

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुस्वारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.172 to 180/Viz/2023

(निर्धारणवर्ष/ Assessment Year : 2012-13 to 2020-21)

M/s. Polisetty Somasundaram,
D.No. 8-24-31, Main Road,
Mangalagiri Road,
Guntur - 522001.
PAN: AACFP 7251 J

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Appellant by

प्रत्यार्थीकीओरसे/ Respondent by

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of

Pronouncement

Vs. The Deputy Commissioner of
Income Tax,
Central Circle-1,
Guntur.

(प्रत्यार्थी/ Respondent)

Sri M.V. Prasad, AR

Sri MN Murthy Naik, CIT-DR

: 10/08/2023

: 18/08/2023

ORDER

PER BENCH :

All the captioned appeals are filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Visakhapatnam in DIN & Order No. ITBA/APLS/250/2023-24/1053106125(1), dated 23/05/2023 for the AY 2012-13; ITBA/APL/S/250/2023-24/1053194405(1), dated 26/05/2023

for the AY 2013-14; ITBA/APL/S/250/2023-24/1053105114(1), dated 23/5/2023 for the AY 2014-15; ITBA/APL/S/250/2023-24/1053145480(1), dated 24/5/2023 for the AY 2015-16; ITBA/APL/S/250/2023-24/1053146135(1), dated 24/05/2023 for the AY 2016-17; ITBA/APL/S/250/2023-24/1053146734(1), dated 24/5/2023 for the AY 2017-18; ITBA/APL/S/250/2023-24/1053147015(1), dated 24/05/2023 for the AY 2018-19; ITBA/APL/S/250/2023-24/1053147822(1), dated 24/5/2023 for the AY 2019-20 arising out of the orders passed U/s. 153A r.w.s 143(3) and ITBA/APL/S/250/2023-24/1053278674(1), dated 29/05/2023 for the AY 2020-21 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act]. Since the core issues as well as most of the grounds raised by the assessee in all these appeals are identical, therefore for the sake of convenience, all these appeals are clubbed, heard together and disposed off in this consolidated order. Appeal wise adjudication is given in the following paragraphs of this order.

2. Firstly, we shall take up the ITA No. **172/Viz/2023 (AY 2012-13)** as lead appeal as the outcome of this appeal will have the same bearing on the other appeals of the assessee as the core

issues involved in the other appeals are identical to that of the issues raised by the assessee in its appeal for the AY 2012-13.

ITA No. 172/Viz/2023
(AY: 2012-13)

3. This appeal is filed by the assessee against the order of the Ld. CIT(A)-3, Visakhapatnam dated 23/05/2023 arising out of the order passed U/s.153A r.w.s 143(3) of the Act.

4. Briefly stated the facts of the case are that the assessee (M/s. Polisetty Somasundaram), a flagship firm of Polisetty Group, has filed its return of income on 29/9/2012 for the AY 2012-13 admitting a total income of Rs. 31,93,49,317/-. A search operation was conducted U/s. 132 of the Act on 28/01/2020 in the group cases of Polisetty Somasundaram covering the business premises situated at D.No. 8-24-31, Mangalagiri Road, Guntur. The case was centralized to ACIT/DCIT vide order U/s. 127 of the Act by the Ld. PCIT, Vijayawada in F.No. 127/Pr. CIT/VJA/2020-21, dated 16/02/2021. Subsequently, notice U/s. 153A of the Act was issued to the assessee on 17/1/2022 and notice U/s. 142(1) was issued on 22/01/2022. In response to the notice U/s. 153A, the assessee filed the return of income on 30/01/2022 admitting the

same income declared and filed U/s. 139 of the Act. Subsequently, notice U/s. 143(2) of the Act was issued on 17/03/2022. The Ld. AO observed that the assessee generated unaccounted cash income by adopting the various *modus operandi*. The Ld. AO also found that certain incriminating material was found and seized during the search proceedings with respect to unaccounted income generated by the assessee group. In response to the detailed questionnaire issued to the assessee during the assessment proceedings on 22/01/2022, the assessee filed its reply dated 5/3/2022. Considering the reply of the assessee, the Ld. AO observed that the assessee has admitted Rs. 3,99,35,221/- as unaccounted income generated in the FY 2011-12. Therefore the Ld. AO proceeded to complete the assessment by making addition of Rs. 3,99,35,221/-. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-3, Visakhapatnam. The assessee contested before the Ld. CIT(A) regarding the validity of the issue of notice U/s. 153A which is beyond the period of six years relevant to the previous year in which the search was conducted. The Ld. AR of the assessee pleaded before the Ld. CIT(A) that the assessment order may be treated as null and void. Further, it was also contested before the Ld. CIT(A) that the order passed by the Ld.AO is

beyond the prescribed time limit specified U/s. 153B of the Act. Further, it was also contested by the assessee that the opening balance considered as addition by the Ld. AO is not valid and bad in law. The assessee's Representative made various submissions before the Ld. CIT(A). The Ld. CIT (A) considering the submissions made by the assessee, confirmed the addition made by the Ld. AO. Further, with respect to the time limit prescribed U/s. 153B of the Act, the assessee made various submissions before the Ld. CIT(A). The Ld. Assessee's Representative in his written submissions before the Ld. CIT(A) stated that the search was commenced on 28/1/2020 and closed on 31/1/2020 as temporarily concluded. The Ld. AR also submitted that the Prohibitory Order (PO) was placed on certain loose sheets placed in the wooden almirah by passing the order U/s. 132(3) of the Act. Subsequently, the Prohibitory Order was lifted on 6/8/2020 by drawing another Panchnama on 6/8/2020 which revealed that the proceedings were closed without seizure of any documents, including the loose sheets placed in wooden almirah. The Ld. AR therefore pleaded before the Ld. CIT(A) that since no seizure was made on 6/8/2020, it is not a valid Panchnama and accordingly the limitation period for passing of the assessment order commences from the date of the original Panchnama dated

31/1/2020. In support of his argument, the Ld. AR relied on various case laws as discussed in the order of the Ld. CIT(A). The Ld. CIT(A) after considering the various submissions of the assessee and the case laws relied on by the assessee, taking support in the decision of the Hon'ble Supreme Court in the case of Anil Minda vs. CIT [2023] 148 Taxmann.com 407 dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. On the facts and circumstances of the case, the Ld. CIT (A) erred both in law and on facts.*
- 2. On the facts and circumstances of the case, the Ld. CIT(A) erred in not considering that the issue of notice U/s. 153A is invalid in law as it is beyond six assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted and the mandatory conditions prescribed in the 4th proviso to section 153A(1) for such assessment years are not satisfied in the appellant's case. The Ld. CIT (A) ought to have held that the assessment made without a valid jurisdiction to issue notice U/s. 153A is void.*
- 3. On the facts and circumstances of the case, the Ld. CIT(A) erred in stating that the condition prescribed in the 4th proviso to section 153A(1) is satisfied since the deposits in the bank account fall under the definition of Asset as per the Explanation 2 of section 153A(1) though there were no such deposits in bank account as per the satisfaction note of the Assessing Officer. The Ld. CIT(A) ought to have held that the cash balance treated by the Assessing Officer as an Asset in the satisfaction note does not come under the ambit of the definition of Asset as per Explanation 2 of section 153A(1) and consequently ought to have held that the issue of notice U/s. 153A is invalid and the Assessment is bad in law.*

4. *On the facts and in the circumstances of the case the Ld. CIT(A) erred in not considering that the Assessment is valid ab initio as the order passed is beyond the time limit prescribed U/s. 153B. The Ld. CIT(A) ought to have seen that the Panchnama drawn on 6/8/2020 at the time of revoking the prohibitory order U/s. 132(3) dated 31/1/2020 cannot be treated as the last Panchnama for the purpose of reckoning the period of limitation U/s. 153B for the following reasons:*
- (a) *The prohibitory order passed U/s. 132(3) on 31/1/2020 without recording proper reasons / satisfaction with regard to the existence of the circumstances prescribed in section is invalid in law.*
 - (b) *The prohibitory order U/s. 132(3) was lifted beyond 60 days which is against the provisions of section 132(8A) and consequently, the Panchnama drawn on 6/8/2020 for lifting the same has no recognition in law.*
 - (c) *The prohibitory order U/s. 132(3) was not lifted within 30 days as mandated in the beneficial CBDT Circular which is binding on the field authorities as per the decision of the Hon'ble Supreme Court and consequently, the Panchnama drawn on 6/8/2020 for lifting the said order has no recognition in law.*
 - (d) *There was no seizure in the Panchnama dated 6/8/2020 and such a Panchnama drawn without any seizure does not represent a valid Panchnama for the purpose of computing the period of limitation.*
 - (e) *The prohibitory order passed U/s. 132(3) on 31/1/2020 is invalid in law as the documents placed under restraint by the said prohibitory order have not culminated into any undisclosed income in the assessment order.*
5. *On the facts and circumstances of the case the Ld. CIT(A) is not justified in considering the certificate obtained U/s. 65B in respect of the seized pendrive (vide Annexure A/PSS/CORP/18) as a legally valid certificate though it does not bring out the satisfaction of all the conditions laid down in section 65B(2) and 65B(4) of the Indian Evidence Act, which is a mandatory requirement as held by the Hon'ble Apex Court. The Ld. CIT(A) ought to have held that the said digital evidence does not qualify as admissible evidence for the purpose of Assessment in view of the legal infirmity in the certificate obtained U/s. 65B and the additions made based on the said evidence are not sustainable in law.*

6. *Any other legal ground and factual ground that may be urged at the time of hearing of the appeal."*

5. **Grounds No. 1 and 6** are general in nature and therefore they need no adjudication. **Ground No.2** relates to the validity of issuance of notice U/s. 153A because as per the assessee, in this case, the notice U/s. 153A was issued beyond six assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted and the fourth proviso to section 153A(1) for such assessment years is not satisfied in the assessee's case. **Ground No.3** relates to the application of the conditions laid down in the fourth proviso to section 153A(1) of the Act to the case of the assessee by the Ld. CIT(A).

6. **In Ground No. 4** the assessee raised a legal issue regarding the period of limitation U/s. 153B of the Act. **In Ground No.5** the assessee raised another legal issue relating to the legal infirmity in the Certificate obtained U/s. 65B of the Indian Evidence Act, 1872. The legal issues raised by the assessee vide Ground No.4 & 5 of this appeal for the AY 2012-13 are identical to the legal issues raised by the assessee in its other appeals for the AYs 2013-14 to 2020-21. We therefore firstly proceed to

adjudicate the legal grounds raised by the assessee vide Grounds No. 4 & 5 of the Grounds of Appeal.

Grounds No. 4 & 5 of AY 2012-13

7. Before us, at the outset, with respect to **Ground No 4(a)**, the Ld. Authorized Representative [AR] stated that the search was commenced on 28/1/2020 and concluded on 31/1/2020 by placing a Prohibitory Order on Wooden Almirah wherein certain loose sheets were placed by the search party. The Ld. AR referred to page 10 of the Paper Book-4, wherein an order U/s. 132(3) was placed and stated that only certain loose sheets and documents are kept in the Wooden Almirah on which Prohibitory Order is placed, located at the business premises of the assessee. The Ld. AR further submitted that as per section 132(3) of the Act, wherein it is not practicable to seize the materials can only be placed under Prohibitory Order. The Ld. AR further submitted that the search team identified only certain loose sheets which are not impracticable to seize on the date of search. Further, the Ld. AR also while referring to the Panchnama dated 6/8/2020 placed in Page-20 of Paper Book-4, referred to Sl.No.5 of the Panchnama wherein it was stated that no document was found

and seized. The Ld. AR therefore vehemently argued that since there are no seizures on the date of Panchnama, ie., on 6/8/2020, it cannot be considered as a valid Panchnama for the purpose of limitation prescribed U/s. 153B of the Act. The Ld. AR therefore pleaded that the original Panchnama should only be considered for the purpose of limitation and accordingly the assessment order should have been passed on or before 30/09/2021, being the extended period, whereas it was passed on 31/3/2022. The Ld. AR further submitted that since there are no seizures in the second Panchnama, it is drawn only for extending the limitation period for passing the assessment order. Further, the Ld. AR vehemently argued that since the loose sheets are not impracticable to impound, Prohibitory Order placed by the search party is not a valid Prohibitory Order. In this connection, the Ld. AR heavily relied on the following case laws:

- (i) Pr. CIT vs. PPC Business and Products Pvt Ltd [2017] 398 ITR 71 (Delhi High Court).
- (ii) CIT vs. D.D. Axles (P) Ltd [2010] 195 Taxman 277 (Delhi).
- (iii) CIT, Delhi-II vs. Deepak Aggarwal {2008] 175 Taxman 1 (Delhi).
- (iv) CIT vs. S.K. Katyal {2009] 308 ITR 168 (Delhi)
- (v) CIT vs. Sandhya P. Naik [2002] 124 Taxman 384 (Bombay)

- (vi) CIT vs. T.S. Chandrasekhar [2009] 221 CTR 385 (Karnataka HC)
- (vii) Mohd Yasin vs. CIT, Jaipur [2017] 84 Taxmann.com 292 (Rajasthan)
- (viii) CIT vs. White & White Mineral (P.) Ltd [2011] 12 Taxmann.com 120 (Rajasthan).
- (ix) CIT-1, Jodhpur vs. Om Prakash Mandora [2013] 37 Taxmann.com 426 (Rajasthan).
- (x) K.V. Padmanabhan vs. ACIT, Central Circle, Trichur [2019] 107 taxmann.com 24 (Kerala HC)
- (xi) V.L.S. Finance Ltd vs. CIT, Central-II, [2007] 159 taxman 102 (Delhi)
- (xii) CIT vs. Anil Minda [2010] 235 CTR 1 (Delhi)
- (xiii) Anil Minda vs. CIT [2023] 148 Taxmann.com 407, Supreme Court of India
- (xiv) TOLA Notification No. 10/2021, dated 27/02/2021.

8. Countering the arguments of the Ld. AR with reference to **Ground No.4(a)**, the Ld. CIT-DR submitted that the ratio laid down in the case laws relied upon by the Ld. AR have been rendered in the context of old provisions of Block Assessments. The Ld. AR also further submitted that the loose sheets placed vide Prohibitory Order was only to collate it with other documents seized from the other business premises of the assessee and therefore it is a valid Prohibitory Order. The Ld. DR heavily relied on the orders passed by the Ld. CIT (A) and the Ld. AO on this ground.

9. With respect to **Ground No.4(b)**, the Ld. AR argued that as per the Central Board of Direct Taxes [CBDT] Circular dated

03/07/2002 the Prohibitory Order should be released within a period of one month whereas it was released on 6/8/2020 which is beyond the period of one month. The Ld. AR in support of his argument heavily relied on the following case laws:

- (i) CIT vs. Punalur Paper Mills Ltd [1987] 34 Taxman 268 (Kerala HC)
- (ii) Catholic Syrian Bank Ltd vs. Commissioner of Income Tax [2012] 343 ITR 270 (SC)
- (iii) Commissioner of Income Tax vs. Smt. Nayana P. Dedhia [2004] 270 ITR 572 (AP).

10. Countering the arguments of the Ld. AR, the Ld. DR submitted that the Board Circular referred to by the Ld. AR is not a Circular but it is only a Board Instruction issued for administrative convenience. The Ld. DR further submitted that the case laws relied on by the Ld. AR refers only about the Circular and not about the Instruction.

11. With respect to **Ground No.4(c)** of the Grounds of Appeal, wherein it was contended by Ld AR that the Prohibitory Order U/s. 132(3) was not lifted within 30 days as mandated in the CBDT Circular and therefore as held by Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. White & White Mineral (P.) Ltd, the Panchnama drawn on 6/8/2020 for lifting

the said PO has no recognition in the eyes of law. The Ld. AR relied on the following case laws:

- (i) The judgment of the Hon'ble Delhi High Court in the case of Pr. CIT, Central-3 vs. PPC Business and Products Pvt Ltd., in ITA No. 290/2016, dated 4th July, 2017 [This judgment involves 13 cases including that of the Pr. CIT vs. PPC Business and Products];
- (ii) Commissioner of Income Tax vs. D.D. Axles (P.) Ltd reported in [2010] 195 Taxman 277 (Delhi);
- (iii) Commissioner of Income Tax, Delhi-II vs. Deepak Aggarwal [2008] 175 taxman 1 (Delhi);
- (iv) Commissioner of Income Tax vs. Sandhya P. Naik reported in [2002] 124 Taxman 384 (Bombay)
- (v) Commissioner of Income Tax vs. White & White Mineral (P.) Ltd reported in [2011] 12 taxmann.com 120 (Rajasthan High Court)

12. The Ld. CIT-DR once again countered the case laws relied on by the Ld. AR by stating that the ratio laid down in these cases relate to Block Assessments and not for 153A assessments.

13. Further, with respect to **Ground No.4(d)** it was contended by the Ld. AR that when there was no seizure in the Panchnama dated 6/8/2020, such Panchnama without any seizure cannot be considered for the purpose of computing the period of limitation. The Ld AR placed reliance on the following case laws:

- (i) Pr. CIT vs. PPC Business and Products Pvt Ltd [2017] 398 ITR 71 (Del.)

- (ii) Judgment of the Hon'ble Delhi High Court in the case of CIT vs. D.D. Axles (P.) Ltd reported in [2010] 195 Taxman 277 (Delhi)
- (iii) Judgment of the Hon'ble Delhi High Court in the case of CIT, Delhi-II vs. Deepak Aggarwal reported in [2008] 175 Taxman 1 (Delhi)
- (iv) Hon'ble Bombay High Court in the case of Commissioner of Income Tax vs. Sandhya P. Naik reported in [2002] 124 Taxman 384 (Bombay)
- (v) Hon'ble Rajasthan High Court in the case of Commissioner of Income Tax vs. White & White Mineral (P.) Ltd reported in [2011] 12 taxmann.com 120 (Rajasthan)

14. Drawing our attention to the **Ground No.4(e)** the Ld. AR argued that as per the provisions of the Act, the documents placed under restraint by the Prohibitory Order do not culminate into any undisclosed income in the assessment order and hence the Prohibitory Order is invalid.

15. We have heard both the sides, perused the written submissions of the assessee as well as the orders of the Ld. Revenue Authorities. Admittedly, the search was temporarily closed on 31/1/2020 by placing certain loose sheets on the Wooden Almirah at D.No. 8-24-31, Mangalagiri Road, Guntur, the premises of the assessee. The order U/s. 132(3) was passed stating that certain loose sheets were placed in the Wooden Almirah. A copy of the order U/s. 132(3) of the Act is placed

before us in Page-10 of Paper Book-4. Subsequently, the Prohibitory Order was released on 6/8/2020 by drawing another Panchnama. The copy of the Panchnama dated 6/8/2020 is placed in the Paper Book, Page-20. On perusal of the Panchnama, we find that no books of account and documents were seized on 6/8/2020. It is also stated that the search commenced on 6/8/2020 on 11.00 AM and closed on 6/8/2020 at 02.00 PM. Further, we also find from the Panchnama where the parties offered for their personal search before the commencement of the search, was declined by the search party. Therefore, effectively no search was conducted on 6/8/2020 as per the Panchnama, dated 6/8/2020. In the absence of any seizure on 6/8/2020 by the search party it can only be considered for the purpose of removal of the restraint order and not as continuation of the search proceedings under the same authorization. For the sake of brevity we extract below section 132(3) of the Act:

“Sec. 132(3): The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.”

