

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गराव, न्यायिक सदस्य एवं**  
**श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**  
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

**आयकर अपील सं./I.T.A.Nos.111 & 112/Vizag/2017**  
(निर्धारण वर्ष / Assessment Years: 2007-08 & 2008-09)

Lalitha Devi  
Kakinada  
[PAN No.ACDPL3732F]  
(अपीलार्थी / Appellant)

ACIT, Central Circle  
Rajahmundry  
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri P. Prabhakara Murthy,  
AR  
प्रत्यार्थी की ओर से / Respondent by : Shri Deba Kumar Sonowal,  
DR  
सुनवाई की तारीख / Date of hearing : 12.03.2018  
घोषणा की तारीख / Date of Pronouncement : 04.04.2018

**आदेश / O R D E R**

**PER D.S. SUNDER SINGH, Accountant Member:**

These appeals filed by the assessee are directed against order of the Commissioner of Income Tax (Appeals)-3 {CIT(A)}, Visakhapatnam for the assessment years 2007-08 & 2008-09.

2. Assessee filed return of income in this case on 23.11.2007 admitting total income of Rs.1,47,830/-. Subsequently, a search u/s 132 of the Act was carried out in the group cases of the assessee on 3.2.2009 and assessment was reopened u/s 153C of the Act by invoking the provisions of section 153C of the Act. During the search assessment proceedings, the A.O. found that the assessee had received unsecured loans of Rs.1,61,900/- from various persons. as follows:

1. A. Narendra ₹ 17000
2. Ch. Hanumantha Rao ₹ 15000
3. G. Mani ₹ 17000
4. K. Ramachandra Rao ₹ 16000
5. S. Subba Rao ₹ 17000
6. P. Chandra Sekhar ₹ 16000
7. P. Gayatrinath ₹ 15000
8. M. Rama Krishna ₹ 17000
9. K. Dora Babu ₹ 16000
10. N. Venkateswara Rao ₹ 15000

Since the assessee could not furnish any explanation with regard to the source and nature of credits, the A.O. completed the assessment by making addition of Rs.1,61,000/- and disallowed the interest relating to the unsecured.

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) confirmed the addition made by the A.O. as under:

*8.4) I have carefully considered the written submissions and the facts of the case. There is no dispute regarding the action u/s.132 of the Act carried on 03.02.2008 in the group cases. It is also not disputed by*

*the AR that certain documents were seized wherein the details of income of appellant was mentioned. The AR has raised a doubt as to how the Assessing Officer was satisfied on the said material in order to invoke provisions u/s.153C of the Act. I have perused the material on record. It contains transactions relating to construction of residential house. It is also seen that the appellant and other group members have contested in capital gains claim u/s.54F as well as loans obtained from various persons. These two items have direct bearing on the income of the appellant. In view of the facts discussed above, I consider that the Assessing Officer has correctly assumed jurisdiction u/s.153C. Further, the appellant had complied with the proceedings by filing replies and other details without objection in the assessment proceedings. Though the appellant can agitate on legal issues before the appellate authorities, it cannot be a routine ground beyond reasonable time and without adequate material. In view of the facts and legal position discussed above, the plea of the appellant is rejected and the order of the Assessing Officer is held as valid.*

*8.5) The solitary issue that needs adjudication in this case is cash credits of Rs.1,61,000/- borrowed from 10 people. It is seen from paper book that the appellant has repaid loans to 5 people and remaining 5 people are outstanding. However, during the appellate proceedings, the AR of the appellant filed another paper book on 20.10.2016 which revealed that repayments were made in the case of Sri P. Chandrasekhar (Rs.16,000/-), Sri M. Ramakrishna (Rs.17,000/-), Sri K. Dorababu (Rs.16,000I-) and Sri N. Venkateswara Rao (Rs.15,000/-) prior search action. The remaining 5 were repaid during the year 2010 i.e., subsequent to search.*

*8.6) It is also a fact that the loans were accepted in cash. The AR was asked to substantiate that the payments were reflected in the books or bank account of creditors for which he expressed his inability. The AR was also requested to substantiate the source of creditors either by bank entries or by salary certificate in order to support their claim that these loans were advanced out of their own savings from salary. The AR again expressed his inability to furnish the details. The facts and circumstances of the case have not changed from the assessment proceedings till the appellate proceedings. The fact that remains unchanged is the confirmation letters from creditors. A mere filing of confirmation letters may not absolve the legal responsibility or obligation of appellant in the absence of corroborative evidence with entries in the bank account of appellant and creditors. Such attempt was not made by the appellant even during the remand and appellate proceedings. The confirmation letters and the claim of repayment of Loan remain self serving statements. The rigors of Section 68 are stringent in the case of credits. What the appellant needs to demonstrate is identity,*

*genuineness and creditworthiness of loan creditors. Absence of any one of these elements will render the loan as unexplained and liable to be taxed u/s.68 of the Act. In the instant case, the appellant had failed to prove the genuineness and creditworthiness of creditors.*

*8.7) In view of the above facts and circumstances, I uphold the addition of Rs.1,61,000 - on account of loan creditors made by the Assessing Officer. Having held that the loans a unexplained, the interest claimed by the appellant is also held as unexplained expenditure Accordingly, the claim of the appellant is hereby rejected and the order of the Assessing Officer is confirmed.*

4. Aggrieved by the order of the CIT(A), the assessee is in appeal before us. During the appeal hearing, the Ld. A.R. argued that in this case, the assessee has filed a return of income on 23.11.2007 and the time limit for issue of notice u/s 143(2) of the Act got expired on 30.9.2008. Therefore, the assessment is completed assessment, hence, the additions if any required to be made only on incriminating material but not on the material accounted in the books of accounts. The Ld. A.R. argued that unsecured loans were recorded in the books of accounts as evidenced from the assessment order. Hence, the assessment made by the A.O. u/s 153C of the Act is required to be quashed.

5. On the other hand, the Ld. D.R. strongly supported the orders of the lower authorities.

6. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In this case, the assessee filed return of income on 23.11.2007 and the notice

u/s 143(2) of the Act required to be issued on or before 30.9.2008. Therefore, the assessment is completed assessment. In the case of search assessments, completed assessments should not be disturbed unless the incriminating material is available. Any addition required to be made u/s 153C of the Act is only on the basis of incriminating material but not from the assessment records. This view is supported by the order of this Tribunal in the case of Bhavanasi Anjaneyulu in ITA No.354 and 359/Vizag/2017 dated 19.1.2008 relied up on by the assessee. The ITAT, Visakhapatnam in its order in the case of P.Rama raju in ITA no.424 to 426/Vizag/2013 dated 31/07/2017 expressed the same view relying on the Special bench decision in the case of All cargo Logistics Ltd. The Id. A.R relied on the order of this Tribunal in ITA Nos.300 to 305/Vizag/2012, in case of L. Suryakantham Vs. ACIT, where in the ITAT has considered similar issue and held that the A.O. had no jurisdiction to make additions u/s 153A of the Act, for the assessments which are not pending as on the date of search and also the time limit for issue of notice u/s 143(2) of the Act has been expired. The relevant portion of the order is extracted below:

*19. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The factual matrix of the case is that there was a search action u/s 132 of the Act. During the course of search, incriminating documents found reveals that the assessee has inflated labour charges for the assessment years 2008-09 & 2009-10. Based on the documents found during search, the assessee*

*has accepted that he has inflated 10% labour charges and which is common in this line of business. Consequent to search action u/s 132 of the Act, the assessee case has been centralized and accordingly fresh assessment proceedings have been initiated by issuing notice u/s 153A/153C of the Act for the six assessment years immediately preceding the assessment year in which search was conducted. The assessee has filed revised returns in response to notice u/s 153A of the Act and admitted the additional income disclosed during the course of search. The case has been selected for scrutiny. During the course of assessment proceedings, the assessee was asked to produce books of accounts and relevant bills & vouchers in support of expenditure claimed. In response, the assessee filed written submission and stated that the books of accounts are not available and hence cannot be furnished. Therefore, the A.O. issued a show cause notice and asked to explain why the net profit from the business shall not be estimated.*

*In response to show cause notice, the assessee has filed a written reply and contended that the income for the assessment year 2004-05, 2005-06 and 2007-08 cannot be tinkered with, as there was no incriminating material found during the course of search for the above assessment years and as such no additions can be made to the returned income. It is further submitted that as per sec. 153A of the Act, de-novo assessment can be made only in respect of the assessment year for which the assessment proceedings had been abated and that in respect of assessment years for which the assessment had already been reached a finality, such assessment could not be made u/s 153A of the Act unless there was seized materials.*

*20. The A.O. has passed reassessment orders u/s 153A/153C of the Act for all the six assessment years immediately preceding the year in which search was conducted. According to the A.O., as per the provisions of section 153A of the Act, there is no limitation or restriction provided in the new procedure of search assessments on the powers of A.O. for making assessment/reassessment and the A.O. is not required to confine his assessments on the material found during the course of search as was the case in the old procedure of block assessments. The new procedure of block assessment was explained by way of provisions of section 153A of the Act. As per section 153A of the Act, the A.O. shall assess or reassess the total income of the specified six assessment years irrespective of the fact that the assessment of the said years were completed or pending as on the date of search. Therefore, the A.O. has reassessed the income of six assessment years and recomputed the profits afresh after considering the relevant facts available on record. It was the contention of the assessee that the A.O. cannot disturb the completed assessments unless there was a seized material. The assessee further contended that where assessments are not pending as on the date of search and time*

*limit for issue of notices u/s 143(2) of the Act has been expired, irrespective of the fact that those assessments have been completed u/s 143(1) or 143(3) of the Act, then the A.O. has no power to reassess the income of those completed assessment years.*

*21. We find force in the arguments of the assessee for the reason that the issue no longer res integra, as the issue has been already decided by the ITAT, special bench and held that where the assessments are not pending as on the date of search, the A.O. loses jurisdiction u/s 153A of the Act to reassess the income of those completed assessments. Though the provisions of section 153A of the Act does not specify abated and completed assessments, the natural meaning assigned to it should be given to interpret the provisions in such a way that which shall not cause undue hardship to the tax payers. The provisions of section 153A of the Act explained the procedure of assessments, abated assessments and the manner in which the assessment should be framed, which was further supported by circular no.7 of 2003 issued by the CBDT. When the law has explained the position of abated assessments, then the same way the completed assessment should be treated so as to understand that those assessments are reached finality and which cannot be tinkered with unless there was a seized document. Therefore, we are of the considered opinion that where search is initiated, all pending assessments are merge into one and only one assessment for each assessment year shall be made separately on the basis of findings of search and other material existing or brought on record by the A.O. In respect of non abated or completed assessments, the assessment will be made on the basis of books of accounts or other relevant documents found during the course of search, but not produced in the course of original assessment.*

*22. In the present case on hand, on perusal of the document available on record, we find that the assessment for the assessment year 2004-05 to 2007-08 were not pending as on the date of search. The fact that the assessment has been completed u/s 143(1) & 143(3) of the Act are not material. The time limit for issue of notice u/s 143(2) of the Act has been expired. On further verification of the documents available on record, we find that there was no incriminating documents found during the course of search in respect of assessment year 2004-05 to 2007-08. Therefore, we are of the opinion that the A.O. was not correct in reassessing the total income of the assessment year 2004-05 to 2007-08 in the absence of any seized materials. Accordingly, we direct the A.O. to delete the additions made for the assessment year 2004-05, 2005-06 & 2007-08.*

23. *It is pertinent to discuss herein the case laws relied upon by the assessee. The assessee has relied upon the ITAT, special bench decision in the case of All Cargo Global Logistics Ltd. Vs. DCIT (2012) 137 ITD 287. The coordinate bench of this Tribunal, while deciding the issue in favour of the assessee held as under:*

*"In assessments that are abated, the AO retains the original jurisdiction as well as jurisdiction conferred on him u/s 153A for which assessments shall be made for each of the six assessment years separately. In other cases, in addition to the income that has already been assessed, the assessment u/s 153A will be made on the basis of incriminating material, which in the context of relevant provisions means – (i) books of account, other documents, found in the course of search but not produced in the course of original assessment, and (ii) undisclosed income or property discovered in the course of search."*

24. *The assessee relied upon, A.P. High Court decision in the case of CIT Vs. M/s. AMR India Ltd. in ITTA No.354 of 2014 dated 12.6.2014. The Hon'ble High Court held that the A.O. has no jurisdiction to re-agitate the assessments which were already completed and subsiding. The relevant portion is extracted below:*

*"We have heard Sri J.V. Prasad, learned counsel for the appellant, and gone through the impugned judgement and order of the learned Tribunal.*

*It appears that the learned Tribunal found on fact that after completion of assessment proceedings and after reaching finality thereon, the Assessing Officer tried to reagitate the assessments. According to us, the learned Tribunal has rightly held that the Assessing Officer has no jurisdiction to reagitate the assessments which were already completed and subsisting. We therefore do not find any element of law to be decided in this appeal.*

*Hence, the appeal is dismissed. There will be no order as to costs."*

7. The similar issue has been considered by the Hon'ble ITAT Kolkata bench in the case of Smt. Yamini Agarwal Vs. DCIT (Central Circle)-3, Kolkata reported in 83 Taxman.com 209 after considering the decision of special bench ruling in the case of All Cargo Logistics and the decision of Hon'ble Karnataka High Court in the case of

Canara Housing and the Bombay High Court decision in the case of Anil Kumar Bhatia and expressed a view that in respect of assessments completed prior to the date of search the scope of proceedings u/s 153A of the Act has to be confined only to the material found in the course of search. For the sake of convenience, we extract the relevant para-25 & 26 of the cited order.

*25. We therefore hold that the scope of the proceedings u/s.153A in respect of assessment year for which assessment have already been concluded and which do not abate u/s.153A of the Act, that the assessment will have to be confined to only incriminating material found as a result of search. The next aspect to be considered is as to when returns of income filed u/s.139 of the Act are shown to have been accepted without an intimation u/s.143(1) of the Act or without any notice issued u/s.143(2) of the Act within the time limit contemplated by the proviso thereto, can be said to be assessment proceedings concluded that have not abated u/s.153A of the Act. Section 153A of the Act, uses the expressing "pending assessment or reassessment". When a return is filed and when neither an acknowledgement or intimation u/s.143(1)of the Act is issued nor a notice u/s.143(2) of the Act is issued within the time limit laid down in the proviso to Sec.143(2) of the Act, the proceedings initiated by filing the return are closed. In the present case, the period for issuing the notice u/s 143(2) elapsed. Therefore the process has attained the finality which can only be assailed u/s 148 or 263 of the Act. It can thus be concluded that making of an addition in an assessment under section 153A of the Act, without the backing of incriminating material, is unsustainable even in a case where the original assessment on the date of search stood completed by absence of issue of intimation under section 143(1) of the Act or by not issuing notice u/s.143(2) of the Act within the time limit laid down in the proviso to Sec.143(2) of the Act, results in an assessment proceedings and where such assessment proceedings are completed prior to the date of search then they do not abate in terms of the Second Proviso to section 153A(1) of the Act. The decision of the ITAT Kolkata Bench rendered in the case of Shri Bishwanath Garodia (supra) on identical facts of the case as that of the Assessee in the present case, clearly supports our conclusions as above.*

*26. In the light of the discussion above, our conclusion is that in the present case, the issue dealt with by the AO in the assessment order u/s.153A of the Act, could not and ought not to have been examined by the AO in the assessment proceedings u/s.153A of the Act as the said issue*

*stood concluded with the assessee's return of income being accepted prior to the date of search and no notice having been issued u/s.143(2) of the Act within the time limit laid down in that section. Such assessment did not abate on the date of search which took place on 28.3.2008. In respect of assessments completed prior to the date of search that have not abated, the scope of proceedings u/s.153A of the Act has to be confined only to material found in the course of search. Since no material whatsoever was found in the course of search, the additions made by the AO in the order of assessment for both the Assessment years could not have been subject matter of proceedings u/s.153A of the Act. Consequently, the said various additions made in the orders of Assessment ought not to have or could not be made by the AO. Gr.No.1 raised by the Assessee in both the appeals are accordingly allowed.*

8. As per the provisions of section 153C of the Act also, the A.O. required to issue the notice only on the basis of money, bullion, jewellery, other article or thing seized or requisitioned belonged to or any books of accounts or documents seized or requisitioned pertains to or pertain to the assessee. For ready reference we extract section 153C of the Act, which reads as under;

*"153C(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person [and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (10 of section 153A)."*

9. In view of the above factual and legal position and law, respectfully following the view taken by the coordinate bench of this

Tribunal, we hold that invoking provisions of section 153C of the Act without having incriminating material is bad in law and accordingly we set aside the orders of the lower authorities and allow the appeal of the assessee.

**ITA 112/Vizag/2017:**

10. During the appeal hearing, the Ld. A.R. has not pressed the grounds of appeal raised in this appeal hence the appeal filed by the assessee is dismissed as not pressed.

11. In the result, the appeals filed by the assessee in ITA No.111/Vizag/2017 is allowed and ITA No.112/Vizag/2017 is dismissed.

The above order was pronounced in the open court on Apr'18.

(वी. दुर्गराव)

**(V. DURGA RAO)**

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated :

VG/SPS

(डि.एस. सुन्दर सिंह)

**(D.S. SUNDER SINGH)**

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – Smt. Lalitha Devi, W/o Sri Bhawarlal Jain, D.No.5-3-25, Latchirajuvari Street, Kakinada-533 001, East Godavari District.
2. प्रत्यार्थी / The Respondent – The ACIT, Central Circle, Rajahmundry
3. आयकर आयुक्त / The Principal CIT-2, Visakhapatnam
4. आयकर आयुक्त (अपील) / The CIT (A)-3, Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /  
DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

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Sr. Private Secretary  
ITAT, VISAKHAPATNAM