 (2012) 65 DTR (All) 41 (2012) 346 ITR 130 (All) relied on; K.P. Varghese vs ITO (1981) 24 CTR (SC) 358: (1981) 131 ITR 597 (SC) applied.*"

(Paras 30, 34 & 35)

In a decision in the case of M/s D J Malpani (ITA No 1148-1154/Pn/2013 decision dated 30/10/2015), the Pune ITAT on the issue of fresh claim made in the returns filed u/s 153A held as under:

"The La Counsel for the assessee at the outset submitted that the issue stands decided against the assessee by the decision of the Pune Bench of the Tribunal in the case of B.G. Shirke Construction Technology Pvt. Va. ACIT vide ITA Nos 727 to 730/PN/2012 order dated 31-10-2013 for A Yrs 2003-04 and 2006-07 to 2008-09 respectively. It has been held in the said decision that in r of the assessments which are completed prior to the date of search, no fresh claim of deduction can be made by the ass in view of the above on by the Ld Counsel for the and absence of any section The Ld Departmental Representative the order of the CIT(A) holding that assessee is not entitled to make a fresh claim in the return u/s 153A when no such claim was made in the original return of income has to be upheld. The ground raised by the assessee are accordingly dismissed."

The above decisions were favorably referred and approved by the Mumbai ITAT (5 of ALL Cargo Global Logistics (147 TTJ 613) as under:

"15. The third line of the argument of the Ld Counsel is based on the premises that in proceedings u/s 153A, the assessee cannot raise a new or fresh claim in this connection, reliance is placed on the decision in the case of Suncity Alloys (P) Ltd. (supra) and Charchit Agarwal (supra). We have seen that the finding in the case of Suncity Alloys (P) Ltd. (supra) is that proceedings u/s 163A do not constitute de novo assessment. The assessee la precluded from raising any fresh claim after expiration of the time allowed to file revised return a 139 (5) Therefore, no such fresh or revised claim can be raised in assessments made 153A Similar finding has been rendered in the case of Charchit Agarwa (supra) where the assessee was not allowed to change the method of valuation of closing stock in the course of proceedings u/s 183A On the basis of these decisions, the case of Ld. Counsel obviously is that if the axes in precluded from raising new and fresh claims in assessment u/s 153A, by implications the revenue will also not be permitted to raise new and fresh grounds for making additions in assessment u/s 153A."

Thus the law is that an assessee cannot make additional claims in the returns fled 153A particularly so in unabated proceedings; which has attained finality before search. Thus even on the technical ground the appellant cannot be allowed to claim benefit of exempt agricultural income in unabated proceedings of A Ys 2003-04 and 2005-05."

Being aggrieved, the assessee is in appeal before us.

8. During the course of hearing, the learned D.R. explained the facts of the case and vehemently relied upon the order of the lower authorities.

9. We have heard the learned D.R. and perused the material available on record. We find that in the impugned order, the learned CIT(A) after considering the submissions of the assessee and findings of the Assessing Officer has dismissed the appeal filed by the assessee both on jurisdiction as well as on merits of the case. In the absence of any contradictory material being available on record, we are of the considered view that the impugned order passed by the learned CIT(A) requires no interference and, therefore, is upheld. Accordingly, grounds raised by the assessee in its appeal for assessment year 2003-04 are dismissed.

10. In the result, appeal by the assessee for assessment year 2003-04 is dismissed.

ITA no.681/Mum./2020
Assessment Year : 2004-05

11. In this appeal, the assessee has raised similar grounds as in its appeal for assessment year 2003-04 and the same are also dismissed in view of our findings given at Para-9 above.

12. In the result, appeal by the assessee for assessment year 2004-05 is dismissed.

ITA no.682/Mum./2020
Assessment Year : 2007-08

13. In this appeal, the sole grievance of the assessee is against addition of Rs.26 lakhs, made under section 68 of the Act by the Assessing Officer.

14. The brief facts of the case pertaining to the issue as emanating from the record are: During the assessment proceedings, pursuant to the receipt of material from Anti Corruption Bureau, Thane, from the Balance Sheet filed along with the return of income, it was, inter-alia, observed by the Assessing Officer that the assessee has taken loan of Rs. 26 lakhs for Wine Shop licence. The assessee was asked to give loan confirmation, creditworthiness, cashflow statement and other documentary evidences along with proof of the persons who has given loan and their income particulars. The Assessing Officer, vide order dated 29/12/2008, passed under section 143(3) r/w section 154B(b) of the Act, inter-alia, made an addition of Rs.26 lakhs as unexplained credit under section 68 of the Act in the absence of any documents / details being filed by the assessee.

