

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BENGALURU**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA Nos.1582 to 1588/Bang/2016
(Assessment years: 2006-07 to 2012-13)

Mr. Amit Caddy,
Regency Salma,
GA No.18, Richard Town,
Halls Road,
Bengaluru-560005. ... Appellant
PAN:AEVPC8007L

Vs.

Deputy Commissioner of Income-tax,
Central Circle 2(1),
Bangalore. ... Respondent

Appellant by : Smt.Prathibha, Advocate.
Respondent by : Ms.Neera Malhotra, CIT(DR)

Date of hearing : 16/11/2017
Date of pronouncement : 10/01/2018

O R D E R

Per BENCH:

These are appeals filed by the assessee directed against different orders of the learned Commissioner of Income-tax (Appeals)-11, Bangalore, [CIT(A)], dated 25/06/2016 for the assessment years 2006-07 to 2012-13. Since identical issues are involved in all these appeals, we dispose of these appeals vide this common order.

2. The assessee raised the following identical grounds:

1. On the facts and in the circumstances of the case, the appellate order of the learned CIT (Appeals) is opposed to law and to the principles of natural justice in that the required opportunity had not been given to the Appellant and consequently the order is liable to be set aside.
2. The learned CIT (Appeals) erred in holding that the Appellant was not serious to represent and defend his case and the conclusion as drawn by the learned CIT (Appeals) in this regard is without justification and dismissal of the appeal on this ground alone was opposed to law and the appellate order is accordingly liable to be set aside.
3. The learned CIT (Appeals) failed to appreciate that ultimately when hearing was given, the Appellant's representative appeared and made representation with submission on legal grounds and thus there was compliance of the notice in the appellate proceedings.
4. The learned CIT (Appeals) ought to have appreciated that the Appellant had submitted that the proceedings under Section 153C were bad in law and on the basis of the observations in the assessment order and also requested a fresh opportunity to the Appellant if the learned CIT (Appeals) was not agreeing to the legal issues raised to the enable the Appellant to make his submissions on merits and thus there was no lapse on the part of the Appellant to justify dismissal of the appeal.
5. The learned CIT (Appeals) erred in holding that the Appellant's representative was directed to file written submission on merits when she appeared to submit the written submission on legal issue.
6. On the other hand, the learned CIT (Appeals) had only indicated as on the date of hearing that he would go through the submissions and revert back to the Appellant.
7. The learned CIT (Appeals) having committed to give one more opportunity, erred in passing the order without giving a fresh opportunity to the Appellant to make submissions on merits in case the submissions on legal grounds were not acceptable to him and having failed to do so, the principles of natural justice have been violated and the appellate order passed was opposed to law and liable to be set aside.

8. Without prejudice, even otherwise the learned CIT (Appeals) ought to have disposed of the grounds raised on merits before him and having failed to do so, the order passed is opposed to law and liable to be set aside.
 9. Without prejudice, the learned CIT (Appeals) ought to have appreciated that the impugned additions have been made without considering the materials on record and had there been an opportunity to the Appellant, the Appellant would have satisfied in toto with regard to the sources on the impugned additions and as to how they were not includible in the hands of the Appellant.
 10. The learned CIT (Appeals) having failed to do so, the impugned additions are opposed to law and liable to be deleted.
 11. Without prejudice, the impugned additions are without substance, arbitrary, excessive and ought to be reduced substantially.
 12. The learned CIT (Appeals) erred in upholding the levy of interest under Sections 234A and 234B of the Act.
 13. For these and such other grounds that may be raised at the time of hearing, the Appellant prays that the appeal may be allowed.
3. Brief facts of the case are that the assessee is an individual engaged in the business of horse training in Bangalore Turf Club. There was a search and seizure operation in the residential premises of the assessee along with one Mr. M.M.Prasanna Kumar and others on 06/2/2012. Consequently notice u/s 153A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] dated 13/09/2012 was issued requiring the assessee to file return of income. In response to notice u/s 153A, the assessee filed returns of income for assessment years 2006-07 to 2012-13 as follows:

<i>Assessment year</i>	<i>Date of filing return of income</i>	<i>Income declared</i>	<i>Income assessed</i>
2006-07	18/12/2013	Rs.1,65,000/-	Rs.1,65,000/-
2007-08	18/12/2013	Rs.1,20,000/-	Rs.5,10,400/-
2008-09	18/12/2013	Rs.1,30,000/-	Rs.5,50,900/-
2009-10	18/12/2013	Rs.2,04,000/-	Rs.13,28,900/-
2010-11	28/02/2013	Rs.4,32,500/-	Rs.42,12,258/-
2011-12	18/12/2013	Rs.8,68,440/-	20,69,154/-

For the assessment year 2012-13 notice u/s 142(1) was issued requiring the assessee to file return of income. In response to same, assessee filed return of income on 11/09/2013 declaring income of Rs.11,30,540/-. The assessments were completed by the DCIT, Circle 2(1), Bangalore vide orders dated 26/03/2014 passed u/s 143(3) r.w.s.153A of the Act by disallowing 50% of the expenditure claimed of Rs.8,41,800/- for assessment year 2008-09, Rs.10,18,800/- for assessment year 2009-10, Rs.8,41,800/-; Rs.12,99,512.48 for the assessment year 2010-11, Rs.11,38,307.17/- 5,69,154/- for assessment year 2011-12 and Rs.14,94,293.41/- for assessment year 2012-13.

4. Being aggrieved, an appeal was filed before the Id.CIT(A) contending *inter alia* that there was no search and seizure action under section 132 in the case of the appellant and therefore in the absence of warrant for search, the assessment made u/s 153A is not valid in law. The only effective ground raised before the Id.CIT(A) is on the valid notice under section 153A in the absence of search warrant in the name of the appellant. Despite filing an appeal, the appellant had refused to accept service of notice of hearing issued by the Id.CIT(A). The Id.CIT(A) has brought out this conduct of the appellant vide paragraph 5 of his order which is reproduced below :

5. Before proceeding with the case, it is important to bring out the conduct of the appellant during the course of appellate proceedings. He has refused to take the notice on various pretexts which are part of record. Notices has been issued on many occasions which is presented in a tabular form as bellow,

Sl.No.	Date of issue of Notice	Date of Hearing	Comments of Postal authorities	Remarks
1.	27.11.2015	3.12.2015		No Response
2.	03.02.2016	17.02.2016	Not claimed on 04.02.2016 & 05.02.2016	
3.	10.03.2016	18.03.2016	Not claimed 11.03.2016 Hence returned on 19.03.2016	
4.	07.04.2016	26.04.2016	Not claimed on 12.04.2016 & 13.04.2016 Hence Returned on 20.04.2016	
5.	26.04.2016	05.05.2016	Refused, hence returned on 28.04.2016	

Finally notice of hearing came to be served on the appellant through the Inspector. After service of the said notice, the AR of the appellant filed written submissions on 14/06/2016 which are as under:

"The above appeals have been filed against the assessment order for the relevant years passed u/s. 143(3) r.w.s 153A of the Income-tax Act, 1961. At the outset, on perusal of the order that the proceedings have been initiated on account of the search and seizure operation u/s.132 of the Act conducted in the case of Sri. M. M. Prasanna Kumar on 6.2.2012. It is further observed that the appellant stood covered by Section 132 r.w.s. 153A of the Act. From the facts as narrated by the Assessing Authority, there was no search in the case of the search in the case of M .M. Prasanna Kumar which would mean that the case of the appellant would fall u/s.153C rws 153A of the Act. If that may be so, then there should be satisfaction recorded in the case of Sri. M.M. Prasanna Kumar with regard to the documents found and seized which related to the appellant. No details in this regard are forthcoming form

the Assessment Order. Accordingly, the assessments as made by applying the provisions of Sec.153A of the Act are without jurisdiction and accordingly liable to be cancelled. We seek support from the following judgments in this regard.

Sl. No.	Name of the Judgment	Reported in
1.	Judgment of the Karnataka High Court in the case of CIT & Anr vs. M/s.IBC Knowledge Park Pvt. Ltd., Bangalore	ITA Nos. 403/2009 and connected matters dt:28.04.2016
2.	Order of the ITAT, New Delhi in the case of ACIT vs. Pacl India Ltd.,	ITA No.2637/Del/2010 dt:20.06.2013
3.	Order of the ITAT, Panaji Bench, Panaji In the case of Smt.Sunita Bai vs. DCIT	ITA No.112/PNJ/2014 dt:9.12.2014
4.	Order of ITAT, Agra Bench in the case of ACIT vs.Global Estate	ITA Nos.144 to 149/Agra/2011 dt:30.11.2012
5.	C.B.D.T. Circular	Circular No.24 of 2015 dt:31,12,2015

In addition, the recent circular of the CBDT referred to supra the assessing authority cannot invoke the provisions of Sec. 153C and 153A in the absence of satisfaction as contemplated and there is no material brought out in the assessment order to suggest that the proceedings were validly initiated and accordingly in the light of the above Board circular the assessments should be cancelled.

If the assessing authority of M.M.Prasanna Kumar has recorded satisfaction, then the same is required to be furnished to the appellant for rebuttal before the proceedings u/s.153A of the Act were commenced. The failure on the part of the learned Authority caused

violation of natural justice and the proceedings initiated and the assessment completed thereafter are invalid and consequently the assessments are required to be cancelled. Accordingly, we pray that the assessments as made may kindly be cancelled. In the alternative, if the learned Commissioner (A) proposed to go into the merits of the case, it is prayed that the appellant may kindly be given a fresh opportunity for making submission with regard to the merits of the additions which are under challenge. "

The Id.CIT(A), after calling for remand report from the AO held that there was a search and seizure action in the case of the appellant and there was warrant to search. Accordingly the CIT(A) rejected the contention of the appellant that there was no search and seizure action and search warrant in the name of the Appellant and dismissed the appeal.

5. Being aggrieved, the appellant is before us in the present appeal.

6. The effective ground of appeal raised by the appellant is on the validity of the assessment made under section 153A in the absence of search warrant. The CIT(A) called for remand report from the AO which is as under:

Kind reference is invited to the above.

Vide reference above, the appellant assessee had furnished his written submissions in respect of his appeals for AY 2007-08 to 2012-13 wherein it was stated that the proceedings initiated under section 153A were without jurisdiction and accordingly liable to be cancelled. The assessee further stated that no search was conducted in his case and therefore, the case of the appellant would all u/s.153C rws 153A of the Act.

As seen from the records, the then AO had recorded in the order sheet dt:22.08.2012 that a search u/s.132 was initiated in the case of the assessee at the premises no. 859, 4th A Cross, 11th Main, Koramangala, Bengaluru-560034 and therefore, the notice u/s.153A of the I.T.Act dated 22.08.2012 was issued. Further, as seen from the

records, a search operation u/s.132 was initiated at the above premises of the appellant assessee on 06.02.2012 and concluded on the same date. Therefore, the plea of the assessee that no action u/s. 132 was conducted in the assessee is incorrect.

Further, during the assessment proceedings u/s.153A the assessee had sought copies of sworn statements of several persons vide letter dated 3.07.2013 which were made available to him vide this office letter dated 01.08.2013. Further, in response to subsequent notices u/s. 143(2) and 143(1), the assessee complied with the same and furnished replies/ information called for and the same are available on record. Therefore, the compliance of the assessee to the notices issued during the course of the assessment proceedings is on record. The appellant taking the plea of lack of jurisdiction at the appellate proceedings stage is, therefore, not acceptable. The plea of the assessee that there is no material brought out in the assessment order to suggest that the proceedings were validly initiated has no basis. It is therefore submitted that the proceedings u/s 153A were valid, with jurisdiction and in accordance with the provisions of the I.T.Act.

Submitted to the CIT (A)-11, Bengaluru for kind perusal and necessary Action.

From the remand report, it is clear that there was a search in the premises of the appellant on 22/08/2012 and the appellant never objected before the AO on the validity of the proceedings under section 153A. Even before us, the learned counsel for the appellant has not led any evidence rebutting the findings of the AO in the remand report nor could she give a plausible explanation as to how the appellant could not co-operate in the proceedings before the CIT(A). In the circumstances we do not find any fallacy in the orders of the CIT(A). Further it is

noteworthy that the co-ordinate bench of this Tribunal, in the case of *Shri Peter Caddy vs. Dy.CIT* in ITA Nos.1576 to 1581/Bang/2016 dated 14/07/2017 involving identical facts took similar view.

7. In the result, the appeals filed by the assessee are dismissed.

Order pronounced in the open court on 10th January 2018.

Sd/-

(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

Place : Bengaluru.

D a t e d : 10/01/2018

srinivasulu, sps

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

By order

Senior Private Secretary
Income-tax Appellate Tribunal
Bangalore