Second Proviso to sub-section (1) to section 132: Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii):”

16. From the plain reading of the above section it is very clear that the Authorized Officer may where it is not practicable to seize any article or thing, etc., can place a Prohibitory Order. Various judicial pronouncements as relied on by the Ld. AR have also laid down that where it is impracticable to seize any books of account or document etc., a restraint order cannot be placed as per section 132(3) of the Act.

17. In the case of **CIT vs. S.K. Katyal reported in [2009] 308 ITR 168 (Del.)**, the Hon’ble Delhi High Court in Para 16 of their order held as follows:

*“16. This discussion leads us to the question 'was the Panchnama of 3-1-2001 of the type mentioned in the said Explanation 2(a)'. **From the facts narrated above, it is clear that the Panchnama of 3-1-2001 itself reveals that nothing was seized on that date. Nor was anything 'found' on that date. In fact, no search was conducted.** The jewellery that was put in the cash box of the almirah had already been searched, found, inventorised and valued by the*

*DVO on 17-11-2000 itself. **Nothing remained to be searched thereafter. And, in fact, no further search was conducted after 17-11-2000. Obviously, nothing else could be found.** All that was done on 3-1-2001, in the presence of the witnesses (Panchs), was that the seals were removed from the cash box and the almirah and the keys were handed back to the assessee. Essentially, the revocation of the restraint order was given effect to. This is exactly what the Tribunal found as a fact and meant when it concluded that **the Panchnama dated 3-1-2001 was merely a release order and could not extend the period of limitation.**"*

18. Further, the Hon'ble Kerala High Court in the case of Dr. C. Balarishnan Nair vs. Commissioner of Income Tax reported in [1999] 103 Taxmann 242 (Ker.) held as follows:

*"As per Panchnama, seven items, books of account and other valuable articles were seized. These articles which were available on 27-10-1995 were put in an almirah and sealed since scrutiny could not be completed during the search and investigation and a prohibitory order under section 132 was served on the petitioners. Section 132(3) empowers the authorised officer to pass an order on the owner that he shall not remove, part with or otherwise deal with the articles and books of account, etc., except with the previous permission of the officer. But this can be served only if it is not practicable to seize any such books of account, other documents, etc. **It was not stated as to why the books of account, documents, etc., were not practicable to be seized on 27-10-1995 and in the absence of any satisfactory explanation as to why the books of account, pass book and the documents were not practicable to be seized on 27-10-1995 itself, it was a case of contravention of section 132(3).**"*

19. Further, the Hon'ble High Court of Orissa in the case of **Maa Vaishnavi Sponge Ltd vs. DGIT (Investigation)** reported in [2012] 21 taxmann.com 512 (Orissa) held as follows:

*"13. For the reasons stated above, we are unable to accept the above contention of the learned senior standing counsel justifying the action of the authorised officer in issuing prohibitory order under s. 132(3) of the Act. Moreover, even though in the meantime more than one month passed from the date of issuance of prohibitory order **under s. 132(3) of the Act, no material has been produced before us to show that any of the deposits/entries made in various bank accounts in question represent wholly or partly the undisclosed income of the assessee.** This Court in *Visa Comtrade Ltd. (supra)*, referring to the judgment of Punjab & Haryana High Court in *Om Prakash Jindal v. Union of India* [1976] 104 ITR 389 and the decision of Allahabad High Court in the case of *Sriram Jaiswal v. Union of India* [1989] 176 ITR 261/42 Taxman 83 held that prohibitory order under s. 132(3) of the Act issued in respect of bank accounts without forming any belief or without any material on record to conclude that the amount deposited in such bank accounts is either wholly or partly undisclosed income of the petitioner is not sustainable in law."*

20. Further, the Hon'ble Bombay High Court in the case of Commissioner of **Income Tax vs. Sandhya P. Naik** reported in [2002] 124 Taxman 384 (Bombay) held as follows:

"Action under section 132(3) can be resorted to only if there is any practical difficulty in seizing the item which is liable to be seized. When there is no such practical difficulty, the officer is left with no other alternative but to seize the item, if he is of the view that it represents the undisclosed income. Power under section 132(3), thus, cannot be exercised so as to

circumvent the provisions of section 132(3), read with section 132(5). The position has become much more clear after the insertion of the Explanation to section 132(3) effective from 1-7-1995, that a restraint order does not amount to seizure. Therefore, by passing a restraint order, the time-limit available for framing of the order cannot be extended. As regards the order passed on 13-12-1996, the officer concerned, on his own admission, had no locus standi in the matter. Moreover, the Panchnama made on that date had many defects as admitted by the department itself.

Thus, no fault could be found with the impugned order of the Tribunal. The impugned assessment indeed was barred by limitation and also invalid."

21. Respectfully following the above judicial pronouncements, we are of the considered view that the Prohibitory Order passed by the search party U/s. 132(3) by placing certain loose sheets cannot be considered as impracticable for seizure which requires a restraint order U/s. 132(3) of the Act. Hence, the period of limitation for the purpose of passing the assessment order commences from 31/1/2020 and should have been completed on or before 31/3/2021 which was further extended by Taxation and Other Laws Amendment (TOLA) to 30thSeptember, 2021. Therefore, in the present case, the assessment order ought to have been passed on or before 30/09/2021 wherein it was passed on 31/3/2022.

22. Additionally, the reliance placed by the Ld. AR with respect to the release of the restraint order by relying on the Board Instruction dated

3/7/2002 wherein the Instruction relating to search and seizure work should be completed as early as possible and restraint order U/s. 132(3) should be lifted within one month from the date of the above order was not followed by the search party, deserves consideration. The Board Instruction is placed at Page-6, Paper Book-2. In this regard, we find from the case laws relied on by the Ld. AR in the case of **Commissioner of Income Tax vs. Punalur Paper Mills Ltd reported in [1987] 34 Taxman 268 (Kerala)** the Hon'ble Kerala High Court has held as under:

"The Board of Revenue is competent to issue circulars under section 119. The circulars so issued have got the force of law. The benevolent circulars are in the nature of administrative relief. They really supplant the law. They can even deviate from the provisions of the Act. It is settled law that the circulars cannot impose any burden on the taxpayer, but they can relax rigour of the law. Even if the circulars are relied on for the first time in the High Court during the course of hearing, the assessee will be entitled to the benefit. The Court is bound to take note of the circular. This view has been taken by the Supreme Court and various High Courts in many cases. It is hence too late in the day for the revenue to contend that the circular issued by the Board is only an administrative direction or that it will not bind the department or that it shall not be given effect to, since it goes beyond or deviates from the terms of the statute. Therefore, the Tribunal in the present case, was justified in giving effect to the circular, and thus no question of law arose out of its order."

23. Further, the Hon'ble Kerala High Court has also observed as under:

"4. We see no force in this plea. The Board of Revenue is competent to issue circulars under section 119 of the Act. The

circulars so issued have got the force of law. All officers of the department are bound by the said circulars. The benevolent circulars issued by the Board are in the nature of administrative relief. They really 'supplant' the law. The circular can afford administrative relief, even beyond the relevant terms of the statute. It can deviate from the provisions of the Act. The Courts have held that such circulars are binding on the officers of the department. It is not open to the department to contend, even in cases where the circular goes beyond the terms of the section, that the circular has no legal effect or should not be given effect to. The circulars would go to the assistance of the assessee. It is settled law that the circulars cannot impose any burden on the taxpayer. But, by the issue of a circular, the rigour of the law can be relaxed by giving administrative relief. Apart from the fact that such circulars are binding on the officers of the department, even if the circulars are relied on for the first time in the High Court during the course of hearing, the assessee will be entitled to the benefit afforded by the circulars. The Court is bound to take note of the circular. These propositions are well settled by a series of decisions of the Supreme Court as well as the High Courts.....”

24. Further, the Hon'ble Supreme Court in the case of **Catholic Syrian Bank Ltd vs. Commissioner of Income Tax** reported in [2012] 343 ITR 270 (SC) held as follows:

“18. Now, we shall proceed to examine the effect of the circulars which are in force and are issued by the Central Board of Direct Taxes (for short, 'the Board') in exercise of the power vested in it under Section 119 of the Act. Circulars can be issued by the Board to explain or tone down the rigours of law and to ensure fair enforcement of its provisions. These circulars have the force of law and are binding on the income tax authorities, though they cannot be enforced adversely against the assessee. Normally, these circulars cannot be ignored. A circular may not override or detract from the provisions of the Act but it

can seek to mitigate the rigour of a particular provision for the benefit of the assessee in certain specified circumstances. So long as the circular is in force, it aids the uniform and proper administration and application of the provisions of the Act. {Refer to UCO Bank, Calcutta v. CIT [1999] 4 SCC 599."}

25. Similarly, the Hon'ble jurisdictional High Court in the case of **Commissioner of Income Tax vs. Smt. Nayana P. Dedhia reported in [2004] 270 ITR 572 (AP)** relying on the decision of the Hon'ble Supreme Court in the case of **UCO Bank vs. CIT [1999] 237 ITR 889 (SC)** observed as follows:

"The Supreme Court in this judgment, which is clear from the paragraph quoted above, held in no uncertain terms that:

*(a) **The authorities responsible for administration of the Act shall observe and follow any such orders, instructions and directions of the Board;***

(b) such instructions can be by way of relaxation of any of the provisions of the section specified therein or otherwise;

(c) the Board has power inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions by issuing circulars in exercise of its statutory powers under section 119 of the Income-tax Act;

(d) the circulars can be adverse to the Income-tax Department, but still, are binding on the authorities of the Income-tax Department, but cannot be binding on assessee, if they are adverse to assessee;

(e) the authority, which wields the power for its own advantage under the Act, has a right to forego the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law by issuing instructions in terms of section 119 of the Act.

This judgment leaves no room to doubt that the Tribunal was right in holding that the Income-tax authorities could have not selected

the case for detailed scrutiny in view of the circular issued by the Board....."

