

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.1733, 1734 & 1735/Bang/2018

Assessment year : 2008-09 to 2010-11

Shri C Anil Rahashekar, No.2101, Washleigh Manor, Rustmubagh Road, New BBMP, Municipal, Bangalore-560 017. PAN - ABJPC 6466 G	Vs.	The Dy. Commissioner of Income- tax, Central Circle-2(3), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri G.S Prashanth, C.A
Revenue by	:	Shri. Sumer Singh Meena, CIT (DR)

Date of hearing	:	10.08.2022
Date of Pronouncement	:	02.09.2022

ORDER

Per Laxmi Prasad Sahu, Accountant Member

All these three appeals are directed against the common order passed by the CIT(A) dated 26/3/2018 for the asst. year 2000-11. The issue in these appeals are common in nature except one issue and hence these appeals are heard together and disposed of together in this common order for the sake of convenience.

2. Since the issues raised by the assessee in ITA No.1733 & 1734/Bang/2018 are common except for the figures. The decision in ITA No.1733/Bang/2018 shall apply mutatis mutandis in other appeals also. Hence, the grounds raised in ITA No.1773/Bang/2018 is reproduced as under:-

“1. The orders of the authorities below in so far as these are against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies himself liable to be assessed on a total income of Rs. 7,90,91.011/- as against the returned income of Rs. 1,05,63,790/- under the facts and circumstances of the case.

3. a) The order of the assessment is bad in law as the appellant is a person searched and thus the assessment ought to have been completed under section 153A of the Act under the facts and circumstances of the case.

b) The learned CIT(A) erred in upholding the assessment completed under section 153C of the Act even though the appellant is the person searched under section 132 of the Act under the facts & circumstances of the case.

c) Without prejudice, the order of assessment is bad in law as the mandatory condition of recording of satisfaction under section 153 of the Act has not been complied with or having complied, copy of satisfaction note has not been provided to the appellant and thus the assessment has no legs to stand the test of law.

4. Without prejudice the orders of the authorities below are bad in law on the ground that: -

a) The search initiated in the case of the appellant is illegal and ultra vires the provisions of section 132(1)(a), (b) & (c) of the Act;

b) That the search is conducted not on the basis of any prior information or material inducing any belief but

purely on the suspicion and therefore, the action under section 132(2) is bad in law and consequent assessment is null and void-ab-initio on the parity of the ratio of the decision of the Hon'ble Apex Court in the case of UOI vs. Ajith Jam, reported in 260 ITR 80.

c) The learned authorities below have not discharged the burden of proving that there is a valid initiation of search under section 132(1)(a), (b) & (c) of the Act, its execution and its completion in accordance with law to render the proceedings valid under the facts and circumstances of the case.

d) The learned CIT(A) failed to appreciate that the intention of the amendment to Section 132(1) of the Act was to maintain confidentiality of the source of information and identity of the informer and not to ignore the procedures to be followed to conduct a valid search under the facts and circumstances of the case.

e) The learned CIT(A) further failed to appreciate the fact that the explanation to section 132(1) of the Act only prohibits the non-disclosure of reason to believe/reason to suspect but it does not preclude the authorities from looking into other aspects of validity of search proceedings and thus the CIT(A) ought to have examined the vital aspects of search and failure to do so renders the entire proceedings bad in law.

f) The CIT(A) erred in law in examining the Explanation 1 to section 132(1) of the Act and the same is to be ignored as the past actions have not been validated and consequently the learned CIT(A) ought not to have looked into the Explanation (1) to section 132(1) of the Act to adjudicate the validity of search under the facts & circumstances of the case.

5. The learned assessing officer erred in making an addition of Rs.7,55,58,161!being purchases from unregistered dealers under the facts and circumstances of the case.

6. The learned CIT(A) erred in confirming the addition made by the assessing officer of Rs.7,55,58,161/-

being purchases from unregistered dealers under the facts and circumstances of the case.

7. *The authorities below failed to appreciate that there is no prohibition under any law for purchasing from the unregistered dealers and thus the entire addition is merely based on suspicion & surmises and hence the same is liable to be deleted on the facts of the case.*

8. *The orders of the authorities below are bad in law as the seized materials relied upon by the assessing officer was not put forth to the appellant for his rebuttal despite specific request being made under the facts and circumstances of the case.*

9. *The learned CIT(A) failed to take cognisance of the submissions made by the appellant and consequently erred in holding that the appellant has failed to prove the genuineness of the purchases under the facts and circumstances of the case.*

10. *Without prejudice, the addition made is highly excessive and needs to be substantially reduced under the facts of the case.*

11. a) *The copy of the approval of the Additional Commissioner was not obtained or having obtained, the copy of the same is not provided to the appellant which is in violation of the settled principles of natural justice and thus the order of assessment needs to be set aside under the facts and circumstances of the case.*

b) *The order of assessment is bad in law as the approval of the Additional Commissioner under section 153D of the Act presupposes the application of mind by the Joint Commissioner which is not discernible from the order of assessment on the facts of the case.*

12. *The appellant denies himself liable to be levied interest under sections 234A, 234B & 234C of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period*

of levy of interest is not in accordance with the provisions of the Act.

13. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

14. In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity."

3. The brief facts of the case are that Shri Anil Rajshekar is a proprietor of M/s Chundru Associates, Bellary. He filed his return of income on 29.9.2008 declaring an income of Rs.35,32,850/- The assessee is engaged in the business of trading in iron ore. The modus operandi of the assessee is purchase of iron ore from various dealers and selling them to various parties who in turn exports the iron ore.

3.1 A search u/s 132 of the Act was conducted in the assessee's premises on 25/10/2010 and certain incriminating material was seized from assessee's premises. As per order sheet dated 14.11.2011 a search action u/s 132 was also initiated in the case of Shri B Nagendra and in connection with the same, the premises of Shri Anil Rajasekhar, D No.7, 5th Cross, Vidyanagar East, Contonment, Bellary was also searched and documents/assets were seized as per inventory CA(3) annexed to the pancnama dated 25/10/2010 and A-1/CAR annexed to the panchnama dated 3/11/2010 for the search conducted in the premises of Shri C Anil Rajasekhar, 1st Floor & Ground Floor of D.No.7, 5th Cross East,

Vidyanagar, Bellary and No.32, Rahim Manzil, 1st Floor, Infantry Road, Cantonment, Bellary respectively. After duly recording reasons, notice u/s 153C was issued to the assessee, which was served upon the assessee on 14/11/2022. Subsequently, notice u/s 142(1) r.w.s 129 dated 14th September 2012, owing to the change in incumbency was served on the assessee. The assessee did not file his return of income and sought for time. Another opportunity was given to the assessee vide notice dated 18/10/2012 for filing return of income u/s 153C of the Act. Despite the another opportunity the assessee did not file return of income till 15th December, 2012. The show cause notice was issued to the assessee on 17/12/2012 for proposing that why assessment should not be completed ex-parte on the basis of material available on record. Thereafter the assessee filed letter dated 24/12/2022 stating that return filed u/s 139 on 29/9/2008 may be treated as return filed in response to notice u/s 153C of the Act thereafter statutory notice was issued to the assessee. The assessee did not comply the notice u/s 142(1) dated 4/2/2013 again show cause notice was issued to the assessee for completing assessment u/s 144 dated 8/3/2013. Accordingly, on 21/3/2013. the assessee filed replies but the assessee could not substantiate evidences and documents in support of the claim.

3.2 Accordingly, the AO completed the assessment, which is as under :-

“During the course of search proceedings documents and loose sheets marked as A/TBS/01 to A/TBS/02 were seized from the residence of Sri C.A. Rajasekhar, Vidyanagar, 5th Cross, Bellary on 25.10.2010. Also the documents and loose sheets marked as 1 to 9 (Volume-I), 1 to 12(Volume-II), 1 to 14 (Volume-III) were seized from, the office of M/s Chunduru Associated, No. 32, :Khaja Complex, Infantry Road, Bellary on 25.10.2010. One Sony CD containing data marked as 10(Volume-II) was also seized from the, office of M/s Chunduru Associated, No. 32, Khaja Complex, Infantry Road, Bellary on 25.10.2010. On continuation of search operation on 03/11/2010, documents and loose sheets marked as A-1/CAR/01 to A-1/CAR/03 were seized from the residence of Sri C.A. Rajasekhar, Vidyanagar, 5 Cross, Bellary. One Pen drive marked as A-i /CAR/03, containing data from computer was also seized on 03/11/2010. Details of the issues arising from the seized materials are discussed in the following paragraphs;

It is seen from the books of accounts maintained in tally package seized on 25.10.2010 at M/s Chunduru Associates, Khaja Complex, Infantry Road, Bellary that the URD cash purchases for A.Y.2008-09 and 2009-10 are Rs.7,55,58,161.8/- and Rs. 1,07,27,670.76/- respectively.. In the ledger extracts of URD purchases, it can be noticed that the assessee has mentioned the names of innumerable number of people against whom the URD purchases are made by debiting the amount less than Rs. 20,000/- in each entry to dissuade the provisions of 40A(3).

It can also be seen from the seized cash vouchers of URD purchases marked as No. 1 to 9 (Volume-1) seized from the office of M/s Chunduru Associated, No. 32, Khaja Complex, Infantry Road, Bellary on 25.10.2010 that the bills are self-made and prepared by the assessee himself and there is no TIN No. of the person and concern from whom the material is purchased. Even there is no mention of full address of the persons from whom the material is purchased.

The assessee was asked to produce the persons/URDs from whom he has purchased and to prove the real source of purchase vide letters dated 28.12.2010 and 28.02.2011 respectively. In response the assessee submitted his reply vide letter dated: 06.01 .2011.

In the submissions made by the assessee, it can be noticed that the assessee is trying to compare the iron ore with agricultural produce: and he has narrated the stories of poor farmers in the remote areas having been sold the iron ore after extracting it from their respective fields to earn their living. But the assessee neither produced the persons nor gave the list of name and full postal addresses of the farmers from whom the iron ore is purchased. It is a known fact that the iron ore is a mineral resource which is a wealth of the nation. If someone has to extract the iron ore, he needs to have proper license from the Department of mines and geology which will be granted after obtaining clearances from various departments like Environment and Forestry etc. In this line of business only the mine owners who are having the mining lease to extract a permitted quantity of iron ore from the Department of Mines and Geology are only supposed to extract the iron ore. On the permitted quantity of the iron ore, the transportation permits are also granted by the same department in accordance with the royalty paid by the mine owner. In the case of URD purchases made by the assessee, the entire quantity of iron ore is illegally extracted iron ore. Therefore the entire URD purchases can be disallowed under explanation to section 37(1) of IT. Act 1961.

Since it was illegally extracted iron ore on which no royalty is being paid and there were no valid permits for transportation of material. The assessee did not produce the persons from whom the material was purchased. The assessee neither produced the persons from whom the URD cash purchases are made nor submitted the postal address, PAN and other basic details. Even though the assessee has stated that the he has enclosed the list of people along with the addresses from whom the material is purchased, but th submission letter was not enclosed with the same. From the above mentioned facts it

is evident that the assessee is trying to misquote the exceptions to section 40(A)(3) which is mentioned in the form of rule ÔDD. It is also clear that the assessee has made cash payments for the purchase of illegally extracted iron ore. It is clear from the ledger extracts of the URD purchases which is maintained in the tally software which was seized in the course of search on 25/10/2010 at the business premises of M/s Chundururu Associates at Bellary that the assessee has entered names of many fictitious persons as against the URD purchases and the cash payments purportedly made to a single person per day is less than 20,000 as colourable device to dissuade the provisions of section 40 A(3). The fact that the assessee failed to produce these URDs also confirm that the payments are made in cash in excess of Rs 20,000 for the purchase of illegally extracted iron ore and the assessee through the reply dated 06/01 /2011, is trying to concoct the stories to circumvent the provisions of 40(A)(3) without proper evidences in support of it.

The examination of the ledger abstract of unregistered purchase reveals the following facts

- 1. These parties have no PAN nor has the assessee been able to furnish the complete and detail address as Irequired by my notice dated 08.03.2013.*
- 2. The assessee has not been able to produce the parties before the undersigned, the opportunity for which was given vide this office notice dated 08.03.2013.*
- 3. These parties also do not have TIN number and therefore, they do not have the statutory recognition by the commercial tax department, government of Karnataka.*
- 4. Most of the transactions are in cash.*
- 5. Wherever the transactions are in cheque, the assessee has failed to establish the identity of the seller.*
- 6. There are no purchase invoices in any of the transactions of URD Purchase - be it cash or cheque.*
- 7. Most of the expenses debited are less than Rs.20,000I- reflected towards multiple parties, thus showing that the assessee has intentionally resorted to circumventing provisions of Section 40A(3) of the IT Act.*

During the search proceedings the assessee was asked to produce the unregistered dealers to prove the real, source of purchase. In response to this' the assessee vide his letter dated 06.01.2011 has vaguely stated that the iron ore has been procured from poor farmers who tend to dispose of any iron ore found in their farms. However he did not produce any substantiating evidence and documents with regard to the unregistered purchases as called for vide letters dated 28.12.2010 and 28.02.2011.

During the scrutiny proceedings vide notice u/s. 142(1) dated 08.03.2013, the assessee was asked to furnish substantiate evidence of the persons from whom the unregistered purchase is claimed to have made, by producing the following documents before the undersigned:

- 1. Full and correct address of the parties along with their PANs from whom the unregistered iron ore is claimed to be purchased, for the purpose of verification by this office .*
- 2. Substantiating evidences like cheque numbers and, bank statements vide which the payments to the unregistered dealers is claimed to be made,-*
- 3. Copies of mining license held, if any, by the parties from whom the unregistered purchase of iron ore has been made.*
- 4. Cause the persons claimed as unregistered dealers with their details like name, address with PAN along with their identity card for the purpose of verification by this office.*
- 5. If Cash purchase then party wise breakup along with confirmation with that effect.*
- 6. Purchase invoices in proof of purchase.*

In response to the above, the assessee has submitted that his submissions vide his letter dated 25.03.2011 may be treated as his reply to the above query. As discussed above the assessee vide his letter dated 25.03.2011 has stated that unregistered purchase has been made from small farmers to dispose of the iron ore found in their farms and since they are one time sellers the payments are usually below Rs.20,000/- per day since these farmers are illiterate they do not have bank accounts. Further the assessee has stated certain case laws in support of his claim.

The above contention of the assessee are not acceptable because-

1. The-expenditure of unregistered purchase is claimed by the assessee and therefore the onus is on the assessee to furnish proof in support of the same.

2. The assessee has not furnished any substantiating evidences and documents as called for. Vide various notices of this office as discussed above.

3. The facts and circumstances of the case laws quoted by the assessee are different from the facts and circumstances of the assessee's case.

From the above, it is evident that the amount of Rs. 7,55,58,161/- debited as URD purchase is a bogus entry and is proved beyond reasonable doubt that it is only an adjustment entry to reduce the profit as per books by inflating expenditure and reducing tax liability thereon.

(U) In the light of the above the assessee was also asked to substantiate why section 40A (3) should not be invoked in the assessee's case with regard to the unregistered purchase vide this office notice dated 08.03.2013. The assessee has reiterated his response vide letter dated 25.03.2011 filed during the search proceedings stating that they are poor farmers who do not have bank accounts and they are all payment below to Rs.20,000/- . In the light of which disallowance is warranted, The above contention of the assessee is not acceptable because the assessee has in the primary instance failed to establish the genuineness of the' unregistered purchase itself. Therefore, it is not verifiable if the assessee has made payments less than Rs.20.000/- to persons claimed as unregistered dealers and the assessee has not been able to establish the same by producing documentary proof of identities of the persons claimed as unregistered dealers.

In the light of the above the unregistered purchase is also disallowable u/s. section 40A(3) of the IT Act, 1961

Thus, it can also be concluded that the assessee has not complied with section 40A(3), as he has failed to establish the genuineness of the unregistered dealers.

(III). Further, the assessee was also asked to substantiate why explanation to section 37(1) should not be invoked, by treating the unregistered purchase as illegal mining, given the fact that the assessee has failed to establish the genuineness of the unregistered dealers. The assessee has not responded to the above query raised vide the final show cause notice dated 08.03.2013

1. The assessee firm has not produced any party /person to whom the payment is made in respect of the above URD Purchase for the purpose of verification by this office as called for. Vide this office notice dated 08.03.2013.

2. For the purchases not to be treated as illegal expenditure, the onus is on the assessee to prove that the said purchase is within the legal permissibility, especially when it is proved beyond reasonable doubt that the said purchase is not genuine and it is a bogus entry as discussed in Para-I of this order.

It is also a known fact that iron ore found in the area of business operation of the firm has been found to be traded illegally excavated without proper license from the department of Mines and Geology and clearances from ministry of Environment and Forests. In the light of the above the onus lies squarely on the assessee to substantiate the genuineness and legality of the unregistered purchase by producing evidences with regard to the unregistered dealers by establishing their identity along with their licenses issued by the statutory authorities for mining to that effect.

It is therefore clear that the unregistered purchase is disallowable in accordance with explanation to section 37(1) of the ,I T Act, 1961.

In the light of the above the amount of Rs.7,55,58,161/- is hereby disallowed and added back to the total income of the assessee as unexplained expenditure.”

4. Aggrieved by the order of the AO, the assessee filed appeal before the CIT(A) and he also challenged the legal issue.

4.1 The CIT(A) called remand report from the AO and observed that the AO had given sufficient opportunity to the assessee to prove the genuineness of the transaction. Accordingly, the CIT(A) dismissed the legal issue challenging the assessment framed u/s 153C of the Act along with the merits of the case.

4.2 Aggrieved by the order of the CIT(A), the assessee is in appeal before Income-tax Appellate Tribunal.

5. The Id. AR reiterated the submission made before the lower authorities. He also reiterated statement of facts submitted along with the appeal memo containing para No.1 to 41 which is placed on the record. In addition to the above, he further submitted that the AO has wrongly completed the assessment u/s 153C. The assessment should have been made as per sec. 153A of the Act because the panchanama was drawn in the name of the assessee which is placed at page No.60 of paper book.

5.1 The Id.AR submitted that the search under section 132 of the Act was carried out in the assessee's premises on 25.10.2010 based on the warrant of authorisation dated 22.10.2010 issued in the name of the assessee. It is submitted that the warrant of authorisation was in the name of the assessee, the premises of the assessee was searched and thus the assessee becomes a person searched and thus the assessment proceedings ought to have been

done under section 153A. However, the AO has completed the assessment u/s 153C of the Act which is not in accordance with law and thus the order of assessment needs to be quashed in the interest of equity and justice.

5.2 The Id.AR further submitted that the AO in his remand report dated 12.02.2015 had stated as follows:

"The assessee's contention that warrant was issued in his name is false. I am attaching copy of warrant issued u/s 132 which was issued in the name of Shri. B. Nagendra (as per annexure 1). As the warrant was issued in the case of Shri. B. Nagendra only, assessment in the case of above mentioned assessee was rightly concluded u/s 153C as there was no case doing the same u/s 153A."

