

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE “B” BENCH, BANGALORE**

**Before Shri Laxmi Prasad Sahu, Accountant Member  
and  
Shri Keshav Dubey, Judicial Member**

<b>ITA No. 755/Bang/2024</b> (Assessment Year: 2018-19)		
Kempapura Srinivasareddy Uday 328, B Block Aces Layout Kundalahalli Bangalore 560037 PAN – ACTPU3804H	vs.	DCIT, Central Circle-2(2) Bengaluru
(Appellant)		(Respondent)
Assessee by:	Shri Siddesh N. Gaddi, CA	
Revenue by:	Shri Satish M., CIT-DR	
Date of hearing:	24.06.2024	
Date of pronouncement:	28.08.2024	

**ORDER**

**Per: Keshav Dubey, J.M.**

This appeal at the instance of the assessee is directed against Id. CIT(A)'s Order vide DIN- ITBA/APL/M/250/2003-24/1061702458(1) dated 28.02.2024 passed under Section 250 of the Income Tax Act, 1961 (the Act) in respect of Assessment Year (AY) 2018-19.

2. The assessee has raised the following grounds of appeal: -

- “1. *The impugned order passed by the Learned Officers (the Deputy Commissioner of Income Tax Central Circle 2(2), Blr and the Commissioner of Income Tax (Appeals)-15, Bangalore), to the extent prejudicial to the Appellant, is not justified in law and on facts and circumstances of the case.*
2. *The CIT(A) has erred in law and on facts in upholding the order of the AO, to the extent it is prejudicial to the interest of the Assessee.*

3. *The Learned Officer has erred in law and on facts in passing the impugned order without jurisdiction;*
4. *The Learned CIT(A)/AO have erred in law and on facts in not appreciating that in the absence of incriminating materials, there is no question of making an assessment in the case of concluded/unabated assessments.*
5. *The Learned AO has erred in making an addition u/s 22 of the Act to the extent of Rs. 4,15,887/-.*
6. *The above addition made on the basis of assumption is bad in law;*
7. *The Learned Officers have erred in law and on facts in denying deduction under section 80C of the Act to the extent of Rs. 150,000/-;*
8. *Based on the above, the Learned AO has erred in law and in fact in raising demand by levying interest u.s 234A/234B of the Act.”*

3. The brief facts of the case are that the assessee being an individual deriving income under the head 'income from house property' filed his original return of income u/s. 139(1) of the Act on 08.08.2018 declaring total income of Rs.8,75,220/- after claiming deduction under Chapter VIA of Rs. 1,50,000/-. The assessee in his return of income has declared income from the house property amounting to Rs.10,25,216/-. The return of income was further processed u/s. 143(1) of the Act on 29.07.2020. A search action u/s. 132 of the Act was conducted in the case of the assessee on 05.02.2020 and accordingly notice u/s. 153A of the Act was issued and served on 18.11.2020. In response to the notice u/s. 153A of the Act the assessee filed return of income on 18.12.2020 admitting income of Rs.8,75,220/-. Subsequently notices u/ss. 143(2) as well as 142(1) of the Act were issued requiring the assessee to produce supporting documents/details in support of the claim made in the return. During the course assessment proceedings the Assessing Officer (AO) verified that the assessee claimed deduction of Rs. 1,50,000/- in respect of tuition fees paid for the year. Hence the AO issued show cause notice to the assessee to furnish proof of tuition fees. In the absence of any evidence/documents the AO confirmed the addition of Rs. 1,50,000/- and disallowed assessee's claim of deduction u/s. 80C of the Act, Further the AO

found from assessee's bank statement that the assessee received rental income of Rs.14,41,103/- out of which the assessee declared Rs. 10,25,216/- in the return of income. Thus the difference of Rs. 4,15,887/- (14,41,103 – 10,25,216) is treated as income of the assessee and subsequently the AO completed the search proceedings by passing an order u/s. 153 of the Act. Aggrieved by the assessment completed u/s. 153A of the Act vide order dated 23.09.2021 assessee preferred an appeal before the CIT(A).

4. The ground Nos. 1, 2, 3 and 6 are general in nature and does not require any adjudication. The ground No. 4 relates to the legal validity of the assessment on the ground that in the absence of incriminating material there is no question of making assessment in the case of concluded/unabated assessment. Ground No. 5 relates to the addition u/s. 22 of the Act to the extent of Rs.4,15,887/-. Ground No. 7 relates to the denial of deduction u/s. 80C to the extent of Rs. 1,50,000/-. Ground No. 8 relates to levying of interest u/ss. 234A/234B of the Act.

5. Before us the learned A.R. of the assessee vehemently submitted that the case of the assessee is squarely covered by the judgement of the Hon'ble Supreme Court in the case of PCIT v. Abhisar Buildwell Pvt. Ltd. [2023] 454 ITR 212 (SC) wherein it was held that in case no incriminating material is found during the search conducted u/s. 132 of the Act, the AO will have no jurisdiction to make an assessment. Further, the learned A.R. submitted that during the course of first appellate proceedings the assessee has filed the details of property flat-wise as well as summary of rental income. Further, it was submitted that in the case of Anirudh Sarawat (tenant) the assessee has received rental income of Rs.18,900/- only for April, 2017 and thereafter he vacated the property. The First Appellate authorities ignored the copy of the bank statement submitted during the appellate proceedings.

6. The learned D.R., on the other hand, supported the order of the Id. CIT(A) and highly relied on the order of the ITAT Delhi “G” Bench in the case of *Amit Arora v. ACIT* {2020} 122 taxmann.com 78 (Delhi-Trib.) and submitted that the AO has jurisdiction to make addition in the assessment order u/s. 153 of the Act regardless of whether any incriminating materials were found/seized during search action u/s. 132 of the Act.

7. We have heard the rival contentions and perused the material on record. We first take up the issue relating to the legal validity of the addition made u/s. 143 of the Act because this is the basic issue having a bearing on the outcome of the appeal. The assessee had also raised the same legal issue before the Id. CIT(A) in the present case. First of all we would like to make it clear that the case laws relied upon by the Revenue is on different set of facts & circumstances compared to the present facts of the case. The issue decided in the case of *Amit Arora v. ACIT* (supra) is whether when assessee had filed original return of income after date of search, AO had jurisdiction to make additions in assessment order u/s 153A, regardless of whether any incriminating materials were found /seized in course of search action u/s 132. In the present case the assessee filed his return of Income U/s 139(1) of the Act on 08/08/2018 and the search took place well after the filing the return i.e. on 05/02/2020. Thus It is an undisputed fact that the assessee has filed return of income u/s. 139(1) of the Act on 08.08.2018. The return of income was processed u/s. 143(1) of the Act on 29.07.2020. The search action u/s. 132 of the Act was carried out on 05.02.2020. The assessee filed the return of income in response to notice u/s. 153A on 18.12.2020 admitting the income of Rs,8,75,220/- as declared u/s 139(1). Therefore, the return of income was processed u/s. 143(1) of the Act only after conducting the search on 05.02.2020. Further, the time limit for serving notice u/s. 143(2) on the

assessee was within 6 months from the end of the financial year in which the return is furnished, i.e., 30.09.2019. We found that as on the date of search the time limit for issuing notice u/s. 143(2) has already lapsed. The learned A.R. of the assessee strongly contended that in the absence of any incriminating material, there is no question of making an assessment in the case of concluded/unabated assessment. We also note that during the course of First appellate proceedings, the assessee filed the additional Grounds of Appeal & written submissions as well as additional evidence which were sent by Id. CIT(A) for seeking remand report from AO. The AO submitted remand report- II dated 19.4.2023 in which it has been submitted as under:

*"During the search action conducted at the residential premises of the assessee, several incriminating documents were found and seized. Some of the seized documents was related to receipt of sale consideration from sale of flats obtained through JDA. Some of them showed receipt of rental income/sale consideration in cash and through bank account by assessee and family members. The seized documents pertains to rental income of the assessee from property at #336 and from some shops. It becomes clear that the assessee has short reported his income in ITR.*



*Vide letters filed on 07.03.2023, the assessee has raised below additional grounds of appeal:*

1. The order of the learned Assessing Officer u/s 153A of the income-tax Act 1961 dated 23.09.2021 is opposed to law, facts and circumstances of the case.
2. The impugned order has been passed in great haste without providing an adequate and reasonable opportunity of being heard, which is against the Principles of Equity and Natural Justice, and therefore the impugned order is liable to be quashed.
3. The action of the Learned Assessing Officer is arbitrary as the Appellant was not served with the show cause notice prior to the issuance of impugned assessment order u/s. 153A

Remarks of AO:

Following notices were issued to assessee giving time to explain the facts and claims made in the return of income

Notice	Date
153A	18.11.2020
143(2)	30.12.2020
142(1)	13.08.2021

Vide notice u/s 142(1) dated 13.08.2021, the assessee was asked to furnish the (a) financial transactions for the AY under consideration including the unsecured loans, investments, fixed deposits and other tax-free income.

(b) all bank account statements:

(c) comment on the seized material that has a bearing on total income declared in return of income.

Submissions furnished on 03.09.2021 were not sufficient to explain the financial transactions as assessee merely reported NIL for all the above details. For bank statements, assessee only reported one bank account at Whitefield branch of Bank of Baroda and stated that only income is Rs 12/-. As none of the submissions reported any loans/sources for the expenditures incurred by the assessee assessing officer passed assessment orders after making additions/disallowances based on the information available on record.

4. The impugned assessment order has been passed without any incriminating material found during the search operations and the impugned adjustments being merely based on an erroneous assumption and presumptions without any tangible evidence. This violates the principles of natural justice and results in unjust assessment.

As already stated above, the seized documents clearly showed that assessee and family members were receiving rental income in cash or otherwise from various properties and that the assessee has under reported his income.

In view of the above, the additional grounds of appeal filed by the assessee may be rejected."

7.1 The above remand report was brought to the notice of the assessee and the assessee also submitted rejoinder in which it has been contested that the documents found during the course of search does not belong to the assessee but it is related to HUF & assessee's mother. The details submitted by the assessee are as under:-

Particulars	Seized Documents reference	Page No	Remarks
Picture-1	A-EPR 15-06	20	Pertaining to HUF property No. 397- period 01-11-2015
Picture-2	A-EPR 15-06	24	Pertaining to HUF property No. 397- period 01-01-2016
Picture-3	A-EPR 15-06	33	Pertaining to HUF property No. 397- period 01-06-2016
Picture-4	A-EPR 15-05	10	Pertaining to Mother's & HUF Property- period 01-08-219
Picture-5	A-EPR 15-0	111	Pertaining to mother's property - period 2012

7.2 We have gone through the above table and found that no documents belong to the assessee. The Id. CIT(A) has not disputed the same and during the course of proceedings before us, the Id. D.R. also do not controvert with regard to the above submissions that it belong to the assessee in the rejoinder proceedings noted (supra). Further, we are of the opinion that during the assessment proceedings, the AO has also not referred to any seized material while framing the assessment. Accordingly, we hold that the AO is not justified for making additions towards the rental income for want of any incriminating material. The assessee has also filed return of income for the impugned assessment year u/s 139(1) of the Act and as on the date of search there was no assessment pending and in fact the time limit for issue of notice u/s 143(2) has also expired . In support of our decision, we rely on the decision of the Apex court in the case of PCIT Vs Abhisar Buildwell (2023) 149 taxmann.com 399. We, therefore allow this ground of the assessee.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 28<sup>th</sup> August, 2024.

Sd/-

**(Laxmi Prasad Sahu)**  
**Accountant Member**

Bengaluru, Dated: 28<sup>th</sup> August, 2024

n.p.

Sd/-

**(Keshav Dubey)**  
**Judicial Member**

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

*By Order*

//True Copy//

*Assistant Registrar  
ITAT, Bangalore*

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	08.08.2024		Sr. PS/PS
2	Draft placed before author	08.08.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement			Sr. PS/PS
7	File sent to Bench Clerk			Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			