

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH : BANGALORE**  
**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER**  
**AND SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 723/Bang/2016</b>
<b>Assessment years : 2010 – 11</b>

Smt. Saritha Dudheria, W/o.Sri.Laxmipath Dudheria, No.20, Vasavi Plaza, II Floor, DVG Road, Basavangudi, Bengaluru. <b>PAN : AFWPD 9619 P</b>	Vs.	DCIT Circle – 1, Central Circle-1(2), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>
Assessee By	:	Shri.KR.Pradeep CA along with Smt.Girija G.P.CA
Revenue By	:	Shri.Priyadarshi Mishra
Date of Hearing	:	06/10/2020
Date Of Pronouncement	:	06/11/2020

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER:**

Present appeal has been filed by assessee against order dated 09/02/2016 passed by Ld.CIT(A)-11, Bangalore for assessment year 2010-11 on following grounds of appeal:

1. *That the order of the authorities below in so far as it is against the appellant is against the law, facts, circumstances, natural justice, without jurisdiction, bad in law and all other known principles of law.*
2. *That the total income and total tax liability computed is hereby disputed.*
3. *The order is based on surmise, suspicion and conjuncture and is in blatant disregard to the evidence on record, law, fact and judicial pronouncement of higher authorities and courts, requires to be cancelled.*
4. *That the notice, initiation and subsequent proceedings u/s 148 are bad in law, without jurisdiction and requires to be cancelled.*
5. *That the notice u/s 148 is without jurisdiction and is in total disregard to the provisions of C air 5-ferXIV of the IT Act, 1961.*
6. *That the entire reassessment proceedings violate the procedure prescribed by the Supreme Court in 259 ITR 19 for 148 proceedings.*
7. *That the authorities below erred in making addition of Rs.1,00,00,000/-as unexplained income.*
8. *That the addition has been made contrary to the Board Instruction dated 10th March, 2003 vide F.No.286/2/2003/IT(Inv) and without any cogent evidence in support of the addition.*
9. *The appellant denies the liabilities of interest u/s 234A and 234B of the Act. Further prays that interest if any should be levied only on returned income.*
10. *No opportunity has been given before levy of interest u/s 234A and 234B of the Act.*
11. *Without prejudice to the appellant's right of seeking waiver before appropriate authority, the appellant begs for consequential relief in the levy of interest u/s 234A and 234B of the Act.*
12. *For the above and other grounds and reasons which may be submitted during the course of hearing of the appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered.*

**Brief facts of the case are as under:**

**2.** Assessee is an individual and filed her return of income on 29/09/2011 declaring total income of Rs.9,33,970/-. The return was processed under section 143(1) of the Act.

There was a search under section 132 of the Act, in case of M/s. Bharat Mines and Minerals on 19/07/2010. The search also covered Sri.Lakshmipat Dudhoria, being husband of assessee. During the course of search, certain documents were found, which was not belonging to Sri.Lakshmipat Dudhoria. The document was marked as A1/DC at page 32 & 33

**2.1.** Assessee gave letter dated 17/09/2010 to DDIT (Inv.) declaring Rs.1 Crore for assessment year 2010-11 to cover entries in the loose sheet marker A1/DC at pages 32&33 as well as miscellaneous issues such as investment, expenditure etc. This letter was signed by assessee under section 132(4) of the Act.

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DATE : 17/09/2010

**FROM :**

Smt.SARITA DUDHERIA  
W/o Sri.Laxmipat Dudheria  
#20, Vasavi Plaza, 2<sup>nd</sup> Floor  
D.V.G. Road, Basavangudi,  
**BANGALORE 560004**

**TO :**

THE DEPUTY DIRECTOR  
OF INCOME TAX(INV)  
Unit- II (2)  
**BANGALORE**

Honours,

Sub : Disclosure U/s 132(4) of the I.T.Act.  
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There was a search in the case of my husband Sri.Laxmipat Dudheria purportedly u/s 132 of the I.T.Act on 19<sup>th</sup> July 2010. During and Subsequent to search, several details were sought, questions were raised and various information was directed to be filed. All such directions have been complied to the best of ability and availability of information, considering that lot of books and records which were under prohibitory order u/s 132(3) of the I.T.Act.

During the course of search certain documents were gone through and the Learned DDI sought various explanation on the financial affairs pertaining to me. In particular seized material A1/DC page no.32 & 33 consisting of certain scribbling were seized from my husband. With an intention to buy peace and to put an end to any possible litigation I intend to declare a sum of Rs.1.00 crore for the assessment year 2010 – 11 to cover the entries in the above said loose sheet as well as miscellaneous issues such as investment, expenditure etc., The said amount

will be reflected in the statement of affairs and return of income which I will file upon receipt of the necessary notice under the I T Act.

It is submitted that the above act of declaration has been done with an intention to buy peace, co-operate and with an expectation of expeditious conclusion of all issues in the assessee's favour.

The tax and interest as is applicable would be paid along with the return. In view of the foregoing act it is prayed and requested that no penalty be initiated or levied u/s 271 (1) (c) read with other explanation and also Section 271 AAA. Similarly the assessee also prays that no other penal consequences be made applicable.

The above disclosure shall be treated as disclosure u/s 132(4) of the I.T.Act and done with an intention to buy peace and avoid litigation on the issue of exemption u/s 10B..

Thanking you,

Yours sincerely

*Sarita Dudheria*

SARITA DUDHERIA

**2.2.** Subsequently, the Investigation Wing summoned assessee u/s131 of the Act and her statement was recorded on 24/09/2010. The relevant portion of statement recorded has been reproduced by Ld.AO in assessment order in para 4.4.

**2.3.** Based on the statement recorded, Ld.AO had reason to believe that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act and accordingly, after recording satisfaction, notice under section 148 was issued on 28/08/2012, requiring assessee to file return of income. In response, assessee

filed a letter on 21/12/2012 stating that return filed on 28/09/2011 may be treated as return in response to notice under section 148 of the Act. Subsequently, notice under section 143(2) was issued on 11/01/2013 along with notice under section 142(1) calling for the details. Vide letter dated 11/02/2013, assessee sought reasons recorded by Ld.AO for reopening of assessment. Ld.AO dispatched the reasons recorded on 11/07/2013.

**2.4.** Before Ld.AO, assessee did not object for proceedings under section 147, which was recorded vide order sheet noting dated 20/02/2014.

It is recorded by Ld.AO that to buy peace and put an end to any possible litigation assessee declared a sum of Rs.1crore for assessment year under consideration to cover the entries in the loose sheet as well as miscellaneous issue such as investment, expenditure etc. Assessee submitted the disclosure in writing vide letter dated 17/09/2010 under section 132(4) of the Act, which is reproduced by Ld.AO in assessment order.

**2.5.** Ld.AO in assessment order refers to the statement recorded by the investigation wing of assessee on 24/09/2010 wherein she stated that sources of the investments appearing in the seized documents were out of her undisclosed an unaccounted income earned by her during the financial year 2009-10, and that, she invested such amount in shares and loans and advances in cash as mentioned in the document seized. Ld.AO has reproduce the statement recorded by assessee in the assessment order and has also reproduced the typed document seized being A1/DC at page

33. In the paper book filed by assessee on 24/07/2018 the seized documents at page 32 is placed.

**2.6.** Before Ld.AO, assessee subsequently changed her stand by submitting that said income of Rs.1Cr, though was declared u/s.132(4) for year under consideration, however belonged to assessment year 2011-12. Assessee filed letter with Ld.AO on 12/08/2013, submitting that she offered sum of Rs.1Cr for assessment year 2011-12, and that she has paid taxes on the said income, along with copy of acknowledgement of return of income and computation of total income.Ld.AO rejected the contention of assessee.

**2.7.** Ld.AO completed the assessment by making addition of Rs.1Cr the hands of assessee for year under consideration.

**3.** Aggrieved by addition made, assessee preferred appeal before Ld.CIT(A).

**3.1.** Before Ld.CIT(A), assessee also challenged proceedings under section 148 of the Act to be bad in law. It was alleged by assessee that, proceedings in assessee's case should have been in accordance with provisions of section 153C since addition is found during search.