26 In the instant case, the PO was released on 06/8/2020, which is beyond period of 30 days. The search party has therefore not followed the CBDT instruction dated 3/7/2002 even though it is binding on the department. We, therefore, respectfully following the judicial pronouncements, find force in the argument of the Ld. AR that even though section 132(8A) grants a time limit of 60 days for removing the restraint order, the limit specified by the CBDT, Instruction dated 3/7/2002 for a period of one month is binding on the Ld. Revenue Authorities. Accordingly, in the instant case, the period of limitation for removal of Prohibitory Order expires on 1/3/2020. The argument of the Ld. DR that it is only an Instruction and not a Circular could not be accepted due to the fact that the Hon'ble jurisdictional High Court have categorically held that the Authorities responsible for administration of the Act shall observe and follow any such orders, Instructions and Directions of the Board. The Act has empowered the Board U/s. 119 to issue Instructions to the subordinate Authorities. Section 119(1) of the Act is reproduced herein below for reference:

"Sec. 119. (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in

the execution of this Act shall observe and follow such orders, instructions and directions of the Board:"

27. In the instant case however, we find that the Authorities have not followed the Instructions of the Board issued by CBDT vide Instruction dated 3/7/2002. **We therefore are of the considered view that since the Prohibitory Order has not been removed within the time limit specified by the CBDT Instruction (supra), the releasing of the Prohibitory Order on 6/8/2020 and resultant Panchnama on 6/8/2020 becomes invalid in law. On this count also we find that the period of limitation for the purpose of passing the assessment order commences from 31/1/2020 and should have been completed on or before 31/3/2021 which was further extended by Taxation and Other Laws Amendment (TOLA) to 30thSeptember, 2021. But, we find that the assessment order has been passed on 31/3/2022 which is bad in law.**

28. Further, with respect to Ground No.4(d) wherein it was contended that when there was no seizure in the Panchnama dated 6/8/2020, such Panchnama without any seizure cannot be treated as a valid one for the purpose of computing the period of limitation, the Ld. AR placed reliance on the following cases deserves consideration.

29. The Hon'ble High Court of Delhi in the case of **Pr. CIT vs. PPC Business and Products Pvt Ltd [2017] 398 ITR 71 (Del.)** held as follow:

"25.3 The Karnataka High Court in C. Ramaiah Reddy (supra) also took note of the Circular No.772 dated 23rd December, 1998 in relation to the definition of the word 'execute' and then observed as under:

.....

.....

26. In the considered view of the Court, the above decision in C. Ramaiah Reddy (supra) puts it beyond the pale of doubt that merely visiting the premises on the pretext of concluding the search but not actually finding anything new for being seized cannot give rise to a second Panchnama. In such event, there would be no occasion to draw up a Panchnama at all. In the present case, the Court is satisfied that the second visit by the search party to the Ashok Vihar premises on 15th May, 2007 did not result in anything new being found that belonged to any of the searched parties. The second visit and the Panchnama drawn up on that date cannot lead to postponement of the period for completion of assessment with reference to Section 153B (2) (a) of the Act."

30. Similar view was also taken by the Hon'ble Delhi High Court in the case of **CIT vs. D.D. Axles (P.) Ltd reported in [2010] 195 Taxman 277 (Delhi)** in para 6 of its order by relying on the decision of the Division Bench of Delhi High Court in the case of **CIT vs. S.K. Katyal [2009] 308 ITR 168** which is as follows:

"5. In CIT v. S.K. Katyal[2009] 308 ITR 168 a Division Bench of this Court observed as under:—

*"17. This discussion leads us to the question - Was the Panchnama of 3-1-2001, of the type mentioned in the said Explanation 2(a)? **From the facts narrated above, it is clear that the Panchnama of 3-1-2001, itself reveals that nothing was seized on that date. Nor was anything "found" on that date. In fact, no search was conducted.** The jewellery that was put in the cash box of the almirah had already been searched, found, inventorised and valued by the DVO on 17-11-2000, itself. Nothing remained to be searched thereafter. And, in fact, no further search was conducted after 17-11-2000. Obviously, nothing else could be found. All that was done on 3-1-2001, in the presence of the witnesses (Panchs), was that the seals were removed from the cash box and the almirah and the keys were handed back to the assessee. Essentially, the revocation of the restraint order was given effect to. **This is exactly what the Tribunal found as a fact and meant when it concluded that the Panchnama dated 3-1-2001, was merely a release order and could not extend the period of limitation.**"*

31. Similar view was also held by the Hon'ble Delhi High Court in the case of **CIT, Delhi-II vs. Deepak Aggarwal** reported in [2008] 175 **Taxman 1 (Delhi)** and the relevant para 4 from the said judgment is reproduced herein below:

*"4. The decision of this Court in Sarb Consulate Marine Products (P.) Ltd.'s case (supra) is applicable to the facts of the present case. In that case a similar situation had arisen and **the question before the Court was whether the Panchnama drawn on 6-11-1996 was the last Panchnama or whether it was the Panchnama drawn on 14-9-1998 which was the last for the purpose of reckoning the commencement of the limitation period.** The Court examined various decisions including Dr. C. Balakrishna Nair v. CIT [1999] 237 ITR 70 (Ker.)*

and *CIT v. Mrs. Sandhya P. Naik* [2002] 253 ITR 534 (Bom.) and concluded as under :—

"A general consensus appears to have emerged among the High Courts to the effect that a search under section 132 of the Act should be continuous and if it is discontinued and thereafter resumed, then there must be a valid explanation for the gap. Insofar as the present case is concerned, the facts on record show that prima facie there was absolutely no justification for keeping the search pending for more than one year and ten months without any semblance of any activity by the revenue."

*It may be noted that in Dr. C. Balakrishna Nair's case (supra) the gap was only of 14 days. In the present case the gap between the search on 31-10-2000 and the purported last search on 23-12-2000 is approximately 53 days. There is no explanation whatsoever with regard to this period between the two intervening dates. In fact, the revocation order does give an indication that the prohibitory order was passed merely for continuing the search possibly for the purposes of extending the limitation. **The Tribunal has come to a conclusion of fact that the second purported search on 23-12-2000 was not a search at all and all that was required to be searched and seized had been concluded on 31-10-2000 itself.** In fact, there is no explanation forthcoming from the revenue as to what transpired from 31-10-2000 to 23-12-2000 so as to enable us to take a different view than what the Tribunal has taken. In these circumstances we feel that the ratio of this Court in Sarb Consulate Marine Products (P.) Ltd.'s case (supra) squarely applies to the facts and circumstances obtaining in the present case. The Tribunal has followed the said decision and we find that there is no error in the Tribunal's order. No substantial question of law arises for our consideration. These appeals are dismissed."*

32. Further, the Hon'ble Bombay High Court has also taken the same view in the case of **Commissioner of Income Tax vs. Sandhya P. Naik**

reported in [2002] 124 Taxman 384 (Bombay) at para 10 of its judgment held as under:

*"10.....Thus, the Tribunal had rightly held that the proceedings, on 26-10-1996, could not be considered as part of the execution of the search proceedings which concluded on 20-10-1996. **Indeed, by simply stating in the Panchnama that the search is temporarily suspended, the authorised officer cannot keep the search proceedings in operation by passing a restraint order under section 132(3).** Reliance placed by the department on the judgment of the Allahabad High Court in the case of *Sriram Jaiswal v. Union of India* [1989] 176 ITR 261, was correct. The restraint order in view of this authority cannot be cancelled and renewed from time-to-time. **Action under section 132(3) can be resorted to only if there is any practical difficulty in seizing the item which is liable to be seized.** When there is no such practical difficulty, the officer is left with no other alternative but to seize the item, if he is of the view that it represented undisclosed income. Power under section 132(3), thus, cannot be exercised so as to circumvent the provisions of section 132(3), read with section 132(5). **The position has become much more clear after the insertion of the Explanation to section 132(3) effective from 1-7-1995, that a restraint order does not amount to seizure. Therefore, by passing a restraint order, the time-limit available for framing of the order cannot be extended.**"*

33. Further, the Hon'ble Rajasthan High Court is also of the same view in the case of **Commissioner of Income Tax vs. White & White Mineral (P.) Ltd** reported in [2011] 12 taxmann.com 120 (Rajasthan) held as under [Head Note]:

"Section 132 of the Income-tax Act, 1961 - Search and seizure - General - A prohibitory order was passed in case of assessee - Thereupon an order dated 21-12-2002

was passed revoking prohibitory order under section 132(3) - After revoking prohibitory order, there was nothing to show that any fresh prohibitory order was clamped - Further, Panchnama dated 21-12-2002 did not show that a search remained incomplete or was continued to be completed on any subsequent date in close proximity or in continuity - Thus, it was apparent that entire episode was over on 21-12-2002 - Thereupon, another Panchnama dated 3-1-2003 was prepared; however, there was nothing on record showing that said Panchnama was prepared with intention to extend time-limit - Whether, in view of above, it was to be concluded that Panchnama dated 3-1-2003 did not extend time-limit for revenue authorities to pass an order of block assessment - Held, yes"

34. Against the decision of the Hon'ble Rajasthan High Court in the case of CIT vs. White & White Mineral (P.) Ltd., (supra), the Revenue preferred an appeal vide SLP(C) No. 4356 of 2010 before the Hon'ble Supreme Court. The Hon'ble Apex Court dismissed the SLP preferred by the Revenue by observing as under:

"Mere revocation of prohibitory order whether relevant for reckoning limitation

1-2-2010 : Their Lordships S. H. KAPADIA and SWATANTER KUMAR JJ. dismissed the Department's special leave petition against the judgment dated May 15, 2009 of the Rajasthan High Court in ITA No. 25 of 2009, whereby it held that after revoking the prohibitory order dated December 21, 2002, there was nothing to show that any fresh prohibitory order was passed and the Panchnama dated December 21, 2002 did not show that the search remained incomplete or was continued to be completed on any subsequent dates in close proximity or continuity and since on January 3, 2003 nothing was done except merely preparing Panchnama, the assessment was rightly held barred by time reckoning from the earlier

Panchnama : CIT v. WHITE AND WHITE MINERAL (P) LTD. : S. L. P. (C) No. 4356 of 2010.

35. Per contra, the Ld. CIT-DR relied on the judgment of the Apex Court in the case of Anil Minda vs. CIT reported in **Anil Minda Vs CIT [2023] 148 taxmann.com 407** to state that the lastly drawn Panchnama in the case of the assessee should be considered for reckoning the period of limitation. Countering the arguments of the Ld. DR, the Ld. Authorized Representative of the assessee submitted that the judgment of the Hon'ble Supreme Court quoted by the Ld. DR in the case of Anil Minda vs. CIT (supra) is distinguishable on the fact that in the said case that the warrant of authorization was challenged with respect to the last Panchnama drawn. Further the Ld. AR submitted that in that case there was seizure of material in the last drawn Panchnama and hence the Hon'ble Supreme Court has held that the period of limitation commences from the last drawn Panchnama. However, in the instant case, the Ld. AR argued that there was no seizure in the lastly drawn Panchnama dated 6/8/2020 and hence the case relied on by the Ld. DR in the case of Anil Minda cannot be applied to the instant case. The Ld. AR filed written submissions which are reproduced herein below:

"8. In this connection, it is submitted that while rendering the said decision, the Hon'ble High Court observed that it is but logical that the point of execution of warrant on the last Panchnama drawn would be starting point of time of limitation,

since it is at that point of time that the search party has in its custody the complete material and is in a position to evaluate disclosed and undisclosed material/income and not before that. While agreeing with the same, the Hon'ble Supreme Court observed that it cannot be disputed that the block assessment proceedings are initiated on the basis of the entire material collected during the search and on the basis of the respective Panchnamas drawn and therefore, the date of the Panchnama last drawn can be said to be the relevant date and can be said to be the starting point of limitation of two years for completing the block assessment proceedings. It is evident from the said reasoning given by the Hon'ble High Court and Supreme Court that they have given due consideration to the crucial aspect of completion of collection of all the relevant material during the course of search (by way of seizure) as the decisive factor for considering the date of last Panchnama drawn (irrespective of whether it relates to the last authorisation or otherwise) as the relevant date for reckoning the starting point of limitation for completion of search assessments. This reasoning followed by the Hon'ble High Court and Supreme Court in rendering their decisions in the case of Anil Minda implicitly affirms the reasoning followed by various High Courts in rendering the decision that the last Panchnama which does not involve seizure does not qualify to be considered as the last Panchnama for the purpose of determining the limitation of time for completion of search assessments. It is therefore submitted that the decision of the Hon'ble Supreme court in the case of Anil Minda does not overrule the said decisions of various High Courts relied upon by the appellant in this written submission but actually renders support to the reasoning adopted in the said decisions. The relevant paragraph of the decision of Apex court in Anil Mind case is extracted here

"In the present case, the first authorization was issued on 13.03.2001 which ultimately and finally concluded and/or culminated into Panchnama on 11.04.2001. However, in between there was one another authorization dated 26.03.2001 with respect to one locker and the same as executed on 26.03.2001 itself and Panchnama for the same was drawn on 26.03.2001. However, Panchnama drawn with respect to authorization dated 13.03.2001 was lastly drawn on 11.04.2001. As observed and held by this Court in the case of VLS Finance

*Limited (supra), the relevant date would be the date on which the Panchnama is drawn and not the date on which the authorization/s is/are issued. It cannot be disputed that the block assessment proceedings are initiated on the basis of the **entire material collected during the search/s and on the basis of the respective Panchnama/s drawn.** Therefore, the date of the Panchnama last drawn can be said to be the relevant date and can be said to be the starting point of limitation of two years for completing the block assessment proceedings.*

9. It is therefore submitted that the decisions of various High Courts referred to in this written submission overwhelmingly support the contention of the appellant that the Panchnama dated 06.08.2020 in its case cannot be considered as the last Panchnama drawn for conclusion of search in the absence of seizure of any material on the said date and the Panchnama drawn on 31.01.2020 itself is required to be considered as the last Panchnama. As a consequence, it is submitted that the original time barring date for completion of search assessments is required to be reckoned as 31.03.2021, being 12 months from the end of the FY 2019-20 relevant to the said last Panchnama, which has since been extended to 30.09.2021 in accordance with the notification issued under TOLA, 2020. As the assessments were not concluded by the said date, it is submitted that the assessments have become time barred and bad in law."

36. We have considered the submission of the Ld. AR as well as the Ld. DR. On perusal of the case laws cited by the Ld. AR, we are of the considered view that the last drawn Panchnama dated 6/8/2020 is only for the purpose of cancellation of the restraint order passed U/s. 132(3) of the Act and it could not be regarded as a Panchnama for the purpose of computation of limitation U/s. 153B of the Act. In the present case on hand, admittedly there is no search or seizure on 6/8/2020. The

Panchnama was drawn only for the purpose of cancellation of restraint order passed U/s. 132(3). **Therefore, it cannot be considered as a last Panchnama drawn for conclusion of search in the absence of any material on the said date and the Panchnama which was drawn on 31/1/2020 itself is required to be considered as a last Panchnama as per the ratio laid down by various High Courts and the Hon'ble Apex Court in the case of CIT vs. White and White Mineral (P.) Ltd [SLP(C) No. 4356 of 2010] (supra).** Therefore, we have no hesitation to come to the conclusion that the Assessment Order passed on 31/3/2022 by the Ld. Assessing Officer is a time barred assessment. The Assessing Officer ought to have been passed the assessment order or before 30/09/2021 whereas it was passed on 31/3/2022. Thus, considering the above facts and circumstances of the case, **we hereby allow the Grounds No. 4(a) to 4(e) of the assessee's appeal for the AY 2012-13.**

37. With respect to Ground No.5, regarding the violation of section 65B of the Indian Evidence Act, the Ld. AR submitted that the primary evidence from wherein the data was copied on the Pen Drive was not identified. The Ld. AR referred to the Digital Evidence Investigation Manual issued by the CBDT which clearly indicates the procedure for obtaining the Certificate U/s. 65B of the Indian Evidence Act. The Ld. AR further submitted that the Certificate obtained U/s. 65B of the Act is

not in accordance with the procedures laid down in section 65B(2) of the Indian Evidence Act. The Ld. AR also submitted that the four conditions prescribed in sub-section (2) of section 65B of the Indian Evidence Act should be followed cumulatively while obtaining the Certificate U/s. 65B of the Indian Evidence Act. The Ld. AR vehemently argued and submitted that the search team has failed to adhere to the procedures laid down in section 65B(2)(d) of the Indian Evidence Act while seizing the pendrive from Sri A. Srinivasa Rao, Cashier of the assessee. The copy of the Certificate has been placed in Page-11 of the Paper Book-1. The Ld. AR also produced a copy of Certification issued U/s. 65B of the Indian Evidence Act in another case wherein the primary and secondary device details including the owner / user of the device has been clearly mentioned. The Ld. AR submitted that in the instant case, no evidence was produced by the Revenue stating that the data copied to the pendrive was from the system identified in this regard, and used by the Cashier Sri A. Srinivasa Rao. The Ld. AR therefore pleaded that on this ground also, the assessment order is not a valid assessment order. The Ld. AR relied on the following case laws:

- (i) Vetrivel Mineral vs. ACIT, Central Circle-2, Madurai [2021] 129 taxmann.com 126 (Madras)
- (ii) Judgment of the Hon'ble Supreme Court in the case of Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Ors in Civil Appeal Nos. 20825-20826 of 2017.

- (iii) Anvar P.V. vs. P.K. Basheer and others [2014] 10 SCC 473 (SC).

38. Per contra, the Ld. DR submitted before that the Digital Evidence collection form was obtained from the assessee's premises during the search operations. The Ld. DR also submitted that as per page 33 of the submissions, the system has been identified by the search party. Countering the same, the Ld. AR submitted that there is no evidence in support of the claim of the Ld. CIT-DR that the same system was used by the assessee's Cashier.

39. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities on this issue as well as the submissions made by the Ld. AR and the Ld. CIT-DR. The CBDT has issued an Investigation Manual for the purpose of collecting Digital Evidence in the cases of search and seizure. In para 2.6.3 of the said Manual, the CBDT has advised that the *procedure has to be in consonance with the provisions of section 65B of the Indian Evidence Act*. For reference sake, we extract below the relevant para 2.6.3 of the Manual:

"2.6.3 Under Indian Evidence Act there are several references to documents and records and entries in books of account and their recognition as evidence. By way of the THE SECOND SCHEDULE to the Information Technology Act Amendments to the Indian Evidence Act have been brought in so as to, incorporate reference to Electronic Records along with the

document giving recognition to the electronic records as evidence.

Further, special provisions as to evidence relating to electronic record have been inserted in the Indian Evidence Act, 1872 in the form of section 65A & 65B, after section 65. These provisions are very important. They govern the integrity of the electronic record as evidence, as well as, the process for creating electronic record. Importantly, they impart faithful output of computer the same evidentiary value as original without further proof or production of original. **Accordingly, while handling any digital evidence, the procedure has to be in consonance of these provisions."**

40. Further, we find that section 65B(2) of the Indian Evidence Act clearly specifies the following conditions with respect to obtaining of Digital Evidence both for primary and secondary evidences. The relevant extract of section 65B(2), (3) and (4) are as follows:

"(2) The conditions referred to in sub-section

(1) in respect of a computer output shall be the following, namely:

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over 181 that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation

during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-

section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."

41. We find from the written submissions of the Ld. AR that the provisions of section 65B(2)(d) as extracted above was not followed by the Revenue. **The Revenue failed to identify the primary system giving particulars of the device involved in the production of the data was produced by a computer.**

42. Further, we have also considered the cases referred to by the Ld. AR. In the case of **Vetrivel Mineral vs. ACIT, Central Circle-2, Madurai reported in [2021] 129 taxmann.com 126 (Mad.)** the Hon'ble Madras High Court has observed as under:

*"24. As contended by the writ petitioners, when the entire assessment has been framed only on the basis of the so-called electronic record which are said to be copies of Excel Sheet, Excel work note book etc., **non-compliance of section 65(B) of the Indian Evidence Act renders the document inadmissible in the eye of law as held by the Supreme Court in the judgment Anvar P.V. case (supra).***

"14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of sections 59 and 65A, can be proved only in accordance with the procedure prescribed under section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned

under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under section 65B(2). Following are the specified conditions under section 65B(2) of the Evidence Act:

- (i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;
- (ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;
- (iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and
- (iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;

- (d) *The certificate must deal with the applicable conditions mentioned under section 65B(2) of the Evidence Act; and*
- (e) *The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.*

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to section 45A opinion of examiner of electronic evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under section 65B of the Evidence Act are not complied with, as the law now stands in India."

43. In the case of **Anvar P.V vs. P.K. Basheer and Others [2014] 10 SCC 473 (SC)**, the Hon'ble Supreme Court held their observations vide Paras 14, 15, 16, 17 & 18 to state that **non-compliance of section 65(B) of the Indian Evidence Act renders the document inadmissible in the eye of law.** Relying on the same ratio laid down by the Hon'ble Apex

Court, the Hon'ble Madras High Court delivered its judgment in the case of Vetrivel Mineral vs. ACIT (supra) vide para 24 of its order which is extracted herein above. Therefore, in our opinion there is no need to repeat the finding of the Hon'ble Supreme Court in the case of Anvar P.V. vs. P.K. Basheer and Others again for reference.

44. Now coming to the decision of the Hon'ble Supreme Court in the case of **Arjun Pandit Rao Khotkar vs. Kailash Kushan Rao Gorantyal And Ors reported in [2020] 7 SCC 1 (SC)** the Hon'ble Apex Court has observed as under:

"30. Coming back to Section 65B of the Indian Evidence Act, sub-section (1) needs to be analysed. The sub-section begins with a non-obstante clause, and then goes on to mention information contained in an electronic record produced by a computer, which is, by a deeming fiction, then made a "document". This deeming fiction only takes effect if the further conditions mentioned in the Section are satisfied in relation to both the information and the computer in question; and if such conditions are met, the "document" shall then be admissible in any proceedings. The words "...without further proof or production of the original..." make it clear that once the deeming fiction is given effect by the fulfilment of the conditions mentioned in the Section, the "deemed document" now becomes admissible in evidence without further proof or production of the original as evidence of any contents of the original, or of any fact stated therein of which direct evidence would be admissible.

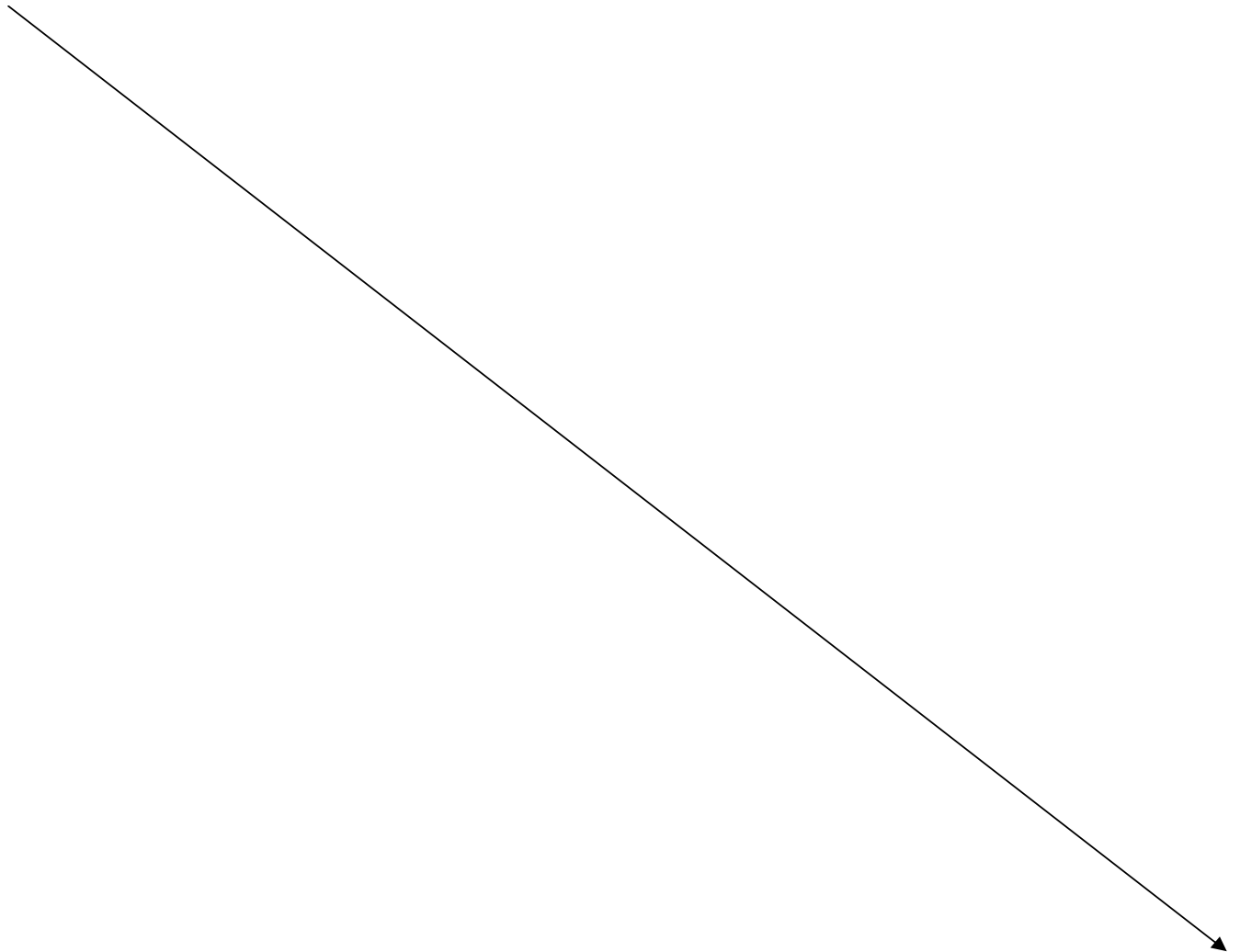
31. The non-obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65B, which is a special provision in this behalf - Sections 62 to 65 being irrelevant for this purpose. However, **Section 65B(1) clearly**

differentiates between the "original" document - which would be the original "electronic record" contained in the "computer" in which the original information is first stored - and the computer output containing such information, which then may be treated as evidence of the contents of the "original" document. All this necessarily shows that Section 65B differentiates between the original information contained in the "computer" itself and copies made therefrom - the former being primary evidence, and the latter being secondary evidence.

32. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the Court, then the only means of proving information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). This being the case, it is necessary to clarify what is contained in the last sentence in paragraph 24 of Anvar P.V. (supra) which reads as "...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act...". This may more appropriately be read without the words "under Section 62 of the Evidence Act,...". With this minor clarification, the law stated in paragraph 24 of Anvar P.V. (supra) does not need to be revisited.

45. On careful perusal of the case laws cited above, we are of the considered view that the Revenue Authorities should mandatorily and scrupulously follow the conditions laid down under section 65B(2) and (4) of the Indian Evidence Act to render any documents to be valid in the

eyes of law. In the instant case, the investigation agency obtained a Certificate about the details of the pen drive and the person in whose custody it was seized. Except these details nothing was there in the Certificate and also the said Certificate was not completely filled up by the Ld. Revenue Authorities. Further, from the Certificate obtained under Indian Evidence Act which is placed in Page-11 of Paper Book-2, we find force in the arguments of the Ld. AR that it is not as per the conditions laid down U/s. 65B of the Indian Evidence Act. For the sake of reference, the Certificate is reproduced here in below:



CERTIFICATE U/S 65B OF THE INDIAN EVIDENCE ACT. 1872

I, A. SRINIVASA RAO (Name) (PAN NO. : A IMPR6853N) state the following that I am an employee/partner/director/proprietor of Messers. Polisetty Somasundaram after referred to as firm / company /LLP /AOP /Proprietary Firm) Located at Messers. Polisetty Somasundaram ,no 8-24-31, Mangalagiri Road , Guntur 522001 (here after referred to as Premises).

I, A. SRINIVASA RAO (Name) state that by virtue of being employee / partner /director / proprietor in firm / company / LLP/AOP/Proprietary Firm, I and my employees uses the server/system/File-Folder/hard disk/pen drive/mobile/email Cashier HP Pendrive , s.no : FS-16G-K (here after referred to as System) located in the premises of Office at Located at Messers. Polisetty Somasundaram , no 8-24-31, Mangalagiri Road , Guntur 522001 firm/company/LLP /AOP /Proprietary Firm. Further, the server/system/File-Folder/hard disk/pen drive/mobile/email used by us in this premises was functioning normally all times and this server/system/hard disk/pan drive/mobile/email was used for meeting various business interest of Messers. Polisetty Somasundaram / company /LLP /AOP /Proprietary Firm. I,(Name)also like to state that I (Name) along with my staff / and/or family members were involved in entering data on server/system/File-Folder/hard disk/pen drive/mobile/emailin the Premises.

Accordingly, I, Ashok Naga SaiPabbathi(Name of Digital Forensic Examiner)certify that the data is backed up from the Cashier HP Pendrive , s.no : FS-16G-K _server/system/File-Folder/hard disk/pen drive/mobile/email during the search proceedings u/s 132 of the Income Tax Act,1961, in case of Messers. Polisetty Somasundaram (Company name). At the Messers. Polisetty Somasundaram , no 8-24-31, Mangalagiri Road , Guntur 522001 Date of Search: 28-1-2020) is stored in the devices with the following details:


Master Copy Details	Working Copy Details
Make: Sandisk Model: <u>Cruzer Blade</u> Serial No: n/a	Make: Sandisk Model: <u>Cruzer Blade</u> Serial No: n/a
Is the Hash Value Calculated ?	Algorithm:
<input checked="" type="radio"/> Yes <input type="radio"/> No	<input checked="" type="radio"/> MD5 <input checked="" type="radio"/> SHA1 <input type="radio"/> Others
MD5 hash value: b5525c605629d608cba81d9d7d5e42b8	
SHA1 hash Value: b097431855543a8b9fcc1f8d85b95e0b30343200	

Therefore, this certificate is sufficient compliance of Section 65B of the Indian Evidence Act,1872.

Signature:

Name:

Designation:

 20/11/20

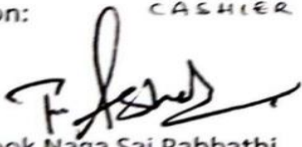
A. SRINIVASA RAO

CASHIER

Signature:

Name: Ashok Naga Sai Pabbathi

Designation: Digital Forensic Examiner



46. After considering the decisions of the Hon'ble Supreme Court in the case of Anvar P.V vs. P.K. Basheer and Others (supra); Arjun Pandit Rao Khotkar vs. Kailash Kushan Rao Gorantyal and Ors (supra) and the judgment of the Hon'ble Madras High Court in the case of Vetrivel Mineral vs. ACIT (supra) as well as on perusal of the facts and circumstances of

the case, we are of the considered we that the four conditions stipulated in section 65B(2) ie., (a) to (d) along with section 65B(4) were not followed while obtaining the Certificate U/s. 65B of the Indian Evidence Act 1872 in the case of the assessee which are to be followed mandatorily. Therefore, we have no hesitation to hold that this Certificate is not a valid Certificate as prescribed under the Indian Evidence Act 1872 and hence cannot be enforced. Therefore, the Certificate obtained in the case of the assessee cannot be regarded as a legally valid certificate U/s. 65B of the Indian Evidence Act and the same has no recognition in the eyes of law. The information contained in the seized pendrive is could not be considered as admissible evidence as per the provisions of section 65B of Indian Evidence Act. Therefore, we are of the considered view that such inadmissible seized material is not sustainable in the eyes of law. Thus, the assessment order passed in the case of the assessee on 31/3/2022 is not a valid assessment order in the eyes of law and it deserves to be set aside.

47. So far as **Grounds No. 2 and 3** (AY 2012-13) are concerned, since we have set-aside the assessment order by allowing the Grounds No. 4 & 5 raised by the assessee, the Ground Nos 2 and 3 needs no separate adjudication. It is ordered accordingly.

48. In the result, appeal of the assessee for the AY 2012-13 is allowed.

ITA No.173/Viz/2023

(AY: 2013-14)

49. In this appeal the assessee has raised eight grounds of appeal.

Grounds No.1,7 & 8 are general in nature and therefore they need no adjudication.

50. **Grounds No.2 and 3** raised by the assessee for the AY 2013-14 are legal grounds which are identical to the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13. Since the grounds and the issues raised by the assessee in its appeal for the AY 2013-14 vide Grounds No. 2 & 3 are identical to that of the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13, our decision given therein while adjudicating the Grounds No. 4 & 5 for the AY 2012-13 *mutatis mutandis* applies to the Grounds No. 2 & 3 for the AY 2013-14 also. Accordingly, these grounds raised by the assessee are allowed.

51. **Grounds No.4** relates to the addition of Rs. 10,00,00,000/- made by the Ld. AO towards sale of GTC Martur property and confirmed by the Ld. CIT(A). In this regard, it is pertinent to mention that while adjudicating the legal issues raised by the assessee vide Grounds No.2 & 3, based on our decision with respect to Grounds No. 4 & 5 of the assessee's appeal

for the AY 2012-13, we have allowed the grounds in favour of the assessee and set-aside the assessment order and therefore, this ground raised by the assessee needs no separate adjudication.

52. **Ground Nos. 5 and 6** raised by the assessee on merits and they are extracted herein below:

"5. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in allowing deduction of expenditure towards purchases of tobacco as reflected in the seized material to the extent of 80% of such expenditure only instead of allowing the entire expenditure though the sales admitted in the books could not have been made without effecting such purchases and though the said sales have not been disputed by the Revenue.

6. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in allowing deduction towards the expenditure represented by the debit entries without narration in the seized material to the extent of 40% of such expenditure only without providing any justified for limiting the deduction to the said extent instead of allowing the entire expenditure any by disregarding the provisions of section 132(4A) that deem that the contents of the seized material are true."

53. On the above grounds, the Ld. AR argued that the assessee has purchased tobacco from grey market by cash which was already included in the purchases while admitting the gross profit during the filing of return of income. The Ld. AR admitted that this grey market purchases are shown in the books of accounts under different creditors instead of the original creditors. Therefore the Ld. AR pleaded that the Ld. CIT(A) has estimated a profit of 20% on unaccounted purchases is not valid as the assessee has declared the profit while filing the return of income is

after considering the entire purchases. The Ld. AR therefore also submitted that various High Courts as relied by the Ld. CIT (A) has estimated the profit at 12.5% on the bogus purchases and therefore prayed that the profit may be restricted to 12.5%. Per contra, the Ld. DR submitted that the Ld. CIT(A) has already granted substantial relief by estimating the profit @ 20% on bogus purchases by placing reliance on the decision of the Hon'ble Bombay High Court in the case of ITO-12(3)(3), Mumbai vs. Matcon Engineers India Pvt Ltd and hence pleaded that the order of the Ld. CIT(A) may be upheld.

54. We have heard both the sides and perused the material available on record. We find from the order of the Ld. CIT(A) has estimated the profit @ 20% on the bogus purchases by relying on the High Court decisions. No doubt, various High Courts have supported the decision of estimating the profit @ 5% to 12.5% only on bogus purchases. Now the question before us is whether the Ld. CIT(A) is right in estimating the profit @ 20% on bogus purchases. The contention of the assessee on this aspect is that it has already shown in its books of accounts about the grey market purchases and it is included in the gross profit. Hence, the Ld. AR pleaded to restrict the estimation to 12.5% instead of 20%. However, since the legal grounds raised by the assessee have been adjudicated in favour of the assessee, as per the foregoing paragraphs and hence

adjudication of the grounds raised vide Ground No. 5 and 6 on merits needs no separate adjudication.

55. In the result, appeal of the assessee for the AY 2013-14 is allowed.

ITA No. 174/Viz/2023

(AY: 2014-15)

56. In this appeal, the assessee has raised **seven grounds** of appeal. **Grounds No. 1, 6 and 7** are general in nature and therefore, they need no separate adjudication.

57. **Grounds No.2 and 3** raised by the assessee for the AY 2014-15 are legal grounds which are identical to the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13. Since the grounds and the issues raised by the assessee in its appeal for the AY 2014-15 vide Grounds No. 2 & 3 are identical to that of the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13, our decision given therein while adjudicating the Grounds No. 4 & 5 for the AY 2012-13 *mutatis mutandis* applies to the Grounds No. 2 & 3 for the AY 2014-15 also. Accordingly, these grounds raised by the assessee are allowed.

58. **Grounds No. 4 & 5** raised by the assessee are identical to that of the **Ground Nos. 5 and 6** of the assessee's appeal for the AY 2013-14. Since the issues involved in both these appeals are identical, our decision

given therein applies *mutatis mutandis* to the Grounds No. 5 & 6 of the assessee's appeal also. Accordingly, these grounds need no separate adjudication as the legal grounds are adjudicated in favour of the assessee.

59. In the result, appeal of the assessee for the AY 2014-15 is allowed.

ITA No. 175/Viz/2023

AY: 2015-16

60. In this appeal, the assessee has raised **six grounds** of appeal. **Grounds No.1, 5 & 6** are general in nature and they need no separate adjudication.

61. **Grounds No.2 and 3** raised by the assessee for the AY 2015-16 are legal grounds which are identical to the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13. Since the grounds and the issues raised by the assessee in its appeal for the AY 2015-16 vide Grounds No. 2 & 3 are identical to that of the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13, our decision given therein while adjudicating the Grounds No. 4 & 5 for the AY 2012-13 *mutatis mutandis* applies to the Grounds No. 2 & 3 for the AY 2015-16 also. Accordingly, these grounds raised by the assessee are allowed.

62. **Ground No.4** raised by the assessee is as under:

"4. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in allowing deduction of expenditure towards purchases of tobacco as reflected in the seized material to the extent of 80% of such expenditure only instead of allowing the entire expenditure though the sales admitted in the books could not have been made without effecting such purchases and though the said sales have not been disputed by the Revenue."

63. This ground raised by the assessee is identical to that of the **Ground No. 5** of the assessee's appeal for the AY 2013-14. Since the issue involved in both these appeals is identical, our decision given therein (AY 2013-14) applies mutatis mutandis to the Ground No. 4 of the this appeal (AY 2015-16) also. Accordingly, this ground needs no separate adjudication as the legal grounds are adjudicated in favour of the assessee.

64. In the result, appeal of the assessee for the AY 2015-16 is allowed

ITA No.176/Viz/2023

(AY: 2016-17)

65. In this appeal, the assessee has raised **seven** grounds of appeal. **Grounds No.1, 6 & 7** are general in nature and therefore, they need no separate adjudication.

66. **Grounds No.2 and 3** raised by the assessee for the AY 2016-17 are legal grounds which are identical to the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13. Since the grounds and the issues

raised by the assessee in its appeal for the AY 2016-17 vide Grounds No. 2 & 3 are identical to that of the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13, our decision given therein while adjudicating the Grounds No. 4 & 5 for the AY 2012-13 *mutatis mutandis* applies to the Grounds No. 2 & 3 for the AY 2016-17 also. Accordingly, these grounds raised by the assessee are allowed.

67. **Ground No.4** raised by the assessee reads as under:

"4. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in allowing deduction of expenditure towards purchases of tobacco as reflected in the seized material to the extent of 80% of such expenditure only instead of allowing the entire expenditure though the sales admitted in the books could not have been made without effecting such purchases and though the said sales have not been disputed by the Revenue."

68. This ground raised by the assessee is **identical to that of the Ground No. 5** of the assessee's appeal for the AY 2013-14. Since the issue involved in both these appeals is identical, our decision given therein (AY 2013-14) applies *mutatis mutandis* to the Ground No. 4 of the this appeal (AY 2016-17) also. Accordingly, this ground needs no separate adjudication as the legal grounds are adjudicated in favour of the assessee.

69. **Ground No.5** raised by the assessee reads as under:

"5. On the facts and circumstance of the case, the Ld. CIT(A) erred in sustaining the addition of Rs. 6,10,91,854/- made towards

negative cash balance in the unaccounted cash book though the same was due to lack of accuracy in the dates mentioned in the said cash book and when there is no possibility of cash expenditure being incurred in an unaccounted cash book without the availability of cash."

70. In this regard, it is pertinent to mention that while adjudicating the legal issues raised by the assessee vide Grounds No.2 & 3, based on our decision with respect to Grounds No. 4 & 5 of the assessee's appeal for the AY 2012-13, we have allowed the grounds in favour of the assessee and set-aside the assessment order and therefore, this ground raised by the assessee needs no separate adjudication.

71. In the result, appeal of the assessee for the AY 2016-17 is allowed.

ITA No.177/Viz/2023

(AY: 2017-18)

72. In this appeal the assessee has raised **six** grounds of appeal. **Grounds No. 1, 5 & 6** are general in nature and therefore they need no separate adjudication.

73. **Grounds No.2 and 3** raised by the assessee for the AY 2017-18 are legal grounds which are identical to the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13. Since the grounds and the issues raised by the assessee in its appeal for the AY 2017-18 vide Grounds No. 2 & 3 are identical to that of the Grounds No.4 & 5 of the assessee's

appeal for the AY 2012-13, our decision given therein while adjudicating the Grounds No. 4 & 5 for the AY 2012-13 *mutatis mutandis* applies to the Grounds No. 2 & 3 for the AY 2017-18 also. Accordingly, these grounds raised by the assessee are allowed.

74. **Ground No.4** raised by the assessee reads as under:

"4. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in allowing deduction of expenditure towards purchases of tobacco as reflected in the seized material to the extent of 80% of such expenditure only instead of allowing the entire expenditure though the sales admitted in the books could not have been made without effecting such purchases and though the said sales have not been disputed by the Revenue."

75. This ground raised by the assessee is **identical to that of the Ground No. 5** of the assessee's appeal for the AY 2013-14. Since the issue involved in both these appeals is identical, our decision given therein (AY 2013-14) applies *mutatis mutandis* to the Ground No. 4 of the this appeal (AY 2017-18) also. Accordingly, this ground needs no separate adjudication as the legal grounds are adjudicated in favour of the assessee.

76. In the result, appeal filed by the assessee for the AY 2017-18 is allowed.

ITA No.178/Viz/2023**(AY: 2018-19)**

77. In this appeal, the assessee has raised **six** grounds of appeal. **Grounds No. 1, 5 & 6** are general in nature and therefore they need no separate adjudication.

78. **Grounds No.2 and 3** raised by the assessee for the AY 2018-19 are legal grounds which are identical to the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13. Since the grounds and the issues raised by the assessee in its appeal for the AY 2018-19 vide Grounds No. 2 & 3 are identical to that of the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13, our decision given therein while adjudicating the Grounds No. 4 & 5 for the AY 2012-13 *mutatis mutandis* applies to the Grounds No. 2 & 3 for the AY 2018-19 also. Accordingly, these grounds raised by the assessee are allowed.

79. **Ground No.4** raised by the assessee reads as under:

"4. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in allowing deduction of expenditure towards purchases of tobacco as reflected in the seized material to the extent of 80% of such expenditure only instead of allowing the entire expenditure though the sales admitted in the books could not have been made without effecting such purchases and though the said sales have not been disputed by the Revenue."

80. This ground raised by the assessee is **identical to that of the Ground No. 5** of the assessee's appeal for the AY 2013-14. Since the issue involved in both these appeals is identical, our decision given therein (AY 2013-14) applies mutatis mutandis to the Ground No. 4 of the this appeal (AY 2018-19) also. Accordingly, this ground needs no separate adjudication as the legal grounds are adjudicated in favour of the assessee.

81. In the result, appeal filed by the assessee for the AY 2018-19 is allowed.

ITA No. 179/Viz/2023

(AY: 2019-20)

82. In this appeal, the assessee has raised six grounds of appeal. **Grounds No. 1, 5 & 6** are general in nature and therefore they need no separate adjudication.

83. **Grounds No.2 and 3** raised by the assessee for the AY 2019-20 are legal grounds which are identical to the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13. Since the grounds and the issues raised by the assessee in its appeal for the AY 2019-20 vide Grounds No. 2 & 3 are identical to that of the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13, our decision given therein while adjudicating

the Grounds No. 4 & 5 for the AY 2012-13 *mutatis mutandis* applies to the Grounds No. 2 & 3 for the AY 2019-20 also. Accordingly, these grounds raised by the assessee are allowed.

84. **Ground No.4** raised by the assessee reads as under:

"4. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in allowing deduction of expenditure towards purchases of tobacco as reflected in the seized material to the extent of 80% of such expenditure only instead of allowing the entire expenditure though the sales admitted in the books could not have been made without effecting such purchases and though the said sales have not been disputed by the Revenue."

85. This ground raised by the assessee is **identical to that of the Ground No. 5** of the assessee's appeal for the AY 2013-14. Since the issue involved in both these appeals is identical, our decision given therein (AY 2013-14) applies *mutatis mutandis* to the Ground No. 4 of the this appeal (AY 2019-20) also. Accordingly, this ground needs no separate adjudication as the legal grounds are adjudicated in favour of the assessee.

86. In the result, appeal filed by the assessee for the AY 2019-20 is allowed.

ITA No. 180/Viz/2023**(AY: 2020-21)**

87. In this appeal, the assessee has raised **seven** grounds of appeal. **Grounds No. 1, 6 & 7** are general in nature and therefore they need no separate adjudication.

88. **Grounds No.2 and 3** raised by the assessee for the AY 2020-21 are legal grounds which are identical to the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13. Since the grounds and the issues raised by the assessee in its appeal for the AY 2020-21 vide Grounds No. 2 & 3 are identical to that of the Grounds No.4 & 5 of the assessee's appeal for the AY 2012-13, our decision given therein while adjudicating the Grounds No. 4 & 5 for the AY 2012-13 *mutatis mutandis* applies to the Grounds No. 2 & 3 for the AY 2020-21 also. Accordingly, these grounds raised by the assessee are allowed.

89. **Ground No.4** raised by the assessee reads as under:

"4. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in allowing deduction of expenditure towards purchases of tobacco as reflected in the seized material to the extent of 80% of such expenditure only instead of allowing the entire expenditure though the sales admitted in the books could not have been made without effecting such purchases and though the said sales have not been disputed by the Revenue."

90. This ground raised by the assessee is **identical to that of the Ground No. 5** of the assessee's appeal for the AY 2013-14. Since the issue involved in both these appeals is identical, our decision given therein (AY 2013-14) applies mutatis mutandis to the Ground No. 4 of the this appeal (AY 2020-21) also. Accordingly, this ground needs no separate adjudication as the legal grounds are adjudicated in favour of the assessee.

91. **Ground No.5** raised by the assessee reads as under:

"On the facts and circumstances of the case, the Ld. CIT(A) erred in dismissing the contention of the appellant that the assessment is void ab initio since the Assessing Officer has not validly assumed jurisdiction to make the assessment in the absence of issue of notice U/s. 143(2) on the valid revised return filed by the appellant though the revised return was duly considered while making the assessment. The Ld. CIT(A) erred in placing reliance on judicial decisions which have held that issue of notice U/s. 143(2) is not mandatory in the assessments made U/s. 153A though the assessment for the instant AY is not an assessment U/s. 153A."

92. Vide the above ground, the assessee has raised the issue of validity of the assessment order without issuing notice U/s. 143(2) of the Act for the AY 2020-21. The Ld. AR relied on the decision of the Coordinate Bench of Chennai in ITA Nos. 22/Mds/2016 in support of his argument. Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities. We have

heard both the sides and we are of the considered view that since the legal grounds have been adjudicated in favour of the assessee, the Ground No.5 raised by the assessee for the AY 2020-21 in ITA No. 180/Viz/2023 needs no separate adjudication.

93. In the result, appeal of the assessee for the AY 2020-21 is allowed.

94. Ex-consequenti, all the appeals filed by the assessee are allowed.

Pronounced in the open Court on 18th August, 2023.

Sd/-

(दुव्वूरु.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated :18.08.2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-M/s. Polisetty Somasundaram, C/o. CA MV Prasad, D.No. 60-7-13, Ground Floor, Siddhartha Nagar, 4th Lane, Vijayawada, Andhra Pradesh – 520010.
2. राजस्व/The Revenue –The Deputy Commissioner of Income Tax, Central Circle-1, 3rd Floor, Raj Kamal Complex, Lakshmipuram, Main Road, Guntur, Andhra Pradesh – 520002.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam