

R.M. AMBERKAR
(Private Secretary)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

**INCOME TAX APPEAL (IT) NO. 643 OF 2016
WITH
INCOME TAX APPEAL (IT) NO. 424 OF 2016**

Cheryl J. Patel

.. Appellant

Versus

The Assistant Commissioner of Income
Tax, Central Circle -13, Mumbai

.. Respondent

-
- Mr. Nishit Gandhi for the Appellant
 - Mr. Suresh Kumar for the Respondent
-

**CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.**

DATE : NOVEMBER 26, 2018.

P.C.:

1. Heard.

2. At the request of the learned counsel for the parties,
the appeal is taken up for final disposal.

3. These appeals under Section 260 A of the Income Tax
Act, 1961 ("**the Act**" for short), challenge the order dated
21.1.2015 passed by the Income Tax Appellate Tribunal,
Mumbai ("**the Tribunal**" for short). These appeals relate to

the Assessment Years 2003-04 and 2004-05. The impugned order is a common order relating to not only the appellant herein but also the appeal filed by her son Mr. Punit J. Patel.

4. The basic issue raised on behalf of the appellant is as under:-

"Whether in the facts and circumstances of the case and in law, the Tribunal was justified in dismissing the assessee's appeal by merely recording that it accepts the view of the (CIT) Appeals?"

5. We find that while discussing various issues, the Tribunal has not given any independent reasons showing consideration of the submissions made on behalf of the assessee. We are conscious of the fact that an appellate order which affirms the order of the lower authority need not be a very detailed order, nevertheless, there should be some indication in the order passed by the appellate authority, of due application of mind to the contentions raised by the assessee in the context of findings of the lower authority which were the subject matter of the challenge before it. In view of above, the interest of justice would be served if the impugned order is quashed and set aside and the appeals are restored to the Tribunal for fresh consideration.

6. Therefore, both the appeals are allowed by way of remand. All contentions are kept open.

[M.S. SANKLECHA, J.]

[AKIL KURESHI, J]

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'सी', मुंबई ।

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

सर्वश्री आर.सी.शर्मा, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य

BEFORE SHRI R.C.SHARMA, AM

&

SHRI SANJAY GARG, JM

आयकर अपील सं./ITA No.5449 to 5453/Mum/2012

(निर्धारण वर्ष / Assessment Year :2003-04 to 2007-08)

ACIT, Cent.Cir-13, Mumbai-400 020	Vs.	Shri Punit J. Patel, B/27, Clifton Society, Near Centaur Hotel, Juhu, Mumbai-400 049
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGRPP 9056 G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.5544 to 5546/Mum/2012

(निर्धारण वर्ष / Assessment Year :2003-04, 2006-07 & 2007-08)

Shri Punit J. Patel, B/27, Clifton Society, Near Centaur Hotel, Juhu, Vile Parle Mumbai-400 049	Vs.	ACIT, Cent.Cir-13, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGRPP 9056 G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.5539 to 5543/Mum/2012

& ITA No.7526/Mum/2013

(निर्धारण वर्ष / Assessment Year :2001-02, 2003-04, 2004-05, 2006-07 & 2007-08)

Mrs. Cheryl J Patel, B/27, Clifton Society, Near Centaur Hotel, Juhu, Vile Parle Mumbai-400 049	Vs.	ACIT, Cent.Cir-13, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACPP 6413 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Surinderjit Singh

निर्धारिती की ओर से /Assessee by : Dr. K.Shivram & Shri Ajay R. Singh

सुनवाई की तारीख / Date of Hearing : 17th December, 2014

घोषणा की तारीख/Date of Pronouncement 21st January, 2015 <http://itatonline.org>

आदेश / ORDER

PER R.C.SHARMA (A.M):

These are the cross appeals filed by assessee and Revenue as well as against the order of CIT(A) for the assessment years 2001-01 to 2007-08, in the matter of order passed under Section 143(3)/153A of the I.T.Act.

