

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.1928 to 1933/Bang/2016 & ITA No.511/Bang/2017
Assessment Years: 2006-07 & 2008-09 to 2013-14 respectively

Shri M.J. Siwani H.M. Geneva House No.14, Cunningham Road Bangalore-560 052  <b>PAN NO : AHWPS5879E</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Central Range-1(4) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA Nos.1934 to 1939/Bang/2016 & ITA No.512/Bang/2017
Assessment Years: 2006-07 & 2008-09 to 2013-14 respectively

Shri H.J. Siwani H.M. Geneva House No.14, Cunningham Road Bangalore-560 052  <b>PAN NO : AHWPS5878F</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Central Range-1(4) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri V. Chandra Sekhar, A.R.
<b>Respondent by</b>	:	Shri Muzaffar Hussain, D.R.

<b>Date of Hearing</b>	:	06.08.2020
<b>Date of Pronouncement</b>	:	26.10.2020

**O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

All the appeals filed by the assessee herein are directed against the orders passed by Ld CIT(A)-11, Bangalore in their respective hands and they relate to the assessment years 2006-07 and 2008-09 to 2013-14. Since common issues are urged in all these appeals of both the assessee, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. The facts relating to the assessee and impugned assessments are stated in brief. Shri H J Siwani and Shri M.J Siwani are brothers. They are partners of a firm named M/s H.M. Constructions, which is engaged in the business of construction of residential and commercial complexes. The revenue carried out search and seizure operations u/s 132 of the Income-tax Act, 1961 ['the Act' for short] in the group of M/s H M Constructions on 30-06-2011. Consequently, the assessments for assessment years 2006-07, 2008-09 to 2011-12 were completed u/s 153A r.w.s 143(3) of the Act. The assessments of the assessment years 2012-13 and 2013-14 were completed u/s 143(3) of the Act.

3. The grounds urged by both the assessee are identical in nature. In assessment years 2006-07, 2008-09 to 2011-12, the assessee have raised certain legal issues challenging the validity of search action and also the validity of notice issued to them u/s 153A of the Act.

4. With regard to the validity of search proceedings, the Ld CIT(A) has held that he does not have jurisdiction to examine the said issue. Accordingly, he has rejected the grounds raised before in this regard.

5. The Ld A.R, however, raised a new plea before us. He submitted that the various additions made by the AO are based on the materials seized from the premises of M/s H M Constructions and from the premises of the assessee herein. Accordingly, he submitted that the AO should have initiated proceedings u/s 153C of the Act. He submitted that the provisions of sec.153A and 153C operate on different persons, which have been explained by Hon'ble jurisdictional Karnataka High Court in the case of IBC Knowledge Park (385 ITR 346)(Kar) at paragraph 49 of its order, which reads as under:-

**49.** On a conjoint reading of the aforesaid provisions, it becomes clear that a search can take place only when a concerned officer has information and reason to believe that any person is in possession of any valuable assets, which has not been or would not be disclosed under the Act. In such a case, a search can take place. Following the search, if any books of account, other documents, any valuable assets is or are found in the possession or control of any person in the course of a search, then the books of account or other documents or valuable assets could be seized. Under Section 153A, the satisfaction regarding an inference of liability must be recorded. The Assessing Officer has to issue notice to the assessee i.e., the person searched for the purpose of assessment or reassessment of the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted. Section 153C as already noted, deals with assessment of income of any other person, when the Assessing Officer is satisfied that the books of account or documents or valuable 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 under sub-section(1) of Section 153A of the Act. In such a case, the Assessing Officer has to issue notice to assess or reassess income of other person under Section 153A of the Act. Thus, the fact that search has been conducted would not justify issuance of notice under Section 153A. If it is only during a valid search when certain incriminating materials are detected, notice could be issued.

The Ld A.R submitted that the AO did not take action u/s 153C of the Act and hence the entire assessment orders are vitiated. Accordingly, he contended that the impugned assessment orders for AY 2006-07 and 2008-09 to 2011-12 should be quashed.

6. On the contrary, the Ld D.R submitted that the assesseees have also been subjected to search operations along with the premises of M/s H M Constructions, which is the business premises of the assesseees also. Accordingly, he submitted that the question of invoking provisions of sec.153C of the Act separately does not arise. He submitted that the proceedings u/s 153A of the Act have been validly initiated in the hands of the assesseees and accordingly, the AO has to determine the “total income” of the assessee by considering all the materials available with him, as held by Hon’ble Karnataka High Court in the case of Canara Housing Development Company (62 taxmann.com 250).

7. We heard rival contentions and perused the record. From the assessment orders, we notice that the revenue has carried out search and seizure operations in the hands of M/s H.M. Constructions and in the hands of the assesseees herein. We have earlier noticed that both the assesseees herein are partners of M/s H M Constructions. It was also not shown to us that the assesseees herein have different business premises distinct and separate from the premises of M/s H M Constructions. Hence it cannot be conclusively said that the incriminating documents were seized from a person other than the assesseees herein. The details of seized record are given in the table available in page no.2 of the assessment order. A perusal of the same would show that one seized record is numbered as A-1/HM/1 and the remaining records are numbered as M J Shivani/Scanned files 1/Doc. It is a known fact that the numbering of seized documents is done by search officials in order to identify the seized materials.

