

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA Nos.562 to 567/Hyd/2022		
Assessment Years: 2014-15 to 2017-18 & 2019-20 to 2020-21		
Shri Srinivas Rao Boinipally, Hyderabad	Vs.	ACIT Central Circle 2(4) Hyderabad
(Appellant) PAN:ADAPB5985C		(Respondent)
Assessee by:	Shri K.C. Devdas, CA	
Revenue by:	Smt. T.H. Vijaya Laxmi, CIT(DR)	
Date of hearing:	14/09/2023	
Date of pronouncement:	21/09/2023	

ORDER

PER BENCH:

The above batch of 6 appeals filed by the assessee are directed against the separate orders dated 26.08.2022 passed by the learned CIT(A)-12, Hyderabad u/s 153A of the I.T. Act for the A.Ys. 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20 respectively. Since identical grounds have been taken by the assessee in all these appeals, therefore, for the sake of convenience, all these appeals were heard together and are being disposed of by this common order.

ITA No.562/Hyd/2022

2. We take ITA No.562/Hyd/2022 for the A.Y 2014-15 as the lead case and the grounds raised by the assessee read as under:

1. The Hon'ble Commissioner of Income tax [Appeals][hereinafter referred to Hon.CIT-A] ought to have appreciated that a technical/nominal PO release order and Panchanama by the Deputy Director of Income tax (Investigation), Unit 3(3),New Delhi, drawn on 23.07.2020 in subsequent financial year cannot save the assessment order from limitation of time specified under section 153B of Income tax Act, 1961 [for short -the Act] and therefore the assessment order passed by learned AO was barred by limitation.

2.1 The Hon.CIT-A erred in confirming the addition made by the learned assessing officer in the form of alleged interest income of Rs.1,50,000 u/sec.69 [the learned assessing officer made the addition under section 69A/115BBE]- that was made purely based on assumptions and presumptions without correctly appreciating the nature of entries made in the said document (Annexure-4) which specifically indicates the source and its application which are not remotely connected with the appellant.

2.2. The Hon.CIT-A erred in confirming the addition without any discovery of undisclosed investment made by the Appellant and the year of investment.

2.3. The Hon.CIT-A is Wrong in not appreciating that section 69 obligates the learned AO to initially discharge the burden of proof of investment and year of investment while bringing to tax the alleged interest income of Rs.1,50,000. The learned AO invoked section 69A for making the addition of said amount.

3. The Hon. CIT-A failed to appreciate that entire basis for making the addition to the income by the learned AO was based on third party computer data sheet and without any valid and legal evidence on hand. The appellant contends that the data sheets cited in the assessment order pointing to some transactions made at in Bangalore has not an iota of connection to him nor the computer belongs to him.

4. *The Hon. CIT-A should have appreciated the well-established judicial precedent that the presumption howsoever strong should not take the place of proof and in the present case there is no proof/evidence brought out in the Assessment order.*

5. *The Hon.CIT-A ought to have appreciated that no addition should have been made on the basis of entry in third-party computer generated data sheet when the said data sheet is non-speaking in all respects and more specifically in relation to the appellant.*

6. *The Hon.CIT-A should have appreciated that for retrieval of the data from the third-party computer which does not belong to appellant the procedure laid down under Sec 65 A & 65 B of the Evidence Act and reiterated in Digital Manual available in Net ought should have rigorously been followed to before making use of the same in assessment.*

7. *The Hon. CIT-A ought to have appreciated that the learned AO has not furnished the details of evidence to appellant in spite of bringing to her notice and therefore the impugned assessment order which is nonspeaking in the matter of utilisation of evidence should have been set aside deleting the addition.*

8. *The learned CIT (A) ought to have appreciated that no attempt was made at the stage of post search enquiry or in course of assessment proceeding to corroborate the entries relating to the electronic data when appellant denied the entries as pertaining to him and in the absence of any corroboration, should have deleted the addition in the backdrop of the principle that electronic data cannot be made use of in the absence of any corroboration.*

9. *The learned CIT (A) ought to have appreciated that electronic data is not a primary evidence to be utilised in framing assessment unless required certificate under section 65A/65B is given while retrieving the data from the computer.*

10. *The learned CIT (A) should have appreciated that there is no whisper in the assessment as to why the assessment was made in the hands of appellant (Individual) and in the absence of any finding the stipulations of section 5 of the Act fails at the threshold level”.*

3. With regard to Ground No.1, the learned AR drew our attention to Page 1 of the Paper Book filed by the assessee wherein 4 pages of Panchanama to the following effect:

“LIMITATION - B.SRINIVASA RAO/B USHA RANI

Date	Panchanama / Other Document.
06-02-2020	<p>1. Search u/sec. 132 of Income Tax Act, 1961 commenced at Residence. Joint Warrant includes and search commenced against Smt. B. Usha Rani, Prathima Infrastructure Limited,. Prathima Industries P Ltd.</p> <p>2. PO u/sec. 132(3) dated 06-02-2020 at Guest Room, Residence.</p> <p>3. PO w/sec. 132(3) dated 159, BOB, Masab Tank, Road No. 12, Banjara Hills, Hyderabad.</p> <p>4. PO u/sec. 132(3) dated 06-02-2020-Locker 640 in Axis Bank - B. Harini.</p> <p>5. Panchanama for Plot No. 30, 31 & 32, HUDA Heights, Lotus Pond, Jubilee Hills, Hyderabad Search from 06 02-2020 finally concluded 06-02-2020 /8.40 PM.</p>
08-02-2020	<p>6. PO @ 2 above, Jewellery (Annexure-J), Silver Articles (Annexure-S) at Guest Room, Residence was valued, "received back by the owner Smt. B. Usha Rani but placed under PO".</p> <p>7. Panchanama - Gopanapally Project Finally concluded.</p>
09-02-2020	8. Panchanama-NetXCell Ltd. - Finally concluded.
10-02-2020	<p>9. @3 above, Release Order dated 10-02-2020 reg. Locker No. 159, BOB, Masab Tank.</p> <p>10. Panchanama dated 10-02-2020 Search temporarily concluded at Residence BSR & BUR @ 1 above.</p>
11-02-2020	11.Prathima Industries P Ltd.- Prathima House, Search Finally Concluded. @ above.
12-02-2020	12.Prathima Infrastructure Ltd - Search finally concluded at 1 AM. - @ above.
	23-07-2020 13.@ 4 above, Release Order and Panchanama dated 23 07-2020-Locker 640 in Axis Bank - B. Harini.
	14. @ 2 above - PO revocation &Panchanama at Residence.

15.Panchanama - Search finally concluded at Residence @ 1 above. - Annexure 01, Page 01 shows the bills seized for the Jewellery @ 6 above submitted by party. Panchanama - includes Annexure 'A'-01 under both Seized and Not Seized also. Seized was originally NIL with Not Seized : Annexure-1, but later Seized NIL was struck off and made -01(to show Annexure 'A'-01, Page :01)

Whether 23-07-2020 Panchanama is to be considered for Limitation.

5. In the course of the search.

(a) **The following were found and seized:**

- (i) Books of account and documents as per inventory in annexure A(1 sheet)
- (ii) Bullion i.e. gold, silver etc. as per annexure 'B' (Nil)
- (iii) Cash as per annexure 'C' (Nil)
- (iv) Jewellery, ornaments etc. which have been inventorised for each place from where received, as per annexure 'J' (Nil)
- (v) Silver articles and silverware as per inventory in annexure 'S' (Nil)
- (vi) Other valuables, locker keys, F.D. Rs. etc. as per inventory in annexure 'O' (1 sheet)

Ram
10/2/2020

B. W. S. R.
10/2/2020

Dr. Srinivas
10/2/2020 (Party)

Yogesh Kumar
YOGESH KUMAR, I.R.O
Deputy Commissioner of Income Tax
Central Circle-3(3), Hyderabad

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8. The search commenced on 06/02/2020 at 11:35 AM. The proceedings were closed on 10/02/2020 at 10:45 P.M. as ~~finally concluded~~/as temporarily concluded for the day to be commenced subsequently for which purpose 05(Five), 05 (five) seals placed on the toilet door and store room door respectively of the closet of the guest room at north-West of the first floor (right hand corner room), Suguna House, Manchirevula, Royal Function Hall Lane, Narsinghi.

9. An order under section 132(3) of the I.T. Act, 1961:

a) In respect of the sealed closet of the guest room at north-West of the first floor (right hand corner room), Suguna House, Manchirevula, Royal Function Hall Lane, Hyderabad was served on Smt./Ms Usha rani Boinipally by the said authorized officer.

b) Locker No 640 in the Axis Bank, Opp BVB School, Jubilee Hills in the name of Hagini Boinipally issued to the concerned Manager, Axis Bank.

c) Locker No 159 with the name of Smt Usha Rani at Bank of Baroda, Room No 12, Banjara Hills, Hyderabad issued to the concerned Manager, Bank of Baroda.

10. Before leaving the above mentioned place of search, the entire search party again offered themselves for personal search which was taken/~~declined~~. The above Panchnama has been read by us/explained to us in English & Hindi by Mr Yogesh Kumar, DCIT CC 3(3), Hyderabad and it is certified that it has been correctly recorded.

3.1. Thereafter, the learned AR drew our attention to Page 6 and its rear side of the page, the following intimation was made by the assessee on 8.2.2022.

ORDER UNDER SECTION 132 (3) OF THE INCOME-TAX ACT, 1961

By virtue of the powers vested in me under the warrant of Authorisation dated _____ issued by the Director General of Income Tax (Inv.) Hyd/Director of Income Tax (Inv.) Hyd/Asst. Director of Income Tax, Hyd Unit _____ under Section 132 (1) of the Income-Tax Act, 1961, I hereby order you not to remove, part with or otherwise deal with the articles mentioned below which you are in immediate possession or control thereof, either as owner or otherwise without any previous permission.

2. If you contravene this order, you shall be punishable with rigorous imprisonment which may extend to 2 years and also be liable to fine under Sec. 275 A of the Income - Tax Act, 1961.

DETAILS OF ARTICLES / SEAL PLACED

A closet of the guest room at north end of 1st floor (single bed) corner room.

1. Two lock floor (single bed) corner room.
2. Toilet door (two beds) side room door (two beds).
3. *** binding ***

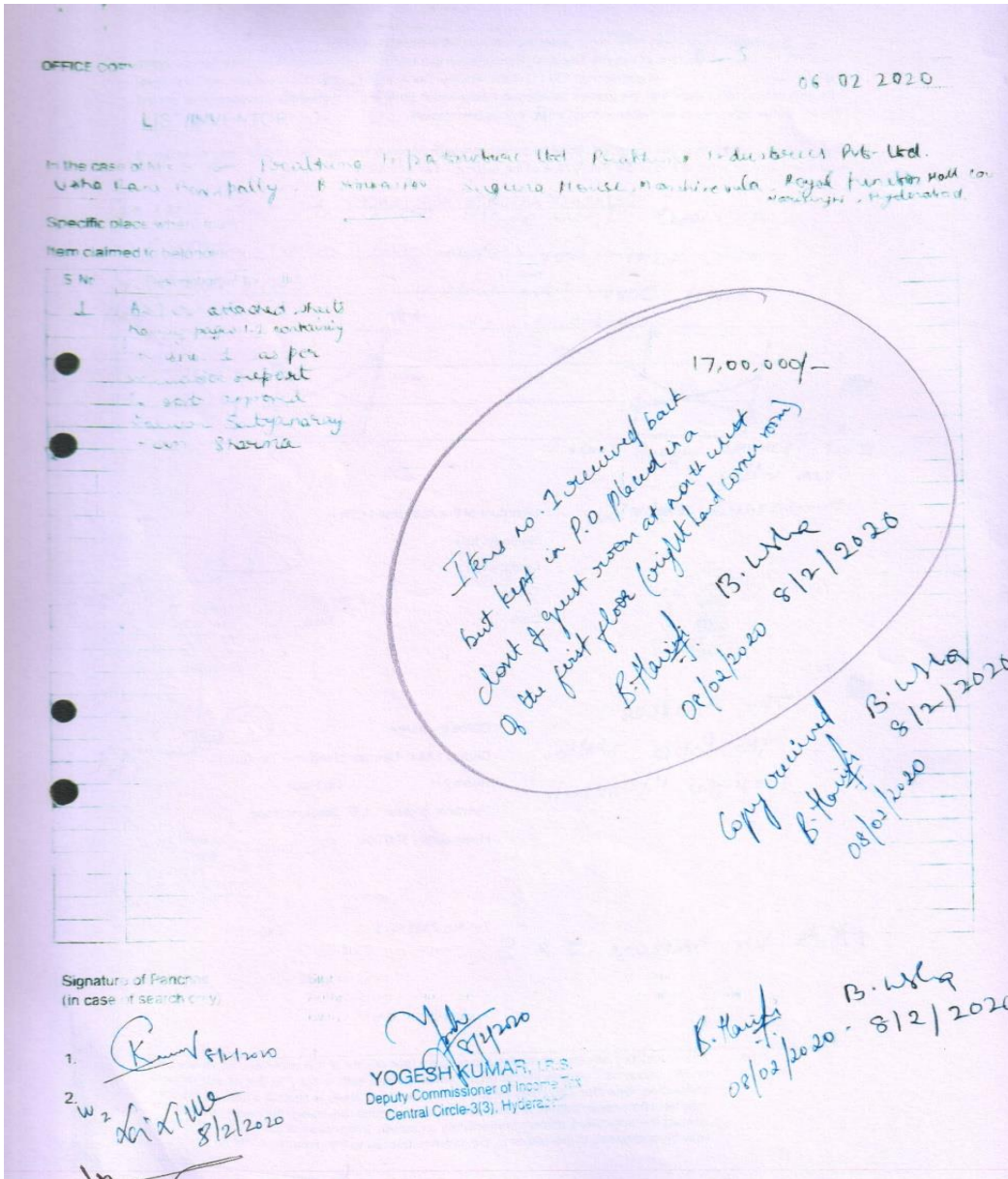
at Premises Suguna House in Green valley, Muradnagar Hyderabad.

Signature of the Authorised Officer
 Name (in full) :
 Designation :
 Tel. No. :
 Date :
 Time :
 Dy. Director of Income Tax (Inv.) - II
 Chandigarh

Copy to:
 1. The Assessee
 2. The Police Station
 Narsingi Hyderabad.

Office-in-charge
 Deputy / Asst. Director of Income Tax (Inv.) -
 Room No. 4th Floor
 "Aayakar Bhavan", L.B. Stadium Road,
 Hyderabad - 500 004.
 (आयकर भवन)
 (Aayakar B.)
 Dy. Director of Income Tax (Inv.) - II
 Chandigarh

Tel. No 23233413 Ext. :
 *** As per Memo J & S



4. Thereafter, the learned AR drew the attention to page 22 wherein the revocation order dated 23.07.2020 is placed which is as under:

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Office of the
Deputy Director of Income Tax (Inv.), Unit-3(4), New Delhi
Room No. 118, 1st Floor, C-Block, Dr. S.P. Mukherjee Civic Centre,
Minto Road, New Delhi -110002

Date: 23.07.2020

Revocation Order

The Restraint Order dated 06.02.2020 issued u/s 132(3) of the Income Tax Act, 1961, during search and seizure operation in the case of M/s. Prathima Infrastructure Ltd., Prathima Industries Pvt. Ltd., Usha Rani Boinipally, B Srinivas Rao in respect of locker No. 640 in Axis Bank Ltd., Opp BVB School, Jubilee Hills, Hyderabad in the name of Ms. Harini Boinipally D/o Sh. B. Srinivas Rao is being revoked with immediate effect.



23/07/2020
(Davinder Chodha)
Deputy Director of Income Tax (Inv.)
Unit-3(4), New Delhi

DAVINDER CHODHA
Deputy Director of Income Tax (Inv.)
Unit-3(4), New Delhi

Copy to :-

1. The Assessee.
2. The Branch Manager.

23/07/2020
Deputy Director of Income Tax (Inv.)
Unit-3(4), New Delhi

DAVINDER CHODHA
Deputy Director of Income Tax (Inv.)
Unit-3(4), New Delhi

4.1 The contention of the learned AR was that there is no restrain order issued by the authorities by way of provisional order u/s 132(3) on 8.2.2020. It was submitted that the limitation for the purpose of Section 153B is required to be counted for passing the assessment order from the last date of Panchanama which was issued on 6.2.2020. It was submitted

that the assessment order passed by the Assessing Officer on 30.03.2022 is beyond the period of limitation provided by the Act.

