

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM and Ms.Padmavathy S, AM

ITA No.978/Bang/2014 : Asst.Year 2001-2002
ITA No.979/Bang/2014 : Asst.Year 2002-2003
ITA No.980/Bang/2014 : Asst.Year 2003-2004
ITA No.982/Bang/2014 : Asst.Year 2004-2005
ITA No.984/Bang/2014 : Asst.Year 2005-2006

M/s.P.Shyamaraju & Co. India Private Limited "Divyashree Chambers" Wing A #11, O'Shaugnessy Road Bangalore - 560 025. PAN : AACCS6562L.	v.	The Deputy Commissioner of Income-tax, Central Circle 2(2) Bangalore.
(Appellant)		(Respondent)

ITA No.941/Bang/2014 : Asst.Year 2002-2003
ITA No.942/Bang/2014 : Asst.Year 2003-2004
ITA No.943/Bang/2014 : Asst.Year 2004-2005
ITA No.944/Bang/2014 : Asst.Year 2005-2006

The Assistant Commissioner of Income-tax, Central Circle 2(3) Bangalore.	v.	M/s.P.Shyamaraju & Co. India Private Limited "Divyashree Chambers" Wing A, #11, O'Shaugnessy Road Bangalore - 560 025.
(Appellant)		(Respondent)

Revenue by : Sri.Sri.Dilip, Standing Counsel for Department
Assessee by : Sri.V.Chandrashekar, Advocate

Date of Hearing : 04.04.2022	Date of Pronouncement : 25.04.2022
-------------------------------------	---

ORDER

Per George George K, JM :

These cross appeals are directed against consolidated order of the CIT(A) dated 21.04.2014. The relevant assessment years are 2001-2002 to 2005-2006.

2. Brief facts of the case are as follows:

The assessee is a company engaged in the business of property development and construction. There was a search conducted on 01.03.2007 in group of cases and the last of the panchnama was drawn on 10.04.2007. Subsequent to the search, the case was centralized and notice u/s 153A of the I.T.Act was issued to the assessee. In response, the assessee filed its return of income under protest on 14.12.2007 for all the assessment years presently under consideration. The orders u/s 143(3) r.w.s. 153A of the I.T.Act was completed by the AO for all the assessment years on 31.12.2009.

3. Aggrieved, the assessee filed appeals before the first appellate authority. The said appeals were earlier allowed by the first appellate authority on technical issue raised that the warrant of action u/s 132 of the I.T.Act had been issued in the joint name and not in the name of the assessee only. However, subsequently, in view of insertion of section 292CC of the I.T.Act by Finance Act, 2012 with retrospective effect from 01.04.1976, an individual assessment in the case of assessee though in pursuant to a warrant issued in the joint name was held to be valid under law. Accordingly, the earlier appellate order dated 23.02.2012 was rectified u/s 154 of the I.T.Act after giving due opportunity to the assessee and the appeals were readmitted for adjudication on all the issues raised in the appeals. Before the CIT(A), the assessee had raised several legal grounds as well as grounds on merits. The CIT(A) rejected all the legal grounds raised by the assessee. However, on merits, the CIT(A) granted partial relief.

4. Aggrieved by the CIT(A)'s order, both the assessee and the Revenue have filed these appeals before the Tribunal. (The Revenue has filed appeals for all the assessment years except for assessment year 2001-2002).

We shall adjudicate first the assessee's appeals.

ITA Nos.978, 978, 980, 982 & 984/Bang/2014 (Asst.Years 2001-2002 to 2005-2006)

5. In the above appeals, the assessee has raised the following legal grounds:-

(i) Assumption of jurisdiction to make addition without invoking the provisions of section 153C of the I.T.Act is bad in law.

(ii) The assessment order is barred by limitation.

5.1 As regards the first legal contention is concerned, the learned AR submitted that the assessment completed u/s 153A of the I.T.Act is bad in law, since the additions have been made on the basis of material found in a search conducted on a person other than the assessee (i.e., search conducted in the premises of one Sri.V.Sambamoorthy, for which an independent search warrant was issued). According to the learned AR, the assessment ought to have been completed u/s 153C of the I.T.Act and in this context the learned AR relied on the co-ordinate Bench order of Bangalore Tribunal in the case of Sri.Anil H.Lad v. DCIT in ITA No.1852 & 1853/ Bang/2013 (order dated 28.06.2019). The learned AR also placed reliance on the judgment of the Hon'ble Delhi High Court in the case of PCIT(Central) v. Anand Kumar Jain

(HUF) & Ors. in ITA No.23/2021 and 26 to 31/2021 (judgment dated 12.02.2021).

5.2 As regards the second legal contention is concerned, the learned AR submitted that the search proceedings was completed in the month of March 2007 and hence the assessment order ought to have been completed by December 2008, whereas in the instant case, the assessments were completed only on 31.12.2009. In this context, the learned AR relied on the order of the Bangalore Bench of the Tribunal in the case of Sri.P.B.Laxmeshwar v. ACIT in IT(SS)A Nos.3 & 4/Bang/1998 (order dated 22.03.2019), the order of the Ahmedabad Bench of the Tribunal in the case of Shri.Hitesh Ashok Vaswani & Ors. in ITA Nos.118 to 123/Ahd/2019 (order dated 12.11.2020), and the judgment of the Hon'ble Delhi High Court in the case of CIT v. S.K.Katyal reported in (2009) 308 ITR 168 (Delhi).

5.3 The learned Standing Counsel, on the other hand, submitted that even the material / information found in the case of other searched person is entitled to be utilized u/s 153A of the I.T.Act. In this context, the learned Standing Counsel relied on the judgment of the Hon'ble jurisdictional High Court in the case of Canara Housing Development v. DCIT reported in 274 CTR 122. It was submitted by the learned Standing Counsel that the order of the Bangalore Bench of the Tribunal in the case of Sri.Anil H.Lad v. DCIT (supra) is *per incuriam*, since the same has not considered the judgment of the Hon'ble jurisdictional High Court in the case of Canara Housing Development v. DCIT (supra).

5.4 As regards the issue whether the assessment order is time barred, the learned Standing Counsel submitted that the last of the panchnama was drawn on 10.04.2007 and on that date there was a seizure as per Annexure-A/D/SCPL (refer page 66 of PB Vol.1). Consequently, reckoning the search proceedings to be completed on 10.04.2007, the assessment completed on 31.12.2009 is well within the time limited prescribed u/s 153B of the I.T.Act.

6. We have heard rival submissions and perused the material on record. The Hon'ble Karnataka High Court in the case of IBC Knowledge Park Private Limited v. CIT reported in 385 ITR 346 had held that unless in the material seized during the course of search show undisclosed income and are incriminating in nature, jurisdiction u/s 153C of the Act cannot be assumed. The ratio of the above decision would apply to section 153A of the Act also. The latest judgment of the Hon'ble jurisdictional High Court in the case of Pr.CIT v. M/s.Delhi International Airport Pvt. Ltd. in ITA No.322/2018 & Ors. (judgment dated 29th September, 2021) also followed the judgment of the Hon'ble Karnataka High Court in the case of IBC Knowledge Park Pvt. Ltd. v. CIT (supra). The relevant finding of the Hon'ble jurisdictional High Court in the case of Pr.CIT v. M/s.Delhi International Airport Pvt. Ltd. (supra), reads as follow:-

“30. Thus, it is clear that the Assessing Officer while passing the order under Section 153A read with Section 143(3) of the Act, ordinarily cannot disturb the assessment / reassessment order which has attained finality, unless the materials gathered in the course of the proceedings establishes that the finalized assessments are contrary to the material unearthed

during the course of 153A proceedings, as held by the Coordinate Bench of this Court in the case of IBC Knowledge Park (P) Ltd. supra. A concluded assessment could not be disturbed without there being any basis for doing so which is impermissible in law. Even in case of a searched person, the same reason would hold good.....”

6.1 The judgment of the Hon’ble Delhi High Court in the case of CIT v. Kabul Chawla reported in (2016) 380 ITR 573 (Delhi) had summarized the legal position as regards assessment u/s 153A of the Act, as follows:-

“37. On a conspectus of Section. 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six A Ys immediately preceding the previous year relevant to the A Y in which the search. takes place.

ii. Assessments and reassessments pending on the date of the search shall abate The total income for such AYs will have to be computed by the AOs as afresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the total income of the aforementioned six years In separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs in which both the disclosed and the undisclosed income would be brought to tax”.

iv. Although. Section. 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information. available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material.”

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or

reassessment can be made. The word 'assess' in Section 153A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each A Y on the basis of the findings of the search and any ether material existing or brought on the record of the AD.

vi. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

6.2 The Hon'ble jurisdictional High Court in the case of Pr.CIT v. M/s.Delhi International Airport Pvt. Ltd. (supra) had also referred to the judgment of the Hon'ble Delhi High Court in the case of CIT v. Kabul Chawla (supra) (Refer para 20 of the Karnataka High Court judgment). From the above judicial pronouncements, cited supra, it is clear that the assessments which are not pending and hence does not abate, the addition can be made only on the basis of incriminating material found during the course of search. The search in the instant case took place on 01.03.2007 and the last of the panchnama was drawn on 10.04.2007. On the date of search, the assessment proceedings for assessment years 2001-2002, 2002-2003 and 2005-2006 has not abated as the time limit of issue of notice u/s 143(2) of the I.T.Act had expired on that date. Thus, the assessments are deemed to have been concluded for the above mentioned three assessment years. As regards the assessment years 2003-2004 and 2004-2005 are concerned,

the issue of applicability of provisions of section 80IA(4)(iii) of the I.T.Act and its allowability was dealt, deliberated and adjudicated for assessment years 2003-2004 and 2004-2005 u/s 143(3) of the I.T.Act (the assessment orders dated 23.03.2006 and 29.12.2006, respectively). Therefore, as mentioned in the terms of binding judgment of the Hon'ble jurisdictional High Court in the case of PCIT (Central) v. Delhi International Airport Private Limited (supra), it is clear that in the case of persons searched, the assessment for those years where the assessments are concluded as on the date of search, cannot be disturbed unless incriminating material pertaining to such assessment year is not found and seized during the course of search. Therefore, as regards the deduction u/s 80IA(4)(iii) of the I.T.Act is concerned, for assessment years 2001-2002 to 2005-2006, it is undisputed fact that there is no incriminating material being found and seized in the search conducted in the premises of the assessee for each of those assessment years.

6.3 Further, the A.O. had made other additions (other than the claim of deduction u/s 80IA(4) of the I.T.Act) relying upon the materials marked as A/VSM/5,7,8,9,12,15,17 and a pen drive marked as A/VSM/16. It is an undisputed fact that those materials which were all found and seized was during the course of search carried out in the premises of one Sri.V.Shambamoorthy pursuant to a separate warrant of search. The A.O. is certainly entitled to use these materials to make addition in the hands of the assessee, provided, he had initiated proceedings u/s 153C of the I.T.Act and assessed the

income u/s 153C r.w.s. 143(3) of the I.T.Act. There is no dispute that the A.O. in the instant case has not initiated proceedings u/s 153C of the I.T.Act. Now the question arises whether the incriminating material found and seized in the search of Sri.V.Shambamoorthy can be used in an assessment of the assessee in a proceedings u/s 153A of the I.T.Act without invoking the provisions of section 153C of the I.T.Act. The answer to the above question would be 'no'. The reason being that as per the provisions of section 153C of the I.T.Act. it is imperative that in order to use the material found and seized in a search of an another person other than the person who is subjected to assessment, such material cannot be used without invoking the provisions of section 153C of the I.T.Act. The proceedings u/s 153C of the I.T.Act ought to have been initiated in the case of the assessee when satisfaction was arrived at in the assessment proceedings of Sri.V.Shambamoorthy that material found and seized in the search of Sri.V.Shambamoorthy did not pertain to him, but instead pertains to the assessee.