5.3 It is submitted that the statement of the AO that the warrant was not in the name of the assessee is factually incorrect and unfounded. It is relevant to state that the search was conducted on 25.10.2010 in the premises of the assessee and the Panchanama was prepared on the said date as per which the warrant was issued in the name of the assessee and the said warrant of authorisation was shown to the assessee by the authorised officer in presence of the Panchas. It is submitted that the assessee had furnished the copy of the Panchanama drawn on 25.10.2010 before the CIT(A) and the CIT(A) has confirmed the fact that the warrant was in the name of the assessee. He further submitted that the assessee had contended before the CIT(A) that the proceedings completed under section 153C of the Act are not in accordance with law and

prayed for quashing the said assessment order. However, the CIT(A) dismissed the appeal of the assessee by holding that no prejudice has caused to the assessee by completing the assessment u/s 153C of the Act instead of under section 153A of the Act.

5.4 The Id.AR stated that provisions of section 153C of the Act can be invoked only when the assessing officer is satisfied that -

- i) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
- ii) 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.

5.5 It is further submitted that as per the provisions of section 153A of the Act where the search has been initiated under section 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A the AO shall have to issue notice under section 153A and required to assess or reassess the total income under section 153A of the Act. In the case of the assessee, the search was conducted u/s 132 of the Act and thus the assessment ought to have been done under section 153A of the Act.

It is also submitted that the CIT(A) failed to appreciate that chapter XIV-B of the Act provides a special procedure and the AO is

bound to comply with the procedure as stipulated under chapter XIV-B of the Act. The ld.AR reiterated that in the case instant the AO has not complied with the same.

5.6 On merits of the case, the ld.AR submitted that the books of accounts produced during the assessment proceedings u/s 153C of the Act was accepted the AO and no any other discrepancies were found. The AO has chosen the figure only from the books of account. The entry was made in the computer on tally accounting system as a cash purchase which was below Rs.20,000/- in each case therefore sec.40A(3) cannot be applied. The AO has observed that the assessee had purchased iron ore from the unregistered dealers is not prohibited under the Karnataka Value Added Tax 2003 as well as in the Income Tax Act also. The VAT Tax Department has accepted the purchase. There is no intention of the assessee to inflate the purchase value by making cash purchase entry in the books of accounts. The AO has not given details of the cash purchase which is more than Rs.20,000/- He also submitted that the assessee has not violated any of the rules/provisions the entire transactions are legal. The assessee has not been given any notice under any law to state that there has been illegality in his transactions therefore, the provisions of sec.37(1) is not applicable to the instant case. Thus, the disallowance of purchase from unregistered dealers of Rs.7,55,58,161/- and Rs.1,07,27,670/- needs to be deleted.

6. The Id.DR reiterated the order of the lower authorities and further submitted that the warrant of authorization was issued in the name of Sri. B. Nagendra, which is evident from Warrant of authorization u/s 132 of the Act, in Form No.45, the search warrant was issued to search the premises of M/s. Chandru Associates Prop: C.A Rajasekhar, the assessee. It is further submitted that while preparing the Panchanama by the search team by oversight they had written in column No. a) of Panchanama, as Sri. C A Rajasekhar instead of Shri. B. Nagendra. (Copy of Panchanama is enclosed). However, the Form No.45 is clearly shows that Warrant is issued in the name of Shri. B. Nagendra and not in the name of Shri C.A Rajasekhar. Therefore, considering the contents mentioned in the warrant of Authorization dated 22.10.2010, assessment proceedings completed by AO invoking provisions of section 153C of the Act is in Order. It is also further submitted that The CIT(A) expressed his view based on the Panchanama drawn by search team on 25.10.2010. The Id.DR reiterated that the assessment made by AO u/s 153C is as per the provisions of the Act. He further submitted that the sufficient opportunity was given to the assessee during the course of assessment proceedings, which is clear from the assessment order. The approval obtained by the AO from the Addl.CIT, Central Range - 2 u/s 153D was well in time. He further submitted that the provisions of sec.40A(3) is applicable in the case of the assessee, he has made payment more than Rs.20,000/-

in a day to one assessee. The assessee also failed to establish the genuineness URD purchases. It is also not verifiable that the assessee had made payments less than Rs.20,000/- to persons claimed as unregistered dealers and the assessee has not been able to establish the same by producing the documentary proof of the identity of the persons claimed as unregistered dealers. The assessee also failed to produce those persons from whom URD purchases were made. He further submitted that during the course of assessment proceedings, the assessee has stated before the AO that he has enclosed the list of people along with the address from whom the material is purchase but the submission letter was not enclosed with the same. The loose sheets found during the course of search and seizure, which has been used by the AO for completing the assessments. The assessee has purchased iron ores from the registered dealers is illegal, it requires licence from the concerned authorities for mining activities. Accordingly, the assessee has violated the provision of sec. 37(1) of the Act.

7. We have heard the rival submissions and carefully considered the same along with the order of the authorities below as well as the documents referred to and relied on before us during the course of the hearing. We found substance on the submissions made by the Id.DR. We did not find any merit on the objections raised by the Id.AR of the assessee in regard to the legal issue that the assessment should be framed u/s 153A of the Act. On

observation of the documents submitted by the CIT(DR) containing page no.1-11, the Form No.45 placed at page No;8 which is a warrant of authorization u/s 132 of the Act is in the name of Shri B Nagendra (PAN ADKPN 9671 M) and the address is Khaja Complex, 32 Rahim Manzil, Infantry Road, Cantonment, Bellary, office of C.A Rajasekar issued by DICT (Inv.), Bangalore dated 22.10.2010 and we found that the Revenue had issued the warrant of authorization in the name of Shri B Nagedra but not on the name of the assessee as contested by the Id.AR. Further, the assessment order was passed on 30/3/2013 after receipt of approval u/s 153D of the Act, the date of order mentioned in the assessment order is a typographical mistake which is clear from the remand report dated 12/02/2015, which is placed at paper book page No.85. We also observe that the notices were also issued by the AO and the assessee has participated in the assessment proceedings after the 15th March 2013. Therefore, it cannot be said that the order has been passed after 15th March, 2013. As per ground No.8 the assessee has contested that the seized material has not been provided to the assessee even after making request to the AO but during the course of hearing before us, he could not produce any evidence in this regard so tht it can be justified that the principal of natural justice has not been given and he has also not provided application for seeking coppyp of seized documents from the AO. The case law relied on by the Id.AR is not applicable in the present facts of the case. Considering the totality of the facts and

circumstances of the case as observed above we reject the legal issue raised by the assessee as per the grounds noted supra.

7.1 Now coming to the merits of the case, in regard to the addition of URD cash purchases during the course of assessment proceedings u/s 153C of the Act, the AO observed from the books of accounts maintained in Tally package seized on 25/10/2010 at M/s Chundururu Associates it has been observed that there was URD cash purchase for assessment year 2008-09 and 2009-10 of Rs.7,55,58,161.80/- and Rs.1,07,27,670.76 respectively. The assessee had mentioned in the ledger account the names of innumerable number of people against whom the URD purchase was made by debiting the amount less than Rs.20,000/- in each entry. We observe from the assessment order at page No.6 1st paragraph the observations of the AO are as under:-

“Since it was illegally extracted iron ore on which no royalty is being paid and there were no valid permits for transaction of material. The assessee did not produce the persons from whom the material was purchased. The assessee neither produced the persons from whom the URD cash purchases are made nor assessee has stated that he has enclosed the list of people along with the addresses from whom the material is purchase, but the submission letter was not enclosed with the same.”

7.2 From the AO observation of the AO, it has been stated that the details of the URD vendors of Iron Ore was not submitted before the AO and even it was not submitted before us.

Considering the totality of facts and circumstances of the case for substantiating the URD purchase made by the assessee, we think it fit to send back the issue to the file of the AO for verifying from the list of the URD vendors as stated before the AO and AO shall decide the issue in accordance with law. The assessee shall be given reasonable opportunity of being heard and he is directed not to seek adjournment for early disposal of the case.

7.3 In the result, the appeal of the assessee is allowed for statistical purposes.

ITA No.1734/Bang/2018 A.Y 2009-10

8. We observe from the order of the lower authorities that the facts and findings of the lower authorities are similar as decided above, therefore, the decision in ITA No.1733/Bang/2018 shall apply mutatis mutandis in ITA No.1734/Bang/2018. Hence, this issue is also sent back to the AO as stated above.

8.1 In the result, the appeal is allowed for statistical purposes.

ITA No.1735/Bang/2018

9. The legal issue raised by the assessee is similar as decided in ITA No.1733/Bang/2018, therefore on the legal issue shall apply mutatis mutandis in ITA No.1735/Bang/2018.

9.1 In the result, the legal issue raised by the assessee are rejected.

10. In regard to addition of Rs.22.00 lakhs the observation of the CIT is as under:-

10.1. The A.O. has observed that a sum of Rs.22,00,000/- cash deposits were made in the bank account of the appellant and sought for an -explanation for the same. The appellant has contended that the explanation was sought for in respect of cash deposit made on 3103.2010 and the same was explained. It is seen that the appellant has not explained the source of cash deposits during the financial year 200940. He has stated that the cash deposit of Rs.22,00,000/- into the Axis bank account is explainable and the addition was made on wrong appreciator of facts. The appellant further contended that all cash deposits into the bank account are out of the amounts available with the appellant and from the withdrawals by the appellant on various dates and pleaded for deletion of the addition.

10.2. The appellant has also raised an alternate contention that a credit entry following a debit entry should be preferable to the debit entry and only the peak of the credits should be treated as unexplained. I have considered the statement of facts, grounds of appeal and written submission filed on 13.12.2017 by the appellant and also the assessment records of the A.O. After careful perusal of the same I do not find any merit in the contentions of the appellant to allow peak credit and thus I uphold the addition made by the A.O. Accordingly, the Ground Nos. 5, 6 & 7 for the assessment year 2010-11 are dismissed.”

10.1 The Id.AR reiterated the submissions made before the lower authorities and further submitted that only the peak credit can be disallowed instead of entire cash deposit of Rs.22.00 lakhs. The assessment was completed u/s 144 of the Act.

10.2 On the other hand, the Id.DR relied on the orders of the lower authorities and submitted that the assessee was given sufficient opportunity before the lower authorities to explain the observation of the AO but he did not avail and he also could not explain the source of deposit of Rs.22 lakhs even before the ITAT. He has no any evidence for the sources of cash. In view of the above, the order of the CIT(A) should be confirmed on this issue.

10.3 We have heard the rival submissions and carefully considered the same along with the order of the authorities below as well as the documents referred to and relied on before us during the course of the hearing. We observe that the assessee has deposited cash of Rs.22.00/- lakhs on 29/3/2010 in Axis bank account. Since we are remitting the issues for the assessment years 2008-09 and 2009-10 to the file of the AO, we remit this issue also to the file of AO for fresh examination of the source of cash deposits of Rs.22.00 Lakhs. The Assessing Officer is directed to decide the issue as per law. The assessee shall be given reasonable opportunity of being heard and he is directed not to seek

unnecessarily adjournment for early disposal of the case. A copy of this common order to be placed in the respective case files.

11. In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in court on 3rd day of September, 2022

Sd/-

(GEORGE GEORGE K)
Judicial Member

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated, 3rd September, 2022
/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.