

ITA Nos.780 to 785/Bang/2024 & CO Nos.15 to 18/Bang/2024  
M/s. Coffee Day Enterprises Ltd., Bangalore  
ITA Nos.786 to 791/Bang/2024 & CO Nos.19 to 23/Bang/2024  
M/s. Coffee Day Global Limited, Bangalore  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH: BANGALORE**

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

ITA Nos.780 to 785/Bang/2024
Assessment Years: 2011-12, 2015-16, 2016-17, 2017-18, 2018-19 & 2020-21 respectively

DCIT Central Circle-1(3) Bangalore	<b>Vs.</b>	M/s. Coffee Day Enterprises Limited No.23/2, Coffee Day Square Vittal Mallya Road Bengaluru 560 001  <b>PAN NO : AADCC3995L</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

CO Nos.15 to 18/Bang/2024 (Arising out of ITA Nos.780 to 783/Bang/2024)
Assessment Years: 2011-12, 2015-16, 2016-17 & 2017-18 respectively

M/s. Coffee Day Enterprises Limited Bengaluru 560 001	<b>Vs.</b>	DCIT Central Circle-1(3) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA Nos.786 to 791/Bang/2024
Assessment Years: 2011-12, 2012-13, 2015-16, 2016-17, 2017-18, & 2018-19 respectively

DCIT Central Circle-1(3) Bangalore	<b>Vs.</b>	M/s. Coffee Day Global Limited No.23/2, Coffee Day Square Vittal Mallya Road Bengaluru 560 001  <b>PAN NO : AABCA5291P</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

CO Nos.19 to 23/Bang/2024 (Arising out of ITA Nos.786 to 790/Bang/2024)
Assessment Years: 2011-12, 2012-13, 2015-16, 2016-17 & 2017-18, respectively

M/s. Coffee Day Global Limited Bangaluru 560 001	<b>Vs.</b>	DCIT Central Circle-1(3) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri C. Ramesh, A.R.
<b>Respondent by</b>	:	Smt. S, Praveena, D.R.

<b>Date of Hearing</b>	:	05.07.2024
<b>Date of Pronouncement</b>	:	23.07.2024

### **O R D E R**

#### **PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

The revenue raised appeals in ITA Nos.780 to 785/Bang/2024 for the assessment years 2011-12, 2015-16, 2016-17, 2017-18, 2018-19 & 2020-21 respectively which are directed against common order of CIT(A). The assessee filed Cross objection Nos.15 to 18/Bang/2024 for the assessment years 2011-12, 2015-16, 2016-17 & 2017-18 respectively.

#### **ITA Nos.780 to 785/Bang/2024 (Revenue's appeals):**

**2.** First, we will take up ITA Nos.780 to 785/Bang/2024 (Revenue's appeals). In these appeals, the only issue is with regard to disallowance u/s 14A of the Income Tax Act, 1961 (in short "The Act") read with Rule 8D of the Income Tax Rules.

**3.** Facts of the case are that on 21 .09.2017, a search action u/s. 132 of the Act was conducted in the case of M/S. Coffee Day Enterprises Ltd. at No. 23/2, Coffee Day Square, Vital Mallya Road. Bengaluru - 560001, in connection with search proceedings in the group case of M/S. Day Global Ltd., M/S. Coffee Day Enterprises Ltd., Shri V. G. Siddhartha and others (M/S. Coffee Day Group). Following search operation, notice under Section 148 was issued on 29.06.2017 for AY 2011-12 and notices u/s. 153A were issued to the appellant for AYs 2012-13 to 2017-18 on 14.11.2018. In compliance, the appellant submitted Returns of Income for relevant

AYs. The AO passed an order u/s 143(3) r.w.s. 147 of the Act on 28.06.2019 for AY 2011-12, u/s 153A r.w.s. 143(3) r.w.s.153D of the Act on 30.12.2019 for the AYs 2015-16 to 2017-18, 143(3) r.w.s 1531) on 30.12.2019 for the AY 2018-19 and u/s 143(3) r.w.s 1531) on 28.09.2022 for the AY 2020-21. Following the passing of assessment order u/s. 143(3) r.w.s 147 for the Assessment Year 2011-12 on 28.06.2019, the AO passed a rectification order u/s. 154 on 29.07.2021, for the same AY, enhancing interest u./s 234B by Rs.1,68,14,539/and charged interest u/s 234D of Rs. 87,89,415/- since the interest initially undercharged under Section 234B(3). The appellant challenged this rectification order, Out the CIT(A) discussed the appeal through an order (bearing DIN No. ITBA/APL/M/250/2022-23/1043503503(1) dated 21.6.2022. Subsequently the appellant approached the ITAT against the decision. The ITAT in its order dated 30.08.2022 in ITA No. 558/Bang/2022 remanded the matter back to the ld. CIT(A) as reproduced below, instructing to reassess the appellant's claims in this appeal in conjunction with the pending quantum appeal.

*“2.5 Against the order u/s 154, the assessee filed an appeal before the CIT(A) on 25.12.2021 the CIT(A) vide his order dated 21.6.2022 discussed the appeal filed by the assessee.*

*Against the CIT(A)'s order, the assessee is before this Tribunal against the quantum of interest levied u/s 234B(3) and also addition u/s 234D of the Act. The ld. A.R. at the outset submitted that the original quantum addition made by the ld. AO u/s 143(3) order is pending before the ld. CIT(A). He submitted that in the meanwhile by way of the 154 order, the ld. AO has enhanced the addition. He prayed that this appeal may also be remanded back to the ld. CIT(A) to consider together.*

*The ld. D.R. did not object for the issue to be remanded to the ld. CIT(A). Accordingly, we remand this issue back to the ld. CIT(A). It is directed that the ld. CIT(A) is directed to consider the claim raised by assessee in this appeal along with the quantum appeal which is said to be pending adjudication.*

*Accordingly, grounds raised by assessee stands allowed for statistical purposes.*

*In the result, the appeal filed by assessee stands allowed for statistical purposes.”*

**3.1** On appeal, ld. CIT(A) decided the issue in favour of the assessee. Against this revenue is in appeal before us by way of following grounds which are common in nature in all the appeals except change in figures. Hence, we reproduce the grounds raised in ITA No.780/Bang/2024 (AY 2011-12):

1. *Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) is right in setting aside the disallowance made by the assessing authority u/s 14A of the Act by holding that disallowance made voluntary by the assessee will meet the requirements as set out in section 14A of the Act?*
2. *Whether on the facts and circumstances of the case and in law, the ld. CIT(A) is right in holding that the voluntary disallowance made by the assessee exceeding the exempt income would meet the requirements of section 14A of the Act?*
3. *Whether on the facts and circumstances of the case and in law, the ld. CIT(A) is right in holding that the disallowance u/s 14A cannot exceed the income claimed as exempt contrary to the provisions of law prescribed?*
4. *Whether on the facts and circumstances of the case and in law, the ld. CIT(A) is right in not appreciating the contents of the CBDT Circular 5/2014 dated 11.2.2014?*

**3.2** In these assessment years, the ld. AO made disallowances u/s 14A of the Act as follows:

<b>AY</b>	<b>Exempted income</b>	<b>Disallowed by assessee</b>	<b>Disallowed by AO</b>
2011-12	--	--	16,05,86,054/-
2015-16	12,65,97,818/-	23,50,40,368/-	99,05,89,740/-
2016-17	18,33,48,564/-	12,33,31,273/-	41,02,66,817/-
2017-18	17,46,17,680/-	1,94,64,691/-	18,06,09,659/-
2018-19	19,20,79,448/-	1,94,64,691/-	19,36,37,309/-
2020-21	5,23,86,303/-	8,11,029/-	18,93,47,071/-

**4.** The ld. D.R. relied on the order of ld. AO and submitted that the disallowance made by assessee itself is not in accordance with Rule 8D(2)(i)(ii) & (iii) of the IT Rules and there should be disallowance under these 3 limbs and to be computed accordingly.

**5.** The ld. A.R. submitted that assessee voluntarily made disallowance u/s 14A of the Act corresponding to the exempted income. Thus, there cannot be any further disallowance under the provisions of section 14A of the Act. It was also submitted that in assessee's own case for the assessment year 2013-14, the assessee came in appeal before this Tribunal. The Tribunal vide order in ITA No.2820/Bang/2018 dated 10.6.2019 for the AY 2013-14 has allowed the appeal of the assessee by observing as under:

*“6. Having heard rival contentions, we are of the view that there is merit in the contentions of the assessee. During the course of hearing the ld AR also submitted that the assessee had received dividend from only one company named M/s Mind Tree Ltd. Further the amount of disallowance made by the assessee Rs.3023.29 lakhs is more than the dividend amount of Rs.205.44 lakhs. Hence, we are of the view that the disallowance voluntarily made by the assessee would meet the requirements of sec.14A of the Act. Accordingly, we are of the view that further disallowance made by the AO and confirmed by ld CIT(A) is not warranted in the facts and circumstances of the case. Accordingly, we set aside the order passed by ld CIT(A) on this issue and direct the AO to delete further addition made by him u/s 14A of the Act.”*

**5.1** Further, on appeal to the Hon'ble jurisdictional High Court, the High Court vide judgement in ITA No.2 of 2020 dated 3.1.2023 held as under:

*“7. In the instant case, the disallowance of Rs.30.23 crores and dividend amount is Rs.2.50 crores. As the disallowance is higher than the interest earned, we find no error in the order passed by the ITAT.*

*Accordingly, this appeal is dismissed.*

*Questions of law are answered in favour of the assessee and against the revenue.”*

**5.2** Further, he submitted that similar issue was considered by this Tribunal in AY 2014-15 in ITA No.459/Bang/2020, the Tribunal vide order dated 7.10.2020 held as under:

“6. Having heard rival contentions, we notice that the co-ordinate bench has decided an identical issue in the assessee’s own case in favour of the assessee in AY 2013-14 (referred supra). For the sake of convenience, we extract below the operative portion of the order passed in AY 2013-14:-

“6. Having heard rival contentions, we are of the view that there is merit in the contentions of the assessee. During the course of hearing the ld AR also submitted that the assessee had received dividend from only one company named M/s Mind Tree Ltd. Further the amount of disallowance made by the assessee Rs.3023.29 lakhs is more than the dividend amount of Rs.205.44 lakhs. Hence, we are of the view that the disallowance voluntarily made by the assessee would meet the requirements of sec.14A of the Act. Accordingly we are of the view that further disallowance made by the AO and confirmed by ld CIT(A) is not warranted in the facts and circumstances of the case. Accordingly we set aside the order passed by ld CIT(A) on this issue and direct the AO to delete further addition made by him u/s 14A of the Act.”

7. We notice that during the year under consideration, the assessee has received dividend income of Rs.8.47 crores and it has voluntarily disallowed a sum of Rs.28.56 crores u/s 14A of the Act. We also notice from the computation of income placed at page 65 of the paper book, the assessee has also earned Long term capital gain of Rs.13 crores and claimed the same as exempt. Thus aggregate amount of exemption claimed was Rs.21.47 crores. We also notice that the dividend income was received from one group company named M/s Mindtree Limited and the long term capital gain was also earned on sale of shares of M/s Mindtree limited. We notice that, as in the earlier year, the disallowance made by the assessee voluntarily is more than the amount of exempted income. Hence, we are of the view that the disallowance voluntarily made by the assessee would meet the

*requirements of sec.14A of the Act. Accordingly, following the order passed in AY 2013-14, we are of the view that further disallowance made by the AO and confirmed by ld CIT(A) is not warranted in the facts and circumstances of the case. Accordingly we set aside the order passed by ld CIT(A) on this issue and direct the AO to delete further addition made by him u/s 14A of the Act.”*

**5.3** In the light of above, he submitted that the assessee itself disallowed the expenses incurred for earning the exempted income and there cannot be any further disallowance could be made by the ld. AO and he submitted that order of the ld. CIT(A) to be confirmed on this issue.

**6.** We have heard the rival submissions and perused the materials available on record. Admittedly, for assessment years 2015-16, 2016-17, 2017-18, 2018-19 & 2020-21 the assessee has already made disallowance u/s 14A of the Act. Being so, as held by Hon'ble jurisdictional High Court in assessee's own case in ITA No.2/2020 dated 3.1.2023 for the assessment year 2013-14, there cannot be any further disallowance on this count for the assessment years 2015-16, 2016-17, 2017-18, 2018-19 & 2020-21.

**6.1** For the assessment year 2011-12, the assessee earned no exempted income. However, the ld. AO made disallowance of Rs.16,05,86,054/-. This issue came for consideration before Hon'ble Karnataka High Court in the case of PCIT Vs. Delhi International Pvt. Ltd. reported in 291 Taxman 490/138 taxmann.com 112 (Karn.), wherein held that “where assessee company did not have exempt income, no disallowance can be made u/s 14A of the Act.” Being so, in the assessment year 2011-12, no exempted income earned by assessee, there cannot be any disallowance u/s 14A of the Act.

**7.** In the result, all the appeals of the revenue in ITA Nos.780 to 785/Bang/2024 are dismissed.

**CO Nos.15 to 18/Bang/2024 (AYs 2011-12, 2015-16, 2016-17 & 2017-18 respectively) (By Assessee):**

8. The assessee filed Cross Objection Nos.15 to 18/Bang/2024 for the AYs 2011-12, 2015-16, 2016-17 & 2017-18 respectively, wherein assessee challenged the reopening of assessment by raising the grounds as under:

1. *“The order of the learned Commissioner of Income Tax (Appeals) is opposed to the facts of the case and law applicable to it.*
2. *The learned Commissioner of Income Tax (Appeals) erred in upholding the action of the Assessing Officer in concluding the assessment under the provisions of section 143(3) r.w.s 147 of the act ignoring the fact that, the assessment was reopened with a proposal to assess certain alleged notional income consequent to waiver of interest, whereas after due process of hearing addition was made under the provisions of section 14A of the act and under law this could not have been done.*
3. *The learned Commissioner of Income Tax (Appeals) erred in not following the ratios laid down in the following decisions wherein it is held that, if the issue which- led for reopening does not sustain, addition on a different issue cannot be made.*
  - (i) *Ranbaxy Laboratories Ltd V. CIT (2011) 336 ITR 136 (Del)*
  - (ii) *CIT V. Adhunik Niryatlspar Ltd (2011) 63 DTR 212 (Del)*
  - (iii) *Martech Peripherals (P) Ltd V. DCIT (2017) 81 Taxmann.com 73 (Madras)/(2017)394 ITR 733 (Madras)*
  - (iv) *CIT V. Jet Airways (I) Ltd (2010) 331 ITR 336 (Bom)*
  - (v) *CIT V. Takshila Educational Society (2016) 131 DTR 332 (Pat)*
  - (vi) *CIT V. Double Dot Finance Ltd (2013) 214 Taxman 47 (Mag) (Bom) & Rahul Prakash V. ITO (2013) 217 Taxman 100 (All)*
  - (vii) *CIT V. Mohmed Juned Dadani (2013) 214 Taxman 38 (Guj)*
  - (viii) *CIT V. Living Media India Ltd (2013) 359 ITR 106 (Del)*
  - (ix)
4. *The learned Assessing Officer erred in ignoring the fact that, an order U/s. 143(3) of the act had already been passed in the case of the respondent on 18.03.2014 and on a mere change in opinion no proceedings could have been initiated under the provisions of section 147 of the act.*
5. *The learned Commissioner of Income Tax (Appeals) erred in not following the position of law laid down by Hon'ble Supreme Court in the case of CIT V.*

*Kelvinator India Ltd (2010) 320 ITR 561 (SC) & also various other decisions.*

6. *The respondent craves permission to add, delete or alter any of the grounds at the time of hearing.*

**8.1** The contention of ld. A.R. is that the assessee company is engaged in the business of running and / or managing hotels & resorts and also carrying on the business of consultancy services and being holding company of a group of subsidiaries. The assessee company had filed return of income for the A.Y.2011-12 on 27.11.2011 declaring Nil income. An order U/s. 143(3) of the Act has been passed on 18.03.2014 accepting the income declared. There was action U/s. 132 of the Act, in the case of the appellant on 21.09.2017. There were no incriminating documents seized relevant to A.Y.2011-12. Further, the assessment year 2011-12 is beyond six years prior to the year in-which the search was conducted and hence this assessment year is not covered under the provisions of section 153A of the Act. Notice U/s. 148 of the Act was issued to the respondent on 29.03.2018. The brief facts which was the basis for issue of notice U/s. 148 of the Act is that, the respondent had issued debentures of Rs.360 crores to M/s. Arduino Holdings Ltd, a non-resident company to whom initially it was agreed that, interest would be paid at 7% p.a. However, on renegotiation it was agreed that, no interest is payable and accordingly no expenditure was claimed in the books nor was any provision made. The Assessing Officer initiated proceedings U/s. 147 of the Act alleging that, the waiver of interest would result in income to the respondent, ignoring the fact that, there was no such provision made and no such claim made by the assessee.

**8.2** The ld. A.R. submitted that during the assessment proceedings consequent to reopening, the Assessing Officer ignored the issue on which reopening was made but issued a show cause

stating that, there is expenditure disallowable U/s.36(1)(iii) r.w.s 37 of the Act. After considering the explanations offered even this proposal was ignored and assessment concluding with a disallowance of Rs.16,05,86,054/- under the provisions of section 14A of the Act. The assessee had not earned. any exempt income during the previous year and hence there could not have been any disallowance under the provisions of section 14A of the Act. He submitted that primarily the notice U/s. 148 of the Act issued is bad in law, for the reason that, on a change of opinion no notice could have been issued in respect of concluded assessments. Further, the issue recorded for reopening the assessment was dropped but addition was made on a different issue. Hence, he submitted that the order U/s. 143(3) r.w.s 147 of the Act is bad in law on this count also.

**8.3** According to the ld. A.R. the notice U/s. 148 of the Act was issued allegedly for the reason that, certain interest waiver is required to be taxed as income. However, on considering the facts no such income was brought to tax. The Assessing Officer has proceeded to make a disallowance U/s.14A of the Act which was not the reason for reopening at all. He submitted that the Assessing Officer has erred in not following the ratios laid down in the following decisions wherein it is held that, if the issue of reopening is not sustainable, the proceedings will have to be dropped and additions cannot be made on a different ground in a reopened assessment.

