

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos.1108 to 1110/Bang/2022
Assessment Years: 2009-10, 2010-11 & 2013-14 respectively

Smt. Reddy Sangeetha #9/1, 2 <sup>nd</sup> Floor, Classic Court Richmond Road Bengaluru 560 025  <b>PAN NO : BBNPS5550A</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Central Circle-1(3) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Narendra Sharma, A.R.
<b>Respondent by</b>	:	Shri Veera Raghavan, D.R.

<b>Date of Hearing</b>	:	27.07.2023
<b>Date of Pronouncement</b>	:	29.09.2023

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

These appeals by assessee are emanated from the order of CIT(A) passed for the assessment years 2009-10, 2010-11 & 2013-14. Since the issues are common in all these appeals, these are clubbed together, heard together and disposed of by this common order for the sake of convenience.

**ITA Nos.1108 to 1110/Bang/2022 (AYs 2009-10, 2010-11 & 2013-14):-**

**2.1** In this case, there was a search action u/s 132 of the Act at No.109, 10<sup>th</sup> Main, 7<sup>th</sup> Cross, RMV Extension, 2<sup>nd</sup> Stage, Sadashivanagar, Bengaluru on 7.1.2015 which is in connection with search proceedings in the group case of M/s. Reddy Veeranna Constructions Pvt. Ltd. Consequent to search, notice u/s 153A of the Act was issued on 17.11.2015 to the assessee requiring her to file

the return of income within 30 days from the date of receipt of notice. As the assessee has not filed the return of income within the stipulated time, the reminders were issued to the assessee on various dates. The assessee finally filed the return of income u/s 153A of the Act on 24.8.2016. The assessee has not paid the self-assessment tax on the same. Notice has been issued to the assessee as to why return should not be treated as defective return. The assessee paid the self-assessment tax on 14.12.2016 and filed the return on 20.12.2016 incorporating the same. Therefore, notice u/s 143(2) of the Act dated 21.12.2016 was issued and served on the assessee. Finally, assessment has been completed u/s 143(3) of the Act making additions of Rs.1,04,57,255/- u/s 68 of the Act.

**2.2** The common ground in all these appeals is that assessment passed u/s 143(3) r.w.s. 153A of the Income-tax Act,1961 [‘the Act’ for short] is bad in law and void-ab-initio since there was valid search conducted in the premises of the assessee. Consequently, the provisions of section 153A of the Act have no application and therefore, the assessment order passed deserve to be cancelled. The ld. A.R. also submitted before us that there was no justification to issue the warrant to search the premises of the assessee as the conditions specified in terms of section 132(1) of the Act did not exist and therefore, the search action is illegal and consequently the impugned assessment order deserves to be quashed. In our opinion, this ground has no merit since validity of search cannot be questioned before this Tribunal in view of the insertion of Explanation to section 132(1) of the Act/Finance Act, 2017 with retrospective effect from 1.4.1962. For the purpose of clarity we reproduce the said explanation:-

“Explanation: For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the Income Tax authority under this sub-section shall not be disclosed to any person or any authority or the Appellate Authority.”

**2.3** This view was also fortified by the judgement of jurisdictional High Court in the case of Prathibha Jewellery House Vs. CIT (88 taxmann.com 94) (Karn.), wherein held as under:

*"10. Having heard the learned counsels for the parties, this Court is satisfied that the present writ petitions deserve to be dismissed for the following reasons:—*

*(i) That the decision of this Court in the case of C. Ramaiah Reddy (supra). which allowed the Appellate Authority to go into the question of validity of Search is a subject-matter of pending appeal before the Hon'ble Supreme Court and therefore, not only the Authorities of the Department, but even this Court should await the decision of Hon'ble Supreme Court on the said issue and cannot direct the Appellate Authorities like (CIT(Appeal) below by way of a writ of mandamus to go into the question of validity of search under Section 132 of the Act and it would be incongruous and not in deference to the pendency of aforesaid Civil Appeal No.2734/2013 before the Hon'ble Supreme Court.*

*(ii) That even the law has been amended by insertion of the aforesaid Explanation by Parliament in Section 132 of the Act by the Finance Act, 2017 with retrospective effect from 1.4.1962. That Explanation also prohibits the Appellate Authorities to go into the reasons recorded by the concerned Income Tax Authority for directing Search against the assessee or tax payer.*

*(iii) That this Amendment came after both, ITAT passed the order in the present case on 21.11.2014 as also the learned CIT(A) passed the impugned order aji 11.2.2015. Nonetheless, retrospective effect of the said amendment, will have its effect on the present case as well so long that the said Amendment holds the field Therefore, the Appellate Authorities of the Department cannot be expected to go into the said question. It is only for the Constitutional Courts to examine the vires and validity of such Amendment and for that, a separate writ petition is already said to be pending. However, no such challenge to the Amendment has been made in the present case.*

*11. In these circumstances, the impugned order Annexure-A dated 11.2.2015 passed by the learned CIT(A) cannot be faulted and it stands to the reason for the learned*

*CIT(A) to have followed the Chattisgarh HighCourt's decision and refused to do so."*

**2.4** Being so, in our opinion, there is no merit in the argument of ld. A.R. regarding validity of search carried out by the department u/s 132 of the Act and consequently framing of assessment cannot be questioned on this reason. This ground of appeal of the assessee in ITA Nos.1108 to 1110/Bang/2022 is dismissed.

**ITA No.1108/Bang/2022 (AY 2009-10):**

**3.** Next ground in this appeal is with regard to sustaining addition of Rs.1,04,57,255/-.

**3.1** Facts of the issue are that in the course of assessment, AO noticed that the assessee has shown opening capital of Rs.64,72,071/- as on 1.4.2008 in the capital account of the assessee. Further, assessee has shown another amount of Rs.39,85,184/- as bank receipts in the aforesaid capital reconciliation statement and noticing these facts, the ld. AO called for an explanation before the AO that assessee has earned a sum of Rs.1,04,57,255/- as professional charges in the earlier assessment year 2008-09 from M/s. Embassy Solutions Pvt. Ltd. and this was shown as opening capital of Rs.64,72,071/- and amount receivable from M/s. Embassy Services Pvt. Ltd. of Rs.39,85,184/-. The same has been shown in the financial statement and for the year ended on 31.3.2008, which is immediately preceding the financial year 2008-09 relevant to assessment year 2009-10. It was submitted that aforesaid professional charges were merely received during the year under appeal and deposited in bank account of the assessee. The assessee produced a ledger account of the assessee in the books of M/s. Embassy Services Pvt. Ltd and also the TDS certificate issued by the said company for the assessment year 2008-09 to substantiate the

claim of the assessee that the aforesaid professional charges did not relate to the year under appeal and hence, the same were shown as opening capital and amount receivable from M/s. Embassy Services Pvt. Ltd. in the financial statement. The ld. AO did not accept the aforesaid computation of the assessee and since the assessee has received the aforesaid sum during the year under appeal and the same as considered as income of the assessee for the impugned assessment year 2009-10, since the assessee has not filed any return of income for the assessment year 2008-09 reporting the said income for the earlier assessment year 2008-09. The ld. AO also observed that the TDS certificate issued by M/s. Embassy Services Pvt. Ltd. cannot be proof for accrual of income in the earlier assessment year 2008-09 and since the assessee has not filed any agreement for rendering professional services, the ld. AO made an addition of Rs.1,04,47,255/- u/s 68 of the Act. Against this assessee is in appeal before us.

**3.2** On appeal, the ld. CIT(A) observed that there is no necessity of seized material to make an addition while framing assessment u/s 153A of the Act by placing reliance on the judgement of Hon'ble Karnataka High Court in the case of Canara Housing Development Company (62 Taxmann.com 650) with regard to sustaining addition of Rs.39,85,184/-, he observed that on merit of the addition of Rs 39,85,184/- the claim of the assessee is that the same pertained to income already accrued in the AY 2008-09. However, this claim of the assessee is wholly unsubstantiated. In this regard the ld. CIT(A) observed that it is important to 'look into the reply dt. 24/11/2016 filed before AO during assessment proceedings. The same is reproduced as follows:



**NSVM &**  
**ASSOCIATES**  
CHARTERED ACCOUNTANTS

To

The Deputy Commissioner of Income-tax  
Central Circle:1(3)  
Bangalore.

*Remind*  
*[Signature]*  
*24/11/16*

Sir

**Sub: Scrutiny Submission -Sangeetha Reddy- PAN: BBNPS5550A - Assessment year - 2009-10 -**

We are submitting the following information in respect of the above assessment:-

1. In the course of the proceedings for the assessment year 2009-10, it was explained that sum of Rs.39,85,184/- received towards consultancy charges from Embassy Services Private Limited during the year 2008-09, pertains to the earlier years. The assessee is following mercantile system of accounting.
2. We are enclosing 26AS to substantiate that the consultancy charges earned during the assessment year 2009-10 is duly offered for taxation during the assessment year 2009-10.
3. We are not in a position to ascertain the exact year to which it relates as the accountant has left the organisation abruptly and M/s. Embassy Services Private Limited from whom the consultancy charges earned are also immediately not supporting us due to the gap of number of years. They are also expressing their helplessness as they have relocated their office. Locating old records is becoming difficult for them.
4. Under these circumstances, in order to close the proceedings without litigation, we will offer the income of Rs.39,85,184/-voluntarily for the assessment year 2009-10 and request your honour to take lenient view of other penal proceedings. The assessee undertakes to pay the taxes on this voluntary offer of the income.

Thanking You

*Yours faithfully*  
**For NSVM & Associates**  
**Chartered Accountants**

*[Signature]*  
**(A V Vasudevan)**  
**Partner**



**3.3** The ld. CIT(A) observed that on perusal of para 3 of this reply clearly shows that the assessee had admitted that she was not in a position to ascertain the exact year to which the amount of Rs 39,85,184/- relates and in para 4 the assessee had voluntarily offered the amount of Rs 39,85,184/- as her income for the year under consideration. Further, he observed that the total amount claimed to be income of AY 2008-09 is Rs 1,04,57,255/-, however the assessee was not able to explain this amount of Rs 39,85,184/- even on the basis of TDS certificate or the ledger account or confirmation from the clients. She was not able to explain as to why the amount was not appearing in the opening capital balance and her argument of 'mere error' was too flimsy to be accepted. That was why she had come forward with such admission during assessment proceedings. So the assessee cannot be aggrieved now. Considering above, the ld. CIT(A) upheld the addition to the extent of Rs39,85,184/-.

**3.4** With regard to sustaining addition u/s 64,72,071/- the ld. CIT(A) has observed that the main reliance of the assessee is on pages 26 to 30A of the paper book filed during appellate proceedings. Page 26 is the ledger account forming part of the assessment order as annexure III. He observed that page nos. 27 and 30 exist in the paper book, which he ignored. Pages 28, 29 and 30A are reproduced as follows:

To: R Sangeetha Firm: Embassy Services Pvt. Ltd  
No 110 Embassy Park  
Hegde Road,  
Bangalore - 560001

Date: 19-08-20

Sub. Confirmation of Accounts  
From 01-Apr-2020 To 31-Mar-2021

Given below is the details of your Accounts as standing in your favour for the above mentioned period.

Kindly return 3 copies along with T. Payment A/c No. duly signed and sealed in confirmation of the same. Please note that if no reply is received from you within a fortnight, it will be assumed that you have accepted the balance shown below.

Sl. No.	Particulars	Debit A/c No.	Date	Particulars	Credit A/c No.
1	Opening Balance				4472771.90
2	NG Vijaya Bank Ltd	2276722.00	31-Mar-2020	Consultancy & Retainer charges	348295.00
3	Dr. No. 638065 paid to P. Sangeetha			Bank Withdrawal fee for 2020-21 account	
4	Interest opening balance			1% for 11.3% on Rs. 3248256 - MFC HS	
5	NG Vijaya Bank Ltd	4147890.00		Net Income Rs. 1133274 for 2020-21	
6	Dr. No. 656875 paid to P. Sangeetha			Annual exp. & Rs. 1226542 for 2020-21	
7	Balance opening balance				6108607.00
8	Closing Balance	6354740.00			6108607.00
9		375857.00			6108607.00
10		6730597.00			6108607.00

We hereby confirm the above

T. Payment

Stamp: EMBASSY SERVICES PRIVATE LIMITED, BANGALORE

Appeal No. CIT(A)-11/BNG/11521/2018-19  
Smt Reddy Sangeetha  
A.Y. 2009-10



TDS  
Centralized Processing Cell

TRACES

TDS Reconciliation Analysis and Correction Enabling System

Form 26AS

Annual Tax Statement under Section 203A of the Income Tax Act, 1961

Section 203AA and second provision to section 203C (1) of the Income Tax Act, 1961 and Rule 114R of Income Tax Rules, 1962

Name of Assessee: R SANGEETHA  
Address of Assessee: 2nd FLOOR, CLASSIC COLLEGE, 80, KRISHNAMOORE ROAD, BANGALORE, KARNATAKA, INDIA

Assessment Year: 2009-10

No. No.	Section	Name of Deductor	TAN of Deductor	Total Amount Paid/ Credited	Total Tax Deducted**	Total TDS Deposited***
1	Section 1	EMBASSY SERVICES PRIVATE LIMITED	BLR20092008	538072.00	60964.24	60964.24

No. No.	Section	Transaction Date	Date of Booking	Remarks**	Amount Paid/ Credited	Tax Deducted**	TDS Deposited***
1	192	31-Mar-2020	31-Mar-2020		538072.00	60964.24	60964.24

No. No.	Section	Transaction Date	Date of Booking	Remarks**	Amount Paid/ Credited	Tax Deducted**	TDS Deposited***
1	192	31-Mar-2020	31-Mar-2020		538072.00	60964.24	60964.24

No. No.	Section	Transaction Date	Date of Booking	Remarks**	Amount Paid/ Credited	Tax Deducted**	TDS Deposited***
1	192	31-Mar-2020	31-Mar-2020		538072.00	60964.24	60964.24

No. No.	Section	Transaction Date	Date of Booking	Remarks**	Amount Paid/ Credited	Tax Deducted**	TDS Deposited***
1	192	31-Mar-2020	31-Mar-2020		538072.00	60964.24	60964.24

No. No.	Section	Transaction Date	Date of Booking	Remarks**	Amount Paid/ Credited	Tax Deducted**	TDS Deposited***
1	192	31-Mar-2020	31-Mar-2020		538072.00	60964.24	60964.24

No. No.	Section	Transaction Date	Date of Booking	Remarks**	Amount Paid/ Credited	Tax Deducted**	TDS Deposited***
1	192	31-Mar-2020	31-Mar-2020		538072.00	60964.24	60964.24

304

8819471

FORM NO. 16A  
[See rule 31(1)(b)]  
Certificate of deduction of tax at source under section 203  
of the Income-tax Act, 1961

[For interest on securities; dividends; interest other than "interest on securities"; winnings from lottery or crossword puzzle; winnings from horse race; payments to contractors and sub-contractors; insurance commission; payments to non-resident sportsmen/sports associations; payments in respect of deposits under National Savings Scheme; payments on account of repurchase of units by Mutual Fund or Unit Trust of India; commission, remuneration or prize on sale of lottery tickets; commission or brokerage; rent; fees for professional or technical services; royalty and any sum under section 28(va); income in respect of units; payment of compensation on acquisition of certain immovable property; other sums under section 195; income in respect of units of non-residents referred to in section 195A; income from units referred to in section 195B; income from foreign currency bonds or shares of an Indian company referred to in section 195C; income of Foreign Institutional Investors from securities referred to in section 195D]

Name and Address of the person deducting Tax	Acknowledgement Nos. of all Quarterly Statements of TDS under sub-section (3) of section 200 as provided by TIN Facilitation Centre or NSDL web-site	Name and address of the person to whom payment made or in whose account it is credited	
Embassy Services Private Limited 15C, 1 Floor, Embassy Point, Infantry Road, Bangalore - 560001 KARNATAKA	Quarter	R Sangeetha 109, 10th main, 7th cross RNV Extension, Sadasivnagar Bangalore-560 080	
	Acknowledgement No		
	1		090400100761795
	2		090400100761774
	3	090400100761785	
	4	090400100833354	
TAX DEDUCTION A/C NO. OF THE DEDUCTOR	NATURE OF PAYMENT	PAN NO. OF THE PAYEE	
BI RE005268	194J	BNPSE5550A	
PAN NO. OF THE DEDUCTOR	Payment of fees to professional or technical services	FOR THE PERIOD	
AAACE4258K		01/10/2008 To 31/12/2008	

DETAILS OF PAYMENT, TAX DEDUCTION AND DEPOSIT OF TAX INTO CENTRAL GOVERNMENT ACCOUNT

S. No.	Amount Paid/Grossed (Rs.)	Date of Payment / Credit	TDS (Rs.)	Surcharge (Rs.)	Education Cess (Rs.)	Total Tax deducted (Rs.)	Cheque/DD No. (if any)	BSR Code of Bank branch	Date on which tax deposited (DDMMYY)	Transfer Voucher/Chk No. (DDMMYY)
1	4,94,400.00	22/12/08	4,49,400.00	44,940.00	14,082.00	5,08,422.00	80788	0300145	25/03/09	
Total	4,94,400.00					5,08,422.00				

Certified that a sum of Rs. 5,09,216.00 (Rupees Five Lakh Nine Thousand Two Hundred Sixteen Only) has been deducted at source and paid to the credit of the Central Government as per details given above.

Signature of the person responsible for deduction of tax  
Place: Bangalore Date: 24.04.2009  
Name: C.V. Seshagiri  
Designation: Head-Property Mgmt



**3.5** The Id. CIT(A) observed that pages 29 (Form 26AS) and 30A (Form 16A for period 01/10/2008 to 31/12/2008) shows that the same relate to AY 2009-10 i.e. the year under consideration and not to AY 2008-09 (FY 2007-08). So these documents do not show that the M/s Embassy Services had deducted tax at source on professional services fee of Rs 64,72,071/- accrued to the assessee in FY 2007-08, as claimed by the assessee. Anyhow, a TDS certificate would not reflect the nature of payment i.e. whether the same was actual payment or a mere advance or accrual of income as tax is deducted at source on the basis of credit or actual payment, whichever is earlier.

**3.6** As regards the confirmation filed from M/s Embassy, as reproduced supra, the Id. CIT(A) observed that here too there is nothing to show that the opening balance as on 01.04.2008 was the income of Rs 64,72,071/-, which had already accrued to the assessee in FY 2007-08 but pending payment. Here it is important to note that this account of the assessee in the books of M/s Embassy does not tally with the account of M/s Embassy in the books of the assessee (annexure III to the assessment order). The above confirmation from M/s Embassy although refers to period 01/04/2008 to 31/03/2009, but the same does not show details of the professional fees of Rs 53,80,972 and its payment, which has already been disclosed by the assessee in her books of account (annexure III to the assessment order) and reflected in the Form 26AS reproduced supra. So he opined that reliance cannot be placed on this document too.

**3.7** The Id. CIT(A) further observed that the above factors compounded with the fact that the assessee was not able to produce any service agreement with M/s Embassy Services (a

related party) pertaining to FY 2007-08, although huge amount of professional fee is being claimed to be involved; non availability of a bank account for receiving payments; falsely claiming that return of income was filed for AY 2008-09 but arguing during appellate proceedings that non-filing of return for AY 2008-09 could not make income of that year assessable in the year under consideration etc. lead to preponderance of probability being against the claim of the assessee that the amount of Rs 64,72,071/- received by her during the year under consideration was the accrued income of earlier year.

**3.8** The Id. CIT(A) observed that the argument of the assessee that she has always been following mercantile system of accounting and so income already accrued in FY 2007-08 cannot be taxed in AY 2009-10, is also devoid of any merit. It is a case where the assessee has filed return of income for the first time for the year under consideration. So it is not a case that the assessee had been showing her income on mercantile basis year after year. The AO has observed that the assessee has not filed any return for AY 2008-09 or AY 2007-08. So he observed that the assessee is just trying to take advantage of the fact that in her case the AY 2008-09 is beyond the purview of the Section 153A of the Act and so she can safely claim that part of the receipts of the current year had already accrued to her in AY 2008-09 and thus the same cannot be taxed now. Since the assessee has claimed accrual of income in earlier years, the onus was on her to prove the same by bringing on record some positive evidence that services were rendered by her in FY 2007-08 and the terms and conditions of the agreement with the client provided accrual of income from time to time and that corresponding income had accrued to her in FY 2007-08. However,

she has failed to discharge this onus. Against this assessee is in appeal before us.

**4.** We have heard the rival submissions and perused the materials available on record. With regard to argument of the Id. A.R. that there is no seized material to sustain addition while framing u/s 153A of the Act, we are of the opinion that in case of completed assessment/unabated assessment, in absence of any incriminating material, no addition can be made by the AO and the Id. AO has no jurisdiction to reopen the completed assessment. For this proposition, we place reliance on the judgement of jurisdictional High Court in the case of Delhi International Airport Pvt. Ltd. In ITA No.322/2018 vide judgement dated 29.9.2021, wherein it was held as under:-

*“30. Thus, it is clear that the Assessing Office: while passing the order under Section 153A read with Section 143[3] of the Act, ordinarily cannot disturb the assessment/reassessment order which has attained finality, unless the materials gathered in the course of the proceedings establishes that. the finalized assessments are contrary to the material unearthed during the, course of 153A proceedings, as held by the Co-ordinate Bench of this Court in the case of **IBC Knowledge Park (P) Ltd., supra**. A concluded assessment could not be disturbed without there being any basis for doing so which is impermissible in law. Even in case of a searched person, the same reason would hold good. As observed in **Canara Housing Development Company supra**, the Assessing Officer is empowered to assess or reassess the total income of six assessment years i.e., the income which was returned in the earlier return, the income which was unearthed during search and also any income which was not disclosed in the earlier return or which was not unearthed during the search by separate assessment orders but in our considered view the completed assessments should be subject to the safeguards provided in **IBC Knowledge Park (P) Ltd. supra**.*

*“54. On a consideration of the relevant sections as well as judicial precedent referred to above, what emerges is that, Section 158BD of the Act deals with undisclosed income of a third party. However, insofar as the incriminating material of the searched person or other person detected during the course of search is*

*concerned, the same can be considered during the course of assessment. Further, such incriminating material must relate to undisclosed income which would empower the Assessing Officer to upset or disturb a concluded assessment of the other person. Otherwise, a concluded assessment would be disturbed without there being any basis for doing so which is impermissible in law. Even in case of a searched person, the same reason would hold good as in case of any other person as observed by us, detection or the existence of incriminating material is a must for disturbing the assessment already made and concluded. But, at the same time, such can be at three stages: one, at the stage when the re-assessment is initiated, the second, at the stage during the course of reassessment and third, at a stage where the reassessment is altered by a different assessment in respect of searched person or in respect of third party. In this regard, reference may be made to the decision of Apex Court in case of M/ s. Calcutta Knitwear (supra) and based on the said decision, the CBDT has also issued circular dated 31.12.2015 vide No.24/ 2015. The relevant extract of the circular for ready reference can be extracted as under:*

*“.....”*

*As regards the pending assessments are concerned only one assessment shall be made separately for each assessment year on the basis of the income unearthed during search and any other material existing or brought on the record of the Assessing Officer. Even in the absence of any incriminating material abated „Assessment or reassessment could be done. The returns filed under Section 139 of the Act gets replaced by the returns filed under Section. 15:3A[I] of the Act. Pending proceedings in appeal, revision/application shall not abate subsequent to initiation of Section 153A proceedings. Further, recording of satisfaction under Section 153A may not be necessary unlike Section 153C of the Act which mandates recording of satisfaction.*

*For the reasons aforesaid, substantial question of law in ITA Nos.322/2018 to 324/2018, 354/2018 and 355/2018, substantial question of law No.1 in ITA Nos.380/2018, 382/2018 to 385/2018 and 197/2021 to 199/2021 and substantial question of law Nos.1 and 2 in ITA No.381/2018 are answered in favour of the assessee and against the Revenue.*

*Substantial question of Law No.2 in ITA Nos.380/2018, 383/2018 to 385/2018 is squarely covered by the ruling of the coordinate Bench of this 'Court in ITA No.352/2018 and connector? matters (DI) 25.05.2021) wherein the said substantial question of law has been answered in favour of the assessee and against the Revenue.*

*Substantial question of law No.2 in ITA No.382/2018 and substantial question of law No.3 in ITA Nos.380/2018, 383/2018 to 385/2018 does not arise for our consideration since the same are not pressed by the Revenue.*

*Appeals stand disposed of accordingly.”*

**4.1** Same view was taken by the Hon’ble Delhi High Court in case of CIT Vs. Kabul Chawla (380 ITR 573) (Del.). Even Hon’ble Supreme Court in case of Principal CIT Vs. Abhisar Buildwell Pvt. Ltd. (116 CCH 307) (SC) has reiterated the same proposition as follows:

*“14. In view of the above and for the reasons stated ab e, it is concluded as under:*

*i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*

*ii) all pending assessments/reassessments shall stand abated;*

*iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*

*iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the*

*Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.”*

**4.2** Now the contention of the ld. A.R. is that out of Rs.1,04,57,255/-, an amount of Rs.64,72,071/-, which was shown in balance sheet as on 31.3.2008 is receivable from M/s. Embassy Services Pvt. Ltd. and another amount of Rs.39,85,184/- is provision of consultancy charges receivables, which was specified as current assets in the balance sheet as on 31.3.2008. This amount has been accrued before 31.3.2008 which falls in the assessment year 2008-09 and not in the assessment year 2009-10 and this also enclosed by the TDS Certificate in form no.16 issued by M/s. Embassy Services Pvt. Ltd. Admittedly, in this case, there was no seized material suggesting these additions. This has been shown by assessee in its balance sheet filed by assessee before ld. AO and also it is also admitted fact that an amount of Rs.64,72,071/- shown as opening balance as on 1.4.2008 and there was increase of Rs.39,85,184/- in capital account of the assessee. The contention of the ld. D.R. is that this income has been received by the assessee in the assessment year under consideration and same to be taxed. In our opinion, opening capital account balance as on 1.4.2008 cannot be taxed in the assessment year under consideration though it was received in the assessment year under consideration as the TDS for the same has been made in the earlier assessment year, which shows the amount accrued in earlier assessment years. Regarding the balance amount of Rs.39,85,184/-, the assessee has filed a letter before ld. Deputy Commissioner of Income-tax as follows:

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The Deputy Commissioner of Income-tax  
Central Circle:1(3)  
Bangalore.

Sir

Sub: Scrutiny Submission -Sangeetha Reddy- PAN: BBNPS5550A - Assessment  
year - 2009-10 -

We are submitting the following information in respect of the above assessment:

1. In the course of the proceedings for the assessment year 2009-10, it was explained that sum of Rs.39,85,184/- received towards consultancy charges from Embassy Services Private Limited during the year 2008-09, pertains to the earlier years. The assessee is following mercantile system of accounting.
2. We are enclosing 26AS to substantiate that the consultancy charges earned during the assessment year 2009-10 is duly offered for taxation during the assessment year 2009-10.
3. We are not in a position to ascertain the exact year to which it relates as the accountant has left the organisation abruptly and M/s. Embassy Services Private Limited from whom the consultancy charges earned are also immediately not supporting us due to the gap of number of years. They are also expressing their helplessness as they have relocated their office. Locating old records is becoming difficult for them.
4. Under these circumstances, in order to close the proceedings without litigation, we will offer the income of Rs.39,85,184/-voluntarily for the assessment year 2009-10 and request your honour to take lenient view of other penal proceedings. The assessee undertakes to pay the taxes on this voluntary offer of the income.

Thanking You

Yours faithfully  
For N S V M & Associates  
Chartered Accountants

  
(A V Vasudevan)  
Partner



**4.3** In our opinion, since the assessee has admitted that he is not able to explain the year in which it was received or accrued and voluntarily offered as income in the assessment year 2009-10, being so, we have no hesitation in sustaining this addition of Rs.39,85,184/-.

**5.** In the result, the appeal of the assessee in ITA **No.1108/Bang/2022** for the AY 2009-10 **is partly allowed.**

**ITA No.1109/Bang/2022 (AY 2010-11):**

**6.** The assessee is in appeal before us with regard to sustaining addition of Rs.55,10,000/-.

**6.1** Facts of the case are that this ground relates to the action of the AO in making a disallowance of Rs 55,15,000/-. In brief, this was observed by the AO that the assessee had claimed payment of consultancy charges of Rs 55,15,000/-. The assessee was asked to substantiate her claim and to furnish copy of the service agreement. In response to the same the assessee submitted that there wasn't any written agreement and that the consultant was hired for making a detailed project (including feasibility report) as she wanted to develop a big residential project by entering into a joint development agreement with Manyata Developers. The assessee submitted that tax at source was duly deducted on the payments so made. However, the assessee failed to produce copy of such project report also. The AO rejected the claim of the assessee by giving following reasons:

- The invoices provided by the assessee do not indicate the nature of services availed.

- The invoices have been raised by M/s Sheshanka Financial Services (P) Ltd., by mentioning 'Professional charges'. The name of the company suggests that the nature of services provided could only be financial services.
  - The assessee has failed to bring out the true nature of services. The assessee has not produced any agreement for engaging a professional for such consultancy services.
  - The assessee has failed to substantiate her claim that services had actually been availed by her and that the same had nexus with her profession of consultancy.
  - The real estate project was not shown to have commenced.
  - No such consultancy expenditure had ever been incurred in past (AY 2009-10) or future years (AY 2011-12 to AY 2015-16).
  - The financials of the assessee do not show that she was into real estate business. As per tax audit report the assessee is into profession of consultancy. If the intention of the assessee was to enter into real estate business, then commencement of business was not there.
- 7.** We have heard the rival submissions and perused the materials available on record. In this case, the assessee claimed expenditure of Rs.55.15 lakhs as consultancy charges and submitted before the lower authorities that assessee wants to develop a big residential project by entering into Joint Development Agreement with Manyata Developers in the area Seegehalli. In order to develop a detailed project report and mobilise the funds from various financial institutions, assessee incurred this expenditure and the TDS also made on this expenditure. However, the AO doubted availing the services and payment for those services. The AO has not

carried out any enquiry in this regard. When he disbelieved the contention of the assessee, the burden cast upon the AO to carry out necessary enquiry to suggest that the claim of expenditure by assessee is bogus. The rejection of this expenditure as not incurred by assessee is only on surmises and conjectures, which cannot be upheld. More so, there was no material in the hands of AO to suggest that this expenditure is of bogus nature. Hence, we are not in a position to uphold the orders of the lower authorities. Accordingly, we reverse the order of the lower authorities and allow the ground of assessee. This ground of appeal of the assessee is allowed.

**7.1** In the result, assessee's appeal in **ITA No.1109/Bang/2022** is partly allowed.

**ITA No.1110/Bang/2022 (AY 2013-14):**

**8.** In this appeal, the assessee has raised a ground with regard to sustaining addition of Rs.34,80,353/-, though there was no incriminating material found during the course of search action.

**8.1** Facts of the case are that the ld. AO during the course of assessment proceedings noticed that assessee had claimed a sum of Rs.34,80,353/- as interest u/s 36(1)(iii) of the Act. The assessee explained that the said claim was made as the borrowed funds were used for the purpose of business. However, the ld. AO noticed that the assessee has given huge advances to sister concerns and related parties and the assessee has not explained the need for borrowed funds and held that assessee is not entitled for deduction u/s 36(1)(iii) of the Act.

**8.2** On appeal, the ld. CIT(A) observed that there was no incriminating material to sustain this addition and addition is to be deleted. On the merit also submitted that the assessee is having own funds to advance to sister concerns. The ld. CIT(A) not agreeing with

the contention of the ld. A.R., dismissed the appeal of the assessee. Against this assessee is in appeal before us.

**8.3** The ld. A.R. submitted that the assessee had paid interest on borrowed capital and had claimed the same as a deduction in the original return of income filed by the assessee. There were no materials found at the time of search to consider that the aforesaid interest expenditure claimed by the assessee was not genuine. He further submitted that the learned A.O. failed to appreciate that the aforesaid disallowance made in the proceedings u/s. 153A of the Act was unjustified and unwarranted. It is submitted that the scope of the assessment proceedings u/s. 153A of the Act for the year under appeal was restricted to making the assessment based on the materials found and seized at the time of search. This is because the assessment proceedings for the year under appeal had not abated after the search was conducted and therefore the jurisdiction to make an assessment for the year after the search was restrictive one i.e., having regard to the materials found in course of search. Thus, the impugned disallowance made by the learned A.O. without any materials found and seized at the time of search to show that the said expenditure is not genuine is therefore opposed to law and hence, the same deserves to be deleted. It is prayed accordingly.

**8.4** The ld. A.R. submitted that without prejudice to the above, the learned A.O. also ought to have appreciated that the assessee was entitled to the deduction u/s. 36[1][iii] of the Act. It is submitted that the learned A.O. ought to have appreciated the fact that the assessee is also engaged in real estate business and had used the borrowed funds for business

purposes. Hence, he submitted that the disallowance made by the learned A.O. was purely on suspicion and surmise, assumption and presumptions and therefore, the same deserves to be deleted.

**8.5** The Id. D.R. relied on the order of Id. CIT(A).

**9.** We have heard the rival submissions and perused the materials available on record. In the present case, assessee's balance sheet reads as follows as on 31.3.2013:-

R. SANGEETHA BALANCE SHEET AS ON 31.03.2013				
LIABILITIES	AMOUNT	ASSETS		AMOUNT
Capital being excess of Assets over Liabilities	5,92,78,562	<u>Fixed Assets:</u> Motor Car	33,17,600	
		Less: Depreciation	4,97,640	28,19,960
<u>Loans:</u> Car Loan From ICICI	8,43,604	Site at Manyata Nagar		34,72,280
Vysya Cooperative bank Term loan	3,08,55,019			58,69,966
Loan for Singapore Property	4,03,96,224	Gold Jewellery & Diamonds		
Accrual	2,30,000	<u>Investments:</u> Suzlon Energy Ltd		67,954
<u>Current Liabilities:</u> Musaddilal Jewellers Pvt Ltd	1,49,000	Blue Hill Informatics Pvt Ltd- Shares		1,00,000
Audit Fees Payable	80,157	Dyuti Infrastructure Pvt Ltd-Shares		60,000
Service tax payable(2012-13)	42,71,616	Manyata Developers Pvt Ltd-Shares		2,75,40,000
Service tax payable(2011-12)	4,77,375	Navya Infrastructure Pvt Ltd-Shares		90,000
Service tax payable(2010-11)	21,13,575	Reddy Veeranna Investments Pvt Ltd-Shares		54,000
Service tax payable(2009-10)	14,91,025	Talita Infrastructure Pvt Ltd-Shares		90,000
Service tax payable(2008-09)	17,97,322	<u>Deposits:</u> -ICICI Fixed Deposit	30,00,000	
TDS Payable	17,730	Accr: interest accrued	4,92,069	34,92,069
Vysya Cooperative bank - OD	30,70,778	Vysya Cooperative bank FD - 4545		10,76,377
		Vysya Cooperative bank FD - 4590		16,85,527
		Vysya Cooperative bank FD -4591		16,85,527
		<u>Current Assets, Loans &amp; Advances:</u> Embassy Services Pvt Ltd		1,52,01,028
		Manyata Developers Pvt Ltd		1,14,40,000
		Reddy Veeranna		1,01,71,920
		R Snehalatha		50,000
		Gowtham		7,00,000
		Sundry advances		44,97,882
		Property at Singapore		5,03,99,047
		<u>TDS Receivable (AY 2013-14)</u> - Professional Charges		38,83,162
		- FD Interest		30,341
		<u>Cash &amp; Bank Balances:</u> - Cash on Hand		1,50,000
		- Axis Bank-5340		70,511
		- ING VBL-4931		3,66,344
		- ING VBL-14484		8,093
	14,50,71,987			14,50,71,987

S-1-1t

R Sangeetha  
(Proprietor)

Place:Bangalore  
Date:31.03.2015

For NSVM & ASSOCIATES  
Chartered Accountants  
Firm Reg. No. 010078

Sangeetha

D N Sreehari  
(Partner)  
Membership No.027388

Place:Bangalore  
Date:31.03.2015

**9.1** As seen from the above, assessee has used the money borrowed for acquisition of property at Singapore. However, there was another term loan availed from Vysya Co-operative Bank on which assessee paid the interest in this assessment year under consideration. The assessee is not able to explain the purpose of borrowing that term loan.

**9.2** On the other hand, assessee made interest free advance to various parties, namely M/s. Embassy Services Pvt. Ltd., Manyata Developer Pvt. Ltd., Reddy Veeranna, Reddy Snehalata and Sundry advances. The assessee is not able to explain the sources to make interest free advance to these parties. Hence, it should be considered that assessee has used the borrowed funds from Vysya Co-operative Bank to advance these parties on which assessee claimed interest in its profit & loss account in the assessment year under consideration at Rs.34,80,353/-, which cannot be allowed u/s 36(1)(iii) of the Act, since the loan has been borrowed for the purpose of business and not satisfy the conditions laid down in section 36(1)(iii) of the Act. Accordingly, the disallowance made by the lower authorities is justified. This ground of appeal of the assessee is dismissed.

**9.3** The assessee has raised ground no.5 that assessee is not liable to be charged interest u/s 234A & 234B of the Act. In our opinion, this ground is consequential and mandatory in nature and is to be charged accordingly. This ground is dismissed. However, the assessee is at liberty to seek waiver before DG/CCIT, if so advised.

**9.4** In the result, the assessee's appeal in ITA No.1110/Bang/2022 is dismissed.

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**10. In the result, assessee's appeal in ITA No.1108 & 1109/Bang/2022 are partly allowed and assessee's appeal in ITA No.1110/Bang/2022 is dismissed.**

Order pronounced in the open court on 29<sup>th</sup> Sept, 2023

**Sd/-  
(Beena Pillai)  
Judicial Member**

**Sd/-  
(Chandra Poojari)  
Accountant Member**

Bangalore,  
Dated 29<sup>th</sup> Sept, 2023.  
VG/SPS

Copy to:

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

By order

**Asst. Registrar,  
ITAT, Bangalore.**