2. Common grounds are involved in all the appeals and they are related to the family members, where search was conducted, therefore, all the appeals are heard *en masse* and are now decided by this consolidated order.

3. Rival contentions have been heard and record perused. Facts in brief are that both the assessee are husband and wife and having income from business, capital gains, other sources and agricultural income. A search and seizure action u/s.132 of the Act was carried out on 10-1-2007 in the residence of Shri Jayant B. Patel, who is father of assessee Mr. Punit J. Patel and father-in-law of assessee Mrs.Cheryl J. Patel. Both the assessee being son and daughter-in-law of Mr. Jayant B. Patel, therefore, their case was selected for scrutiny. Both the assessee filed their respective return of income. Thereafter assessment u/s.143(3) r.w.s.153A of the Act was completed on 30-12-2008 determining taxable income at Rs.45,20,120/- in case of Mr. Punit J. Patel and Rs.10,25,070/- in case of Mrs. Cheryl J. Patel, respectively. Subsequently, the Tribunal in ITA No.4159/Mum/2009, vide order dated 30-9-2010 for A.Y.2003-04 set aside and restored the matter back to the file of AO for de novo

assessment. Consequent to order of the Tribunal, notice u/s.143(2) and fresh opportunity letter dated 1-6-2011 were issued. The assessee was asked to produce relevant details such as copy of 7/12 statement for agricultural land, sale bills for the crop sold, documentary evidence with respect to the expenses incurred like fertilizers, pesticides, seeds, manure, labour, mode of payment and receipt of expenses etc. towards his/her claim of agricultural income. However, the AO did not accept the reply of the assessee and came to the conclusion that assessee did not have any genuine agricultural income and he/she was merely legalizing his/her unaccounted income earned from his/her business and added the agricultural income of Rs.1 lakhs in respect of Mr. Punit J. Patel and Rs.2 lakhs in case of Mrs. Cheryl J. Patel, respectively. The AO also made various addition in case of both the assessee.

4. By the impugned order the CIT(A) deleted the addition made by the AO on account of agricultural income, unexplained cash credit and sale of gold jewellery, against which the Revenue is in appeals, whereas the CIT(A) confirmed some of the additions made by the AO u/s.153A and 68 of the Act as well as the addition made on account of alleged bogus gift, against which both the assessee are in their respective appeals before us.

5. First, we shall take into consideration the appeals filed by the Revenue in case of assessee **Shri Punit J. Patel (i.e. ITA Nos. 5449 to 5453/Mum/2012)**.

5.1 The first ground relates to deleting the addition of agricultural income on the basis of only self serving evidence <http://itatonline.org>

which did not tantamount to carrying out agricultural operation. The AO did not accept the evidence of the assessee, according to the AO the assessee had failed to establish the performance or carrying out of agricultural operations and there was no third party evidence. Hence, the AO came to the conclusion that assessee did not have any genuine agricultural income and he was merely legalizing his/her unaccounted income earned from his business and added the agricultural income of Rs.1 lakh.

5.2 In appeal, the CIT(A) observed that there was no fault in the evidence filed by the assessee, which was very much placed before the AO and the net agricultural income shown by the assessee group is around Rs.30,000/- per acre per annum which is not very high. After relying on various case laws, the CIT(A) observed that the agricultural income claimed by the assessee for the year under consideration cannot be added in the hands of the assessee and deleted the same.

5.3 We have considered rival contentions, carefully gone through the orders of the authorities below and we do not find any mistake in the findings of the CIT(A), accordingly, we confirm the same.

6. The next ground relates to deletion of an amount of Rs.1,50,000/- out of Rs.11,91,225/- as unexplained cash credit u/s.68 of the Act.

6.1 The AO treated the gifts as unexplained cash credit. The CIT(A) by impugned order, deleted the addition after having the following observations :-

"2.9.4 I have perused the evidence filed before the Ld. AO and reiterated before me. During the year, the appellant has shown gifts of Rs.15,59,555/- received from various persons. Ld. AO has made

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the addition by stating that most of the parties were not produced. However, in respect of the donors who attended he has simply brushed aside their claim. Whereas I am convinced about the creditworthiness of the following persons who are either related to the appellant or are close friends and who appeared before the Id. AO, I am not inclined to accept the creditworthiness of the others as neither they are related nor connected with the appellant group and they appear to be mere name lenders in whose names the appellants of the group have laundered their money :-

Name of the donor	C.J.Patel	J.B.Patel	P.J.Patel
Manisha V. Patel	1,00,000(04-05)	1,25,000(04-05)	75,000(04-05)
Vipul Patel	1,00,000(04-05)	1,00,000(04-05)	1,00,000(04-05)
Nita Butala		1,00,000(04-05)	
Mukund Butala		1,11,000(03-04) 1,00,000(04-05)	1,00,000(03-04)
Seema H. Shah	50,000(03-04)		50,000(03-04)

As during the year, only Seema H. Shah & Mukund Bataala's name appeared out of the above, therefore, an amount of Rs. 1,50,000/- is directed to deleted and the balance is confirmed."

6.2 We have considered rival contentions. The detailed findings recorded by CIT(A) had not been controverted. Accordingly, we confirm the action of the CIT(A) for deleting addition of Rs.1,50,000/- and confirming the balance.

7. The next grievance of the Revenue relates to deletion of addition of Rs.3,71,120/- on account of sale of gold jewellery holding as unaccounted.

7.1 The AO made the addition on account of sale of gold jewellery treating as unexplained income of the assessee. By the impugned order, the CIT(A) deleted the addition so made by the AO after having the following observations :-

"It is a matter of record that all the four entities of the group are staying together and total jewellery found during the course of search was only 1987.500 gms. as against balance of 653.10 gms. claimed by the appellant after the sale of jewellery in A.Y.2003-04. It is not a case where jewellery has been claimed to be purchased from someone or someone else's jewellery (any third party) has

been claimed to be kept with the group. As per Hindu tradition, HUF may, from time to time, part with properties to the hands of the coparceners and other members and hence, I do not find anything wrong in the claim made by the appellant that overall gold jewellery found during the course of search should be compared with jewellery claimed to be kept with the appellant and after the sale made in the year A.Y.2003-04. Accordingly, out of the additions made as delineated above, Ld. AO is directed to delete Rs.3,71,120/- (analogous to the value of family gold.)”

7.2 We have considered rival contentions and found that after considering the overall gold jewellery found during course of search vis-à-vis jewellery claimed to be kept with assessee, the CIT(A) has deleted the addition of Rs.371,120/-, therefore, no interference is required in the order of CIT(A).

8. In **ITA No.5450/Mum/2012(AY:2004-05)**, the first ground of Revenue relates to deletion of addition of agricultural income. The same issue has been decided by us while dealing with the appeal of the Revenue for A.Y.2003-04, wherein we have confirmed the findings of the CIT(A). Therefore, following the same reasoning, we dismiss the ground raised by the Revenue regarding addition of agricultural income.

8.1 Secondly, the Revenue has raised the grievance relating to deletion of an amount of Rs.1,50,000/- out of Rs.15,59,555/- as unexplained cash credit u/s.68 of the Act. The very same ground has been decided by us above while deciding the appeal of the Revenue for A.Y.2003-04. Accordingly, we uphold the findings of CIT(A).

9. In **ITA No.5451/Mum/2012(AY:2005-06)**, the Revenue has raised only one ground, which relates to deletion of addition of agricultural income. The same issue has been decided by us while dealing with the appeal of the Revenue for A.Y.2003-04, wherein we have confirmed the

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findings of the CIT(A). Therefore, following the same reasoning, we dismiss the ground raised by the Revenue regarding addition of agricultural income.

10. In **ITA No.5452/Mum/2012(AY:2006-07)**, the Revenue has raised only one ground, which relates to deletion of addition of agricultural income. The same issue has been decided by us while dealing with the appeal of the Revenue for A.Y.2003-04, wherein we have confirmed the findings of the CIT(A). Therefore, following the same reasoning, we dismiss the ground raised by the Revenue regarding addition of agricultural income.

11. In **ITA No.5453/Mum/2012(AY:2007-08)**, the first ground of Revenue relates to deletion of addition of agricultural income. The same issue has been decided by us while dealing with the appeal of the Revenue for A.Y.2003-04, wherein we have confirmed the findings of the CIT(A). Therefore, following the same reasoning, we dismiss the ground raised by the Revenue regarding addition of agricultural income.

11.1 Secondly, the Revenue has raised the grievance relating to deletion of an amount of Rs.9,14,670/- as unexplained cash credit u/s.68 of the Act. The very same ground has been decided by us above while deciding the appeal of the Revenue for A.Y.2003-04. Following the same reasoning, we uphold the action of CIT(A) on this ground.

12. Now, we shall decide the appeals filed by the assessee Mr. Punit J. Patel i.e ITA Nos.5544 to 5546/Mum/2012.

13. In **ITA No.5544/Mum/2012(AY:2003-04)**, the assessee has raised
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the following grounds :-

"1.1 The learned Commissioner of Income tax (Appeals) - 37, Mumbai [Id. CIT ()]" erred in confirming the action of the Assessing officer in initiating reassessment proceedings and framing as assessment or the Appellant by invoking the provisions of Section 143 (3) r.w .s.153A or the Income tax Act, 1961 [the Act].

1.2 While doing so. the Id. CIT (A) failed to appreciate that the addition made was beyond the scope or assessment under section 153A of the Act and the necessary conditions for initiating and completion of the assessment were not fulfilled.

1.3 It is submitted that in the facts and the circumstance or the case and In law, the assessment order is bad. illegal and void.

WITHOUT PREJUDICE TO THE ABOVE:

2.1 The Id. CIT (A) erred in confirming the action or the A.O. in making addition of Rs.13,693/- [Rs.5,01,862/-(Less) Rs.4,88,169/-] u/s.68 of the Act on account of alleged bogus transaction or sale of shares.

2.2 The Id. CIT(A) failed to appreciate that the transactions entered into by the assessee were genuine transactions which were duly disclosed by the appellant

2.3 It is submitted that in the facts and in the circumstances of the case, and in law, no such addition was called for.

3.1 The Id. CIT (A) erred in confirming the addition or Rs. 25,093/-, being alleged fees at 5% of the sale value paid for the alleged bogus capital gain declared by the Appellant.

3.2 It is submitted that in the facts and in the circumstances of the case. and in law, no such addition was called for.

3.3 Without prejudice to the above. it is submitted that the addition made is arbitrary and excessive.

4.1 The Id. CIT(A) erred in confirming the action of the AO in making the addition of Rs.14,09,555/- to the income of the appellant on account of alleged bogus gift.

4.2 While doing so, the CIT(A) failed to appreciate that :

- (i) the appellant had duly/fully explained the source of the gifts received by him, by placing on record all the relevant documentary*
- (ii) all the gifts received by the Appellant were genuine gifts; and*
- (iii) the action of the A.O.in making the alleged addition was based purely on surmises, suspicion and conjectures*

4.3 It is submitted that in the facts and in the circumstances of the case. and in law, no such addition was called for.

5. The Commissioner of Income tax (Appeal) erred in upholding the Assessing Officer order of charging interest u/s 234A and 234B of the Act without appreciating the fact of the case.

14. Ld. AR did not press the ground No.1.1 along with additional ground, the same is, therefore, dismissed as not pressed.

15. In ground No.2.1 to 2.3, the assessee is aggrieved for confirmation of addition made by the AO of Rs.13,693/- u/s.68 of the Act on sales of shares.

15.1 The AO in its assessment order has observed that the assessee had dealt in bogus purchase and sale of shares in order to get accommodation entries for showing fictitious capital gains, therefore, he added back the entire sale consideration. By the impugned order, the CIT(A) after considering the issue in detail and relying various judgments of the Hon'ble Supreme Court, did not convince with the submission of the assessee and dismissed the same.

15.2 We have considered rival contentions and carefully considered the orders of the authorities below. We found that the CIT(A) has dealt with the issue in detail from para 2.7.1 to 2.7.12 after relying various judgments of the Hon'ble Supreme Court and High Courts. Accordingly, we do not find any reason to deviate from the findings of the CIT(A) and, the same is hereby confirmed.

16. In ground No.3.1 to 3.3, the assessee is aggrieved for confirmation of addition made by the AO @5% towards fee paid for obtaining of bogus

capital gain. The CIT(A) relying the decisions in respect of bogus capital gain, confirmed the findings of the AO.

16.1 We have carefully gone through the orders of the authorities below and found that the findings given by the CIT(A) are just and proper, which requires no interference.

17. In ground No.4.1 to 4.3, the assessee is aggrieved for addition made on account of gifts treating the same as unexplained cash credit, whereby the CIT(A) though deleted the addition so made upto Rs.1,50,000/-, however, confirmed the balance amount.

17.1 We have considered rival contentions and perused the orders of the authorities below. We have already decided the very same issue while dealing with the ground of appeal of Revenue for A.Y.2003-04, wherein we have confirmed the findings of the CIT(A). For the reasons stated above, we do not find any infirmity in the findings of the CIT(A).

18. In ground No.5, the assessee is aggrieved for charging of interest u/s.234A & 234B of the Act.

18.1 We have considered rival contentions and carefully gone through the orders of the authorities below. With regard to charging of interest u/s.234A of the Act, the contention of Id. AR was that there was delay of 10 months in filing return which was because of delay in receipt of seized materials from the department. We found that there was a delay in supplying seized materials which is attributable to the department, therefore, no interest is to be charged for such period which is attributable to the department. Accordingly, the AO is directed to verify and not to charge interest for such delay.

19. In **ITA No.5545/Mum/2012(AY:2006-07)**, the assessee has raised the following grounds :-

"1.1 The learned Commissioner of Income tax (Appeals) - 37, Mumbai [Id. CIT ()]" erred in confirming the action of the Assessing officer in initiating reassessment proceedings and framing as assessment or the Appellant by invoking the provisions of Section 143 (3) r.w .s.153A or the Income tax Act, 1961 [the Act'].

1.2 While doing so. the Id. CIT (A) failed to appreciate that the addition made was beyond the scope or assessment under section 153A of the Act and the necessary conditions for initiating and completion of the assessment were not fulfilled.

1.3 It is submitted that in the facts and the circumstance or the case and In law, the assessment order is bad illegal and void.

WITHOUT PREJUDICE TO THE ABOVE:

2.1 The Id. CIT (A) erred in confirming the action or the A.O. in making addition of Rs. 17.892/- [net balance] u/s. 68 or the Act on account or alleged bogus transaction or sale of shares.

2.2 The Id.CIT (A) railed to appreciate that the transactions entered into by the assessee were genuine transactions which were duly disclosed by the appellant

2.3 It is submitted that in the facts and in the circumstances of the case, and in law, no such addition was called for.

3.1 The Id. CIT (A) erred in confirming the addition or Rs. 19,713/-, being alleged fees at 5% of the sale value paid for the alleged bogus capital gain declared by the Appellant.

3.2 It is submitted that in the facts and in the circumstances of the case. and in law, no such addition was called for.

3.3 Without prejudice to the above. it is submitted that the addition made is arbitrary and excessive.

4. The Commissioner of Income tax (Appeal) erred in upholding the Assessing Officer order of charging interest u/s 234A and 2348 of the Act without appreciating the fact of the case."

20. Ld. AR submitted to withdraw the grounds No.1.1 to 1.3 along with additional ground, the same is, therefore, dismissed as withdrawn.

21. In ground No.2.1 to 2.3, the assessee is aggrieved for confirmation of addition made by the AO of Rs.17,892/- u/s.68 of the Act on sales of shares.

21.1 We have already dealt with the very same issue while considering the appeal for the A.Y.2003-04, wherein we found that the CIT(A) after considering the detail facts and circumstances of the case, has allowed the same ground. Accordingly, we also allow this ground of assessee.

22. In ground No.3.1 to 3.3, the assessee is aggrieved for confirmation of addition made by the AO @5% towards fee paid for obtaining of bogus capital gain. The CIT(A) relying the decisions in respect of bogus capital gain, confirmed the findings of the AO.

22.1 We have carefully gone through the orders of the authorities below and found that the findings given by the CIT(A) are just and proper, which requires no interference.

23. In ground No.5, the assessee is aggrieved for charging of interest u/s.234A & 234B of the Act.

24.1 This issue has already been decided by us in ITA No.5544/Mum/2012, therefore, following the same reasoning, we direct the AO not to charge interest u/s.234A&B, where delay is attributable to the department. We direct accordingly.

25. In **ITA No.5546/Mum/2012(AY:2007-08)**, the assessee has raised the following grounds :-

"1.1 The learned Commissioner of Income tax (Appeals) - 37, Mumbai [Id. CIT ()]" erred in confirming the action of the Assessing officer in initiating reassessment proceedings and framing as assessment or the Appellant by invoking the provisions of Section 143 (3) r.w .s. 153A or the Income tax Act, 1961 [the Act'].

1.2 While doing so. the Id. CIT (A) failed to appreciate that the addition made was beyond the scope or assessment under section 13A of the Act and the necessary conditions for initiating and completion of the assessment were not fulfilled.

1.3 It is submitted that in the facts and the circumstance or the case and In law, the assessment order is bad illegal and void.

WITHOUT PREJUDICE TO THE ABOVE:

2.1 The Id. CIT (A) erred in confirming the action or the A.O. in making addition of Rs.5,18,800/- [net balance] u/s. 68 or the Act on account or alleged bogus transaction or sale of shares.

2.2 The Id.CIT (A) failed to appreciate that the transactions entered into by the assessee were genuine transactions which were duly disclosed by the appellant

2.3 It is submitted that in the facts and in the circumstances of the case, and in law, no such addition was called for.

3.1 The Id. CIT (A) erred in confirming the addition of Rs.25,940/-, being alleged fees at 5% of the sale value paid for the alleged bogus capital gain declared by the Appellant.

3.2 It is submitted that in the facts and in the circumstances of the case and in law, no such addition was called for.

3.3 Without prejudice to the above. it is submitted that the addition made is arbitrary and excessive.

26. Ld. AR submitted to withdraw the grounds No.1.1 to 1.3 along with additional ground, the same is, therefore, dismissed as withdrawn.

27. In ground No.2.1 to 2.3, the assessee is aggrieved for confirmation of addition made by the AO of Rs.5,18,800/- u/s.68 of the Act on sales of shares.

27.1 We have already dealt with the very same issue while considering the appeal for the A.Y.2003-04, wherein we found that the CIT(A) after considering the detail facts and circumstances of the case, has dismissed the same ground. Accordingly, we also dismiss this ground of assessee and uphold the findings of CIT(A).

28. In ground No.3.1 to 3.3, the assessee is aggrieved for confirmation of addition made by the AO @5% towards fee paid for obtaining of bogus capital gain. The CIT(A) relying the decisions in respect of bogus capital gain, confirmed the findings of the AO.

29.1 We have carefully gone through the orders of the authorities below and found that the findings given by the CIT(A) are just and proper, which requires no interference.

30. Now, we shall decide the appeals filed by the assessee Mrs. Cheryl J. Patel i.e ITA Nos.5539 to 5555/Mum/2012 & 7526/Mum/2013.

31. As the same grounds have been raised by assessee Mrs. Cheryl J. Patel in its appeal i.e ITA Nos.5539 to 5555/Mum/2012, therefore, the observations made by us while dealing with the issues in the case of assessee Mrs.Punit J.Patel, will be applied *mutatis and mutandis* to the present appeals.

32. Now, we shall take appeal of the assessee **Mrs. Cheryl J. Patel i.e ITA No.7526/M/2013 (A.Y.2001-02).**

33. This appeal has been filed by the assessee against the order of CIT(A), dated 25-10-2013, for the A.Y.2001-02, in the matter of order passed u/s.154 of the Act for rectifying the addition made of alleged long term capital gains on sale of shares. After having elaborate discussion, the AO held that the mistake is not apparent from record. The CIT(A) confirmed the action of the AO by observing that even on merits claim of assessee is not admissible and nor the same is in the order as falling within the scope of Section 154 of the Act.

33.1 We have considered rival contentions, carefully gone through the orders of the authorities below and found that in the course scrutiny assessment an addition of 5% fee on alleged sale of shares of planter poly was made. The addition so made was confirmed by the CIT(A) after having the detailed discussion. Before confirming the action of the AO, the CIT(A) observed as under :-

“5.3 The perusal of the earlier assessment orders and appellate orders in this case shows that the issue involved is the taxability of bogus sale of shares indulged in by the appellant. The AO has recorded at length the statement of Shri Narendra R. Shah who was an entry operator and he was involved in giving accommodation entries to various parties through various concerns that he had floated/used for this purpose. The appellant is one such beneficiary. It is seen that the AO has based his order on the facts as disclosed by the appellant in its return, in its statement admitting to bogus shares transactions and the statement of Shri. Narendra R. Shah. It is also seen that the assessment order was passed in this case for A.Y. 2001-02 on 16/12/2011 after the Hon'ble ITAT had set-aside the assessment to the assessing officer to be completed de-novo. The original assessment order had been passed on 30/12/08 based on the details furnished by the appellant and the incriminating documents found in the search action carried out in the case of the appellant. It is an undisputed fact that the contract notes in respect of purchase and sales of shares were bogus and “capital gains” has been purchased from the entry operator to avoid payment of taxes.

5.4 Since, the factual matter needed to be verified, a remand report was called from the DCIT Cent. Cir.-13 vide this 'office letter dt. 20108/13. A combined remand report was submitted in the case of Jayant B. Patel, Shri. Jayant B. Patel(HUF) and Cheryl Patel for A.Y. 2001-02 through the Addl. CIT Cent. Cir.3, Mumbai dt. 08/10/13. In this report the AO has noted that the appellant did not furnish the bank statement of financial year 2000-01 reflecting the amount credited from the sale of shares during the year nor was the amount reconciled with the return of income. The AO submitted that in all these cases, the assessee had offered the amount in table which appeared in bank statement, however, in the return of income filed, different amount has been offered and not the amount stated in the table.

33.2 In application u/s.154 of the Act, the assessee has asked for rectifying the addition made of long term capital gains on sale of shares of

Tripex overseas as undisclosed income. It is the assessee's claim that the

AO has made addition of Rs.3,86,192/- alleged to be bogus long term capital gain being value of shares of Tripex Ltd. in A.Y.2001-02 whereas the sale of Tripex Ltd shares was made in A.Y.2007-08 and not in A.Y.2001-02. It was contention of assessee that the AO should not have added 5% on the alleged sale of Tripex shares in the current assessment year. Deletion of such addition cannot be considered u/s.154 of the Act. Under the provisions of Section 154 of the Act, only mistake apparent from record can be rectified. The error pointed by the assessee is debatable in nature and requires long deliberation, which cannot be the subject of Section 154 of the Act. Accordingly, we do not find any infirmity in the order of CIT(A) confirming the rejection of application filed by the assessee u/s.154 of the Act.

34. In the result, all the appeals of the Revenue as well as appeals of both the assessee are dismissed.

Order pronounced in the open court on this 21/01/2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: 21/01/2015 को की गई ।

Sd/-

Sd/-

(संजय गर्ग)

(आर.सी.शर्मा)

(SANJAY GARG)

(R.C.SHARMA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 21/01/2015

प्र.कु.मि/pkm, नि.स/ PS

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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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ITA Nos. 5449-5453,5544-5546,5539-5543/12
& ITA No.7526/13

आदेशानुसार/ BY ORDER,

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