

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

**ITA Nos. 16 to 18/Coch/2021&
SP Nos. 01 to 03/Coch/2021**
(Assessment Years:2007-08 to 2009-10)

E. Noushad Mannante Tharayil Thazhava P.O. Karunagappally, Kollam [PAN:AOPPN6607R] (Appellant)	vs.	Dy. CIT, Central Circle Kollam (Respondent)
---	-----	--

Assessee by:	Shri Anil D. Nair, Advocate
Revenue by:	Smt. J.M. Jamuna Devi, Sr. DR

Date of Hearing:	15.09.2023
Date of Pronouncement:	30.10.2023

ORDER

Per Sanjay Arora, AM

This is a set of three Appeals, i.e., for three consecutive years, being Assessment Years (AYs.) 2007-08 to 2009-10, by the assessee, directed against the part-confirmation in first appeal of his assessments under section 153A r/w s. 153C of the Income Tax Act, 1961 ('the Act') dated 31.03.2014 by the Commissioner of Income Tax, Kochi-3 [CIT(A)] vide a common order dated 10.11.2020.

2. The appeals are delayed by 34 days, which though is covered by the blanket saving by the Hon'ble Apex Court per it's *suo motu* writ in WP (C) 03/2020, dated 10/01/2022. The appeals were accordingly admitted, and the hearing proceeded with.

3. The impugned assessments are consequent to a search at the premises of M/s. A.R. Bangles, a Kollam-based firm in the business of gold jewellery, in which the

assessee is a partner, on 22.09.2011. The appeals contest several additions made in the assessment, confirmed in the main in first appeal.

4.1 The assessee's case before us, relying on the recent decision in *Pr. CIT vs. Abhisar Buildwell Pvt. Ltd.* [2023] 454 ITR 212 (SC), and taking us through the inventory of the seized material, praying for its admission, was that none of the impugned additions has its basis in the material found or seized during search. All the additions being agitated per the instant appeals, Sh. Nair, the ld. counsel for the assessee, would submit, are on the basis of disclosed information, or, in any case, not found or seized during search. Shri Nair would then take us through the assessment order for AY 2007-08, the first year, reading out the same. The additions relate to the source of investment in residential house (at Rs.3.08 lakhs); (b) source of deposit in bank account with Federal Bank, Thodiyoor Branch (at Rs.3.30 lakhs); and (c) source of purchase of property admitted in net wealth (Rs.3.18 lakhs), made during the year, i.e., aggregating to Rs.9.56 lakhs. There is no reference, he pointed out, to material seized during search in the assessment order. Like-wise, he added, for the other years.

4.2 We have toward the same also perused the assessment orders for the other two years, to find no reference to any seized material therein. Sure, the presumption in the absence of reference thereto in the assessment order, would be that it is indeed so, i.e., there is no such material found in search for the relevant years. However, it may well be that the Assessing Officer (AO) had omitted to refer to the seized material in the body of the assessment order/s, particularly considering the binding decisions by the Hon'ble jurisdictional High Court, i.e., prior to *Abhisar Buildwell Pvt. Ltd.* (supra), as in *E.N.Gopakumar v. CIT* [2017] 390 ITR 131 (Ker)), ruling that an assessment u/s.153A gets triggered on the basis of a search, irrespective of the discovery or otherwise of incriminating material thereat, a subsequent event. Seized material, however, is a part of the assessment record, and there is therefore no question of drawing any presumption in its respect. Smt. Devi, the ld.Sr. DR, was

accordingly required by the Bench to confirm, with evidence, if the addition/s made had its genesis in the material found or seized during search. This was also considered necessary in view of the assessments under reference being u/s.153C r/w.s.153A of the Act, i.e., in case of a person other than the person searched, jurisdiction for which gets assumed only *on the basis of material found and seized* during the search *qua* a person other than the person searched. The Revenue has vide letter dated 14/9/2023 clarified that there is no seized material other than that brought on record. The hearing was accordingly concluded, i.e., without hearing the parties on the merits of the quantum additions.

5. We have heard the parties, and perused the material on record.

5.1 The Hon'ble Apex Court in *Abhisar Buildwell Pvt. Ltd.* (supra) held as under:

'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 Assessing Officer 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 Assessing Officer 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 Assessing Officer including the income declared in the returns; and

(iv) in case no incriminating material is unearthed during the search, the Assessing Officer 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 Assessing Officer in the 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 reopened by the Assessing Officer in exercise of powers under section 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under section 147/148 of the Act and those powers are saved. (at pgs. 247-248)

5.2 The Hon'ble Apex Court has per its cited decision abundantly clarified that the jurisdiction to assess income u/s. 153A of the Act for an unabated assessment would only be on the basis of incriminating material found during search u/s.132 or

requisition u/s.132A of the Act. That is, the jurisdiction to assess income u/s. 153A of the Act, notwithstanding that the provision requires the AO to assess total income, defined u/s. 2(45), could only be in relation to an incriminating material/s found or unearthed during search proceedings.

5.3 None of the assessments under reference is an abated assessment, so that the scope of an assessment pursuant to a search u/s.132 (or requisition u/s.132A) of the Act would only be on the basis of incriminating material found or seized during search or through requisition, i.e., as clarified in *Abhisar Buildwell Pvt. Ltd.* (supra). In the instant case, the inventory of seized material, listed as Annexures CHN/16/8H(A) and (B), is placed on record. While Ann. (B) is the inventory of cash found (Rs. 18,000), Ann. (A) lists the purchase deeds of immovable property. Entries at Sr. Nos. 3, 7 & 16 thereof pertain to the assessee. The corresponding dates of their registration are 10.11.2010, 25.02.2011 and 12.07.2010. None of them, clearly, fall during the previous years relevant to the assessment years under appeal, i.e., AYs. 2007-08 to 2009-10. We are conscious that the dates referred to are the registration dates, and it may well be that the date/s of transfer u/s. 2(47) of the Act is prior thereto, falling under any of the years under appeal. No such case, however, has been made by the Revenue; it, as given to understand, adopting the same as the transfer dates.

5.4 In view of the fore-going, their merits apart, none of the additions made in assessment/s survive in view of the law laid in *Abhisar Buildwell Pvt. Ltd.* (supra). As explained therein, income in case of an unabated assessment could be disturbed, in the absence of material found during search, only by way of an assessment u/s. 147, following the due process envisaged therefor by law. The impugned additions are, accordingly, held as bad in law. The assessee's taxable income shall, accordingly, be that as returned or otherwise admitted by him, even if by way of self-assessment (*CIT*

v. *Shelly Products* [2003] 261 ITR 367 (SC)). As we have decided the assessee's appeals, his stay petitions become infructuous. We decide accordingly.

6. In the result, the appeals filed by the assessee are allowed, and the stay petitions dismissed as infructuous.

Order pronounced in the open court on October 30, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

(Manomohan Das)
Judicial Member

Sd/-

(Sanjay Arora)
Accountant Member

Cochin, Dated: October 30, 2023

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin