

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

<b>S.P. No. 29/Bang/2024 (in ITA No. 1107/Bang/2024) &amp; ITA No. 1107/Bang/2024</b>
<b>Assessment Year : 2018-19</b>

M/s. Asian Fab Tec Ltd., No. 15, Peenya Industrial Area, Peenya 2 <sup>nd</sup> Stage, Bengaluru – 560 058. <b>PAN: AADCA7116R</b>	<b>Vs.</b>	The Joint Commissioner of Income Tax (OSD), Central Circle – 1(3), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Chythanya K K, Sr. Advocate
Revenue by	:	Shri D.K. Mishra, CIT-DR

Date of Hearing	:	14-08-2024
Date of Pronouncement	:	22-08-2024

**ORDER**

**PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

Present appeal arises out of order dated 28/03/2024 passed by NFAC/CIT(A)-11, Bangalore for A.Y. 2018-19.

**2. Brief facts of the case are as under:**

**2.1.** Assessee is a company engaged in the business of providing electrical infrastructure to BESCO and KPTCL that includes laying of network of new transmission or distribution lines. On 03/10/2018, a search action u/s. 132 was conducted on the premises of the assessee. On perusal of the order of the Ld.CIT(A)/NFAC, it is noted that the assessee was also subjected to search operation u/s. 132 on 17/01/2016. For the year under consideration, the assessing officer passed assessment order u/s. 153A on 27/04/2021 against which the assessee filed appeal before the Ld.CIT(A).

**2.2.** Before the Ld.CIT(A), the assessee raised various issues against jurisdiction of the assessing officer who passed the assessment order and the validity of assessment order was thus challenged u/s. 282A(1) r.w.Rule 127A. The Ld.CIT(A) after considering the submissions of the assessee passed the impugned order against the assessee.

Against the order of the Ld.AO, the assessee is in appeal before this *Tribunal*.

**2.3.** The Ld.Sr.Counsel submitted that, the jurisdictional issue raised by the assessee before the Ld.CIT(A) was dismissed and additions made on merits by the Ld.AO were upheld. He submitted that before this *Tribunal*, the assessee has alleged

following additional grounds seeking admission of the same which is reproduced as under:

*“1. With reference to the above appeal, we request the Honourable Members to kindly permit us to take the following additional ground for the AY 2018-19:*

*“2.4. The search is invalid rendering resultant statements taken and consequent assessment invalid as the Authorised Officers appointed the witnesses who are not the inhabitants of the locality contrary to Rule 112(6) of the IT Rules and the search and seizure manual published by the department.*

*5.4. Without prejudice to above, manually signed final assessment order served on 22.06.2021, is non-est in the absence of generation of unique DIN, being contrary to Circular No. 19 of 2019.*

*7A. Without prejudice to the above, the assessment order being passed with the prior approval of the Additional CIT, is invalid and bad in law when such approval is not required to be obtained as per the provisions of the Act.”*

*2. It is submitted that the aforesaid grounds were inadvertently not raised in the appeal memorandum. The aforesaid grounds being legal grounds, may be decided on the basis of facts which are already on record. The omission to raise the grounds is not mala fide and willful.*

*3. Therefore, it is sincerely prayed before the Honourable Members that the leave to take up the aforesaid grounds may kindly be granted for the AY 2018-19.*

*4. The Affidavit in this regard is enclosed.”*

**2.4.** The Ld.Sr.Counsel submitted that, the Ld.CIT(A)/NFAC disposed off the appeal for A.Y. 2018-19 which being the assessment year immediately preceding the year in which the search took place. However, the other 5 assessment years out of

the block of six is still pending with the Ld.CIT(A). He submitted that, the above additional grounds raised before this *Tribunal* would impact the hearing on the appeals pending before the Ld.CIT(A) and as it goes to the root of the case.

**2.5.** The Ld.DR on the contrary submitted that, a report is to be called from the assessing officer on the issues that has been raised by the assessee in additional grounds, in the event this *Tribunal* admits the same.

We have perused the submissions advanced by both sides in the light of records placed before us.

**3.** On perusal of the issues raised in the additional grounds by the assessee, we note that the challenge is regarding the validity of the panchanama drawn. The crux of the issues alleged in additional ground is that as the panchas are alleged to be not the inhabitants of the locality, is contrary to the Rule 112(6) of the rules. The Ld.Counsel thus submitted that, based on such panchanama, entire search assessment initiated is bad in law.

**3.1.** The another issue raised in additional ground is regarding non-generation of DIN in the final assessment order that was served to the assessee on 22/06/2024, which also needs to be verified and addressed by the Ld.CIT(A).

**3.2.** It is noted that assessee has also raised without prejudice additional ground wherein the challenge is in respect of the prior approval having not taken of the ACIT in passing the assessment, thereby submitting that the assessment order becomes invalid.

**3.3.** It is noted by us that, since the Ld.CIT(A) has not verified the issues raised in the additional ground by the assessee and considering the fact that this could affect the search proceedings for the entire six years that falls into the block of assessment, we deem it necessary to remit the additional grounds raised by the assessee to the Ld.CIT(A). The Ld.CIT(A) is directed to analyse the issues raised by the assessee in accordance with law. We therefore remand the appeal to the Ld.CIT(A) for necessary verification in the light of the records and in accordance with law.

**3.4.** Liberty is granted to the assessee to raise the additional grounds before the Ld.CIT(A) which may be considered by the first appellate authority. Accordingly, without commenting on the merits of the case, we remit the issues to the Ld.CIT(A) to consider and dispose of the additional grounds filed by the assessee.

Needless to say that proper opportunity of being heard must be granted to the assessee.

**As we have remitted the appeal to the Ld.CIT(A), the stay petition stands disposed of accordingly.**

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

**Order pronounced in the open court on 22<sup>nd</sup> August, 2024.**

Sd/-  
(BEENA PILLAI)  
Judicial Member

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Bangalore,  
Dated, the 22<sup>nd</sup> August, 2024.  
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)              |

By order

Assistant Registrar,  
ITAT, Bangalore