

**आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष**

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

आयकर अपील सं./ I.T.A. No.116/Viz/2021

(निर्धारण वर्ष / Assessment Year : 2008-09)

Deputy Commissioner of Income Tax, Central Circle-2, Visakhapatnam. PAN: AADCS 1409 H	Vs.	M/s. Sai Kanaka Mahalakshmi Finance Private Limited, No.14, 2 <sup>nd</sup> Floor, Room No. 18, KGN House, Ganesh Chandra Avenue, Dalhousie, Kolkata.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Assessee by	:	Sri GVN Hari, AR
प्रत्यर्थी की ओर से / Revenue by	:	Dr. Satyasai Rath, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	21/09/2023
घोषणा की तारीख/Date of Pronouncement	:	30/11/2023

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Visakhapatnam in appeal No. 657/10551/2019-20/CIT(A)-3/VSP/2020-21, dated

11/03/2021 arising out of the order passed U/s. 143(3) r.w.s 153A of the Income Tax Act, 1961 [the Act] for the AY 2008-09.

2. Brief facts of the case are that the assessee filed its original return of income U/s 139(1) of the Act for the Assessment Year 2008-09 admitting a total income of Rs. 6,406/- on 26/09/2008. Subsequently, a search operation U/s. 132 of the Act was conducted on 15/09/2017 in the case of the assessee company at its registered office premises at Kolkata in connection with the seizure operations in the group cases of Sri Alakaram Satyanandam. On verification of the seized material and books of accounts and evidences, the Ld. AO found that the income represented in the form of asset which has escaped assessment is likely to amount to Rs. 50 lakhs or more for the AYs 2008-09 to 2011-12. Accordingly, the Ld. AO issued a notice U/s. 153A of the Act on 7/12/2019. In response to the notice, the assessee filed its return of income for the AY 2008-09 on 24/12/2019 admitting the income of Rs. 6,410/-. Thereafter, notices U/s. 143(2) dated 27/12/2019 and U/s. 142(1), dated 15/12/2019 along with a questionnaire were issued to the assessee. On verification of the submissions made by the assessee, the Ld AO noticed that the assessee company allotted 92,750 shares on

15/2/2008 having face value of Rs. 100/- at a premium of Rs. 900/- to various companies as listed in the assessment order. Further, these 92,750 shares were transferred to the family members or concerns of Lahoti Family on 24/09/2009 at the face value. Subsequently, all the issued shares of the assessee company aggregating to 1,19,820 which includes 92,750 shares as detailed above have been transferred to M/s. Allbless Vyapaar Private Limited and M/s. Growfast Vanijya Private Limited wherein the family members of Sri Alakram Satyanandam are the Directors. The Ld. AO found that the shares have been obtained at a cost of Rs. 1000/- including premium (face value of Rs. 100/- + premium of Rs. 900/-) but were transferred to the various entities at the face value and therefore questioned the genuineness of the share capital brought in by the investor companies. The Ld. AO considered these transactions as sham and concluded that the assessee is in possession of an asset in the form of cash which escaped from the books of accounts and thus treated the entire share capital of Rs. 9,27,50,000/- as income of the assessee and considered the same as unexplained cash credit U/s. 68 of the Act. Aggrieved by the additions made by the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). On appeal, the Ld. CIT(A) concluded that in the absence of any

incriminating material found during the course of search, no additions can be made by the Ld. AO for unabated assessments and thereby partly allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us by raising the following grounds of appeal:

- "1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that the AO has no jurisdiction in making the addition in respect of concluded assessments in the absence of incriminating material when there was incriminating material in the form of share applications and seized and subsequent enquiries caused by the AO lead to the conclusion that the share applicants were bogus.*
- 2. Any other ground of appeal that may arise at the time of hearing."*

3. Further, by invoking the provisions of Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, the assessee filed a petition by raising the following grounds:

- "1. Assessment in the case of the petitioner / respondent was completed U/s. 143(3) r.w.s 153A of the Act vide order dated 30/12/2019. The Assessing Officer made one addition of Rs. 9,27,50,000/- U/s. 68 of the Act towards unexplained share capital.*
- 2. Being aggrieved, the petitioner filed an appeal before the Ld. CIT(A)-3, Visakhapatnam vide ITA No. 10551/2019-20. In this appeal, the petitioner contested the assessment order not only on merits but also on various legal objections. The following legal issues were raised before the Ld. CIT(A).*
  - a. The addition made without reference to incriminating material found during the search*

- is outside the scope of assessment U/s. 153A of the Act [Ground No.3].*
- b. The impugned assessment does not qualify for invoking the fourth proviso to section 153A of the Act and therefore the assessment is void ab initio [Ground No.2].*
  - c. The issue of notice in terms of the time limits revised as per Finance Act, 2017 is not permissible in respect of an assessment year for which the time limit for issue of notice U/s. 153A expires much before the date on which the Finance Act, 2017 came into force (Point E of the Legal submissions made before the Ld. CIT(A)).*
- 3. The Ld. CIT(A) granted relief by allowing ground no.3 of the appeal. The remaining legal issues were not specifically discussed and decided. Therefore, it is deemed that these legal grounds were decided against the petitioner.*
  - 4. As per the petitioner got full relief, it did not choose to file the further appeal before the Hon'ble ITAT, Visakhapatnam Bench. However, the Revenue preferred appeal against the order of the Ld. CIT(A) before the Hon'ble ITAT, Visakhapatnam Bench vide ITA No. 116/Viz/2021. As per Rule 27 of the Appellate Tribunal Rules, 1963 'the Respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him'. In pursuance of this Rule, the Petitioner / Respondent prefers to support the order of the Ld. CIT(A) on the following legal grounds deemed to be decided against the Respondent.*

*GROUND IN SUPPORT OF THE ORDER FO THE CIT(A)*

- 1. The impugned assessment year is beyond the scope of 'Relevant Assessment Year' as referred to in 4<sup>th</sup> proviso to section 153A of the Act and therefore the notice issued U/s. 153A is void ab-initio and is liable to be quashed.*
- 2. The Assessing Officer erred in invoking the 4<sup>th</sup> proviso to section 153A of the Act as the condition prescribed in clause(a) of the 4<sup>th</sup> proviso is not fulfilled.*

*3. The impugned assessment year is beyond the time limit of six years immediately preceding the assessment year relevant to the previous year in which the search was conducted and such time limit having expired prior to the Finance Act, 2017 coming into force, the Assessing Officer is barred from issuing the notice U/s. 153A in terms of the time limits extended by the Finance Act, 2017."*

4. At the outset, the Ld. DR argued that shares were issued at a huge premium and later on transferred to the Companies wherein the Directors are interested, at par value. The Ld. DR also argued that the Ld. CIT(A) has not specified about the absence of incriminating material. Further, the Ld. DR also referred to para 4.6.1 of the Assessment Order wherein the Ld. AO has clearly established about the bogus investments. The Ld. DR fully relied on the order of the Ld. AO.

Per contra, the Ld. AR argued that the Ld. AO has not referred to any incriminating materials but has made additions only on enquiries. The Ld. AR also further submitted that there were no incriminating materials except documents relating to Share Application Money received by the assessee company. The Ld. AR also further submitted that Sri Alakram Satyanandam has become a share-holder in the Financial Year 2011-12 only and hence he was not a Related Party during the impugned

assessment year. The Ld. AR further submitted that the he has raised grounds by invoking Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 and pleaded that before adjudicating the issues on merits, these grounds raised may be taken up for adjudication. Countering the arguments of the Ld. AR, the Ld. DR placed reliance on the decision of the Hon'ble High Court of Kerala in the case of E.N. Gopakumar vs. CIT (Central) reported in [2016] 75 taxmann.com 215 (Kerala). Further, the Ld. DR also placed reliance on the decision of the Hon'ble Karnataka High Court in the case of Canara Housing Development Co vs. DCIT, Central Circle-1(1), Bangalore reported in [2014] 49 taxmann.com 98 (Karnataka). The Ld. DR vehemently submitted that there are no merits in the order of the Ld. CIT (A). Countering the arguments of the Ld. DR, the Ld. AR placed reliance on the decision of the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax vs. Abhisar Buildwell P. Ltd in Civil Appeal No. 6580 of 2021, dated 24/04/2023. The Ld. AR also placed heavy reliance on the decision of the Coordinate Bench of Chennai in ITA No. 56/Chny/2022 and others, dated 03/08/2022 in the case of ACIT vs. Shri V. Durai and others. The Ld. AR also further heavily relied on the decision of the Hon'ble High Court of the Chennai in the case of A.R. Saifulla vs.

ACIT, Central Circle-1, Trichy [WP (MD) No. 4327 of 2021 dated 24/03/2021]. The Ld. AR therefore pleaded that the Ld. AO has no jurisdiction beyond the period of 10 years from the search assessment year and hence pleaded that the order of the Ld. AO be quashed.

5. We have heard the rival contentions and perused the material available on record and the orders of the Ld. Revenue Authorities. Before proceeding to adjudicate the grounds raised by the Revenue, we deem it fit to adjudicate the grounds raised by the assessee by invoking the Rule 27 of the ITAT Rules, 1963. After hearing the rival submissions and on going through the facts and circumstances of the case, **now the issue before us is whether the assumption of jurisdiction by the Ld. AO for the AY 2008-09 is valid or not as per the Fourth proviso to section 153A(1)(b) of the Act.** We note that the relevant assessment year is 2008-09 and the date of search is 15/9/2017 which falls in the Assessment Year 2018-19.

6. In the instant case on hand, Ten years has to be calculated from the starting point, from the end of the search assessment years i.e., from the AY 2018-19. Accordingly, the 10<sup>th</sup> Assessment Year in the instant case shall be the AY 2009-10. Section

153A(1)(b) states that the Ld. AO shall assess or re-assess the total income of six years immediately preceding the assessment year relevant to the previous year in which the search is conducted. The Fourth proviso and the Explanation-1 to Fourth Proviso defining the expression "**relevant assessment year**" for the purpose of this sub-section are extracted below for the sake of brevity:

*Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless-*

- (a) *The Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years:*
- (b) .....
- (c) .....

*"Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made."*

From the bare reading of the above provisions we find that the Statute has prescribed a different yardstick for the computation of six years in the case of search assessments for the purpose of section 153A(1)(b) and a different yardstick in the computation of Ten years, for the purpose of fourth proviso. Accordingly, we find that the Ld. AO has jurisdiction upto the AY 2009-10 in the instant case.

From the reliance placed by the Ld. AR in the case of A.R. Saifulla vs. ACIT (supra) we find it relevant to extract the relevant paragraphs from the said order as under:

*"8. In fact, I am prepared to sail along with the learned standing counsel and hold that if there is any ambiguity while construing a provision meant for rooting out or investigating evasion of tax, it must be resolved in favour of the revenue and against the assessee. Jurisprudentially speaking, the very object of law is to lay down norms for general behavior and prescribe sanction to ensure their compliance. Unless sanction is strictly enforced, it will incentivise deviation. Even in criminal law, while when it comes to substantive offences, retrospective application is forbidden, contrary approach is adopted in matters of procedure. I agree with the submission that [Section 153 A](#) of the Income Tax Act is intended to unearth tax evasion. But I can endorse the stand of the respondent as regards computation of the period of ten years only if there is ambiguity or obscurity in Explanation-I. To me, there is absolutely no ambiguity. <https://www.mhc.tn.gov.in/judis/>*

*9. Explanation-I is clear as to the manner of computation of the ten assessment years. It clearly and firmly fixes the starting point. It is the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. There cannot be any doubt that since search was made in this case on 10.04.2018, the assessment year is 2019-20. The end of the assessment year*

2019-20 is 31.03.2020. The computation of ten years has to run backwards from the said date i.e., 31.03.2020. The first year will of course be the search assessment year itself. In that event, the ten assessment years will be as follows :

1st year	2019-20
2nd year	2018-19
3rd year	2017-18
4th year	2016-17
5th year	2015-16
6th year	2014-15
7th year	2013-14
8th year	2012-13
9th year	2011-12
10th year	2010-11

The case on hand pertains to AY 2009-10. It is obviously beyond the ten year outer ceiling limit prescribed by the statute. The terminal point is the tenth year calculated from the end of the <https://www.mhc.tn.gov.in/judis/> assessment year relevant to the previous year in which search is conducted. The long arm of the law can go up to this terminal point and not one day beyond. When the statute is clear and admits of no ambiguity, it has to be strictly construed and there is no scope for looking to the explanatory notes appended to statute or circular issued by the department.

10. In the case on hand, the statute has prescribed one mode of computing the six years and another mode for computing the ten years. Section 153 A(1)(b) states that the assessing officer shall assess or reassess the total income of six years immediately preceding the assessment year relevant to the previous year in which search is conducted. Applying this yardstick, the six years would go up to 2013-14. The search assessment year, namely, 2019-20 has to be excluded. This is because, the statute talks of the six years preceding the search assessment year. **But, while computing the ten assessment years, the starting point has to be the end of the search assessment year. In other words, search assessment year has to be including in the latter case.** It is not for me to fathom the wisdom of the parliament. I cannot assume that the amendment introduced by the [Finance Act, 2017](#) intended to bring in four more years over and above the six years already provided within

*https://www.mhc.tn.gov.in/judis/ the scope of the provision. When the law has prescribed a particular length, it is not for the court to stretch it. Plasticity is the new mantra in neuroscience, thanks to the teachings of Norman Doidge. It implies that contrary to settled wisdom, even brain structure can be changed. But not so when it comes to a provision in a taxing statute that is free of ambiguity. Such a provision cannot be elastically construed.*

*11. One other contention urged by the standing counsel has to be dealt with. It is pointed out that the petitioner has invoked the writ jurisdiction at the notice stage. Since the petitioner has demonstrated that the subject assessment year lies beyond the ambit of the provision, the respondent has no jurisdiction to issue the impugned notice. Once lack of jurisdiction has been established, the maintainability of the writ petition cannot be in doubt.*

*12. The notice impugned in the writ petition is quashed. The writ petition stands allowed."*

7. In the case on hand search operation U/s. 132 of the Act was conducted on 15/09/2017, falling in the AY 2018-19. The computation of ten years as per above explanation is as follows:

1st year	2018-19
2nd year	2017-18
3rd year	2016-17
4th year	2015-16
5th year	2014-15
6th year	2013-14
7th year	2012-13
8th year	2011-12
9th year	2010-11
10th year	2009-10

The Ld AO has assumed jurisdiction for the AY 2008-09, which is beyond the period of limitation prescribed by statute.

Considering these facts and circumstances of the case as well as respectfully following the decision of the Hon'ble Madras High Court in the case of A.R. Saifulla vs. ACIT (supra), we are of the considered view and we deem it fit to quash the assessment order passed by the Ld. AO since the Ld. AO has no jurisdiction over the impugned assessment year. It is ordered accordingly. The decisions relied on by the Ld. DR are with respect to reopening of unabated assessment without any incriminating material therefore the case laws are of no help to the Revenue in the instant case.

8. Since the grounds raised by the assessee by invoking Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 are adjudicated by quashing the assessment order, the adjudication of other grounds raised by the assessee along with the two other grounds raised in support of the Ld. CIT(A)'s order become infructuous. Similarly, all the grounds raised by the Revenue need not be adjudicated since we have quashed the assessment as the Ld. AO has no jurisdiction to invoke the provisions of section 153A(1)(b) of the Act in the impugned assessment year. Therefore, the adjudication of all the grounds raised by the Revenue becomes infructuous.

9. In the result, appeal of the Revenue is dismissed and the petition filed by the assessee under Rule 27 is allowed as indicated herein above.

Pronounced in the open Court on 30<sup>th</sup> November, 2023.

Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
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Dated :30.11.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – M/s. Sai Kanaka Mahalakshmi Finance Private Limited, No. 14, 2<sup>nd</sup> Floor, Room No. 18, KGN House, Ganesh Chandra Avenue, Dalhousie, Kolkata, West Bengal.
2. राजस्व/The Revenue – Deputy Commissioner of Income Tax, Circle-2, Pratyakshakar Bhavan, Sector-8, MVP Double Road, Visakhapatnam, Andhra Pradesh – 530017.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam