

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI ARUN KUMAR GARODIA, AM
AND
SHRI PAVAN KUMAR GADALE, JM**

ITA No. 793 to 799/Bang/2016
Assessment Years : 2006 – 07 to 2012 – 13

M/s Smt. Mala Bathla, L/R of Late Ashok Bathla, No. 361, 7 th Main, HAL 2 nd Stage, Indiranagar, Bangalore - 560008 PAN: ACAPB5672K	vs.	DCIT, Central Circle – 2 (1), Bangalore
APPELLANT		RESPONDENT
Assessee by	:	Shri V. Chandrasekhar, Advocate & Shri G.S.Prasanth, C.A.
Revenue by	:	Shri C. H. Sundar Rao, CIT DR
Date of Hearing	:	24.09.2019
Date of Pronouncement	:	25.10.2019

ORDER

PER SHRI A.K. GARODIA, AM:

These seven appeals are filed by the assessee and these are directed against a combined order of learned CIT (A) 11, Bangalore dated 29.02.2016. All these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. Year wise grounds raised by the assessee are as under”-

In ITA No.793(B)/2016 (Assessment year 2006-07).

1. The order of the authorities below in so far as it is against the appellant is opposed to law, weight of evidence, natural

justice, probabilities, facts and circumstances of the appellant's case.

2. The appellant denies himself liable to be assessed on a total income of Rs. 34,18,572/- as against Rs. 6,63,572/- returned by the appellant under the facts and circumstances of the case.

3. The order of CIT(A) is bad in law as the additions made on protective basis by the assessing officer was confirmed on substantive basis which amounts to enhancement which is impermissible in law without giving show cause notice under section 251(2) of the Act.

4. The mandatory condition of issuance of notice under section 251(2) of the Act for the enhancement is not complied with and thus the order of CIT(A) needs to be set aside on this count alone.

5.a) The learned CIT(A) erred in confirming the addition of Rs.1,25,000/- as unexplained credits in Dena Bank Account under the facts and circumstances of the case.

b) The learned CIT(A) erred in confirming the addition of Rs.16,30,000/- as unexplained credits in Guardian Souhardha Bank Account under the facts and circumstances of the case.

6. Without prejudice the authorities below ought to have worked out the peak credit before quantifying the unexplained credits under the facts and circumstances of the case.

7. The CIT(A) erred in confirming an addition of Rs.10,00,000/- as unexplained money advanced under the facts and circumstances of the case.

8. Without prejudice the addition made is wrong and requires to be made as Nil on the facts of the case.

9. The CIT(A) failed to appreciate that the additions made merely on protective basis without there being any substantive assessment do not stand the test of law and consequently the orders of the authorities below are ultra vires the provisions of the Act and thus the additions needs to be deleted for the substantial cause of advancement of justice.

10. The learned CIT(A) erred in not considering the submissions made by the appellant which is sine qua non for

passing the order and thus the order passed needs to be set aside on the facts and circumstances of the case.

11.The assessing officer erred in making addition purely on suspicion and surmises and not based on any factual foundation and the CIT(A) further erred in confirming the additions made on the facts of the case.

12.The order of the authorities below is bad in law as the mandatory conditions to invoke the jurisdiction under section 153A of the Act did not exist or having not been complied with and consequently the order of the authorities below is bad in law for want of requisite jurisdiction.

13.The learned CIT(A) ought to have given a finding on the validity of search. Reliance is placed on the decision of the Jurisdictional High Court in the case of C Ramaiah Reddy vs. ACIT reported in 339 ITR 210.

14. The authorities below erred in not providing the copy of reasons recorded even after specific request made by the appellant under the facts of the case. Reliance is placed on the decision of Supreme Court in the case of DGIT vs. Spacewood Furnishers Pvt. Ltd. reported in 374 ITR 595.

15.The appellant denies himself liable to be levied to interest under sections 234A, 234B, 234C and 234D of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with sections 234A, 234B, 234C and 234D of the Act.

16.Without prejudice, the interest levied under section 234A, 234B, 234C and 234D of the Act requires to be waived off under the facts and circumstances of the case.

17.The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

18.In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.

In ITA No.794(B)/2016 (Assessment year 2007-08)

1.The order of the authorities below in so far as it is against the Appellant is opposed to law, weight of evidence, natural

justice, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies himself liable to be assessed on a total income of Rs. 69,68,934/- as against Rs. 6,08,934/- returned by the appellant under the facts and circumstances of the case.

3. The CIT(A) erred in confirming addition of Rs.50,00,000/- as undisclosed income from bookie business merely based on the statements recorded during search under the facts and circumstances of the case.

4. Without prejudice, the learned CIT(A) is not justified in confirming the additions of Rs. 50,00,000/- in each year when no such statement has been made and thus the addition confirmed is contrary to the factual foundations of the case.

5. Without prejudice, determining income on net incremental wealth method is an accepted norm and there is nothing on record to remotely suggest that such income is earned on the facts and circumstances of the case.

6. The learned CIT(A) failed to appreciate that the appellant had retracted the declaration made during search and thus the addition confirmed merely based on admission without any tangible evidence is unsustainable in the eyes of law. Reliance is placed on the decision of the Apex Court in the case of Pullangode Rubber Produce Co Ltd vs. State of Kerala and another reported in 91 ITR 18.

7. Without prejudice, the amount added is wrong and requires to be made as Nil or even in extreme case the amount added is highly excessive and needs to be substantially reduced on the facts of the case.

8. The assessing officer erred in making addition purely on suspicion and surmises and not based on any factual foundation and the CIT(A) further erred in confirming the additions made on the facts of the case.

9. The order of the authorities below is bad in law as the mandatory conditions to invoke the jurisdiction under section 153A of the Act did not exist or having not been complied with and consequently the order of the authorities below is bad in law for want of requisite jurisdiction.

10.The learned CIT(A) ought to have given a finding on the validity of search. Reliance is placed on the decision of the Jurisdictional High Court in the case of C Ramaiah Reddy vs. ACIT reported in 339 ITR 210.

11.The order passed by the CIT(A) is on a wrong appreciation of facts and is against the principles of natural justice under the facts and circumstances of the case.

12.The authorities below erred in not providing the copy of reasons recorded even after specific request made by the appellant under the facts of the case. Reliance is placed on the decision of Supreme Court in the case of DGIT vs. Spacewood Furnishers Pvt. Ltd. reported in 374 ITR 595.

13.The appellant denies himself liable to be levied to interest under section 234 A, 234B and 234C of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with section 234A, 234B and 234C of the Act.

14.Without prejudice, the interest levied under sections 234A, 234B, and 234C of the Act requires to be waived off under the facts and circumstances of the case.

15.The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

16.In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.

In ITA No.795(B)/2016 (Assessment year 2008-09)

1.The order of the authorities below in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2.The appellant denies himself liable to be assessed on a total income of Rs.70,26,991/- as against Rs. 5,98,991/- returned by the appellant under the facts and circumstances of the case.

3.The CIT(A) erred in confirming addition of Rs.50,00,000/- as undisclosed income from bookie business merely based on the statements recorded during search under the facts and circumstances of the case.

4.Without prejudice, the learned CIT(A) is not justified in confirming the additions of Rs. 50,00,000/- in each year when no such statement has been made and thus the addition confirmed is contrary to the factual foundations of the case.

5.Without prejudice, determining income on net incremental wealth method is an accepted norm and there is nothing on record to remotely suggest that such income is earned on the facts and circumstances of the case.

6.The learned CIT(A) failed to appreciate that the appellant had retracted the declaration made during search and thus the addition confirmed merely based on admission without any tangible evidence is unsustainable in the eyes of law. Reliance is placed on the decision of the Apex Court in the case of Pullangode Rubber Produce Co. Ltd. vs. State of Kerala and another reported in 91 ITR 18.

7.Without prejudice, the amount added is wrong and requires to be made as Nil or even in extreme case the amount added is highly excessive and needs to be substantially reduced on the facts of the case.

8.The assessing officer erred in making addition purely on suspicion and surmises and not based on any factual foundation and the CIT(A) further erred in confirming the additions made on the facts of the case.

9.The order of the authorities below is bad in law as the mandatory conditions to invoke the jurisdiction under section 153A of the Act did not exist or having not been complied with and consequently the order of the authorities below is bad in law for want of requisite jurisdiction.

10.The learned CIT(A) ought to have given a finding on the validity of search. Reliance is placed on the decision of the Jurisdictional High Court in the case of C Ramaiah Reddy vs ACIT reported in 339 ITR 210.

11.The order passed by the CIT(A) is on a wrong appreciation of facts and is against the principles of natural justice under the facts and circumstances of the case.

12.The authorities below erred in not providing the copy of reasons recorded even after specific request made by the appellant under the facts of the case.

Reliance is placed on the decision of Supreme Court in the case of *DGIT vs. Spacewood Furnishers Pvt. Ltd.* reported in 374 ITR 595.

13.The appellant denies himself liable to be levied to interest under section 234A, 234B and 234C of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with section 234A, 234B and 234C of the Act.

14.Without prejudice, the interest levied under sections 234A, 234B, and 234C of the Act requires to be waived off under the facts and circumstances of the case.

15.The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

16.In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.

In ITA No.796(B)/2016 (Assessment year 2009-10)

1.The order of the authorities below in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2.The appellant denies himself liable to be assessed on a total income of Rs.75,46,201/- as against Rs. 6,96,201/- returned by the appellant under the facts and circumstances of the case.

3.The CIT(A) erred in confirming addition of Rs.50,00,000/- as undisclosed income from bookie business merely based on the statements recorded during search under the facts and circumstances of the case.

4.Without prejudice, the learned CIT(A) is not justified in confirming the additions of Rs. 50,00,000/- in each year when no such statement has been made and thus the addition confirmed is contrary to the factual foundations of the case.

5. *Without prejudice, determining income on net incremental wealth method is an accepted norm and there is nothing on record to remotely suggest that such income is earned on the facts and circumstances of the case.*

6. *The learned CIT(A) failed to appreciate that the appellant had retracted the declaration made during search and thus the addition confirmed merely based on admission without any tangible evidence is unsustainable in the eyes of law. Reliance is placed on the decision of the Apex Court in the case of Pullangode Rubber Produce Co Ltd Vs State of Kerala and another reported in 91 ITR 18.*

7. *Without prejudice, the amount added is wrong and requires to be made as Nil or even in extreme case the amount added is highly excessive and needs to be substantially reduced on the facts of the case.*

8. *The assessing officer erred in making addition purely on suspicion and surmises and not based on any factual foundation and the CIT(A) further erred in confirming the additions made on the facts of the case.*

9. *The order of the authorities below is bad in law as the mandatory conditions to invoke the jurisdiction under section 153A of the Act did not exist or having not been complied with and consequently the order of the authorities below is bad in law for want of requisite jurisdiction.*

10. *The learned CIT(A) ought to have given a finding on the validity of search. Reliance is placed on the decision of the Jurisdictional High Court in the case of C Ramaiah Reddy vs ACIT reported in 339 ITR 210.*

11. *The order passed by the CIT(A) is on a wrong appreciation of facts and is against the principles of natural justice under the facts and circumstances of the case.*

12. *The authorities below erred in not providing the copy of reasons recorded even after specific request made by the appellant under the facts of the case. Reliance is placed on the decision of Supreme Court in the case of DGIT vs. Spacewood Furnishers Pvt. Ltd. reported in 374 ITR 595.*

13. *The appellant denies himself liable to be levied to interest under section 234A, 234B, 234C and 234D of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of*

the case. The appellant expressly urges that the period of levy of interest is not in accordance with sections 234A, 234B, 234C and 234D of the Act.

14. Without prejudice, the interest levied under sections 234A, 234B, 234C and 234D of the Act requires to be waived off under the facts and circumstances of the case.

15. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

16. In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity. I

In ITA No.797(B)/2016 (Assessment year 2010-11)

1. The order of the authorities below in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies himself liable to be assessed on a total income of Rs.62,82,132/- as against Rs. 16,56,840/- returned by the appellant under the facts and circumstances of the case.

3. The CIT(A) erred in confirming addition of Rs.50,00,000/- as undisclosed income from bookie business merely based on the statements recorded during search under the facts and circumstances of the case.

4. Without prejudice, the learned CIT(A) is not justified in confirming the additions of Rs. 50,00,000/- in each year when no such statement has been made and thus the addition confirmed is contrary to the factual foundations of the case.

5. Without prejudice, determining income on net incremental wealth method is an accepted norm and there is nothing on record to remotely suggest that such income is earned on the facts and circumstances of the case.

6. The learned CIT(A) failed to appreciate that the appellant had retracted the declaration made during search and thus the addition confirmed merely based on admission without any tangible evidence is unsustainable in the eyes of law.

Reliance is placed on the decision of the Apex Court in the case of Pullangode Rubber Produce Co. Ltd. vs. State of Kerala and another reported in 91 ITR 18.

7. Without prejudice, the amount added is wrong and requires to be made as Nil or even in extreme case the amount added is highly excessive and needs to be substantially reduced on the facts of the case.

8. The assessing officer erred in making addition purely on suspicion and surmises and not based on any factual foundation and the CIT(A) further erred in confirming the additions made on the facts of the case.

9. The order of the authorities below is bad in law as the mandatory conditions to invoke the jurisdiction under section 153A of the Act did not exist or having not been complied with and consequently the order of the authorities below is bad in law for want of requisite jurisdiction.

10. The learned CIT(A) ought to have given a finding on the validity of search. Reliance is placed on the decision of the Jurisdictional High Court in the case of C Ramaiah Reddy vs ACIT reported in 339 ITR 210.

11. The order passed by the CIT(A) is on a wrong appreciation of facts and is against the principles of natural justice under the facts and circumstances of the case.

12. The authorities below erred in not providing the copy of reasons recorded even after specific request made by the appellant under the facts of the case. Reliance is placed on the decision of Supreme Court in the case of DGIT vs. Spacewood Furnishers Pvt. Ltd. reported in 374 ITR 595.

13. The appellant denies himself liable to be levied to interest under section 234B of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with sections 234B of the Act.

14. Without prejudice, the interest levied under sections 234B of the Act requires to be waived off under the facts and circumstances of the case.

15. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

16. In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.

In ITA No.797(B)/2016 (Assessment year 2010-11)

1. The order of the authorities below in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies himself liable to be assessed on a total income of Rs.60,49,824/- as against Rs. 7,79,824/- returned by the appellant under the facts and circumstances of the case.

3. The CIT(A) erred in confirming addition of Rs.50,00,000/- as undisclosed income from bookie business merely based on the statements recorded during search under the facts and circumstances of the case.

4. Without prejudice, the learned CIT(A) is not justified in confirming the additions of Rs. 50,00,000/- in each year when no such statement has been made and thus the addition confirmed is contrary to the factual foundations of the case.

5. Without prejudice, determining income on net incremental wealth method is an accepted norm and there is nothing on record to remotely suggest that such income is earned on the facts and circumstances of the case.

6. The learned CIT(A) failed to appreciate that the appellant had retracted the declaration made during search and thus the addition confirmed merely based on admission without any tangible evidence is unsustainable in the eyes of law. Reliance is placed on the decision of the Apex Court in the case of Pullangode Rubber Produce Co. Ltd. vs. State of Kerala and another reported in 91 ITR 18.

7. Without prejudice, the amount added is wrong and requires to be made as Nil or even in extreme case the amount added is highly excessive and needs to be substantially reduced on the facts of the case.

8. The assessing officer erred in making addition purely on suspicion and surmises and not based on any factual foundation and the CIT(A) further erred in confirming the additions made on the facts of the case.

9. *The order of the authorities below is bad in law as the mandatory conditions to invoke the jurisdiction under section 153A of the Act did not exist or having not been complied with and consequently the order of the authorities below is bad in law for want of requisite jurisdiction.*

10. *The learned CIT(A) ought to have given a finding on the validity of search. Reliance is placed on the decision of the Jurisdictional High Court in the case of C Ramaiah Reddy vs. ACIT reported in 339 ITR 210.*

11. *The authorities below erred in not providing the copy of reasons recorded even after specific request made by the appellant under the facts of the case.*

Reliance is placed on the decision of Supreme Court in the case of DGIT vs. Spacewood Furnishers Pvt. Ltd. reported in 374 ITR 595.

12. *The appellant denies himself liable to be levied to interest under sections 234A, 234B and 234C of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with sections 234A, 234B and 234C of the Act.*

13. *Without prejudice, the interest levied under sections 234A, 234B and 234C of the Act requires to be waived off under the facts and circumstances of the case.*

14. *The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

15. *In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.*

In ITA No.798(B)/2016 (Assessment year 2011-12)

1. *The order of the authorities below in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.*

2. *The appellant denies himself liable to be assessed on a total income of Rs.60,49,824/- as against Rs.7,79,824/- returned*

by the appellant under the facts and circumstances of the case.

3.The CIT(A) erred in confirming addition of Rs.50,00,000/- as undisclosed income from bookie business merely based on the statements recorded during search under the facts and circumstances of the case.

4..Without prejudice, the learned CIT(A) is not justified in confirming the additions of Rs. 50,00,000/- in each year when no such statement has been made and thus the addition confirmed is contrary to the factual foundations of the case.

5.Without prejudice, determining income on net incremental wealth method is an accepted norm and there is nothing on record to remotely suggest that such income is earned on the facts and circumstances of the case.

6.The learned CIT(A) failed to appreciate that the appellant had retracted the declaration made during search and thus the addition confirmed merely based on admission without any tangible evidence is unsustainable in the eyes of law. Reliance is placed on the decision of the Apex Court in the case of Pullangode Rubber Produce Co. Ltd. vs. State of Kerala and another reported in 91 ITR 18.

7.Without prejudice, the amount added is wrong and requires to be made as Nil or even in extreme case the amount added is highly excessive and needs to be substantially reduced on the facts of the case.

8.The assessing officer erred in making addition purely on suspicion and surmises and not based on any factual foundation and the CIT(A) further erred in confirming the additions made on the facts of the case.

9. The order of the authorities below is bad in law as the mandatory conditions to invoke the jurisdiction under section 153A of the Act did not exist or having not been complied with and consequently, the order of the authorities below is bad in law for want of requisite jurisdiction .

10. The ld.CIT(A) ought to have given a finding on the validity of the search. Reliance is placed on the decision of the jurisdictional High Court in the case of C Ramaiah Reddy Vs ACIT reported in 339 ITR 210.

11.The authorities below erred in not providing the copy of the reasons recorded even after specific request made by the appellant under the facts of the case. Reliance is placed on the decision on the decision of Supreme Court in the cse of DGIT Vs Spacewood Furnishers Pvt.Ltd., reported in 374 ITR 595.

12.The appellant denies himself liable to be levied to interest under sections 234 A, 234B and 234C of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with sections 234 A, 234B and 234C of the Act.

13.Without prejudice, the interest levied under sections 234 A, 234B and 234C of the Act requires to be waived off under the facts and circumstances of the case.

14.The appellant craves to leave to add, alter, delete or substitute any of the grounds urged above.

15.In view of the above and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.

In ITA No.799(B)/2016 (Assessment year 2012-13)

1.The order of the authorities below in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2.The appellant denies himself liable to be assessed on a total income of Rs. 2,72,79,772/- as against Rs. 18,85,213/- returned by the appellant under the facts and circumstances of the case.

3.The order of the assessing officer is bad in law as the mandatory conditions to invoke the jurisdiction did not exist, or having not been complied with and consequently the order passed is bad in law for want of requisite jurisdiction.

4.The CIT(A) erred in confirming addition of Rs.50,00,000/- as undisclosed income from bookie business merely based on the statements recorded during search under the facts and circumstances of the case.

5.Without prejudice, the learned CIT(A) is not justified in confirming the additions of Rs. 50,00,000/- in each year when

no such statement has been made and thus the addition made is contrary to the factual foundation of the case.

6. Without prejudice, determining income on net incremental wealth method is an accepted norm and there is nothing on record to remotely suggest that such income is earned on the facts and circumstances of the case.

7. The learned CIT(A) failed to appreciate that the appellant had retracted the declaration made during search and thus the addition confirmed merely based on admission without any tangible evidence is unsustainable in the eyes of law.

Reliance is placed on the decision of the Apex Court in the case of Pullangode Rubber Produce Co. Ltd. vs. State of Kerala and another reported in 91 ITR 18.

8. Without prejudice, the amount added is wrong and requires to be made as Nil or even in extreme case the amount added is highly excessive and needs to be substantially reduced on the facts of the case.

9. The assessing officer erred in making addition purely on suspicion and surmises and not based on any factual foundation and the CIT(A) further erred in confirming the additions made on the facts of the case.

10. The appellant denies himself liable to be levied to interest under sections 234 A, 234B and 234C of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with sections 234 A, 234B and 234C of the Act.

11. Without prejudice, the interest levied under sections 234 A, 234B and 234C of the Act requires to be waived off under the facts and circumstances of the case.

12.The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

13.In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.

3. It was submitted by the learned AR of the assessee that Ground No. 1 & 2 in each year are general. Regarding ground Nos. 3 & 4 in A. Year 2006 – 07 in respect of enhancement by CIT (A), reliance was placed on a Judgment of Hon'ble Punjab & Haryana High Court rendered in the case of Y. Brahmiah vs. ITO, 229 Taxman 558 copy available on pages 47 to 50 case Law Compilation. Learned DR of the revenue supported the order of CIT (A). He also submitted that the judgment cited by the learned AR of the assessee is not applicable in the present case.

3. We have considered the rival submissions and find that even as per Ground no. 3 raised by the assessee, learned CIT (A) has not made any enhancement in true sense and the assessee is terming the confirmation of protective addition as substantive addition as enhancement. In our considered opinion, mere conversion of a protective addition by the AO into a substantive addition by CIT (A) does not amount to an enhancement as referred to in section 251 (2) of I T Act. The facts in the case of Y. Brahmiah vs. ITO (Supra) are different and therefore, this Judgment of Hon'ble Punjab & Haryana High Court is not applicable in the present case. These grounds are rejected.

4. Regarding ground Nos. 5 & 6 in A. Year 2006 – 07 in respect of confirming of an addition of Rs. 1.25 Lacs and Rs. 16.30 lacs and regarding Ground Nos. 3 & 4 in A. Year 2007 – 08 to 2012 – 13 in respect of confirming of an addition of Rs. 50 Lacs in each of these six years, learned AR of the assessee submitted that even if some addition is to be made in these seven years, it can be maximum as per peak working of these years and not of entire cash deposit and amount declared in the retracted statement u/s 132 (4) as has been done by the AO and confirmed by CIT (A) to the extent of the retracted statement u/s 132 (4). At this juncture, the bench wanted to see the peak working along with relevant bank statements in support of such peak working. In reply, learned AR of the assessee submitted that by 4th October, he will file the same with a copy to learned DR of the revenue. Learned DR of the revenue supported the

order of CIT (A). He also submitted that in case, the AR of the assessee is granted time to file the peak working, then he should also be granted time and liberty to file his submission in reply to such peak working. The bench also wanted to see the relevant seized material, the Statement u/s 132 (4) and its retraction. In reply, it was submitted by the learned AR of the assessee that the relevant seized material is available on pages 20 to 24 of the paper book, Statement u/s 132 (4) is available on pages 1 to 13 of the paper book and its retraction is available on pages 14 to 19 of the paper book.

5. We have considered the rival submissions and we find that in the present case, addition in various years are made to the extent of entire cash deposits in two bank accounts with Dena Bank and Guardian Souharda Bank. In addition to this, addition of Rs. 50 lacs in each of six assessment years from 2007 – 08 to 2012 – 13 is made on the basis of sworn statement u/s 132 (4) dated 10.02.2012, copy available on pages 1 to 13 of the paper book which is said to be retracted on 22.05.2012 as per copy of various letters dated 22.05.2012 available on pages 14 to 19 of the paper book and these letters are duly receipted by Dy. Director of Income Tax (Investigation) Unit 1 (2) Bangalore on 22.05.2012. In addition to these, some other additions are made in these seven years totaling Rs. 159.25 lacs as per details available on pages 10 & 11 of the Assessment order for A. Y. 2007 – 08. These additions are made on the basis of a seized material marked as A1/AB/01, copy available on pages 20 to 24 of the paper book. In our considered opinion, addition on the basis of mere statement recorded u/s 132 (4) is not justified if the same is not corroborated by any seized material or any other material available on record. Particularly, in a case, where the statement is retracted within a reasonable time, in such a case, such retracted statement cannot be made a basis for any addition and addition should be made on the basis of adverse material on record. In the present case, statement u/s 132 (4) dated 10.02.2012 is retracted on 22.05.2012 i.e. within less than 4 months and the retraction is before Dy. Director of Income Tax (Investigation) Unit 1 (2) Bangalore. In our considered opinion, under these facts, the addition should be made on the basis of the adverse material and not on the basis of this retracted statement. Hence, we delete this addition in all six years.

6. Learned CIT (A) has confirmed the addition of Rs. 50 lacs in each of these six years and by granting telescoping of that addition, other additions were deleted by him but now we are deleting this addition of Rs. 50 lacs in each of these six years made by

the AO on the basis of statement u/s 132 (4) and as a consequence, no telescoping is available and therefore, we have to examine and decide about sustainability of other additions. About the addition made by the AO in respect of alleged unexplained cash deposits in various bank accounts, it was submitted that it should not exceed the peak amount of such cash deposit in excess of available cash and we find merit in this claim because if cash is withdrawn from bank and the revenue has not brought any material on record showing some other use of that cash then it should be accepted that such cash was available for deposit in bank account in near future at least.

7. Having held so, we now examine the addition to be made on the basis of seized material. In A. Y. 2006 – 07, the addition made by the AO and confirmed by CIT (A) is of Rs. 27.55 Lacs which includes cash deposit in two bank accounts Rs. 17.55 lacs and Rs. 10 lacs for alleged unexplained loans given by the assessee as per seized material marked as A1/AB/01. Regarding the addition in respect of cash deposit in banks in this year, we find force in the submission of the learned AR of the assessee that such addition should be based on peak working and not total deposit because if there is some cash withdrawal then for deposit on a later date, such cash withdrawal has to be considered as a source of deposit unless some material is available on record about user of such withdrawn case for some other purpose. In the present case, no such material is pointed out by the learned DR of the revenue. As per the peak working provided by the learned AR of the assessee, we find that an opening cash in hand of Rs. 1 lac is considered and it is stated that it is supported by return filed for A. Y. 2005 – 06. Copy of this return is available on pages 112 to 114 of the peak working. Total income declared is Rs. 173,058/- and advance tax paid is Rs. 25,000/-. This declared income includes Rs. 84,001/- on account of Remuneration and interest from a partnership firm M/s Bathla & Sons but whether there is any cash withdrawal from the firm is there or not is not known. This income cannot be considered for closing cash in hand as on 31.03.2005 and opening cash in hand on 01.04.2005 in the absence of any evidence showing cash withdrawal from firm. There is payment of advance tax of Rs. 25,000/- and this has to be reduced from cash available on account of other income of Rs. 90,000/- being Misc. Income declared. There would be Household expenses also and considering these facts, we do not accept the claim about opening cash in hand of Rs. 1 lac. Thereafter, we find that the withdrawal from bank is considered as cash in hand and cash deposit in bank is considered as user of such cash in hand and only the

excess cash available after deposit in bank is considered as available cash on a later date and when the cash deposit exceeds the available cash, minus cash balance is considered as peak of that date and after that date, available cash in hand becomes nil and withdrawal from bank after peak date is again considered as cash in hand and same method is adopted till cash deposit exceeds cash in hand again. In this manner, peak for A. Y. 2006 – 07 is worked out at Rs. 4 lacs on 28.07.2005. Again on 13.03.2006, second peak of minus cash balance is worked out at Rs. 3.10 lacs and by adding the both, total minus balance for this year is worked out at Rs. 7.10 Lacs by reducing the total deposit of Rs. 25.10 Lacs from claimed opening cash in hand Rs. 1 Lacs and cash withdrawal Rs. 17 lacs. Since, we have not accepted the claim of opening cash in hand Rs. 1 Lac, we adopt peak of Rs. 8.10 lacs for this year. In this working, both these bank accounts with Dena bank and Guardian Bank are considered and in addition to that, bank account with HSBC is also considered. All bank statements are also enclosed and this is not a submission of the learned DR of the revenue that the entries in peak working are not matching with entries in the bank statement. Hence, we accept this peak working with one modification i.e. increase of Rs. 1 lac in A. Y. 2006 – 07. Ground No. 5 & 6 in A. Y. 2006 – 07 are partly allowed and addition of Rs. 8,10,000/- is confirmed as against Rs. 17.55 lacs made by the AO and confirmed by CIT (A).

8. In remaining six years, learned CIT (A) has deleted various other additions about cash deposit and advances but confirmed the addition of Rs. 50 Lacs in each year made by the AO on the basis of statement u/s 132 (4) He has made a chart on page no. 20 of his order in which, he worked out that other additions in these six years are as under:-

a) Unexplained Cash Deposit in Dena Bank	Rs. 13.92 lacs
b) Unexplained Cash Deposit in Guardian Souharda Bank	Rs. 23.75 lacs
c) Unexplained loans	Rs. 139.25 lacs
d) Jewellery	Rs. 80.20 lacs
Total	Rs. 257.12

9. Since, he confirmed the addition of Rs. 50 lacs in each of these six years total Rs. 300 Lacs, he held that telescoping of Rs. 300 lacs is allowable and deleted these additions of Rs. 257.12 Lacs but since, we have deleted this addition of Rs. 50 lacs in each of these six years made by the AO on the basis of statement u/s 132 (4) and as a

consequence, no telescoping is available and therefore, we have to examine and decide about sustainability of other additions.

10. As per the peak working submitted by the learned AR of the assessee, there is deposit of Rs. 2.30 Lacs in April 2006 and there is no opening balance and no withdrawal in this month and hence, peak negative cash balance is worked out at Rs. 2.30 lacs in April, 2006. In May 2006, there is withdrawal of Rs. 2.50 Lacs on 20.05.2006 and there is no cash deposit in this month before 20.05.2006 and there are various cash deposits during 24.05.2006 to 31.07.2006 of Rs. 4.45 lacs. After making adjustment of Rs. 2.50 Lacs as cash available, peak negative cash balance of this period from May 2006 to July 2006 is worked out at Rs. 1.95 lacs and cumulative negative peak during April 2006 to July 2006 is worked out at Rs. 4.25 lacs. After July 2006 till October, 2006, there is no cash withdrawal and cash deposits are of Rs. 1.35 lacs and therefore, peak negative cash balance of this period is worked out at Rs. 1.35 lacs and cumulative negative peak during April 2006 to October 2006 is worked out at Rs. 5.60 lacs. After October 2006 till March, 2007, there is no cash deposit till 12.03.2007 but there are two cash withdrawals on 05.03.2007 2007 of Rs. 4 lacs and thereafter on 13.03.2007, there is cash deposit of Rs. 0.50 Lac and hence, in march there is no peak negative cash balance. In fact, there is positive cash balance as on 31.03.2007 of Rs. 3.50 lacs after considering total peak negative cash balance of Rs. 5.60 Lacs in F. Y. 2006 – 07.

11. In the peak working for F. Y. 2007 – 08, there is cash deposit of Rs. 2.00 lacs but the opening cash balance of Rs. 3.50 Lacs is available and therefore, peak negative cash balance for April 2007 is nil and in fact, there is positive cash balance of Rs. 1.50 lacs at the end of April, 2007. There is further cash withdrawal of Rs. 10 Lacs in May & June 2007 and there is no cash deposit in these two months making available positive cash balance of Rs. 11.50 Lacs at the end of June 2007. In July, 2007, there is neither cash deposit nor withdrawal and in August to October 2007, there are cash deposits of Rs. 6.30 Lacs and no cash withdrawal leaving positive cash balance of Rs. 5.20 Lacs at the end of October 2007. In November, 2007, there is neither cash deposit nor withdrawal and in December 2007, there are cash withdrawals of Rs. 2.50 Lacs and no cash deposit making positive cash balance available of Rs. 7.70 Lacs at the end of December 2007. In January to March 2008, there are two cash deposits of

Rs.1.47 lacs and hence, at the end of march 2008, the available positive cash balance is Rs. 6.23 lacs and nil negative cash in hand in the F. Y. 2007 – 08.

12. In F. Y. 2008 – 09, there are cash deposits of Rs. 3.24 lacs in April 2008 leaving positive cash balance at the end of April 2008 at Rs. 2.99 lacs. In May 2008, there is neither cash deposit nor withdrawal and in June 2008 to February 2009, there are various cash deposits totaling Rs. 6.35 lacs and therefore, there is peak of negative cash balance of Rs. 0.36 Lac as on 03.02.2009. In March, 2009, there is cash withdrawal of Rs. 2 lacs and no cash deposit and therefore, there is positive cash balance of Rs. 2 Lacs as on 31.03.2009 with negative peak of Rs. 0.36 lac in f. Y. 2008 – 09.

13. In F. Y. 2009 – 10, there is neither cash deposit nor withdrawal during 01.04.2009 to 26.06.2009 and On 27th June 2009, there are two cash withdrawals totaling Rs. 2.00 lacs and in July 2009, there is cash deposit of Rs. 2 lacs leaving a positive cash balance of Rs. 2 lacs at the end of July, 2009. In August 2009, there is neither cash deposit nor withdrawal. In September 2009 to February, 2010, there are cash deposits of Rs. 3.44 lacs and therefore, there is peak of negative cash balance of Rs. 1.44 Lac as on 25.02.2010 with no transaction in march 2010. Hence, the peak of negative cash in F. Y. 2009 – 10 is Rs. 1.44 Lacs and nil positive cash balance as on 31.03.2010. In F. Y. 2010 – 11, there is no cash withdrawal and various cash deposits totaling Rs. 2.70 lacs and therefore, the peak of negative cash in F. Y. 2010 – 11 is Rs. 2.70 Lacs and nil positive cash balance as on 31.03.2011.

14. In F. Y. 2011 – 12, there is no cash withdrawal and various cash deposits totaling Rs. 4.50 lacs and therefore, the peak of negative cash in F. Y. 2011 – 12 is Rs. 4.50 Lacs and nil positive cash balance as on 31.03.2012. We confirm the addition of year wise peak negative cash balance after considering total cash deposits and cash withdrawals from various banks. Summary of F. Y. wise peak negative cash balance is as under: -

F. Y.	Amount (Rs. in Lacs)
2006 – 07	5.60
2007 – 08	NIL
2008 – 09	0.36
2009 – 10	1.44
2010 – 11	2.70
2011 – 12	4.50
TOTAL	14.60

15. Now, we examine the sustainability of the addition of Rs. 139.25 lacs. This addition is made on the basis of seized material available on page no. 21 of the paper book being page 1 of Annexure A1/AB/01. On page 10 and 11 of the assessment order for A. Y. 2007 – 08, the AO has made a chart of 19 entries and in this chart, he says that dates are available in respect of 5 entries and for remaining 14 entries, he says that date is not available. In respect of those 5 entries, for which the AO says that date is available, such dates noted by him are 31.03.2006, 31.07.2009, 21.08.2009, 2007/2008 and 16.01.2012. In respect of these 5 entries, he made addition in A. Y. 2006 – 07 Rs. 10 lacs, A. Y. 2007 -08 Rs. 5 Lacs, A. Y. 2008 – 09 Rs. 5 lacs, A. Y. 2009 – 10 Rs. 10 lacs and A. Y. 2012 – 13 Rs. 10 Lacs and for remaining 14 items for which no date is available as per the AO, he made addition in A. Y. 2012 – 13 being the year relevant to the date of search on 06.02.2012. In this year, he made total addition on account of unexplained loan at Rs. 119.25 Lacs and this includes Rs. 109.25 Lacs on account of 14 entries for which no date is available as per the AO and Rs. 10 lacs for date noted as 16.01.2012 total such addition on account of unexplained loan is of Rs. 159.25 Lacs. When we examine the seized material, we find that no date is there at all. This query was raised by the bench in course of hearing from the learned Dr of the revenue to show the date in the seized material but he could not point out the same. This query was also raised as to how the addition can be made in the year of search when there is no date in the seized material because the amount noted may be of more than 6b years old and the amount may not be about an asset. In reply, learned DR of the revenue could not point out any legal basis of such addition in the year of search. Hence, we hold that in view of these facts,, no addition is justified because it is seen that in the seized material, only some amount and some percentage is noted without

any date and narration and hence, it is not clear as to whether these amounts are in respect of any loan given and if it is loan given, what is date of giving of loan because if the loan given is prior to 01.04.2005, no addition can be made in A. Y. 2012 – 13 also which the assessment year relevant to the date of search on 06.02.2012.

16. Now the next addition made by the AO on substantive basis in A. Y. 2012 – 13 is of Rs. 80,19,559/- on account of jewellery. On page 15 of the assessment order for A. Y. 2012 – 13, it is noted by the AO that in search on 06.12.2012, 2712.880 grams of jewellery was found in Locker no. 180 with Dena bank and 370.380 grams jewellery was found in locker No. 361 with Guardian bank, total 3083.260 Grams. The AO also noted that this was claimed before him that it was submitted before him that the assessee's mother Smt. Amrit rani Bathla had gold jewellery of about 5000 grams for several decades and this jewellery was valued by the govt. approved valuer and valuation report dated 15.10.1975 was furnished. The AO held that since no Wealth tax Return was filed by the mother of the assessee, mere valuation report carries no evidentiary value. This Valuation Report dated 15.10.1975 is available on pages 55 to 59 of the paper book. This report is by M/s C. Krishnaiah Chetty & Sons of 35, commercial Street, Bangalore – 560001. This report contains the phone nos. of office and residence also along with address. This is admitted position of fact that no wealth tax return was filed by Mrs. Amrit Rani Bathla, mother of the assessee of whom the valuation report dated 15.10.1975 was made available before us as well as the AO. Now, if, this is the stand of the AO that no such jewellery was available on this date i.e. 15.10.1975, the AO should have examined the valuer to find out the truth but the AO has not done so and therefore, it has to be accepted that the existence of this jewellery on 01.10.1975 with the mother of the assessee is not doubted by the AO also because in the absence of any contrary material, it has to be accepted that Govt. Approved Valuer will issue a valuation certificate only after examining the jewellery. If the existence of jewellery as on 01.10.1975 is accepted, the existence of it on the date of search cannot be rejected merely on this basis that the concerned assessee has not filed wealth Tax Return. For such a default of an assessee, consequences are provided in wealth tax Act but merely for non-filing of wealth tax return, existence of jewellery cannot be rejected. No other reason is given by the AO in this regard such as disposal of this jewellery before the date of search by way of sale, gift or in other manner. Under

these facts, we hold that the jewellery found in course of search cannot be treated as unexplained jewellery.

16. Out of various additions deleted by CIT (A) by allowing telescoping of the addition confirmed by him of Rs. 300 Lacs, we have held in above paras that in respect of cash deposited in various banks, addition is upheld to the extent of Rs. 14.60 lacs as per Para 14 above as per which all years are affected except A. Y. 2007 – 08 and in respect of various additions on account of alleged unexplained loans and jewellery, we have held that no addition is justified even after deletion of the addition of Rs. 300 Lacs deleted by us as per Para 5 above.

17. In the result, the appeal for A. Y. 2007 – 08 is allowed and the remaining six appeals of the assessee are partly allowed.

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

SD/- SD/-
(PAVAN KUMAR GADALE)
Judicial Member

(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the October, 2019.
am

Copy to:

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.