**3.2.** Ld.CIT(A) after considering submissions and the decisions relied by Ld.AR observed as under:

*"8. As far as issue of notice u/s 148 vis a vis 153C is concerned, the facts are little different in this case. As discussed in earlier paragraphs of this order (para-5.4), there was a search in the case of appellants husband where some documents related to appellant were seized. Subsequent to the search, the appellant has given a letter to Deputy Director of Income Tax (Inv) Unit II(2), Bangalore, on 17.09.2010. In that letter she has promised to offer Rs.1 crore as her undisclosed income for*

*the Assessment Year 2010-11. This was reiterated in her sworn statement recorded before Deputy Director of Income Tax (Inv) Unit II(2), Bangalore, on 24.09.2010. Hence, when she has not admitted her income in A.Y.2010-11, a notice u/s 148 was issued to tax the income escaped in the A.Y.2010-11. Therefore, the escapement of income is because of the letter written by the appellant on 17.09.2010 and sworn statement on 24.09.2010. Once escapement of income is established, the Assessing Officer has rightly issued notice u/s 148 of the Income-tax Act, 1961.*

*8.1 It will not be out of place to mention that this ground has never been raised before the Assessing Officer. The appellant had no objection for proceedings u/s.147 of the Act, which was recorded, vide order sheet noting dated 20.02.2014, which is reproduced as under:*

*"Ms. Sanjana, CA appeared along with supporting details. Had **not** filed any objection for reopening. Had stated that one crore has been offered for A.Y.2011-12 instead of A.Y.2010-11. She has also told that the amount of one crore should not be assessed for A.Y.2010-11".*

*9. Now the appellant is taking a stand that that the assessment was wrong and a notice u/s 153C should have been issued. This cannot be the purpose of allowing additional grounds of appeal. A legal ground which has never been raised before Assessing Officer can be raised before the CIT(A) if it goes to the root of the matter. But it cannot mean to say that a ground conceded before Assessing Officer can still be raised before the CIT(A). Having conceded that she has no objection with proceedings u/s 147/148 of the Act and having participated in all the assessment proceedings, it appears that the appellant has a change of mind later. It cannot be permissible now at the appellate stage and this ground of appeal deserves to be rejected on this reasoning too."*

Ld.CIT(A) thus rejected appeal filed by assessee.

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

**4.** Ld.AR submitted that, **Ground No. 1-3** are general in nature and therefore do not require adjudication.

**5. Ground No. 4-6** is on legal issue raised by assessee, challenging the proceedings initiated by Ld.AO under section 148 of the Act.

Ld.AR submitted that, reasons recorded for reopening of assessment is based on seized material i.e; A1/DC being page 32 and 33. It is submitted that, these documents were seized from premises of M/s Bharat Mines and Minerals. It has been submitted by Ld.AR that without adverting to the veracity whether, such material was indeed seized or not and whether material seized were incriminating in nature or not, Ld.AO issued notice under section 148 to assessee. Placing reliance on provisions of section 153A/153C, Ld.AR submitted that, assessment based on seized material cannot be made by issuing notice under section 148 of the Act. He submitted that if any proceedings could be initiated shall be only under section 153C read with 153A of the Act, in the case of assessee. He placed reliance on following decisions in support of his contention:

- *Kedarnath Jute Manufacturing Co Ltd vs CIT reported in 82 ITR 363 (SC)*
- *Tansukhari Bodulal vs ITU and Ors. Reported in 46 ITR 325 (FB- Assam)*
- *Manvy Bros vs CIT reported in Bom HC 93 CCH 40*
- *Smt. Bhagya Nagaraj vs DCIT in ITA No.93-96/Bang/2017 for assessment year 2005-06 to 2008-09 by order dated 25/10/2017*
- *ACIT vs Sh.Srinivas Rao Hoskote in ITA No.1154-1155/Bang/2015 for assessment years 2010-11 and 2011-12 by order dated 21 02/02/2018*
- *Halcrow Group Ltd., vs ADIT in ITA Nos. 5163-5164/D/2010 and 5554/D/2010 for AY 2004-05 and 2005-06 dated 02/07/2018(Del Trib).*
- *Rajat Shubra Chatterji vs.ACIT reported in (2016) 47 CCH 0135 (Del Trib.)*
- *ITO vs Arun Kumar Kapoor reported in (2011) 30 CCH 0325 (Asr. Trib)*

**5.1.** Relying on above decisions, Ld.AR submitted that, as the documents were seized during the course of search, provisions of

section 153C of the Act are applicable. He submitted that, section 153C is a 'notwithstanding' clause and therefore will supersede applicability of provisions of section 147 and 148 of the Act.

**5.2.** On the contrary, Ld.Sr.DR submitted that, documents seized were found from premises of assessee's husband during the course of search on him. In the present facts of the case, from seized documents it was not discernible, as to whom, it 'belongs to' or 'pertained to' or 'related to' and therefore, the presumption under section 292C provides that, the documents found in possession or control of any person in course of search should be considered to be belonging to that person.

**5.3.** Ld.Sr.DR submitted that, it was during the course of investigation by the DDIT that assessee took the onus of the documents relating to her by way of disclosure under section 132(4) of the Act on 17/09/2010. On the basis of such disclosure notice under section 131 was issued to assessee. Thus, the only recourse for Ld.AO to consider these documents in the hands of assessee was to initiate reassessment proceedings. He submitted that, statement recorded by DDIT of assessee in respect of A1/DC at page 32&33 categorically establishes that she agreed to the investments mentioned therein to be made by her with the help of husband. Ld.Sr.DR, primarily submitted that there was no panchanam drawn based on the statement of assessee that provisions of 153A/C could be initiated. He also submitted that assessee was not covered under search action. Secondly he submitted that the DDIT(Inv.) disclosure by assessee u/s132(4) of

the Act, and statement recorded by DIT that was forwarded to Ld.AO. Ld.Sr.DR submitted that, it was upon assessee owning the document that Ld.AO initiated proceedings under section 148 of the Act. He submitted that in no way it could be held, but for the statement given by assessee under section 132(4) that, these documents could be held to be belonging to assessee. He vehemently submitted that proceedings were initiated on assessee pursuant to statement recorded under section 131 of the Act.

**5.4.** Ld.Sr.DR further submitted that, assessee did not file any objections before Ld.AO in the reassessment proceedings under section 148 for year under consideration alleging the validity of reopening. Instead she admitted that the documents relates to her and that she would offer Rs.1Crore to cover up the entries in the loose sheetas well as miscellaneous issue such as expenditure etc. And the statements recorded by Ld.AO during the assessment proceedings are self explanatory regarding the unaccounted money that is discernible from the seized documents owned by assessee herself. Ld.Sr.DR submitted that, the statement recorded under section 132(4) of the Act, have great evidentiary while you and cannot be discarded in a summary manner. Ld.Sr.DR placed reliance on following decisions:

- *Decision by Hon'ble Supreme Court in Bannalal Jat Constructions (P.) Ltd vs. ACIT reported in (2019) 106 taxmann.com.*
- *AGR investment Ltd reported in 333 ITR 146 (DEL)*
- *Safetage International India (P) Ltd reported in 332 ITR 622 (del)*
- *Mobius India Ltd (Mad) in WP No. 3354 and 3355 of 2015 by order dated 04/08/2015*

- *Senate vs DCIT reported in (2016) 68 Taxmann.com 223 (Bang)*
- *Rameshchandra and Co vs CIT reported in (1987) 35 taxman 153 (BOM)*
- *Kunhambu vs CIT reported in (1996) 86 Taxmann 477 (Ker)*
- *Carpenters classic (exempt) (P) Ltd vs DCIT reported in (2007) 108 ITD 142 (Bang)*
- *Sudharshan P.Amin vs ACIT reported in (2013) 35 Taxmann.com 370 (Guj)*

**5.5.** He thus submitted that proceedings initiated under section 148 does not get vitiated due to peculiar circumstances in present facts.

**5.6.** On merits, Ld.Sr.DR submitted that, having said so in the statement recorded under section 131 and subsequent statement recorded by Ld.AO during reassessment proceedings, assessee declared Rs.1 Crore for assessment year 2011-12 which was intimated to Ld.AO by letter dated 12/08/2013. Ld.Sr.DR placing reliance on decision of *Hon'ble Supreme Court* in case of *Bannalal Jat Constructions (P.) Ltd vs. ACIT(supra)*, the disclosure made by assessee was based on certain documents admitted to be related to assessee suo moto, and having accepted the disclosure by revenue, in light of statement recorded under section 131, assessee could not have changed her stand.

**5.7.** He also submitted that the searched person having disowned the documents, and assessee suo moto declaring income for assessment year 2010-11, considering such documents, establishes the admission in the statement. Assessee did not have any valid reason to shift the disclosure to assessment year 2011-12. He supported the addition made for year under consideration.

**6.** We have perused the record and submissions advanced by both sides.

Assessee filed her original return of income on 29/09/2011 declaring total income of Rs.9,33,970/-. The assessment year involved in the present case is 2010-11. And notice u/s 147 was issued to assessee on 28/8/2012.

**6.1.** There was a search under section 132 of the Act, in case of M/s. Bharat Mines and Minerals on 19/07/2010. The search also covered Sri.Lakshmi Pat Dudhoria, being husband of assessee. During the course of search, certain documents were found, which was not belonging to Sri.Lakshmi Pat Dudhoria. The document was marked as A1/DC at page 32 & 33

**6.2.** We note that assessee was investigated based on the disclosure made by her *suo moto* under section 132(4) to the DTI(Inv.) on 17/09/2010. We also note that subsequent to the declaration, DIT(Inv.) summoned assessee under section 131 of the Act on 24/09/2010. It is not the case of assessee that the investigation wing impounded documents or requisitioned any assets under section 132/132A of the act. There is nothing on record to show that the DIT(Inv,) requisitioned or seized, any books of account or documents/assets etc., as per section 132/132A of the Act. Further we note that apart from the declaration given by assessee there is nothing to establish that the documents belonged to or even related to assessee. Under such circumstances provisions of section 153A/153C would not be applicable.

**6.3.** As per the scheme of the Act the year in which search is conducted does not fall within the purview of the provisions either under section 153A or under section 153C. Act allows 6 years period to be computed from the previous year relevant to the year in which the search was conducted. In Present facts the year under consideration is relevant to financial year in which search took place. Further there has been no action on assessee under section 132 or requisition is made under section 132A as per section 153C(2). In the present facts none of these conditions stands satisfied. We therefore find argument advanced by Ld.AR challenging the reopening is without any basis and does not satisfy the required conditions to be considered as per law. The reopening cannot be quashed on such technicalities as argued by Ld.AR that, assessee falls under the category of other person as per section 153A of the Act. In our view reopening notice was issued as assessee failed to include the amount disclosed vide her letter dated 17/09/2010 in the return filed for year under consideration on 29/09/2011.

**6.4.** In our view the arguments advanced by Ld.Sr.DR deserves to be upheld. As observed hereinabove it was pursuance to the declaration by assessee that the summon under section 131 was issued based upon the statements recorded therein the reopening has been initiated. We note that reopening notice is issued as assessee failed to include the disclosure made as per statement recorded in the return filed for year under consideration. It is apparently clear that the reopening notice has been issued

subsequent to the filing of return for year under consideration by assessee.

**6.5.** We therefore, reject the grounds raised by assessee challenging the validity of reassessment proceedings.

**Accordingly Grounds, 1-6 and 8 raised by assessee stands dismissed.**

**7. Ground No. 7** has been raised by assessee challenging the addition of Rs.1 Crore as unexplained income.

7.1 We note that assessee had raised this issue before Ld.CIT(A). However it has not been decided by Ld.CIT(A). Accordingly we deem it proper to remand this issue back to Ld.CIT(A) to consider the issue alleged in accordance with law.

**Accordingly this ground raised by assessee stands allowed.**

**In the result appeal filed by assessee stands partly allowed.**

Order pronounced in open court on 6<sup>th</sup> Nov, 2020

Sd/-

**(A.K. GARODIA)**

**Accountant Member**

Bangalore,

Dated: 6<sup>th</sup> November, 2020.

/Vms/

Sd/-

**(BEENA PILLAI)**

**Judicial Member**

		<b>Date</b>	<b>Initial</b>	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-11-2020		Sr.PS
3.	Draft proposed & placed before the second member	-11-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-11-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-11-2020		Sr.PS/PS
6.	Kept for pronouncement on	-11-2020		Sr.PS
7.	Date of uploading the order on Website	-11-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-11-2020		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