

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ A ” BENCH: BANGALORE  
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1006 to 1008/Bang/2013  
(Assessment Year: 2006-07 to 2007-08)

Smt. G. Vanaja,  
W/o G Karunakar Reddy,  
No.52, Sirguppa Road, Ashok Nagar,  
Havambavi, Bellary.  
PAN AIHPG 0429L

....Appellant

Vs.

Dy. Commissioner of Income Tax,  
Central Circle 1(3), Bangalore.

.....Respondent.

Assessee By:	Shri Mallah Rao, Advocate.
Revenue By:	Shri Dilip, Standing Counsel.

Date of Hearing :	25.11.2019
Date of Pronouncement :	27.11.2019

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

The assessee has filed appeals against common order of Commissioner of Income Tax (Appeals), Mysore for the Assessment Years 2006-07 & 2007-08, the order was passed under Section 153C r.w.s. 143(3) and 250 of the Income Tax Act, 1961 ('the Act') and for the Assessment Year 2008-09 order was passed under

Section 143(3) and 250 of the Act. Since the issues involved in all these three appeals are similar and identical, they are clubbed and heard together and common order is passed. For the sake of convenience we take up ITA No.1006/Bang/2013 and facts narrated therein.

2. The assessee has raised the following grounds of appeal :

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 herself liable to be assessed on a total income of Rs.1,62,75,100/- as against Rs.27,64,724/- returned by the appellant and in fact the returned income is excessive and needs to be reduced under the facts and circumstances of the case
3. The assessment order is bad in law as the assessment ought to have been completed under section 153A of the Act as the appellant is a person searched on the facts of the case.
4. Without prejudice, the order of the assessing officer is bad in law as the mandatory conditions to invoke the jurisdiction under section 153C of the Act did not exist or having not been complied with and consequently the order of the assessing officer is bad in law for want of requisite jurisdiction.
5. The authorities below erred in adding a sum of Rs.53,33,705/- under section on account of suppression of Bank balance and CIT(A) further erred in confirming the addition made by the assessing officer which is contrary to the facts and circumstances of the case.

6. The authorities below erred in adding a sum of Rs.80,24,673/- on account of unproved liabilities under the facts and circumstances of the case.
7. a) The authorities below ought to have made a reasonable estimate of income at some reasonable percentage of the turnover under the facts and circumstances of the case.
8. b) Without prejudice, the estimation of income at a greater figure than gross receipts of the appellant is not in accordance with law and thus the income assessed needs to be substantially reduced under the facts of the case.
9. The authorities below erred in considering capital introduced in cash of Rs.1,52,000/- as unexplained income under the facts of the case.
10. Without prejudice, the income assessed at Rs.1,62,75,100/- is highly excessive and needs to be substantially reduced on the facts of the case.
11. The appellant denies herself liable to be levied to interest under sections 234A,B and D 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 the provisions of the Act.
12. Without prejudice, the interest levied under sections 234 A, B and D ought to have been waived on the facts of the case.
13. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.
14. 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. The assessee is engaged in the business of ore crushing contract and there was a search under Section 132 of the Act and Notice under Section 153A was issued. The assessee has filed Return of Income on 6.10.2009 and in response to Notice under Section 143(2) of the Act the learned Authorised Representative appeared from time to time and produced the details as called for. The Assessing Officer on perusal of the financial statement found that there is a difference in the cash balances and further sundry creditors are not proved and accordingly made addition to the income returned and assessed total income of Rs.1,62,75,100. Aggrieved by the order the assessee has filed an appeal with the CIT(Appeals) whereas the CIT(Appeals) has confirmed the order of Assessing Officer. Aggrieved by the order of the CIT(Appeals), the assessee has filed an appeal before the Tribunal.

4. At the time of hearing, the learned Authorised Representative submitted that the order passed by the Assessing Officer under Section 153C r.w.s. 143(3) of the Act is bad in law. The contention of the learned Authorised Representative that the search proceedings conducted on the assessee and Notice was issued under Section 153A of the Act and order was passed under Section 153C of the Act. The learned Authorised Representative has argued and restricted his submissions on this technical / legal issue of Section 153A and 153C of the Act. Contra, the learned Departmental Representative supported the orders of the CIT(Appeals).

5. We heard the rival contentions and perused the material on record. Prima facie, the learned Authorised Representative has argued only to the extent of grounds of appeal relate to technicalities of passing assessment order, where the Assessing Officer has passed under Section 153C of the Act. On perusal of the assessment order, there was search operations under Section 132 of the Act on 26.10.2007 and documents relating to the assessee were seized. Hence Notice under Section 153A of the Act was issued. When a query was raised to ld. AR on

challenging of jurisdiction and Notice issued. The Id. AR submitted that the assessment order was passed under Section 153C of the Act. We found the grounds of appeal raised by the assessee before the appellate authority, CIT (Appeals) are that the assessee has challenged the issue of Notice under Section 153A of the Act and completion of assessment by Assessing Officer by passing order under Section 153C r.w.s. 143(3) of the Act. On perusal of the learned CIT(Appeals) order, we found that the learned CIT(Appeals) has only confirmed the additions made by the Assessing Officer, but on the issue of Ground Nos. 2.1 and 2.2 in respect of validity of Notice and Assessment, there is no findings and the learned Authorised Representative further submitted that the CIT(Appeals) has not given any findings on the alleged issue of Notice under Section 153A of the Act and validity of assessment under Section 153C r.w.s. 143(3) of the Act. We considering the overall aspects and provisions and observations in the CIT(Appeals) order are of the opinion that the CIT(Appeals) has not given findings on the legality of issue of Notice under Section 153A and passing of assessment order under Section 153C r.w.s. 143(3) of the Act. Therefore, we set aside the order of CIT(Appeals) and restore the entire disputed issue to the file of CIT(Appeals) for adjudication afresh to decide the technical grounds on legality mentioned in Ground Nos.2.1and 2.2 and if the assessee fails on the technical ground, then decide the case on merits and pass a speaking order and the assessee should be provided adequate opportunity of hearing in submitting the information and shall co-operate in submitting the information for early disposal of the appeal and the grounds of appeal of the assessee are allowed for statistical purposes.

6. Similarly, the assessee has filed appeals in ITA Nos.1007 & 1008/Bang/2013 for the Assessment Years 2007-08 & 2008-09 where the issues are identical and same decision as held in ITA No.1006/Bang/2013 for the Asst. Year 2006-07 shall apply. Accordingly these appeals are also restored to the file of

learned CIT(Appeals) for adjudication afresh with the above directions and allow the grounds of appeal of assessee for statistical purposes.

7. In the result, the assessee's appeals in ITA Nos.1006 to 1008/Bang/2013 are allowed for statistical purposes.

Order pronounced in the open court on 27th Nov., 2019.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 27.11.2019.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore