

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

ITA. Nos.1774 to 1776/Bang/2017  
(Assessment Years: 2013-14, 2014-15 and 2015-16)

Shri. E. Ramana Reddy, No.10 Sri Ramanjaneya Nilaya, 32 <sup>nd</sup> Main, 5 <sup>th</sup> Cross, Dollars Colony, BTM 1 <sup>st</sup> Stage, Bangalore-560 068 PAN ABOPR 2085 B	Vs.	Dy. Commissioner of Income Tax, Central Circle 2[4], Bangalore.
(Appellant)		(Respondent)

Assessee By:	Shri V. Srinivasan, Advocate
Revenue By:	Shri Priyadarshi Misra, JCIT (D.R)

Date of Hearing :	04.08.2020
Date of Pronouncement :	27.11.2020

**ORDER**

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

The assessee has filed appeals against common order of Commissioner of Income Tax (Appeals)-11, Bangalore, dated 29.06.2017, passed under section 153C r.w.s. 143(3) and 250 of the Income Tax Act, 1961 (hereafter called ‘the Act’) for the Assessment Year 2013-14 and 2014-15. And for the Assessment Year 2015-16 ,the order was passed

under section 143(3) and 250 of the Income Tax Act(hereafter called 'the Act') Act.

Since all these appeals are emanating from the common order of CIT(A) where the issues are similar and identical. For the sake of convenience, we shall take up assesses appeal in ITA No.1774/Bang/2017 for Assessment Year 2013-14 as a lead case and deal with the facts. The assessee has raised the following grounds of appeal:

*1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*2A. The order of assessment passed u/s 153C rws 143[3] of the Act is bad in law and void-ab-initio in as much the conditions precedent to invoke the provisions of sec. 153C of the Act viz., the discovery of any assets/documents in course of search conducted in the case of any person that belongs to the appellant and is relevant for computing the income of the appellant for the year under appeal is totally absent and consequently the impugned assessment order passed deserves to be cancelled.*

*2B. The learned CIT[A] is not justified in upholding the proceedings initiated u/s. 153C of the Act without appreciating that the appellant has not been furnished the copy of the satisfaction reached and recorded by the Assessing Officer of the person searched as well as the Assessing Officer of the appellant as required u/s. 153C of the Act despite the request made by the appellant before the learned A.O. as well as the learned CIT[A] and hence, the impugned order of assessment passed without giving the copy of the satisfaction note recorded by the Assessing*

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

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

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

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

*4. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

*5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

2. The Brief facts of the case are assessee is engaged in the business of management of Municipal Solid Waste on contract basis with BBMP.

There was a search conducted at the residential premises on 09.10.2014 where the Assessee stays along with several other family members. In the course of Assessment proceedings, the assessee was issued notice under section 153C of the Act for filing of return of income for the Assessment Years 2009-10 to 2014-15. The assessee complied with the directions and participated in the assessment proceedings. In the search proceedings cash amounting to Rs14,80,000/- and gold jewellery aggregating to 1970.30 gms was seized. Subsequently the AO has issued notice u/sec143(2) and U/sec142(1) of the Act. The AO dealt on the statement recorded U/sec132(4) of the Act and confirmed the Jurisdiction u/sec153C of the Act. The A.O. has Considered the submissions and explanations on the business income of the assessee, but was not satisfied and has rejected the business income disclosed and estimated the business income @12% of the gross receipts and passed Assessment Order under section 153C r.w.s. 143(3) of the Act, dated 30.11.2016.with the total income of Rs1,94,74,948/-. Aggrieved by the order, the assessee has filed an appeal with CIT(A), whereas CIT(A) on the issue of validity of Assessment Order under section 153C of the Act has rejected the contentions of the learned AR and confirmed the validity of the Assessment Order. In respect of

estimation of income by the AO @12% of gross receipts, the CIT(A) has dealt on the disputed issue at para 7.8 of the order and restricted the addition of business income @ 8.5% of the gross receipts of the assessee and partly allowed the appeal.

3. Aggrieved by the order of CIT(A), the assessee has filed appeal with the Tribunal. At the time of hearing, the Ld AR of the assessee submitted that in assessee's group case of Shri. Panati Vittalnath Reddy vs DCIT, the Hon'ble Tribunal, on the disputed issue of validity of assessment has upheld the validity proceedings under section 153C of the Act. In respect of estimation of business income @ 8.5% of the gross receipts, the Hon'ble Tribunal has restricted the estimation of income @ 8% of the gross receipts and prayed for the relief. Contra, the learned DR supported the orders of CIT(A).

4. We heard the rival submission and perused the material on record. On the first dispute as envisaged by learned AR of the assessee in the ground of appeal No.2A to 2B, is on the validity of assessment under section 153C of the Act, We find the C-ordinate Bench of this Tribunal in the case of Shri. Panati Vittalnath Reddy Vs DCIT in ITA Nos.1768 to 1770/Bang/2017 for the Assessment Year 2013-14, 2014-15 and 2015-16 vide order dated

26.02.2020 on the validity of Assessment Order under section 153C of the Act held at page 13 Para 10 and 11 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, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A. Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to 5 [subsection (1) ot] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person."*

*11. Considering the above provision of the Act and findings of CIT (A) who has held once 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."*

5. We find the facts of the present case are similar and identical. Accordingly, we follow the decision of the co-ordinate Bench and uphold the validity of assessment u/sec153C of the Act and dismiss this ground of appeal of the assessee.

On the second disputed issue, the learned CIT(A) has restricted the business income of the assessee @8.5% of the gross receipts. The

learned AR's contentions are that the assessment has not abetted since the time limit for issue of notice under section 143(2) of the Act expired before date of search. The assessee has filed the return of income for the Assessment Year 2013-14 on 29.09.2013, whereas the time limit for issue of notice expires on 30.09.2014 and the search took place on 09.10.2014. Since the time limit for issuance of notice expires on 30.09.2014, the Hon'ble Tribunal has observed that no addition can be made under section 153C of the Act at page 19 para 18 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."*

6. Accordingly, we follow the judicial precedence, and there is no addition made under section 153C of the Act as the assessment is not abated on the date of search and partly allow the appeal of the assessee.

7. Now we shall take up appeal in ITA No.1775/Bang/2017 for Assessment Year 2014-15. The facts are identical and similar to the earlier Assessment Year 2013-14 and the Tribunal has decided the issue in assessee's own case for Assessment Year 20-13-14 as discussed and the same shall apply. The Ground of appeal No.2A and 2B is on validity of Assessment Order under section 153C of the Act, we upheld the validity of proceedings under

section 153C of the Act as discussed in above paragraphs and dismiss the ground of appeal of the assessee. On the second disputed issue with respect to estimation of business income by the AO @ 12% subsequently CIT(A) has reduced @ 8.5% of the gross receipts, we find for the Assessment Year 2014-15, the Hon'ble Tribunal has restricted the estimation of income @ 8% of the gross receipts as held at page 21 and 22 Para 30 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 and 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 AO is, therefore, directed to recalculate the addition of business income by adopting 8% of gross receipts. This ground of appeal is therefore, partly allowed.”*

8. Even in the current Assessment Year, the CIT(A) has restricted the estimation of income @ 8.5% of gross receipts and the facts are similar and

identical. Accordingly, we follow the decision of the co-ordinate Bench and restrict the estimation of income @ 8% of gross receipts and partly allow the grounds of appeal of the assessee.

9. We shall take up ITA No.1776/Bang/2017 Assessment Year 2015-16 Where the assessment was framed under section 143(3) of the Act. The assessee has raised other grounds, in addition to the ground of appeal 2A and 2B being ground of appeal no 3 and 4. The grounds of appeal raised by the assessee are as under:

*1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*2A. The learned CIT[A] is not justified in upholding the rejection of the income reported by the appellant which is supported by audited financial statements while reducing the estimation of the business income to 8.5% of the gross receipts as against 12% of the gross receipts adopted by the learned A.O. thereby sustaining a portion of the addition made to the returned income under the facts and in the circumstances of the appellant's case.*

*2B. Without prejudice to the above, the income sustained by the learned CIT[A] at 8.5% of the gross receipts is highly excessive and liable to be reduced substantially.*

*3. The learned CIT[A] is not justified in sustaining the addition of Rs. 4,93,000/- made by the learned A.O. in respect of 1/3<sup>rd</sup> of the cash seized at the time of search in the hands of the appellant on the ground that the same represents unexplained investment of the appellant under the facts and in the circumstances of the appellant's case.*

4. *The learned CIT[A] is not justified in sustaining the addition of Rs. 16,42,900/- made by the learned A.O. in respect of 1/3<sup>rd</sup> of the gold seized at the time of search in the hands of the appellant on the ground that the same represents unexplained investment of the appellant under the facts and in the circumstances of the appellant's case.*

5. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

6. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

10. On the grounds of appeal of 2A and 2B, the decision of the Tribunal for the Assessment Year 2014-15 referred at page 8 & 9 of the order shall apply. Accordingly, we restrict the income @ 8% of gross receipts as followed in the earlier Assessment Years and partly allow the ground of appeal.

11. The ground of appeal No.3 is with respect to addition of Rs.4,93,000/- being 1/3<sup>rd</sup> of the cash seized at the time of search, the coordinate bench of Tribunal in the case of Shri Panati Vittalnath Reddy VS DCIT (Supra) has deleted the addition referred at page 27 at para 45 of the order 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. 3.93 lakhs only. We further note that the assessee has been showing substantial income over the years and nature of business requires holding cash in hand for making weekly payments to pourakarmikas, diesel etc. Considering these facts, it can be assumed that cash of Rs. 3.93 Lakh was available out of known sources, which can be considered as explainable out of cash withdrawals made prior a week of search date. Therefore, we are of the view the AO was not justified in making this addition, hence, the addition of Rs.3.93 lakh is directed to be deleted. This ground of appeal is, therefore, allowed.”*

12. The contentions of the LdAR are that there are cash withdrawals before the date of search and there is also sufficient business income declared by the assessee and hence the addition can not be sustained. Further there was a cash withdrawal of Rs.9 lakhs on 11.09.2014 much before the search and the assessee has explained the facts with evidence before the assessing authorities. Contra, The LdDR relied on the CIT(A) orders.

We considering the facts and submissions of the learned AR, supported by the evidence, are of the opinion that the assessee has cash withdrawals prior to the date of search. Therefore, the AO is not justified in making addition. Accordingly, we direct the AO to delete the addition and allow this ground of appeal of the assessee.

13. The last ground of appeal is in respect of addition of Rs.16,42,900/- being 1/3<sup>rd</sup> of the gold seized at the time of search, The LdAR submitted that it has to be equally divided among 19 family members. The Hon'ble Tribunal has held that the assessee has claimed jewellery of 261 grams belonging to him and has been reflected in the Balance Sheet as on 31.03.2011 and hence no addition can be made in the hands of the Assessee. In the present case, the assessee has disclosed 329 grams jewellery purchased in A.Y. 2011-12 and 60 grams of jewellery received during marriage and the total aggregating to 379 grams. We find the coordinate bench of tribunal has dealt in the case of Shri Panati Vittalnath Reddy VS DCIT (Supra) has deleted the addition referred at page 29 at para 51 of the order which is read 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 1/3<sup>rd</sup> 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 ground of appeal is therefore, allowed.”*

14. We follow the judicial precedence and the facts are similar. The assessee is owning the jewellery aggregating to 389 grams and supported with the evidence. We are of the view that no addition can be sustained. Accordingly, we direct the AO to delete the addition and allow this ground of appeal of the asses

12. In the result, the assessee appeals for Asst Years 2013-14, 2014-15, and Asst Year 2015-16 are partly allowed.

Order pronounced in the open court on 27<sup>th</sup> Nov., 2020.

**Sd/-**

**(B.R. BASKARAN)  
ACCOUNTANT MEMBER**

**Sd/-**

**(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER**

Dated: 27.11.2020.  
/NS/\*

Copy to

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

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore