

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI A.K GARODIA, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1771, 1772 & 1773/Bang/2017
Assessment Years : 2013-14 to 2015-16

Sri Panati Vidyanath Reddy, #10, Sri Ramanjaneya Nilaya, 32 nd Main, 5 th Cross, Dollars Colony, BTM Layout, Bengaluru-560 068. PAN - AFMPR 3580 F	Vs.	The Dy. Commissioner of Income-tax, Central Circle-2(4), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri V Srinivasan, Advocate
Revenue by	:	Shri Pradeep Kumar, CIT

Date of Hearing	:	11-08-2020
Date of Pronouncement	:	21-08-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against consolidated order dated 29/06/2017 passed by Ld.CIT(A)-11, Bangalore for assessment years 2013-14 to 2015-16

Brief in the case are as under:

2. Assessee is a small waste management contractor, providing service in the field, work sweeping collection and

transportation of garbage and in running the business activity along with his brother Sh. P.Vittalnath Reddy. Search was conducted on 09/10/2014 in the premises of Sh.Gopinath.P.Reddy and others, at No.10 Sh. Ramanjaneya Nilaya, 32nd main, 5th cross, dollars colony, BPM 1st stage, Bangalore.

3. It has been submitted that, assessee stays in residential premises with other family members, and is a common residence for 19 members of the same family. During the course of search, cash amounting to Rs.14,80,000/- and 1970.39gm of gold jewellery were seized as unaccounted from assessee's residence.

4. After completion of search the case was centralised and Ld.AO issued notice under section 153C of the act on 05/10/2016 calling upon assessee to file return of income for assessment years under consideration.

5. Assessee raised objection on issuance of notice under section 153C of the act on the premise that provisions of section 153C are applicable only when there is a search in of premises and during the course of search certain papers/documents are found that belong to other person, and that AO of searched person is satisfied that such papers etc., belongs to a person, other than searched person. Ld.AO rejected the contentions of assessee's and passed assessment order by holding that jurisdiction under section 153C of the act has been resumed correctly. Ld.AO passed assessment order on 13/11/2016 in respect of all assessment years under consideration by estimating

business income at rate of 12% of gross receipts as per 26 AS.

6. For assessment year 2015-16, there were 2 more additions made by Ld.AO in respect of 1/3rd cash seized from the premises, amounting to Rs.4,93,000/- and addition of Rs.16,42,900/- in respect of 1/3rd gold seized at the time of search.

7. Aggrieved by additions made by Ld.AO, in all the assessment years under consideration appeal was filed before Ld.CIT(A) wherein assessee challenged assumption of jurisdiction by Ld.AO under section 153C of the Act, along with additions made in respective years. Ld.CIT(A) after perusal submissions advanced and document placed on record, called for records of searched person Sh.P.Gopinath Reddy. Ld.CIT(A) found that, Ld.AO of Sh.P.Gopinath Reddy recorded satisfaction that there was seized cash and jewellery belonging to assessee before us that was found and seized at the time of search which has been handed over to assessing officer of assessee subsequently. Ld.CIT(A) observed in para 5.2 of his order that, assessing officer of assessee recorded satisfaction for initiating proceedings under section 153C of the Act, and assessment records and thus Ld.AO in the present case has followed the procedure for initiating proceedings under section 153C of the Act, and that there has been material found and seized that belong to assessee in the course of search conducted. Ld.CIT(A) upheld additions made by Ld.AO for all assessment years under consideration.

8. Aggrieved by order passed by Ld.CIT (A) assessee is in appeal before us now.

Validity of assessment u/s.153C:

9. Ld. A.R. submitted that this issue is common for assessment year 2013-14 and 2014-15 only.

10. Ground 2A,2B for assessment year 2013-14 and 2014-15 are raised, challenging validity of assessment order passed under section 153C of the Act.

11. At the outset, Ld.AR submitted that, this *Tribunal* in case of Sh.P.Vithalnath Reddy, in ITA No.1768-1770/Bang/2017, for assessment years 2013-14 to 2015-16, vide order date 26/02/2020 considered similar additions and issues raised by assessee therein.

12. For sake of convenience Ld.AR filed synopsis of issues involved and findings of this *Tribunal* in case of *Sh.P.Vittalnath Reddy (supra)* which is as under:

Issue	Ground No.			Findings of Hon'ble ITAT in the case of related assessee of the group
	AY 2013-14	AY 2014-15	AY 2015-16	
<p>Validity of assessment u/s 153C:</p> <p>No incriminating material found belonging to appellant & no satisfaction note recorded and furnished to the appellant</p>	2A, 2B	2A, 2B	N.A	<p>Hon'ble ITAT in the case of another assessee of the group i.e. Shri Panati Vittalnath Reddy in ITA No. 1768 to 1770/Bang/2017 dated 26/02/2020 for AY 2013-14 to AY 2015-16 [placed at Pages 170 to 204 of Paper Book has upheld the validity of proceedings u/s 153C of the Act. Relevant discussion vide Para 11 at Page 182 of the paper book.</p>

<p>Estimation of business income by the CIT(A) at 8.5% of gross receipts (Being reduced from 12%,, originally estimated by the learned A.O)</p>	3A, 3B, 3C	3A, 3C	2A, 2B	<p>For AY 2013-14, Hon'ble ITAT held in the aforesaid case that the assessment has not abated since time levied for issue of notice u/s 143(2) expired before date of search vide Para</p> <p>Appellant had filed his return for AY 2013-14 on 29/09/2013 [Page 48 of Paper Book] and time limit for issue of notice expires on 30/09/2014 whereas date of search is 09/10/2014 [Page 14 of Paper book.]</p> <p>For the assessment year 2014-15 & 2015-16 the Hon'ble ITAT has partly allowed (116e grounds by limiting the estimation of income to 8% of gross receipts vide Para 30 & 39 at Page 191 192 & Page 195 Of the paper book respectively</p>
<p>Addition of Rs. 4,93,000/- in respect of 1/3rd of cash seized at the time of search</p>	N.A	N.A	3	<p>In the case of the other assessee where similar addition of 1/3rd of the cash found was made. Hon'ble ITAT deleted the addition vide Para 45 at Page 197 of the Payer book observing that there were cash withdrawals just before the search and sufficient business income was being declared by the assessee and considering the nature of business. the requirement of holding cash in hand was to be accepted</p> <p>In the case of the present appellant, there was a cash withdrawal of Rs. 9,00,000/- on 70/09/2014 before the search and the submissions of the appellant on this score are at Page 166 of the Paper Book.</p>
<p>Addition of Rs. 16,42,900/- in respect of 1/3rd or gold seized at the time of search</p>	N.A	N.A	4	<p>On this ground. the Hon'ble ITAT has held that if an addition was to be made it had to be equally divided among 19 family members. Further. the appellant had claimed that jewellery of 261 grams belonged to him had been reflected in the 13/S as on 31-03-2011 and thus no addition could be made in the hands of the assessee. Hence the addition was deleted vide Para 51 at page 199 & 200 of the paper book.</p> <p>In the case of the present appellant. he has shown 381.83 grams of jewellery purchased in FY 2010-11 and 157 grams were received during marriage and total holding is 538.83 grams [Refer Page 136 of Paper book].</p>

13. Both sides submitted that the issues may be sent back to Ld.AO to verify issues raised in present appeals in light of observations of this *Tribunal* in case of *Sh.P.Vittalnath Reddy (supra)*.

14. We have perused submissions advanced by both sides in light of records placed before us.

15. We note that ground No. 2A, 2B raised for assessment year 2013-14 and assessment year 2014-15 is in respect of

validity of assessment under section 153C of the Act, alleging that no incriminating material has been found belonging to assessee and no satisfaction note has been recorded and furnished to assessee.

16. This issue has been decided by this *Tribunal* in case of *Sh.P. Vittalnath Ready (supra)* upholding the validity of proceedings under section 153C of the Act by observing as under:

"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, jewel/cry 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"

ii. Considering the above provision of the Act and findings of C I TI (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."

17. As facts and circumstances in both these cases are identical arising out of the same search conducted on the group, we do not find any reason to deviate from the above findings. We also note that Ld.CIT(A) held that materials found belonging to assessee was found during course of search, from searched premises, and therefore, notice issued under section 153C of the Act is valid.

Accordingly these grounds raised in assessment year 2013-14 and 2014-15 stands dismissed.

Addition of estimation of business Income:

18. Ground 3A, 3B, 3C for assessment year 2013-14; ground 3A, 3C for assessment year 2014-15 and Ground 2A, 2B for assessment year 2015-16 are in respect of estimation of business income by Ld.CIT(A) at 8.5%.

19. A.Y:2013-14: We note that this issue has been dealt with by this *Tribunal* while deciding this issue observed that for assessment year 2013-14, time period for issuing notice under section 143 (2) expired before the date of search and that the assessment had not abated.

20. The said observation has been recorded as under:

“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.”

21. In present facts of the case Ld.AR submitted that issue is identical. It is also been alleged by Ld. ar that no incriminating material was found during search relating to assessment year 2013-14.

22. We therefore direct Ld.AO to verify the same and consider the claim of assessee. In the event it is found that time period for issuance of notice under section 143 (2) stood expired, and that no incriminating materials were found, no addition could be made under section 153C.

Accordingly, this ground for assessment year 2013-14 stands allowed for statistical purposes.

AY:2014-15 & 2015-16

23. In respect of assessment year 2014-15 and 2015-16, Ld.AR submitted that, this *Tribunal* partly allowed by limiting the estimation to 8% of gross receipts, by observing as under:

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 & 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. 2014-15 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 AG is, therefore, directed to recalculate the addition of business income by adopting 8% of gross receipts. This ground of appeal is therefore, partly allowed.”

24. We note that, above observation has been applied *mutatis mutandis* for assessment year 2015-16 in para 39 at page 195 of paper book.

25. Both sides has admittedly submitted that facts and circumstances based upon which petitions have been made in case of present assessee are similar to the facts in case of *Sh. P Vittalnath Reddy, (supra)* considered by this *Tribunal*, vide order dated 26/02/2020.

Accordingly these grounds raised by assessee stands partly allowed for assessment years 2014-15 and 2015-16.

26. Ld.AR submitted that, addition in respect of 1/3rd cash seized and 1/3rd gold ceased at the time of search is raised for assessment year 2015-16.

27. Ground 3 for assessment year 2015-16 pertains to addition of Rs.4,93,000/-, being 1/3rd of cash seized at the time of search.

28. Ld.AR submitted that identical issue has been addressed by this *Tribunal* in case of *Sh. P Vittalnath Reddy, (supra)*. He also submitted that in the present case assessee had withdrawn cash of Rs.9,00,000/- on 20/09/2014 before the date of search for certain expenses and the balance was available with him as on the date of search.

29. Ld. senior DR submitted that the issue may be set aside to learnt AO for verification.

30. We have perused submissions advanced by both sides in light of records placed before us.

31. We note that in case of *Sh. P Vittalnath Reddy, (supra)* this Tribunal considered this issue by observing as under:

“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 01.10.2014, 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.4.93 lakhs only. We further note that the assessee has been showing substantial income over the years and a 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.4.93 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.4.93 lakh is directed to be deleted. This ground of appeal is, therefore, allowed.”

32. We direct Ld. AO to verify the facts in respect of withdrawals for year under consideration and to consider the claim in light of observations of this tribunal in case of *Sh. P Vittalnath Reddy, (supra)*.

Accordingly this ground raised by assessee for assessment year 2015-16 stands allowed for statistical purposes.

33. Ground No. 4 for assessment year 2015-16 is in respect of addition of Rs.16,42,900/- being 1/3rd of gold seized at the time of search.

34. Ld.AR submitted that identical issue has been addressed by this Tribunal in case of *Sh. P Vittalnath Reddy, (supra)*.

35. Ld.Sr.DR submitted that the issue may be set aside to learnt AO for verification.

36. We have perused submissions advanced by both sides in light of records placed before us.

37. We note that in case of *Sh. P Vittalnath Reddy, (supra)* this Tribunal considered this issue by observing as under:

“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.”

38. We direct Ld.AO to verify the facts for year under consideration and to consider the claim in light of observations of this Tribunal in case of *Sh.P.Vittalnath Reddy, (supra)*.

Accordingly, this ground raised by assessee for assessment year 2015-16 stands allowed for statistical purposes.

In the result, appeal is filed by assessee for assessment year 2013-14, 2014-15 and 2015-16 stands partly allowed for statistical purposes.

Order pronounced in the open court on 21st Aug, 2020.

Sd/-
(A.K GARODIA)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 21st Aug, 2020.
/Vms/

Copy to:

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

By order

Assistant Registrar,
Income-Tax Appellate Tribunal.
Bangalore.

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-08-2020		Sr.PS
3.	Draft proposed & placed before the second member	-08-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-08-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-08-2020		Sr.PS/PS
6.	Kept for pronouncement on	-08-2020		Sr.PS
7.	Date of uploading the order on Website	-08-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-08-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS