

आय अधकरण, "बी" ढयायपीठ, चेन्नई
APPELLATE TRIBUNAL 'B' BENCH, CHENNAI

ढी चं पूजार, लेखा सदय एवं ढी धुवु आर.एल रेडी, ढयायक सदय के सम
Before Shri Chandra Poojari, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

I.T.A. Nos.2714, 2715 & 2716/Mds/2016
Assessment Years : 2007-08, 2008-09 & 2010-11

The Assistant Commissioner of
Income Tax, Central Circle 2(1),
Investigation Wing, 46, Nungambakkam
High Road, Chennai 600 034.

M/s. Leela Distilleries (P) Ltd.,
Vs. No. 16, Zamindar Garden, S.V. Patel
Salai, Pondicherry 605 012.
[PAN:AABCL0814D]

(अपीलाथ /Appellant)

(ढूयथ/Respondent)

अपीलाथ क ओर से / Appellant by : Shri V. Vivekanandan, CIT

ढूयथ क ओर से/Respondent by : None

सुनवाई क तारख/ Date of hearing : 08.06.2017

घोषणा क तारख /Date of Pronouncement : 28.07.2017

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

These three appeals of the Department pertaining to the same assessee, are directed against the common order passed by the Id. Commissioner of Income Tax (Appeals) 18, Chennai dated 30.06.2016 relevant to the assessment years 2007-08, 2008-09 and 2010-11, whereby the Department has challenged in annulling the assessment made under section 143(3) r.w.s. 153A of the Income Tax Act, 1961 [Act+in short] for the all the above assessment years.

It is noted that a search was conducted in the office premises of the assessee [one of group concerns promoted by Sri N. Jayamurugan, who is one of the Directors of the company] at No.99, Canal Bank Road, C.I.T. Nagar, Nandanam, Chennai 35 on 15.5.2012 as evidenced by the warrant issued in the assessee's case. Subsequently, notice under section 153A of the Act was issued on 15.03.2013 for all the above assessment years. In response to notice under section 153(A) of the Act, the assessee filed its return of income for the assessment year 2007-08 admitting NIL+ income on 16.04.2013. For the assessment year 2008-09, vide letter dated 16.04.2013, the assessee has stated that the original return filed on 30.09.2008 admitting total loss of .(-)22,85,402/- may please be treated as return of income filed in response to the notice under section 153A of the Act. For the assessment year 2010-11, vide letter dated 15.04.2013, the assessee has stated that the original return filed on 15.10.2010 admitting total loss of .(-)24,90,980/- may please be treated as return of income filed in response to the notice under section 153A of the Act. Thereafter, notice under section 143(2) dated 01.08.2014 and notice under section 142(1) of the Act dated 10.11.2014 were issued and served on the assessee. After considering the details filed by the assessee, the assessment was completed by assessing total income of the assessee at .28,60,766/- for the

.27,00,000/- for the assessment year 2008-09 and .14,90,980/- for the assessment year 2010-11 after making addition.

3. The assessee carried the matter in appeal before the Id. CIT(A) and mainly contended that the Assessing Officer had no jurisdiction to make additions in the above assessment years under section 153A of the Act since no incriminating documents/evidence were found during the course of search. After considering the submissions of the assessee and following various decisions, the Id. CIT(A) annulled the assessments for all the above assessment years

4. On being aggrieved, the Revenue is in appeal before the Tribunal for all the above assessment years. With regard to assumption of jurisdiction for the assessment years 2011-12 & 2012-13, the Id. DR has submitted that service of notice under section 153A of the Act followed by the search conducted under section 132 of the Act, the Assessing Officer has validly assumed jurisdiction to complete the assessment under section 143(3) r.w.s. 153A of the Act and pleaded that the orders of the Id. CIT(A) should be set aside for the assessment years 2011-12 & 2012-13.

5. Despite service of notice, none appeared on behalf of the assessee. Hence, we proceeded to decide the appeal by considering materials

gments of the Id. DR.

6. We have heard the Id. DR, perused the materials available on record and gone through the orders of authorities below. For all the assessment years, notice under section 153A of the Act was issued on 15.03.2013, since a search conducted under section 132 of the Act on the premises of the assessee on 15.05.2012. However, no incriminating material was found during the course of search. Therefore, it was the submission of the assessee that since no incriminating material was found during the course of search, the assessment completed under section 143(3) r.w.s. 153A of the Act is not valid. However, it was the submission of the Id. DR that once search operation was conducted under section 132 of the Act, the Assessing Officer got valid jurisdiction over the assessee under section 153A of the Act. On appeal, while following various decisions including recent decision of the Tribunal in the case of Smt.Geetha Jayamurugan v. DCIT (supra), the Id. CIT(A) allowed the ground raised by the assessee by observing as under:

“5. I have gone through the assessment orders, the grounds raised, written submissions made by AR and materials available on record. As can be seen from the assessment orders for all the AYs in appeal the AO made an addition towards unsecured loan alleged to have been obtained from one of the directors of the appellant company. The AO’s observation, more or less, common for all the AYs, is as under:

"In this AY the assessee received Rs as unsecured loan from one of the directors Mr.Surali Narayan Swami. In this regard vide notice u/s.142(1) .. the assessee was asked to produce the details of source for Mr. Surali Narayan Swami along with necessary evidence and ledger of him in the book of the assessee for the unsecured loan. There was no response from the

the assessee filed only the ledger of Mr. Surali Narayan Swami for source was furnished.

Again on 7.3.2015, the assessee was asked to produce proof for source for Mr. Surali Narayan Swami to ascertain creditworthiness and genuineness of transaction. For this assessee filed PAN and address of Mr. Surali Narayan Swami and stated that as Mr. Surali Narayan Swami was out of country confirmation could not be furnished."

Based on the above, the AO made the impugned addition.

The AR during appellate proceedings made the following submission:

"The assessee company was searched on 15.05.2012, simultaneously with other group companies of SNJ and its Directors. The first issue arising out of the appeal is whether, the assessment under section 153A, which is not based on any incriminating material, is valid or not. You find that this issue is already covered by the judgment of the Hon'ble Chennai ITAT, in the case of Smt. Geetha Jayamurugan in ITA No.2262 and others dated 4.3.2016, in favour of the assessee. It was held that, the assessments of 2007-08 to 2011-12, which are not based on any incriminating and therefore the assessment framed u/s. 153A cannot stand on its own leg, which are not framed on the basis of any incriminating material found during the course of search operation and they do not conform the mandate of section 153A of the Act. Accordingly, the assessments framed under section 153A r.w.s 143(3) for the assessment years 2007-08 to 2011-12 [five assessment years] are quashed. Therefore, we request your good self to allow this ground of appeal."

As can be seen from the assessment order and pointed out by the appellant, the AO made the addition for each of the AY without referring to any incriminating documents found/seized during the search, thereby making one to come to the conclusion that the addition was not based on seized document. In the circumstances, inasmuch as the additions were made without any back up of materials or incriminating documents seized, the assessments are hereby annulled. Hence the ground relating to jurisdiction raised by the appellant is allowed. While deciding the issue in favour of the appellant, the following decisions were also relied upon.

Various High Courts and ITAT have followed the decision of the Special Bench of the ITAT Mumbai in the case of All Cargo Global Logistics Ltd. vs. CIT [2012] 137 ITD 287 (Mumbai) (SB) in which, it was held that no additions or disallowances can be made to the income returned in case of assessments which have been completed and in case where no incriminating materials have been found during the course of search in respect of the said

in this regard reliance was also placed on the

- i) *ABS Sanjjay vs. ACIT ITA No.1691 to 1693/Mds/2013*
- ii) *Jai Steel (India) vs. ACIT [2013] 88 DTR 1 (Raj.)*
- iii) *Marigold Merchandise Pvt. Ltd. vs. DCIT ITA No.2666 & 2667/Del/2013*
- iv) *AB Sudarsanam vs. ACIT ITA No.1694 & 1695/Mds/2013*
- v) *MGF Automobiles Ltd. vs. ACIT ITA No.4212 & 4213/Mds/2014*
- vi) *Gurinder Singh Bawa vs. DCIT ITA Nos.2075 & 2669 (Mum) of 2010*
- vii) *Rm.K. Viswanatha Pillai & Sons vs. DCIT ITA No. 1065, 1066 & 1067/Mds/2014*
- viii) *AR Murugadoss vs. ACIT ITA No. 559, 560, 561, 562, 563 & 564/Mds/2014*
- ix) *Joseph Prince and Others vs. ACIT ITA No.2739, 2740 & 2741/Mds/2014*
- x) *Jignesh P. Shah vs. DCIT ITA No. 1 553 & 3173/Mum/2010*

In all the above judgments, invariable decision is that *no additions or disallowances can be made to the income returned in case of assessments which have been completed and in case where no incriminating materials have been found during the course of search.*

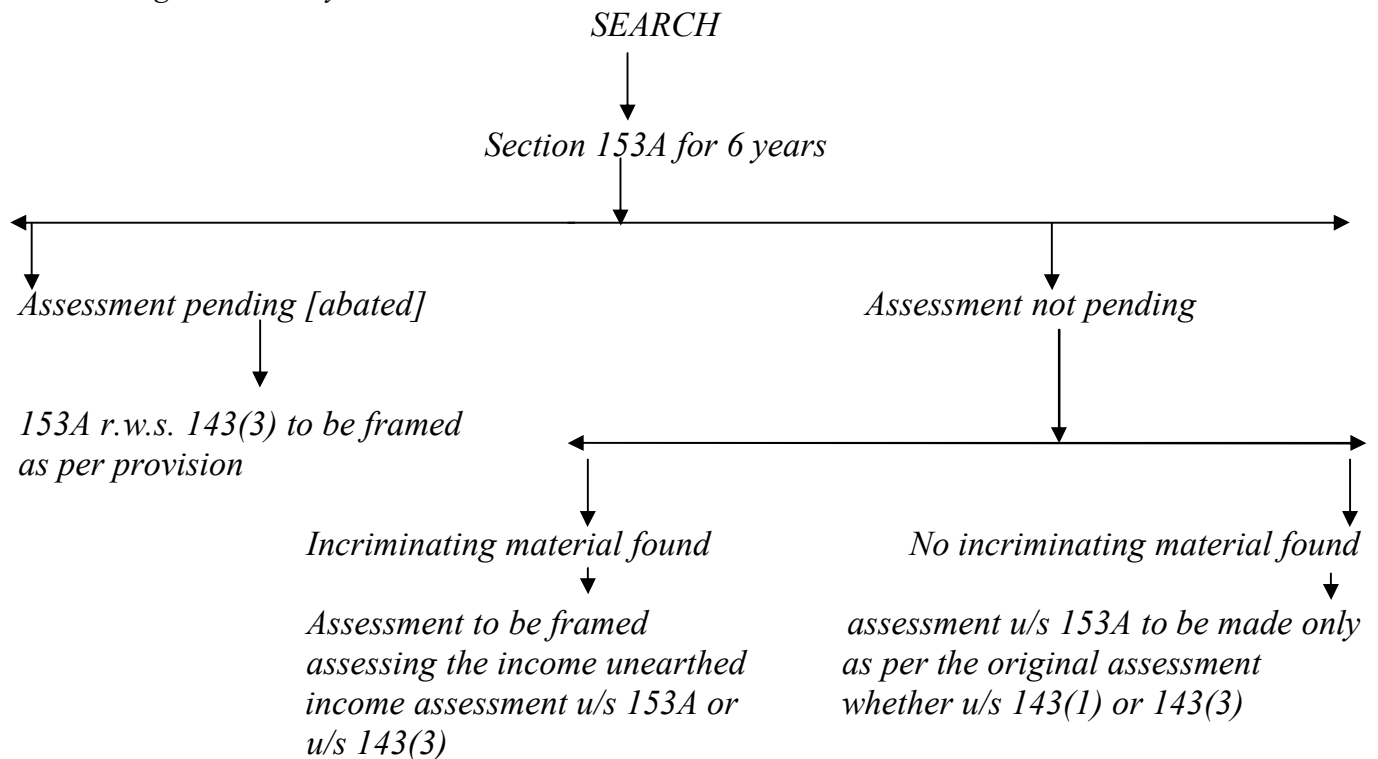
As the very existence of the assessments has become farce, the other grounds raised in all the AYs in appeal, relating to addition on account of unsecured loan becomes infructuous and hence are dismissed”.

7. The assessee has mainly relied on the recent decision of the Tribunal in the case of Smt. Geetha Jayamurugan v. DCIT (supra), wherein the Coordinate Benches of the Tribunal has observed and held as under:

“6. We have heard both sides, perused the materials on record and gone through the orders of authorities below. In this case, there was a search at the assessee’s premises on 15.05.2012. Consequent to this, notice under section 153A of the Act was issued on 15.03.2013. For the assessment years 2007-08 to 2011-12, the assessee has stated that the returns already filed were to be treated as return filed against the notice under section 153A of the act. Accordingly, the assessment was completed for the assessment years 2007-08. In the course of assessment, the Assessing Officer made addition, prima facie, disallowing certain agricultural income as non-agricultural income and also disallowance under section 40(a)(iii) of the Act. Now, the contention of the ld. Counsel for the assessee is that the assessment for the assessment years 2007-08 and 2008-09 already completed either under section 143(1) or 143(3) and there is no pendency of assessment so as to

[Click Here to upgrade to Unlimited Pages and Expanded Features](#)

er, where, there is no seized material found the assessment under section 153A be framed only on the basis of original assessment, which is under section 143(1) or 143(3) of the Act. Admittedly, in these assessment years, the search took place on 15.05.2012. As on this day, the assessee has already filed return of income for the assessment years 2007-08 and 2008-09. It is also on record that the assessment for the assessment year 2008-09 and 2009-10 was completed under section 143(3) and the Assessing Officer accepted agricultural income in these assessment years. The time limit for issuing notice for other assessment years has already expired by this time and thereby, the assessments stated to be reached finality by operation of law for the assessment years 2007-08 to 2011-12 as on the date of search as the time limit to issue notice for these assessment years is already over. Being so, no assessment or reassessment or pending assessment at the time of search carried out on 15.05.2012. In respect of these assessment years, section 153A empowers the Assessing Officer to complete the assessment for 6 consequent assessment years consequent to search action under section 132 or requisition under section 132A of the Act. It is also to be noted that the assessment as well as reassessment are possible in the case of pending assessment. Further, when the assessments are already completed and no assessments are pending at the time of issue of notice under section 153A, reassessment can be made only if any incriminating material found during the course of search and item concluded in earlier assessment cannot be considered in the reassessment under section 153A of the Act. In other words, the scope of assessment under section 153A can be summarized diagrammatically as under:



he above chart, when nothing incriminating is or requisition, then the question of reassessment of already completed assessment does not arise. The underline purpose of making assessment of a total income under section 153A of the Act is therefore, to assess the income, which was not disclosed or would not have been disclosed. The second proviso to section 153A of the Act provides for abatement of assessment or reassessment only for the reason that there cannot be two assessments for a single assessment year. The reassessment is permitted in an assessment under section 153A of the Act when incriminating materials are found in the course of search. In the present case, for the assessment year 2007-08 to 2010-11, there is no reference of any incriminating material found during the course of search to frame assessment under section 153A of the Act. The Assessing Officer considered the original return already filed in normal course and reassessing the income of the assessee and observing that the assessed agricultural income is excess over there is no incriminating material to suggest that the agricultural income declared by the assessee is excess. Further, it is already concluded by the Assessing Officer for the assessment year 2008-09 and 2009-10 while framing assessment under section 143(3) of the Act and accepted the agricultural income declared by the assessee.

8. At this stage, it is appropriate to mention the ratio laid down by the order of the Mumbai Special Bench decision of the Tribunal in *All Cargo Global Logistic Ltd. v/s DCIT*, [2012] 137 ITR 287 (SB) (Mum.), after analyzing the relevant provisions of the Act, came to the following conclusion and ratio:—

“(a) In assessment that are abated, the Assessing Officer retains the original jurisdiction as well as jurisdiction conferred on him under section 153A for which assessments shall be made for each of the six assessment years separately.

(b) In other cases, in addition to the income that has already been assessed, the assessment under section 153A will be made on the basis of incriminating material which in the context of relevant provisions means books of account, other documents, found in the course of search but not produced in the course of original assessment and undisclosed income or property discovered in the course of search.”

9. In this case, the question answered in clause (b) would be applicable as the addition in the assessment order passed under section 153A, can be made only on the basis of incriminating material found in the course of search in case where the assessment has already been finalized. Thus, in this case, no addition can be made over and above the returned income which has become final prior to the date of search and there is no material found at the

Mumbai Special Bench decision of the Tribunal in *All Cargo Global Logistics Ltd. (supra)* has also been reaffirmed and applied by the Mumbai Benches of the Tribunal in the case of *Gurinder Singh Bawa v. DCIT* [2012] 28 *Taxman.com* 328 (Mum.). The relevant observation of the Tribunal is reproduced herein below:—

“6. We have perused the records and considered the rival contentions carefully. The dispute raised is regarding legal validity of addition made by AO under section 153A of the Act. Under the provisions of section 153A, in all cases, where search is conducted under section 132 of the Act, AO is empowered to assess or reassess total income of six assessment years preceding the assessment year in which search was conducted. The section also provides that assessment or reassessment relating to any assessment year falling within period of six assessment year if pending on the date of initiation of search shall abate. There have been divergent views regarding scope of application of section 153A in cases where no incriminating material was found indicating any undisclosed income. Some of the Tribunal Benches had taken the view that in case no incriminating material was found AO had no jurisdiction to make assessment or reassessment under section 153A while some other Benches held that jurisdiction under section 153A was automatic to reassess six immediate preceding assessment years irrespective of the fact whether any incriminating material was found or not. Another aspect on which there had been divergent views was whether even if AO had jurisdiction under section 153A, addition can be made in assessment/ reassessment only when some incriminating material has been found. All these aspects had been referred to the Special Bench of the Tribunal in case of *All cargo Global Logistics Ltd.* and order of Special Bench dated 6.7.2012 has been referred.

6.1 The Special bench in the case of *All Cargo Global Logistics Ltd. (supra)*, has held that provisions of section 153A come into operation if a search or requisition is initiated after 31.5.2003 and on satisfaction of this condition, the AO is under obligation to issue notice to the person requiring him to furnish the return of income for six years immediately preceding the year of search. The Special Bench further held that in case assessment has abated, the AO retains the original jurisdiction as well as jurisdiction under section 153A for which assessment shall be made for each assessment year separately. Thus in case where assessment has abated the AO can make additions in the assessment, even if no incriminating material has been found. But in other cases the Special Bench held that the assessment under *M/s. Govind Agarwal (HUF)* 6 section 153A can be made on the basis of incriminating material which in the context of relevant provisions means books of account and other documents found in the course of

[Click Here to upgrade to
Unlimited Pages and Expanded Features](#)

...ced in the course of original assessment and
...r property disclosed during the course of search.
...in the present case, the assessment had been completed under
summary scheme under section 143(1) and time limit for issue of
notice under section 143(2) had expired on the date of search.
Therefore, there was no assessment pending in this case and in such a
case there was no question of abatement. Therefore, addition could be
made only on the basis of incriminating material found during
search.”

10. Further, the Coordinate Benches of the Tribunal in the case of *Sree Gopalakrishna Fabrics v. DCIT* in I.T.A. Nos. 788 to 794/Mds/2015 vide order dated 27.11.2015 has taken similar view.

11. Moreover, in the case of *Jai Steel (India) v. ACIT* [2013] 259 CTR 281, the Hon'ble Rajasthan High Court has held that in case nothing incriminating material is found on account of search of search or requisition then the question of reassessment of concluded assessment does not arise. If any books of account or other documents relevant to the assessment has not been produced in the course of original assessment and found in the course of search, such books of account or other documents are to be taken into consideration while assessing or reassessing the total income under the provision of section 153A of the Act. The requirement of assessment or reassessment under section 153A had to be read in the context of section 132 or under section 132A of the Act in as much as, in case nothing incriminating is found on account of such search or requisition, then the question of reassessment of concluded assessment does not arise, which would require more reiteration and it is only in the context of abated assessment under second proviso, which is required to be assessed. Thus, it is apparent from the above that (a) the assessment or reassessments, which stand abated in terms of second proviso to section 153A of the Act, the Assessing Officer acts under his original jurisdiction for which assessments, have to be made; (b) regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material and (c) in the absence of any incriminating material, the completed assessment can be reiterated and the abated assessment and reassessment can be made.

12. Thus, in our opinion, the assessments of 2007-08 to 2011-12, which are not based on any incriminating and therefore the assessment framed under section 153A of the Act cannot be stand on its own leg, which are not framed on the basis of any incriminating material found during the course of search operation and they do not conform the mandate of section 153A of the Act. Accordingly, the assessments framed under section 153A r.w.s. 143(3) for the assessment years 2007-08 to 2011-12 [five assessment years] are quashed”.

mittedly, no assessment under section 143(3)

of the Act was completed and moreover, even though no incriminating materials were found during the course of search, the decisions relied on by the Id. CIT(A) are not applicable. However, in similar facts and circumstances, in the case of CIT v. Dr. P. Sasikumar 387 ITR 8 (Kerala), the Hon^{ble} Kerala High Court has observed and held as under:

“On a plain reading of section 153A, it is clear that once search is initiated under section 132 or a requisition is made under section 132A after the 31st day of May 2003, the Assessing Officer is empowered to issue notice to such person requiring him to furnish return of income in respect of each assessment year following within six assessment years referred to in clause (b). It further treats the returns so filed as if such return were a return required to be furnished under section 139. So that on a reading of section 153A(1) it is categorical and clear that once a notice is issued and the Assessing Officer has required the assessee to furnish return for a period of six assessment years as contemplated under clause (b) then the assessee has to furnish all details with respect to each assessment year since the same is treated as a return filed under section 139. It is true that as per the first proviso, the Assessing Officer is bound to assess or reassess the total income with respect to each assessment year following the six assessment years specified in sub-clauses (a) and (b) of section 153A. However, even if no documents are unearthed or any statement made by the assessee during the course of search under section 132 and no materials are received for the afore specified period of six years, the assessee is bound to file a return, is the scheme of the provision. Even though the second proviso to section 153A speaks of abatement of assessment or reassessment pending on the date of the initiation of search within the period of six assessment years specified under the provision that will also not absolve the assessee from his liability to submit returns as provided under section 153A(1)(a). This being the scheme of the provisions of the Act, the Appellate Tribunal ought to have considered the issue with specific reference to the facts involved in the case and as provided under section 153A.”

In the light of the judgment of this court, the aforesaid conclusion of the Tribunal cannot be sustained.”

9. Respectfully following the above decision of the Hon^{ble} Kerala High Court, we set aside the order of the Id. CIT(A) and direct him to adjudicate

[Click Here to upgrade to
Unlimited Pages and Expanded Features](#)

essee on merits in accordance with law after

allowing sufficient opportunities of being heard to the assessee. Accordingly
all the appeals filed by the Revenue are allowed for statistical purposes.

10. In the result, all the appeals of the Revenue are allowed for statistical
purposes.

Order pronounced on the 28th July, 2017 at Chennai.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 28.07.2017

Vm/-

आदेश क० प्रतिलिपि अपेक्षित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5.
प्रभागीय प्रशासक/DR & 6. गाडफ़ाईल/GF.