IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH **" C "** : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos.2625 to 2627/Bang/2019
(Assessment Years : 2014-15 to 2016-17)

Shri Ahmed Shareef,
M/s. Shauhan Traders, D.No.35-2,
256, Imtiyaz Manzil, Karmbar, Bajpe,
Mangaluru. ….Appellant.
PAN ACAPA 5956F

ITA Nos.2628 to 2631/Bang/2019
(Assessment Years : 2013-14 to 2016-17)

Smt. Shabana Shareef,
M/s. Golden Supari Traders,
D.No.20-1-713, Sabeena Complex,
AzzizuddinRoad, Bunder,
Mangalore-575 001 ….Appellant.
PAN AKTPS 3681C
Vs.
Dy. Commissioner of Income Tax,
Central Circle 1, Mangalore. ……Respondent.

ITA No.2484/Bang/2019
(Assessment Year : 2015-16)

Dy. Commissioner of Income Tax,
Central Circle 1, Mangalore. ……Appellant.
Vs.
Shri Ahmed Shareef,
M/s. Shauhan Traders, Mangaluru. ……Respondent.

Assessee By:	Shri S. Srinivas Kamath, C.A.
Revenue By:	Shri Pradeep Kumar, CIT (D.R)

Date of Hearing :	08.02.2021.
Date of Pronouncement :	22.03.2021.

O R D E R

PER SHRI CHANDRA POOJARI, A.M. :

The appeals in ITA Nos.2625 to 2627 and 2628 to 2631/Bang/2019 filed by the assessee and 2484/Bang/2019 filed by the Revenue in respect of Shri Ahmed Shareef and Smt. Shabana Shareef for the respective assessment years.

2. In these cases, there was search conducted at the residential premises of the assessee on 24.11.2015 at Door No.35-2-256, Imtiaz Manzil, Karambar, Bajpe, Mangalore. There was also survey u/s. 133A of the Act on 24.11.2015 at Golden Supari Traders at business premises at Mohd. Ali Road, Bandar, Mangalore. Consequent to this search and survey action, Notice u/s. 153A was issued to these two assesses on 27.10.2016. Thereafter assessments were framed for the above Assessment Years under consideration u/s. 153A r.w.s. 143(3) of the Act. The Assessing Officer made various additions in these assessment years which are challenged by the assessee before the CIT(Appeals). The CIT(Appeals) given partial relief. Against sustenance of certain additions, the assessee is in appeal

before us by way of above appeals. The Revenue is in appeal before us for giving relief to the assessee in Assessment Year 2015-16 in ITA No.2484/Bang/2019. Since common issues are involved in these appeals, they are heard together and passed a consolidated order.

3. First we will take up the assessee's appeals in ITA Nos.2625 to 2627/Bang/2019 in the case of Shri Ahmed Shareef and 2628 to 2631/Bang/2019 by Smt.Shabana Shareef.

4. The first common ground in assessee's appeals in ITA Nos.2625, 2627 & 2629/Bang/2019 is "the CIT(Appeals) erred in addition with respect to under valuation of property at Rs.7,90,640 in Assessment Year 2014-15 in ITA Nos.2625 & 2629/Bang/2019 and Rs.10,63,595 in Assessment Year 2016-17 in ITA No.2627/Bang/2019. In these assessment years, the assessee constructed house property at Maravuru, Mangalore declaring total cost of Rs.2,27,78,541 upto 31.03.2016. The cost of land as per the Balance Sheet was Rs.43,12,408. The assessee availed Bank loan for construction of this house. The property was jointly owned by the assessee with his wife Smt.Shabana Shareef. The assessee availed Bank loan from various Banks for which the assessee furnished valuation report from the Registered Valuer. The Assessing Officer computed the difference in value declared by the assessee in different assessment years with the Valuation

Report made by the Registered Valuer. According to the Assessing Officer, there is a difference of these assessment years as follows :

Name	**A.Y.**	**Amount Rs.**
Amar Shareef	2014-15	7,92,640
Amar Shareef	2016-17	10,63,595
Shabana Shareef	2014-15	7,92,640.

The Assessing Officer made addition towards this difference in the above assessment years. Again the assessee carried the appeal before the CIT(Appeals) who has observed that the assessee has not been able to prove nor produced any evidence rather than only “Land” as held by the Assessing Officer and as is evident from transfer deed. Accordingly he upheld the additions made by the Assessing Officer. Now the contention of the learned Authorised Representative is that the variation between the value of the property declared in the Books of Accounts of each assessee as compared to the valuation mentioned in the Registered Valuer’s Report which is less than 15%. As such the valuation being information of the Valuer, the addition cannot be made and the CIT(Appeals) relied on the judgment of Patna High Court in the case of B**imla Singh Vs. CIT 308 ITR 71** wherein it was held that the difference of 15% was ignored by the Hon'ble High Court. The relevant extract is reproduced herewith as under :

"In the absence of any statutory provision, no hard and fast rule can be laid down in regard to the percentage of difference, which can be ignored. It is well known fact borne out of practical experience that the determination of value of the house property by a valuer is generally a matter of estimate based to some extent on guess and despite utmost bonafide, the estimate of the value of the house is bound to vary. ***In the present case, we are concerned with the house property and the difference between the assessee and the valuer is less than 15 per cent****. Not only this, the construction of the house spread over a period of 7 years. In the facts of the present case, we are of the opinion that the difference between the plea of the assessee on the issue on investment on house property and valuer's report is so meagre that one can assume it to be bona fide difference, fit to be ignored".*

Further he relied on the judgements of the co-ordinate bench of ITAT in the case of Ritz Enterprises Pvt. Ltd. Vs. ACIT in ITA No.268/Luck/2015 Dt.17.07.2015 wherein it was held that -

"In the present case, this is accepted position that there are two demerits in the property because there is no parking space and graveyard is there on one side and after accepting these two demerits, the D.V.O. has allowed 10% rebate from DM Circle rate. The difference between the value declared by the assessee at Rs.49.397 lac and as determined by D.V.O. at Rs.57.036 lac, the difference is only Rs.8.639 lac which works out to 15.15%. This is

also to be noted that as per the judgment of Hon'ble Patna High Court rendered in the case of Bimla Singh vs. CIT [2009] 308 ITR 71 (Pat) available on pages 243 to 246 of the paper book, it was held that difference between cost of construction shown by the assessee and as determined by the Assessing Officer being less than 15%, same is to be ignored for the purpose of addition. Hence, if it is accepted that the rebate allowed by D.V.O. on account of demerits is less, such rebate should be 25% as against 10% allowed by the D.V.O., there will be no difference between the value declared by the assessee and value as per D.V.O. Since the rebate allowed by D.V.O. is estimated rebate without any basis indicated by D.V.O. in his report, we feel it proper that in the facts of the present case, such rebate should be 25% of DM Circle Rate and as a result, there is no difference between the value as per D.V.O. and value as per the assessee and as a result, no addition survives".

We find force in the argument of the learned Authorised Representative that the addition is based on the difference between the value declared by the assessee in their Books of Accounts as compared to DVO's Report. The Valuation Report was made after the long gap of period after the purchase made by the assessee. In other words, the Valuation Report was made in F.Y. 2016-17 contrary to the purchase of property in the F.Y. 2013-14 and F.Y. 2015-16. During these periods, there is a steep rise in the value of the immovable property and we cannot consider the Valuation Report of the DVO is foolproof in which the inflation cost also has to take into account. Further immovable property registered with the State Authorities wherein they accepted the valuation declared by the assessee with

regard to various properties and not disputed by the Sub-Registrar of the concerned State Govt. Office. In such circumstances, the Assessing Officer only on the basis of valuation mentioned in the DVO Report cannot make addition when such difference is less than 15% as compared to the valuation declared in the Books of Accounts. On this count, we are inclined to delete the addition in all these assessment years. This ground of appeal of the assesses is allowed.

5. The next ground for our consideration in ITA No.2628 to 2631/Bang/2019 is with regard to estimation of income on undisclosed turnover at 5%.

5.1 The contention of the ld. AR is that the CIT(Appeals) estimated the income on undisclosed turnover at 5% which is very high and it should be around 2% only. For this purpose, he relied on the order of ITAT in the case of M.A. Siddique Vs. DCIT in ITA Nos.62 to 66/Bang/2020 Dt.14.08.2020 for the proposition that the assessee is engaged in the business of Supari may get the net profit of 2%. The ld. DR relied on the orders of authorities below.

5.2 We have gone through the order of the Tribunal in the case of M.A. Siddique Vs. DCIT (supra) wherein the Tribunal considered the business of Supari and observed that in the case of unaccounted sales no bill is issued and therefore no customer will pay taxes and levies which will result into higher profit to the seller. The Tribunal adopted the profit rate of 2% in the case of Supari business. Following the above decision of co-ordinate bench of this Tribunal, we are inclined

to hold that the Assessing Officer shall adopt the net profit of 2% on undisclosed turnover of the assessee in all these assessment years. This ground of appeal in ITA Nos.2628 to 2631/Bang/2019 is allowed. Ordered accordingly.

6. The next ground in ITA Nos.2627, 2629, 2630 & 2631/Bang/2019 is with regard to non-giving of set off of income declared by the assessee in the statement recorded u/s. 132(4) of the Act. In these assessment years, the assessee declared income in the statement recorded u/s. 132(4) of the Act as follows :

Smt. Shabana Shareef

Assessment Year	Amount Rs.
2014-15	Rs.45 lakhs
2015-16	Rs.50 lakhs
2016-17	Rs.5 lakhs.

Shri Amar Shareef

2016-17	Rs.1.00 Crore

The assessee declared this income in the statement recorded u/s. 132(4) of the Act. The searched team found certain incriminating documents during the course of search action in these cases. Thereafter the assesses filed the Return of Income declaring specific undisclosed income with regard to incriminating seized material found during the course of search action. The Assessing Officer assessed the

undisclosed income in addition to the income voluntarily declared by these assesses in the statement recorded u/s. 132(4) of the Act. In our opinion, the Assessing Officer made independent addition based on the seized material found during the course of survey action, there cannot be income addition on account of voluntary disclosure made by the assesses. Hence, in our opinion, it is appropriate to set off of income declared by the assessee in the statement recorded u/s. 132(4) of the Act out of undisclosed income computed by the Assessing Officer. Accordingly, we direct the Assessing Officer to recompute the income after overlooking the income declared by the assessee in the statement recorded u/s.132(4) of the Act. Otherwise it amounts to double addition for the same lapse found in the Books of Accounts of the assesses.

6.1 At this stage, it is pertinent to mention t*he CBDT Circular No. 14(XL-35) of 1955, dated 11.4.1955* as per which the lower authorities should have guided the assessee as to the correct proposition of the law regarding taxability of capital gain. For clarity, we reproduce the contents of the said Circular:-

> " Officers of the department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a tax payer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a tax payer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department, for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with the assesses on whom it is imposed by law, officers should —

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs".

6.2 Further the ld.AR placed reliance on the CBDT F.No.286/2/2003/IT(INV) Dt.10.03.2003, which clearly refrains the Assessing Officer recording confessional statement during the course of search and seizure and survey operations and also warns the Assessing Officer not to admit to obtain any confessional statement as to the undisclosed income, any action contrary shall be viewed adversely. It also states that the Assessing Officer should rely upon evidences and material gathered during the course of search. In the present case, the AO made additions in this assessment year based on the statement recorded u/s. 132(4) after making independent addition on the basis of incriminating material found during the course of search action. It cannot be appreciated. For this purpose, it is pertinent to mention the ratio laid down by the various Courts which are as under:-

(i) The Hon'ble Delhi High Court in the case of *CIT v. Bharat General Reinsurance Co. Ltd., 83 ITR 303 (Del)* held as follows:-

> "It was true that the assessee itself had included that dividend income in its return for the year in question, but there was no estoppel in the Income-tax Act and the assessee having itself challenged the validity of taxing the dividend during the year of assessment in question, it must be taken that it had resiled from the position which it had wrongly taken while filing the return. Quit apart from it, it was incumbent on the income-tax department to find out

> whether a particular income was assessable in the particular year or not. Merely because the assessee wrongly included the income in its return for a particular year, it could not confer jurisdiction on the department to tax that income in that year even though legally such income did not pertain to that year. Therefore the income from dividend was not assessable during the assessment year 1958-59, but it was assessable in the assessment year 1953-54. It could not, therefore, be taxed in the assessment year 1958-59."

(ii) The Hon'ble Bombay High Court in the case of *Nirmala L. Mehta vs. A. Balasubramaniam, C.I.T. (2004) 269 ITR 1 (Bom)* held that there cannot be any estoppel against the statute. Article 265 of the Constitution of India in unmistakable terms provides that no tax shall be levied or collected except by authority of law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law.

(iii) The Hon'ble Supreme Court in the case of *CIT, Madras vs V. MR. P. Firm, Muar reported in 56 ITR 67(SC)* held as under:-

> "If a particular income is not taxable under the Income-tax Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. Equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not. If it is not, the Income-tax Officer has no power to impose tax on the said income."

6.3 As we discussed earlier, the addition shall be confined to the incriminating material found during the course of search action. Accordingly, we direct the Assessing Officer not to consider the additions made on the basis of statement recorded u/s. 132(4) of the Act. This ground of appeals by the assesses is allowed.

7. The next ground in ITA No.2624/Bang/2019 in Assessment Year 2015-16 in the case of Shri Ahmed Shareef cash deposits in Bank accounts as per audited

Balance Sheet which was disclosed in the Books of Accounts of the assessee and Department in ITA No.2484/Bang/2019 with regard to sustaining only addition at 5% of cash deposits as undisclosed turnover of Rs.2,61,00,100.

7.1 The facts of the case are that the deposit in the Assessment Year under consideration to the extent of a sum of Rs.2,61,00,100 into various Bank accounts. The Assessing Officer made entire addition as unexplained income in the hands of assessee. However, the CIT(Appeals) sustained the addition at 5% of this amount. Against this, both the assessee as well as Revenue are in appeal before us.

7.2 We have already discussed this issue in earlier part of this order while adjudicating in ITA Nos.2628 to 2631/Bang/2019 for the Assessment Years 2013-14, 2014-15, 2015-16 and 2016-17 in the case of Smt. Shabana Shareef observing that any unexplained deposits in the Bank accounts, it should be considered as business receipts and income at 2% has to be assessed as undisclosed income of the assessee by placing reliance on the judgement of M.A. Siddique Vs. DCIT cited supra. Accordingly, we direct the Assessing Officer to consider only 2% of this cash deposit of Rs.2,61,00,100 as undisclosed income of the assessee. This ground of appeal of assessee is allowed and that of Revenue is dismissed.

8. The next ground in all these appeals is with regard to levy of interest u/s.234A, 234B and 234C of the Act in ITA Nos.2630/Bang/2019 & Others.

8.1 Regarding the levy of interest u/s. 234A, 234B & 234C of the Act, the learned Authorised Representative submitted that this issue was considered by ITAT, Chennai Bench in the case of Dr.V. Jayakumar & Others Vs. ACIT in ITA Nos.520 to 525/Mds/2010 vide order dt.4.2.2011 and he drew our attention to the following finds of the Tribunal in paras 7 to 12 as under :

7. We have considered the rival submissions. We will first adjudicate on the quantum of interest. For better appreciation of the quantum issue, it would be worthwhile to extract the relevant provisions. Section 234A(3) reads as follows:
"234A(3). Where the return of income for any assessment year, required by a notice under section 148 or section 153A issued after the determination of income under sub-section (1) of section 143 or after the completion of an assessment under sub-section (3) of section 143 or section 144 or section 147, is furnished after the expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one percent for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time allowed as aforesaid, and,--
(a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or
(b) where no return has been furnished, ending on the date of completion of the reassessment or recomputation under section 147 or reassessment under section 153A, on the amount by which the tax on the total income determined on the basis of such reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the earlier assessment aforesaid." Section 234B (3) reads as follows:
"234B(3). Where, as a result of an order of reassessment or recomputation under section 147 or section 153A, the amount on which interest was payable under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of one percent for every month or part of a month comprised in the period commencing on the day following the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made as is referred to in sub-section (1) following the date of such regular assessment and ending on the date of the reassessment or recomputation under section 147 or section 153A, on the amount by which the tax on the total income determined on the basis of the reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the regular assessment aforesaid."

8. A perusal of the provisions of section 153A(1)(a) of the Act clearly shows that the Assessing Officer is to issue notice on the searched person requiring him to furnish within such period as may be specified in the notice the return of income in respect of each assessment year falling within six assessment years ……. and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139. Thus from the above it is clear that a return filed in response to a notice u/s 153A is to be treated as a return filed u/s 139(1). Thus by the act of the provisions of section 153A where a notice has been issued on the assessee the due date of filing the return as provided in section 139(1) gets shifted to the date prescribed in the notice u/s. 153A. This is

because of the words “apply accordingly as if such return were a return required to be furnished under section 139”. A perusal of the return filed by the assessee shows that in the returns the assessee has paid taxes while filing the return itself. It has also been mentioned by the learned authorised representative that cash which was found in the course of search and which was seized was also immediately prayed for by the assessee to be adjusted against the tax liability in the statement recorded itself during the course of search. Thus it becomes clear that the assessee has paid the taxed much before the filing of the returns. A perusal of the provisions of section 234A(3), as extracted above, clearly shows that the said sub-section takes into consideration the return of income for any assessment year required by a notice under section 153A and as prescribed that the assessee is liable to pay simple interest at the prescribed rate for every month or part of the month comprised in the period commencing on the day immediately following the expiry of the time allowed in the said notice.

9. A perusal of the provisions of section 234B(43), as extracted above, clearly shows that the interest u/s 234B is leviable in relation to an assessment u/s. 153A on the amount which is increased in the final assessment when compared to the original assessment or the determination u/s. 143(1). Now a question comes up as to which is the 143(1) or the original assessment which is being talked about here. Here we may refer back to the second proviso to section 153A which specifically says that any assessment or reassessment, if any, relating to any assessment year falling within the period of six years referred to in section 153A(1) pending on the date of the initiation of the search shall abate. In such a situation obviously once a notice u/s. 153A is issued all past assessments and reassessments pending as on the date of the initiation of the search would no more survive. Further, in view of the provisions of section 153A(1)(a) as a return filed in response to the noti8ce u/s 153A is to be treated as a return under section 139, the section 143(1) referred to in section 234B(3) would have to be considered as the intimation in relation to such return which has been filed in response to a notice u/s 153A. This view also finds support because the intimation has to be issued within 12 months from the date of filing the return and as per the second proviso to section 153A, the assessment and reassessment proceedings which are pending at the time of initiation of the search have abated and as per the provisions of section 153A the return filed in response to such notices becomes by act of the provisions itself a return u/s 139(1) which effaces the original return. In the present case it is noticed that the returned income has also been accepted. A perusal of the provisions of section 143(1) shows that the word used is “shall” i.e. “where a return has been made under section 139…….such return shall be processed in the following manner”. Further the Explanation (b) of the second proviso to section 143(1) categorically explains that the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by or refundable to the assessee under clause (c), and where no adjustment has been made under clause (a). Thus the intimation of the return filed in response to the notice u/s. 153A automatically by act of the provisions of the Explanation to section 143(1) becomes the intimation under section 143(1). Thus the interest under section 234B would be leviable only on the tax on the total income determined in the order passed u/s. 153A which exceeds the tax on the total income determined under sub-section (1) of section 143 in response to the notice under section 153A.

10. In regard to the levy of interest under section 234C, there is no provision similar to section 234A(3) or section 234B(3) in the said section. The learned authorised representative has also not raised any serious submissions in regard to the levy of interest under section 234C of the Act in regard to the calculation of the same.

11. In the circumstances, the computation of the interest under section 234A is to be done for every month or part of the month comprised in the period commencing on the day immediately following the

expiry of the time allowed in the notice under section 153A. The interest under section 234B is to be computed on the amount by which the tax on the total income determined on the basis of the assessment under section 153A exceeds the tax on the total income determined under sub-section (1) of section 143 on the return filed in response to the notice issued under section 153A. In the circumstances, with these directions the issue of computation of interest under sections 234A and 234B is restored to the file of the Assessing Officer for re-adjudication and the order of the learned CIT(A) and the Assessing Officer on this issue stands set aside.

12. Coming to the issue of debatable nature of the levy of interest u/s. 234A, 234B and 234C, admittedly, the levy of interest is compensatory in nature. The method of computation of the interest is specifically provided in the sections 234A(3) and 234B(3) in the case of assessments under section 153A and section 234C. Non-application of a particular provision of the Act which is undisputedly is a mistake apparent from the record. The non-application of a specific provision being mistake apparent from record, we are of the view that the finding of the learned CIT(A) in holding that the Assessing Officer was right in invoking the provisions of section 154 is on a right footing and does not call for any interference. Further there can be no two views in regard to the levy of interest under sections 234A, 234B and 234C, especially when the provisions of the said section themselves specifically provide for the levy. In the circumstances we are of the view that the Assessing Officer was right in invoking the provisions of section 154 for rectifying the mistake of the non-levy of interest under sections 234A, 234B and 234C of the Act in the original assessment."

8.2 On the other hand, the learned Departmental Representative submitted that the Assessing Officer rightly confirmed the same. He supported the orders of CIT (Appeals).

8.3 We have heard both the parties and perused the material on record and also case laws cited by the learned Authorised Representative. In our opinion, the interest u/s. 234A of the Act is chargeable from the date of expiry of Notice period given to the assessee u/s. 153A of the Act. It is because the return filed u/s.153A would be deemed to be a Return of Income u/s. 139 of the Act as per the express language of the provisions of Section 153A(1)(a) of the Act and therefore the Return of Income filed u/s. 153A of the Act also is to be processed u/s. 143(1) of the Act and the income determined thereof. These are all consequences of search

conducted u/s. 132 of the Act and issuance of Notice u/s. 153A of the Act. Once a recomputation in the assessment order u/s. 153A of the Act is done, the interest chargeable u/s. 234A would have to be reckoned from the date of determination of income u/s. 143(1) r.w.s. 153A of the Act to the date of recomputation of income u/s.153A r.w.s.143(3) of the Act. This position is in accordance with the provisions s stated in Section 234A(3) of the Act. Therefore interest u/s. 234A is chargeable from the date of expiry of the Notice period given u/s. 153A of the Act to the date of completing the assessment u/s. 153A r.w.s. 143(3) of the Act. Accordingly, we direct the Assessing Officer to recomputed the interest u/s. 234A of the Act.

8.4 The interest u/s. 234B is to be leviable from the date of determination of income u/s. 143(1) r.w.s. ;139, r.w.s. 153A(1)(a) to the date of assessment order u/s. 153A, r.w.s. 143(3) of the Act. The interest u/s. 234B is to be levied only on the additional tax levied on the enhanced income determined u/s. 153A, r.w.s.143 of the Act and therefore the period of charge should be from the date of determination of income u/s. 143(3) r.w.s. 153A to the determination of increased total income u/s. 153A, r.w.s. 143(3) of the Act. We direct accordingly to the Assessing Officer to recompute the interest u/s. 234B of the Act.

8.5 Regarding levy of interest u/s. 234C of the Act, no serious argument has been made by the ld. AR on this issue.

9. The next ground in Revenue's appeal in 2484/B/2019 is with regard to deleting the addition made towards rental receipt. In this assessment year under consideration i.e. A.Y. 2015-16, the seized material suggests that the assessee is jointly owning property with his sister Ms. Shamshad Begum at Falnir. The seized material suggested that there was a receipt of rent of Rs.9,500 per month which is assessee's share after deduction u/s. 24 of the Act. The assessee's taxable income is Rs.1,05,000 on this count. The CIT(Appeals) deleted it by observing that the property was unoccupied and the Assessing Officer has not examined any tenant or made any enquiry in this regard. Hence the CIT(Appeals) deleted the addition. Aggrieved the action of the CIT(Appeals) on this issue, the Revenue is in appeal before us.

9.1 We have heard the rival contentions, perused and carefully considered the material on record. Admittedly in this case the Assessing Officer has not examined the tenants. It is also brought to our notice that it was unoccupied in the Assessment Year under consideration and no income derived. Hence in our opinion, the CIT(Appeals) justified in deleting the additions made by the Assessing Officer. The order of the CIT(Appeals) on this issue is confirmed. This ground of appeal of Revenue on this issue is dismissed.

10. The next ground in Revenue's appeal in ITA No.2484/Bang/2019 is with regard to deletion by CIT(Appeals) on account of drawings without calling for Remand Report from the Assessing Officer.

11. The assessee has claimed foreign education expenses incurred by his son and pleaded that it has made sufficient drawings and also submitted letter from one **Mr. Abdul Farveez** who is an NRI stating that he has met the education expenses of assessee's son. The Assessing Officer has not agreed with this argument and made addition of Rs.11,87,232 u/s. 69C of the Act. The CIT(Appeals) on the basis of letter from **Mr. Abdul Farveez** deleted the addition by observing that the Assessing Officer could have made further enquiry conducting foreign enquiry if she doubted the veracity of the confirmation letter filed by the assessee with the Assessing Officer which has not done. Accordingly, the CIT(Appeals) given benefit of doubt and deleted the addition made by the Assessing Officer on this count. Aggrieved by the order of CIT(Appeals), the revenue is in appeal on this issue before us.

11.1 We have heard the rival contentions, perused and carefully considered the material on record. The ld. DR is not able to counter the findings of the CIT(Appeals) that the assessee has furnished confirmation letter from NRI sponsored the education expenses of Mr. Abdul Farvez, the assessee's son. In

such circumstances, the CIT(Appeals) justified in deleting the addition made by the Assessing Officer on account of low drawings. The order of the CIT(Appeals) on this issue is confirmed. This ground of appeal of the Revenue is dismissed.

12. In the result, all the assessee's appeals are partly allowed and Revenue's appeal in ITA No.2484/Bang/2019 is dismissed.

Pronounced in the open court on this 22nd day of March, 2021.

Sd/-	Sd/-
(SMT. BEENA PILLAI)	**(CHANDRA POOJARI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated, the 22nd March, 2021.

*Reddy GP/*Desai S Murthy /*

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