IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALOR "B" BENCH - BANGALORE

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

I.T.A Nos.1768 to 1770/BANG/2017
Assessment Years : 2013-14, 2014 – 15, 2015-16

Shri Panati Vittalnath Reddy, No.10, Sri Ramanjaneya Nilaya, No.32nd main, 5th Cross, Dollars Colony, BTM Layout, Bengaluru-560 068	Vs.	The Deputy Commissioner of Income Tax, Central Circle-2(4), Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, Advocate
Respondent by	:	Sri. S.T Seshadri, Sr. D.R

Date of hearing	:	21.01.2020
Date of Pronouncement	:	26.02.2020

ORDER

PER 0. P. MEENA, AM:

1. These three appeals by the Assessee are directed against the order of learned Commissioner of Income tax (Appeals)-11, Bangalore (in short "the CIT (A)") all dated 29.06.2017 for the Assessment Year 2013-14, 2014-15 and 2015-16 respectively, which in turn has arisen from the assessment order passed under section 153C read with section 143 (3) all dated 30.11.2016 of income Tax Act,1961 (in short 'the Act') by the Deputy Commissioner of Income-Tax, Central Circle - 2(4) Bangalore (in short "the AO")

2. The appeal bearing ITA No.1768 & 1769/BANG/2017 relate to the proceedings initiated u/s 153C r.w.s.143(3) of the IT Act, 1961(The Act) and the other appeal being ITA No.1770/BANG/2017 relate to the order passed u/s 143(3) of the IT Act. All these appeals were heard together and are being disposed of by this common order for the sake of convenience.

3. The assessee in its appeal No.1768/BANG/2017 has raised the following grounds;

> *1. The orders of the authorities below insofar as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
>
> *2A. The order of assessment passed u/s 153C r.w.s 143[3] of the Act is bad in law and void-ab-initio in as much the conditions precedent to invoke the provisions of sec.153C of the Act viz., the discovery of any assets/documents in course of search conducted in the case of any person that belongs to the appellant and is relevant for computing the income of the appellant for the year under appeal is totally absent and consequently the impugned assessment order passed deserves to be cancelled.*
>
> *2 . The learned CIT[A] is not justified in upholding the proceedings initiated u/s. 153C of the Act without appreciating that the appellant has not been furnished the copy of the satisfaction reached and recorded by the Assessing Officer of the person searched as well as the Assessing Officer of the appellant as required u/s. 153C of the Act despite the request made by the appellant before the learned A.O. as well as the learned CIT[A] and hence, the impugned order of assessment passed without giving the copy of the*

satisfaction note recorded by the Assessing Officer of the person searched as well as the Assessing Officer of the appellant is bad in law and hence, the assessment order so passed requires to be cancelled.

3A. The learned CIT[A] is not justified in upholding the rejection of theme income reported by the appellant which is supported by audited financial statements while reducing the estimation of the business income to 8.5% of the gross receipts as against 12% of the gross receipts adopted by the learned A.0 thereby sustaining a portion of the addition made to the returned income by under the facts and in the circumstances of the appellant's case.

3B. The learned CIT(AJ ought to have appreciated that there were no incriminating materials found in course of search relating to the assessment year under appeal to reject the income reported by the appellant and make an estimate especially when the assessment for the year under appeal had not abated in terms of the second proviso to sec. 153A of the Act and hence, the partial addition sustained by the learned CIT[AJ is also opposed to law and hence, the same requires to be deleted.

3C. Without prejudice to the above, the income sustained by the learned CITIA] at 8.5% of the gross receipts is highly excessive and liable to be reduced substantially.

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. 234-A, 234-8 and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

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.

4. Ground No.1: is general in nature hence, it does not require any specific adjudication.

5. Ground no.2A Et 2B relates to initiation of proceedings u/s 153C of the IT Act which are bad in law and conditions precedent to invoke the provisions of sec.153C of the Act which were not satisfied, as there was no discovery of any assets/documents in course of search conducted in the case of any person belong to the assessee and without appreciating that the assessee has not been furnished with a copy of the satisfaction recorded by the AO as required u/s 153C of the Act.

6. The brief facts of the case are that the assessee is engaged in the business of management of Municipal Solid Waste on contract basis with BBMP. A search was conducted in at the residential premises of the assessee situated at No.10, Sri Ramanjeneya Nilaya, 32nd Main, 5th Cross-, Dollars Colony, BTM I Stage, Bangalore u/s 32 of the Act on 0910-2014 on the basis of warrant issued in the case of one Sri P. Gopinath Reddy and others. In this residential premise, the assessee stays along with several other family members, as it is a common residence for 19 members of the family of one Sri P. Chenga Reddy. During the course of search cash of Rs.14,80,000/- was seized apart from jewellery

weighing about 1,970 grams. Apart from these valuables, there were no other documents or books of accounts that were seized during the course of search. After completion of the search, the case of the assessee was centralized to the DCIT, Central Circle-2(4), Bangalore. The said AO issued notice u/s 153C of the Act on 05-10-2016 calling for the returns of income for the assessment years 2009-10 to 2014-15. The assessee complied with the notices issued and participated in the assessment proceedings. The AO passed the assessment by estimating the business income at the rate of 12% of gross receipts, reflected as per 26AS. During the course of assessment proceedings the assessee has raised objection to the issuance of notice u/s 153C of the Act on the ground that the provisions of sec.153C of the Act are applicable only when there is a search in third person case and in the course of search, certain papers/documents are to have been found in such case and the AO of such other persons is satisfied with such papers etc. are incriminating further with papers etc. belonging to person other than searched person. In support of his contention, the assessee has also placed reliance in the decision of the jurisdictional High Court of Karnataka in the case of CIT Vs IBC Knowledge Park Pvt. Ltd. (2016) 69 taxman.com (Kar) and CIT. Vs M/s Lancy Constructions (2016) 66 taxman.com 264 (Kar). However, the AO observed that the prepositions

laid down by the jurisdictional high Court in the case of CIT Vs IBC Knowledge Park Pvt. Ltd and CIT Vs M/s Lancy Constructions are distinguishable on facts. The AO observed that the material in the form of valuable assets such as cash and jewellery found were belonging to Sri Vittalnath Reddy (third party during the course of search in the case of Sri P. Gopinath Reddy. The satisfaction was recorded by the AO having jurisdiction over Sri P.Gopinath Reddy and communicated to the AO of Sri Vittalnath Reddy (third party) along with the seized documents and other incriminating material. On receipt of aforesaid material belonging to third party (Sri P. Vittalnath Reddy), the AO having jurisdiction over the third party issued notice u/s 153C based on incriminating material and after being satisfied with the same bearing on the determination of total income of the assessee i.e. Shri P. Vittalnath Reddy, for the relevant assessment year. It was further pointed out that during the course of statement recorded from the assessee, it was admitted that no books of accounts were maintained by him. The assessee is also accepted the fact that he has not maintained the cash book, ledger and trial balance. Thus, there was clear unconditional and categorical admission on the part of the assessee that the books of accounts are not maintained. Thus, according to the AO, in the face of admission in the statement u/s

132(4) of the Act by the assessee himself, the non-seizure of any material/asset ceases to be of consequence and the statement itself assumes the character of incriminating documents, which has a bearing on the computation of income of the assessee. Further, in the instant case, there was also seizure of cash and jewellery and the assets seized which have a bearing on the determination of the total income of the assessee for the relevant assessment year. Hence, the AO held that the jurisdiction u/s 153C of the Act has been correctly assumed.

7. Being aggrieved, the assessee carried the matter before the ld.CIT (A) wherein it was contended that the search was conducted based on one person in the case of Sri P Gopinath Reddy. Therefore, it was contended that the search conducted in the residence of assessee could not clothe the AO to assume jurisdiction u/s 153C of the Act, since the document found in the premises of the assessee belonged to the assessee and not to any other persons. Without prejudice to the above, it was further contended that there was no other sized material found at the time of search that belonged to the assessee and were relevant to computing the income of the assessee for the year under appeal. The AO has merely referred to the fact that gold jewellery and cash was found and seized. However, there was no other material to show that these seized assets belonged to the assessee alone, since there

were several other family members Further, search was conducted in the premises of the assessee on 09-10-2014. During the financial year 2014-15, the aforesaid assets are seized and deemed to be the income for the assessment year 2015-16 and have been assessed as such. Thus, these assets found at the time of search can by no stretch of imagination be considered as incriminating material that has a bearing on the assessment of income for the assessment years 2009-10 to 20140-15, hence it cannot be said that there was requisite satisfaction reached by the AO based on the material seized in the course of search to undertake the provisions of ec.153C of the Act. Further, it was argued that the ld.AO has failed to furnish the copies of satisfaction note recorded by him against Shri P.Gopinath Reddy and others as well as satisfaction note recorded by the AO to justify the assumption of jurisdiction u/s 153C of the Act, as requested by the assessee. Therefore, relying on the decision of the Hon'ble Supreme Court in the case of Manish Maheshwari reported in 289 ITR 341(SC) and M/s Calcutta Knitwears reported in 362 ITR 673, the proceedings initiated are bad in law and liable to be cancelled. However, the ld.CIT (A) observed that he has called for and verified the assessment record of the persons searched that Sri P.Gopinath Reddy and also assessment record of the assessee and found that AO of Sri P Gopinath Reddy has

recorded the satisfaction that there was seized cash and jewellery belong to the assessee that was found and sized at the time of search and this has been handed over to the AO of the assessee. The ld.CIT(A) further observed that the AO of assessee has also recorded his satisfaction for initiating proceedings u/s 153C of the Act in the assessment records. Thus, the AO has followed the procedure for initiating proceedings u/s 153C of the Act and there has been material seized which belong to the assessee in the course of search conducted by the department. With regard to contention of the assessee that the seized cash and jewellery only relate to assessment year 2015-16 and this cannot constitute satisfaction for initiating proceedings for the assessment year 2009-10 to 2014-15. Further, ld.CIT(A) observed that once some material found belong to the assessee and having a bearing on the assessment of income, the AO has no choice in the matter. He is duty bound to issue notice u/s 153C of the Act and complete the assessment as per the provisions of Act. The provisions of the Act compels the AO to issue notice for six assessment years and it cannot be viewed in isolation and restrict to the year for which the materials are found. He further observed that the seized cash and jewellery that belongs to the assessee and this is not disputed. Hence, the case laws cited by the assessee are distinguishable on facts and not applicable

to assessee's case. Therefore, the validity of the proceedings taken by the AO u/s 153C of the Act was upheld.

8. Being aggrieved, the assessee is in appeal before us. The ld. counsel for the assessee submitted that search u/s 132 of the Act was conducted on 09-10-2014 at the residential premises of the assessee though, warrant was issued in the name of Sri P.Gopinath Reddy and the search was completed on 01-12-2014, as per Panchanama placed at page no.26 of the paper book. He took us though the paper book page no.54 a 55, which is the submissions filed before the AO by which it was requested that a copy of the satisfaction note may be supplied to the assessee. However, the AO has not furnished a copy of the satisfaction note recorded in the case of searched person. The ld. counsel submitted that as per the submissions as appearing at page no.61 -62 the assessee has objected to the issue of notice u/s 153C of the Act by stating that provisions of sec.153C of the Act are applicable only when there is search in the third persons case and in the course of search in the third persons case certain papers/documents are found. In such case, the AO of such other person is satisfied that such papers etc. are incriminating and further that such papers etc. belong to the persons other than searched person. Since in the case of assessee, no papers/documents relating to the assessee were found

during the search. Therefore, relying on the decision in the case of M/s IBC Knowledge Park (P) Ltd.(Supra) the proceedings u/s 153C of the Act are not valid. The Id. counsel further submitted that it is admitted fact that the assessee has not maintained any books of accounts nor any incriminating materials relating to the assessee has been found and seized. Therefore, no proceeding u/s 153C of the Act can be initiated against the assessee. It was further contended that only the cash and jewellery were found and seized which were relating to financial year 2014-15 relevant to assessment year 2015-16. Therefore, such seized assets whether explained or unexplained does not give rise to initiation of proceedings u/s 153C of the Act, in respect of the assessment under appeal. The ld. counsel further placed reliance in the case of CIT Vs Sinhgad Technical Education Society reported in 397 ITR 344 in support of his contentions. Therefore, in absence of non-recovery of any books of account and incriminating material, the proceedings initiated u/s 153C of the Act are liable to be quashed.

9. *Per contra,* ld. **DR** submitted that provisions of sec.153C of the Act are attracted as the premises of the assessee have been searched by the department under warrant issued in the name of his brother. Further, unaccounted cash and jewellery were found and seized which

was claimed to be belonged to the assessee and therefore, the AO of the assessee has rightly recorded the satisfaction based on seized assets and other material for issuance of notice u/s 153C of the Act. It was further submitted that the assessee has not maintained any books of accounts; therefore, there is no question of any book of accounts. Further, the seized assets have been acquired out of business income and therefore, they are having the bearing and could be considered as in the nature of incriminating material. Further, the CIT (A) has verified the assessment, recorded the searched person as well as the assessee, and found that a satisfaction note has been duly recorded and the seized cash and jewellery belonged to the assessee and the same has been handed over to the AO of the assessee. Therefore, there was a valid satisfaction note available on the file of AO. Thus, the AO followed the due procedure for initiating the assessment proceedings u/s 153C of the IT Act and the same has been rightly upheld by the ld.CIT (A). Further, non-giving of satisfaction note to the assessee is not a fatal for the assessment order and it can be asked for discovery and can be given to the assessee. The ld. Dr. submitted that the case laws in the case of CIT Vs Sinhgad Technical Education Society (supra) is distinguishable and not applicable to the facts of the case.

10. We have heard the rival submissions and perused the relevant material on record. The section 153C of the Act reads as under:-

> *"153C. [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A. Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to 5 [subsection (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person."*

11. Considering the above provision of the Act and findings of CIT (A) who has held once the some material found belonging to the appellant having bearing on the assessment of income, the AO has no choice but duty bound to issue notice under section 153C of the Act. The case laws relied by the counsel are distinguishable on facts as in the case of the assessee there was no seizure of assets in the form of valuables cash and jewellery was found. Therefore, same is upheld.

12. Ground no.3A, 3B and 3C are relates to reducing the estimation of the business income to 8.5% of the gross receipts as against 12% of the gross receipts adopted by the AO, thereby sustaining a portion of the addition made which is highly excess.

13. Short facts are that the AO noted that the assessee claimed various huge expenses in the PEtL account i.e. wages of Rs.3,09,77,799/- vehicle maintenance of Rs.15,69,014/- fuel of Rs.1,07,04,810/-, salaries of Rs.28,80,000/- and many such expenses and the assessee has not produced any documentary evidence in support of these expenses. Therefore, vide questionnaire dated 15-11-2016 the assessee was asked to furnish the books of account and documents for verification. However, the assessee vide his submission dated 23-11-2016 stated that the books of accounts maintained in the computer has crashed and trying to retrieve the same. However, the AO observed the fact is that the assessee was found to be not maintaining any books of accounts even during the search. The assessee also admitted in his statement-recorded u/s 132(4) of the Act that he and his brothers have maintained no books of accounts. The AO has reproduced the questions and statement of assessee at page-3 Et 4 of the assessment order and held that it is clear that books of accounts are not maintained by the assessee therefore, the assessee was asked

to show cause as to why income should not be estimated at 12% of gross receipts in the absence of any books of accounts/documents. The assessee furnished a reply vide his letter dated 30-11-2016 which has been reproduced by the AO in his assessment order at page-5. After considering the fact and rejection the books of accounts u/s. 145 of the Act, the AO estimated the business income of the assessee at the rate of 12% gross receipts as reflected in 26AS and worked out the total business income at Rs.69,99,836/- as against business income returned at Rs.43,18,402/- and hence made addition of Rs.26,81,434/

14. Being aggrieved, the assessee filed an appeal before the ld. CIT(A). The ld.CIT(A) observed that the AO has given the reasoning for rejection of books of accounts and estimation of income at 12% of the gross receipts that the assessee has not maintained any books of accounts for any of the year. Further, in the course of search, the assessee was not found maintaining any books of accounts and same was stated in his statement u/s 132(4) of the Act. Further, in the case of search, the assessee was found to have cash of Rs.20,85,080/ - jewellery weighing 5823.71 gms worth of Rs.1,51,29,897/-. Therefore, the ld.CIT(A) observed that it can be concluded that the assessee has generated asset with unaccounted income and therefore, the book result in the past are not reliable and correct hence, the AO has rightly

rejected the books of accounts. Further, the assessee has contended that the AO has not cited any comparative cases to justify adoption of the business income at 12% of the gross receipts. Reference is made to the presumptive rate of 8% prescribed u/s 44AD of the Act, which support the logical estimate that could be made in the event of rejection of the books of accounts. The details of the return of income filed, turnover, income reported and the percentage of income reported in gross receipts from the business for the assessment year 2009-10 to 2015-16 was given in the form of chart are as under:

SI.No	Asst. year	Date of filing the return of income	Turnover	Business Income offered	Percentage of turnover
1	2009-	30/09/2009	2,40,07,599/-	21,62,084/-	9.00
2	2010-	24/09/2010	2,72,80,355/-	24,76,711/-	9.07
3	2011-	25/09/2011	5,13,66,767/-	45,93,237/-	8.94
4	2012-	27/09/2012	5,27,87,155/-	47,42,870/-	8.98
5	2013-	29/09/2013	5,81,25,970/-	43,18,402/-	7.43
6	2014-	27/09/2014	6,58,38,445/-	46,88,453/-	7.12
7	2015-	29/09/2015	3,78,19,995/-	26,91,887/-	7.12

15. After having considered the above chart, the Id.CIT (A) observed that the average income reported by the assessee comes to 9.07% of the turnover for the assessment year 2009-10, 2010-11, 2011-12, 2012-13 which is more than the prescribed rate of 8% u/s 44AD of the **IT** Act hence, the provisions of sec.44AD are strictly not applicable to assessee's case, since the turnover of the assessee far exceeds the limit

mentioned in that section. However, the estimated income at 12% of the turnover cannot be sustained, as the said income is arbitrary and pure guesswork. The AO has not considered the past result or other assessees engaged in similar business. The only reasons offered to support the estimate is that there was huge cash of Rs.20,85,080/- and jewellery valued at Rs.1,51,29,897/- found at the time of search which was considered by the 0 to be acquired out of unaccounted income. However, this view of the AO is not very sound. In view of this, the ld.CIT(A() observed that the addition made by the AO for the assessment year 2009-10,2010-11,2011-12 and 2012-13 is unaccounted for as the assessee has offered average income at 9% of the turnover for these year. Consequently, the addition made on this account for assessment year 2009-10 to 2012-13 was deleted. However, for the assessment year2013-14, 2014-15 and 2015-16 the income shown by the assessee was found to be lower than the average income of 9% of the turnover that has been disclosed by the assessee in the earlier years. The reason for the fall in income has not been properly explained by the assessee by maintaining books of accounts and substantiating the income reported in the return of income for the year. However, it is pleaded that from 01-10-2013, the BBMP has discontinued the contract system of solid waste management through contractors and was undertaking the

activity by itself. Therefore, there was drop in the profits and turnover. However, considering these facts, as there is a change in the business model a deduction of 0.5% of the turnover was considered as allowable hence, Id. CIT (A) upheld the rejection of books of accounts and directed the AO to estimate the business income of the assessee at 8.5% of the gross receipts for the assessment years 2013-14, 2014-15 and 2015-16.

16. Being aggrieved, the assessee filed this appeal before this Tribunal. The Id. counsel for the assessee filed his return of income on 29-09-2013 as evidenced from page-33 of the paper book therefore, notice u/s 143(2) could be issued up to 30-09-2014, since no notice, u/s 143(2) was issued within the time prescribed hence the assessment proceedings were not pending on that commencement of date i.e.90-10-2014. Therefore, this assessment was not abated on the date of search not at the time of conclusion on 01-10-2014. Hence, this is not abated no additions can be made on this account. The Id. Counsel further supported the issue by placing reliance on the decision of the Coordinate Bench of this Tribunal of Circuit Bench at Mangalore in the case of ACIT Vs Dr. Ali Kumble in ITA NOs.1376 a 1377(6)/2015 for the assessment years 2009-10 Et 2010-11 dated 03-05-2017. Copies as per paper book at page-164. The Id. counsel further placed reliance on the decision of the Tribunal in the case of Smt.Vidya Devi Ladhani Vs ACIT in ITA NO.118 to 120(6)/2017 AY: 2009-10 to 2012-13 (SMC). Copies placed at paper book 199.

17. Per contra, ld. DR supported the order of the ld.CIT(A).

18. We have heard the rival submissions and perused the relevant material on record. We find that the return of income was filed on 30.09.2013 and notice under section 143(2) could be issued up to 30.09.2014 for making scrutiny assessment in this case. However, the search was conducted on 09.10.2014 hence, on the date of search no proceeding were pending for assessment year 2013-14, hence, the assessment is not abated on the date of search. Therefore, no addition under section 153C could be made for the assessment year under consideration, where no incriminating material was found in search relating to that assessment year. Accordingly, addition in business income sustained on account of estimation ® 8.5% of gross receipts is therefore, deleted. Accordingly, Ground No. 3A, 3B and 3C of appeal is allowed.

19. Ground No. 4 is relating to charging of interest under section 234A 234B and 234C of the Act.

20. We are of the view that charging of interest is mandatory as held by the Hon' ble Supreme Court in the case of CIT v. Anjum M. **H.** Ghaswala [2001] 252 ITR 1 (SC), therefore, we upheld the same. However, we held that the assessee is entitled to consequential relief if any as arise out on giving effect to this order if any. This ground is therefore, disposed-off accordingly.

21. In the result, the appeal of the assessee is partly allowed for A.Y.2013-14.

I.T.A.No. 1769/BANG/2017/A.Y. 2014-15:-

22. Ground No.1: is general in nature hence, it does not require any specific adjudication.

23. Ground No. 2 A Et 2B is relates to initiation of proceedings under section 153C of the Act.

24. This ground is covered by our findings as recorded in assessment year 2013-14, in I.T.A.No. 1768/BANG/2017 wherein we have held that initiation of proceedings under section 153C was in order. Hence, this grounds of appeal is therefore, dismissed.

25. Ground No. 3A *Et* 3C: relates to upholding the rejection of income reported by the Appellant, which is supported by the audited financial statement while reducing the estimation of business income to 8.5% of the gross receipts as against 12% of the gross receipts adopted by the Ld. AO, which is very highly excessive and liable to be reduced.

26. Succinct facts are that the assessee has claimed huge expenses in Profit Et Loss Account being wages expenses of Rs.2,22,87,392, vehicle maintenance Rs. 17,00,367, fuel expenses of Rs. 2,64,20,184 and salaries Rs.17,95,500 andmany other such expenses, which were not found supported by vouchers and books of accounts. The assessee has claimed that books of accounts maintained in

computer could not be retrieved as the computer has been crashed. However, the AO has observed that the facts is that the assessee was not found maintaining any books of accounts during the course of search and seizure operation as admitted during the course of statement recorded under section 132(4). Therefore, the assessee was asked to show-cause notice as to why income should not be estimated @ 12% of the gross receipts. However, on the basis of cash found at Rs. 20,85,080 and jewellery found at Rs. 1,51,29,897 during search have generated assets with unaccounted income and no evidence of maintenance of books of accounts, the AO has observed that books of accounts are not reliable, hence, rejected under section 145 of the Act and accordingly, gross receipts were estimates at 12% business income at Rs.79,37,576 of gross receipts of Rs. 6,61,46,468 as shown in 26AS from. Accordingly, business income was worked out at Rs.79,37,576 as against business income returned at Rs. 46,88,453. Thus, the difference of Rs.32,49,123 i.e. [79,37,576- 46,88,453] was added to total income.

27. Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). However, Ld. CIT (A) found that percentage of turnover for the year under consideration comes to 7.12% as compared to A.Y. 2013-14 at 7.43% and in

A.Y. 2012-13 at 8.98%. Since books of accounts were not produced before the AO, hence, rejection of the same was held to be justified The gross profit disclosed during assessment years 2010-11, 2011-12, 2012-13 were of 9.07%, 8.94% and 8.98% which is more than presumptive rate of 8% as per provision of section 44AD of the Act. Hence, the CIT (A) directed the AO to reduce the percentage rate of business income at Rs. 8.5% after reducing the margin of 0.5% from average rate of previous years and considering presumptive rate of **8^{0}/0.**

28. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that business income is disclosed at 7.12% as against the preceding assessment year at 7.43%. The decline in rate is on account of increase in turnover for Rs. 5.81 crores to Rs. 6.58 crores during the year under consideration. Further the business of solid waste was discontinued in year under appeal, hence, there was drop in profit for the year under consideration. Hence, the rate adopted is very higher as compare to earlier year's. Hence, same may be reduced.

29. Per contra, Ld. D.R. relied on order of the Ld. CIT (A).

30. We have heard the rival submissions and perused the relevant material on record. We find that the assessee could not produce books of accounts and supporting vouchers of expenses and there was huge expenses debited in Profit Et Loss Account. Hence, we are of the considered opinion that the AO

has rightly rejected book result under the provisions of section 145 of the Act. Hence, same is upheld. However, so far the estimation of percentage at 8.5% is concerned, we find that the rate of gross profit is disclosed at 8.94% in A.Y. 2011-12, 8.98% in A.Y. 2012-13 , 7.43% in A.Y. 2013-14, 7.12% in A.Y. 201415 and 7.12% in A.Y. 2015-16 of which average comes to 7.918%. Hence, the CIT(A) was not justified adopting rate at 8.5% of gross receipts by upholding the addition on this account. Since, the average gives a rate of 7.918%, which is almost equal presumptive rate of 8% under section 44AD in the case of non-maintenance of books of accounts. Therefore, on careful consideration of facts and taking a reasonable approach, it would be met end of justice, if the profit rate were applied to 8% being equal to presumptive rate under section 44AD of gross receipts as against estimation @ 8.5% by Ld. CIT (A). The AO is, therefore, directed to recalculate the addition of business income by adopting 8% of gross receipts. This ground of appeal is therefore, partly allowed.

31. Ground No. 4 is relating to charging of interest under section 234A 2346 and 234C of the Act.

32. We are of the view that charging of interest is mandatory as held by the Hon' ble Supreme Court in the case of CIT v. Anjum M. H. Ghaswala [2001] 252 ITR 1 (SC), therefore, we upheld the same. However, we held that

the assessee is entitled to consequential relief if any as arise out on giving effect to this order if any. This ground is therefore, disposed-off accordingly.

I.T.A. No. 1770/BANG/2017/A.Y. 2015-16

33. Ground No.1: is general in nature hence, it does not require any specific adjudication.

34. Ground No. 2A Et 2B: relates to upholding the rejection of income reported by the Appellant, which is supported by the audited financial statement while reducing the estimation of business income to 8.5% of the gross receipts as against 12% of the gross receipts adopted by the Ld. AO, which is very highly excessive and liable to be reduced.

35. Succinct facts are that the assessee has claimed huge expenses in Profit Et Loss Account being wages expenses of Rs. 1,48,20,220, vehicle maintenance Rs. 14,95,500, fuel expenses of Rs. 1,31,48,119, salaries Rs. 7,12,500 and money such expenses, which were not found supported by vouchers and books of accounts. The assessee has claimed that books of accounts maintained in computer could not be retrieved as the computer has been crashed. However, the AO has observed that the facts is that the assessee was not found maintaining any books of accounts during the course of search and seizure operation as admitted during the course of statement recorded under section 132(4). Therefore, the assessee was asked to show-cause as to why income should not be estimated @ 12% of the gross receipts.

However, on the basis of cash found at Rs. 20,85,080 and jewellery found at Rs. 1,51,29,897 during search have generated assets with unaccounted income and no evidence of maintenance of books of accounts, the AO has observed that books of accounts are not reliable, hence, rejected under section 145 of the Act and accordingly, gross receipts were estimates at 12% of gross receipts shown as per 26AS of Rs.3,78,19,794. Accordingly, business income was worked out at Rs.45,38,375 resulting in addition of Rs.27,21,336 was added to total income.

36. Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). However, Ld. CIT (A) found that percentage of turnover for the year under consideration comes to 7.12% as compared to previous year at 7.12% and in A.Y. 2013-14 at 7.43%. Since books of accounts were not produced, hence, rejection of the same was held to be justified. Accordingly, the gross profit disclosed during assessment years 2010-11, 2011-12, 2012-13 were of 9.07%, 8.94% and 8.98% which is more than presumptive rate of 8% as per provision of section 44AD of the Act Hence, the CIT (A) directed the AO to reduce the percentage rate of business income at Rs. 8.5%.

37. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that Gross Profit Rate disclosed at 7.12% is same as per preceding assessment year. Further, there was change in business and business of solid waste was discontinued during the year under consideration, hence, there was drop in profit during the year under consideration. Hence, the rate adopted is very higher as compare to earlier years.

38. Per contra, Ld. D.R. relied on order of the Ld. CIT (A).

39. We have heard the rival submissions and perused the relevant material on record. We find that the assessee could not produce books of accounts and supporting vouchers of expenses and there was huge expenses debited in Profit Et Loss Account. Hence, we are of the considered opinion the AO has rightly rejected book result under the provisions of section 145 of the Act. Hence, same is upheld. However, so far the estimation of percentage at 8.5% is concerned, we find that the rate of gross profit is disclosed at 8.94% in A.Y. 2011-12, 8.98% in A.Y. 2012-13 , 7.43% in A.Y. 2013-14, 7.12% in A.Y. 2014-15 and 7.12% in A.Y. 2015-16 of which average comes to 7.918% Hence, the AO was not justified adopting rate at 8.5% of gross receipts by upholding the addition on this account. Since, the average gives a rate of 7.918, which is almost equal presumptive rate of 8% under section 44AD in the case of non-maintenance of books of accounts. Therefore, we considering the facts and facing a reasonable approach of the opinion that it would meet end of justice if the profit rate were applied at 8% being equal to presumptive rate under section 44AD to gross receipts as against estimation ® 8.5% made by the Ld. CIT (A). The AO is directed to recalculate the addition of business income by adopting 8% of gross receipts. This ground of appeal is therefore, partly allowed.

40. Ground No. 3 is against sustaining addition of Rs. 3, 93,000 made by the Ld. AO in respect of 1/3rd cash seized at the time of search.

41. The AO noted that during the course of search and seizure operation, cash of Rs.20,85,080 was found out of which cash of Rs. 14,80, 000 was seized. However, the assessee has failed to substantiate his contention by documentary evidence of cash withdrawals and bank passbook etc. The assessee family is joint family with three brothers, hence, 1 /3rd of seized cash of Rs. 14.80 Lakh of which Rs.3.93 Lakh were added in the case of the assessee.

42. Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). Wherein it was contended that there was cash withdrawals of Rs. 7 Lakh on 01.10.2014 and same was available with him. However, CIT (A) viewed that the appellant would have incurred expenditure out of withdrawals and only for this purpose that out of cash found of Rs. 20.85 Lakh. Only a sum of Rs. 14.80 Lakh were seized in the hands of all three brothers. Further, the appellant did not maintain books of accounts; hence, addition made by the AO was confirmed.

43. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that cash of Rs. 7 Lakh was withdrawn on 01.10.2014 i.e. before date of search on 09.10.2014 hence, this much cash was available with the assessee. Therefore, Ld. CIT (A) was not justified in sustaining the addition made on this account of 1/3rd cash seized.

44. Au contraire, Ld. D.R. supported the order of lower authorities.

45. We have heard the rival submissions and perused the relevant material on record. We find that the assessee has withdrawn cash of Rs. 7 Lakh on 01.10.2W014, hence, this cash might be available with the assessee on the date of search. As against this, the addition made by the AO is Rs. 3.93 lakhs only. We further note that the assessee has been showing substantial income over the years and nature of business requires holding cash in hand for making weekly payments to pourakarmikas, diesel etc. Considering these facts, it can be assumed that cash of Rs. 3.93 Lakh was available out of known sources, which can be considered as explainable out of cash withdrawals made prior a week of search date. Therefore, we are of the view the AO was not justified in making this addition, hence, the addition of Rs.3.93 lakh is directed to be deleted. This ground of appeal is, therefore, allowed.

46. Ground No. 4 is against the sustaining addition of Rs. 16,42,900 made by the AO in respect of 1/3rd of gold seized at the time of search.

47. Short facts are that during the course of search and seizure operation carried out as to how residential premises of the assessee under the warrant issued in the name of one of the brothers, jewellery worth Rs. 1,51,29,897

was found out of which jewellery weighing 1970.39 grams valued at Rs. 49,28,705 was seized. In the statement recorded during search on 09.10.2014 independently from Shri P. Vidyanath Reddy, P Vitalnath Reddy and E Ramana Reddy, it was stated that three of them stay in a joint family and all the jewellery of family kept at one place. However, the source of acquisition of seized jewellery was not produced, therefore, the AO divided the seized jewellery equally between Shri P. Vidyanath Reddy, P Vitalnath Reddy and E Ramana Reddy at Rs. 16,42,900 and made addition being 1/3rd share of the assessee, accordingly.

48. Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). It was submitted that the assessee and his two brothers were leaving together in common residence and the jewellery found at 5282.71 grams during search out of which 1970.39 grams was seized which was belonged to 19 family members. It was submitted that the gold jewellery of 381 grams was only belonged to him out of which 145 grams was acquired in financial year 2010-11 and same was reflected in financial statement for the said assessment year. However, Ld. CIT (A) viewed that considering these facts, the Department did not seize entire jewellery and no evidence has been adduced

for seized jewellery, hence, addition was confirmed.

49. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel referred inventory of jewellery placed at Paper Book Page No. 11 and 12 to the Panchnama prepared during search and submitted that list containing jewellery was claimed to be belonging to all family members and kept together and inventorised accordingly. The list of 19 person to whom jewellery belonged was submitted during the course of assessment proceedings, which is placed at Paper Book Page No. 262, according to which the assessee has owned jewellery of 261 grams, which reflected in balance sheet. Therefore, there was no justification in making addition in the case of the assessee. Further, the AO should have allowed telescoping with income assessed under the business head at Rs. 27,21,336 on estimate basis. The jewellery as per CBDT Circular is covered and to be treated as explained in the hands of all 19 family member.

50. Per contra, Ld. D.R. relied on order of the Ld. CIT (A).

51. We have heard the rival submissions and perused the relevant material on record. We find that it is fact that jewellery of all family members was kept together at one place and assessee was jointly residing therein. The inventory so made during search is also reflecting this fact. The assessee has filed a list

of 19 person to whom this jewellery was found during search. The list of 19 person to whom jewellery belonged was submitted during the course of assessment proceedings, which is placed at Paper Book Page No. 262, according to which the assessee has owned jewellery of 261 grams, which reflected in balance sheet. Therefore, there was no justification in making addition in the case of the assessee. Therefore, we are of the considered opinion the no addition can be made in the hands of the assessee by treating 1 /3rd of seized jewellery in his hand as jewellery was belonging to entire family members. Therefore, if at all if any addition to be made it is to be equally divided among family members. Further, the assessee has only claimed jewellery of 261 grams as belonging to him, which has been reflected in balance sheet as on 31.03.2011 hence, no addition could be made in the hands of the assessee. Further, considering the CBDT Circular which provides jewellery holding by female member and male members and children in particular quantity as not be served meaning thereby as explained, we are of the considered opinion that no addition can be sustained on this account. Accordingly, 1/3rd addition made in the case of the assessee on account of jewellery at Rs.16,42,900 is deleted. This ground of appeal is therefore, allowed.

52. Ground No. 5 is relating to charging of interest u/s. 234B.

53. We are of the view that charging of interest is mandatory as held by the Hon ble Supreme Court in the case of CIT v. Anjum **M.** H. Ghaswala [2001] 252 **ITR 1** (SC), therefore, we upheld the same. However, we held that the assessee is entitled to consequential relief if any as arise out on giving effect to this order if any. This ground is therefore, disposed-off accordingly.

54. In the result, the appeal of the assessee is partly allowed for the assessment year 2015-16.

55. In sum up, appeal of the assessee for assessment year 2013-14 in I.T.A.No. 1768/BANG/2017 is partly allowed appeal for assessment year 2014-15 in I.T.A.No. 1769/BANG/2017 is partly allowed and appeal for assessment year 2015-16 in I.T.A.No. 1770/BANG/2017 is partly allowed.

56. The order pronounced in the open Court on 26.02.2020.

Sd/- **Sd/-**

(BEENA PILLAI) (O.P. MEENA)
JUDICIAL MEMBER ACCOUNTANT MEMBER

Place:Bangalore,
Dated, the 26th February, 2020.
am*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.