

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND  
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.	Assessment Year	DIN Number
963/Bang/2024	2012-13	ITBA/APL/M/250/2023-24/1063340129(1)
964/Bang/2024	2013-14	ITBA/APL/M/250/2023-24/1063340168(1)
965/Bang/2024	2014-15	ITBA/APL/M/250/2023-24/1063340010(1)
966/Bang/2024	2015-16	ITBA/APL/M/250/2023-24/1063340086(1)
967/Bang/2024	2016-17	ITBA/APL/M/250/2023-24/1063340116(1)

M/s. Anand Diagnostic Laboratory, No.54, Bowring Towers, Bowring Hospital Road, Shivaji Nagar, Bengaluru – 560 001. <b>PAN :AAHFA 2660 H</b>	Vs.	DCIT, Central Circle – 2(4), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	S/Shri. Sridhar S and Arjun Raj N, Advocates
Revenue by	:	Ms. Neha Sahay, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	18.07.2024
Date of Pronouncement	:	16.08.2024

**ORDER**

***Per Bench:-***

All these appeals of the assessee are arising from Order of CIT(A) dated 25.03.2024 having DIN numbers mentioned in the title of the appeals. The facts leading to the filing of the present appeals are discussed herein under: -

***ITA No-963 to 967 for AY 2012-13 to 2016-17(Five Appeals)***

1. In all these five appeals the admitted facts are that the assessee has filed the return of income for the years as per the chart mentioned below. These returns were not pending on the date of search.

<b>Assessment Year</b>	<b>Date of filing of return</b>	<b>Status on date of search i.e., on 29.11.2017</b>
2012-13	29.09.2012	Assessed u/s 143(3) on 25.03.2015..
2013-14	31.10.2013	Not pending
2014-15	12.11.2014	“
2015-16	26.09.2015	“
2016-17	28.09.2016	“

2. Perusal of the above table would show that so far as Assessment Years 2012-13 to 2016-17 are concerned, the returns of income filed by the assessee were not pending on the date of search. This fact is crucial and goes to the route of the matter.
3. In this case, search was conducted at the premises of the assessee on 29.11.2017. It is admitted fact as coming out from the Assessment Orders itself that return of income for all the above-mentioned Assessment Years were not pending on the date of search and in fact in Assessment Year 2012-13, the assessment was completed under section 143(3) of the Act. Be that as it may, it is the case of the Revenue that certain incriminating materials were found during the course of search viz., bills related to “other discounts” given by the assessee. On the basis of these bills it is observed by the AO that assessee has not reflected an expenses namely “other discount” in the invoices though expenses under this nomenclature have been claimed in the P&L. Accordingly the AO took the view that amount

which is not found mentioned in the bills not allowable as revenue expense to the assessee.

3. Aggrieved by the Order of the AO, assessee has preferred appeals before CIT(A) and, *inter alia*, contended that the AO has erred in making the addition under section 153A of the Act would there being any incriminating material found during the course of search and ignoring that the return of income filed by the assessee were not pending on the date of search. However, the CIT(A) dismissed the appeal of the assessee and affirmed the Order of the AO.

4. Aggrieved with the Order of the CIT(A), assessee has come up in appeal before the us and has raised several grounds. At the outset, learned Counsel for the assessee vide ground No.11 has contended that the case of the assessee is squarely covered by the judgment of Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell (P.) Ltd. reported in [2023] 149 taxmann.com 399 (SC). The learned Counsel for the assessee contended that it is a settled position of law that in absence of any incriminating material the AO cannot assess an assessee for such years for which no assessments are pending on the date of search. The learned Counsel for the assessee also argued that reliance by the Departmental authority on the statement of the Manager Accounts of the assessee company, *dehors* the support of any incriminating material, is not tenable in law.

5. The learned DR relied on the Orders of the authorities below.

6. After considering the rival submissions, we observe that the assessee has incurred certain expenses under the head "other discount" and has duly reflected those amounts in the Profit and Loss account, and the AO has examined this issue only *dehors* any incriminating material. Therefore, it is not a case where some document exhibiting some income not disclosed by assessee have been found, rather it is case where assessee books of account were recording certain

entries have been examined by the AO under section 153A read with 143(3) of Act.

4. It is settled position of law that under section 153A of the Act, presence of incriminating material is *sine-qua- non* for **assessing those years which were not abated** on the date of search. In other words, there has to be some incriminating material unearthed during search qua those years which are not pending on the date of search. Recently, Hon'ble Supreme Court in the case of *Abhisar Buildwell (P.) Ltd. (supra)*, affirming the view of *Kabul Chawla*, has held as under:

*"23. In view of the above and for the reasons stated above, it is concluded as under:*

*i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*

*ii) all pending assessments/reassessments shall stand abated;*

*iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*

*iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be reopened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.*

*24. The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.”*

7. In the present case except the statement of Manager accounts, who is third party, there is nothing on record to suggest that there was some manipulation in the accounts of the assessee. A statement on standalone basis cannot be treated as incriminating material as held by various High Courts including Delhi High Court in the case of **CIT Vs Harjeev Aggarwal reported in 290 ITR 263(Del) and and CIT Vs Best Infrastructure reported in 397 ITR 82(Del)**. Therefore, respectfully following the verdict of the Hon'ble Apex Court in the case of Abhisar(Supra), we allow the appeals of the assessee on this ground alone. Since we have already allowed the appeal of the assessee on this legal aspect, we deem it appropriate not to go into the merits of the case.

8. Hence, the appeals of the assessee in for AY 2012-13 to 2016-17 are allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

**Sd/-**  
**(CHANDRA POOJARI)**  
**Accountant Member**

**Sd/-**  
**(PRAKASH CHAND YADAV)**  
**Judicial Member**

Bangalore.  
Dated: 16.08.2024.  
/NS/\*

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|---------------|------------------------|
| 1. Appellants | 2. Respondent          |
| 3. DRP        | 4. CIT                 |
| 5. CIT(A)     | 6. DR,ITAT, Bangalore. |
| 7. Guard file |                        |

By order

Assistant Registrar,  
ITAT, Bangalore.