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

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA Nos. 2013 to 2019/Bang/2017
Assessment Years :2009-10 to 2015-16

Shri Ramappa Chandru, Ahuja Chambers, 204 II Floor, # 1, Kumara Krupa Road, Bangalore – 560 001. **PAN: ACHPC 6860H**	Vs.	The Deputy Commissioner of Income-tax, Central Circle – 2[4], Bangalore.
APPELLANT		RESPONDENT

ITA Nos. 2105 to 2111/Bang/2017
Assessment Years :2009-10 to 2015-16

The Assistant Commissioner of Income-tax, Central Circle – 2(4), Bangalore.	Vs.	Shri Ramappa Chandru, Ahuja Chambers, 204 II Floor, # 1, Kumara Krupa Road, Bangalore – 560 001. **PAN: ACHPC 6860H**
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Shri E.S.N. Prasad, CIT (DR)

Date of hearing	:	12.02.2018
Date of Pronouncement	:	06.04.2018

O R D E R

PER BENCH:

Out of this bunch of these 14 appeals, 7 appeals are filed by the assessee and the remaining 7 appeals are filed by the revenue and all these appeals are directed against a combined order of ld. CIT (A) -11, Bangalore dated 28.08.2017 for Assessment Years 2009-10 to 2015-16. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the assessee in its appeals are as under.

"**Assessment Year 2009-10:-**

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. Without prejudice to the above, in the absence of seizure of any incriminating materials during the course of search relevant for the year under appeal and there being, no assessment proceedings pending by way of issuance of notice u/s.143[2] or 148 of the Act, at the time of search to abate, the invocation of jurisdiction u/s.153A of the Act, is bad in law and the consequential assessment u/s.153A read with 143[3] is also bad in law and requires to be annulled having regard to the ratio of the following decisions made in view of the fact the Hon'ble Supreme Court stayed the operation of the order of ***the Hon'ble Delhi High Court in the case of SMT. DAYAWANTI & ORS reported in 390 ITR 496 (Del) by its order dated 07/10/2017*** *:*

1) ***IBC KNOWLEDGE PARK LIMITED reported in 385 ITR 346 [Kar];***
2) ***DIPAK JASHVANTLAL PANCHAL reported in 397 ITR 153 (Guj)***
3) ***SAUMYA CONSTRUCTIONS PVT. LTD. reported in 387 ITR 529 (Guj)***
4) ***DESAI CONSTRUCTION P. LTD., reported in 387 ITR 552 [Guj]***
5) ***CONTINENTAL WAREHOUSING CORPN. [NHAVA SHEVA] LTD., reported in 374 ITR 654 (Bom)***
6) ***CIT V. SINHGAD TECHNICAL EDUCATION SOCIETY reported in 378 ITR 84 (Bom] affirmed by the Hon'ble Supreme Court in 297 CTR 441 (SC)***
7) ***CIT V. KABUL CHAWLA reported in 380 ITR 573 (Del)***
8) ***MEETA GUTGUTIA PROP. M/s. FERNS "N" PETALS reported in 395 ITR 526 (Del)***
9) ***Ms. LATHA JAIN reported in 384 ITR 543 (Del)***

2.1 Without prejudice to the above, the impugned search proceedings in the case of the appellant are bad in law and are ultra-vires the provisions of Section 132[1][a], [b] and [c] of the Act, which have not been contradicted by the authorities below despite having contended before them and therefore deemed to have been accepted by the doctrine of non-traverse and therefore the impugned order is bad in law and patently illegal and requires to be cancelled as void-ab-initio having regard to the parity of the ratio of the ***Hon'ble Supreme Court in the case of AJITH JAIN reported in 260 ITR 80 and the Hon'ble Karnataka High Court in the case of C. RAMAIAH REDDY reported in 339 ITR 210****.*

3. Without prejudice to the above, the learned CIT[A] is not justified in confirming the addition of Rs. 1,20,60,000/- being the aggregate cash deposits in the bank account of the appellant, which was not an incriminating seized material at all but one obtained from the bank in

the post search proceedings out of the earlier withdrawals made from the very same bank account by rejecting the explanation on most unsustainable grounds, which is purely out of suspicion and surmise and consequently, the addition made requires to be deleted.

3.1 The learned CIT [A] failed to appreciate the fact that the income reported by the appellant on estimate basis itself was Rs. 2,04,96,539/-, which was far greater than the extent of deposits of Rs. 1,20,60,000/- drawn from the very same bank account and the source by way of such withdrawals was to make the deposits fully substantiated and self-manifest which was not disputed at all and consequently, the addition made requires to be deleted.

4. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

4.1 The learned A.O. failed to appreciate that the income of the appellant by way of contract as well as from operating the wine stores was subject to TDS/TCS and in view of that, there was no obligation for the appellant to file an estimate of advance-tax consequently there was no justification to charge interest u/s.234B of the Act, having regard to ***the parity ratio of the decision of the Hon'ble Supreme Court in the case of PETER MORRIS reported in 389 ITR 501 [SC]****.*

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

Assessment Year 2010-11:-

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. Without prejudice to the above, in the absence of seizure of any incriminating materials during the course of search relevant for the year under appeal and there being, no assessment proceedings pending by way of issuance of notice u/s.143[2] or 148 of the Act, at the time of search to abate, the invocation of jurisdiction u/s.153A of the Act, is bad in law and the consequential assessment u/s.153A read with 143[3] is also bad in law and requires to be annulled having regard to the ratio of the following decisions made in view of the fact the Hon'ble Supreme Court stayed the operation of the order of ***the Hon'ble Delhi High Court in the case of SMT. DAYAWANTI & ORS reported in 390 ITR 496 (Del) by its order dated 07/10/2017*** *:*

1) ***IBC KNOWLEDGE PARK LIMITED reported in 385 ITR 346 [Kar];***
2) ***DIPAK JASHVANTLAL PANCHAL reported in 397 ITR 153 (Guj)***
3) ***SAUMYA CONSTRUCTIONS PVT. LTD. reported in 387 ITR 529 (Guj)***
4) ***DESAI CONSTRUCTION P. LTD., reported in 387 ITR 552 [Guj]***
5) ***CONTINENTAL WAREHOUSING CORPN. [NHAVA SHEVA] LTD., reported in 374 ITR 654 (Bom)***
6) ***CIT V. SINHGAD TECHNICAL EDUCATION SOCIETY reported in 378 ITR 84 (Bom] affirmed by the Hon'ble Supreme Court in 297 CTR 441 (SC)***
7) ***CIT V. KABUL CHAWLA reported in 380 ITR 573 (Del)***
8) ***MEETA GUTGUTIA PROP. M/s. FERNS "N" PETALS reported in 395 ITR 526 (Del)***
9) ***Ms. LATHA JAIN reported in 384 ITR 543 (Del)***

2.1 Without prejudice to the above, the impugned search proceedings in the case of the appellant are bad in law and are ultra-vires the provisions of Section 132[1][a], [b] and [c] of the Act, which have not been contradicted by the authorities below despite having contended before them and therefore deemed to have been accepted by the doctrine of non-traverse and therefore the impugned order is bad in law and patently illegal and requires to be cancelled as void-ab-initio having regard to the parity of the ratio of the ***Hon'ble Supreme Court in the case of AJITH JAIN reported in 260 ITR 80 and the Hon'ble Karnataka High Court in the case of C. RAMAIAH REDDY reported in 339 ITR 210****.*

3. Without prejudice to the above, the learned CIT[A] is not justified in confirming the addition of Rs. 68,99,500/- being the aggregate cash deposits in the bank account of the appellant, which was not an incriminating seized material at all but one obtained from the bank in the post search proceedings out of the earlier withdrawals made from the very same bank account by rejecting the explanation on most unsustainable grounds, which is purely out of suspicion and surmise and consequently, the addition made requires to be deleted.

3.1 The learned CIT[A] failed to appreciate the fact that the income reported by the appellant on estimate basis itself was Rs. 4,37,45,474/-, which was far greater than the extent of deposits of Rs. 68,99,500/- drawn from the very same bank account and the source by way of such withdrawals was to make the deposits fully substantiated and self-manifest which was not disputed at all and consequently, the addition made requires to be deleted.

4. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

4.1 The learned A.O. failed to appreciate that the income of the appellant by way of contract as well as from operating the wine stores was subject to TDS/TCS and in view of that, there was no obligation for the appellant to file an estimate of advance-tax consequently there was no justification to charge interest u/s.234B of the Act, having regard to ***the parity ratio of the decision of the Hon'ble Supreme Court in the case of PETER MORRIS reported in 389 ITR 501 [SC]****.*

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

Assessment Year 2011-12:-

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. Without prejudice to the above, in the absence of seizure of any incriminating materials during the course of search relevant for the year under appeal and there being, no assessment proceedings pending by way of issuance of notice u/s.143[2] or 148 of the Act, are pending at the time of search to abate, the invocation of jurisdiction u/s.153A of the Act, is bad in law and the consequential assessment u/s.153A read with 143[3] is also bad in law and requires to be annulled having regard to the ratio of the following decisions made in view of the fact the Hon'ble Supreme Court stayed the operation of the order of ***the Hon'ble Delhi High Court in the case of SMT. DAYAWANTI & ORS reported in 390 ITR 496 (Del) by its order dated 07/10/2017*** *:*

1) ***IBC KNOWLEDGE PARK LIMITED reported in 385 ITR 346 [Kar];***
2) ***DIPAK JASHVANTLAL PANCHAL reported in 397 ITR 153 (Guj)***
3) ***SAUMYA CONSTRUCTIONS PVT. LTD. reported in 387 ITR 529 (Guj)***
4) ***DESAI CONSTRUCTION P. LTD., reported in 387 ITR 552 [Guj]***
5) ***CONTINENTAL WAREHOUSING CORPN. [NHAVA SHEVA] LTD., reported in 374 ITR 654 (Bom)***
6) ***CIT V. SINHGAD TECHNICAL EDUCATION SOCIETY reported in 378 ITR 84 (Bom] affirmed by the Hon'ble Supreme Court in 297 CTR 441 (SC)***
7) ***CIT V. KABUL CHAWLA reported in 380 ITR 573 (Del)***
8) ***MEETA GUTGUTIA PROP. M/s. FERNS "N" PETALS reported in 395 ITR 526 (Del)***
9) ***Ms. LATHA JAIN reported in 384 ITR 543 (Del)***

3. The authorities below failed to appreciate that the appellant filed the return originally on 30/09/2011 estimating the income from contract at 8% and no proceedings were initiated by issuance of

notice u/s.143[2] of the Act, to make an assessment u/s.143[3] of the Act or u/s.148 of the Act, to make an assessment and finality was reached in the matter of assessment to consider an) such proceedings being pending at the time of search to abate and therefore, the notice u/s.153A of the Act, in the absence of seizure of any incriminating materials relating to the assessment year under appeal by the invocation of jurisdiction u/s.153A of the Act, is bad in law and consequential assessment made requires to be annulled having regard to the ratio of the decision of ***the Hon'ble Supreme Court in the case of CIT V. SINHGAD TECHNICAL EDUCATION SOCIETY reported in 297 CTR 441 (SC)***

4. Without prejudice to the above, the learned CIT[A] is not justified in sustaining the estimation of income from contract receipts at 10% as against 8% reported by the appellant on estimate under the facts and in the circumstances of the appellant's case in the absence of any incriminating seized material relevant for the assessment year under appeal to warrant a conclusion that the appellant has not made a full disclosure of income as the assessment records by way of return of income and orders for the assessment years 2009-10 and 2010-11, which were relied upon by the learned CIT[A] to estimate the income at 10% as against the estimate of 8% were neither found or seized during the search or even if they were to be considered as seized during search, they do not constitute incriminating seized material as they were already with the department.

5.1 Without prejudice to the above, the learned CIT[A] is not justified in estimating the income from contract receipt at 10% in as much as the appellant brought to his notice that in the same Commissionerate income from contracts was estimated at 8%.

5.2 The addition made is purely on suspicion and surmise, assumptions and presumptions and contrary to evidence on record and consequently, the same requires to be deleted.

6. Without prejudice to the above, the impugned search proceedings in the case of the appellant are bad in law and are ultra-vires the provisions of Section 132[1][a], [b] and [c] of the Act, which have not been contradicted by the authorities below despite having contended before them and therefore deemed to have been accepted by the doctrine of non-traverse and therefore the impugned order is bad in law and patently illegal and requires to be cancelled as void-ab-initio having regard to the parity of the ratio of ***the Hon'ble Supreme Court in the case of AJITH JAIN reported in 260 ITR 80 and the Hon'ble Karnataka High Court in the case of C. RAMAIAH REDDY reported in 339 ITR 210****.*

7. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest

u/s. 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

7.1 The learned A.O. failed to appreciate that the income of the appellant by way of contract as well as from operating the wine stores was subject to TDS/TCS and in view of that, there was no obligation for the appellant to file an estimate of advance-tax consequently there was no justification to charge interest u/s.234B of the Act, having regard to ***the parity ratio of the decision of the Hon'ble Supreme Court in the case of PETER MORRIS reported in 389 ITR 501 [SC]****.*

8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

Assessment Year 2012-13:-

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. Without prejudice to the above, in the absence of seizure of any incriminating materials during the course of search relevant for the year under appeal and there being, no assessment proceedings pending by way of issuance of notice u/s.143[2] or 148 of the Act, are pending at the time of search to abate, the invocation of jurisdiction u/s.153A of the Act, is bad in law and the consequential assessment u/s.153A read with 143[3] is also bad in law and requires to be annulled having regard to the ratio of the following decisions made in view of the fact the Hon'ble Supreme Court stayed the operation of the order of ***the Hon'ble Delhi High Court in the case of SMT. DAYAWANTI & ORS reported in 390 ITR 496 (Del) by its order dated 07/10/2017*** *:*

1) ***IBC KNOWLEDGE PARK LIMITED reported in 385 ITR 346 [Kar];***
2) ***DIPAK JASHVANTLAL PANCHAL reported in 397 ITR 153 (Guj)***
3) ***SAUMYA CONSTRUCTIONS PVT. LTD. reported in 387 ITR 529 (Guj)***
4) ***DESAI CONSTRUCTION P. LTD., reported in 387 ITR 552 [Guj]***
5) ***CONTINENTAL WAREHOUSING CORPN. [NHAVA SHEVA] LTD., reported in 374 ITR 654 (Bom)***
6) ***CIT V. SINHGAD TECHNICAL EDUCATION SOCIETY reported in 378 ITR 84 (Bom] affirmed by the Hon'ble Supreme Court in 297 CTR 441 (SC)***
7) ***CIT V. KABUL CHAWLA reported in 380 ITR 573 (Del)***
8) ***MEETA GUTGUTIA PROP. M/s. FERNS "N" PETALS reported in 395 ITR 526 (Del)***
9) ***Ms. LATHA JAIN reported in 384 ITR 543 (Del)***

3. The authorities below failed to appreciate that the appellant filed the return originally on 28/09/2012 estimating the income from contract at 8% and no proceedings were initiated by issuance of notice u/s.143[2] of the Act, to make an assessment u/s.143[3] of the Act or u/s.148 of the Act, to make an assessment and finality was reached in the matter of assessment to consider an) such proceedings being pending at the time of search to abate and therefore, the notice u/s.153A of the Act, in the absence of seizure of any incriminating materials relating to the assessment year under appeal by the invocation of jurisdiction u/s.153A of the Act, is bad in law and consequential assessment made requires to be annulled having regard to the ratio of the decision of ***the Hon'ble Supreme Court in the case of CIT V. SINHGAD TECHNICAL EDUCATION SOCIETY reported in 297 CTR 441 (SC)***

4. Without prejudice to the above, the learned CIT[A] is not justified in sustaining the estimation of income from contract receipts at 10% as against 8% reported by the appellant on estimate under the facts and in the circumstances of the appellant's case in the absence of any incriminating seized material relevant for the assessment year under appeal to warrant a conclusion that the appellant has not made a full disclosure of income as the assessment records by way of return of income and orders for the assessment years 2009-10 and 2010-11, which were relied upon by the learned CIT[A] to estimate the income at 10% as against the estimate of 8% were neither found or seized during the search or even if they were to be considered as seized during search, they do not constitute incriminating seized material as they were already with the department.

4.1 Without prejudice to the above, the learned CIT[A] is not justified in sustaining an addition of Rs. 3,60,000/- being the aggregate of cash deposits in the bank account of the appellant, which was not an incriminating seized material at all but one obtained from the bank in the post search proceedings out of the earlier withdrawals made from the very same bank account by rejecting the explanation on most unsustainable grounds, which is purely out of suspicion and surmise and consequently, the addition made requires to be deleted on merits.

4.2 The learned CIT[A] failed to appreciate the fact that the income reported by the appellant on estimate basis is itself is Rs.5,91,46,190/- , which is far greater than the extent of amounts drawn of Rs.10,31,63,000/- to make the impugned extent of deposits of Rs.3,60,000/- drawn from the very same bank account and the source by way of such withdrawals is to make the deposits fully substantiated and self-manifest which is not disputed at all and consequently, the addition made requires to be deleted on merits.

5.1 Without prejudice to the above, the learned CIT[A] is not justified in estimating the income from contract receipt at 10% in as much as

the appellant brought to his notice that in the same Commissionarate income from contracts was estimated at 8%.

5.2 The addition made is purely on suspicion and surmise, assumptions and presumptions and contrary to evidence on record and consequently, the same requires to be deleted.

6. Without prejudice to the above, the impugned search proceedings in the case of the appellant are bad in law and are ultra-vires the provisions of Section 132[1][a], [b] and [c] of the Act, which have not been contradicted by the authorities below despite having contended before them and therefore deemed to have been accepted by the doctrine of non-traverse and therefore the impugned order is bad in law and patently illegal and requires to be cancelled as void-ab-initio having regard to the parity of the ratio of ***the Hon'ble Supreme Court in the case of AJITH JAIN reported in 260 ITR 80 and the Hon'ble Karnataka High Court in the case of C. RAMAIAH REDDY reported in 339 ITR 210****.*

7. The learned CIT[A] is not justified in directing the learned A.O. to assess a sum of Rs.3,00,00,000/- as additional income offered on the basis of a statement given during the course of search for non-maintenance of books of accounts and withdrawal of cash for incurring the expenditure and NOT ON THE GROUND OF ANY SUPPRESSION OF INCOME, which he had initially erroneously offered in the return, which was withdrawn in time before receipt of the order by filing a revised return and the learned A.O. on his own has also not made any addition at all, in the exercise of his appellate powers, which apart from not being justified on merits technically in effect an enhancement of income by CIT[A] which is not in conformity with the procedure for making the enhancement accordingly, the direction to assess such income not assessed by the A.O. requires to be deleted.

7.1 Without prejudice to the above, the income so directed to be assessed by the learned CIT[A] requires to be telescoped with such income similarly directed to be assessed by him in the subsequent years in addition to the additions made by the learned A.O. and sustained by the learned CIT[A] which were telescoped by him during the previous year relevant to the assessment year under appeal.

8. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

Assessment Year 2013-14:-

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence,

probabilities, facts and circumstances of the case.

2. Without prejudice to the above, in the absence of seizure of any incriminating materials during the course of search relevant for the year under appeal and there being, no assessment proceedings pending by way of issuance of notice u/s.143[2] or 148 of the Act, are pending at the time of search to abate, the invocation of jurisdiction u/s.153A of the Act, is bad in law and the consequential assessment u/s.153A read with 143[3] is also bad in law and requires to be annulled having regard to the ratio of the following decisions made in view of the fact the Hon'ble Supreme Court stayed the operation of the order of ***the Hon'ble Delhi High Court in the case of SMT. DAYAWANTI & ORS reported in 390 ITR 496 (Del) by its order dated 07/10/2017*** *:*

1) ***IBC KNOWLEDGE PARK LIMITED reported in 385 ITR 346 [Kar];***
2) ***DIPAK JASHVANTLAL PANCHAL reported in 397 ITR 153 (Guj)***
3) ***SAUMYA CONSTRUCTIONS PVT. LTD. reported in 387 ITR 529 (Guj)***
4) ***DESAI CONSTRUCTION P. LTD., reported in 387 ITR 552 [Guj]***
5) ***CONTINENTAL WAREHOUSING CORPN. [NHAVA SHEVA] LTD., reported in 374 ITR 654 (Bom)***
6) ***CIT V. SINHGAD TECHNICAL EDUCATION SOCIETY reported in 378 ITR 84 (Bom] affirmed by the Hon'ble Supreme Court in 297 CTR 441 (SC)***
7) ***CIT V. KABUL CHAWLA reported in 380 ITR 573 (Del)***
8) ***MEETA GUTGUTIA PROP. M/s. FERNS "N" PETALS reported in 395 ITR 526 (Del)***
9) ***Ms. LATHA JAIN reported in 384 ITR 543 (Del)***

3. The authorities below failed to appreciate that the appellant filed the return originally on 27/09/2013 estimating the income from contract at 8% and no proceedings were initiated by issuance of notice u/s.143[2] of the Act, to make an assessment u/s.143[3] of the Act or u/s.148 of the Act, to make an assessment and finality was reached in the matter of assessment to consider an) such proceedings being pending at the time of search to abate and therefore, the notice u/s.153A of the Act, in the absence of seizure of any incriminating materials relating to the assessment year under appeal by the invocation of jurisdiction u/s.153A of the Act, is bad in law and consequential assessment made requires to be annulled having regard to the ratio of the decision of ***the Hon'ble Supreme Court in the case of CIT V. SINHGAD TECHNICAL EDUCATION SOCIETY reported in 297 CTR 441 (SC)***

4. Without prejudice to the above, the learned CIT[A] is not justified in sustaining the estimation of income from contract receipts at 10% as against 8% reported by the appellant on estimate under the facts and in the circumstances of the appellant's case in the absence of any incriminating seized material relevant for the assessment year under

appeal to warrant a conclusion that the appellant has not made a full disclosure of income as the assessment records by way of return of income and orders for the assessment years 2009-10 and 2010-11, which were relied upon by the learned CIT[A] to estimate the income at 10% as against the estimate of 8% were neither found or seized during the search or even if they were to be considered as seized during search, they do not constitute incriminating seized material as they were already with the department.

4.1 Without prejudice to the above, the learned CIT[A] is not justified in sustaining an addition of Rs. 5,94,000/- being the aggregate of cash deposits in the bank account of the appellant, which was not an incriminating seized material at all but one obtained from the bank in the post search proceedings out of the earlier withdrawals made from the very same bank account by rejecting the explanation on most unsustainable grounds, which is purely out of suspicion and surmise and consequently, the addition made requires to be deleted on merits.

4.2 The learned CIT[A] failed to appreciate the fact that the income reported by the appellant on estimate basis is itself is Rs. 1,54,93,230/-, which is far greater than the extent of amounts drawn of Rs. 43,85,000/- to make the impugned extent of deposits of Rs. 5,94,000/- drawn from the very same bank account and the source by way of such withdrawals is to make the deposits fully substantiated and self-manifest which is not disputed at all and consequently, the addition made requires to be deleted on merits.

5.1 Without prejudice to the above, the learned CIT[A] is not justified in estimating the income from contract receipt at 10% in as much as the appellant brought to his notice that in the same Commissionarate income from contracts was estimated at 8%.

5.2 The addition made is purely on suspicion and surmise, assumptions and presumptions and contrary to evidence on record and consequently, the same requires to be deleted.

6. The learned CIT[A] is not justified in sustaining an addition of a sum of Rs.54,00,000/- made by the learned A.O. in respect of the payment made to one Sri N.P.Mahesh, on 07/09/2012 as unexplained investment despite the fact there were enough resources with the appellant to make the payment, on an irrelevant and slender ground that the agreement pursuant to which payment was made got cancelled and the said person returned the money and the non-production of the cancellation agreement has nothing to do with the of funds to make the payment and thus, the addition confirmed by CIT[A] is on irrelevant ground and requires to be deleted on merits he held the same requires to be telescoped by the additions confirmed by him in the order.

7. The learned CIT[A] is not justified in directing the learned A.O. to assess a sum of Rs.1,80,00,000/- as additional income offered on the basis of a statement given during the course of search for non-maintenance of books of accounts and withdrawal of cash for incurring the expenditure and NOT ON THE GROUND OF ANY SUPPRESSION OF INCOME, which he had initially erroneously offered in the return, which was withdrawn in time before receipt of the order by filing a revised return and the learned A.O. on his own has also not made any addition at all, in the exercise of his appellate powers, which apart from not being justified on merits technically in effect an enhancement of income by CIT[A] which is not in conformity with the procedure for making the enhancement accordingly, the direction to assess such income not assessed by the A.O. requires to be deleted.

7.1 Without prejudice to the above, the income so directed to be assessed by the learned CIT[A] requires to be telescoped with such income similarly directed to be assessed by him in the subsequent years in addition to the additions made by the learned A.O. and sustained by the learned CIT[A] which were telescoped by him during the previous year relevant to the assessment year under appeal.

8. Without prejudice to the above, the impugned search proceedings in the case of the appellant are bad in law and are ultra-vires the provisions of Section 132[1][a], [b] and [c] of the Act, which have not been contradicted by the authorities below despite having contended before them and therefore deemed to have been accepted by the doctrine of non-traverse and therefore the impugned order is bad in law and patently illegal and requires to be cancelled as void-ab-initio having regard to the parity of the ratio of ***the Hon'ble Supreme Court in the case of AJITH JAIN reported in 260 ITR 80 and the Hon'ble Karnataka High Court in the case of C. RAMAIAH REDDY reported in 339 ITR 210****.*

9. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

9.1 The learned A.O. failed to appreciate that the income of the appellant by way of contract as well as from operating the wine stores was subject to TDS/TCS and in view of that, there was no obligation for the appellant to file an estimate of advance-tax consequently there was no justification to charge interest u/s.234B of the Act, having regard to ***the parity ratio of the decision of the Hon'ble Supreme Court in the case of PETER MORRIS reported in 389 ITR 501 [SC]****.*

10. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal

may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

Assessment Year 2014-15:-

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. Without prejudice to the above, in the absence of seizure of any incriminating materials during the course of search relevant for the year under appeal and there being, no assessment proceedings pending by way of issuance of notice u/s.143[2] or 148 of the Act, are pending at the time of search to abate, the invocation of jurisdiction u/s.153A of the Act, is bad in law and the consequential assessment u/s.153A read with 143[3] is also bad in law and requires to be annulled having regard to the ratio of the following decisions made in view of the fact the Hon'ble Supreme Court stayed the operation of the order of ***the Hon'ble Delhi High Court in the case of SMT. DAYAWANTI & ORS reported in 390 ITR 496 (Del) by its order dated 07/10/2017*** *:*

1) ***IBC KNOWLEDGE PARK LIMITED reported in 385 ITR 346 [Kar];***
2) ***DIPAK JASHVANTLAL PANCHAL reported in 397 ITR 153 (Guj)***
3) ***SAUMYA CONSTRUCTIONS PVT. LTD. reported in 387 ITR 529 (Guj)***
4) ***DESAI CONSTRUCTION P. LTD., reported in 387 ITR 552 [Guj]***
5) ***CONTINENTAL WAREHOUSING CORPN. [NHAVA SHEVA] LTD., reported in 374 ITR 654 (Bom)***
6) ***CIT V. SINHGAD TECHNICAL EDUCATION SOCIETY reported in 378 ITR 84 (Bom] affirmed by the Hon'ble Supreme Court in 297 CTR 441 (SC)***
7) ***CIT V. KABUL CHAWLA reported in 380 ITR 573 (Del)***
8) ***MEETA GUTGUTIA PROP. M/s. FERNS "N" PETALS reported in 395 ITR 526 (Del)***
9) ***Ms. LATHA JAIN reported in 384 ITR 543 (Del)***

3. The authorities below failed to appreciate that the appellant filed the return originally on 27/06/2016 estimating the income from contract at 8% and no proceedings were initiated by issuance of notice u/s.143[2] of the Act, to make an assessment u/s.143[3] of the Act or u/s.148 of the Act, to make an assessment and finality was reached in the matter of assessment to consider an) such proceedings being pending at the time of search to abate and therefore, the notice u/s.153A of the Act, in the absence of seizure of any incriminating materials relating to the assessment year under appeal by the invocation of jurisdiction u/s.153A of the Act, is bad in law and consequential assessment made requires to be annulled having regard to the ratio of the decision of ***the Hon'ble Supreme Court in the case***

of CIT V. SINHGAD TECHNICAL EDUCATION SOCIETY reported in 297 CTR 441 (SC)

4. Without prejudice to the above, the learned CIT[A] is not justified in sustaining the estimation of income from contract receipts at 10% as against 8% reported by the appellant on estimate under the facts and in the circumstances of the appellant's case in the absence of any incriminating seized material relevant for the assessment year under appeal to warrant a conclusion that the appellant has not made a full disclosure of income as the assessment records by way of return of income and orders for the assessment years 2009-10 and 2010-11, which were relied upon by the learned CIT[A] to estimate the income at 10% as against the estimate of 8% were neither found or seized during the search or even if they were to be considered as seized during search, they do not constitute incriminating seized material as they were already with the department.

4.1 Without prejudice to the above, the learned CIT[A] is not justified in sustaining an addition of Rs. 2,80,000/- being the aggregate of cash deposits in the bank account of the appellant, which was not an incriminating seized material at all but one obtained from the bank in the post search proceedings out of the earlier withdrawals made from the very same bank account by rejecting the explanation on most unsustainable grounds, which is purely out of suspicion and surmise and consequently, the addition made requires to be deleted on merits.

4.2 The learned CIT[A] failed to appreciate the fact that the income reported by the appellant on estimate basis is itself is Rs. 2,42,49,060/-, which is far greater than the extent of amounts drawn of Rs. 1,93,00,000/- to make the impugned extent of deposits of Rs. 2,80,000/- drawn from the very same bank account and the source by way of such withdrawals is to make the deposits fully substantiated and self-manifest which is not disputed at all and consequently, the addition made requires to be deleted on merits.

5.1 Without prejudice to the above, the learned CIT[A] is not justified in estimating the income from contract receipt at 10% in as much as the appellant brought to his notice that in the same Commissionarate income from contracts was estimated at 8%.

5.2 The addition made is purely on suspicion and surmise, assumptions and presumptions and contrary to evidence on record and consequently, the same requires to be deleted.

6. The learned CIT[A] is not justified in directing the learned A.O. to assess a sum of Rs.1,70,00,000/- as additional income offered on the basis of a statement given during the course of search for non-maintenance of books of accounts and withdrawal of cash for incurring the expenditure and NOT ON THE GROUND OF ANY

SUPPRESSION OF INCOME, which he had initially erroneously offered in the return, which was withdrawn in time before receipt of the order by filing a revised return and the learned A.O. on his own has also not made any addition at all, in the exercise of his appellate powers, which apart from not being justified on merits technically in effect an enhancement of income by CIT[A] which is not in conformity with the procedure for making the enhancement accordingly, the direction to assess such income not assessed by the A.O. requires to be deleted.

7.1 Without prejudice to the above, the income so directed to be assessed by the learned CIT[A] requires to be telescoped with such income similarly directed to be assessed by him in the subsequent years in addition to the additions made by the learned A.O. and sustained by the learned CIT[A] which were telescoped by him during the previous year relevant to the assessment year under appeal.

7. Without prejudice to the above, the impugned search proceedings in the case of the appellant are bad in law and are ultra-vires the provisions of Section 132[1][a], [b] and [c] of the Act, which have not been contradicted by the authorities below despite having contended before them and therefore deemed to have been accepted by the doctrine of non-traverse and therefore the impugned order is bad in law and patently illegal and requires to be cancelled as void-ab-initio having regard to the parity of the ratio of ***the Hon'ble Supreme Court in the case of AJITH JAIN reported in 260 ITR 80 and the Hon'ble Karnataka High Court in the case of C. RAMAIAH REDDY reported in 339 ITR 210****.*

8. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

8.1 The learned A.O. failed to appreciate that the income of the appellant by way of contract as well as from operating the wine stores was subject to TDS/TCS and in view of that, there was no obligation for the appellant to file an estimate of advance-tax consequently there is no justification to charge interest u/s.234B of the Act, having regard to ***the parity ratio of the decision of the Hon'ble Supreme Court in the case of PETER MORRIS reported in 389 ITR 501 [SC].***

9. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

Assessment Year 2015-16:-

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2.1 The learned CIT[A] is not justified in estimating the income from contract receipt at 10% in as much as the appellant brought to his notice that in the same Commissionarate income from contracts was estimated at 8%.

2.2 The addition made is purely on suspicion and surmise, assumptions and presumptions and contrary to evidence on record and consequently, the same requires to be deleted.

3. The learned CIT[A] is not justified in sustaining the additions of Rs.4,27,410/- and Rs.7,76,756/- being the cash and foreign currency found and seized during the course of search under the facts and in the circumstances of the appellant's case.

3.1 Without prejudice to the above, the learned CIT[A] failed to appreciate that the income reported of Rs. 1,93,99,290/- from contract business as well as from wine stores for the previous year relevant to the assessment year under appeal and taking into account such income earned by the appellant not only for the previous year but for earlier years also and its accumulation, there is no justification for making the impugned addition and consequently, the addition made requires to be deleted on merits.

4. The learned A.O. is not justified in sustaining a sum of Rs. 25,00,000/- made by the A.O. as unexplained income u/s.69 of the Act, under the facts and in the circumstances of the appellant's case.

4.1 Without prejudice to the above, the learned CIT[A] failed to appreciate that the income reported of Rs. 1,93,99,290/- from contract business as well as from wine stores for the previous year relevant to the assessment year under appeal and taking into account such income earned by the appellant not only for the previous year but for earlier years also and its accumulation, there is no justification for making the impugned addition and consequently, the addition made requires to be deleted on merits.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

5.1 The learned A.O. failed to appreciate that the income of the appellant by way of contract as well as from operating the wine stores was subject to TDS/TCS and in view of that, there was no obligation

for the appellant to file an estimate of advance-tax consequently there was no justification to charge interest u/s.234B of the Act, having regard to ***the parity ratio of the decision of the Hon'ble Supreme Court in the case of PETER MORRIS reported in 389 ITR 501 [SC].***

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

3. The grounds raised by the revenue in its appeals are as under.

"**Assessment Year 2009-10:-**

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in restricting the addition made by the Assessing Officer on the estimation @ 9% as against assessed @ 12% of Gross receipts in the hands of assessee?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) was right in deleting the addition of Rs.75,38,567/- made by the Assessing Officer on account of profit on the contract receipts of various persons in the hands of the assessee in spite of the fact that the assessee only managed all the contracts/transactions of the said persons?

3. Any other grounds that may arise at the time of hearing.

Assessment Year 2010-11:-

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in restricting the addition made by the Assessing Officer on the estimation @ 10.5% as against assessed @ 12% of Gross receipts in the hands of assessee?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in deleting the addition of Rs.7,83,73,237/- made by the Assessing Officer on account of profit on the contract receipts of various persons in the hands of the assessee in spite of the fact that the assessee only managed all the contracts/transactions of the said persons?

3. Any other grounds that may arise at the time of hearing.

Assessment Year 2011-12:-

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in restricting the addition made by the Assessing

Officer on the estimation @ 10% as against assessed @ 12% of Gross receipts in the hands of assessee?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in deleting the addition of Rs. 10,91,63,775/- made by the Assessing Officer on account of profit on the contract receipts of various persons in the hands of the assessee in spite of the fact that the assessee only managed all the contracts/transactions of the said persons?

3. Any other grounds that may arise at the time of hearing.

Assessment Year 2012-13:-

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in restricting the addition made by the Assessing Officer on the estimation @ 10% as against assessed @ 12% of Gross receipts in the hands of assessee?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in deleting the addition of Rs.8,52,45,730/- made by the Assessing Officer on account of profit on the contract receipts of various persons in the hands of the assessee in spite of the fact that the assessee only managed all the contracts/ transactions of the said persons?

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in directing the Assessing Officer to telescope the addition made by the Assessing Officer on account of cash deposits of Rs 3,60,000/-with the addition sustained by estimating the income @10% of gross receipt?

4. Any other grounds that may arise at the time of hearing.

Assessment Year 2013-14:-

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in restricting the addition made by the Assessing Officer on the estimation @ 10% as against assessed @ 12% of Gross receipts in the hands of assessee?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in deleting the addition of Rs.6,57,71,890/- made by the Assessing Officer on account of profit on the contract receipts of various persons in the hands of the assessee in spite of the fact that the assessee only managed all the contracts/transactions of the said persons?

3. Whether on the facts and in the circumstances of the case, the Ld.

CIT(A) was right in directing the Assessing Officer to telescope the addition made by the Assessing Officer on account of cash deposits of Rs 5,94,000 /and unexplained investment of Rs 54,00,000/- with the addition sustained by estimating the income @10% of gross receipt?

4. Any other grounds that may arise at the time of hearing.

Assessment Year 2014-15:-

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in restricting the addition made by the Assessing Officer on the estimation @ 10% as against assessed @ 12% of Gross receipts in the hands of assessee?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in deleting the addition of Rs.8,52,45,730/- made by the Assessing Officer on account of profit on the contract receipts of various persons in the hands of the assessee in spite of the fact that the assessee only managed all the contracts/transactions of the said persons?

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in directing the Assessing Officer to telescope the addition made by the Assessing Officer on account of cash deposits of Rs 3,60,000/-with the addition sustained by estimating the income @10% of gross receipt?

4. Any other grounds that may arise at the time of hearing.

Assessment Year 2015-16:-

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right while restricting the addition made by the Assessing Officer on the estimation @ 10% as against assessed @ 12% of Gross receipts in the hands of assessee?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in directing the Assessing Officer to telescope the addition on account of cash of Rs 4,27,410/-, foreign currency of Rs 7,76,756/- and unexplained investment u/s 69 of Rs 25,00,000/-, with the addition sustained by estimating the income @ 10% of gross receipt?

3. Any other grounds that may arise at the time of hearing.

4. In these appeals, several grounds are raised by both sides in each year but only limited issues are involved and hence, we note down the issues involved in these appeals and decide these appeals by deciding each of these issues.

5. The Issues involved in these appeals are as under:-

Issue No.	Raised by	A. Y.	Ground No.	Issue
1	Assessee	2009– 10 to 2014– 15	2 in AY 2009 – 10 to 2010 – 11 & Ground No. 2 to 4 in A. Y. 2011 – 12 to 14 - 15	No seizure of any incriminating material during the course of search for the relevant year and because of this reason that no incriminating material was found in the course of search for the relevant year, the assessment order framed by the AO u/s. 153A r.w.s. 143(3) is bad in law and should be annulled.
2	Assessee & Revenue both	2009-10 to 2010-11 by assessee only, 2011 – 12 by none &in remaining years by both	Assessee G. No. 3 in AY 2009 – 10 & 10 - 11 5 in 12 – 13 & 13-14 & 4.1 & 4.2 in 14-15. By Revenue as per G. No. 3 in A. Y. 2012 – 13 to 14 – 15 against telescoping allowed by CIT (A).	Cash deposits in the bank account of the assessee to the extent of Rs. 1,20,60,000/- in Assessment Year 2009-10, Rs. 68,99,500/- in Assessment Year 2010-11, Rs. 3,60,000/- in Assessment Year 2012-13, Rs. 5,94,000/- in Assessment Year 2013-14 and Rs. 2,80,000/- in Assessment Year 2014-15. CIT (A) confirmed in all years but allowed telescoping in AY 2012 – 13 & 2013 – 14.
3	Assessee & Revenue both	2009– 10 to 2010– 11 by only Revenue & 2011 – 12 to 15 – 16 by both	Revenue by Ground No. 1 & Assessee by Ground No. 5.1 but Ground No. 2 in 2015 - 16	Profit Percentage was declared by assessee on estimate at 9% in AY 2009 – 10, 10.5% in AY 2010 – 11 and 8% in remaining years. The AO estimated it @12% in all years& CIT (A) accepted the percentage declared by the assessee in first 2 years and in remaining years, he estimated it @ 10%. The assessee is in appeal for A. Y. 2011 – 12 to 15 – 16 and revenue is in appeal for all years.
4	Assessee	2011– 12 2012– 13 2013– 14 2014– 15	Ground No. 6 Ground No. 6 Ground No. 8 Ground No. 7	Validity of search and consequently validity of assessment order u/s 153A.
5	Assessee	2012– 13 2013– 14 2014– 15	Ground No. 7 Ground No. 7 Ground No. 6	Addl. Income Rs. 3 Crores in AY 2012 – 13, 1.8 Crores in AY 2013 – 14 & 1.7 Crores in AY 2014 – 15 declared by the

				assessee and later retracted, AO not added the same but CIT (A) directed the AO to add it.
6	Assessee	2013– 14	Ground No. 6	Addition of Rs. 54 Lakhs made by the AO in respect of the payments made to Shri N.P. Mahesh on 07.09.2012 as unexplained investment.
7	Assessee & Revenue both	2015– 16	Assessee G. No. 3, By Revenue as per G. No. 2 against telescoping allowed by CIT (A).	Addition of Rs. 4,27,410/- and Rs. 7,76,756/- being the cash and foreign currency found and seized during the course of search.
8	Assessee & Revenue both	2015– 16	Assessee G. No. 4, By Revenue as per G. No. 2 against telescoping allowed by CIT (A).	Addition of Rs. 25 Lacs being the investment by the assessee for purchase of property as per seized material.
9	By Revenue	AY 2009 – 10 to 2014 - 15	Ground No. 2	AO made additions in these years in respect of alleged income of 6 associates but deleted by CIT (A). Addition was Rs. 75,38,567/- in 09-10, Rs. 783,73,237/- in 10 -11, Rs. 10,91,63,775/- in 2011 – 12, Rs. 852,45,730/- in 12 – 13, Rs. 657,71,890/- in 2013 – 14 & Rs. 852,45,730/- in 14 – 15.
10	Revenue	AY 2013-14	Ground No. 3	Telescoping granted by CIT (A) against addition of Rs. 54 lacs as unexplained Investment.

6. Now we decide all these issues one by one. First issue is regarding validity of the assessment order passed by the AO u/s. 153A r.w.s. 143(3) and this is the contention of the ld. AR of assessee that there was no seizure of any incriminating material during the course of search and therefore, these assessment orders are not valid. In this regard, he has placed reliance on the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Lancy Constructions as reported in 295 CTR 454 (Karnataka). In that case, as per the question of law raised before the Hon'ble High Court, this was stated that 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

the ratio of the decision of the special bench of the Tribunal in case of All Cargo Global Logistics Ltd. Vs. CIT as reported in 18 ITR (Trib) 106. Hence it is seen that in that case, the only document found and seized was accounts maintained by the assessee in Tally software and under these facts, it was held by the CIT(A) and Tribunal in that case that there was no incriminating material found during the course of search and this is the finding of Hon'ble Karnataka High Court that merely on the basis of the books of accounts which had been already submitted by the assessee and accepted by the AO at the time of regular assessment, the revenue cannot get a second opportunity to reopen the concluded assessment. Now we examine the facts of the present case. In Para no. 6 of the assessment order for Assessment Year 2009-10, it is noted by the AO that during the course of search proceedings, some evidence was gathered from assessee's premises revealing that the assessee had procured various contracts in the names of different persons. The AO has also noted that the evidence revealing the bank transactions by the assessee in the names of other persons was found and on the basis of those evidence, the AO made addition of Rs. 75,38,567/- being 12% of total credits in those accounts in that year. Similarly in Assessment Year 2010-11, the addition was made by the AO of Rs. 7,83,73,236/- on the basis of transactions in those bank accounts. Such addition in Assessment Year 2011-12 is of Rs. 10,91,63,773/- and in Assessment Year 2012-13, such addition is of Rs. 15,24,60,761/- and in Assessment Year 2013-14, such addition made by the AO is of Rs. 6,57,71,888/- and in Assessment Year 2014-15, such addition is of Rs. 7,00,23,255/- and in Assessment Year 2015-16, the assessment order is u/s. 143(3) and not u/s 153A and therefore, this aspect is not relevant for that year. Hence it is seen that in the present case, incriminating material was found in the course of search and the addition was also made by the AO on the basis of such material. Although such addition is deleted by CIT(A) and the revenue is in appeal before us against such deletion but irrespective of this whether such addition made by the AO and deleted by the CIT(A) survives or not, it has to be accepted that some incriminating material was found in the course of search and therefore, this judgment of Hon'ble Karnataka High Court rendered in the

case of CIT Vs, Lancy Constructions (supra) is not applicable in the present case.

7. In view of above discussion, we hold that there is no merit in various grounds raised by the assessee on this issue and accordingly those grounds are rejected in all these years.

8. The second issue is regarding addition made by the AO in respect of cash deposit by assessee in its bank account of Rs. 120.60 lakhs in Assessment Year 2009-10 and Rs. 68,99,500/- in Assessment Year 2010-11 and in these two years this addition was upheld by CIT(A) and therefore, only the assessee is in appeal before us. Similar addition was also made by AO in Assessment Year 2012-13 of Rs. 3.60 Lacs, in Assessment Year 2013-14 of Rs. 5.94 lakhs and in Assessment Year 2014-15 of Rs. 2.80 lakhs and although such addition was also confirmed by CIT(A) for which the assessee is also in appeal against such confirming of addition. But CIT(A) has granted the benefit of telescoping and as a result, the addition was ultimately deleted by CIT(A) and therefore, the revenue is also in appeal before us against granting of telescoping.

9. Regarding such addition in Assessment Years 2009-10 and 2010-11, this is the contention of ld. AR of assessee that such cash deposit in bank was out of earlier cash withdrawal from bank and he has submitted a statement of cash deposit in banks and cash withdrawal from banks during the Assessment Year 2009-10 on pages 69 to 74 of the paper book filed on the date of hearing along with the bank statement on pages 75 to 101 of the same paper book for Assessment Year 2010-11 and a statement is also made available on pages 102 to 106 of the paper book. The ld. AR of assessee pointed out in the course of hearing that in Assessment Year 2009-10, even after considering the entire cash deposit in bank in that year, there is closing cash in hand as on 31.03.2009 of Rs. 3,54,43,500/- because no other cash expenses/cash payment is considered in this statement and as on 31.03.2010, there is cash in hand of Rs. 5,65,00,500/- without considering the opening cash in hand as on 01.04.2009 and after considering the entire cash deposit in bank during this

year. He submitted that under these facts, the cash deposit in bank in these two years should be accepted as properly explained and the addition made by the AO and confirmed by the CIT(A) should be deleted. Regarding the remaining years, he submitted that although confirming of addition of in those years is also not proper but in view of this fact that telescoping benefit has been allowed by CIT(A) and no such addition ultimately survives after such telescoping benefit, the assessee has nothing much to say for these years. The ld. DR of revenue supported the assessment order in all these years.

10. We have considered the rival submissions. On this issue for these two years, the decision of CIT(A) is contained in Para no. 9.2 of his order which is reproduced herein below for the sake of ready reference.

> "*9.2 I have considered the submissions and materials on record. The appellant has basically contended that the cash deposits in the bank accounts are made out of earlier cash withdrawals. However, the appellant has not explained as to why there were withdrawals and cash deposits made in the bank account for the assessment year 2009-10 and 2010-11 of Rs.1,20,00,000/- and Rs.68,99,500/- respectively. U/s.69 of the Act, the appellant is required to give documentary evidence substantiating the same, which has not been done before the A.O. or before me.* ***Hence, I do not interfere in the action of the A.O. and sustain the said additions made for the assessment years 2009-10 and 2010-11.***"

11. From the above Para reproduced from the order of CIT(A), it is seen that as per the CIT(A)'s findings, no documentary evidence was submitted by assessee before the AO or CIT(A) in support of this contention that there was earlier cash withdrawal. Hence we feel it proper to restore this matter back to the file of CIT(A) for fresh decision on this issue on this aspect in these two years i.e. Assessment Years 2009-10 and 2010-11 and if it is found that cash deposit in bank in these two years stands explained by earlier cash withdrawal then the addition made by the AO in these two years should be deleted.

12. For the remaining three years i.e. Assessment Years 2012-13, 2013-14 and 2014-15, the order of CIT(A) has contained in Para 9.3 of his order which is also reproduced herein below for the sake of ready reference.

> "*9.3. However for the assessment years 2012-13, 2013-14 and 2014-15, the cash deposits added by the A.O. is Rs.3,60,000/-, Rs.5,94,000/- and 2,80,000/- respectively. I have already taken a view that the business income of the appellant should be estimated at 10% of the gross receipts for these years. Hence, the income sustained by me would be available for telescoping and therefore, these additions are not required separately.* ***Hence the additions towards cash deposits for the assessment years 2012-13, 2013-14 and 201415 are deleted.***"

13. From the above Para reproduced from the order of CIT(A), it is seen that it is noticed that CIT(A) has granted the benefit of telescoping on this basis that as per his decision, he has estimated the income of assessee at 10% of gross receipts for these three years whereas the same was reported by assessee by estimating it @ 8% of gross receipts. Hence extra income to the extent of 2% in these three years stands confirmed by CIT(A). Gross receipts in these three years is Rs. 71.03 Crores for Assessment Year 2012-13, Rs. 1619.17 lakhs for Assessment Year 2013-14 and Rs. 1165.42 lakhs for Assessment Year 2014-15. 2% extra income of the gross receipts of these 3 years amounts to much more than the amount of cash deposit in these 3 years of Rs. 3.60 lakhs, Rs. 5.94 lakhs and Rs. 2.80 lakhs only and hence, we find no infirmity in the order of CIT(A) regarding granting of telescoping benefit in these 3 years i.e. Assessment Years 2012-13, 2013-14 and 2014-15. Hence we decline to interfere in the order of CIT(A) on this aspect of this issue in these three years i.e. Assessment Years 2012-13 to 2014-15.

14. The issue no. 3 is regarding estimation of profit percentage which had been done by the assessee at 9% in Assessment Year 2009-10, 10.5% in Assessment Year 2010-11 and 8% in remaining years whereas the AO estimated at 12% in all the years and CIT(A) accepted the percentage declared by the assessee in first two years and in the remaining years, he estimated the profit percentage at 10%. Now the assessee is in appeal before us for Assessment Years 2011-12 to 2015-16 by contending that the income of these years should be estimated at 8% and not at 10% as directed by CIT(A) and revenue is in appeal in all the years contending that in all these years, the estimation of income by the AO @ 12% of gross receipts should be confirmed. Both parties were heard on this issue. We find that this is an undisputed fact

that the assessee is a contractor and the assessee works for BBMP and the assessee has not maintained books of accounts and filed the return of income in all the years by estimating the income at given percentage of the gross receipts. For Assessment Year 2009-10, the assessee has estimated the income at 9% and in Assessment Year 2010-11, the assessee has estimated the income at 10.5% and in the remaining years, the assessee has estimated at 8%. As per the provisions of section 44AD of IT Act which is applicable to only those assessees who are having gross receipts less than Rs. 40 lakhs in a year which was increased to Rs. 1 Crore in Assessment Year 2013-14 and as per this section, presumptive income should be 8% of gross receipts but in all the years before us, the gross receipts of the assessee is many times more than the prescribed gross receipts in this section and therefore, this section is not applicable to the present assessee in any of the years which are before us. Hence, we do not get any guidance from section 44AD of IT Act. In all these years, the AO has estimated the income of the assessee at 12% of gross receipts but he has not provided any basis for estimating the income at 12%. Similarly, ld. AR of assessee is also not giving any basis for estimating the income at 9%, 10.5% or 8% and it is seen that highest percentage of income shown by the assessee at 10.5% is in Assessment Year 2010-11. In spite of a specific query of the bench, the ld. AR of assessee could not point out any difference in facts in Assessment Year 2010-11 as compared to Assessment Years 2009-10 and 2011-12 to 2015-16 and therefore, we feel that when the assessee himself is estimating the income at 10.5% in one year i.e. Assessment Year 2010-11 then in all the remaining years also, the income should not be estimated at a rate lower than that i.e. 10.5% because no case is made out by ld. AR of assessee to estimate the income below 10.5% in any of the years. In our considered opinion, estimating the income of the assessee at 10.5% in all years which are before us will meet the ends of justice in the facts of the present case. Hence we hold accordingly and direct the AO to estimate the income at 10.5% of the gross receipts in Assessment Years 2009-10 to 2015-16. This issue is decided accordingly. Grounds raised by the assessee in this regard are rejected whereas the grounds raised by the revenue in this regard are partly allowed.

15. The next issue no. 4 is regarding validity of search and consequential validity of assessment order u/s. 153A of the IT Act. This issue is raised by the assessee in Assessment Years 2011-12 to 2014-15. This issue was decided by CIT(A) on this basis that validity of search operation cannot be questioned in appellate proceedings before the CIT(A) and on this basis, he has held that the grounds on this issue are not maintainable before CIT(A). As per the judgment of Hon'ble Karnataka High Court rendered in the case of C. Ramiah Reddy vs. ACIT as reported in 244 CTR 126, this issue can be raised before ITAT and it can be decided by the Tribunal. The Conclusions of Hon'ble Karnataka High Court in this case are summarized herein below:-

> ***"Conclusions***
>
> ***(1) The Tribunal has got powers to look into all aspects of search and a valid search is sine qua non for initiating block assessment.***
>
> ***(2) Materials seized during an invalid search cannot be used in block assessment proceeding but can be used in other assessment proceedings under the Act.***
>
> ***(3) The power to put prohibitory order under s. 132(3) is under law but the reasons for doing so have to be recorded in writing and are justiable.***
>
> ***(4) The period of limitation starts on the date on which the last of authorisations has been executed and not when the authorised officer states that the search is finally concluded. Putting a prohibitory order under s. 132(3) does not elongate the starting point of limitation.***
>
> ***In the light of the aforesaid discussion, as the Tribunal has declined to go into the jurisdictional aspect, the appropriate course would be to set aside the order and remit the entire matter back to the Tribunal for fresh consideration keeping in mind the observations made in this judgment and also consider the jurisdiction aspect which it had declined to consider while passing the impugned order.***
>
> ***Therefore the finding recorded by the Tribunal that action of the IT authorities anterior to search cannot be the subject-matter of the appeal, the legality of the validity of the search proceedings cannot be gone into in the appeal against the order of block assessment, and statute has not provided any right of appeal against such an order cannot be sustained. Accordingly the said findings are set aside. Consequently the entire matter is now remitted back to the***

Tribunal to consider the appeal afresh, on merits, including the question of the validity and legality of the search, in the light of the law laid down in this decision."

16. But apart from raising the grounds raised before the Tribunal, no material has been placed before the Tribunal indicating any defect in search operation and on jurisdiction aspect and therefore, in the absence of any such material having been brought before us indicating some defect or irregularity in the search, we reject this ground raised by the assessee before us in Assessment Years 2011-12 to 2014-15 and hold that in the absence of any material having brought before us indication some defect in the jurisdiction, we cannot examine this issue in the absence of any material and therefore, the relevant ground in these four years on this issue is rejected. This issue is decided against the assessee.

17. The issue no. 5 is regarding direction of CIT (A) to AO to add additional income of Rs. 3 Crores in Assessment Year 2012-13, Rs. 1.8 Crores in Assessment Year 2013-14 and Rs. 1.7 Crores in Assessment Year 2014-15. This much additional income was declared by the assessee in these three years and the same was later retracted by assessee and the AO did not make the addition of the same but the CIT (A) directed the AO to add it. In the course of hearing before us, no argument was made by ld. AR of assessee in this regard and hence, we infer that the ld. AR of assessee has nothing to say against this direction of CIT(A) and in view of this fact that the assessee has himself declared this income in response to notice issued by the AO u/s. 153A of the IT Act and the assessee has not shown before CIT(A) or before us that this extra income declared by assessee was on the basis of wrong understanding of facts and therefore, on this issue, we find no infirmity in the order of CIT(A) and therefore, this issue is also decided against the assessee.

18. The issue no. 6 is raised by the assessee for Assessment Year 2013-14 in respect of the addition of Rs. 54 Lakhs made by the AO in respect of the payments to Shri N.P. Mahesh on 07.09.2012 as unexplained investment and issue no. 10 noted above is raised by the revenue for the same year and the grievance of the revenue is this that the CIT (A) was not justified in granting telescoping against this addition of Rs. 54 Lakhs as unexplained investment.

This issue was decided by CIT (A) as per paras 10.2 and 10.3 of his order and the same are reproduced herein below for the sake of ready reference.

> "10.2 *I have considered the submissions and materials on record. It is a fact that a document was found in course of search showing an investment of Rs.54,00,000/- made by the appellant with Sri N.P.Mahesh & others in connection with purchase of a property. The appellant has claimed that the aforesaid property deal was cancelled and he had received the amounts paid. No evidence has been furnished in this regard. As rightly held by the A.O. the source for payment of cash has not been properly explained.* ***Hence, the A.O. was justified in making the addition of Rs.54,00,000/-***.
>
> *10.3 However, the alternate contention of the appellant of telescoping of the aforesaid addition with the income sustained on estimate basis is well-founded.* ***The A.O. is directed to telescope this addition with the income from business estimated at 10% and the additional income offered in the return of income filed for the assessment year 2013-14, Ns hid' has not been accepted by the A.O. while assessing the appellant, which 1 will now advert to. It is directed accordingly***.

19. From the above two paras reproduced from the order of CIT(A), it is seen that addition of Rs. 54 Lakhs is on this basis that no evidence has been furnished regarding this contention that the property deal was cancelled and he has received the amounts paid. Moreover even if the deal is cancelled and the amount is received back then also, the assessee has to explain the source of this fund given by the assessee to Shri N.P. Mahesh on the date when it was given and subsequent cancellation of the deal and refund of the money has no relevance because if the assessee is not able to establish the source of fund on the date of giving the money to Shri N.P. Mahesh in connection with the purchase of a property then even if deal was cancelled and the money was received back, addition has to be made and therefore, we find no merit in the ground raised by the assessee on this issue. Regarding ground raised by revenue in respect of granting of telescoping benefit, we find that telescoping benefit was granted by CIT(A) on this basis that he has already held that the income of assessee should be estimated at 10% as against 8% of income declared by the assessee. On this issue, we have also held that as against 8% declared by the assessee in the present year, income should be estimated at 10.5%. For Assessment Year 2013-14, the gross receipts of the assessee were Rs. 1619.17 lakhs. The extra income @ 2.5% of this much gross receipts amounts to Rs. 40.48 lakhs approx. The CIT(A) has already allowed telescoping benefit in the present year to the extent of Rs. 5.94 Lakhs in

Assessment Year 2013-14 while deciding the issue related to cash deposit in bank. Hence the remaining benefit available is only Rs. 34.54 Lakhs but CIT(A) has allowed telescoping benefit of Rs. 54 Lakhs. But this is also important that the assessee has declared extra income in Assessment Year 2013-14 of Rs. 1.8 Crores. Although such income was not added by the AO in the assessment order but the CIT(A) has directed the AO to make the addition. We have confirmed the order of CIT(A) on that issue and therefore, granting of telescoping of Rs. 54 Lakhs against this addition had no infirmity. This issue is decided against the revenue. Issue no. 10 is decided against the revenue.

20. The issue nos. 7 and 8 are in respect of confirming of addition of Rs. 4,27,410/- and Rs. 7,76,756/- in Assessment Year 2015-16 on account of cash and foreign currency found and seized during the course of search and additional income of Rs. 25 Lakhs in the same year being the investment by the assessee for purchase of property as per seized materials. These two issues are raised by the assessee against confirming of these two additions and the revenue has also raised this issue having grievance against granting of telescoping benefit allowed by CIT(A).

21. Both sides were heard on these two issues and we find that in Assessment Year 2015-16, the gross receipts is of Rs. 1468.45 Lakhs and in this year also, the assessee has estimated his income at 8% but CIT(A) has held that income should be estimated at 10% and we have held that income should be estimated at 10.5%. Hence it is seen that income to the extent of 2.5% of this gross receipt of Rs. 1468.45 Lakhs stands confirmed by us. Such extra income amount to Rs. 36.71 Lakhs approx. and hence, granting of telescoping benefit by CIT(A) of Rs. 37,04,166/- has no infirmity because CIT(A) has directed addition of extra income of Rs. 3 Crores in Assessment Year 2012-13, Rs. 1.8 Crores in Assessment Year 2013-14 and Rs. 1.7 Crores in Assessment Year 2014-15 also and those additions are upheld by us. Hence on this issue, we decline to interfere in the order of CIT(A).

22. Now the only issue remaining to be decided is the issue no. 9 which is raised by the revenue in Assessment Years 2009-10 to 2014-15 as per which this is the grievance of the revenue that the AO has made addition in these years by alleging that income of six persons i.e. Shri B. Basavaraju, Shri Ananth, Shri Santosh Kumar, Shri D. Nagraj, Shri B.N. Vishwanath and Shri N. Sampath Kumar is belonging to the assessee because evidence was gathered from assessee's premises in the course of search revealing that assessee has procured various contracts in the names of different persons because various documents such as contract receipts, discounting of work bills etc. were found and seized. It was also observed during the search proceedings that these persons have given authorization to assessee to operate their bank accounts. The AO has held that these six persons are merely name lenders and these transactions are belonging to the assessee only and in respect of gross receipts in those bank account of six persons also, the AO made the addition @ 12% of such receipts. Such addition was deleted by CIT(A) and the discussion on this issue is contained in paras 8.2 to 8.4 of the order of CIT(A) and these paras are reproduced herein below for the sake of ready reference.

> "*8.2 I have considered the submissions and materials on record. The A.O. has taken the view that the appellant has executed the contracts in respect of the aforesaid 6 persons by pointing out various circumstantial evidence like the said contractors not having any property in their own names and that, the said persons do not have any knowledge, experience, skill or financial capacity to execute the contract in their names. After going through the statement of these persons. which have been reproduced in the assessment order, it is clear that these persons have admitted doing the civil works for BBMP contracts. They have also have contract license and the contract receipts have come to their bank accounts. It is clear from the reading of the statement that these persons have relied upon the appellant for running the business since, in most of their answers they have stated that they have taken the help of the appellant. However, this alone cannot be a ground to treat them as benamis of the appellant.*
>
> *8.3 The appellant has contended that there is no material found to hold that these 6 contractors are mere fronts of the appellant. It is pleaded that the appellant has not provided with them any funds to enable them to execute the works. It is pointed out that the payments for the works done by these 6 contractors, have gone to their*

respective bank accounts and it is not established that the said funds were found its way to the appellant. It is also contended that TDS has been made in respect of these 6 contractors and they have filed returns of income for various years.

8.4 I find merit in the contentions of the appellant that the income earned by these 6 persons cannot be assessed in the hands of the appellant. Although the A.O has pointed out various circumstances to show that these persons are not men of means but, the fact that they have a contract license in their own name to execute the work cannot be brushed aside so easily. It is also a fact that the A.O. has not established that these persons are benamis of the appellant by showing that the appellant provided funds to them to execute the works. which has later come back to the appellant directly or indirectly. Merely on the suspicion that these persons are not capable of doing the work cannot lead to the conclusion that they are benamis of the appellant. The appellant has given a plausible explanation for the role played by him in assisting these 6 persons to open bank accounts and help them to operate the bank accounts for conduct of their business. All the 6 persons were produced in course of search operations and their statements have been recorded by the Investigation Wing. In the statement recorded by the Investigation Wing there is no suggestion that these persons are benamis of the appellant and their income is to be assessed in the hands of the appellant. The assessee has discharged the onus casted upon him by producing the 6 persons before the Investigation Wing and statement having been recorded from all the 6 persons. In the statements recorded of 6 persons there is nothing even to suggest that the appellant was beneficiary of the works carried out by them but, on the other hand, it is seen that these persons have accepted carrying out contract work. Since, the said 6 persons have accepted carrying on the contract work by themselves, the income arising out of their contract work carried requires to be considered in their respective hands and not in the hands of the appellant as added by the A.O. There should be some corroborative and positive evidence required to bring the income earned by these persons to tax in the hands of the appellant. since. suspicion, howsoever strong, cannot be a substitute for evidence. ***Hence, I direct the A.O. to delete the additions of 12% of these receipts that has been treated as the income of the appellant.***"

23. Now, the revenue has raised this issue before us contending that the addition made by the AO in this regard should be upheld and the order of CIT(A) should be reversed on this issue. Whereas the ld. AR of assessee supported the order of CIT(A). He submitted that statements of four persons out of six persons were recorded by AO on 23.12.2016 and the same was reproduced by AO in

the assessment order. These four persons are Shri Nagraj, Shri Sampath Kumar, Shri Santosh Kumar and Shri Vishwanath. He drawn our attention to the statements of these four persons reproduced by the AO in the assessment order and pointed out that in reply to one question regarding giving of any mandate to anyone to operate any of the bank accounts, it was replied that Shri R. Chandru was authorized to operate the bank accounts because Shri R. Chandru is big contractor and the authorization was given to him to purchase material on his behalf. It is also stated that these persons were taking help of Shri R. Chandru in connection with preparation of papers. He submitted that only because the assessee helped some new contractors in developing their business, it cannot be held that such income belonged to the assessee. He also submitted that return of income was filed by Shri B. Basavaraju pursuant to the notice issued by the AO u/s. 148 on 31.03.2017 and the assessment order is framed by the AO for Assessment Years 2010-11 to 2014-15 on 20.12.2017 and he submitted a copy of these assessment orders passed by the AO u/s. 144 r.w.s 147 of the IT Act and it was pointed out that in Assessment Year 2010-11 the income of Shri Basavaraju was assessed at Rs. 1,02,06,500/- @ 12% of his contract receipts of Rs. 8,50,54,170/-. Similarly in Assessment Year 2011-12, his income was assessed at Rs. 8,85,05,111/- being 12% of his gross receipts of Rs. 73,75,42,592/-. In Assessment Year 2012-13 his income was assessed at Rs. 9,74,74,129/- being 12% of gross receipts of Rs. 81,22,84,405/- and similarly in Assessment Year 2013-14, his income was assessed at Rs. 57,11,023/- being 12% of gross receipts of Rs. 4,75,91,860/- and Rs. 3,27,07,793/- being 12% of gross receipts of Rs. 27,25,64,939/- as per Karnataka Bank A/c. No. 363501. He also pointed out that in Assessment Year 2014-15, his income was assessed at Rs. 39,39,767/- being 12% of gross receipts in that year of Rs. 3,28,31,389/-. He submitted that when the income of these persons is being assessed in the hands of those persons, the same cannot be added in the hands of the present assessee. Regarding other five persons, he submitted that he is not aware of this aspect in respect of these five persons as to whether any assessment is framed in those cases or not but this is not the case of the department that the facts in the case of Sri Basavraju is different with the remaining five persons and therefore,

whether assessment is framed in remaining cases or not is not relevant. The ld. DR of revenue supported the assessment order on this issue. He also submitted that on this issue, order of CIT(A) should be reversed and that of AO should be restored.

24. We have considered the rival submissions. We find that this addition is made by the AO on this basis that in course of search proceedings, evidence was gathered from assessee's premises revealing that the assessee had procured various contracts in the names of different persons. The AO has noted on pages 5 & 6 of the assessment order for AY 2009 – 10 that the assessee had various Bank Accounts in the names of six persons i.e. 1) Shri B. Basavraju, 2) Shri Ananth, 3) Shri Santosh Kumar, 4) Shri D. Nagraj, 5) Shri B. N. Vishwanath and 6) Shri N. Sampath Kumar. On page 10 of the same assessment order, the AO has noted the PAN of these six persons as given by the assessee when the assessee was informed by the AO that these persons are not available at their given address. The assessee has also given present address of 4 out of 6 persons and the same is also noted by the AO on the same page of the assessment order. The AO issued summons to these four persons whose address was provided by the assessee. On 23.12.2016, he recorded the statement of these four persons. These four statements are reproduced by the AO on pages 12 to 21 of the same assessment order. On page 27 of the same assessment order, the AO has noted year wise credit in the bank accounts of these six persons. In Para 18 of the assessment order, the AO has given various reasons to hold that the money deposited in the bank accounts of these six persons is the contact receipts of the assessee received in their names. Such reasons are these that 1) in course of search various documents such as contact receipts, discounting of work bills etc. were found and seized., 2) These persons have given authorization to the assessee to operate their bank accounts., 3) At the time of opening of these bank accounts, introduction was given by the assessee. But mainly for these reason that these persons have given authorization to the assessee to operate their bank accounts, the AO came to the conclusion that the assessee only was managing the show but in the names of these persons. The AO has also noted in the

same Para that the statement of four persons clearly reveal that they are the persons of no means and they do not have any knowledge, experience, skill, proficiency, capability and financial base etc. The AO has also noted that all of them have said that they use the office premises of the assessee. On this basis, the AO came to the conclusion that these receipts are of the assessee and he brought to tax 12% of such year wise receipts to tax in the hands of the assessee. Year wise receipt & 12% there of assessed as income is as under:-

Year	Receipts	Income @ 12%
2009 – 10	628,21,392/-	75,38,567/-
2010 – 11	6531,10,313/-	783,73,236/-
2011 – 12	9096,98,127/-	1091,63,775/-
2012 – 13	12705,06,376/-	1524,60,765/-
2013 – 14	5480,99,087/-	657,71,890/-
2014 – 15	5125,35,907/-	615,04,309/-

25. Learned CIT (A) has decided this issue in favour of the assessee as per Para 8.4 of his order which is reproduced herein below for ready reference. This reads as under:-

"8.4 I find merit in the contentions of the appellant that the income earned by these 6 persons cannot be assessed in the hands of the appellant. Although the A.O has pointed out various circumstances to show that these persons are not men of means but, the fact that they have a contract license in their own name to execute the work cannot be brushed aside so easily. It is also a fact that the A.O. has not established that these persons are benamis of the appellant by showing that the appellant provided funds to them to execute the works, which has later come back to the appellant directly or indirectly. Merely on the suspicion that these persons are not capable of doing the work cannot lead to the conclusion that they are benamis of the appellant. The appellant has given a plausible explanation for the role played by him in assisting these 6 persons to open bank accounts and help them to operate the bank accounts for conduct of their business. All the 6 persons were produced in course of search operations and their statements have been recorded by the Investigation Wing. In the statement recorded by the Investigation Wing there is no suggestion that these persons are benamis of the appellant and their income is to be assessed in the hands of the appellant. The assessee has discharged the onus casted upon him by producing the 6 persons before the Investigation Wing and statement having been recorded from all the 6 persons. In the statements recorded

of 6 persons there is nothing even to suggest that the appellant was beneficiary of the works carried out by them but, on the other hand, it is seen that these persons have accepted carrying out contract work. Since, the said 6 persons have accepted carrying on the contract work by themselves, the income arising out of their contract work carried requires to be considered in their respective hands and not in the hands of the appellant as added by the A.O. There should be some corroborative and positive evidence required to bring the income earned by these persons to tax in the hands of the appellant, since. suspicion. howsoever strong, cannot be a substitute for evidence. Hence, I direct the A.O. to delete the additions of 12% of these receipts that has been treated as the income of the appellant."

26. In addition to supporting the various findings of CIT (A), learned AR of the assessee has brought before us the copy of assessment orders for A. Ys. 2010 – 11 to 2014 – 15 all dated 20.12.2017 passed by the AO of Shri B. Basavraju (one of those six persons) u/s 144 r.w.s. 147.Year wise receipts as per the assessment order in the present case and as per the assessment order in the hands of Shri B. Basavraju are as under:-

Assessment Year	As per the asst. order in the hands of the present assessee	As per the asst. order in the hands of Shri B. Basavraju
2009 – 10	2,72,54,284/-	NIL
2010 – 11	23,95,27,161/-	8,50,54,170/-
2011 – 12	40,52,95,556/-	73,75,42,592/-
2012 – 13	42,80,49,590/-	81,22,84,405/-
2013 – 14	10,97,48,294/-	4,75,91,860/-
2014 – 15	69,81,389/-	NIL
TOTAL	1,21,68,56,274	168,28,54,272/-

27. As per the above chart, it is seen that although the year wise figures are not tallying but the amount of total receipts considered during these 6 assessment year as per the assessment order framed in the hands of Shri B. Basavraju is higher than such receipts considered in the present assessment order as receipts of Shri B. Basavraju. The bank accounts with name of bank and

account no. are same i.e. Canara Bank Account No. 0413201028053, Corporation Bank current A/c no. 3681 and Karnataka Bank A/c No. 0632000400339701. When the receipts in the same bank account is considered as receipts of Shri B. Basavraju and income to the extent of 12% of such receipts is taxed in his hands, the department cannot tax income in respect of same receipts in the hands of the present assessee. This is settled law that correct income should be taxed in correct hands and no income can be taxed in the hands of two persons. Various reasons given by the AO as noted above to hold that the receipts in the bank accounts of these 6 persons including Shri Basavraju are in fact the receipts of the present assessee may be good reason to make further enquiry because these reasons raise suspicion but suspicion alone cannot be the basis of addition particularly when on the basis of same bank accounts, the department itself has started proceedings u/s 147 in the hands of Shri B. Basavraju by alleging that the deposits in these bank accounts of Shri B. Basavraju are his contract receipts and taxed 12 % of such receipts as his income. the same cannot be taxed again in the hands of any other person. If this would have been a claim of Shri B. Basavraju that these receipts are his income and department had made protective addition in one person's hands and substantive addition in the hands of the other person, it would have been a matter of adjudication as to in whose hands, the income is to be taxed but when the department itself has alleged that these are contract receipts of Shri B. Basavraju and taxed in his hands for the same receipts, even adjudication is not called for to decide whether any such addition can be made in the hands of the present assessee and deletion of such addition by CIT (A) does not require any interference from our side.

28. This is true that the assessment order placed before us is for only one person only i.e. Shri B. Basavraju out of 6 persons but as per the department also, the facts in these six cases are identical and even before us, this was not even an argument of the learned DR of the revenue that the facts in remaining five cases are different than the facts in the case of Shri B. Basavraju. Hence, the decision regarding receipts in the hands of Shri B. Basavraju is applicable in remaining five cases also and hence, we hold that no interference is called for

in the order of CIT (A) in respect of this issue regarding the remaining five persons also. This issue is decided in favour of the assessee in respect of all six persons.

29. In the result, out of seven appeals of the assessee, two appeals for A. Ys. 2009 – 10 & 2010 – 11 are partly allowed for statistical purposes and remaining five appeals are dismissed. Out of seven appeals of the revenue, the appeal for A. Y. 2010 – 11 is dismissed and remaining six appeals are partly allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(LALIET KUMAR)	(ARUN KUMAR GARODIA)
Judicial Member	Accountant Member

Bangalore,
Dated, the 06th April, 2018.
/MS/

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.