

**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER**

(Conducted through Virtual Court)

IT(SS)A Nos. 25 to 30/Rjt/2023 & ITA No. 96/Rjt/2023

निर्धारणवर्ष/Assessment Years: 2013-14 to 2019-20

Shri Ketan Prabhulal Dalsaniya, Verai Bhuvan, Mahendra Para Street No.11, mahendrapara main Road, Morbi - 363641 PAN : AKUPD 5711 B	Vs.	The DCIT, Central Circle-2, Rajkot
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Mehul Ranpura, AR
Revenue by :		Shri Shramdeep Sinha, CIT-DR

सुनवाई की तारीख/Date of Hearing : 29.11.2023

घोषणा की तारीख /Date of Pronouncement: 07.02.2024

आदेश/ORDER

PER BENCH :

All these appeals are related to the same assessee and have been filed for different assessment years, against the consolidated order passed by the Id. Commissioner of Income-tax (Appeals)-11, Ahmedabad [hereinafter referred to as "CIT(A)" for short] dated 09.02.2023 passed under Section 250(6) of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Years (AYs) 2013-14 to 2019-20.

2. It was common ground that the issue involved in all the appeals was identical arising in the background of identical set of facts; therefore, all the appeals were taken up together for hearing and are being disposed of by this consolidated order for the sake of convenience.

3. Giving a brief background of the case, the Id. Counsel for the assessee pointed out that in consequence to search action conducted in the group

cases of Coral Group of Morbi on 03.01.2019, warrant u/s 132(1) of the Act was also executed in the case of the assessee. Thereafter, assessment was framed in terms of Section 153A of the Act on the assessee in all the impugned years before us. It was pointed out that one common addition was made in all the years pertaining to the income allegedly earned by the wife of the assessee which was clubbed in the hands of the assessee as per the provisions of Section 64(1)(ii) of the Act. The Id. Counsel for the assessee contended that all these additions were made based on the statement of the assessee recorded during search contending allegedly that his wife did not perform any business activity. The Id. Counsel for the assessee drew our attention to the additions so made to the income of the assessee in various years before us as tabulated in the Id. CIT(a)'s order at page no.3 as under:-

A.Y.	Date of order passed u/s. 143(3) r.w.s. 153A/143(3)	Amount of addition (In Rs.)	Nature of addition
2013-14	05.03.2021	1,84,370/-	Clubbing of income as per the provision of section 64(1)(ii) of the Act.
2014-15	05.03.2021	1,93,858/-	Clubbing of income as per the provision of section 64(1)(ii) of the Act.
2015-16	05.03.2021	1,93,596/-	Clubbing of income as per the provision of section 64(1)(ii) of the Act.
2016-17	18.03.2021	2,22,222/-	Clubbing of income as per the provision of section 64(1)(ii) of the Act
2017-18	26.03.2021	2,41,960/-	Clubbing of income as per the provision of section 64(1)(ii) of the Act.
2018-19	13.04.2021	3,29,088/-	Clubbing of income as per the provision of section 64(1)(ii) of the Act.
2019-20	26.03.2021	2,38,626/-	Clubbing of income as per the provision of section 64(1)(ii) of the Act.

4. It was contended that the assessee's appeal before the Id. CIT(A) against the order passed by the Assessing Officer was dismissed; aggrieved by which, the assessee has now come up in appeal before us in all the impugned years.

5. The Id. Counsel for the assessee contended that in all the appeals accordingly there was a solitary issue involved pertaining to the clubbing of

income of the wife of the assessee in the hands of the assessee in terms of provisions of Section 64(1)(ii) of the Act. He pointed out that the common ground was raised in all the appeals and drew our attention to the grounds raised in the appeal of the assessee for AY 2013-14 in IT(SS)A No. 25/Rjt/2023 which read as under:-

“1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. The learned Commissioner of Income-tax (Appeals)-11, Ahmedabad [CIT(A)] erred on facts as also in law in rejecting appellants plea that no addition could have been made in the order passed u/s 153A of the Act, in absence of there being incriminating material found from the appellant. The order passed making addition without there being any incriminating materials may kindly be deleted.

3. The Id. CIT(A) erred on facts as also in law in confirming the addition of Rs.1,84,370/- u/s 64(1)(ii) made on the surmises that the income declared by the appellant's wife Kalyaniben Dalsaniya is unaccounted income of appellant. The addition confirmed is totally unjustified and uncalled for and the same may kindly be deleted.”

6. During the course of hearing before us, Id. Counsel for the assessee contended that this addition made in the hands of the assessee was not sustainable for the simple reason that this income including income from business, had been returned to tax in the hands of the wife of the assessee in returns filed u/s 153A of the Act and which had been accepted by the Assessing Officer passing an assessment order u/s 143(3) r.ws. 153A of the Act in all the years. Copy of the acknowledgment of return of income, computation of income, profit and loss account and assessment order in the case of the wife of the assessee for all the impugned assessment years i.e. AYs 2013-14 to 2019-20, were filed before us in a paper-book comprising of 51 pages.

7. The ld. DR was unable to controvert the factual contention made by the ld. Counsel for the assessee as above.

8. In view of the above, since the income of the wife of the assessee stands accepted in her hands by the Department in scrutiny assessment vide order passed u/s 143(3) of the Act, on returns filed in consequence to the search action conducted on her u/s 153A of the Act, we find that there is no case with the Revenue now to tax the same income in the hands of the assessee also in terms of the clubbing provisions of Section 64(1)(ii) of the Act. Having accepted the said income as belongs to the assessee's wife in scrutiny assessment, the Department is now debarred from taking a contrary view and taxing it in the hands of the assessee on the ground that his wife was not actually carrying out any business. In view of the above, all the appeals of the assessee are allowed in above terms.

9. In effect, all the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 7th February, 2024 at Ahmedabad.

Sd/-

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 07/02/2024

***/t*

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर , /DR,ITAT, Rajkot,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
 आयकर अपीलीय अधिकरण
 ITAT, Rajkot