4.2 In support of his case, the assessee filed the written submissions. The relevant portion of the written submissions reads as under :

“4.2. Time Limit for completion of assessment under section 153B of Act.

The authorisation referred to clause (a) and clause (b) of section 153B(1) is deemed to have been executed on the conclusion of the search as recorded in the last panchanama drawn in relation to a person in whose name the warrant of authorization has been issued. In the case of the assessee, the last Panchanama was drawn on 12- 02-2020. This is clearly indicated in the last Panchanama drawn in case of PIL. What is important to note is last panchanama drawn in case of a Person. Here the emphasis is person u/sec 2(31) of Act. A joint warrant does not refer to a ‘person’ and is not included in the definition. Hence, the view of the department is incorrect to treat joint warrant as a person. At the cost of repetition, the following aspects emerge.

A joint warrant can be issued combining the names of more than one ‘person’ as mentioned in section 2(31). Section 292CC goes this far and no further because of restriction in the said section. It is meant to validate a warrant in joint names only to carry out search.

Such a Jt warrant cannot be construed as having been issued against the person mentioned in sec. 2(31) of Act.

Such a warrant cannot be deemed as having been issued including AOP and BOI who are person.

The assessment shall be made separately in the names of each person mentioned in such joint authorisation.

For the purpose of assessment each person in whose name appears in the Jt warrant is a separate person/entity and the joint warrant is not a person for the purpose of making assessment and reckoning limitation

Time limit should be worked out taking into account date of final conclusion of the search as recorded in the last panchanama in the case of that particular person.

The AO was under a misconception that a joint warrant refers to single person (as AOP of BOI) which was specifically prohibited by law under sec. 292 CC of Act.

The AO has adopted two views- one for making assessment in the names of individual entities and another for reckoning the time limit for completion of assessment treating Jt warrant as person under sec.2(31) of Act. This is contradictory. Thus, in the guise of interpretation, AO cannot legislate to suit his convenience overriding the statutory provision.

Taking all the above vital aspects in view, it is submitted that the working of limitation taking a joint warrant as person is illegal and assessments not sustainable.

"The PO placed on 08-02-2020 in the residence of BSR & BUR was only a nominal PO in the hope to extend time limit for completion of assessment as the financial year changes. Hence the assessment based on this PO lifted on 23-07-2020 is only nominal and is therefore the assessment is barred by limitation. Even otherwise,

It is a settled principle that mere participation in a proceeding does not amount to acquiescence or waiver of jurisdiction. The assessee while giving details of initiation and conclusion of search in a Table in its submission also brought this principle to the notice of AO that there is no estoppel against law and limitation has to be rightly calculated.

The department adopted the last Panchanama dt 23-07-2020 and worked out the limitation as 31-03-2022. This is not legally correct.

Thus, the last Search Warrant executed , in the humble opinion of the appellant that was initiated on 06-02-2020 u/sec.132 of the Act and finally concluded on 10-02-2020. Hence, the assessment completed as follows is barred by limitation.

***Table left intentionally*

5. What is the status of PO which was placed on 08-02-2020 and lifted on 23-07-2020 ?

Kindly refer to the discussion above Para No.2.2-point no.4.2.

6. Import of Placing a nominal PO and execution of last warrant and drawing last Panchanama-Judicial precedents.

As per sec. 132 of Act, a prohibitory order under section 132(3) of Act is placed where it is not practicable to seize any books of account, documents and other valuable articles(money, bullion,

jewellery)' and for reasons other than those under sub-sec. (1) of sec.132 of Act during course of search. 'Not practicable to seize should be for some good and sufficient grounds. It should not be a pretence and for oblique purposes. It is not a routine exercise as this expression suggests. The principle underlying the expression has the approval of Courts. It is a principle that if a thing is required to done in a particular way that should be done in that way or not at all. In the case of the appellant, following facts may kindly be appreciated.

The joint warrant of authorisation in the names of four persons as mentioned was last executed on 12-02-2020 in case of PIL as per categorical endorsement in the Panchanama. The searches were finally concluded as mentioned in this Panchanama.

However, POs without Orders were kept in the residence (common) of BSR and BUR(other two persons) by putting jewellery and silver articles , which were valued and inventorised, in a cupboard (locker) in the residence after due verification jewellery, tax returns, holding of family jewellery as per CBDT Instruction 1916, dated : 11-05-1994. In other words, there was no valid reasons for placing a PO on 08-02-2020 and revoking the same on 23-07-2020. In such a situation one cannot take a plea that it was not practicable to seize the gold ornaments and its purchase bills on 08-02-2020 when the same were verified earlier and returned to the assessee as per endorsement in the Panchanama (Enclosed along with submissions made for the asst. year 2014-15).

Further even on 23-07-2020, the department did not seize gold ornament or silver articles. No statement was recorded regarding purchase bills or gold ornaments as the department was aware that assets and purchase bills were explained on 08-02-2020 and the same were not in the nature of incriminating paper and undisclosed assets. There is an endorsement to the effect in the Valuation Report dt. 08-02-2020 that after valuation and taking evidence, jewellery was handed over/released to BUR. Thereafter the jewellery that was handed over to BUR was again taken back and put in PO without PO Orders. Such an attempt on the part of authorised officer does not accord to the stipulation of law and it shall be taken as an illegal attempt for prolonging the search beyond 31-03-2020 so as to get further time to complete the assessment.

PO can be placed under section 132(3) only when it is not practicable to seize some articles. It should not be placed as a mechanical exercise say for getting extended time for completion of assessment. Since the last PO was completed on 08-02-2020 for all purposes, a nominal PO cannot extend the limitation for making assessment. Hence the assessment based on a nominal PO would not be taken as closure of search for the purpose time limit for completion of assessment. Taking into account the operation of last PO on 08-02-2020 and Panchanama dated 10-

02-2020 the time limit for completion of assessment was 30-09-2021 as per TOLA 2020 in case of BSR and BUR also.

Such being the case, the time limit for completion of assessment is on 30-09-2021 being the extended date as per TOLA 2020 but not 31-3-2022 when the AO completed the assessment. The assessment is thus barred by limitation on any count or view.”

5. Per contra, the learned DR drew our attention to the order passed by the learned CIT (A) and more particularly, paragraphs 5.1.1 page 6 & 7 to the following effect. It was submitted that the last Panchnama was drawn by the search team on 23.7.2022 when the loose papers/ bundle 1 to 48 were found and seized by the search party and therefore, the order passed by the authorities was within the period of limitation.

6. We have heard the rival arguments made by both the sides and perused the material available on record including the written submissions filed by the assessee. First we will deal with Grounds 3 to 10 pertaining to the issue of Section 65A / 65B of Indian Evidence Act. In this regard, the learned AR drew our attention to the certificate issued u/s 65B of the Act, which was filed by the assessee and also filed by the Revenue mentioned as under:

CERTIFICATE U/S 55B OF THE INDIAN EVIDENCE ACT, 1872

I, Mr. Srinivas Rao (PAN NO. :) state the following that I am an MD of M/s Prathima Infrastructure Limited with office Premises at Plot No. 292-III, Road No.: 78, Jubilee Hills, Hyderabad- 500033.

I, Mr. Srinivas Rao state that by virtue of being MD of M/s Prathima Infrastructure Limited, I uses the email srinivas@prathimagroup.net located in the premises at Plot No. 292-III, Road No.: 78, Jubilee Hills, Hyderabad- 500033. Further, the srinivas@prathimagroup.net email used by me in this premises was functioning normally all times and this email was used for meeting various business interest of M/s Prathima Infrastructure Limited. I, Mr. Srinivas Rao also like to state that I, Mr. Srinivas Rao along with and/or my staff members were involved in entering data in email in the Premises.

Accordingly, I, Mr. Yishu (Digital Forensic Examiner) certify that the data is backed up from the srinivas@prathimagroup.net email during the search proceedings u/s 132 of the Income Tax Act, 1961, in case of u/s 132 of the Income Tax Act, 1961, Issue to Prathima Infrastructure Ltd. at 292-III, Road No.: 78, Jubilee Hills, Hyderabad- 500033 on DOS 06/02/2020 is stored in the devices with the following details:

Signature of Assesse: 

Name of Assesse: Mr. Srinivas Rao

Designation of Assesse: 

Signature: 

Name: Yishu

Designation: Digital Evidence Examiner

- left intentionally -

MD5 hash value: 7bc51ead39841df72297a470e42a9c8	
SHA1 hash value: eca7d7238b89222a84a76765d3d9d6a5e925daa3	
Master Copy Details	Working Copy Details
Make: SEAGATE	Make: SEAGATE
Model: SRDONF1	Model: SRDOVN2
Serial No: NAA9V0C0	Serial No: NABDC003

I, Mr. Yishu (Digital Forensic Examiner) certify that above data backup is a true and Identical copy / reproductions of electronic record, which was regularly fed in the srinivas@prathimagroup.net email.

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

Signature of Assesse:

Name of Assesse: Mr. Srinivas Rao

Designation of Assesse:

[Handwritten Signature]
11/2/2020
[Handwritten Designation: Director]

Signature:

Name: Yishu

Designation: Digital Evidence Examiner

[Handwritten Signature]
11/02/2020

Digital Evidence Collection Form

Hash Value report of <u>srinivas@prathimainfra.net</u>		
Name of Authorized Officer: Mr. Karvinder Singh Negi, DDIT, Unit - 8(3), Mr. Davinder Chodha DDIT Unit - 3(4), Mr. Bhageerath Choudhary DDIT - Unit-3(3), Mr. P. Sudhakar Naik DDIT		
Name of Assessee: Prathima Infrastructure Limited, Prathima Industries Private Limited, Usha Rani Boinipally, B Srinivas Rao		
DDOS: 06/02/2020	Evidence Image Date : 11/2/2020	Address: Plot No. 292-III, Road No.: 78, Jubilee Hills, Hyderabad- 500033
Examiner's Name and Details: Yishu, Digital Evidence Examiner, SysTools		
Details of Imaging Software/Version to be Given: FTP Imager 4.2.0.13		
Case Information: In case of s/s 132 of the income Tax Act, 1961, Issue to Prathima Infrastructure Limited, Prathima Industries Private Limited, Usha Rani Boinipally, B Srinivas Rao at 292-III, Road No.: 78, Jubilee Hills, Hyderabad- 500033 on DDOS 06/02/2020.		
Gmail ID:	<u>srinivas@prathimainfra.net</u>	
Password:		
Is the Hash Value Calculated ?	Algorithm:	
Yes No	<input checked="" type="radio"/> MD5 <input type="radio"/> SHA1 <input type="radio"/> Others	
MD5 hash value: <u>7bc51eaad39841df72297a470e42a9c8</u>		
SHA1 hash value: <u>eca7d7238b89222a84a76765d3d9d6a5e925daa3</u>		
Master Copy Details		Working Copy Details
Make: SEAGATE		Make: SEAGATE
Model: SRD0NF1		Model: SRD0VN2
Serial No: NAA9V0C0		Serial No: NAB0C003
Assessee Signature: <u>[Signature]</u> 11/2/2020	Authorized Officer: <u>[Signature]</u> 11/2/2020 Dr. Bhageerath Choudhary Deputy Director	
Witness Signature 1: <u>[Signature]</u> 11/2/2020	Witness Signature 2: <u>[Signature]</u> 11/2/2020	

7. It is the contention of the assessee before us that the certificate does not pertain to the computer Seized from the premises (subject matter of the present dispute) as it pertains to other location. The learned AR also relied upon the decision of the Vizag Bench of the Tribunal in the case of M/s. Polisetty Somasundaram vs. DCIT in ITA Nos. 172 to 180/Viz/2023 dated 18.08.2023 and our attention was drawn to paragraphs 35 and 46.

8. The ld.AR had filed the following written submissions in support of his case on this ground.

10. Evidentiary value of digital Evidence [65A and 65B of Indian Evidence Act] of unsigned & unverified Excel sheets.

· While passing the assessment order the learned assessing officer has not considered the import of sections 65A and 65B of Information Technology Act. In terms of Sec.60 of the Indian Evidence Act, computerized information is within the realm of hearsay evidence and therefore, not relevant at all by itself. In such cases either authority who has fed the information must be identified or he must appear personally and testify before the Court about the source of information. Hence, in the absence of any such corroboration, the evidence remained hearsay evidence, carrying no evidentiary value, in the absence of any corroboration. In a recent decision in the case of Vetrivel Minerals v.ACIT[2021] 179 taxmann.com 126(Madras), it was observed that electronic evidence is a secondary evidence and therefore it is required to follow the procedure while seizing and making use of electronic evidence.

· 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(8) of the Indian Evidence Act renders the document inadmissible in the eye of law as held by the Supreme Court in the judgment reported in Anvar P.V vs. P.K.Basheer and others reported in (2014) 10 SCC 473.

· 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 658. Section 658 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 65E3(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.

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.

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."

Moreover, while extracting the data from the computer procedure as prescribed under section 69A and 69B of Indian Evidence has to be mandatorily followed. to obtained the certificate . Hence such electronic evidence has no evidentiary value as decided by the Apex Court . Finally, this confusion has been settled by a larger bench of the Supreme Court in Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal,(2020) CIVIL APPEAL NOS. 20825-20826 OF 2017. where it was held that the procedure under Sections 65A and 65B is a code in itself and mandatory regarding admissibility of electronic evidence. Therefore, provisions of 65A and 65B should be followed to adduce the electronic evidence. AO made no attempt for corroboration although aspect was brought to his notice. Hence such electronic data cannot be made use of in the assessment and to make addition. ”

9. The above said aspect has been seriously disputed by the learned DR. It was submitted by the Id. DR that the computer and the data recovered belongs to the Assessee and the assessee has not disputed the same during the assessment proceedings. He had also drawn our attention to the seizure memo of the computer, which clearly shows that the hard disk and the laptop belongs to the assessee. He has drawn our attention to page 28 of paper book, which is to the following effect :

28

ANNEX DE A *...*

INCOME TAX DEPARTMENT, HYDERABAD

SEARCHED ON 06-03-2020 PAGE NO. 1

LIST OF A/C BOOKS ETC., SEIZED

List of *...* of *...* Documents etc. in the name of *...*

... Hyderabad

S. No.	DESCRIPTION	Total Pages	WB. No.	Period of which		Pages on which identification Marks placed
				From	To	
1	Loose sheets etc.	126	126			
2	Documents etc.	216	216			
3	Documents etc.	231	231			
4	W.O. K. ... TO ...	01				
/						

Total No. of items of books of accounts documents, etc., on this page _____

Total up to this Page _____

Signatures of Parties

1. *...*

2. *...*

Signature of Authorized Officer (With Name & Designation)

...

G. RAVI KIRAN - IRS
Asst. Commissioner of Income Tax Circle-1(1)
Off. Addl. Commissioner of Income Tax
Range-11, Hyderabad-500002

Signature of Party (With Name & Position)

...

(Written by Shri/Secy. *...*)

(Please use extra sheets if found inadequate)

10. We have heard the rival arguments of both sides and perused the record. In the present case, undoubtedly the Revenue has produced the above-mentioned certificate u/s 65B. The only point raised by the learned AR during the course of argument is that this certificate does not pertain to the computer seized from the premises where it was found lying and it pertains to different premises. It was submitted by ld.AR that the authorities prepared no Panchnama on 6.2.2020 pertaining to the hard disk and the laptop.

11. Further, the learned AR, in support of the grounds 2 to 2.3 raised before us, submitted that the assessee was asked to prove that he was not carrying any money lending business. Further, it was submitted that on the basis of some printouts taken out from the computers, the assessee was asked to prove that he was not into money lending business. The assessee had categorically denied the same. However, the lower authorities had confirmed the additions. Ld. AR submitted that the assessee cannot be asked to prove the negative or an inappropriate Act.

12. In this regard, the ld.AR had filed the following written submissions and submitted that the assessee cannot be asked to discharge and rebut the above said allegation based on section 292C of the Act.

Addition of unexplained loan and loan interest

Appellant is the prop of Pristine Estates a real estate project located at Sy. Nos. 159 & 162, Gopanapally (V), Serilingampally (M), Hyderabad. The premises of this entity was searched on 06-02-2020 and finally closed on 08-02-2020. In course of search the personal computer used by two officers of their own namely-Harsha and Radhika were scanned by the AO and an image of hard disks of those two computers were seized. Later, On the basis of notings in the Excel sheets extracted from in portable hard disk by the AO , it was alleged that the appellant was carrying on money lending activity. Based on these excel sheets, the AO worked out the figures of Principal and interest assuming that the appellant was carrying on money lending business. Accordingly, interest income and unexplained principal were taxed in the hands of BSR for various assessment years. The addition are as follows:

hands of BSR for various assessment years. The addition are as follows:

Assessment year	Unexplained principal (in Rs.)	Undisclosed interest(in.Rs.)	Remark
2014-15		1,50,000	Assessed by AO under section 69A , which was later changed to Section 69 by CIT-A
2015-16	63,26,184	5,85,000	Do
2016-17		3,60,000	Do
2017-18		2,55,000	Do
2018-19		0	Do
2019-20		3,65,000	Do
2020-21		45,000	Do

In the light of the above facts it is submitted that the inferences drawn by the AO are based on pure suspicion to work out additional income as given here under . The computer does not belong to either the appellant or to PIL or to PIPL. These were employees' personal computers.

No where in the Excel sheet the name of the appellant appears. Neither in course of search nor in course of post search investigation nor in course of assessment proceeding any corroborative evidence was found that appellant was carrying on money lending business and the computer belong to Pristine Estates.

· *The notings in the Excel sheets indicates that loans advanced and interest realised relate to some unnamed or unidentified person(s). Appellant does not carry on money lending business. Although a comprehensive search was carried out in the residence of the appellant and in the premises of the company, no evidence was found corroborating carrying on of business of money lending.*

· *The excel sheets were unsigned copies and does not indicate full details regarding name and addresses of the debtors or any supporting documents like loan agreements, promissory documents, stamped revenue receipts.*

· *The appellant is not aware of identity a few nick names which were noted on the excel sheets. No evidence was brought in to prove any connection of the appellant with the transaction.*

· *No legal evidence was found to show that money was advanced by the Appellant so as to fix liability on the appellant.*

· *No enquiry was made to ascertain the addresses of debtors despite denial by the appellant that he ever carried on money lending activity. Not even an iota of evidence to link the amount advance to the appellant was found.*

· *Merely because the said Excel sheet was found in a third party computer, it cannot be linked with the appellant to fasten a liability on the basis of a dumb document which is not speaking on all respects.*

· *The extract was taken from the hard at the back of the appellant and without his knowledge or information to him. He was never questioned.*

· *The laptop does not belong to the appellant since the appellant has not provided any laptop or computer to the project site and it is a third-party laptop computer.*

· *The appellant maintains regular books of account or any data relating to the appellant are maintained by the Accountant at H.O., Plot No. 213, Prathima, Road No. 1, Film Nagar, Jubilee Hills, Hyderabad. The project only carries out operations, attends to customer queries, etc., and the payments, sale transaction etc., are done at H.O.*

· *The Search Team have not questioned the person in whose control, operation, and possession of the computer at the project site to elicit any information of ownership of the computer or of the ownership of the data seized or discovered either during the course of search or post search investigation and during the assessment proceedings.*

· No attempt was made as to how the third-party computer person is related to the appellant, like an employee, creditor, service provider so as to establish any relation to the appellant / his business. Just because some person is in possession of a laptop computer and that person was present during search will not fasten any liability on the part of the appellant unless the identity of the possessor and the relation of data to appellant is established by the learned AO, especially when the search is at the back of the assessee.

· The Search Team obtained a Statement from the person in control, operation, and possession of the computer at the project site, but it preferred not to question him even when the data was non-speaking, vague and no details are forthcoming as to the nature of transaction, parties thereto, period of contract, sources for the transactions, who is the recipient if any receipt is shown etc. No attempt was made to gather facts even after the Search or during the Assessment Proceedings.

· The Search Team also obtained a Statement from the appellant, but it preferred not to question him either during the search or thereafter. During the Assessment Proceedings, the appellant was questioned without providing any details of the computer, the details of the person who was in possession and operation of the said computer and operation at the time of search, the details of data appearing in the computer, etc., which was requested by the appellant.

· Bald information of numbers without showing any means to ascertain the person, income, nature of transaction, parties to transaction, author of information, means of transaction execution, corroboration by way of any asset in any form in books of account, etc. is untenable.

· Although there was some mention about 'Bangalore' in the Notice u/sec.142(1) of the Act no question was asked. The appellant submitted that he does not have any relation to Bengaluru stated by the learned AO to have been mentioned in the data either in individual capacity or in relation to his business.

· It may be pertinent to mention here that although all the premises of offices of Prathima group were searched including that of residences of directors no corroborative evidence was found that the appellant was in any way connected with those unfamiliar persons and entries made in the computer. No question was put to him at any stage of the proceeding to elicit his reply.

· The books of account of the appellant do not contain an iota of reference to the transactions referred to by the AO. The appellant reiterated his submissions time and again and yet the learned AO went ahead and made the addition of the alleged amount of interest as the income of the appellant in an ad-hoc manner without any reason or support of law.

The learned AO erred in asking the appellant to explain third party data which is something impossible. To put it differently, the learned AO has asked the appellant to prove that he did not enter into certain transaction which in fact he never entered into those transactions at all nor his audited records or business show any relation to the said data. Can one be asked to prove the negative when he has not entered into those transactions and evidence was brought to his notice ? How can anyone disprove something which he did not do it all? In such a case, the onus is strictly on the learned AO to make a prima facie case, not mere allegations or presumptions and record the satisfaction of the facts linking the transaction to the appellant.”