- i *Ranbaxy Laboratories Ltd V. CIT (2011) 336 ITR 136 (Del)*
- ii *CIT V. Adhunik Niryatlspar Ltd (2011) 63 DTR 212 (Del)*
- iii *Martech Peripherals (P) Ltd V. DCIT (2017) 81 Taxmann.com 73 (Madras)/(2017) 394 ITR 733 (Madras)*
- iv *CIT V. Jet Airways (I) Ltd (2010) 331 ITR 336 (Born)*
- v *CIT V. Takshila Educational Society (2016) 131 DTR 332 (Pat)*
- vi *CIT V. Double Dot Finance Ltd (2013) 214 Taxman 47 (Mag)(Bom) & Rahul Prakash V. ITO (2013) 217 Taxman 100 (All)*

vii *CIT V. Mohmed Juned Dadani (2013) 214 Taxman 38 (Guj)* (viii) *CIT V. Living Media India Ltd (2013) 359 ITR 106 (Del)*

**8.4** As stated an order U/s.143(3) of the act had been passed in the case of the respondent on 18.03.2014. There was no disallowance under the provisions of section 14A of the Act. Under the circumstances, the reopening on 25.05.2018 by way of issue of notice UIs. 148 of the Act is consequent to a change of opinion and hence not admissible under law. We rely on the ratios laid down in the following decisions.

- i *CIT V. Kelvinator India Ltd, Eicher Ltd (2010) 320 ITR 561 (SC)*
- ii *Ralies India Ltd V. ACIT & Another (2010) 323 ITR 54 (Born)*
- iii *Pr.CIT-II, Lucknow V. Scooter India Ltd (2017) 81 Taxmann.com 316 (Allahabad)*

**8.5** The ld. A.R. requested us to consider the submissions above and hold that, the order u/s. 143(3) r.w.s. 147 of the Act passed on 28.06.2019 by the Assessing Officer is bad in law and deserves to be annulled.

**9.** On the other hand, ld. D.R. submitted that assessment was rightly reopened by invoking the provisions of section 147 of the Act as there was escapement of income due to wrong claim of disallowance u/s 14A of the Act.

**10.** We have heard the rival submissions and perused the materials available on record. The main contention of the ld. A.R. is that the ld. AO made disallowance u/s 14A of the Act, which was not the reason for assessment at all as such, reopening therefore is not sustainable. He relied on the judgement of Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways 331 ITR 230. However, we find that there is a binding decision of jurisdictional High Court in the case of N. Govindaraju Vs. ITO & Anr. 93 CCH 488 (Karn.), wherein held as under:

*“The question which first arises is with regard to the validity of the reopening proceedings, which is by issuance of notice under section 148, reasons for which are to be recorded under sub-section (2). The assessee has an opportunity to challenge the reasons given for issuance of notice and if the same are found to be vague or illegal or without any basis, the notice would become invalid.*

*In the case of Raymond Woollen Mills Ltd. vs ITO (1999) 236 ITR 34, where such notice had been challenged, the Supreme Court held that what is to be seen is "whether there was prima facie some material on the basis of which the Department can reopen the case. The sufficiency of correctness of the material is not to be considered at this stage". Relying on this decision, the Apex Court, in the case of vs Rajesh Jhaveri Stock Brokers(P) Ltd. (2007) 291 XTR 500, while the issuance of notice under section 147 of the Act prior to the Act of 2009, has held that the final outcome of the proceedings is not at initial stage, what is required is 'reason to believe' but not established escapement of income. It further held that "at the stage of issue of notice, question is whether there was relevant material on which a reasonable person could have formed a requisite belief whether the materials would conclusively prove the escapement is not the concern at this stage".*

*This would mean that the issuance of notice is justiciable. If the assessee chooses not to file the notice or if it is challenged and found to be valid, then in either case, such notice is to be treated as valid and final. Since the validity of the notice issued under section 148(2) can be challenged or is subject to judicial scrutiny, in our view, the assessment or reassessment of 'any other income' in the case of a validly issued notice cannot be said to be a case of fishing and roving enquiry. The assessee has the opportunity to challenge the notice, and if it is held to be invalid for not giving adequate reasons for reopening the assessment, the entire reopening proceedings would lapse. In such a case there would be no question of assessment of either 'such income' of the first part of section 147 or 'any other income' of its second part. But if the notice is either not challenged or if challenged and found to be justified, it would be a case of reopening the assessment on the basis of a valid notice.*

*Once the notice for reopening of a previously closed assessment is held to be valid, the assessment proceedings as well as the assessment order already passed would be deemed to have been set aside. The Assessing Officer would then have the power to pass fresh assessment order with regard to the entire income which has escaped assessment. As long as the proceedings have been initiated on the basis of a valid notice, it becomes the duty of the Assessing Officer to levy tax on the entire income which may have escaped assessment during the assessment year. The said section 147 of the Act, as it now stands after 1.4.1989, may be read in a simple manner, in parts, as follows:*

*If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment, he may assess or reassess such income' "and also" 'any other income ' chargeable to tax which has escaped*

*assessment and which comes to his notice subsequently in the course of the proceedings.*

*The to believe' that any income chargeable to tax has escaped assessment, is one aspect of the matter. If such reason exists, the Assessing Officer can undoubtedly assess or reassess such income, for which there is such 'reason to believe' that income chargeable to tax has escaped assessment. This is the first part of the section and up to this extent, there is no dispute.*

*It is the latter part of the section that is to be interpreted by this Court, which is as to whether the second part relating to 'any other income' is to be read in conjunction with the first part (relating to 'such income') or not. If it is to be read in conjunction, then without there being any addition made with regard to 'such income' (for which reason had been given in the notice for reopening the assessment), the second part cannot be invoked. But if it is not to be read in conjunction, the second part can be invoked independently even without the reason for the first part surviving.*

*From a plain reading of section 147 of the Act it is clear that its latter part provides that 'any other income' chargeable to tax which has escaped assessment and which has come to the notice of the Assessing Officer subsequently in the course of the proceedings, can also be taxed. The said two parts of the section having been joined by the words 'and also', what we have to now consider is whether 'and also' would be conjunctive, or the second part has to be treated as independent of the first part. If we treat it as conjunctive, then certainly if the reason to believe is there for a particular ground or issue with regard to escaped income which has to be assessed or reassessed, and such ground is not found or does not survive, then the assessment or reassessment of 'any other income' which is chargeable to tax and has escaped assessment, cannot be made.*

*Chapter XIV of the Act deals with the 'Procedure for Assessment'. It provides for filing of Return of Income (s. 139), Self Assessment (s. 140 A), Assessment (s. 143), Best Judgment Assessment (s. 144) and also for Income Escaping Assessment (s. 147). The purpose of these provisions is to bring to tax the entire taxable income of the assessee and in doing so, where the Assessing Officer has reason to believe that some income chargeable to tax has escaped assessment, he may assess or reassess such income. Since the purpose is to tax all such income which has escaped assessment, in our view, besides 'such income' for which he has reason to believe to have escaped assessment, it would be open to the Assessing Officer to also independently assess or reassess any other income which does not form the subject matter of notice.*

*Although in a different context, which was whether in the course of reassessment of an escaped item of income an assessee could seek review in respect of an item which stood included in the original assessment order, the Supreme Court in the case of Sun Engineering Works Pvt. Ltd. Vs CIT (1992)198 ITR 297 has held that "the proceedings under S.147 of the Act are for the -benefit of the Revenue and not an assessee and are aimed at garnering the 'escaped income' of an assessee".*

*While interpreting the provisions of section 147, different High Courts have held differently, i.e., some have held that the second part of section 147 is to be read in conjunction with the first part, and some have held that the second part is to be read independently. To clarify the same, in the year 1989, the legislature brought in suitable amendments in sections 147 and 148 of the Act, which was with the object to enhance the power of the Assessing Officer, and not to help the assessee. Explanation 3 was inserted in section 147 by Finance (No. 2) Act, 2009 with effect from 1.4.1989. By the said Explanation, which is merely clarificatory in nature, it has been clearly provided that the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings, notwithstanding that the reasons for such issue had not been included in the reasons recorded under sub-section (2) of section 148. Insertion of this Explanation cannot be but for the benefit of the Revenue, and not the assessee. In this background, if we read Section 147 it would be clear that in the phrase 'and also' which joins the first and second parts of the section, 'and' is conjunctive which is to join the first part with the second part, but 'also' is for the second part and would be disjunctive. It segregates the first part from the second. Thus, when we read the full section, the phrase 'and also' cannot be said to be conjunctive.*

*The Punjab & Haryana High Court- in the case of Majinder Singh Kang Vs CIT (2012) CIT 244 ITR 358 has, after noticing that the earlier judgments of the Punjab & Haryana and Rajasthan High Courts in the cases of CIT Vs Atlas Cycle Industries (1989) 180 ITR 319 and CIT vs Shri Ram Singh(2008) 306 ITR 343 respectively] were rendered prior to the insertion of Explanation 3 to Section 147 of the Act, held that "a plain reading of Explanation 3 to S.147 clearly depicts that the Assessing Officer has power to make additions even on the ground that reassessment notice might not have been issued in the case during the reassessment proceedings, if he arrives at a conclusion that some other income has escaped assessment which comes to his notice during the course of proceedings for reassessment under S. 148 of the Act. The provision nowhere postulates or contemplates that it is only when there is some addition on the ground on which reassessment had been initiated, that the Assessing Officer can make additions on any other grounds on which the income has escaped assessment". The same view was reiterated by the Punjab & Haryana High Court in the case of CIT Vs Mehak Finvest Pvt. Ltd. (2014) 367 ITR 769. In the said judgment, it was also noticed that the Special Leave Petition filed against the judgment in the case of Majinder Singh (supra) had been dismissed by the Supreme Court.*

*Circular No.5 of 2010 issued by the Central Board of Direct Taxes (CBDT) after the amendment of 2009, provided for the "Explanatory Notes to the Provisions of Finance (No. 2) Act, 2009" by which Explanation 3 to section 147 of the Act had been inserted with effect from 1.4.1989. The relevant paragraph 47 of this Circular is reproduced below:*

*"47: Clarificatory amendment in respect of reassessment proceeding under S. 147.*

47.1: *The existing provisions of S. 147 provides that ff the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of S. 148 to 153, assess or reassess such income and also any other income chargeable to tax, which has escaped assessment. Further Assessing Officer may also assess or reassess such other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section. Assessing Officer is required to record the reasons for reopening the assessment before issuing notice under S.148 with a view to reassess the income of assessee.*

47.2: *Some courts have held that the Assessing Officer has to restrict the reassessment proceedings only to the reasons recorded for reopening of the assessment and he is not empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent.*

47.3: *Therefore, to articulate the legislative intention clearly Explanation 3 has been inserted in S. 147 to provide that the Assessing Officer may examine, assess or reassess any issue relevant to income which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of S. 148.*

47.4: *Applicability - This amendment has been made applicable with retrospective effect from 1<sup>st</sup> April, 1989 and will apply accordingly in relation to assessment year 1989-90 and subsequent years. "*

*It is thus clear that once satisfaction of reasons for the notice is found sufficient, i.e., if the notice under section 148(2) is found to be valid, then addition can be made on all grounds or issues (with regard to 'any other income' also) which may come to the notice of the Assessing Officer subsequently during the course of proceedings under section 147, even though reason for notice for 'such income' which may have escaped assessment, may not survive.*

*In the case of CIT vs Jet Airways (1) Ltd. (2011) 331 ITR 236 the Bombay High Court has held that "Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in. the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance or core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment. it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be*

*necessary, the legality of which would be tested in the event of a challenge by the assessee. "*

*Thus, what has been held is that 'such income' in the first part of section 147 is joined with 'any other income' of the second part of the section by the phrase "and also" which is used in a "cumulative and conjunctive sense". Following the said judgment of the Bombay High Court, same view has been taken by the Delhi High Court in the cases of Ranbaxy Laboratories Ltd. Vs CIT (2011) CIT 336 ITR 136 and CIT Vs Adhanjk Niryat Ispat Ltd. (2011) 63 DTR 212 and also the Gujarat High Court in the case of CIT Vs Mohmed Juned Dadani (2013) 214 Taxman 38.*

*With due respect to the view taken in the aforesaid cases, we are unable to persuade ourselves to follow the same.*

*Insertion of 'Explanation' in a section of an Act. Explanation is also different from Rules framed under an Act. Rules are for effective implementation of the Act whereas Explanation only explains the provision of the Section. Rules cannot go beyond or against the provision of the Act as it is framed under the Act and if there is any contradiction, the Act will prevail over the Rules. Same is not the position vis-a-vis the Section and its Explanation. The latter, by its very name, is intended to explain the provision of the Section, hence there can be no contradiction. Section has to be understood and read hand-in-hand with the Explanation, which is only to support the main provision, like an example does to explain any situation.*

*In the present case, insertion of Explanation 3 to section 147 does not in any manner override the main section and has been added with no other purpose than to explain or clarify the main section so as to also bring in 'any other income' (of the second part of section 147) within the ambit of tax, which may have escaped assessment, and comes to the notice of the Assessing Officer subsequently during the course of the proceedings. Circular 5 of 2010 issued by the CBDT (already reproduced above) also makes this position clear. In our view, there is no conflict between the main section 147 and its Explanation 3. This Explanation has been inserted only to clarify the main section and not curtail its scope. Insertion of Explanation 3 is thus clarificatory and is for the benefit of the Revenue and not the assessee.*

*If there is ambiguity in the main provision of the enactment it can be clarified by insertion of an Explanation to the said section of the Act. Same has been done in the present case. Section 147 of the Act was interpreted differently by different High Courts, i.e., whether the second part of the section was independent of the first part, or not. To clarify the same, Explanation 3 was inserted by which it has been clarified that the Assessing Officer can assess the income in respect of any issue which has escaped assessment and also 'any other income' (of the second part of section 147) which comes to his notice subsequently during the course of the proceedings under the section. After the insertion of Explanation 3 to section 147 it is clear that the use of the phrase "and also" between the first and the second parts of the section is not conjunctive and assessment of 'any other income' (of the second part) can be made independent of the first part (relating to 'such income' for which reasons are given in notice under section 148), notwithstanding*

*that the reasons for such issue (any other income') have not been given in the reasons recorded under section 148(2) of the Act. We are thus in agreement with the view taken by the Punjab & Haryana High Court in the cases of Majinder Singh Kang and Mehak Finvest (supra). Considering the provision of section 147 as well as its Explanation 3, and also keeping in view that section 147 is for the benefit of the Revenue and not the assessee and is aimed at garnering the escaped income of the assessee [viz. Sun Engineering (supra)] and also keeping in view that it is the constitutional obligation of every assessee to disclose his total income on which it is to pay tax, we are of the clear opinion that the two parts of section 147 (one relating to 'such income' and the other to 'any other income') are to be read independently. The phrase 'such income' used in the first part of section 147 is with regard to which reasons have been recorded under section 148(2) of the Act, and the phrase 'any other income' used in the second part of the section. is with regard to where no reasons have been recorded before issuing notice and has come to the notice of the Assessing Officer subsequently during the course of the proceedings, which can be assessed independent the first part, even when no addition can be made with regard to 'such income', but the notice on the basis of which proceedings have commenced, is found to be valid.*

*In the end it was vehemently argued by the learned counsel for the appellant that the reason to be given under sub-section (2) of section 148 would be the very foundation of the issuance of notice and if it is false or baseless, then everything goes and the structure erected on such foundation would crumble.*

*It is true that if the foundation goes, then the structure cannot remain. Meaning thereby, if notice has no sufficient reason or is invalid, no proceedings can be initiated. But the same can be checked at the initial stage by challenging the notice. If the notice is challenged and found to be valid, or where the notice is not at all challenged, then in either case it cannot be said that notice is invalid. As such, if the notice is valid, then the foundation remains and the proceedings on the basis of such notice can go on. We may only reiterate here that once the proceedings have been initiated on a valid notice, it becomes the duty of the Assessing Officer to levy tax on the entire income (including 'any other income') which may have escaped assessment and comes to his notice during the course of the proceedings initiated under section 147 of the Act.*

*In view of the aforesaid, we answer the first two substantial questions of law in favour of the Revenue and against the assessee."*

**10.1** In view of the binding decision of Hon'ble Karnataka High Court, we are not agreeing with the contention of Id. A.R. This ground raised by assessee in its CO Nos.15 to 18/Bang/2024 on reopening of assessment are dismissed.

**11.** In the result, all the CO Nos.15 to 18/Bang/2024 for the AYs 2011-12, 2015-16, 2016-17 & 2017-18 respectively filed by the assessee are dismissed.

**ITA Nos.786 to 791/Bang/2024 (Revenue's appeals) & CO Nos.19 to 23/Bang/2024 (By assessee):**

**12.** These appeals filed by revenue and COs by assessee are directed against common order of Id. CIT(A) for the assessment years 2011-12 to 2018-19 dated 20.2.2024. The first ground of revenue is with regard to grant of additional depreciation u/s 32(1)(iia) of the Act holding that whole process of conversion of raw materials when released to production of new article resulting in transformation of new articles ignoring that in the case of assessee process of preparing a liquid coffee is neither a distant object or article having a different name, character and use whereby no new product comes into existence.

**13.** After hearing both the parties, we are of the opinion that in assessee's own case in ITA Nos.3040 & 3041/Bang/2018 for the assessment years 2013-14 & 2014-15 dated 24.2.2020, wherein held as under:

*"6.3 We have heard the rival submissions and perused the record. Now the question before us is whether storing, drying of coffee, hulling, peeling, polishing, grading, colour sorting, garbling and manual grading, out-turning of garbled coffee and bulking thereby turning to liquid coffee is a manufacturing activity or not and whether it falls under section 2(29A) of the I.T. Act which resulted in manufacturing of object or article and bringing a distinct new product with different commercial composition or individual structure. In the present case, converting raw coffee beans which are not fit for human consumption as such to 'liquid coffee' which is fit for human consumption has to be considered as manufacturing activity, as it is an irreversible process producing different marketable product fit for human consumption. It came to that position by storing, drying of coffee, hulling, peeling, polishing, grading, colour sorting, garbling and manual grading, out-turning of garbled coffee and bulking, thereby, the same being a irreversible process, there is a change in the chemical composition of the product. Alternatively, one cannot say that the same is a 'processing'. It amounts to production and manufacture of a distinct commercial product different from original product. In view of this, the machinery like coffee making machine, vending machine, express kiosks etc., which are used for such activities, on which the additional depreciation was claimed by the assessee is to*

be allowed. It would be relevant to reproduce the relevant provision i.e. section 32(1) (ia) of the Act:

*“32(1)(ia) In the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31<sup>st</sup> day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation or generation and distribution of power, a further sum equal to twenty per cent of the actual cost and such machinery or plant shall be allowed as deduction under clause*

*(ii):*

*Provided that no deduction shall be allowed in respect of-*

- (A) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or*
- (B) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house; or*
- (C) any office appliances or road transport vehicles; or*
- (D) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head “Profits and gains of business or profession” of any one previous year”.*

#### *6.4 The Supreme Court in the case of Commissioner of Income-tax vs. N.C.*

*Budharaja and Co. and another reported in [1993] 204 ITR 412, has held that for determining whether manufacturing can be said to have taken place is where the commodity which is subject to the process of manufacturing can no longer be regarded as the original commodity but is recognized in a trade as a new and distinct commodity.*

#### *6.5 Reference needs to be made to the decision rendered in the case of Commissioner of Income-tax vs. Prabhudas Kishordas Tabacco Products P.Ltd reported in [2006] 282 ITR 568 (Guj), wherein it was held:-*

*"9. The tests to ascertain whether an activity amounts to manufacture or production of an article or thing have been laid down and reiterated by various decisions of the apex court and this High Court. Broadly, the requirement is that the raw material must be, in the first instance, subjected to a process of such a nature that it cannot be termed to be the same as the end-product after the raw material undergoes the process of manufacture, In other words, the goods purchased as raw material should go in as inputs in the process of manufacture and the result must be manufacture of other*

*goods, The article produced must be regarded by the trade as a new and distinct article having an identity of its own, an independent market after the commodity is subjected to the process of manufacture. The nature and extent of the process would vary from case to case, and in a given case, there may be only one stage of processing, while in another case, there may be several stages of processing, and perhaps, a different kind of process at every stage. That with every process, the commodity would experience a change, but ultimately, it is only when the change, or a series of changes, bring about a result so as to produce a new and distinct article, that it can be said that the commodity used as raw material has been consumed in the manufacture of the end-product. To put it differently, the final product does not retain the identity of the raw material after it has undergone the process or processes of manufacture."*

6.6 Thus, the whole process of conversion of the raw material when leads to production of new article and when its character, use and nature also indicate complete transformation bringing into existence the new product altogether. The assessee has rightly been allowed the benefit of additional depreciation by the CIT(A).

6.7 In light of the discussion hereinabove, we hold that the ground raised in both the appeals by the Revenue is dismissed."

**13.1** In view of the above order of the Tribunal, we dismiss this revenue's ground in ITA Nos.786 to 791/Bang/2024.

**14.** Next common ground in ITA Nos.788 to 791/Bang/2024 (AYs 2015-16 to 2018-19) are with regard to disallowance u/s 14A of the Act.

<b>AY</b>	<b>Exempted income</b>	<b>Disallowed by assessee</b>	<b>Disallowed by AO</b>
2015-16	--	--	2,66,16,313/-
2016-17	--	--	2,94,47,050/-
2017-18	--	--	94,13,000/-
2018-19	--	--	67,15,000/-

**14.1** After hearing both the parties, we are of the opinion that similar issue came for consideration before this Tribunal in assessee's own case in AYs 2013-14 & 2014-15 in ITA Nos.3040 & 3041/Bang/2018 dated 24.2.2020, wherein held as under:

*“4.5 We have heard the rival submissions and perused the record. It is admitted fact that the assessee has not earned exempted income. In similar circumstances, the Bengaluru Bench of the Tribunal in the case of M/s. J.P. distilleries (P) Ltd. vs. ITO in ITA No.470/Bang./2017 dated 20/06/2018 held that where there is no exempt income no disallowance can be made under the provisions of section 14A of the Act. The same view was taken by the Delhi High court in the case of Cheminvest Ltd. vs. CIT (378 ITR 33) wherein it was held that the expression “does not form part of the total income” u/s. 14A of the I.T. Act envisages that there should be actual receipt of income which was not includible in the total income, during the relevant previous year, for the purpose of disallowance of any expenditure incurred in relation to the said income. In other words, section 14A of the Act would not apply if no exempt income was received or receivable during the relevant previous year. Since in the present case, the Assessing Officer has not brought on record any earning of exempt income so as to invoke the provisions of section 14A r.w. Rule 8D(2)(iii) of the Act, we are in agreement with the finding of the CIT(A) on this issue. Accordingly, this ground of appeal of the Revenue in both the appeals is dismissed.”*

**14.2** In view of the above order of the Tribunal, we dismiss the ground taken by the revenue in these assessment years.

**15.** In the result, all the appeals of revenue in ITA Nos.786 to 791/Bang/2024 for the AYs 2011-12, 2012-13, 2015-16, 2016-17, 2017-18, & 2018-19 respectively are dismissed.

**CO Nos.19 to 23/Bang/2024 (By Assessee):**

**16.** In the Cross objections, the assessee has agitated the reopening of the assessment as follows:

- 1. “The order of the learned Commissioner of Income Tax (Appeals) is opposed to the facts of the case and law applicable to it.*
- 2. The learned Commissioner of Income Tax (Appeals) erred in upholding the action of the Assessing Officer in invoking provisions of section 147 of the act, in respect of a concluded assessment for the A.Y.2011-12 ignoring the position of law that, for a mere change in opinion the provisions of section 147 of the act cannot be resorted to.*
- 3. The learned Commissioner of Income Tax (Appeals) erred in not following the position of law laid down by Hon'ble Supreme Court in the case of CIT V. Kelvinator India Ltd (2010) 320 ITR 561 (SC) & also various other decisions.*
- 4. The respondent craves permission to add, delete or alter any of the grounds at the time of hearing.”*

**17.** The ld. A.R. submitted that the order of the learned Commissioner of Income Tax (Appeals) is opposed to the facts of the case and law applicable to it. He submitted that the ld. CIT(A) erred in upholding the action of the Assessing Officer in invoking provisions of section 153A of the Act and concluding assessments accordingly ignoring the fact that, there were no incriminating material seized for the A.Y. 2017-18 relevant to disallowance u/s.14A of the Act and disallowance of additional depreciation u/s.32(1)(iia) of the Act, no proceedings got abate and hence no additions could have been made in a proceedings initiated U/s. 153A of the Act. He submitted that the ld. CIT(A) erred in not following the position of law laid down by Hon'ble Supreme Court in the case Pr. Commissioner of income Tax, Central-3 V. Abhisar Buildwell (P) Ltd (2023) 149 Taxmann.com 399 (SC) wherein it is held that, in the absence of any seized material the concluded assessments cannot be revisited. He further submitted that the ld. CIT(A) erred in not following ratio laid down in the following decisions wherein it is held that, in the absence of any incriminating material seized no additions can be made under section 14A of the Act and u/s 32(1)(iia) of the Act in an assessment u/s. 153A of the Act.

- (i) *Pr. Commissioner of Income Tax, Central IT, New Delhi V. Meeta Gutgutia (2018) 96 Taxmann.com 468 (SC)*  
*CIT Vs. Jagadishprasad Mohanlal Joshi (2018) 259*
- (ii) *Taxmann 342 (SC) (i) Pr.CIT Vs.Dharmpal Premchand Ltd (2018) 408 ITR 170 (Delhi)*

**17.1** The ld. A.R. for the assessee stated the assessee had filed return of income for the A.Y.2017-18 on 30.11.2017 there was no action on the return. The search u/s. 132 of the Act was conducted on 21.09.2017. No incriminating materials were seized and there was any proceedings pending which got abate. Under the circumstances, no proceedings could have been initiated under the

provisions of section 153A of the Act. In the absence of any incriminating material no additions could have been made consequent to the proceedings which was initiated under the provisions of section 153A of the act. He relied on the ratio laid down by the Hon'ble Supreme Court in the case of Pr. Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell (P) Ltd (2023) 149 Taxmann.com 399 (SC).

**18.** We have heard the rival submissions and perused the materials available on record. In this case, search took place u/s 132 of the Act on 21.9.2017 in the case of Coffee Day Enterprises Ltd., 23/2, Coffee Day Square, Vittal Mallya Road, Bangalore 560 001. Consequent to this, notice u/s 153A of the Act has been issued and the assessment has been framed u/s 143(3) r.w.s. 153A of the Act for the assessment year 2012-13, 2015-16, 2016-17 & 2017-18. The scope of provisions of section 153A of the Act could be summarized as follows as per the order of the Mumbai Special Bench in the case of All Cargo Global Logistics Ltd. Vs. Deputy Commissioner of Income-tax (23 taxmann.com 103):-

<b>Scenario</b>	<b>Scope of Section 153A</b>
1. No return of income is filed by the assessee (whether or not time limit to file return of income has expired.	Since no return has been filed, the entire income shall be regarded as undisclosed income.  Consequently, AO would have the authority/jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s 143(3).  No requirement to restrict to documents found during the course of search.
2. Return of Income just filed by the assessee – return yet to be processed u/s 143(1) – Time limit for issue of notice u/s 143(2) not expired.	Since return filed is even pending to be processed, the return would be treated as pending before the AO.  Consequently, AO would have authority/jurisdiction to assessee the entire income, similar to jurisdiction in regular assessment u/s 143(3).

<p>3. Return of Income filed by the assessee – return processed and intimation issued u/s 143(1) – Time limit for issue of notice u/s 143(2) not expired.</p>	<p>Since intimation is not akin to assessment and time limit for notice u/s 143(2) has not expired, even though return has been processed, it will be case where return has not attained finality.</p> <p>Consequently, AO would have authority/jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s 143(3).</p>
<p>4. Return of income filed by the assessee. Intimation passed or not u/s 143(1) and time limit for issue of notice u/s 143(2) has expired.</p>	<p>Return of income of the assessee shall be treated as having being accepted and attained finality. AO loses jurisdiction to verify the return of income</p> <p>Since, no assessment would be pending there would be no abatement of any proceedings.</p> <p>Accordingly, the scope of assessment u/s 153A would be restricted to incriminating material found during the course of search.</p>
<p>5. Notice u/s 143(2) issued and assessment pending u/s 143(3)</p>	<p>Pending regular assessment proceedings would abate and would converge/merge in proceedings u/s 153A.</p> <p>Accordingly the scope of assessment under section 153A would cover the pending return filed as well and would not be restricted to incriminating material found during the course of search.</p>
<p>6. Assessment u/s 143(3) completed.</p>	<p>Since regular assessment proceedings have been completed &amp; are not pending, there would be no abatement of proceedings.</p> <p>AO loses jurisdiction to review the completed assessment. Accordingly, the scope of assessment u/s 153A would be restricted to incriminating material found during the course of search.</p>

7. Proceedings u/s 147 pending where: (a) Assessment originally completed u/s 143(3) OR (b) No assessment earlier completed u/s 143(3)	Pending assessment/reassessment proceedings u/s 147 would abate and would converge/merge in proceedings u/s 153A.  Accordingly, the powers of the AO, in both the cases, shall extent to: (a) Assess income that would validly be assessed in the pending proceedings u/s 147, and
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Further, assessment for these assessment years to be made on the basis of seized material found during the course of search as held by Hon'ble Supreme Court in the case of Pr. Commissioner of income Tax, Central-3 Vs. Abhisar Buildwell (P) Ltd (2023) cited (supra).

**18.1** As seen from the above table, if the regular assessment proceedings have been completed and are not pending as on the date of search, there would be no abatement of proceedings without any seized material. Hence, concluded assessment cannot be reopened without any seized/incriminating material. Being so, in the absence of any seized material, assessment cannot be reopened. Hence, we remit this issue to the file of ld. AO to frame assessment order in the light of above-mentioned observations in respect of assessment years 2012-13, 2015-16, 2016-17 & 2017-18 in CO Nos.20 to 23/Bang/2024.

**18.2.** However, for assessment year 2011-12 in CO No.19/Bang/2024, the assessment involved herein is not framed u/s 153A of the Act and it is a reopened assessment u/s 148 of the Act, hence, we dismiss this CO No.19/Bang/2024 as discussed in CO Nos.15 to 18/Bang/2024.

**19.** In the result, all the COs by assessee in CO Nos.19/Bang/2024 for the AY 2011-12 is dismissed, CO Nos.20 to to 23/Bang/2024 for the AYs 2012-13, 2015-16, 2016-17 & 2017-18, respectively are partly allowed for statistical purposes.

Order pronounced in the open court on 23<sup>rd</sup> July, 2024

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

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

Bangalore,  
Dated 23<sup>rd</sup> July, 2024.  
VG/SPS

Copy to:

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

By order

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