

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B” : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
468/Hyd/2020	2010-11	Asst.Commissioner of Income Tax, Central Circle-3(2), Hyderabad	M/s.Aster Private Limited, Hyderabad [PAN: AACCA5469L]
469/Hyd/2020	2011-12		M/s.Aster Building Solutions Private Limited, Hyderabad [PAN: AAHCA1162B]
470/Hyd/2020	2011-12		
471/Hyd/2020	2012-13		

For Revenue : Shri Rajiv Ranka, CIT-DR
For Assessee : Shri P.Murali Mohana Rao, AR

Date of Hearing : 30-06-2021
Date of Pronouncement : 20-07-2021

ORDER

PER S.S.GODARA, J.M. :

These four Revenue's appeals, two appeals each ITA Nos.468 & 469/Hyd/2020 in case of the former assessee, M/s.Aster Private Limited and ITA Nos.470 & 471/Hyd/2020 involving latter appeals of M/s.Aster Building Solutions Private Limited arise against the CIT(A)-11, Hyderabad's separate orders; all dated 03-01-2020 passed in case Nos.321, 354, 319 & 313 / CIT(A)-11 / Hyd / 2018-19, 2019-20 involving proceedings u/s.143(3) r.w.s.153A of the Income Tax Act, 1961 [in short, 'the Act']; respectively.

Heard both the parties. Case files perused.

2. The Revenue's identical substantive grounds raised in all the instant appeals read as under:

"The Ld.CIT(A) erred both in law and on facts of the case in allowing relief to the assessee.

2.The Ld.CIT(A) failed to appreciate the fact that in the assessment order the Assessing officer has clearly mentioned that the search and post-search enquiries has revealed accommodation purchases by the assessee basing on which the addition was made.

3.The Ld.CIT(A) ought to have appreciated the fact that a detailed show cause notice was issued to the assessee company wherein all the facts relating to the bogus/accommodation entries of purchase bills/unexplained & unverified expenses with various vendors have been pointed out to the assessee.

4.The Ld.CIT(A) erred in allowing the appeal without appreciating the fact that a detailed show cause notice was issued covering the issues of search involving claim of non-genuine/bogus purchases/unexplained & un verified expenses, as applicable to various vendors as noticed during the search and survey proceedings conducted in this group cases.

5.The Ld.CIT(A) erred in not following the principle laid down by the Jurisdictional High Court of Andhra Pradesh in the case of Gopal La Bhadraka vs DCIT 346 ITR 106, wherein it has held that "for the purpose of section 153A/153C of the I.T. Act the AO can take into consideration material other than what was available during search and seizure operation for making an assessment."

6.The Ld.CIT(A) is not justified on facts and in law in deleting the addition ignoring the decision in the case of EN Gopa Kumar Vs CIT(2016) wherein it has held that the presence of incriminating material is not a requirement and the assessee u/s153A can be made without there being any incriminating material.

7.The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary".

3. There is hardly any dispute that we are in AYs.2010-11 and 2011-12 in former assessee and AYs.2011-12 and 2012-13 in case of the latter taxpayer; respectively. All these four cases involve the same search in question dt.23-12-2015. Meaning thereby that all these assessments are 'un-abated' ones u/s.153A of the Act since no assessment was pending in

the said date u/s.153(1) 2nd proviso. The Revenue's identical sole substantive grievance is that it is nowhere mandatory in law that such un-abated assessments have to be initiated and finalised only on the basis of all the incriminating material found or seized by the investigation wing as it has been held in *E.N.Gopa Kumar Vs.CIT (2016) [390 ITR 131]*; *Gopal Lal Bhadraka (supra)*; *CIT Vs. Kesarvani Zarda Bhandar Tax Appeals 270/2014, (Allahabad)*, *CIT Vs. Rajkumar Arora 367 ITR 517 (Allahabad)* and therefore, the CIT(A) has erred in law and on facts in accepting this legal issue in assessee's favour.

4. We have given our thoughtful consideration to Revenue's foregoing grievance and found no merit in the same as per the following case law :

- i. *CIT Vs. Kabul Chawla [318 ITR 573] (Del)*;
- ii. *DCIT Vs. Meta Gutgutia [395 ITR 526] (Del)*
- iii. *CIT Vs. Continental Warehousing Corporation (2015) [374 ITR 645] (Bom)*;
- iv. *CIT Vs. Veerprabhu Marketing Ltd. (2013) [73 taxmann.com 149] (Kol)*;
- v. *PCIT Vs. Soumya Construction Ltd., [387 ITR 529]* holding that Section 153A comes into play only in case of incriminating material found/seized during the course of search. And the hon'ble jurisdictional high court (*supra*) also reiterated the very view since dealing with incriminating material found as against the facts of the instant case.

4.1. We therefore are of the opinion that the learned CIT(A)'s identical conclusion, quashing all these

assessments being not based on the seized material found during the course of search deserves to be upheld. We order accordingly.

5. These Revenue's appeals are dismissed. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 20th July, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 20-07-2021

TNMM

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Copy to :

1. Assistant Commissioner of Income Tax, Central Circle-3(2), Hyderabad.

2. M/s. Aster Private Limited, E67, 4th Street, Sainikpuri, Hyderabad.

3. M/s. Aster Building Solutions Private Limited, 3rd Floor, A-8, Aishwarya Chamber, 4th Crescent Road, Rukmini Colony, Hyderabad.

4. CIT(Appeals)-11, Hyderabad.

5. The Pr. CIT(Central), Hyderabad.

6. D.R. ITAT, Hyderabad.

7. Guard File.