

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA Nos.67 to 72/Bang/2017
Assessment Years :2006-07 to 2011-12

M/s. H. M. Constructions, Geneva House, No.14, 6 th Floor, Cunningham Road, Bengaluru – 560 052. PAN :AAAFH8510 L	Vs.	DCIT, Central Range – 1(4), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. S. Annamalai, Advocate
Revenue by	:	Shri. Dilip, Junior Standing Counsel.

Date of hearing	:	08.02.2023
Date of Pronouncement	:	14.02.2023

ORDER

Per Padmavathy S, Accountant Member

These are appeals by the assessee against 4 orders all dated 26.10.2016 of CIT(A)-11, Bangalore, in relation to Assessment Years 2006-07 to 2009-10 and two orders both dated 28.06.2016, passed by the CIT(A)-11, Bengaluru, in relation to Assessment Years 2010-11 and 2011-12

2. The Assessee is a partnership firm engaged in the business of construction of residential and commercial complex. There was a search and seizure operation conducted in the office premises of the assessee on 30.06.2011. Consequent to the search proceedings under section 153A of the Income Tax Act, 1961

(hereafter called 'the Act'), initiated against the assessee for Assessment Years 2006-07 to 2011-12.

3. There was another Search and Seizure carried out by the competent authority under Sec.132 of the Act, in the residence of Smt.Adlene Kagoo, who is stated to be a trusted employee of one Mr.P.Dayanand Pai, on 12.4.2011. Mr.P.Dayanand pai, is the key person of Dayanand Pai Group of Companies. In the course of search of Adlene Kagoo certain Compact Discs(CD), pen drives and other electronic records were found besides loose papers. They were all seized. Among the seized document, what is relevant and important for the present appeal are the print out taken from the Seized CD in the form of a ledger and this is referred to as "Dummy (Tally Training Environment) {DTEE}". The data contained in DTEE contained day to day receipts and payments transactions-cash, bank and journal entries allegedly maintained by Smt.Adlene Kagoo on instructions from Mr.P.Dayanand Pai.

4. Based on the documents found in the search conducted in the case of Smt. Adlene Kagoo, the AO proceeded to make assessment for all the Assessment Years. Based DTTE, the AO made some additions. We shall first deal with the additions made in AY 2006-07 to 2009-10 that are challenged in the appeals ITA No.67 to70/Bang/2017. According to the Revenue, the DTEE contained details of payment made by the assessee to Shri. P. Dayananda Pai outside the books of accounts in cash. The AO has set out in detail the aforesaid payments which total a sum of Rs.7,75,00,000/- in Assessment Year 2006-07. Similarly, in Assessment Year 2007-08, the AO relying the documents seized in the premises of Smt. Adlene Kagoo came to the conclusion that assessee had given a sum of Rs.13,08,00,000/- to Shri. P. Dayananda Pai as loan from undisclosed sources.

Besides the aforesaid loan, the AO also attributed a sum of Rs.55,29,601/- as interest paid outside the books of accounts and brought to tax a sum of Rs.18,73,29,601/-.

5. In so far as the additions of Rs.7,75,00,000/- made in Assessment Year 2006-07 is concerned, the additions have been made by the AO with the observations that DTTE contained payments made outside the books of accounts. The AO has referred to Dummy (Tally Training Environment) page 2 & 4 and concluded that the Assessee has made certain payments in page 4 to 7 of the order of assessment. According to the AO, those made by the assessee to M/s Dayanand Pai were outside the books of accounts in cash. The payments are made for the purposes mentioned against the same, which are not finding place in the regular books of accounts maintained by the assessee. The summary of the cash payments so made according to the AO were a total sum of Rs. 7,75,00,000/-. According to the AO, the contents of the DTTE match with the parent documents maintained by Mr. P. Dayanand Pai. According to the AO, entries in the tally package are nothing but the accounts maintained by Mr.P.Dayanand Pai in respect of the actual transactions between the Assessee and Mr.P.Dayanand Paid leading to an inescapable conclusion that the contents of these documents are correct. The Assessee by letter dated 11.3.2014 asked for copies of the vouchers of the documents should be provided to it. According to the AO, the existence or otherwise of any such vouchers is known only to the assessee and hence the AO was not in a position to provide the same. According to the AO, the documents found were pertaining to purely cash transactions between the Assessee and P.Dayanand Pai and the method of maintenance of these documentation is known

only to them . The AO therefore concluded that the amounts appearing in the above documents should be brought to tax as under:

AY	Total amounts paid towards transactions at Pages 39 &4	Total amounts paid towards transactions at Page 2 & 33	Total
2006-07	25000000	52500000	77500000

6. In so far as the additions made in Assessment Year 2007-08 is concerned, on the basis of similar observations and placing reliance on DTTE page 2 and 4, the AO made an addition of Rs.5,10,00,000/- as cash payments not reflected in the books of account on the same basis on which addition was made in AY 2006-07. Besides the above, the made an addition of Rs.18,73,29,601/- on the basis of documents seized in the course of search in the case of Smt.Adlene Kagoo. The relevant observations of the AO were as follows:

II. Interest charged:

Further, the assessee has raised certain amounts as interest from M/s Dayanand Pai. The documents show that the assessee had made computations at 14%, 18% and 24%. However an analysis of the relevant pages, namely, 10,11,12,13,14,15,16,45,46,47 of the documents show that he has charged interest at 18%. The working of the interest actually charged by the assessee is at Page 45, based on 18% interest.

Rest of the documents are .supportive documents for the same. Based on the workings, the assessee has written letters to M/s Dayanand Pai, which are appearing in pages 47,16,14,12. The details of interest charged by the assessee are as under:

AY	Interest Charged
2007-08	5529601
2008-09	10202005
2009-10	1552636

The assessee was asked to explain these transactions.

The assessee vide letter dated 113.2014 gave a reply. In the said reply, the assessee stated that they tried to collect interest on the funds borrowed, but did not materialize. The submissions of the assessee are not acceptable in respect of the "interest document" for the following reasons:

- 1. The documents show a detailed working of the interest charged by the assessee.*
- 2. The assessee is following mercantile system of accounting, and the moment it raised the interest charges, it should have offered the income to tax for the respective AYs.*
- 3. In any case, it is seen that the assessee is dealing hugely in cash, so is the case with the group of M/s Dayanand Pai. Thus in the facts and circumstances of the case, there is every possibility that the matter is settled by both the parties outside the books of accounts.*
- 4. These documents show specific transactions and the same is not out of air. A valid rebuttal based on the evidences is required to disregard the same. The documents are provided to the assessee by this office and mere denial does not make that transactions to vanish.*

Assessee's reply is not acceptable for the reasons cited above. Additions are made as unddr on this ground:

<i>AY</i>	<i>Addition on account of Interest Charged</i>
<i>2007-08</i>	<i>5529601</i>

Principle portion of the Interest

As seen from page No 45, ,heassessee has advanced amounts to M/s Dayanand Pai. The details of the loans given and the interest charges are available in the said page. The contents of the page in regard to the principle are reproduced as under, along-with working of peak credit:

<i>Date from</i>	<i>Date to</i>	<i>Amount of loan given</i>	<i>Cumulative loan</i>	<i>Peak</i>	
<i>01-12-2006</i>	<i>29-03-2007</i>	<i>50000000</i>	<i>50000000</i>		
<i>21-12-2006</i>	<i>29-03-2007</i>	<i>30000000</i>	<i>80000000</i>		
<i>10-01-2007</i>	<i>29-03-2007</i>	<i>20000000</i>	<i>100000000</i>		
<i>17-02-2007</i>	<i>29-03-2007</i>	<i>308000000</i>	<i>130800000</i>	<i>130800000</i>	<i>AY 2007-08</i>
<i>30-03-2007</i>	<i>24-04-2007</i>	<i>128300000</i>	<i>128300000</i>		

Subsequent to AY 2007-08, the peak credit has not exceeded Rs 13,08,00,000/-. Thus the discussion is limited to the aforementioned credits only.

All the documents found in the premises of Ms.Adlene Kagoo consistently show the figures as above for the purpose of computation of interest. The Assessee was required to explain the entries. But the reply filed by the Assessee is vague.

*As staged, all the pages showing the computations of interest namely, 45, 44, 43, show the advances at the same figures. Pages 47, 32, 15, 13, 10, being computation sheets for interest confirm to the entries in pages 45,44, 43. Thus, the chain of documentation establishes that the entries in these sheets that are in the hand writing of Mrs.,Adlene Kagoo are true and are nothing but the accounting maintained by M/S.Dayanand Paid in respect of actual transactions that the two business partners have entered into. In other words, the assessee had advanced these amounts to M/S.Dayanand Paid, which is evidenced by the documents. This brings to the inescapable conclusion that the contents of these documents are correct.
Addition AY 2007-08 Rs.13,08,00,000/-*

Thus the total additions are as under:-

<i>AY</i>	<i>DTTE</i>	<i>DTTE</i>	<i>Interest income</i>	<i>Principal</i>	<i>Total</i>
<i>2007-08</i>	<i>51000000</i>		<i>55,29,601</i>	<i>130800000</i>	<i>18,73,29,601</i>

7. Similar addition of interest were made for Assessment Years 2008-09 and 2009-10 of Rs. 1,02,02,005 and Rs.15,52,636, respectively.

8. On appeal by the assessee against the aforesaid additions, the CIT(A) gave partial relief in some of the Assessment Years. The additions made by the AO and the relief given by the CIT(A) is summarized as follows:

Sl. No.	AY	Particulars	Additions as per AO	Additions as per CIT(A)
1	2006-07	Dummy tally	7,75,00,000	7,75,00,000
		Dummy tally	5,10,00,000	5,10,00,000
2	2007-08	loan given	13,08,00,000	5,58,00,000
		Loan Interest	55,29,601	55,29,601
3	2008-09	Loan Interest	1,02,02,005	1,02,02,005
4	2009-10	Loan Interest	15,52,636	15,52,636

The CIT(A) deleted a sum of Rs.7,50,00,000/- for the assessment year 2007-08 being amount advanced by cheque and also confirmed by the recipient. The department is not in appeal against the relief given by the CIT (A).

9. Aggrieved by the orders of the CIT(A), the assessee is in appeal for AY 2006-07 to 2009-10. Though the assessee has filed application for raising additional grounds, at the time of hearing, the preliminary grounds with regard to whether the impugned assessment can be done under section 153A of the Act on the basis of the material found in the case of some other person was argued before us. The said issue was raised by the assessee in ground No.5(i) to (iii) in all these appeals and the same reads as follows:

5. Grounds on whether Section 153A or 153C is applicable:

i. The learned CIT (A) was not justified in law in confirming the additions based on the material seized from the search conducted in the case of Dr. P. Dayananda Pai in the premises of Mrs. Adelene Kagoo in the assessment order passed under Section 153A r.w.s 143(3) of the Act on the facts and circumstances of the case.

- ii. The learned CIT (A) failed to appreciate that the notice under Sects 153C of the Act ought to have been issued for making the assessment*
- a. respect of the material seized from the search conducted in the case of Dr. P. Dayananda Pai in the premises of Mrs. Adelene Kagoo and the order passed under Section 153A of the Act by considering the materials seized from the premises of Mrs. Adelene Kagoo is not valid in the law on the facts and circumstances of the case.*
- iii. The learned CIT (A) failed to appreciate that the assessment order passed under Section 153A r.w.s 143(3) of the Act is without Jurisdiction and the lower authority without prejudice ought to have issued notice under Section 153C of the Act after complying with the mandatory conditions on the facts and circumstances of the case.*
- iv. The CIT (A) failed to appreciate that there being no incriminating materials found/ seized in the course of search in the case of the Appellant or/ and there being no external evidence found, the proceedings initiated and the subsequent order u/s. 153A is opposed to law and accordingly liable to be cancelled.*

10. In so far as ground No.5(i) to (iii) raised by the assessee is concerned, we have already seen that the present proceedings were initiated under section 153A of the Act on the basis of search conducted in H. M. Constructions and group of cases on 30.06.2011. It is also clear from the discussion in the Order of Assessment based on which the impugned additions have been made that the basis of the addition is the document found in the course of search of in the case of Smt. Adlene Kagoo on 12.04.2011. Admittedly, none of the additions are based on any material found in the course of search conducted in the case of the assessee. In such circumstances, the question is whether the additions made on the basis of materials found in the course of search conducted in the case of Smt. Adlene Kagoo, without invoking the provisions of section 153C of the Act in the

assessments concluded under section 153A of the Act pursuant the search conducted in the case of the assessee is sustainable.

11. In this regard, the learned AR drew the attention of the Bench to the provisions of Section 153C of the Act, which enable the AO of the person who is not searched under section 132 of the Act to take cognizance of materials seized in the course in the case of the person searched. It was submitted that section 153C of the Act requires recording of satisfaction that materials found in the course of search belongs to or pertains to some other person other than the person searched. Thereafter, these materials must be transmitted to the AO having jurisdiction over such other person, who has not been searched. The AO of the other person must thereupon record satisfaction that these materials have a bearing on the assessment of income of such other person. It is only thereafter that proceedings can be taken up for framing an assessment under section 153A against such other person. According to the learned AR, the AO while passing the order of assessments under section 153A of the Act had taken into account / considered materials found in the course of subsequent search in the case of Smt.Adlene Kagoo, without adopting and following the procedure laid down under section 153C of the Act. It was argued that the additions made by the AO in the order of assessment under section 153A of the Act, based on documents and materials found in the course of search in the case of Smt.Adlene Kagoo is contrary to law and hence these additions even to the extent sustained by the learned CIT(A) are legally untenable and are required to be deleted. In support of the aforesaid proposition of law, the assessee, inter alia, placed reliance on the decision of the Kolkata Bench of ITAT in the case of Krishna Kumar Singhania (168 ITD 217) (Kol. – Trib.). Reliance was also placed on the judgment of the

Hon'ble Bombay High Court in the case of HDFC Bank Ltd., (174 DTR 92) (Bom).

12. he learned DR supported the impugned orders of assessment for Assessment Years 2006-07 to 2009-10 and submitted that the AO was fully justified in taking cognizance of the material found / seized in the course of search action in the case of Smt.Adlene Kagoo. It was submitted that the provisions of section 153C of the Act need not be invoked when assessment proceedings under section 153A of the Act are pending in the case of the assessee. It was also contended that there was no bar for making assessment by taking cognizance of material found / seized in the case of Smt.Adlene Kagoo.

13. We have carefully considered the rival submissions. The facts are not in dispute that the impugned additions were made in the case of the Assessee on hand on the basis of material found and seized from the premises of Smt.Adlene Kagoo. 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 those materials in the course of pending assessment proceedings under section 153A of the Act for Assessment Years 2006-07 to 2009-10 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 Smt.Adlene Kagoo) for making the additions in the hands of the assessee.

14. 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

15. 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 153C 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.”

16. 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.

17. In the present appeals for AY 2006-07 to 2009-10, there was a search under section 132 of the Act in the case of the assessee on 30.6.2011. No incriminating materials were found during the said search. It is not in dispute that none of the additions made in the aforesaid assessment years is based on material seized and found in the course of search conducted in the case of the assessee on 30.6.2011. After the search, notices under section 153A of the Act were issued on 30.11.2011 and thereafter assessments were framed by the AO. The material based on which the impugned additions were made by the AO were material found in the course

of search of Smt.Adlene Kagoo on 12.4.2011. 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 receives the seized material from the AO of Smt.Adlene Kagoo 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 and clear referred to the documents found in the course of search of Smt.Adlene Kagoo. 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 Smt.Adlene Kagoo and making an assessment with reference to those materials in the case on hand. 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 do 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.”

18. 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. The ITAT, Bengaluru Bench, in the case of Anil H. Lad ITA Nos.1852 and 1853/Bang/2013, order dated 28.06.2019, on identical facts, the Tribunal held that the additions and proceedings under section 153A of the Act on the basis of the material found in the case of some other assessee cannot be sustained.

19. We are of the 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 Smt.Adlene Kagoo, while framing the orders of assessment under section 153A of the Act in the case the assessee. 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 Smt.Adlene Kagoo. 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 additions made by the AO in the impugned orders of assessment for Assessment Years 2006-07 to 2009-10 cannot be sustained as

they are contrary to the provisions of the Act and are therefore to be deleted. Hence, those additions to the extent sustained by the CIT(A) are hereby deleted. Consequently, Ground No.5 (i) to (iii) are allowed. In view of the aforesaid conclusions, we refrain from adjudication the other grounds raised by the Assessee in the grounds of appeal as well as by way of additional grounds of appeal, as they become academic. These grounds are left open without adjudication.

20. In so far as the appeal in ITA Nos.71 and 72/Bang/2017 for AY 2010-11 & 2011-12 are concerned, grounds raised in these appeals are only with regard to the validity of the search conducted in the case of the assessee under section 132 of the Act. Though identical ground No.5 as raised in the Assessment Years 2006-07 to 2009-10 have been raised by the assessee, there is no addition that remains that is challenged in these appeals. Apart from the above, the income returned by the assessee in these 2 years have been accepted by the AO in the Order of Assessment framed under section 153A of the Act. Hence, these appeals are dismissed as infructuous and calling for no adjudication.

21. In the result, appeals being ITA Nos.67 to 70/Bang/2017 are partly allowed while appeals in ITA Nos.71 and 72/Bang/2017 are dismissed as infructuous.

Pronounced in the open court on this the 14TH day of Feb. 2023.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(PADMAVATHY S)
Accountant Member

Bangalore,
Dated: 14.02.2023.
/NS/*

Copy to:

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.