

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH "B", BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI A.K. GARODIA, ACCOUNTANT MEMBER**

ITA No. 1355 to 1360/B/2014

Assessment Years 2005 – 06 to 2010 – 11

M/s Associated Mining Co., No. 18/35, 2 nd Link Road, Paravthinagar, Bellary – 583101. PAN AAFHA3896P	Vs	The DCIT, Central Circle 1 (3), Bangalore
(Appellant)		(Respondent)
Assessee by	Shri Mayank Jain, Advocate	
Revenue by	Ms Neera Malhotra, CIT DR	
Date of hearing	03/08/2016	
Date of pronouncement	18/10/2016	

ORDER

PER BENCH:

All these six appeals are filed by the assessee and these are directed against two separate orders of Learned CIT (A) VI, Bangalore both dated 29.04.2013. The first order is for two Assessment years i.e. 2005 – 06 & 2006 – 07 and the second order is for remaining four assessment years i.e. 2007 –08 to 2010 – 11. All these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. At the very outset, this was submitted by the learned AR of the assessee that in the present case, there is no valid search carried out in the present case and therefore, the orders passed by the A.O. u/s 153A are not valid. In this regard, he submitted that as per the assessment orders, the alleged search was carried out at 18/35, Second Link Road, Parvathinagar, Bellary and as per the Panchnama available on pages 163 to 193 also, the search was carried out at the

same address. Thereafter, he submitted that in the assessment order itself, the A.O. himself has noted that the new address of the firm after reconstitution is No. 123/150, Opposite Kumarswamy Temple, Club Road, Veerana Gouda Colony, Bellary. He also submitted that the date of reconstitution of the firm is 01.08.2009 as noted by the A.O. himself on page 2 of the assessment order. He also submitted that the Income Tax Return of the assessee firm for A. Y. 2010 – 11 was filed on 15.10.2010 as per copy of return available on page 130 of the paper book. Thereafter, he submitted that on page 1 of the assessment order, the A.O. has noted that the search in question was carried out on 10.12.2010 on the strength of search warrant dated 09.12.2010 in the case of Shri K. M. Viswanath Group of cases. Thereafter, he submitted that the sworn statement dated 10.12.2010 of Mr. S. Sreenivas Murthy is available on pages 259 to 262 of the paper book and in reply to question no. 3 about names of concerns which are carrying out business from the searched premises, he stated that presently only one concern M/s K. M. Parvathamma is having office in this address and M/s Associated Mining Company was in this premises up to 31.07.2009 and thereafter, the said firm was taken over by Sri G. Janardan Reddy and his wife and he was manager Finance & Accounts of M/s Associated Mining Company. He submitted that in view of these facts, it is clear that no search was carried out in the case of the present assessee and simply because of this that the name of the assessee firm is there in the search warrant and panchnama, it cannot be said that any valid search was carried out in the case of the assessee and as a consequence, proceedings u/s 153A can be initiated against the assessee. He submitted that under these facts, it should be held that no valid search was conducted against the assessee and therefore, the assessments orders passed u/s 153A are null and void. In support of this contention, he placed reliance on the tribunal order rendered in the case of J. M. Trading Corpn. Vs. ACIT as reported in 20 SOT 489.

3. As against this, learned DR of the revenue supported the orders of the authorities below. She also submitted that in Para 18 of this tribunal order cited by the learned AR of the assessee, it was shown by the assessee in that case that the premises in question was let out to a business group of companies and rental income was offered to tax by the assessee being owner of the premises and under these facts, the tribunal held that the search was not against the assessee but in the present case, there are no such facts and therefore this tribunal order is not applicable in the present case. She also submitted that after carrying out of a valid search, invocation of section 153A by the A.O. is valid and the assessee in the present case has not been able to establish that no valid search was conducted against the assessee.