13. Per contra, ld. DR relied upon the orders passed by lower authorities.

14. We have heard the rival contentions of the parties and perused the material available on record. In our view, once the documents in the form of electronic record have been retrieved from the computers / hard disk / laptop maintained in the office of M/s. Prathima Group, which was further confirmed by the employee of the assessee namely, Sri Ch. Harsha that the accountant namely, G. Radha Kumari was maintaining the computer / hard disk / laptop belonging to Prathima Group, then it is for the Revenue to prove that the electronic evidence / documents retrieved as annexure A/PIL/PE/SO/04 belongs to the assessee. The presumption under the Indian Evidence Act and Section 292C of the Act can always be invoked against the assessee if the books of accounts were found from the possession of assessee. Section 34 of the Indian Evidence Act, 1872 reads as under :

“Section 34 of Indian Evidence Act, 1872 - Entries in books of account, including those maintained in an electronic form, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.”

15. Further, in the present case, the Id.CIT(A) had confirmed the addition of Rs.1,50,000/- in the hands of the assessee on the basis of the Excel sheets found during the course of the search which contains the details of interest received on loan advance. The sole basis of making the addition was on account of the admission made by Shri CH Harsha, Project Manager, in reply to Question No.25 during the search proceedings.

16. The Id CIT (A) further recorded the finding that the assessee had failed to rebut the presumption u/s 292C of the Act and failed to prove that the hard drive and laptop do not belong to him.

17. The Id. AR during the course of argument and also in the form of written submission had submitted that Shri C.H Harsha in his statement had admitted that the hard drive and the laptop do not belong to the assessee rather it belong to Prathima Group. He had drawn our attention to the question No.25 and the reply given thereto.

*“Q.25 I am showing you Annexure-A/PIL/PE/SO/04, WD element 1.5 TB portable Hard Drive **containing image of computer maintained by the accountant G Radha Kumari and image of your Microsoft essential laptop taken during the course of search & seizure u/s 132 of the Income Tax Act, 1961 conducted in the site premise of Pristine Estates situated at Survey No.159 & 162, Gopanpally Village, Serilingampalli Mandal, Hyderabad belonging to Prathima Group. Please confirm the same.**”*

*Ans: **Yes, I confirm the same.**”*

18. It was the contention of the Id. AR that as per the Panchnama prepared no hard disk/laptop was recovered from the premises of the assessee, further, it was submitted that in reply to Question No.25, the CH Harsha had merely confirmed that the laptop/hard disk was maintained by G Radha Kumari, Accountant and it belongs to the Prathima group. It was submitted that on the basis of question and reply (supra), it is clear that the hard drive and the laptop do not belong to the assessee namely Shri B. Srinivas Rao. Further it was the contention of the Id. AR that there is no evidence that G Rahda Kumari was the Accountant of the assessee and the premises of Pristine Estates situated at Survey No.159 & 162, Gopanpally Village, Serilingampalli Mandal, Hyderabad belongs to the assessee.

19. From the record, we do not find any finding of fact given by the Revenue that the hard disk / laptop belongs to the assessee, who happens to be an individual. In fact, in the reply to Question No.25, it is confirmed by the witness that the hard disk / laptop belongs to Prathima Group. The excel sheet and the statement mentioned therein were retrieved from the desktop / laptop belonging to Prathima Group and therefore, it cannot be concluded that the said documents belong to the assessee, in his individual capacity. Therefore, in our opinion, there was no reason for the Assessing Officer to make the addition of Rs.1,50,000/- in the hands of the assessee on the alleged business of money lending done by the assessee. Further, no evidence has been brought on record to substantiate that the assessee was in the money lending business and Rs.1,50,000/-

was earned by him from the said business. In view of the above, the addition made in the hands of the assessee is liable to be deleted. Hence, we delete the addition in the hands of the assessee. Accordingly, ground nos. 2.1 to 2.3 are allowed.

20. With respect to legal grounds nos.1 and 3 to 10 raised by the assessee are concerned, the time limit for passing the assessment order and whether the certificate u/s 65B was issued by the authorities pertain to computers / hard disk / laptop seized from the premises of the assessee or not. As we have granted the relief to the assessee on merit, therefore, we do not deem it appropriate to decide these legal grounds on the basis of the submissions made before us. Hence, we keep these issues alive and open to be decided in appropriate proceedings in an appropriate case. Hence, the above grounds are not being decided.

21. In the result, appeal filed by the assessee in ITA No.562/Hyd/2022 is allowed.

ITA Nos.563 to 567/Hyd/2022

22. Identical grounds have been taken by the assessee in all these appeals for the respective assessment years i.e. A.Ys 2017-18 & 2019-20 to 2020-21 as in ITA 562/Hyd/2022 for the A.Y 2014-15. As we have already allowed the appeal of assessee on merit, therefore, and following the same parity of reasonings, our decision in ITA No.562/Hyd/2022 shall apply mutatis mutandis in the remaining appeals also. Accordingly, appeal nos. 563 to 567/Hyd/2022 are allowed.

23. In the result, all the appeals filed by the assessee are allowed. A copy of the order may be placed in the all the respective case files.

Order pronounced in the Open Court on 21st September, 2023.

Sd/- (R.K. PANDA) VICE-PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 21st September, 2023.

Vinodan/SPS

Copy to:

S.No	Addresses
1	Sri Srinivas Rao Boinipally, Plot No.30, 31, and 32 HUDA Heights, Beside Lotus Ponds, Banjara Hills, Hyderabad 500082 A N D
2.	Sri M Poorna Chander Rao, Partner, Sriramamurthy & Co, C.A H.No.6-3-185, Flat No.201, Sai Damodar Residency, new Bhoiguda, Secunderabad 500080
3	ACIT, Central Circle 2(4)
4	Pr. CIT – Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order