Hence merely because the seized record has been numbered as “HM” does not necessarily mean that the same was seized from a different person. Though the assessee has raised this legal plea, no document was produced to substantiate this claim. Accordingly, for the reasons discussed above, we do not find any merit in the legal contentions raised by the assessee. Accordingly, we reject the same.

8. The next legal issue contested by the assessee is the assessing officer has issued notice u/s 153A of the Act, wherein the expression “assessee/reassess” is mentioned. He submitted that the question of reassessment would arise only if the total income of that year has already been assessed earlier. Accordingly he submitted that the assessing officer should clearly specify in the notice issued u/s 153A of the Act as to whether the income of particular assessment year is proposed to be “assessed” or “reassessed”, i.e., he should strike off inapplicable portion in the notice. Non-striking of the inapplicable portion will show that the assessing officer has not applied his mind and hence the assessment order is liable to be quashed. In this regard, the Ld A.R placed his reliance on the decision rendered by Hon’ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory (359 ITR 565).

9. The Ld D.R, on the contrary, submitted that the provisions of sec.153A itself uses the expression “assess/reassess”, since the assessment of six assessment years are re-opened as per the provisions of sec.153A of the Act. If the assessment of a particular year has not been completed earlier, then the question of reassessment does not arise. However, if the assessment of a particular has already been completed, then the assessment is done second time, it would fall under the category of “reassessment”. Hence the question of application of mind would not arise on this matter. He submitted that the decision in the case of Manjunatha

Cotton & Ginning Factory (supra) has been rendered in the context of sec.271(1)(c) of the Act and further the charge referred in sec.271(1)(c) are two different charges. Accordingly the High Court held that the AO should make it clear in the notice that he should specify the particular charge for which the penalty proceedings were initiated by him. The Ld D.R, accordingly, submitted that the assessee cannot take support of the above said decision.

10. We heard the parties on this issue and perused the record. We find merit in the contentions of the Ld D.R. The provisions of sec.153A of the Act states that the assessment of six assessment years preceding the year of search would get reopened. Out of the six assessment years, assessment of some of the years would have been completed, while some of the years might not. Hence the provisions of sec.153A uses the expression ‘assess/reassess” and the very same expression has been used in the notice issued u/s 153A of the Act. In both the cases, the total income shall be determined by the assessing officer. Hence the assessee would be knowing that the assessment of a particular year is a case of new assessment or reassessment, as it depends upon facts of each assessment year.

11. The facts available in Manjunatha Cotton & Ginning Factory (supra) are different. It related to the penalty levied u/s 271(1)(c) of the Act. Penalty u/s 271(1)(c) of the Act may be levied either for “concealment of particulars of income” or for “furnishing of inaccurate particulars of income”. Since two distinct charges are specified in the provisions of sec.271(1)(c) of the Act, the Hon’ble jurisdictional Karnataka High Court held that AO should clearly specify the charge under which the penalty proceedings were initiated. In the notice issued for initiating penalty proceedings u/s 271(1)(c) of the Act, the AO should clearly specify the charge. If both the charges are mentioned in the notice, the AO should strike off

inapplicable portion. Otherwise, it is quite possible that the assessee does not know the charge under which the penalty proceedings were initiated. Accordingly, it was held that non-striking of inapplicable portion would result in non-application of mind by the AO and since it goes to the root of the matter, the penalty proceedings would get vitiated. In our view, the assessee cannot take support of this decision and hence the contention of the assessee that non-striking of inapplicable portion in the expression “assess/reassess” would vitiate the assessment proceedings is liable to be rejected, as it does not go to the root of the matter.

12. We shall now take up the grounds urged on merits. We shall first take up the appeals filed by both the assessees in AY 2006-07. Identical additions have been made in the hands of both the parties and they are:-

- (a) Addition relating to Vitsandra (das flowers) property – Rs.5,00,000/-
- (b) Addition relating to Ramagondanhalli property – Rs.11,80,625/-
- (c) Addition relating to While field land – Rs.3,00,000/-.

The above said additions represent 50% of the undisclosed amount. The very same amounts have been assessed in the hands of both the assessees, as they have jointly entered into above said transactions.

12.1 The first issue relates to the addition of Rs.5.00 lakhs made in respect of Vitsandra (das flowers) property.

12.2 The facts relating to this addition are stated in brief. During the course of search proceedings, an agreement dated 8<sup>th</sup> September, 2005 was seized. The assessee's herein along with two other persons named Mr. Naseer Ahmed and Mr. Aman Janardhan Agarwal (hereinafter called “buyers”) had entered into an agreement with Mr.

R. Devashritha & others (hereinafter called “sellers”). As per the agreement, a sum of Rs.40.00 lakhs was received by the sellers from the buyers. The above said sum was paid by way of cash of Rs.20.00 lakhs and cheque of Rs.20.00 lakhs. The share of each of the assessee herein in the above said transaction was 25% and hence the AO assessed 25% of Rs.40.00 lakhs, i.e., Rs.10.00 lakhs each in the hands of Shri M J Siwani and H J Siwani. The Ld CIT(A) restricted the addition to Rs.5.00 lakhs, since the amount paid by way of cash was only Rs.20.00 lakhs and 25% of the same works out to Rs.5.00 lakhs.

12.3 The Ld A.R submitted that the above said agreement was entered on 8<sup>th</sup> September, 2005 in respect of a property located at Vitsandara (das flowers). He submitted that the conveyance deed has already been registered in favour of the buyers on 22.08.2005 and 6.9.2005. The above said agreement was entered to make some more payment. The Ld A.R submitted that the buyers had agreed to purchase the property for a sum of Rs.3.60 crores. However, the property suffered from certain disabilities and the co-purchasers Shri Nazeer Ahmed and Shri Aman Jnardhan Agarwal wanted to cancel the deal. However, the assessee's herein have prevailed upon them and the property was purchased for a lower consideration of Rs.3.10 crores, in order to take care of the disabilities. Subsequently, the sellers demanded additional amount of Rs.40.00 lakhs and accordingly, the impugned agreement was prepared for the amount of Rs.40.00 lakhs. However, it can be noticed that the impugned agreement was not signed by the buyers, i.e., they did not agree for payment of Rs.40.00 lakhs. After negotiation, the additional amount was determined at Rs.20.00 lakhs and the same was paid to the sellers by way of cheque. Accordingly, the Ld A.R submitted that the cash payment of Rs.20.00 lakhs mentioned in the agreement was not paid at all. He submitted that the said agreement is not binding upon

the assessees, since it was prepared by the sellers before the finalisation of the dispute and it was not signed by the buyers. Accordingly, he submitted that no credence can be given to the same and accordingly prayed that the addition of Rs.5.00 lakhs confirmed by Ld CIT(A) should be deleted.

12.4 The Ld D.R, on the contrary, the agreement is, in effect, a receipt by the sellers acknowledging the receipt of Rs.40.00 lakhs. Hence it cannot be considered to be a dumb document. Further, the recital in the agreement clearly states that the sellers have received the sum of Rs.40.00 lakhs in full satisfaction of their claim. Accordingly, the Ld D.R submitted that the submissions made by the assessee were rightly rejected by Ld CIT(A).

12.5 We heard the parties on this issue and perused the record. The undisputed fact remains that sale deed for the purchase of Vitsandara property was registered in favour of buyers by conveyance deeds dated 22.08.2005 and 06.09.2005. The present document is titled as "Agreement". It is mentioned in the document that the agreement is entered on 8<sup>th</sup> September, 2005 between sellers and buyers. The agreement mentions about that the property was initially agreed to be sold for Rs.3.60 crores and later sold for Rs.3.10 crores. It also mentions that the sale deeds were registered on 22.08.2005 and 06.09.2005. Thus, the sale transaction is complete in all respects by 06-09-2005.

12.6 It has so happened that the sellers demanded additional amount of Rs.40.00 lakhs even after completion of registration of sale deeds. It is the submission of the assessee that the buyers agreed to pay additional amount of Rs.20.00 lakhs only. However, the sellers prepared the agreement for Rs.40.00 lakhs and hence the buyers have not signed the agreement. Accordingly, it was submitted that

the amount of Rs.20.00 lakhs mentioned in the agreement was not paid at all.

12.7 In the facts and circumstances of the case, we are of the view that there is merit in the submissions of the assessee. It is an undisputed fact that the “agreement” was not signed by the buyers, meaning thereby, it is only an incomplete agreement. If the additional amount was really agreed to be Rs.40.00 lakhs and only Rs.20.00 lakhs was accounted in the books of account, any prudent business man would not show the same in the agreement at all. Hence, there is merit in the submission of the assessee that a sum of Rs.20.00 lakhs only was paid as additional amount to the sellers. Accordingly, we are of the view that the assessee has rebutted the presumption with regard to this evidence. It is also pertinent to note that the assessing officer did not examine the sellers to find out the truth. Further, no other material was brought on record to prove that the sum of Rs.20.00 lakhs was paid by way of cash and the same has not been accounted in the books of accounts. Hence, in the absence of any contrary material to disprove the submission of the assessee, the explanations given by the assessee have to be accepted. Accordingly, we hold that the addition of Rs.5.00 lakhs each sustained by Ld CIT(A) in the hands of the assessee herein are liable to be deleted. Accordingly, we set aside the orders passed by Ld CIT(A) on this issue and direct the AO to delete the addition of Rs.5.00 lakhs each made in the hands of both the assessee in AY 2006-07.

13. The next issue relates to the addition of Rs.11,80,625/- each relating to Ramagondanahalli property in the hands of both the assessee.

13.1 The facts relating to this addition are stated in brief. During the course of search operations, following “receipts” evidencing payments made during the financial year 2005-06 relevant to AY 2006-07 were found: -

Muniamma – paid on 17-06-2005 -	Rs. 5,36,250
Venkatamma & others – paid on 16-06-2005 -	Rs.12,15,000
Venkatamma & others - paid on 16-06-2005	Rs. 6,10,000
	-----
	Rs.23,61,250
	=====

Since the payments have been made on 16-06-2005 and 17-06-2005 and since they have not been accounted in the books on those dates, the AO proposed to assess the above amounts as undisclosed income of the assesseees. The assesseees explained as under:-

*“The purchase of properties more fully described above are accounted by me and my brother Mr. H J Siwani in our Statement of Affairs filed with the Income tax Department. It may not be out of place to mention that the monetary consideration as set out in the Agreement for purchase of property at Ramagondanahalli was paid as advance way back in 1995 itself. However, at that time, these properties could not be registered in our names, as there was a proposal by Bangalore Development Authority to acquire these lands for formation of a layout and the said lands were notified. Subsequently, after a long and protracted request by the effected villages, the Government was not keen and serious to go ahead with a proposal and hence it was some time in 2002-06 that the registration of these lands were made possible. We had applied to BDA Authority under the RTI Act to obtain extracts of the above proceedings and are enclosing the replies received from BDA of the pending proposal as evidence to substantiate our claim. No consideration was paid in 2005 at the time of registration, but however to explain the long gap of 10 years from the time the advance was paid to the time of*

*registration in 2005, a receipt was made on the date of registration to confirm the amount received, so as to facilitate registration of the property before the revenue authorities. I am not maintaining books of accounts for my individual financial affairs and therefore, the advance payment made to purchase the property at Ramagondanahalli is reflected in my Statement of Affairs at a value of Rs.47,40,760/-.”*

Accordingly, it was submitted that entire payments have been made for purchase of property in 1995 itself. It was submitted that a receipt was obtained in 2005 from the vendors in order to facilitate registration of sale deeds.

13.2 The receipts obtained on 16-06-2005 and 17-06-2005 mentioned the payments as “full and final settlement”. The AO interpreted the same as “further money” or “final settlement of money”. Accordingly he observed that the money was paid in addition to what has earlier been paid and was paid at the time of registration. He further observed that the assessee did not produce any evidence to say that the transaction for purchase of land at Ramagondanahalli happened much before the registration of the property. The receipts obtained on 16-06-2005 and 17-06-2005 bears the signature of witnesses and also notarised. Accordingly, the AO rejected the explanations of the assessee. Accordingly he assessed 50% of Rs.23,61,250/-, i.e., Rs.11,80,625/- each in the hands of the assessee herein. The Ld CIT(A) also concurred with the views taken by the AO and accordingly confirmed the additions.

13.3 We heard the parties and perused the record. The Ld A.R reiterated contentions made before the AO. The Ld D.R, on the contrary, submitted that the explanations given by the assessee should be an acceptable explanation as held by Hon’ble Supreme

court in the case of CIT vs. Mussadilal Ram bharosa (165 ITR 14)(SC). However, the present explanations of the assessee are not acceptable. The Ld A.R, in the rejoinder, submitted that the decision in the case of Mussadilal Ram bharosa (supra) has been rendered in the context of penalty levied u/s 271(1)(c) of the Act. He submitted that the assessee has presented correct facts before the AO and the assessing officer has not proved the same to be incorrect.

13.4 We notice that the revenue has seized three receipts, wherein the sellers of Ramagondanahalli lands have acknowledged the receipt of payment in full and final settlement. Since the receipts are dated 16-06-2005 and 17-06-2005, the assessing officer has taken the view that these payments have made by the assesseees and accordingly assessed the same as undisclosed income. The explanations of the assessee are that

- (a) These lands were purchased way back in 1995 and the entire consideration was paid as advance in those years also. In support of this explanation, the assesseees have filed Statement of Affairs before the AO showing therein the payments made to the sellers of the land.
- (b) The assesseees have explained the reasons as to why the registration of conveyance deeds could not be completed. The assesseees have also furnished copies of replies given by Bangalore Development Authority to substantiate their contentions that the registration could not be completed due to the proposal of BDA to acquire the lands.
- (c) The assesseees have explained that the impugned receipts for payment of money were obtained for name-sake in order to complete the registration of conveyance deeds.
- (d) The Ld A.R submitted that the AO has presumed the impugned payments as “further money”, where as no such expression was used in the receipts so obtained.

(e) It was also explained that the value of purchase of land was reflected in the statement of affairs of the assessee at Rs.47,40,760/-.

13.5 We notice that none of the explanation given by the assessee have been examined by the assessing officer. We notice that the impugned payments are covered by three receipts, out of which two receipts make reference to the agreement to sale dated May, 1995. For the sake of convenience, we extract below the relevant expressions used in one of the receipts:-

“..... received a sum of Rs.12,15,000/- (Rupees Twelve Lakh Fifteen thousand only) by way of cash towards the sale of land bearing survey no.94 measuring 28 Guntas situated at Ramagondanahalli village – Varthur Hobli, Bangalore South from Mr. H J Siwani and Mr M J Siwani as full and final settlement towards the agreement of sale dated May 1995 and towards registration of Agreement of sale dated 16.06.2005. We have no claims whatsoever.”

The receipt makes it clear that there was an agreement of sale dated May 1995 and this receipt is issued towards registration of Agreement of sale deed dated 16-06-2005. The usage of expression in the receipt, viz., “towards **registration of Agreement** of sale dated 16-06-2005”, in our view, supports the contentions of the assessee. Had it been additional payments, as presumed by the AO, there was no necessity to use the above said expressions. Accordingly, we are of the view that there is merit in the submissions of the assessee that these receipts were prepared in order to enable registration of Agreement of sale dated 16.06.2005.

13.6 We further notice that the assessee have furnished Statement of Affairs in order to show that the payments have been made in 1995

itself. Further, the assessees have also furnished copies of replies received from Bangalore Development Authority in order to substantiate their contentions that the registration could not be completed due to the proposal of the above said authority to acquire the impugned lands. Accordingly, we are of the view that the assessee there is merit in the explanations given by the assessees and they have effectively rebutted the presumption regarding the impugned seized materials. A perusal of the assessment order would show that the assessees have accepted some of the unaccounted payments on the basis of evidences seized at the time of search, meaning thereby, the assessees have disputed the evidences, when the facts are against the presumptions drawn by the AO. We further notice that the assessing officer did not make any enquiries from the sellers of the land in order to disprove the explanations given by the assessee. Further, no other material was brought on record to prove that the impugned payments were made outside the the books of accounts. Hence, in the absence of any contrary material to disprove the submissions of the assessees, the explanations given by the assessees have to be accepted. The surrounding circumstances and evidences, in our view, supports the explanations of the assessees. Accordingly, we hold that the addition of Rs.11,80,625/- each sustained by Ld CIT(A) in the hands of the assessees herein are liable to be deleted. Accordingly, we set aside the orders passed by Ld CIT(A) on this issue and direct the AO to delete the above said addition made in the hands of both the assessees in AY 2006-07.

14. The next issue relates to the addition of Rs.1,50,000/- relating to property located at White filed.

14.1 The facts relating to the above said issue are stated in brief. During the course of search, the search officials found a receipt dated 24.03.2006 signed by a person named Mr. Winfred Nelson on behalf

of M/s Indo Global Spices Ltd for a sum of Rs.3.00 lakhs. With regard to this receipt, the assessee explained as under:-

“ I submit that we had agreed to pay a total consideration of Rs.2.00 crores for purchase of aforesaid property. Out of the aforesaid consideration, the company wanted for some emergency purpose a sum of Rs.3,00,000/- to be paid by way of cash and a receipt was prepared by the Managing Director Mr. Winfred Nelson and he signed the receipt. As this payment was supposed to be made to Mr. Winfred Nelson on behalf of the company, we insisted Mr. Winfred Nelson to get signature of Mr. N G Jaikumar, another Director of the Company, so as to prevent any misappropriation of money by Mr. Winfred Nelson in his individual capacity. Mr. Winfred Nelson assured that he will get the signature of Mr. N G Jaikumar and requested us to keep the receipt with us, so that he come with Mr. N G Jaikumar and get the receipt signed by Mr. N G Jaikumar and collect the cash. However, due to reasons best known to him, he was unable to bring Mr. N G Jaikumar and get the receipt signed by him and therefore this amount of Rs.3,00,000/- was not paid, as Mr N G Jaikumar did not sign the receipt and therefore, the receipt is incomplete and it is a dumb document, on which no relevance can be placed.”

The AO did not accept the explanations of the assessee. Since the receipt is available for payment of Rs.3,00,000/-, the AO assessed the same equally @ Rs.1,50,000/- in the hands of both the assessee herein. The Ld CIT(A) also confirmed the same.

14.2 The Ld A.R submitted that the total consideration fixed for purchase of property located at No.41/42 EPIP, White field, Bangalore was Rs.2.00 crores. The impugned sum of Rs.3.00 lakhs was part of the above said total consideration. He submitted that the purpose of preparing the receipt by Mr. Winfred Nelson was explained

to the AO and further the reasons as to why the payment was not made as mentioned in the receipt, was also explained. The receipt has not been signed by both the directors of the seller company and hence it cannot be considered to be a proper receipt. He submitted that the entire purchase consideration relating to the above said property has been accounted for in the books of account. Accordingly he submitted that the AO was not correct on facts in presuming that the impugned sum of Rs.3.00 lakhs represent amount paid over and above the consideration of Rs.2.00 crores. Accordingly he prayed for deletion of addition of Rs.1.50 lakhs each made in the hands of the assessee herein.

14.3 The Ld D.R, on the contrary, submitted that the receipt has been signed by Mr. Winfred Nelson and nobody will sign the receipt unless he receives money. He submitted that Mr. Winfred Nelson might have signed on behalf of other director also.

14.4 We heard the parties on this issue and perused the record. We notice that the contention of the assessee was that the above said amount of Rs.3.00 lakhs represent part of total consideration of Rs.2.00 crores, i.e., it is not over and above the agreed consideration. The assessee has explained the circumstances under which the above said receipt was prepared and the reasons as to why the payment of Rs.3.00 lakhs was not actually made. We notice that the AO has not examined the explanations of the assessee in order to find out whether the payment of Rs.3.00 lakhs is part of agreed consideration or not. If it is part of agreed consideration, in our view, then the explanations of the assessee need to be accepted, since the same represents only timing difference. We have earlier noticed that the assessee have accepted the additions, whenever the payments were not accounted for, meaning thereby, the assessee have disputed the evidences, when the facts are against the presumptions

drawn by the AO. We further notice that the assessing officer did not make any enquiries from the Mr. Wilfred Nelson or Mr. N G Jaikumar in order to disprove the explanations given by the assessee. Further, no other material was brought on record to prove that the impugned payments were made outside the books of accounts. Hence, in the absence of any contrary material to disprove the submissions of the assessee, the explanations given by the assessee have to be accepted. The surrounding circumstances and evidences, in our view, supports the explanations of the assessee. Accordingly, we hold that the addition of Rs.1,50,000/- each sustained by Ld CIT(A) in the hands of the assessee herein are liable to be deleted. Accordingly, we set aside the orders passed by Ld CIT(A) on this issue and direct the AO to delete the above said addition made in the hands of both the assessee in AY 2006-07.

15. We shall now take up the appeal filed for AY 2008-09. The only issue urged on merits in this year relate to the addition of Rs.1,45,000/- each made in the hands of both the assessee.

15.1 During the course of search proceedings, six receipts of various amounts aggregating to Rs.2,90,000/- evidencing payment made in FY 2007-08 relevant to AY 2008-09 were found. All the receipts have been scanned by the AO in the assessment order. The assessee submitted that the impugned receipts are only drafts, which is evident from the fact that a lot of corrections have been made in the receipts. Accordingly, the assessee submitted that the payments as per these receipts have not been made. However, the AO did not accept the explanations of the assessee. However, he made very same observations which were made in respect of Ramagondanahalli property in AY 2006-07 (the said property was purchased in 1995, but registration took place in 2005) and accordingly expressed the view that these payments represent payments made over and above

the agreed consideration. The Id CIT(A) confirmed the addition by observing that the receipts mention that payments have been made.

15.2 The Ld A.R submitted that these payments intended to be made through these receipts are part of agreed considerations and the same is evident from the recitals made in the receipts itself. He submitted that these receipts were only drafts, which is evidenced by the corrections found in them. He submitted that the payments, as per these receipts, have not been made. Accordingly he submitted that the tax authorities are not justified in treating the payments as payments made outside books of accounts.

15.3 The Ld D.R, on the contrary, submitted that these receipts mention about the payment of cash by the assesseees.

15.4 We heard the parties on this issue and perused the record. As submitted by Ld A.R, we notice from the recitals made in the receipts that the payments intended to be made through these receipts are part of agreed sales consideration. When the payments are intended to be made as part of agreed consideration, there is no reason as to why the payments, if any, actually made should not be accounted for in the books of accounts. As pointed out by Ld A.R, the receipts contain a lot of corrections and the regular receipts would not normally contain such types of corrections. Hence there may be merit in the submission of the assessee that these receipts are only drafts and the payments have not been made. We further notice that the assessing officer has not taken any steps to verify the agreed consideration, payments made by way of cheques etc., mentioned in the receipts. Without establishing that other information available in the receipts are correct, it may not be proper to presume that the cash component alone has been paid under these receipts. We have earlier noticed that the AO has made the

addition by making observations relating to some other property, which fact would show that the AO has made the addition in a mechanical manner. Hence, we are of the view that the AO and Ld CIT(A) were not justified in making this addition. Accordingly, we set aside the orders passed by Ld CIT(A) on this issue and direct the AO to delete the addition of Rs.1,45,000/- each made in the hands of both the assesseees in AY 2008-09.

16. In all other years, one common issue urged is related to disallowance of part of agricultural income declared by the assessee and assessing the same as income of the assessee from income from other sources. Before dealing with the same, we would like to adjudicate the addition of Rs.20.00 lakhs each made in the hands of the assesseees in AY 2011-12.

16.1 During the course of search, the search officials unearthed two receipts bearing numbers 1733 & 1735, both dated 10-05-2010. The voucher bearing number 1733 mentions

- (a) payment of Rs.20.00 lakhs to Mrs. H S Parvathi.
- (b) "Head of A/c Mrs. Vasantha Lakshmi and Ms. Vidhya Lakshmi".
- (c) To be destroyed as collected voucher no.1735 with Vasantha signature.

The voucher bearing number 1735 mentions that the payment is made to Mrs. Vasantha Lakshmi and Ms. Vidhya Lakshmi. The amount paid is Rs.20.00 lakhs.

16.2 With regard to these vouchers, the assessee furnished following explanations:-

"With regard to payment of Rs.20,00,000/- made to H S Parvathi on 10.05.2020, I submit that the same is cancelled as evident from the Voucher itself, since it is mentioned that "To

be destroyed as collected voucher no.1735 with Vasantha's Signature" and it also says in the Head of account that the proposed payment is for Mrs. Vasantha Lakshmi and Mrs. Vidhya Lakshmi, but however the transaction to buy their property could not go through, as later on they changed their mind to sell the property."

The AO did not accept the explanations given by the assessee by observing that the explanations are not acceptable on the basis of factual evidence and also on legal parameters. He observed that the receipts were acknowledgement of the seller and are duly signed. Accordingly the AO took the view that the amount paid under these two receipts aggregating to Rs.40.00 lakhs is assessable as income in the hands of the assessees. Accordingly, he assessed Rs.20.00 lakhs each in the hands of both the assessees. The Ld CIT(A) also confirmed the same.

16.3 We heard the parties on this issue and perused the record. A perusal of the receipt No.1733 would show that is clearly stated therein that this receipt is to be destroyed, as another voucher no.1735 has been collected from Mrs. Vasantha Lakshmi. Hence, we agree with the contentions of the assessee that the receipt no.1733 is the temporary voucher and the same is replaced by voucher no.1735. Accordingly, we are of the view that no credence should be given to voucher no.1733, i.e., both voucher no.1733 and 1735 relates to the same transaction and hence only a sum of Rs.20.00 lakhs has been given by the assessee to Mrs. Vasantha Lakshmi and Ms. Vidhya Lakshmi. Accordingly the tax authorities are not justified in taking the amount of transactions at Rs.40.00 lakhs. The value of transactions under both the vouchers should be taken as Rs.20.00 lakhs only.

16.4 With regard to the transaction amount of Rs.20.00 lakhs, it is the submission of the assessee that the same was paid for purchasing their property, but it did not go through. From the explanations given by the assessee as well as the discussions made by the tax authorities, it is not clear as to whether the assessee has explained the sources for payment of Rs.20.00 lakhs. If the assessee has explained the sources, then no addition is not called for. Since there is lack of clarity on this issue, we restore this issue to the file of the AO in the case of both the assesseees for examining the same afresh.

17. The next common issue relates to the disallowance of part of agricultural income declared by the assesseees. This issue is being urged by the assessee in assessment years 2009-10 to 2013-14.

18. The details of agricultural income declared by the assessee and accepted by the AO are tabulated below:-

Assessment year	Agri. Income declared by assessee	Agri. Income accepted by the AO	Balance income assessed as income from other sources
2009-10	16,20,000	10,00,000	6,20,000
2010-11	16,50,000	10,00,000	6,50,000
2011-12	28,50,000	10,00,000	18,50,000
2012-13	41,00,000	10,00,000	31,10,000
2013-14	65,00,000	14,00,000	51,00,000

18.1 The facts relating to this issue are discussed in brief. The assessee's herein are jointly holding 21 acres and 290.58 Guntas of agricultural land at places named Sriramanahalli, Ramagondanahalli, Doddagubbi and Huskur. With regard to the agricultural income, the AO asked the assessee to furnish complete details relating to agricultural income lime, the crops grown, nature of the crop, quantity of produce, selling price, gross sale proceeds,

expenditure incurred on cultivation & marketing, net agricultural income, where it was sold, mode of receipt of money, copies of RTC, irrigation facilities available at the land.

18.2 The assessee furnished evidences of land holding, nature of crop grown in each of the land. The assessee furnished "Statement of agricultural income and expenses" every year. The details of agricultural income, agricultural expenses and net agricultural income declared by the assessee are tabulated below:-

Assessment year	Sale value of agricultural produce	Expenses	Net income
2009-10	44,63,267	12,23,270	32,29,997
2010-11	45,41,595	12,23,270	33,18,325
2011-12	78,48,273	21,48,279	56,99,994
2012-13	1,12,67,940	30,67,939	82,00,001
2013-14	1,60,74,483	30,74,483	1,30,00,000

The assessee has also furnished the details of crop raised every year in the above said statement. The assessee has raised Ragi, Soppu (green leafs), Tarakari (vegetables) and Nilgiris (Eucalyptus). All the transactions were carried in cash only. It was also stated that the agricultural produce were sold to hotels runs by H M group.

18.3 The AO was of the opinion that the assessee has claimed substantial agricultural income. He further opined that the assessee could not furnish details/evidence with regard to the expenses incurred for cultivation. He also noticed that the assessee has claimed that all transactions of sales and expenses have been carried out in cash. With regard to sale of produces, the assessee claimed that the produces were utilised in the hotels run by their group. The AO observed that the entities falling under H M Group are well established entities having access to banking facilities. Accordingly he observed that it is not clear as to why group concerns

are making payments in cash. He also took the view that the productivity shown in respect of the lands is very high and not comparable with the lands situated in the surrounding areas. Further, the net income from agricultural activities has also increased manifold in a period of 2 to 3 years without any increase in the area of cultivation. Accordingly, the AO expressed the view that the assessee might have used the agriculture route to convert black money into accounted money.

18.4 The AO noticed that the assessee has each declared agricultural income at Rs.7.00 lakhs in the years relevant to AY 2006-07 to 2008-09, which has increased to Rs.16.20 lakhs, 16.50 lakhs, 28.50 lakhs, 41.00 lakhs and 65.00 lakhs from AY 2009-10 to 2013-14 respectively. The AO took the view that the agricultural income declared by the assessee is very much on the higher side. Accordingly, he restricted the agricultural income to Rs.10.00 lakhs for each of the years in AY 2009-10 to 2012-13 and to Rs.14.00 lakhs in AY 2013-14. The agricultural income declared by the assessee over and above the estimate so made by the AO was assessed as income of the assessee from income from other sources.

18.5 Before the Ld CIT(A), the assessee contended that they did not carry on real estate business in some of the years. Accordingly, it was contended that the AO was not right in presuming that the assessee has converted black money generated from real estate activities into agricultural income. This contention of the assessee was accepted by Ld CIT(A). With regard to other observations made by the AO, the assessee furnished various explanations. The observation made by Ld CIT(A) in this regard in AY 2009-10 in the case of Shri M J Swami and the decision taken by him are extracted below, for the sake of convenience:-

*“The learned Assessing Officer stated other reasons for disallowing the agricultural income of Rs.6,20,000/- and the appellant submission are as follows:*

- i. All the sale proceeds and expenditure incurred are in cash. The appellant submits that there is no restriction in the income-tax Act that the agricultural produce cannot be sold for cash and expenditure cannot be incurred in cash.*
- ii. The agricultural produce were sold to the hotel run by M/s. H.M. Group for cash payments.*

*The learned Assessing Officer has stated that the cash payments have been obtained when the banking facilities are available for those entities. It is not in dispute that the appellant has not sold the agricultural produce to M/s. H.M. Group. The appellant is legally entitled to receive the cash payments.*

- iii. The productivity shown in the lands on which vegetables were grown is very high and is not comparable with the lands situated in the surrounding areas: The appellant submits that the appellant has cultivated Ragi, Nilgiri plantation also and not only vegetables. The learned Assessing Officer has not put to the notice of the appellant in respect of the comparables for reply by the appellant. Consequently the assessment order passed is in violation of principles of natural justice.*

- iv. It is unlikely event that the income has increased manifold in a period of 2 to 3 years without increase in the area under cultivation.*

*The appellant submits that the above reasoning of the learned Assessing Officer is not correct, since the agricultural income will increase depending upon the increase in the value of the sale of agricultural produce and the yield of the agriculture. It is not necessary that to have more agricultural income the land holding of the agricultural land should also increase. The finding of the learned Assessing Officer is perverse.*

*The learned Assessing Officer is not correct in law in not accepting the agricultural income of the appellant to the extent of Rs.6,20,000/-. Further the appellant does not have any other source of income other than declared in the statement of total income, to show as agricultural income. Consequently the addition made as income from other sources to the extent of Rs.6,20,000/- is liable to be deleted under the facts and circumstances of the case.*

*The learned Assessing Officer made the above additions purely on suspicion, surmise, assumptions and presumptions and consequently the additions made deserves to be deleted on the facts and circumstances of the case.*

*I have gone through the facts of the case, assessment order and written submissions of the appellant. The questions raised by the AO has still not been answered. The area under cultivation has not increased but there is a sudden jump in the agricultural income. The appellant has not been able to give any convincing reply about the reason for this sudden jump in the agricultural income. The agricultural income was Rs.7 lakhs for A.Y. 06-07, 07-08 and 08-09 and suddenly it has jumped to Rs.16,20,000/-. The AO has rightly asked the appellant to explain with evidence about the sudden increase of agricultural income. The appellant has only made counter arguments but has not submitted the evidence of incurring expenses for agriculture, the reason for sudden increase in agricultural income in terms of using better quality seeds or change in cropping pattern or change in the nature of produce or better agricultural equipments or better irrigation facilities. The claim of agricultural has been made by the appellant and hence, the onus is squarely on the appellant to prove to the satisfaction of the AO that the claim is genuine. There are no trails to be followed as purchases has been made in cash and has been sold to group concerns in cash. In absence of the corroborative evidence, the addition made by the AO as Income from Other Sources to an extent of Rs.6,20,000/- is UPHeld. By doing so the AO has been reasonable to accept an increase from 7 lakh to 10 lakh which in itself is not a small amount.*

*The ground of appeal is, accordingly, DISMISSED.”*

In other years also, the Ld CIT(A) confirmed the disallowance made by the AO on almost identical reasoning.

18.6 The Ld A.R submitted that the assesseees hold about 28.25 acres of land and are using modern cultivation method and quality

seeds. Hence they could achieve better productivity. He submitted that the assessee has furnished details of agricultural land holding and other details that were called for by the AO. They submitted a statement showing the details of crop grown in each land, gross revenue generated, the expenses incurred therein and net agricultural income. He submitted that the assessing officer did not prove that the details so furnished by the assessee are wrong. Though the AO observes that the productivity shown by the assessee is higher than that shown in comparable cases in surrounding areas, yet he has not cited any comparable instances in support of his observation. He submitted that the assessee has offered proper explanations in respect of each of the observations made by the AO. None of the explanation was found to be incorrect. Accordingly he submitted that there is no reason to disbelieve the agricultural income declared by the assessee.

18.7 On the contrary, the Ld D.R submitted that the assessee has merely furnished a statement of income and expenses. But those income and expenses have not been substantiated with evidences. Further the per acreage income declared by the assessee is very much higher than the average income declared by others. He submitted that the AO has not disallowed entire agricultural income. Considering the land holding, past income details and average income generated in surrounding areas, the AO has only restricted the agricultural income declared by the assessee. Accordingly, he submitted that there is no reason to interfere with the decision rendered by Ld CIT(A) on this issue in all the years under consideration.

18.8 We have heard rival contentions on this issue and perused the record. We notice that the assessee has furnished a Statement showing sale value of agricultural produce and the expenses in

support of the agricultural income declared by them. As observed by the AO, the assessee has not furnished various details called for by the AO, particularly the details of yield, quantity raised, selling price etc. There should not be any doubt that it is the responsibility of the assessee to prove the agricultural yield, realization etc., by furnishing cogent evidences. Mere furnishing of Statement may not be sufficient. At the same time, the AO also did not attempt to find out the average yield, average selling price etc., from the surrounding areas or from agricultural department. Thus, the AO has also made estimate without any basis.

18.9 In view of the above, we are of the view that the issue of agricultural income requires fresh examination in all the years. Accordingly, we set aside the orders passed by Ld CIT(A) on this issue in AY 2009-10 to 2013-14 and restore the same to the file of the AO for examining it afresh. After affording adequate opportunity of being heard, the assessing officer may take appropriate decision in accordance with law.

19. In the result, all the appeals of the assessee are treated as partly allowed for statistical purposes.

Order pronounced in the open court on 26<sup>th</sup> Oct, 2020

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 26<sup>th</sup> Oct, 2020.  
VG/SPS

Copy to:

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

By order

**Asst. Registrar,  
ITAT, Bangalore.**