6.4 The learned Standing Counsel, during the course of hearing, submitted that invoking the provisions of section 153C of the I.T.Act, would results in two assessment orders being passed, one u/s 153A and the other u/s 153C of the I.T.Act, which is impermissible in law. According to us, there is no bar on the A.O. to issue notice u/s 153C of the I.T.Act when there is pending proceedings u/s 153A of the I.T.Act in the case of the assessee, because the assessment proceedings which commence u/s 153A of the I.T.Act would become

“pending proceedings” and the same would abate on the date on which the proceedings is initiated u/s 153C of the I.T.Act, inasmuch as the proceedings initiated u/s 153C of the I.T.Act is later than the proceedings u/s 153A of the I.T.Act. In an assessment order to be passed u/s 153C r.w.s. 143(3) of the I.T.Act, not only the material found in the search of the assessee and any other information pertaining to the assessee can be used in framing the assessment, but more importantly, the material found in the search of another person can also be used in framing the assessment. Thus, there would be only one assessment order, which should be u/s 153C r.w.s 143(3) of the I.T.Act and not two assessment orders as apprehended by the learned Standing Counsel. In this context, we rely on the order of the Co-ordinate Bench of this Tribunal in the case of Sri.Anil H Lad v. DCIT (supra). The Co-ordinate Bench held that when during the course of assessment proceedings u/s 153A of the I.T.Act, material belonging to the assessee was found in another search is received, then the correct and proper procedure is to be initiated proceedings u/s 153C of the I.T.Act and by such initiation, the proceedings already commenced u/s 153A of the I.T.Act would abate and the A.O. can proceed to take cognizance of the material found and seized in another search and use it in assessment proceedings now initiated u/s 153C of the I.T.Act. The Bangalore Bench of the Tribunal had categorically held that material found in another search cannot be used without initiating proceedings u/s 153C of the I.T.Act. The relevant finding of the Co-ordinate Bench of the

Tribunal in the case of Sri.Anil H Lad v. DCIT (supra), reads as follows:-

“12.6.1 We have carefully considered the legal arguments / contentions put forth by both parties. The facts not in dispute are that the substantive and protective additions were made in the case on hand on the basis of material found and seized from the premises of Shri. Manoj Kumar Jain. It is also amply clear that the AO did not invoke the provisions of Section 153C of the Act on receipt of the material; but rather chose to take cognizance of these materials (i.e., seized in the case of Shri. Manoj Kumar Jain) in the course of pending assessment proceedings under section 153A of the Act for Assessment Years 2006-07 and 2007-08 that were before him. It is therefore clearly established that the AO has used seized material / documents found in the course of search conducted in the case of a third party (i.e., search of Shri. Manoj Kumar Jain) for making the additions in the hands of the assessee, although, on protective and substantive basis; which was later on modified as substantive by the CIT(A).

12.6.2 Section 153A of the Act, enables and empowers the AO to frame an assessment in the case of a person where search is initiated under section 132 of the Act for 6 Assessment Years immediately preceding the Assessment Year in which the search takes place. The first proviso to section 153A of the Act requires the AO to assess or re-assess each of the 6 Assessment Years immediately preceding the Assessment Year in which the search takes place. The second proviso to section 153 of the Act provides that pending assessment proceedings on the date of search shall abate and the assessments for those years have to be framed under section 153A of the Act. The provisions of section 153A of the Act reads as under:-

“153A Notwithstanding anything contained in [section 139](#), [section 147](#), [section 148](#), [section 149](#), [section 151](#) and [section 153](#), in the case of a person where a search is initiated under [section 132](#) or books of account, other documents or any assets are requisitioned under [section 132A](#) after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such 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 referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed 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](#);

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this [sub-section] pending on the date of initiation of the search under [section 132](#) or making of requisition under [section 132A](#), as the case may be, shall abate

12.6.3 On the other hand, for Assessment Years 2006-07 and 2007-08, the provisions of Section 153C of the Act enjoins upon the AO of the person searched; that on being satisfied that books of account seized or requisitioned belongs to or pertain to some other persons, to handover the books of account to the AO having jurisdiction over such other person. Thereafter, the second AO, on being satisfied that the books of account and documents received have a bearing on the determination of the total income of the other person, should assume jurisdiction under section 153C of the Act. After assuming jurisdiction under section 153C of the Act, the AO proceeds to carry out an assessment in terms of section 153A r.w.s. 143(3) of the Act. In this regard, it is relevant to extract section 153 of the Act hereunder:-

“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,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates 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 17[for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] 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 sub-section (1) of 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.”

12.6.4 From the above, it is seen that the jurisdictional conditions and circumstances prescribed by the legislature for assumption of jurisdiction and taking action under sections 153A and 153C of the Act are different and are not interchangeable. The jurisdiction to make an assessment under section 153A of the Act arises when there is a search conducted under section 132 of the Act. Whereas, jurisdiction to make assessment under section 153C of the Act arises when satisfaction is reached that the materials found in the course of search of some other person have a bearing on the determination of the income of the assessee. Further, in the first proviso to section 153C of the Act, it is provided that the reference to the date of search in the second proviso to section 153A of the Act; dealing with abatement of pending proceedings on the date of search; shall for the purpose of the persons proceeded under section 153C of the Act be construed as the date on which the seized materials are received by the AO.

12.6.5 In the case on hand, we find that there was a search under section 132 of the Act in the case of the assessee on 26.10.2007. After the search, notices under section 153A of the Act were issued, assessments were framed thereunder by the AO. During the pendency thereof; the AO received material / information from the AO of Shri. Manoj Kumar Jain. As per the second proviso to section 153C of the Act, the assessment proceedings pending under section 153A of the Act in the case of the assessee before the AO would abate on the date the AO received the seized material

from the AO of Shri. Manoj Kumar Jain and fresh proceedings under section 153C of the Act ought to have been initiated. However, it is seen that, upon receipt of the said information / materials, the AO did not assume jurisdiction under section 153C of the Act, but rather chose to use the said materials / information for making additions in the impugned orders of assessment concluded under section 153A of the Act. The AO has discussed these additions in the order of assessment under the caption "ISSUE ARISING OUT OF SEARCH CONDUCTED IN THE CASE OF SHRI. MANOJ KUMAR JAIN". The AO noted that the assessment proceedings in the case of Shri. Manoj Kumar Jain were 'being concluded at Central Circle-1, Belgaum'. Thereafter, he has gone on to set-out the issues in the case of Shri. Manoj Kumar Jain, relevant to the assessee in the case on hand. But, no satisfaction, it appears, has been recorded that these materials have a bearing on the determination of income. Thus, the AO has not followed the procedure laid down in section 153C of the Act for taking cognizance of the material found / seized in the case of Shri. Manoj Kumar Jain and making an assessment with reference to those materials in the case on hand.

12.6.6 *The Kolkata Bench of ITAT in the case of Krishna Kumar Singhania (168 ITD 217) has considered the provisions of sections 153A and 153C of the Act and after examining the different scope of these two sections, at para 10 of its order, has held as under:-*

"We have heard the rival submissions. We find that it is not in dispute that there were no documents that were seized from the premises of the assessee except loose sheets vide seized document reference KKS / 1 comprising of 8 pages , for which satisfactory explanation has been given by the assessee and no addition was made by the Id AO on this seized document. The seized document used by the Id AO for making the addition in section 153A assessment is CG/1 to 11 and CG/HD/1 which were seized only from the office premises of Cygnus group of companies in which assessee is a director. In this regard, it would be pertinent to note that as per section 292C of the Act, there is a presumption that the documents , assets, books of accounts etc found at the time of search in the premises of a person is always presumed to be belonging to him / them unless proved otherwise. This goes to prove that the presumption derived is a rebuttable presumption. Then in such a scenario, the person on whom presumption is drawn , has got every right to state that the said documents does not belong to him / them . The Id AO if he is satisfied with such explanation , has got recourse to proceed on such other person (i.e the person to whom the said documents actually belong to) in

terms of section 153C of the Act by recording satisfaction to that effect by way of transfer of those materials to the AO assessing the such other person. This is the mandate provided in section 153C of the Act. In the instant case, if at all, the seized documents referred to in CG/1 to 11 and CG/HD/1 is stated to be belonging to assessee herein, then the only legal recourse available to the department is to proceed on the assessee herein in terms of section 153C of the Act. In this regard, we would like to place reliance on the recent decision of the Hon'ble Delhi High Court in the case of CIT v. Pinaki Misra & Sangeeta Misra [(2017) 148 DTR 219 (Delhi)] = [TS-5161-HC-2017(DELHI)-0] wherein it was held that, no addition could be made on the basis of evidence gathered from extraneous source and on the basis of statement or document received subsequent to search. Hence we hold that the said materials cannot be used in section 153A of the Act against the assessee. This opinion is given without going into the merits and veracity of the said seized documents implicating the assessee herein.”

12.6.7 The Hon'ble Bombay High Court in the case of HDFC Bank (supra) has also considered a similar question of law in the context of the erstwhile provisions of section 158BD of the Act. The provisions of section 158BD is the pre-cursor to the present provisions of section 153C of the Act; as the said provisions were required to be invoked for framing an assessment in the case of a person who was not searched, but materials indicating undisclosed income was found in the course of search conducted by the Department. In the aforesaid case of HDFC Bank (supra), Revenue sought to take cognizance of the search material and disallow depreciation in regular assessment proceedings and the provisions of section 158BD of the Act was not invoked. The Hon'ble Bombay High Court held that the scope of a regular assessment and the scope of assessment under section 158BD of the Act are different as they stand on different footings and has gone on to uphold the action of the Tribunal in holding that the provisions of section 158BD of the Act ought to have been invoked to make any disallowance of depreciation based on material found in the course of search conducted by the Department in the case of some other person. This judgment also supports the contention of the assessee that no addition could be made in the assessments framed under section 153A of the Act, based on materials found and seized from some other person, unless provisions of section 153C are invoked.

12.6.8 Taking into account the aforesaid factual and legal matrix, we are of the considered view that the AO could not have taken cognizance of the seized documents and other material found

and seized in the course of search conducted in the premises / case of Shri. Manoj Kumar Jain, while framing the orders of assessment under section 153A of the Act in the case on hand. As a matter of fact, the ongoing assessment proceedings under section 153A of the Act would abate on receipt of these seized materials as per the second proviso to section 153C of the Act. We are of the view that in the event the AO wanted to take cognizance of the seized materials, he ought to have invoked the provisions section 153C of the Act after recording his satisfaction based on material sent by the AO of Shri. Manoj Kumar Jain. This jurisdictional pre-condition laid down by the Legislature of recording of satisfaction for taking action under section 153C of the Act cannot be side-stepped / brushed aside and additions be made in proceedings pending under section 153A of the Act as the scope of assessments framed under sections 153A and 153C of the Act are quite different. In that view of the matter, we hold that the protective additions made by the AO in the impugned orders of assessment for Assessment Years 2006-07 and 2007-08 dated 31.12.2009, are contrary to the provisions of the Act and are therefore to be deleted. Hence, the addition sustained by the CIT(A) of Rs.3,49,50,000/- on substantive basis as profit from trading in iron-ore based on the material found and seized in the search conducted in the case of Shri. Manoj Kumar Jain for Assessment Year 2007-08 is also hereby deleted. It is accordingly ordered. Consequently, the additional grounds raised by the assessee are allowed. “

6.5 Further, the Hon’ble Delhi High Court in the case of PCIT(Central) v. Anand Kumar Jain (HUF) & Ors. (supra) had held that initiation of proceedings u/s 153C of the I.T.Act is mandatory if the material found in the case of search other than that of the assessee is to be used in framing the assessment of the assessee. The relevant finding of the Hon’ble Delhi High Court in the case of PCIT(Central) v. Anand Kumar Jain (HUF) & Ors. (supra), reads as follows:-

“10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of section 153C, if this

statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in section 153A), then the only legal recourse available to the department was to proceed in terms of section 153C of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration.”

6.6 The learned Standing Counsel submitted that the decision of the Co-ordinate Bench in the case of Sri.Anil H Lad (supra) was per in curium inasmuch as the said order did not notice the judgment of the Hon’ble Karnataka High Court in the case of Canara Housing Development Company (supra), and hence, the same ought to be ignored by this Bench. The order of the Co-ordinate Bench in the case of Sri.Anil H Lad (supra) does not in any way contradict the judgment of the Hon’ble High Court in the case of Canara Housing Development Co. (supra) and nor does the decision violate the proposition of law decided therein, by the Hon’ble High Court. The judgment of the Hon’ble High Court in the case of Canara Housing Development Co. (supra) which was rendered in the context of revisionary proceedings u/s 263 of the I.T.Act was considered, clarified and explained by the Hon’ble jurisdictional High Court rendered subsequently in the case of IBC Knowledge Park (supra) and once again considered and clarified in another recent decision rendered by it in the case of Pr.CIT v. Delhi International Airport Pvt. Ltd. (supra). Thus, the argument canvassed by the learned Standing Counsel,

questioning the correctness of the decision of the Co-ordinate Bench in the case of Sri.Anil H Lad (supra) is not legally tenable. The learned Standing Counsel had also made one more argument that on the date of search conducted on Sri.V.Shambamoorthy, there was no proceeding pending u/s 153A of the I.T.Act in the case of the assessee and hence the material found in the search of Sri.V.Sambamoorthy ought to be considered as “any other material which comes to the knowledge of the AO” and can be used in the assessment proceedings u/s 153A of the I.T.Act, without invoking the provisions of section 153C of the I.T.Act. This argument of the learned Standing Counsel suffers from the basic flaw inasmuch as it is not the date of search of Sri.V.Sambamoorthy, which is to be reckoned to determine whether proceedings u/s 153A of the I.T.Act is initiated in the case of the assessee and is the same pending, but it is the date on which material, belonging / pertaining to the assessee, found in the search of Sri.V.Sambamoorthy, is handed over to the AO of the assessee, which is to be considered for determining whether proceedings u/s 153A of the I.T.Act is initiated and is pending on the date of receipt of such material. In the present case the date of initiation of proceedings u/s 153A of the I.T.Act definitely precedes the date on which material found in the search of Sri.V.Sambamoorthy is received for the purpose of assessing the same in the hands of the assessee. Thus, the AO ought to have initiated proceedings u/s 153C of the I.T.Act inasmuch as the proceedings u/s 153A of the I.T.Act had already commenced.

6.7 In view of the aforesaid reasoning, since the additions u/s 80IA(4) of the I.T.Act is not based on incriminating material found during the course of search in the premises of the assessee and the assessments for assessment years 2001-2002 to 2005-2006 have already been concluded on the date of search, the A.O. cannot make an addition u/s 153A of the I.T.Act, insofar as the claim of deduction u/s 80IA of the I.T.Act is concerned.

6.8 As regards other additions are concerned for all the assessment years, since it is based on the material found in the course of search of Sri.V.Sambamoorthy and in absence of initiation of proceedings u/s 153C of the I.T.Act, the other additions also cannot be made in a proceedings u/s 153A of the I.T.Act. It is ordered accordingly.

6.9 Since all the additions are deleted, the other legal grounds raised by the learned AR as regards the assessment order passed u/s 153A r.w.s. 143(3) of the I.T.Act being time barred (assessment order dated 31.12.2008), is not adjudicated.

6.10 In the result, the appeals filed by the assessee are partly allowed.

ITA Nos.941, 942, 943 & 944/Bang/2014 (Asst.Years 2002-2003 to 2005-2006)

7. Since the assessee's appeals are allowed on legal grounds and the additions have been deleted, the Revenue's

appeals are dismissed as infructuous. It is ordered accordingly.

8. In the result, the appeals filed by the assessee are partly allowed and the appeals filed by the Revenue are dismissed.

Order pronounced on this 25th day of April, 2022.

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 25th April, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-VI, Bangalore
4. The CIT (Central), Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore