

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH  
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.2647/Mum/2016  
(Assessment Year :2007-08)**

**&**

**ITA No.2649/Mum/2016  
(Assessment Year :2009-10)**

Dy. Commissioner of Income Tax Central Circle-2(4), Old CGO Building 8 <sup>th</sup> Floor, M.K. Road Mumbai – 400 020	Vs.	M/s. Shruti Art Pvt. Ltd., 26/A, New Surya Kiran Co- op Housing Society Huges Road Mumbai – 400 026
<b>PAN/GIR No. AAFPS1984E</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**CO No.343/Mum/2018  
(Arising out of ITA No.2647/Mum/2016)  
(Assessment Year :2007-08)**

**&**

**CO No.345/Mum/2018  
(Arising out of ITA No.2649/Mum/2016)  
(Assessment Year :2009-10)**

M/s. Shruti Art Pvt. Ltd., 26/A, New Surya Kiran Co-op Housing Society Huges Road Mumbai – 400 026	Vs.	Dy. Commissioner of Income Tax Central Circle-2(4), Old CGO Building 8 <sup>th</sup> Floor, M.K. Road Mumbai – 400 020
<b>PAN/GIR No. AAFPS1984E</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Rajesh Damor
Assessee by	None
<b>Date of Hearing</b>	<b>05/07/2022</b>
<b>Date of Pronouncement</b>	<b>15/07/2022</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M.):**

These appeals in ITA No.2647/Mum/2016 & 2649/Mum/2016 & CO No.343/Mum/2018 & CO No.345/Mum/2018 for A.Y.2007-08 & 2009-10 respectively arises out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No.CIT(A)-48/IT.463/DCCC-14/2013-14 & CIT(A)-48/IT.465/DCCC-14/2013-14 dated 28/01/2016 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 153A of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 28/03/2013 by the Id. Deputy Commissioner of Income Tax, Central Circle-14, Mumbai (hereinafter referred to as Id. AO).

Identical issues are involved in all these appeal and hence, they are taken up together and disposed of by this common order for the sake of convenience.

2. Both the parties mutually submitted that the appeal of the Revenue for the A.Y.2009-10 be taken up first. The Revenue has raised the following grounds of appeal for A.Y. 2009-10:-

- (i) "On the facts and circumstances of the case and in law, the learned CIT(A) has erred in deleting disallowance Rs.25,59,209/- [wrongly mentioned in CIT(A)'s order of as Rs.51,18,419/-] out of commission

*expense of Rs.51,18,419/-, by observing that since income has been estimated by rejecting the books of accounts, no separate addition can be made by disallowing expenses based on the same books of accounts ignoring the fact that the Assessing Officer had not estimated total income or Net Profit (N.P.) of the assessee but made addition @ 1% of the turnover over and above G.P. of 23.29% declared by the assessee in the books of accounts by rejecting book results and the disallowance of commission expenses claimed in the Profit & Loss account against G.P. was made as the assessee failed to furnish details in support of its claim."*

*(ii) "On the facts and circumstances of the case and in law, the learned CIT(A) has erred in deleting disallowance of Rs.13,22,370/- out of travelling and conveyance expenses of Rs.26,44,739/-, by observing that since income has been estimated by rejecting the books of accounts, no separate addition can be made by disallowing expenses based on the same books of accounts ignoring the fact that the Assessing Officer had not estimated total income or Net Profit (N.P.) of the assessee but made addition @ 1% of the turnover over and above G.P. of 23.29% declared by the assessee in the books of accounts by rejecting book results and the disallowance of commission expenses claimed in the Profit & Loss account against G.P. was made as the assessee failed to furnish details in support of its claim."*

*(iii)"On the facts and circumstances of the case and in law, the learned CIT(A) has erred in deleting disallowance of Rs.2,02,55,475/- in respect of depreciation claimed on addition to fixed assets, by observing that since income has been estimated by rejecting the books of accounts, no separate addition can be made by disallowing expenses based on the same books of accounts ignoring the fact that the Assessing Officer had not estimated total income or Net Profit (N.P.) of the assessee but made addition @ 1% of the turnover over and above G.P. of 23.29% declared by the assessee in the books of accounts by rejecting book results and the disallowance of commission expenses claimed in the Profit & Loss account against G.P. was made as the assessee failed to furnish details in support of its claim."*

*2. The appellant craves to add, to amend and/ or alter any grounds of appeal, if need to be.*

*3. The Appellant, therefore, prays that on the grounds stated above the order of the CIT(A)-48, Mumbai may be set aside and that of the Assessing Officer restored."*

3. The brief facts of the case are that a search and seizure action u/s.132(1) of the Act was carried out at the premises of the assessee on

23/02/2010. Prior to the search action, the assessee had filed its original return of income on 30/09/2009 declaring total income of Rs.3,56,92,400/-. Consequent to the search action, notice u/s.153A of the Act was issued in response to which, return of income was filed on 06/09/2010 declaring total income of Rs.3,56,92,400/- by the assessee. It is pertinent to note that as on the date of search, the time limit for issuance of notice u/s.143(2) of the Act had not expired and hence, the assessment for A.Y.2009-10 becomes a pending proceedings which gets abated. Hence, there is absolutely no requirement of any incriminating material for the purpose of framing assessment u/s.153A of the Act for the said assessment year.

3.1. The assessee is engaged in the business of offset, screen and digital printing. The Id. AO observed that the assessee did not produce either the books of accounts or vouchers in support of the expenses claimed in the profit and loss account and items reflected in the balance sheet. The Id. AO rejected the book results of the assessee u/s 145(3) of the Act due to the following reasons:-

- a) The director of the assessee company in his statement dated 24/02/2010 had stated that assessee company had not maintained quantitative tally of consumption of raw material and production of finished goods.
- b) Non-production of books of accounts in the course of assessment proceedings.
- c) Non-production of sale bills / purchase bills and expense vouchers
- d) No evidence in support of delivery of goods
- e) Defects in maintenance of inward register

3.2. With these observations, the Id. AO proceeded to reject the book results of the company u/s.145(3) of the Act and proceeded to estimate the profits of the company. The Id. AO estimated the profit percentage by 1% of turnover and made an addition of Rs.1,32,61,271/-.

3.3. The Id. AO further proceeded to make a separate addition on account of bogus purchases allegedly based on seized material in the form of inward register found during the course of search. The said addition on account of bogus purchases was made u/s.69C of the Act by the Id. AO.

3.4. The Id. AO observed that on an examination of profit and loss account, the assessee had paid commission of Rs.51,18,419/- and asked the assessee to provide the details of rate of percentage, name and address of the persons to whom the commission was paid, nature of services rendered by the persons to whom the commission was paid, the qualification of the payees, business procured through the payees and commission agreement, if any. In reply, the assessee produced only a copy of ledger account evidencing the name of persons to whom the commission was paid and no other details were provided to substantiate the claim of payment of the commission. Accordingly, the Id. AO proceeded to disallow 50% of the commission for want of details and made disallowance of Rs.25,59,209/- in the assessment.

3.5. Further, the Id. AO observed that assessee had booked expenditure of Rs.26,44,739/- under the head 'Travelling and Conveyance' for which no details were furnished and accordingly, proceeded to disallow 50% of the same and added Rs.13,22,370/- to the total income.

3.6. Further, the Id. AO observed that assessee had claimed depreciation of Rs.2,02,55,475/- on fixed assets during the year under consideration. Since no details were furnished for the same, the Id. AO proceeded to disallow the depreciation of Rs.2,02,55,475/- in the assessment.

4. The Id. CIT(A) appreciated the contentions of the Id. AO that the book results had been rightly rejected by him in the facts and circumstances of the instant case u/s.145(3) of the Act. The Id. CIT(A) also upheld estimation of net profit @1% of turnover by the Id. AO.

4.1. With regard to the addition made on account of bogus purchases of Rs.84,38,546/- is concerned, the Id. CIT(A) observed that the said addition was made based on alleged seized document found during the course of search for which no proper rebuttal was given by the assessee and upheld the addition made on account of bogus purchases thereon.

4.2. With regard to disallowance of 50% of commission expenses; 50% travelling and conveyance and disallowance of depreciation made by the Id. AO, the Id. CIT(A) observed that those three disallowances cannot be made in view of the fact that the Id. AO had already rejected the books results of the assessee u/s.145(3) of the Act and profit has been estimated @1%. Having done so, the Id. AO cannot look into the very same books and make separate disallowances thereon.

4.3. Aggrieved by the above, the Revenue is in appeal before us against the deletion of disallowance of commission expenses, travelling expenses and depreciation. The assessee has preferred cross objections before us on the legal issue of challenging the validity of search assessment that the same has not been framed in accordance with law and also

challenging the addition made on account of bogus purchases. The assessee has also preferred cross objections on the ground that notice u/s.143(2) of the Act was not served on the assessee. The assessee has further raised yet another ground for disallowance of interest made by the Id. AO which has been confirmed by the Id. CIT(A).

5. None appeared on behalf of the assessee. We have heard the Id. DR and perused the materials available on record. The grounds raised by the Revenue and the grounds raised by the assessee in the cross objections are interconnected and hence, they are taken up together for the purpose of adjudication. At the outset, we find that the book results of the assessee were rejected by the Id. AO u/s.145(3) of the Act. This action of the Id. AO was upheld by the Id. CIT(A). We find that the said book results of the assessee had been rejected with valid reasons which have already been stated supra. No evidences were filed by the assessee either before the Id. AO or before the Id. CIT(A) or before us to controvert the said findings of the lower authorities. Hence, we uphold the action of the lower authorities in rejecting the book results u/s.145(3) of the Act. Accordingly, the ground Nos. 8 & 9 raised by the assessee in its cross objections are dismissed.

5.1. Once the book results are rejected u/s.145(3) of the Act and net profit @1% is estimated by the Id. AO, then there cannot be further disallowance that could be made separately on account of commission expenses, travelling and conveyance expenses and depreciation by looking into the same entries in the books. Hence, we hold that the Id. CIT(A) had rightly deleted the disallowance made on account of commission, travelling and conveyance and depreciation. Accordingly, the grounds raised by the Revenue are dismissed.

5.2. With regard to the addition made u/s.69C of the Act on account of bogus purchases in the sum of Rs.84,38,546/- based on alleged seized materials found during the course of search, we find that the said purchases of Rs.84,38,546/- had been duly reflected as purchases in the books of the assessee and the same has already been considered while arriving at the book results by the assessee. It is not the case of the Revenue that the said purchases of Rs.84,38,546/- had been incurred outside the books of the assessee and not accounted in the books of the assessee. The very fact that the said expenditure had been accounted in the books of the assessee goes to prove that the same is properly explained and hence there cannot be any addition u/s 69C of the Act for the same. The assessee had indeed declared total income of Rs. 3,56,92,400/-. The said total income of Rs.3,56,92,400/- is after considering the disputed purchases of Rs.84,38,546/-. The book results of the assessee had been rejected by the lower authorities for not addressing the defects pointed out by the lower authorities. Hence, once the book results are rejected as stated supra, there cannot be separate addition that could be made on account of purchases which are already reflected in the book results, based on alleged seized material. Hence, we direct the Id. AO to delete the addition made on account of bogus purchases in the sum of Rs.84,38,546/- as the said issue also gets subsumed in the net profit estimated at 1% of turnover. Accordingly, the ground Nos. 11 & 12 raised by the assessee in its cross objections are allowed.

5.3. The ground No.10 raised by the assessee in its cross objections is only supportive of the order of the Id. CIT(A) and hence, allowed.

5.4. The ground Nos. 6 raised by the assessee is challenging the validity of the search assessment on the ground that notice u/s.143(2) of the Act was not served. In this regard, we find that the Id. CIT(A) had categorically held in para 5.1 & 5.2 of his order that notice u/s.143(2) of the Act was issued to the assessee on 16/09/2010 and 27/09/2010 which is apparently after the date of filing of return by the assessee in response to notice issued u/s.153A of the Act. Moreover, we find that the assessee before the Id. CIT(A) had challenged the non-issuance of notice u/s 143(2) of the Act which had been rightly adjudicated by the Id. CIT(A). Before us, the assessee had challenged the non-service of notice u/s 143(2) of the Act. This fact was never raised before the lower authorities and not raised before us by way of an additional ground. No further evidences in this regard were produced by the assessee in support of this contention. Hence we hold that this ground raised before us does not emanate from the orders of the lower authorities . Hence, the ground No.6 raised by the assessee in its cross objections is hereby dismissed as not maintainable.

5.5. The ground No.7 raised by the assessee in its cross objection is challenging the action of the Id. CIT(A) confirming the action of the Id. AO in framing the assessment without giving effect to the directions passed u/s.144A of the Act by the Id. Additional Commissioner of Income Tax. Before us, the directions issued by the Id. Additional CIT(A) u/s.144A of the Act is not placed on record. We also find that the Id. CIT(A) in para 7.1 of his order had dealt with this issue by stating that the assessment has been completed by the Id. AO after considering the directions issued by the Id. Addl. CIT u/s.144A of the Act and had dismissed the plea of the assessee. This finding given by the Id. CIT(A) remain uncontroverted

before us and hence, the ground No.7 raised by the assessee in its cross objections is devoid of merit and is hereby dismissed.

5.6. The ground Nos. 1-5 raised by the assessee in its cross objections are challenging the validity of search assessment framed in the hands of the assessee by challenging on the ground that search assessment is barred by limitation u/s.153B of the Act; that there was no material or evidence available during the course of search to invoke the provisions of Section 153A of the Act; that the primary conditions of provisions of Section 132 of the Act were not satisfied in the instant case to frame the search assessment u/s.153A of the Act; that there were no incriminating materials found during the course of search in order to frame the assessment u/s.153A of the Act and that the search assessment has been framed in violation of provisions of Section 153D of the Act.

5.6.1. We find that A.Y.2009-10 is an abated assessment as the time limit for issuance of notice u/s.143(2) of the Act in respect of original return of income filed by the assessee was very much available with the Id. AO as on the date of search. Hence, it is a pending proceeding which has got abated. In respect of abated assessment, the law is very well settled that there is no need for the Id. AO to determine the total income u/s.153A of the Act based on the incriminating materials found during the course of search. In other words, existence of incriminating materials found during the course of search would be relevant only in respect of concluded assessments and the said principle would not apply for abated assessments. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of Continental Warehousing Corporation reported in 374 ITR 645 (Bom).

5.6.2. We find that assessee has raised an objection that the search assessment completed on 28/03/2013 is barred by limitation in terms of Section 153B of the Act. We find that this objection was also raised by the assessee before the Id. CIT(A) and the Id. CIT(A) addressed the issue in detail by stating that though the search was conducted on 23/02/2010, the last authorisation of search was issued on 19/04/2010 and panchanama was duly drawn thereon and there were seizure of books of accounts and certain documents on the said date. Hence, the search conducted on 19/04/2010 was a valid search. While this is so, the date for completion of assessment should be reckoned from 19/04/2010, in which case, the last date to complete assessment would be 31/03/2013. In the instant case, the search assessment has been completed on 28/03/2013 and hence, the objection raised in this regard by the assessee is devoid of merits and hence dismissed.

5.6.3. We find that once search u/s.132 of the Act has been carried out on assessee, irrespective of the fact as to whether there were any seizures or not, proceedings u/s.153A of the Act gets automatically triggered and assessments had to be framed u/s.153A of the Act in respect of that searched assessee. This is very clear from the starting lines of the provisions of Section 153A of the Act itself.

5.6.4. In view of the above observations, the ground Nos. 1-5 raised by the assessee in its cross objections are completely devoid on merits and hence, dismissed.

6. The ground Nos.13 & 14 raised by the assessee are challenging the action of the Id. CIT(A) confirming the disallowance made on account of proportionate interest of Rs. 3,14,160/-.

6.1. The Id. AO had observed in para 17 of his order that assessee had advanced certain loans without charging any interest thereon. During the course of 143(3) assessment for A.Y.2006-07 interest @12% has been added on such loans and addition has been made in the sum of Rs.3,14,160/-. This addition has been admitted by the assessee in earlier years and accordingly the Id. AO made the same addition in A.Y.2009-10 also in the search assessment completed u/s.153A of the Act. This action was upheld by the Id. CIT(A). We find that ultimately, the Id. AO had rejected the book results of the assessee and had determined the net profit of the assessee @1% of the turnover. Admittedly this addition made towards interest free loans could be made u/s.36(1)(iii) / 37 or u/s.28 of the Act. The business results declared by assessee had already been rejected by the Id. AO. As stated in earlier grounds of the Revenue, once the net profit is estimated @1% of turnover, there cannot be further addition made on account of business income either by way of disallowance of interest on borrowed funds or by way of adding notional interest income on loans and advances. This is in view of the fact that the said interest addition would get subsumed in the determination of net profit @1% of turnover. Hence, we direct the Id. AO to delete the addition made in the sum of Rs.3,14,160/-. Accordingly, the ground Nos. 13 & 14 raised by the assessee in its cross objections are allowed.

7. The ground No.15 raised by the assessee in its cross objection is only challenging the order passed by the Id. CIT(A) on the ground that sufficient opportunity was not given to the assessee thereby violating the principles of natural justice. But we find from perusal of the order of the Id. CIT(A), sufficient opportunities were given to the assessee to buttress the various issues and the Id. CIT(A) had addressed the entire grounds

raised before him in detail. Hence, we hold that ground No.15 raised by the assessee is completely devoid of merit and hence, dismissed.

8. The ground No.16 raised by the assessee in its cross objections is general in nature and does not require any specific adjudication.

9. In the result, appeal of the Revenue for A.Y.2009-10 is dismissed and Cross Objections of the assessee for A.Y.2009-10 is partly allowed.

**ITA No.2647/Mum/2016 (A.Y.2007-08) (Revenue) & CO  
No.343/Mum/2018 (Assessee)**

10. We deem it fit to first take up the technical issue raised by the assessee vide ground No.4 in its cross objections wherein it was stated that there was no incriminating material found during the course of search for this assessment year and this assessment year is concluded assessment and accordingly, no addition could be made in the search assessment framed by the Id. AO.

10.1. As stated earlier, we find that search u/s.132 of the Act was conducted on 23/02/2010. The original return of income for A.Y.2007-08 was filed by the assessee company u/s.139(1) of the Act on 30/10/2007 declaring total income of Rs.2,43,00,975/-. The assessment was completed u/s.143(3) of the Act on 31/12/2008 accepting the returned income. Hence, as on the date of search on 23/02/2010, the assessment for the A.Y.2007-08 becomes concluded assessment. Hence, the assessment earlier completed u/s.143(3) of the Act could be disturbed only when there are certain incriminating materials found during the course of search relatable to A.Y.2007-08. From the perusal of the

assessment order and the order of the Id. CIT(A), we find that all the additions and disallowances were made by the Id. AO in the assessment framed u/s.153A of the Act for the A.Y.2007-08 without reference to any incriminating seized document found during the course of search. The law is very well settled that without incriminating material found during the course of search, the assessments already framed shall not be disturbed by the Id. AO in the proceedings u/s.153A of the Act. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of Continental Warehousing Corporation reported in 374 ITR 645 (Bom).

10.2. The Id. CIT(A) however, had observed that statement u/s.132(4) of the Act has been taken from the Director of the assessee company which constitutes incriminating material. In this regard, we hold that a statement recorded u/s.132(4) of the Act does not constitute any incriminating material found during the course of search within meaning of Section 153A to 153D of the Act. Reliance in this regard is placed on the decision of the Hon'ble Delhi High Court in the case of PCIT vs Best Infrastructure (India) (P) Ltd., reported in 397 ITR 82 (Del). In view of the above, we hold that no additions could be made in the search assessment completed u/s.153A of the Act for the A.Y.2007-08. Hence, the grounds raised by the Revenue are dismissed and the grounds raised by the assessee in its cross objections are allowed.

**11. TO SUM UP:-**

<b><u>ITA NO / CO NO.</u></b>	<b><u>AY</u></b>	<b><u>APPEAL BY</u></b>	<b><u>RESULT</u></b>
<b>ITA No.2647/Mum/2016</b>	<b>2007-08</b>	<b>Revenue</b>	<b>Dismissed</b>
<b>CO No.343/Mum/2018</b>	<b>2007-08</b>	<b>Assessee</b>	<b>Allowed</b>
<b>ITA No.2649/Mum/2016</b>	<b>2009-10</b>	<b>Revenue</b>	<b>Dismissed</b>
<b>CO No.345/Mum/2018</b>	<b>2009-10</b>	<b>Assessee</b>	<b>Partly Allowed</b>

Order pronounced on 15/07/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(VIKAS AWASTHY)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 15/07/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)  
ITAT, Mumbai