

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

S. No.	ITA No.	AY	Appellant	Respondent
1	1695/H/17	2008-09	Batta Yadamma, R.R. District  PAN – ARYPB 9407 B	Income-tax Officer, Ward – 8(1), Hyderabad
2	1696/H/17	2008-09	Batta Eshwaramma, R.R. District  PAN – CDCPB 9153J	-do-
3	1697/H/17	2008-09	Batta Jangaiah, R.R. District  PAN – AHSPB 3381 Q	-do-
4	1698/H/17	2008-09	Batta Rajkumar, R.R. District  PAN – BCEPB 1672 G	-do-
5	1702/H/17	2008-09	Income-tax Officer, Ward – 8(1), Hyderabad	Batta Yadamma, R.R. District  PAN – ARYPB 9407 B
6	1703/H/17	2008-09	Income-tax Officer, Ward – 8(1), Hyderabad	Batta Eshwaramma, R.R. District  PAN – CDCPB 9153J
7	1704/H/17	2008-09	Income-tax Officer, Ward – 8(1), Hyderabad	Batta Jangaiah, R.R. District  PAN – AHSPB 3381 Q
8	1705/H/17	2008-09	Income-tax Officer, Ward – 8(1), Hyderabad	Batta Rajkumar, R.R. District  PAN – BCEPB 1672 G

Assessee by : Shri K.C. Devdas  
Revenue by : Smt. S. Praveena

Date of hearing : 01/10/2018  
Date of pronouncement : 29/11/2018

**ORDER**

**PER BENCH:**

All these appeals filed by different assessees as well as revenue are cross appeals directed against the orders of CIT(A) – 2,

Hyderabad, all dated, 30/06/2017 for AY 2008-09. As identical issues are involved in these appeals, the same were clubbed and heard together and, therefore, a common order is passed for the sake of convenience.

2. In all these appeals, common grounds were raised by the assessees, except the quantum of additions and the same are, as under:

*"1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.*

*2. The Hon'ble CIT(A) ought to have observed that the assessing officer improperly observed that the amount of Rs.26,00,000/- constitute goodwill as there cannot be such goodwill for a land used for the purpose of agricultural operations.*

*3. The Hon'ble CIT(A) ought to have observed that the amount paid was only a capital payment in lieu of source of livelihood foregone by the assessee and there cannot be any goodwill especially for a land given for development.*

*4. The Hon'ble CIT(A) ought to have observed that in the given facts and circumstances of the case the amount paid to the assessee cannot be termed as goodwill as the relevant project was not complete even after lapse of ten years.*

*5. The Hon'ble CIT(A) ought to have observed that for a project dragged on for more than 10 years and taking into consideration the fact that the assessee foregone his land and did not receive the benefits, the amount received can never be considered as goodwill.*

*6. The Hon'ble CIT(A) ought to have held that whatever amount was received has to be setoff against the benefits lost by the assessee i.e. non-receipt of constructed area for 10 years and non-realization of any proceeds in respect of such constructed area and therefore there cannot be any goodwill liable for tax.*

*7. In the facts and circumstances of the case, the amount received by the assessee can never be termed as goodwill as the asset transferred was agriculture land and there cannot be any goodwill for such land. Further, the amount received can never be brought to tax in the light of provisions of section 55(2) of the IT Act.*

*8. The Hon'ble CIT(A) ought to have observed that the amount received was consideration in cash and the same should be brought to tax along with consideration received in kind (constructed area) and therefore the same cannot be brought to tax in the asst. year 2008-09.*

*9. Any other ground will be raised at the time of hearing.”*

2.1 The assesseees have also filed following additional grounds of appeal, which are common in all the appeals:

*“1. The entire assessment proceedings u/s 143(3) read with section 147 are void ab initio and without jurisdiction as the entire proceedings emanated from Search and Seizure Operations u/s 132 of the Income Tax Act, 1961 in the hands of M/s CRK Infrastructure Developers Pvt Ltd on 21<sup>st</sup> March, 2014 and therefore, the appropriate proceedings that ought to have been initiated was section 153C of the Income Tax Act, 1961 and not u/s 147 of the Act.*

*2. The provisions relating to 153C proceedings arises out of 153A proceedings under Income Tax Act, 1961 are special provisions and therefore, the initiation of proceedings u/s 148 of the Income Tax Act, 1961 in the appellant's case is bad in law, invalid and without jurisdiction.”*

3. As the said additional grounds are legal grounds, wherein, the facts are on record and facts do not require fresh investigation, following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co., Limited Vs. CIT 229 ITR 383 (SC), we admit the said additional ground of assessee.

4. First we will take up the additional grounds of appeal, which are legal in nature and the assessee's grievance in the additional grounds of appeal is that the assessments completed by the AO u/s 143(3) r.w.s. 147 are void ab-initio, as the appropriate proceedings in the case of assesseees are u/s 153C of the Act.

5. Before us, Id. AR of the assessee submitted that the entire assessment emanated from Search & Seizure Operations u/s 132 of the Income Tax Act, 1961 in the premises of M/s CRK infrastructure

developers Pvt. Ltd (Presently known as BRC Infra Pvt Ltd) on 21 March, 2014 wherein a development agreement cum General power of Attorney entered into by the assessee on 14.08.2007 vide Doc No. 7952/07 for the land ad measuring A c. 0.11 guntas in Survey No. 1 94 and ac. 0.10 guntas in survey no. 195 total admeasuring Ac 0.21 guntas situated at puppalaguda village, Rajendra Nagar Mandal. R.R District for a consideration of 25000 sft. saleable residential built up area was found. He submitted that proceedings u/s 148 were initiated and assessment u/s 143(3) read with section 147 of the Income Tax Act, 1961 was made.

5.1 He submitted that since the entire assessment emanated from Search & Seizure Operations u/s 132 of the Income Tax Act, 1961 in the premises of M/s CRK infrastructure developers Pvt. Ltd (Presently known as BRC Infra Pvt Ltd) on 21 March, 2014 u/s 153A of the Act, the appropriate proceedings in the case of the assessee ought to have been initiated by the AO u/s 153C of the Act, and therefore, the entire assessment proceedings are invalid without any jurisdiction. In this connection, he relied on the following cases:

1. Shri Mirza Rafiullah Baig, in ITA No. 909/Hyd/213, order dated 08/01/2014.
2. ITO Vs. Arun Kumar Kapoor, 140 TYTJ 249 (Amritsar Bench)
3. CIT Vs. Srinival Rao Hoskote, ITA Nos. 1154 & 1155/Bang/2015, dated 21/02/2018
4. Manish Maheshwar Vs. ACIT, 289 ITR 322
5. Ramballab Gupta Vs. ACIT, 288 ITR 347

6. Ld. DR relied on the orders of revenue authorities and relied on the order of Gudwill Housing Ltd. Vs. ITO, [2014] 45 Taxmann.com 144.

7. Considered the rival submissions and perused the material on record. Similar issue was dealt by the Bengaluru Bench of ITAT in the case of Shri Srinivasa Rao Hostake (supra) wherein the coordinate bench has held as under:

“06. We have heard the rival contentions and perused the record. In our view the scope of [Section 153C](#) and [148](#) are clear from the bare reading of the two provisions insomuch as [Section 153C](#) it starts with 'Notwithstanding nothing containing in [Section 139, 147, 148, 149, 151 and 153](#)'. Thus if there is any contradiction between [Sections 153C](#) and [148](#), in that eventuality, [Section 148](#) shall give way to [Section 153C](#). There is a reason for saying so because if a notice u/s.153C is issued to the third party (assessee), then the AO may assess or reassess the income of the assessee for a period of six years whereas this is not the position in case of [Section 148](#). Further u/s.153C of the Act, the assessment / reassessment can only be made based on the satisfaction recorded by the AO or the searched person as well as of the third party and further addition can only be made by the AO in respect of the assessment year for which the incriminating documents were found with the search person belonging to the third party. Therefore in our view the finding of the CIT(A) is in accordance with law, as the proceeding should have been initiated under [section 153C](#) of the Act, as it were based on material found during the search from the premises of searched person other than assessee and not under [section 148](#) of the Act. Further we are of the opinion that this issue raised by the parties is no more res integra as the coordinate bench in the matter of [G. Koteshwara Rao v. DCIT](#) [(2015) 64 taxmann.com 159] in para 11 to 14 has held as under :

11. A careful study of [section 153A](#) to [153C](#) and also the circular issued by the CBDT explaining the procedure of assessment in search cases, it shows that these are separate provisions independent of other provisions relating to reassessment, because of the non obstante clause begins with the said sections. The language used in these sections, i.e. 'notwithstanding anything contained' in [section 139, section 147, section 148, section 149, section 151 and section 153](#) made it clear that provisions of these sections are not made applicable to the assessments covered by the provisions of [section 153A](#). Prior to the introduction of these three sections, there was a separate chapter XIV -B of the Act, by [section 158BC](#) to [158BE](#) which governs the search assessments which is popularly known as Block assessment. The earlier provisions provides for single assessment to be made in respect of undisclosed income of Block period consisting of 10 assessment years immediately preceding the assessment year in which search took place and the broken period of up to the date of search was also included in the block period. After the introduction of new sections, i.e. [section 153A](#) to [153C](#), the single block assessment concept was done away with the new scheme of assessment of search cases where the Assessing Officer is to assess or reassess the total income of each of the assessment years falling within the period of six assessment years immediately preceding the assessment year in which the search is conducted. Therefore, under the new scheme, the Assessing Officer is required to exercise the normal assessment powers in respect of the previous year in which the search took place. From these facts, one thing is clearly emerged that both i.e. earlier concept of Block

assessment and the new scheme of assessment is separate provisions created for assessment of search cases where the search is conducted u/s 132 or requisition was made u/s [132A of the Act](#).

12. Under the provisions of [section 147](#), the Assessing Officer is having power to re-open the assessment, if he is of the opinion that the income chargeable to tax has escaped assessment.

*Before doing so, the Assessing Officer should satisfy himself that, there is material which suggests that there is an escapement of income. The AO can exercise these powers with a reasonable belief coupled with some material which suggest the escapement of income. Once the conditions precedent for assumption of jurisdiction to commence the reassessment proceedings, he has to cross the hurdles attached with reassessment by way reasons for reopening of assessment, time limit for issue of notice and provision for obtaining sanction of higher authority in certain circumstances. Under the provisions of [section 153A](#) to [153C](#) these hurdles are cleared by using the non obstante clause in the said section. In other words, under the new provisions of [section 153A](#), the AO is not required to satisfy these conditions before issue of notice. The only requirement is that there should be a search action u/s 132 or books of account, other documents or any other asset are requisitioned under [section 132A](#). Therefore, we are of the opinion that though, the Assessing Officer from both sections empowered to tax the income escaped from tax, both are works in a different situations, i.e. [section 147](#) comes in to operation where there is an escapement of income chargeable to tax and [section 153A](#) comes in to operation where there is search u/s 132.*

13. Under the provisions of [section 153A](#), the Assessing Officer is bound to issue notice to the assessee to furnish the returns of income for each assessment years falling within the six assessment years immediately preceding the assessment year in which search or requisition is made. Another significant feature of this section is that the Assessing Officer is empowered to assess or reassess the total income of the aforesaid period which includes disclosed and undisclosed income. Therefore, the new provisions has given wide powers to the Assessing Officer to assess or reassess the total income of six assessment years falling within the period of those six assessment years immediately preceding the assessment year in which search is conducted. Under the new provisions of [section 153A](#), the statute is provides wide powers to the Assessing Officer in respect of assessments already completed u/s 143(1) or 143(3). If such orders is already in existence prior to the initiation of search, the Assessing Officer is empowered to reopen those proceedings and reassess the total income taking note of the undisclosed income, if any, found during the course of search. For this purpose, the restrictions imposed on the Assessing Officer by way of [sections 148](#) to [153](#) to reopen the assessment ITA.1154 & 1155/Bang/2015

Page - 11 u/s 147 has been removed by the non obstante clause used in [section 153A](#).

14. In the present case on hand, admittedly, the Assessing Officer has reopened the assessment based on a search conducted in a third party case. The AO formed the opinion based on the statement recorded from the assessee, consequent to post search proceedings taken up by the DDIT(Inv), which shows undisclosed income which is the very basis of reopening the assessment. The search is conducted on 22-8-2008 which comes under the assessment year 2009-10. The Assessing Officer reopened the assessment year 2008-09, which is falling within those six assessment years immediately preceding the assessment year in which search is conducted. The assessee case falls within the provisions of [section 153C](#), as the incriminating document seized in the case of search in another case. The Assessing Officer, on satisfying the above condition is under obligation to issue notice to the person requiring him to furnish the return for the six assessment years immediately preceding the assessment year in which search is took place. Thereafter, the Assessing Officer has to assess or reassess the total income of those six assessment years. The word "shall" used in [section 153A](#) made it clear that the Assessing Officer has no option, but to issue notice and proceed thereafter to assess or reassess the total income. In the instant case, the Assessing Officer issued notice u/s 148 to reopen the assessment. Therefore, in view of the non-obstante clause begin with [section 153A](#), the Assessing Officer has no jurisdiction to issue notice u/s 148 reopen the assessment of those six assessment year which falls within the exclusive jurisdiction of [section 153A](#). Though, both provisions of the Act empowers the Assessing Officer to assess or reassess the income escaped from assessment, both sections are dealing with different situations. [Section 147](#) comes into operation when, the Assessing Officer believes that there is an escapement of income chargeable to tax, either from the return already filed or through some external material evidence came to his knowledge, which shows the escapement of income. Whereas, [section 153A](#) comes into operation when there is search u/s 132 or books of accounts, or any other asset or other documents requisitioned u/s 132A. If Assessing Officer justified in proceeding with [section 147](#) to reopen the assessment, then there would be no relevance to [section 153A](#), which was inserted in to the Act to deal exclusively with search cases. The legislators in their wisdom clearly spelt out the provisions of law applicable to search cases by using the word shall to begin with [section 153A](#), made it mandatory that the Assessing Officer bound to issue notice u/s 153A or 153C, thereafter proceed to assess or reassess the total income, where search is conducted u/s 132 or requisition is made u/s 132A. Therefore, in our opinion, the AO is not justified in reopening the assessment u/s 147 and his order is illegal and arbitrary.

In view of the above and in view of the decision relied upon by the assessee, we do not find any merit in the appeals filed by Revenue.”

07. *At this stage we may like to point out that the decision relied upon by the Revenue in the matter of Gudwill Housing Ltd (supra) was a decision on [Section 158BD](#) under the old Act. There is a significant difference in the construction, language and content of both the provisions i.e [Section 158BD](#) under the old Act and [section 153C](#) of new Act of 1961. [Section 153C](#) of 1961 Act, starts with a non-obstante clause, whereas this non-obstinate provision was not there in [Section 158BD](#). Therefore in our considered opinion the decision relied upon by the Revenue is not applicable to the facts and circumstances of present case. We hold accordingly.”*

In view of the ratio laid down in the said case, we are of the view that the AO wrongly initiated the proceedings u/s 148 and completed the assessment u/s 143(3) rws 147 of the Act, instead of initiating the proceedings u/s 153C of the Act. Therefore, we set aside the order of CIT(A) and quash the assessment made by the AO u/s 143(3) rws 147 of the Act. Since the very assessment is quashed, the additions made in such assessment automatically get cancelled.

8. As the facts and additional grounds are materially identical in all the other cases to that of the case of Batta Yadamma, following the decision therein we allow these appeals as well. The original grounds of appeals are not required to be adjudicated as the same are irrelevant since the assessment itself is quashed.

9. As far as appeals of the revenue are concerned, they become infructuous as we have set aside the order of CIT(A) and quashed the assessment made u/s 143(3) rws 147 of the Act.

10. In the result, all the appeals of the assesseees are allowed and appeal of revenue are dismissed.

Pronounced in the open Court on 29<sup>th</sup> November, 2018.

**Sd/-**  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 29<sup>th</sup> November, 2018

*kv*

Copy to:-

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- 4) *Batta Rajkumar, C/o B. Narsing Rao & Co., CAs., Plot No. 554, Road No. 92, Jubilee Hills, Hyd. – 96*
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- 6) *CIT(A) – 2 Hyderabad.*
- 7) *Pr. CIT - 2, Hyd.*
- 8) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 9) *Guard File*