4. We have considered the rival submissions and perused the materials on record and gone through the judgment cited by the learned AR of the assessee. There is no dispute that if a valid search is conducted against the assessee, invocation of section 153A by the A.O. is valid. Hence, we have to examine as to whether the search conducted at 18/35, Second Link Road, Parvathinagar, Bellary is a valid search against the assessee or not. In this regard we find that as per the address given in the return of income filed by the present assessee for A.Y. 2010 – 11 filed on 15.10.2010, the address is different and not of the searched premises. The A.O. himself in the assessment order has noted that the new address of the firm after reconstitution is No. 123/150, Opposite Kumarswamy Temple, Club Road, Veerana Gouda Colony, Bellary and the date of reconstitution of the firm is 01.08.20019 as noted by the A.O. himself on page 2 of the assessment order. The alleged search was carried out at 18/35, Second Link Road, Parvathinagar, Bellary and as per the Panchnama available on pages 163 to 193 also, the search was carried out at the same address. On page 1 of the assessment order, the A.O. himself has noted that the search in

question was carried out on 10.12.2010 on the strength of search warrant dated 09.12.2010 in the case of Shri K. M. Viswanath Group of cases. When the firm was reconstituted on 01.08.2009 and after reconstitution, the address has changed which is on record of the revenue in the return of income for A. Y. 2010 – 11 filed before search and the person found at the searched premises also stated on the date of search itself that the in the searched premises, there is no office of the assessee firm, it cannot be said that valid search was conducted against the assessee merely on this basis that the name of the assessee is stated in the search warrant and Panchnama. In our considered opinion, under these facts, the tribunal order rendered in the case of J. M. Trading Corpn. Vs. ACIT (Supra) is squarely applicable. The objection of the learned DR of the revenue is this that the searched premises in that case were let out to a different company in that case and rental income was offered to tax and so assessed and since in the present case, there is no such let out, this tribunal order is not applicable. In this regard, we are of the considered opinion that the real basis of that tribunal order is this that the searched premises in that case were not in occupation of the assessee and for this reason, it was held that the search at that premises was not a search conducted against the assessee. The basis of establishing that the searched premises were not in occupation of the assessee was the fact of letting out to a different company. In the present case, the same thing that the searched premises were not in the occupation of the assessee is being established by the assessee on a different basis that the firm was reconstituted and after reconstitution, the address changed and the new address was brought on the record of the department also on a date prior to search by filing return of income for A. Y. 2010 – 11 and in the sworn statement of the person found at the time of search also, this fact was pointed out that this assessee firm was not having any office at that address at that point of time and hence, in our considered opinion, at least after knowing this fact at the time of search, the department

should have conducted search at the correct address of the assessee if the department wanted to search the assessee after finding out the present address of the assessee and after obtaining search warrant for that address. This is very surprising because generally, the department carries out detailed but silent enquiries before conducting the search about not only address but also the spots where they can find material and in spite of this, the department carried out the search at the old address only although the new address was brought on record by the assessee by filing return of income for A. Y. 2010 – 11 on 15.10.2010 and the search was conducted on 10.12.2010 i.e. after almost two months. Considering these facts, we hold that the present assessment orders are null and void by respectfully following the tribunal order rendered in the case of J. M. Trading Corpn. Vs. ACIT (Supra).

5. In view of our decision in the above Para, no other ground in any of the appeals requires any separate adjudication.

6. In the result, all the six appeals of the assessee are allowed.

(Order was pronounced in the open court on the date mentioned on the caption page)

(SUNIL KUMAR YADAV)

Judicial Member

Dated: 18/10/2016

am*

(A.K. GARODIA)

Accountant Member

Copy of the order forwarded to :

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
- 5.D.R., I.T.A.T., Bangalore

Asstt. Registrar

1. श्रुतलेख की तारीख.....
DATE OF DICTATION.....
2. तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING
MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व. निजी सचिव/निजी सचिव के पास वापस आए
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER
FOR PRONOUNCEMENT.....
5. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
- 6 आदेश अपलोड करने की तिथि
DATE OF UPLOADING THE ORDER ON WEBSITE.....
7. अगर अपलोड नहीं किया तो, उसका कारण
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
8. बेंच लिपिक के पास फाइल जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
9. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
10. फाइल मुख्य लिपिक के पास जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE HEAD CLERK.....
11. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR
SIGNATURE ON THE ORDER.....
12. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH
OF THE TRIBUNAL ORDER.....
13. आदेश की प्रेषण की तिथि
DATE OF DESPATCH OF ORDER.....