15. In appeal, the learned CIT(A), vide impugned order dated 30/11/2019, inter-alia, dismissed the appeal filed by the assessee observing as under: -

"18.0 I have examined the addition of Rs.32,47,826/- on account of unexplained cash credit u/s 68 of the Act and the corresponding submissions in support of the appeal. The details of the loans are as under:-

<i>Table 6: Details of loans of Rs.32,47,826/-</i>		
<i>Sr. no.</i>	<i>Creditors</i>	<i>Amount</i>
<i>1.</i>	<i>Prakash Gore (For Wine Shop License)</i>	<i>Rs.26,00,000/-</i>
<i>2.</i>	<i>Nashik Nagari Sahakari Patpadi</i>	<i>Rs.5,47,826/-</i>
<i>3.</i>	<i>Nilesh N. Sanap</i>	<i>Rs.1,00,000/-</i>
	<i>Total:-</i>	<i>Rs.32,47,826/-</i>

"18.1 As regards to the loan of Rs. 26,00,000/- received from Shri Prakash Gore for wine shop License as claimed by the appellant, there is no specific evidence to accept that the money was received from Shri Prakash Gore. These payments appeared to have been received in cash. Even the source of the loan i.e. Shri Prakash Gore in his so-called affidavit on 25/11/2008 filed before the AO claims to have made a payment after receiving money from various sources, the details of which are tabulated under:-

<i>Table 7: Details of loans of Rs.26,00,000/- from Prakash Gore</i>		
<i>Date</i>	<i>Amount</i>	<i>Source of creditor – Prakash Gore (Source of creditor is clear from his Affidavit dt. 25/11/2008 furnished during assessment proceedings and available on record)</i>
<i>March 2006</i>	<i>3,00,000</i>	<i>Own savings from agricultural income</i>
<i>April 2006</i>	<i>7,50,000</i>	<i>Loan – Prakash Yadav (5,00,000) and Maniyar S.B. (2,50,000) – Affidavit of both creditors is filed</i>
<i>May to June 2006</i>	<i>7,00,000</i>	<i>Ram Pratap Sahani (3,00,000), Eknath Kapshe (4,00,000) – Affidavits of both creditors filed</i>
<i>July 2006</i>	<i>5,00,000</i>	<i>Siddiqui G. Dastagir (5,00,000)</i>
<i>July 2006</i>	<i>3,50,000</i>	<i>Withdrawn from Parvara Sahakari Bank, Bhableshwar SB A/c 213</i>
<i>Total</i>	<i>26,00,000</i>	<i>Balance amount of Rs.7 lacs was payable to Shri Vikaram Shivare. However, till licence would bet transferred to Nashik, he had taken the shop on conducting basis for charges @ 47,000/- p.m. This balance amount was adjustable in the conducting charges.</i>
<i>Payable</i>	<i>7,00,000</i>	
<i>Total Consideration</i>	<i>33,00,000</i>	

As can be seen from the above table, the source of the loan and even the source of the sources appear to be all in cash and an arrangement made to explain the credits in the hands of the appellant to the extent of Rs. 26,00,000/-. Even the claim of repayment of loan doesn't appear to be genuine as from the bank statement of Prakash Gore in Parvara Sahakari Bank Ltd., It is seen that loan claimed to be repaid to P.N. Yadav and E.K. Kapase of Rs. 5,00,000/- and 4,00,000/- respectively on 23/10/2006 occurs after a cash deposit of Rs. 12,00,000/- in the same account on the same date. In any case, these so called loan repayments from the above said account appear to be unique when compared to other transactions in the bank account. Also, all these transactions in the bank account had happened subsequent to the ACB search on the appellant's father and the requisition made u/s 132A by the Income Tax Department. Therefore, it can be inferred that this arrangement was made to explain to the authorities the investment in the name of the appellant. In view of the above, the claim of loan from Prakash Gore to the extent of Rs.

26,00,000/- is not accepted and the addition made by the AO in the hands of the appellant to that extent is uphold for A.Y 2007-08.”

16. During the course of hearing, learned D.R. vehemently relied upon the order of the lower authorities.

17. We have considered the submissions of the learned D.R. and perused the material available on record. The learned CIT(A) rejected the contention of the assessee after careful consideration of the submissions of the assessee. In the absence of any contradictory material being available on record, we find no infirmity in the conclusion reached by the learned CIT(A). Thus, only ground raised by the assessee in its appeal for the assessment year 2007-08 is dismissed.

18. In the result, appeal by the assessee for assessment year 2007-08 is dismissed.

19. To sum up, all the appeals by the assessee are dismissed.

Order pronounced in the open court on 24/06/2022

Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 24/06/2022

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai