IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA NOs.	A.Y.	APPELLANT	VS.	RESPONDENT
592/Bang/2017 593/Bang/2017 594/Bang/2017	2011-12 2012-13 2013-14	The Assistant Commissioner of Income Tax, Central Circle 2(2), Bengaluru.		M/s. Delhi International Airport Pvt. Ltd., SKIP House, 25/1, Museum Road, Bengaluru – 560 025. **PAN: AACCD3570F**
595/Bang/2017 621/Bang/2017 635/Bang/2017	2009-10 2010-11 2008-09	M/s. Delhi International Airport Pvt. Ltd., Bengaluru – 560 025. **PAN: AACCD3570F**		The Deputy Commissioner of Income Tax, Central Circle 2(2), Bengaluru.
597/Bang/2017 598/Bang/2017 599/Bang/2017 600/Bang/2017 601/Bang/2017 634/Bang/2017	2009-10 2010-11 2011-12 2012-13 2013-14 2008-09	The ACIT, Central Circle 2(2), Bengaluru.		M/s. GMR Hyderabad International Airport Pvt. Ltd., SKIP House, 25/1, Museum Road, Bengaluru – 560 025. **PAN: AABCH3448M**
602/Bang/2017 619/Bang/2017 632/Bang/2017	2007-08 2009-10 2008-09	M/s. GMR Hyderabad International Airport Pvt. Ltd., **PAN: AABCH3448M**		The DCIT, Central Circle 2(2), Bengaluru.

Revenue by	:	Shri B.K. Panda, CIT
Respondent by	:	Shri Sunil Jain, CA

Date of hearing	:	24.08.2017
Date of Pronouncement	:	13.10.2017

O R D E R

Per Bench

These are cross appeals preferred by the revenue as well as the assesses against the respective orders of the CIT(Appeals). Since these appeals were heard together, these are being disposed of through this consolidated order. We, however, prefer to adjudicate them one after the other.

ITA 592, 593, 594/Bang/2017

2. These are appeals are preferred by the revenue against the respective orders of CIT(Appeals) on common grounds which are as under:-

> "1. Whether the CIT(A) was right while holding that assessee has not earned any dividend income on investment made which earn exempted income though the CBDT has clarified that the expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether any such income has been earned during the financial year or not.
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> 2. Any other ground that may be urged at the time of appeal."

3. During the course of hearing, the ld. counsel for the assessee has invited our attention that during the impugned assessment year, the assessee has not earned any exempt income, therefore no disallowance u/s. 14A can be made. In support of his contentions, he placed reliance upon various judgments.

4. The ld. DR placed reliance upon the order of the AO. The ld. DR, however, has disputed the receipt of exempt income and further submitted that the matter may be sent back to the AO for verification.

5. Having carefully examined the orders of lower authorities in the light of rival submissions, we find that though the assessee has made investment in mutual funds, but during the impugned assessment years it has not received any dividend income on such investment according to the assessee. Therefore, in the absence of exempt income, no disallowance u/s. 14A can be made. The CIT(Appeals) has followed the order of the Bangalore Tribunal in the case of *Alliance Infrastructure Project Pvt. Ltd. v. DCIT in ITA Nos.220 & 143/Bang/2013*. It has been repeatedly held by the various High Courts and the Tribunal that where assessee did not earn any exempt income, no disallowance u/s. 14A can be made. In this case, the revenue has disputed the fact of receipt of exempt income, therefore, we find it appropriate to restore the matter to the file of the AO for verification of the fact. If the assessee does not have any exempt income, no disallowance u/s. 14A can be made, otherwise the AO may act in accordance with the law.

ITA Nos.595, 621 & 635 and 602, 619 & 632/Bang/2017

6. These appeals are preferred by the assessee against the respective order of CIT(Appeals) on various grounds. In these appeals, the assessee has raised a specific common ground with regard to validity of assessment passed u/s. 143(3) r.w.s. 153A of the Act. Since this ground goes to the

root of the case, we prefer to adjudicate this ground on the validity of assessment at the threshold. We, however, for the sake of reference, extract the common ground raised in ITA No.595/Bang/2017:-

> "Ground I: Order passed under section 143(3) r.w.s. 153A is liable to be quashed
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> 1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in holding that in case a notice under section 153A is issued the Assessing Officer is bound to assess and reassess the total income of the Appellant.
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> 2. The Additional Commissioner of Income-tax, Range -10 , New Delhi has completed the assessment of the Appellant vide order dated December 16, 2011 passed under section 143(3) and in the course of such assessment proceedings full scrutiny and examination was made. A search and seizure operation under section 132 was conducted on October 11, 2012 and during the course of search no incriminating documents or undisclosed income was found.
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> 3. The CIT(A) has erred in not considering that having regard to the second proviso to section 153A, the completed assessment cannot be disturbed except only in the case where there is any undisclosed income found in the course of search or any incriminating documents pointing towards such undisclosed income is found in the course of search or in the course of assessment proceedings under section 153A of the Income-tax Act.
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> 4. The Appellant therefore prays that the order passed by the Assessing Officer is contrary to the provisions of law and liable to be quashed since no undisclosed income is found in the course of search or in the course of proceedings under section 153A.

7. The brief facts borne out from the record are that a search action u/s. 132 was conducted upon the assessee on 11.10.2012. Consequent to the search, notice u/s 153A was issued and assessment was completed u/s. 153A r.w.s. 143(3) of the Act. Before the search, assessment was

completed u/s. 143(3) for the AY 2008-09 on 24.12.2010, for AY 2009-10 on 16.12.2011, and for AY 2010-11 on 24.04.2012 in the case of Delhi International Airport Pvt. Ltd. and assessment u/s. 143(3) was completed in the case of GMR Hyderabad International Airport Pvt. Ltd. for the AY 2009-10 on 30.12.2011, for the AY 2008-09 on 24.12.2010 and for the AY 2007-08 u/s. 143(1) by issuing intimation dated 09.03.2009 and by also issuing refund of Rs.25,630 vide refund order dated 13.03.2009.

8. The ld. counsel for the assessee submitted that during the course of search, no incriminating material was found, therefore the assessments framed consequent to search is not valid and deserves to be quashed. In support of his contention, he placed reliance upon the order of the Tribunal of this Bench in the case of *P.M.A. Razak* in ITA No.305/Bang/2017, the judgment of the Delhi High Court in the case of *CIT v. Kabul Chawla, 234 Taxman 300* and the judgment of the Hon'ble jurisdictional High Court in the case of *CIT v. Lancy Constructions, 237 Taxman 728* with the submission that this issue was examined by the Tribunal in the case of *P.M.A. Razak (supra)* wherein it was categorically held that in the absence of any incriminating material, proceedings u/s. 153A cannot be initiated in the concluded assessment. The Tribunal accordingly knocked down the assessment order framed u/s. 143(3) r.w.s. 153A of the Act.

9. The ld. DR, on the other hand, has placed reliance upon the judgment of Hon'ble jurisdictional High Court in the case of *Canara Housing Development Company v. DCIT, 49 taxman.com 98* with the submission that the judgment of the Hon'ble jurisdictional High Court came

after the judgment in the case of *Lancy Constructions (supra)* and therefore the same may be followed.

10. Having carefully examined the orders of authorities below in the light of rival submissions, we find that undisputedly assessment u/s. 143(3) was completed before the search took place upon the assessee. Nothing has been demonstrated before us that any incriminating material was found during the course of search which was used for completing the assessment u/s. 143(3) r.w.s. 153A of the Act. Therefore there is no incriminating material found during the course of search on the basis of which concluded assessment can be reopened and fresh assessment can be framed u/s. 143(3) r.w.s. 153A of the Act. The question that arises in this case is "whether the AO can reframe the assessment u/s. 153A on the basis of search conducted upon the assessee wherein no incriminating material is found?" This question was examined by this Bench of the Tribunal in which one of the Members was a party to it and the Tribunal having examined both the judgments of the Hon'ble jurisdictional High Court passed in the cases of *Lancy Constructions (supra)* and *Canara Housing Development Company (supra)* has concluded that in the absence of any incriminating material, proceedings u/s. 153A cannot be initiated and concluded assessment cannot be reopened. The relevant observations of the Tribunal are extracted hereunder:-

> "14. Having carefully examined the orders of lower authorities in the light of rival submissions and the judgment referred to by the parties, we find that in the case of Canara Housing Development Company, the question of law raised before the Hon'ble High Court was with regard to scope of revision under section 263 of the Act with respect to assessment completed

under section 143(3) of the Act in the light of the fact that proceedings under section 153A was initiated. For the sake of reference, we extract the question of law referred to Hon'ble High Court as under:

> "When once the proceedings under section 153A of the Act is initiated, whether the Commissioner of Income Tax can invoke the power under section 263 of the Act to review the order of assessment passed by the Assessing Authority?"

15. The facts of the case was that assessment under section 143(3) was completed by an order dated 31.12.2010. Subsequently, a search took place in the premises of the assessee under section 132 of the Act on 12.04.2011. In the course of search, incriminating material leading to non-disclosure of income was seized. Accordingly, proceedings under section 153A was initiated and in response to the notice under section 153A, the assessee filed a return of income for 6 years as required under the said provision. When the said return was under consideration, on 14.03.2013, the CIT initiated proceedings under section 263 of the Act on the ground that assessment order dated 31.12.2010 passed under section 143(3) of the Act is erroneous and prejudicial to the interest of the Revenue. The assessee filed objections. But ultimately order under section 263 was passed which was challenged before the Tribunal and the Tribunal having relied upon the judgment of the special bench of ITA T in the case of All Cargo Logistics Ltd., 16 ITR 380 (Mum) special bench held that it is open to the Commissioner to invoke his powers under section 263 of the Act if the said assessment is erroneous and prejudicial to the interest of the Revenue. Otherwise the Revenue will be without any remedy. Against this order of Tribunal, matter was brought before the jurisdictional Hon'ble High Court and the High Court re-examined the entire issue in the light of judgments of CIT Vs. Anil Kumar 80 CCH 113 Delhi High Court and came to the conclusion that the Commissioner by virtue of the power conferred under section 263 of the Act, gets no jurisdiction to initiate proceedings under the said provision because the condition precedent for initiating proceedings under section 263 is any order passed under the Act by the AO is erroneous in so far as prejudicial to the interest of the Revenue. When once the order passed by the AO gets reopened, there is no order which can be said to be erroneous in so far as it is prejudicial to the interest of the Revenue. The relevant observation of the jurisdictional High Court in the case

of Canara Housing Development Company is extracted hereunder for the sake of reference:

> "10. Section 133A of the Act starts with a non obstante clause. The fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments 'without any fetters, if need be. Therefore, it is clear even if an assessment order is passed under Section 143(1) or 143(3) of the Act, the Assessing Officer is empowered to reopen those proceedings and reassess the total income taking note of the undisclosed income, if any, unearthed during the search. After such reopening of the assessment, the Assessing Officer is empowered to assess or reassess the total income of the aforesaid years. The condition precedent for application of Section 153A is there should be a search under Section 132. Initiation of proceedings under Section 153A is not dependent on any undisclosed income being unearthed during such search. The proviso to the aforesaid section makes it clear the assessing officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. If any assessment proceedings are pending within the period of six assessment years referred to in the aforesaid sub-section on the date of initiation of the search under Section 132, the said proceeding shall abate. If such proceedings are already concluded by the assessing officer by initiation of proceedings under Section 153A, the legal effect is the assessment gets reopened. The block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting

in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the "total income' of the six assessment years in question in separate assessment orders. The Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note of the undisclosed income, if any, unearthed during the search. He has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax. When once the proceedings are initiated under Section 153A of the Act, the legal effect is even in case where the assessment order is passed it stands reopened. In the eye of law there is no order of assessment. Re-opened means to deal with or begin with again. It means the Assessing Officer shall assess or reassess the total income of six assessment years. Once the assessment is reopened, the assessing authority can take note of the income disclosed in the earlier return, any undisclosed income found during search or and also any other income which is not disclosed in the earlier return or which is not unearthed during the search, in order to find out what is the "total income" of each year and then pass the assessment order. Therefore, the Commissioner by virtue of the power conferred under Section 263 of the Act gets no jurisdiction to initiate proceedings under the said provision because the condition precedent for initiating proceedings under Section 263 is any order passed under the Act by the Assessing officer is erroneous insofar as it is prejudicial to the interest of the Revenue. Once the order passed by the Assessing officer gets reopened, there is no order which can be said to be erroneous insofar as it is prejudicial to the interest of the Revenue which confers Jurisdiction on the Commissioner to exercise the power of the jurisdiction.

11. The Tribunal has proceeded on the assumption by virtue of the judgment of the special bench of the Mumbai, the scope of enquiry under Section 153A is to be confined only to the undisclosed income unearthed during search and if there is any other income which is not the subject matter of search, the same cannot be taken into consideration. Therefore, the revisional authority can

> exercise the power under Section 263. In the entire scheme of 153A of the Act., there is no prohibition for the assessing authority to take note of such income. On the contrary, it is expressly provided under Section 153A of the Act the Assessing Officer shall assess or reassess the "total income" of six assessment years which means the said total income includes income which was returned in the earlier return, the income which was unearthed during search and income which is not the subject matter of aforesaid two income. If the commissioner has come across any income that the assessing authority has not taken note of while passing the earlier order, the said material can be furnished to the assessing authority and the assessing authority shall take note of the said income also in determining the total income of the assessee when the earlier proceedings are reopened and that income also shall become the subject matter of said proceedings. In that view of the matter the reasoning given by the Tribunal is not justified. The Commissioner did not have jurisdiction to initiate any proceedings under Section 263 of the Act."

16. Thus in the case of Canara Housing Development Company, the jurisdictional High Court has not laid down any proposition of law that in the absence of incriminating material found during the course of search, proceeding under section 153A can be initiated and the assessment completed under section 143(3) or 143(1) can be relooked into or reconsidered. Whereas in the case of Lancy Construction, the jurisdictional High Court has examined the question of law "whether accounts in Tally copied and seized at the time of search do not come within the purview of material found during the course of search as per ratio of the decision of the special bench of Bangalore in the case of All Cargo Logistics Vs. DCIT (supra).

> 17. While adjudicating the issue, the Hon'ble High Court categorically held that in the absence of incriminating material found during the course of search, proceedings under section 153A cannot be initiated in the light of the fact that regular assessment was completed. If it is to be allowed, then it would amount to second opportunity to the Revenue to reopen the concluded assessment. The relevant observation of the Hon'ble High Court is extracted herein for the sake of reference:

"6. In our view, if assessment is allowed to be reopened on the basis of search, in which no incriminating material had been found, and merely on the basis of further investigating the books of account which had been already submitted by the assessee and accepted by the Assessing Officer at the time of regular assessment, the same would amount to the Revenue getting a second opportunity to reopen the concluded assessment, which is not permissible under the law. Merely because a search is conducted in the premises of the assessee, would not entitle the Revenue to initiate the process of reassessment, for which there is a separate procedure prescribed in the statute. It is only when the conditions prescribed for reassessment are fulfilled that a concluded assessment can be reopened. The very same accounts which were submitted by the assessee, on the basis of which assessment had been concluded, cannot be reappreciated by the Assessing Officer merely because a search had been conducted in the premises of the assessee. "

18. This issue was also examined by different High Courts. In the case of CIT Vs. Kabul Chawla, the Delhi High Court has examined this issue and has categorically held that completed assessments can be interfered with by the AO while making assessment under section 153A only on the basis of some incriminating material unearthed during the course of search which was not produced or not already disclosed or made known in the course of original assessment. In the judgment having examined the various aspects, the Lordship has elaborated the legal position that emerges on conspectus of section 153A(1) of the Act as under:

" i. Once a search takes place under Section 132 of the Act, notice under Section 153A(I) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the A Os as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes places. The AO has the power to assess and reassess the 'total income' of the

aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs 'in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material. "

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153A is relatable to abated proceedings (i.e., those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment. "

19. Gujarat High Court has also examined this issue in the case of Pr. CIT Vs. Saumya Construction Pvt. Ltd., and having relied upon the judgment of the Kabul Chawla, Delhi High Court, the Hon'ble High Court has held that the very purpose of the provisions of section 153A was to make assessment in the case of search or requisition, thereby it goes without saying that the assessment should be connected with something found during the course of search or the requisition i.e., incriminating materials

which reveals undisclosed income. In that case, the addition made was not based on incriminating documents found during the course of search. The Hon'ble High Court has held that AO was not justified in making the additions. The Hon'ble Gujarat High Court while adjudicating the issue had taken into account the judgment of jurisdictional High Court in the case of Canara Housing Development Company Vs. DCIT (Supra) and CIT Vs. Kabul Chawla of Delhi High Court.

20. This legal proposition was followed by the Tribunal in a series of cases and some of the cases are listed hereunder:

i) Dy.CIT, CC-I, New Delhi Vs.Aggarwal Entertainment (P.) Ltd. (2016) (72 Taxmann.com 340), dated 29.6.2016 (ITA Delhi Bench 'A).

21. Turning to the fact of the case we find that undisputedly no incriminating material was found during the course of search and these averments in this regard were not disputed by the Revenue. It is also a fact that original assessment was completed as return of income was filed on 19.01.2003 and the return was processed under section 143(1) of the Act. Thereafter, notice under section 153A of the Act was issued on 18.06.2014. Since the time for issuing of notice under section 143(2) of the Act against the original return has been expired it is deemed that the assessment was concluded and by issuing notice under section 153A, the Revenue intent to reopen the concluded assessment without having any incriminating material found during the course of search. In the absence of any incriminating material, proceedings under section 153A cannot be initiated and the concluded assessment cannot be reopened. Therefore, we have no hesitation in holding that proceeding initiated under section 153A are not valid and we accordingly find ourselves in agreement with the order of the CIT(A) and rightly knock down the assessment completed under section 153A of the Act. We therefore confirm his order."

11. We therefore following the view taken by the Tribunal in the aforesaid case hold that in the absence of incriminating material, the concluded assessment cannot be reopened and assessment u/s. 153A cannot be framed. In the instant case, undisputedly no incriminating material was found, therefore the assessment framed u/s. 143(3) r.w.s.

153A of the Act is not sustainable and we accordingly knock down the assessments.

12. Since we have knocked down the entire assessments framed u/s. 143(3) r.w.s. 153A of the Act, we find no justification to deal with the other issues raised on merit. Accordingly, the appeals of the assesses stand allowed.

ITA Nos.597 to 601/ Bang/2017

13. These appeals are preferred by the revenue against the respective orders of the CIT(Appeals) raising the following common ground:-

> "Whether the CIT(A) was right in allowing the depreciation based on the disallowance of expenses as not eligible for depreciation in AY: 2007-07 & 2008-09."

14. In this regard, we have examined the facts of the case and we find that the assessee has allocated capital work-in-progress ["CWIP"] of Rs.434,86,82,557 to assets and accordingly had claimed depreciation on assets. The above expenditure has been incurred in relation to construction of the airport. The AO had disallowed the expenditure of Rs.60,11,28,411 by considering the same as not eligible for capitalization since they are not in capital nature in the AY 2008-09 and accordingly has reduced the above amount in working out the closing balance of CWIP. The depreciation of Rs.3,69,75,969 in AY 2013-14 and Rs.7,26,69,385 in AY 2009-10 on the said expenditure relating to current assessment year has been disallowed.

15. Before the CIT(Appeals) the assessee has contended that the AO failed to appreciate the fact that assessee is into development of airport and the expenditure incurred in lieu of construction of airport is eligible to be debited to the CWIP. The assessee further prayed that the AO be directed to allow the expenses of Rs.60,11,28,011 under CWIP for AY 2008-09. The assessee prays that the aforesaid disallowance during the said assessment year be deleted.

16. The CIT(Appeals) re-examined the issue and directed the AO to consider certain amount as not eligible for forming part of CWIP which is to be utilized at the time of achieving the commercial operation of the assessee. The AO was directed to consider the amounts as held not eligible for capitalization in deciding the appeal for AY 2007-08 & 2008-09 for the purpose of allowing depreciation.

17. This finding of the CIT(Appeals) is challenged by the revenue, but the ld. DR did not point out the specific defect therein. He simply relied upon the order of the AO. Whereas, the ld. counsel for the assessee has contended that the CIT(Appeals) has examined the issue in the right perspective, therefore no interference is called for.

18. Having carefully examined the orders of lower authorities in the light of rival submissions, we find that the CIT(Appeals) has adjudicated the issue in the right perspective and no infirmity has been pointed out by the ld. DR. Accordingly, we confirm the order of the CIT(Appeals).

19. In ITA Nos.599 to 601/Bang/2017, the other grounds relate to disallowance u/s. 14A of the Act, despite the fact that the assessee has not

earned any exempt income. This issue was examined in the foregoing paras and we have taken a view that in the absence of any exempt income, disallowance u/s. 14A cannot be made. Since the revenue has disputed the receipt of exempt income, we have restored the matter in the earlier appeals to the AO for verification of the facts and if it is established that the assessee has not earned any exempted income, no disallowance can be made. Following the same, this issue is restored to the AO after setting aside the order of the CIT(Appeals).

20. In ITA No.601/Bang/2017, the order of CIT(Appeals) is challenged on one more ground i.e., whether the CIT(Appeals) was right while holding that TDS is deductible u/s. 192 and not u/s. 194J for Director sitting fees which is self contradictory to CIT(A)'s finding for the earlier years.

21. The facts borne out from the record in this regard are that the assessee has incurred an expenditure of Rs.1 lakh towards sitting fees of Directors for attending audit committee meetings, board meetings, etc. The AO has disallowed this expenses on the ground that TDS has not been deducted on the said expenses.

22. The assessee has preferred an appeal before the CIT(Appeals) with the submission that in the case of group company viz., M/s. Delhi International Airport Pvt. Ltd., in appeal against the order passed u/s. 201(1) and 201(1A) of the Act it was held by the CIT(A) that no tax is deductible on payments made to Directors as sitting fees for attending board meetings. It was further contended that the amendment made in section 194J vide Finance Act, 2012 w.e.f. 1.6.2012 casts an obligation on

the person responsible for payment of any commission to director to deduct TDS @ 10% u/s. 194J. He also placed reliance upon clause 71 of the Finance Bill, 2012.

23. The CIT(Appeals) re-examined the same having reproduced clause 71 of the Finance Bill, 2012 in his order and held that sitting fees of Rs.1 lakh was paid to directors who are in receipt of salary and accordingly the provisions of section 192 shall apply to such payment of sitting fees and not the provisions of section 194J. The AO was accordingly directed to delete the disallowance.

24. Aggrieved, the revenue is in appeal before the Tribunal and placed reliance upon the order of the AO, whereas the ld. counsel for the assessee has contended that amendment to section 194J was brought to the statute w.e.f. 1.7.2012, whereas the impugned assessment year is 2013-14, therefore the amendment would not apply in the present case. In the absence of any such amendment, sitting fees paid by the assessee to its directors could not be disallowed u/s. 194J of the Act.

25. Having heard the rival submissions and from a careful perusal of the record, we find that undisputedly amendment u/s. 194J was brought w.e.f. 1.7.2012, therefore it would apply from AY 2014-15, not in the impugned assessment year. Therefore, we find that the CIT(Appeals) has properly adjudicated the issue in the light of relevant provisions of the Act and we find no infirmity therein. We accordingly confirm his order.

ITA No.634/Bang/2017

26. Through this appeal, the revenue has assailed the order of the CIT(Appeals) *inter alia* on the following grounds:-

> "1. The Commissioner of Income Tax(Appeals) has erred in facts and law in holding that the expenses are revenue in nature.
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> 2. The Commissioner of Income Tax (Appeals) has erred in holding that entire expenses towards pre- operative expenses and inauguration expenses are revenue in nature merely on the fact that the business of the assessee is set up without going in to the nature of benefit on account of the said expenditure. The huge expenditures are incurred which facilitate in setting up of International Airport, which gives the assessee benefits of enduring nature.
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> 3. The specific expenditures like expenditure incurred towards Satish Gujral painting, production of film and songs, videos, short film on the activities of airport out of inaugural expenses prima facie give are capital in nature.
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> 4. The Commissioner of Income Tax (Appeals) has failed to appreciate that, though the expenses are incurred after set up of business the said expenses give the assessee benefits of enduring nature in setting up of International Airport.
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> 5. For the above grounds and any other grounds that may be raised during the course of appeal proceedings, the orders of the AO may be upheld, since the expenditure are capital in nature."

27. During the course of hearing, the ld. counsel for the assessee has invited our attention that in this case also assessment was completed u/s. 143(3) of the Act vide order dated 24.12.2010, whereas search was conducted thereafter and no incriminating material was found having invoked the provisions of Rule 27 of the ITAT Rules. Therefore assessment order passed u/s. 143(3) r.w.s. 153A without any incriminating material found during the course of search is bad in law. Once the

assessment order is quashed, no addition made therein would survive. In the light of these facts, the revenue's appeal becomes infructuous.

28. The ld. DR, however, placed reliance upon the order of the AO.

29. Having carefully examined the orders of authorities below in the light of rival submissions, we find that in the foregoing paras we have categorically held that in the absence of any incriminating material, the action u/s. 143(3) r.w.s. 153A cannot be initiated to reassess the issues concluded in the regular assessment framed u/s. 143(3) of the Act vide order dated 24.12.2010. Undisputedly search was conducted on 11.10.2012 and no incriminating material was found. Therefore, assessment framed u/s. 143(3) r.w.s. 153A of the Act is not valid and therefore the additions made therein are not sustainable. We therefore find no merit in the revenue's appeal relating to certain additions made in the assessment order. Accordingly, the revenue's appeal stands dismissed.

30. In the result, the assessees' appeals in ITA Nos.595, 621, 635, 602, 619 & 632 are allowed. The revenue's appeals in ITA Nos.592 to 594/B/17 are allowed for statistical purposes, ITA Nos. 597 & 634/Bang/17 are dismissed and ITA Nos. 598 to 601/B/17 are partly allowed for statistical purposes.

Pronounced in the open court on this 13th day of October, 2017.

Sd/-	Sd/-
(JASON P. BOAZ)	(SUNIL KUMAR YADAV)
Accountant Member	Judicial Member

Bangalore,
Dated, the 13th October, 2017. / Desai Smurthy /

Copy to:

1. Revenue
2. Assessees (2)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary
ITAT, Bangalore.