

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
(THROUGH VIRTUAL HEARING)

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं/ITA No.200 to 203/CTK/2022

(निर्धारण वर्ष / Assessment Year : 2013-2014 to 2016-2017)

M/s Biraja Construction, Ganapatipur, Kodandapur, Jajpur-755001	Vs	ACIT, Central Circle, Cuttack
PAN No. :AADFB 6414 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri P.K.Mishra, Advocate
राजस्व की ओर से /Revenue by	:	Dr. Abani Kanta Nayak, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	12/10/2023
घोषणा की तारीख/Date of Pronouncement	:	12/10/2023

आदेश / O R D E R

Per Bench :

These are the appeals filed by the assessee against the order of the Id. CIT(A)-2, Bhubaneswar, dated 31.10.2022, passed in I.T.Appeal No.:Bhubaneswar-2/10113/2012-13, 2/10380/2013-14, 2/10310/2014-15 & 2/10410/2015-16, for the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, respectively

2. It was submitted by the Id. AR that the facts in all the cases are identical. It was the submission that there was a search on the premises of the assessee on 27.02.2019. Notice u/s.153A of the Act came to be issued on 07.02.2020. The return came to be filed in response to the notice u/s.153A of the Act on 19.03.2020. It was the submission that the

original assessment in the case of the assessee for the assessment years 2013-2014 & 2014-2015, came to be passed u/s.143(3) of the Act on 29.03.2016 & 18.11.2016 and for the assessment years 2015-2016 & 2016-2017, there were intimations u/s.143(1) of the Act and time for issuing notice u/s.143(2) of the Act had expired by the time the search was conducted on the assessee. It was the submission that the appeals before the Tribunal were in respect of the assessment years which have abated. It was the submission that all the assessment orders were passed u/s.153A of the Act, the AO has not relied upon any incriminating material but the assessments are on the basis of verification in the audited balance sheet for the relevant assessment years and the allegation that there was no deduction of TDS u/s.194A of the Act in respect of the payment of interest under the head "hire charges" to M/s Srei Equipment Finance Ltd. It was the submission that as no incriminating material had been found in the course of search on the assessee, no additions could be made in the case of the assessee for any of the four assessment years as no incriminating material was found for any of the assessment years. For this proposition, Id. AR placed reliance on the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell (P.) Ltd., reported in [2023] 454 ITR 212 (SC), wherein the Hon'ble Supreme Court in para 11 has held as follows :-

11. As per the provisions of Section 153A, in case of a search under section 132 or requisition under section 132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to

any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under section 132 or requisition under section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

3. Further, the Hon'ble Supreme Court in para 14 has held as follows:-

14. *In view of the above and for the reasons stated above, 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.*

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

4. It was the submission that this is also the similar principle laid down by the Jurisdictional High Court of Orissa in the case of Smt. Jami Nirmala, reported in [2021] 132 taxmann.com 263(Orissa), wherein it has been held that, “*where the assessment order did not refer to any document unearthed during course of search, assumption of jurisdiction under Section 153A of the Act for reopening of assessment was without legal basis*”. It was the submission that in the case of assessee, as no incriminating documents were unearthed during the course of search or has been referred to or relied upon, the assessment orders were liable to be quashed as the AO did not have the power to assume the jurisdiction u/s.153A of the Act for the relevant four assessment years.

5. In reply, the Id. CIT-DR vehemently supported the order of AO and CIT(A).

6. We have considered the rival submissions. A perusal of the assessment order for the years under consideration clearly shows that the AO has not referred to any documents found in the course of search, incriminating or otherwise. The AO has only made the addition by invoking the provisions of Section 40(a)(ia) of the Act on account of allegation of non-deduction of TDS u/s.194A of the Act in respect of interest payment to Srei Equipment Finance Ltd.. This is not the information which has been unearthed in the course of search. This was the information which was available along with the return originally filed and it was very much available when the original assessment was completed u/s.143(3) of the Act for the assessment years 2013-2014 & 2014-2015 as well as the intimation u/s.143(1) of the Act for the assessment years 2015-2016 & 2016-2017. This being so, in view of the principles laid down by the Hon'ble Supreme Court in the case of *Abhisar Buildwell (P.) Ltd. (supra)* as also the decision of the Hon'ble Jurisdictional High Court of Orissa in the case of *Smt. Jami Nirmala (supra)*, as no incriminating material has been found in the course of search in the case of the assessee, no addition could be made in the assessment framed u/s.153A of the Act. Thus, the addition made by the AO and as confirmed by the Id.CIT(A) stands deleted.

7. In the result, all the three appeals of the assessee are allowed.

Order dictated and pronounced in the open court on 12/10/2023.

Sd/-

(राजेश कुमार)

(RAJESH KUMAR)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 12/10/2023

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
M/s Biraja Construction,
Ganapatipur, Kodandapur,
Jajpur-755001
2. प्रत्यर्थी / The Respondent-
ACIT, Central Circle, Cuttack
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, **कटक/ITAT, Cuttack**