

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No. 334 to 339/Bang/2024
Assessment Years: 2012-13 to 2017-18

Dommallur Shivanna Nandish, C-12, No.156, Epsilon Ventures Villa Layout, Ammani Belandur Marathahalli, Bengaluru – 560 037.  <b>PAN – AAZPN 5719 J</b>	Vs.	The Dy. Commissioner of Income Tax, Central Circle – 1(2), Bengaluru.  .
APPELLANT		RESPONDENT

ITA No. 586 to 591/Bang/2024
Assessment Years : 2012-13 to 2017-18

Protein Entertainment Pvt. Ltd., (DEFUNCT), C-12, No.159, Epsilon Ventures Villa Layout, Ammani Belandur Marathahalli, Bengaluru – 560 037.  <b>PAN – AAFCP 5059 A</b>	Vs.	The Dy. Commissioner of Income Tax, Central Circle – 1(2), Bengaluru.  .
APPELLANT		RESPONDENT

ITA No.1566/Bang/2024 and
Assessment Year: 2017-18

Docket Tech Solutions Pvt. Ltd., Unit No.601, 12 <sup>th</sup> Main, HAL 2 <sup>nd</sup> Stage, Bengaluru – 560 008.  <b>PAN – AAFCD 4749 P</b>	Vs.	The Dy. Commissioner of Income Tax, Central Circle – 1(2), Bengaluru.  .
APPELLANT		RESPONDENT

Assessee by	:	Shri C Ramesh, C.A
Revenue by	:	Ms. Neera Malhotra, CIT (DR)

Date of hearing	:	25.02.2025
Date of Pronouncement	:	23.05.2025

## **ORDER**

### **PER Bench:**

These appeals filed by the assesseees are against the order passed by the CIT(A)-11, Bangalore dated 18/12/2024, 31.01.2024 for the assessment years 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18.

2. Since, the legal issues raised by all the assessee were applicable to all the assessment years under dispute, we for the sake of brevity are inclined to club the legal grounds raised for all the assessment years under dispute by all the assessee. Accordingly, our finding given hereunder will be applicable to all the assessee for all assessment years i.e. A.Ys. 2012-13 to 2017-18. Thus, we proceed to adjudicate the legal grounds/argument raised by the assessee hereunder. However, the facts of the case i.e. Dommallur Shivanna Nandish are adopted for the purpose of adjudication which are identical to all other assessee.

2.1 The relevant facts are that the assessee is an individual and he is CEO & Managing Director of the company, namely M/s Xentrix Studio Pvt Ltd. which was subject to survey proceedings u/s 133A of the Act dt. 3<sup>rd</sup> May 2017. During the survey proceedings at the premises of M/s Xentrix Studio, the statement of the assessee was recorded under section 131 of the Act as on 4<sup>th</sup> May 2017.

3. From the statement of the assessee, it was revealed that he is also a director in 9 other companies in addition to M/s Xentrix Studio and a proprietor of M/s Paprika Studio and has interest in 2 partnership firms. It was further revealed that out of 10 companies only 2 companies (i.e. Xentrix Studio and M/s Paysim Technology India Pvt Ltd.) have physical presence at their given registered office address. Further, none of the entity except M/s Xentrix Studio, was regularly filing their returns of income or maintaining books of accounts. One company namely M/s Paysim Technology India Pvt Ltd. has filed returns till A.Y. 2015-16 only. The assessee, while recording his statement, provided the bank account details of each of the entities.

4. Furthermore, during the survey certain documents were found and impounded marked as Annexure A/XNT/01 to A/XNT/16. The impugned documents were confronted to the assessee (Shri D.S. Nandish) while recording his statement to which he made certain replies which are detailed below.

**A/XNT/01 pages 1 to 105 loose sheet:**

5. The impugned documents are extracts of mobile conversation of one Shri KP Krishna who is an employee of the assessee. The assessee admitted that the impugned sheets contain the details of cash receipts which were maintained by Shri KP Krishna on his instruction and as per noting he received a certain amount in cash which was deposited in the different bank accounts of different entities.

**A/XNT/02 to A/XNT/12 are spiral notepad or diaries:**

6. The assessee stated that noting made in the impugned notepads or diaries were related to cash receipts and the same were deposited into the bank account maintained by his employees.

**A/XNT/13 a pink color folder having 159 pages:**

7. The assessee stated that documents are copies of some agreement and to explain the written content of such documents, he needs time.

**A/XNT/14 loose Sheet having 259 pages:**

8. The assessee stated that the noting made in the impugned sheets were made by his CFO Shri Sunil Gupta. Such loose sheet represents the cash received by him over the time and the same were deposited in the bank account of different entities.

**A/XNT/15 green color folder of loose sheet having 223 pages:**

9. The assessee stated that these sheets are in the nature of some promissory notes and few scribbling documents which are related to cash receipts found from his office. But he needs time to explain.

**A/XNT/16 tally server data, mobile phone & Gmail backup green color folder of loose sheet having 223 pages and A/XNT/17 green color folder of loose sheets:**

10. The assessee stated that these sheets are in the nature of some promissory notes and blank cheques. He needs time to explain these documents.

11. The assessee further admitted that, as no books of account is maintained by the entities, the cash deposited in the bank of different entities was not recorded. The assessee also provided the summary of cash deposits in the bank account of different entities in different assessment years (2012-13 to 2017-18) which were aggregated to Rs. 68,45,21,295/- only. The assessee admitted that he is unable to explain the sources of such cash deposits, hence he voluntarily agreed to offer such cash deposit of 68.45 cores as unaccounted income in the hands of respective entities and further agreed to pay the due taxes & filing of their return of income in due course of time.

12. As per the summary provided for the cash deposits in the bank account of the assessee's proprietary concern i.e. M/s Paprikaas Studio, the details towards cash deposit stand as under:

A.Y. 2015-16	Rs. 2,08,37,000/-
A.Y. 2016-17	Rs. 3,75,06,000/-

A.Y. 2017-18	<u>Rs. 2,12,83,800/-</u>
Total	Rs. 7,96,26,800/-

13. Subsequently, the warrant of authorization for conducting search and seizure operation under section 132 of the Act were issued in the following names:

S. No.	Name	Place of search
1.	D. S. Nandish & M/s Docket Tech Solution Pvt Ltd	Kotak Mahindra Bank, Indra Nagar Brach Bangalore, A/c No. 8011665645
2.	D. S. Nandish & M/s Protein Entertainment Pvt Ltd	Kotak Mahindra Bank, JP Nagar Brach Bangalore, A/c No. 0711470895
3.	D. S. Nandish & M/s Protein Entertainment Pvt Ltd	Kotak Mahindra Bank, JP Nagar Brach Bangalore, current A/c No. 19113901150
4.	D. S. Nandish & M/s Paysim Technologies Pvt Ltd	ICICI Bank Domlur Branch Bangalore, A/c 234005500078

14. Accordingly, the search u/s 132 of Act was carried out as on 24-08-2017 at the above-mentioned bank accounts, wherein cash balance from following bank accounts were seized.

1. ICICI Domlure -	Paysim Technology	20 Lakh
2. Kotak Mahidnra -	Docket Tech	1 lakh
3. Kotak Mahidnra -	assessee & protein	74 Lakh

15. Statement of Shri D.S. Nandish was also recorded u/s 132(4) of the Act on 28-08-2017 wherein identical questions were asked as

recorded during the survey proceedings at Xentrix Studio dated 4<sup>th</sup> May 2017 and based on survey statement the assessee again admitted unaccounted income on account of cash deposits.

16. Consequently, the proceeding u/s 153A of the Act were initiated for A.Ys. 2012-13 to 2017-18, vide notice dt. 31-07-2018 and in response to the notice issued under section 153A of the Act, the assessee filed return of income for each assessment year as on 29<sup>th</sup> March 2019 declaring income as declared in original return of income filed under section 139 of the Act. During the pendency of assessment proceedings, the assessee filed revised return under section 153A of the Act reducing the total income. The revised returns were not accepted by the AO and thereby the AO proceeded to finalize the assessment basing on first return filed under section 153A of the Act as on 29<sup>th</sup> March 2019. Finally, the AO completed the assessment under section 143(3) r.w.s. 153A of the Act for the AYs 2012-13 to 2017-18 vide order dated 24<sup>th</sup> December 2019. The AO in the assessment order for A.Y. 2012-13 to 2014-15 accepted the returned income without any addition whereas in the AYs 2015-16 to 2017-18 made following additions on account of cash deposits:

A.Y. 2015-16	Rs. 2,08,37,000/-
A.Y. 2016-17	Rs. 4,00,06,000/-
A.Y. 2017-18	Rs. 2,17,83,800/-

17. The aggrieved assessee preferred an appeal before the learned CIT(A). The assessee before the learned CIT(A) raised various grounds challenging the validity of the assessment as well as on merits. However, the learned CIT(A) dismissed the grounds of appeal of the assessee.

18. The dispute reached before this Tribunal in assessee's appeals in ITA Nos. 334 to 339/Bang/2024 pertaining to A.Ys. 2012-13 to 2017-18. The assessee before us raised the various legal grounds challenging the validity of search, validity of initiation of proceedings under section 153A of the Act and consequently validity of assessment orders for A.Ys. 2012-13 to 2017-18. The assessee also raised grounds on merits of the additions made in respective assessment years.

19. The legal ground raised by the assessee through grounds of appeal/ through filing of additional grounds of appeal across different assessment years are identical. Therefore, we are inclined to adjudicate the legal grounds first. As the legal issues raised were applicable to all the assessment years under dispute, we for the sake of brevity are inclined to club the legal grounds raised for all the assessment years under dispute and our finding given hereunder will be applicable to all the assessment years i.e. A.Ys. 2012-13 to 2017-18. Accordingly, we proceed to adjudicate the legal grounds/argument raised by the assessee hereunder.

20. The learned AR of the assessee before us filed various paper books and multiple written submissions. The Id. AR among various legal contentions argued that the search was carried out on a particular bank account and not at the premises of the assessee. The bank account cannot be the premises whereas search is required to be conducted. As per the assessee, certain premises can be made subject to search where books of accounts, other documents, money bullion, jewelry or valuable article etc. may be kept. Therefore, the initiation of assessment

proceedings under section 153A of the Act against the assessee is invalid in the absence of proper search warrant and search of the assessee's premises.

21. The learned AR further submitted that a survey under Section 133A was already carried out on 03.05.2017, during which the assessee admitted to an unaccounted income on account of cash deposits in the bank accounts of various entities controlled by him and agreed, through a statement on 05.05.2017, to pay taxes in 12 monthly instalments starting from July 2017. However, when the assessee failed to pay the first instalment, the department conducted a search on 24.08.2017 only at his bank account, only to take a demand draft from the available balance.

22. The Id. AR for the assessee argues that this search did not meet the legal requirement prescribed under section 132(1)(a), (b), or (c) of the Act. As there was no refusal to provide documents, no intention to hide information, and no undisclosed income or asset. In fact, everything was already declared by the assessee during the earlier survey operation. The search is conducted with the purpose to unearth books of account, material or income which may not be disclosed by the assessee in normal parlance. Carrying the search proceeding at bank account only without conducting search at the premises of assessee i.e. business, office etc will not serve the purpose specially when the bank account and amount deposited therein was already known to the department as bank account is not the place where books of account or document may be found.

23. The learned AR also argued that the search Panchanama clearly shows that no cash, books of account, or documents were seized during the search. Also, there was no proper search warrant issued in the assessee's name for his office or residence.

24. Since the bank accounts and cash deposited in those bank accounts had already been disclosed and accepted during the survey, there was no new information that justified a search. Therefore, the assessee claims the search was unnecessary, and the notice under section 153A of the Act based on this search is also invalid. The learned AR to buttress his argument also submitted that during the survey the assessee has provided details of 16 bank accounts belonging different entities in which cash was deposited. However, no action was taken against those bank accounts except the 4 bank accounts belong to the assessee and 3 other entities which highlights the revenue's prejudice mindset to carry out search and transferring the fund available in those bank account to the department account.

25. On the other hand, the learned DR before us filed multiple written submissions contending that in view of the explanation inserted to section 132 of the Act by the Finance Act 2017 with retrospective effect from 1-4-1992, the reason for the search is beyond the scope of the ITAT. Therefore, the assessee cannot challenge the validity of the search conducted by the Department. To this effect, the Id. DR also filed the report obtained from the AO. According to the learned DR, there were cash deposits in the bank which were not disclosed in the income tax return by the assessee and his associates and therefore there are liable

to be added to the total income of the assessee and his associates. The learned DR vehemently supported the order of the authorities below.

26. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the primary dispute relates to the validity of the proceedings under section 153A of the Act, in the absence of a valid search at the premises of the assessee and no discovery of incriminating material during the search, vis-à-vis prior information already available to the Revenue through a survey under section 133A of the Act.

26.1 From the preceding discussion, we note that there was a survey operation under section 133A of the Act conducted on 03.05.2017 at the business premises of the company namely M/s Xentrix Studio Pvt Ltd. in which the assessee is a director. During the course of the survey, documents and other evidences were found suggesting the existence of significant cash deposits in various bank accounts maintained by the assessee and his associated concern. It was further found that the associated concerns of the assessee are not filing the returns of income. The assessee had also not filed returns of income corresponding to such cash deposits, suggesting possible escapement of income.

26.2 Subsequently, on 24.08.2017, a search was purportedly conducted under section 132, not at the assessee's residential or business premises, but solely at specific bank branches holding accounts in the name of the assessee and some related entities. From these bank accounts, certain cash balances were seized/ transferred to the income tax Department. No physical premises of the assessee or the entities

were searched. Notably, the Panchanama drawn during this search reflects no discovery or seizure of books of account, documents, or other valuables from any premises of the assessee.

26.3 Before we deal with the specific issue raised by the assessee, it is necessary to deal with the scope of the different provisions of Act.

**A. Survey under section 133A of the Act**

- Purpose: To collect information regarding the financial affairs of a taxpayer. It is an investigative tool, primarily aimed at discovering facts that may lead to reopening of cases under section 147 of the Act on account of escapement of income.
- Powers: Income Tax authorities can enter the business premises during working hours, inspect books of account, verify cash and stock, and record statements.
- Limitations: No power to seize assets or documents. Cannot access residential premises.
- Outcome: If survey reveals income has escaped assessment, action under section 147 (reassessment) is the proper course.
- Conversion: The revenue if finds necessary can convert the survey into search in accordance with the provisions of law. But in the case on hand, the survey was concluded much earlier and without converting into search which later happened.

**B. Search under section 132 leading to 153A of the Act**

- Purpose: To unearth undisclosed income and assets based on credible prior information that the assessee is in possession of such undisclosed income.
- Requirement: Must satisfy the statutory conditions of 'reason to believe' and 'reason to suspect' that the assessee possesses undisclosed income or property.
- Powers: Extensive, including entry and seizure of books, documents, money, bullion, etc. Can cover both residential and business premises.
- Assessment Mechanism: Section 153A of the Act mandates issue of notice to file returns of income for six preceding assessment years and mandates assessment or reassessment for those years.

26.4 Thus, it is inferred that the section 132 of the Act authorizes a search when the conditions under clauses (a), (b), or (c) are satisfied, primarily when the department has reason to believe that the person concerned:

- is in possession of undisclosed assets,
- is likely to not produce books of account if summoned, or
- is concealing income or assets.

26.5 In the present case, we note that the department was already in possession of all relevant information pertaining to the assessee & his associated bank accounts and the cash deposit in those bank accounts. Majority of cash deposits were unaccounted as books of accounts were

not maintained by virtue of the detailed disclosures made during the earlier survey operation under section 133A of the Act. Therefore, no new material had come to light between the survey and the date of the search that could constitute a valid "reason to believe" for issuing a search warrant. Furthermore, the search was not conducted at any premises where such undisclosed assets, documents, or books of account were suspected to be stored but only at bank branches, which does not align with the legislative intent and jurisprudence related to the provisions of section 132 of the Act.

26.6 At this juncture, it is pertinent to refer the decision of Hon'ble Gujarat High court in the case of Parakash Jaichand Shah vs. DIT(Inv) reported in 23 taxmann.com 8.

26.7 In the case of *Prakash Jaichand Shah (supra)* the Hon'ble Gujarat High Court examined the legality of a warrant of authorization and subsequent seizure of ₹11 lakhs in cash under section 132A of the Act. The facts involve are that the petitioner was a cotton broker from Bhuj. He was apprehended by police at the Ahmedabad bus depot as on 25<sup>th</sup> July 2000 while carrying the cash. He explained that cash was received as payment for cotton transactions between Shreenathji Trading Company (seller) and Raj Trading Company (buyer) via cheque discounting through a local shroff, M/s J.J. Shroff. Despite presenting this explanation and supporting evidence—including corroborative statements from Raj Trading Company's owner Rajan Shah and related bank and accounting records, the police seized the money under section 102 of the CrPC and notified the Income Tax Department. Acting swiftly within hours, the income tax official recorded the statement of the

petitioner where he again given same explanation, Deputy Director of Income Tax also conducted a survey at Raj Trading Company and recorded statements of Rajan Shah who confirmed the transaction by stating that payment was arranged through local shroff M/s J.J. Shroff against the purchase of cotton from M/s Sheerji Trading Co. As such he has issued cheque in favour of M/s Sheerji Tradinf Co and the same was discounted with M/s JJ Shroff. Hence, the transactions were duly corroborated with his books of account and cash book of M/s JJ Shroff. Thereafter, income tax officer tried to contact with M/s JJ Shroff but failed due to his office was closed. Thereafter, the Director of Income Tax authorized issued requisition under section 132A of Act dated 25<sup>th</sup> July 2000 and seized the cash.

26.8 The petitioner challenged the seizure, arguing that the conditions precedent under section 132A of the Act namely, a reasonable belief based on information that the money represented undisclosed income were not satisfied. He emphasized that there was substantial corroborative evidence explaining the source of funds, and no attempt was made to verify details with J.J. Shroff before issuing the warrant. In the given facts, the Hon'ble High Court found that the formation of belief for the search operation by the Income Tax authority was premature and lacked the necessary foundation. It highlighted that the statements and documents available, including bank withdrawals and the cheques' details, supported the petitioner's version. Further, the Income Tax Department failed to produce the satisfaction note before the Court, despite being directed to do so, and the authorities did not verify with the key party—J.J. Shroff—before proceeding. The Court held that no reasonable person could have concluded that the cash was undisclosed

income, and the warrant was therefore issued without fulfilment of the statutory conditions. The relevant observation of the Hon'ble Gujarat High Court is extracted as under:

**11.** *In the present case, the authorisation had been made under section 132A by the respondent No. 1 requisitioning the sum of Rs. 11 lakhs which had been found with the petitioner and had been seized by the police authorities. From the facts noted earlier, it is apparent that after receiving intimation from the police station, the respondent No. 1 recorded the statement of the petitioner who had stated that the amount of Rs. 11 lakhs in cash had been handed over to him by Shri Rajan Shah in respect of proposed sale of cotton bales of M/s. Shreenathji Trading Company, Bhuj. Thus, it was the case of the petitioner that the amount had been collected by way of payment from Shri Rajan Shah for sale of cotton bales of his client Shreenathji Trading Company, Bhuj. The respondent No.2 had also recorded the statement of Shri Rajan Shah who had stated that he had asked M/s. J.J. Shroff to hand over Rs. 11 lakhs in cash to the petitioner. It is the case of the petitioner that Rajan Shah had issued five cheques in favour of Shreenathji Trading Company which he had deposited with M/s. J.J. Shroff and had obtained Rs. 11 lakhs in cash. It is the say of Rajan Shah that he had issued five cheques in favour of Shreenathji Trading Company against which cash had been obtained by the petitioner from M/s. J.J. Shroff. From the documents annexed with the petition, which form part of the record of the income tax authorities, it is apparent on a perusal of the accounts of J.J. Shroff that the same clearly show receipts of cheques No. 937738, 937739, 937740, 937741 and 937742 drawn on Tamilnad Mercantile Bank in favour of Shreenathji Trading Company which have been discounted for cash of Rs. 11 lakhs. The accounts of Raj Trading Company also clearly show issuance of five cheques bearing No. 937738, 937739, 937740, 937741 and 937742 issued in favour of Shreenathji Trading Company on 25th July, 2000. The receipts annexed at Annexure 'I' also show withdrawal of an amount of Rs. 11 lakhs by Shri J.J. Shroff from Siddhi Co-operative Bank Ltd. on 25th July, 2000. The cash recovered by the police from the petitioner was also bearing the label of Siddhi Co-operative Bank, Ahmedabad. Moreover, the bank passbook record of Raj Trading Company of 25th July, 2000 also indicates issuance of the aforesaid five cheques in favour of Shreenathji Trading Company drawn on Tamilnad Co-operative Bank Ltd. In the backdrop of the aforesaid facts, it is the case of the petitioner that the amount was given to him by Shri Rajan Shah of Raj Trading Company. The say of Rajan Shah is that he had given the amount of Rs. 11 lakhs to the petitioner for purchase of cotton from Shreenathji Trading Company through M/s. J.J. Shroff. Rajan Shah's accounts show issuance of five cheques in favour of Shreenathji Trading Company drawn on Tamilnad Mercantile Bank Ltd. The accounts of J.J. Shroff show that the five cheques issued by Rajan Shah have been deposited with them for discounting against which Rs. 11 lakhs in cash had been handed over to the petitioner herein.*

**12.** *It may be noted that the concerned Police Officer of Kagdapith Police Station seized the cash of rupees eleven lakhs vide panchnama drawn on 15:15 hours on 25th July, 2000. The police informed the Joint Director of Income Tax (Investigation) who directed the second respondent to record the statement of*

*the petitioner. The petitioner's statement was recorded under section 131(1A) of the Act and simultaneously survey action under section 133A of the Act was conducted at the office premises of M/s Rajan Enterprises and statement of Rajan B. Shah was also recorded and cash book initialled by him came to be seized. The Joint D.I.T. (Inv.) placed a satisfaction note for the approval of the Director of Income Tax (Inv.) who after perusing the material placed before him and discussing the same with the Joint D.I.T. (Inv.) authorised proceedings under section 132A for requisitioning the cash from the police authorities. Thus, the entire exercise of recording statements, conducting survey action, preparation of satisfaction note and application of mind by the Director of Income Tax to the material on record has taken place within a span of about five to six hours.*

**13.** *It may further be noted that despite a direction by this court to produce the record on the basis of which the Director of Income Tax recorded satisfaction as regards the fulfillment of the condition precedent for exercise of powers under section 132A of the Act, the same has not been produced for the perusal of the court. However, in the affidavit-in-reply filed by the second respondent, extracts of the statements of the petitioner and Rajan Shah recorded under section 133A of the Act have been reproduced. It is the case of the respondents that the petitioner could not adduce satisfactory evidence to show the source of cash found and seized from him and that all he could say was that he had received the cash from Rajan Shah. Rajan Shah has in his statement recorded under section 133A of the Act stated that he had given the cash of rupees eleven lakhs to the petitioner through M/s J.J. Shroff. Thus, without verification at the end of M/s J.J. Shroff there was no reason for the respondents to jump to the conclusion that the source of the amount is unexplained. Moreover, Rajan Shah having clearly admitted that he has paid the said amount to the petitioner, and having stated that the amount was paid through M/s J.J. Shroff, the submission in the affidavit-in-reply that the cash books seized from Rajan Shah do not disclose sufficient balance in the proprietary firm of Rajan Shah or his associate concerns, is clearly misconceived inasmuch as it is not the case of Rajan Shah that rupees eleven lakhs had been handed over to the petitioner in cash, under the circumstances there was no question of making any such entry in the cash book. Thus, insofar as the petitioner is concerned, the source of the amount was Rajan Shah, who in turn has admitted payment of the said amount through M/s J.J. Shroff. Under the circumstances, without due verification with M/s J.J. Shroff, no satisfaction could have been recorded that the amount of rupees eleven lakhs represents income which has not been, or would not have been, disclosed for the purposes of the Income Tax Act, 1961 by the petitioner from whose possession the said amount has been taken in custody by the respondents.*

**14.** *In the aforesaid factual background, in the opinion of this court, no reasonable person could have come to the conclusion that the amount of rupees eleven lakhs belonged to the petitioner or that the petitioner would not disclose the same to the income tax authorities under the provisions of the Act. In the circumstances, on the basis of the material before him, the first respondent could not have formed the requisite opinion as required under section 132A of the Act. The warrant of authorisation issued by the first*

*respondent, therefore, stands vitiated as having been issued without the condition precedent for exercise of powers under section 132A being satisfied.*

**15.** *In Vindhya Metal Corpn. (supra), the Allahabad High Court was dealing with a case where V was found in possession of cash amounting to Rs. 4,63,000/- on December 25, 1981, while he was travelling by train wherein the money came to be seized by the railway police and the Commissioner was informed about it. A search came to be carried out on 29th December, 1981 on the premises of V.M. Corporation and the books of account contained an entry that a sum of Rs. 4,63,000/- had been handed over to V, who was the nephew of one of the partners, for making purchases. A sum of Rs. 17,353/- was cash balance with the firm. This sum and the books of account of the firm were carried away by the income tax authorities. On a writ petition to direct return of the amount as well as cash balance of Rs. 17,353/- and the books of accounts, the High Court held that: (i) the mere fact that V was in possession of a huge amount of cash and did not have documents regarding its ownership and the fact that his name was not found in the list of income-tax assesseees could not be treated as sufficient information leading a reasonable man to the inference that the amount would not be disclosed for income tax purposes. The condition precedent for the exercise of power under section 132A was lacking and the order made under it was liable to be quashed; and (ii) there was no material on record to sustain the order made on the firm. The seizure of the books of accounts and the sum of Rs. 17,353/- was without authority of law and, therefore, liable to be quashed. The aforesaid decision came to be carried before the Supreme Court in the case of Vindhya Metal Corpn. ( supra) and came to be affirmed.*

**16.** *The above decision would be squarely applicable to the facts of the present case inasmuch the respondent No. 1 on the material on record could not have formed the requisite belief under section 132A of the Act and as such, the impugned warrant of authorisation under section 132A of the Act cannot be sustained.*

**17.** *For the foregoing reasons, the petition succeeds and is accordingly allowed. The warrant of authorisation dated 25th July, 2000 issued by the first respondent in favour of the second respondent as well as the order under section 132A of the Act are hereby quashed and set aside. The respondents are directed to forthwith return to the petitioner the seized amount of rupees eleven lakhs alongwith interest at the appropriate rate as contemplated under the Act from the date of seizure till the date of repayment. Rule is made absolute accordingly with no order as to costs.*

26.9 Applying the above principles laid down by the Hon'ble Gujarat High Court in the case of the Prakash Jaichand Shah(supra) to the present case, we note that the assessee during the survey proceeding already has already disclosed the fact about cash deposits in bank accounts held by him and the entities controlled by him. Also disclosed the fact about the entities in whose accounts cash was deposited which

have not maintained books of account. Therefore, the assessee voluntarily agreed to offer income on account of cash deposit. Despite this, the department proceeded to authorized search warrant on the bank account of the assessee and few entities out of 16 bank accounts of different assessee. Thus, in the given case, the precondition for search under section 132(1) of the Act i.e. is in possession of undisclosed assets, is likely not produce books of account if summoned or is concealing income or assets does not fulfilled. It is for reason that search was only conducted at bank account and not at the business or other premises of the assessee or his associates. In our considered opinion, the search at the premises of the assessee may have possibility to unearth the books of account or other document or the assets & income which were not disclosed but mere search at the bank account which has already been in knowledge of the department would yield any undisclosed income, assets or books of accounts.

26.10 It also important to note that during the survey the assessee has made available 16 bank accounts in which cash was deposited over a period of time. The revenue had opportunity to issue notices under section 148 r.w.s. 147 of the Act for all those relevant assessment years but the revenue instead of choosing the path of assessment under section 147 of the Act proceeded to carry out search under section 132 of the Act that too at bank account only and not at the premises of the assessee. Here, it is also pertinent to note that search was carried only on 4 bank accounts out of 16 bank account made available by the assessee which highlights the prejudice approach of the revenue. Moreover, the survey conducted at the premises of the assessee was not converted into search under section 132 of the Act. Meaning thereby,

the revenue while conducting the survey did not realize the importance of converting the survey into operation. But later what triggered to the department for conducting the search under section 132 of the Act only for collecting the money from the bank account is not known though the department could have used the power under section 226 and 281B of the Act as per the provisions of law. As such, the revenue could have immediately after survey issued the notice under section 147 of the Act. But the department remained silent for many months and suddenly recovered the money from the bank account of the assessee by conducting search under section 132 of the Act. This entire process of the department lacks the jurisdiction under section 132 of the Act.

26.11 We are also conscious to fact that the explanation to subsection (1) of section 132 of the Act which clarifies that the "reason to believe" or "reason to suspect" as recorded by the authorized officer shall not be disclosed to any person or authority or the Appellate Tribunal. We respectfully affirm the binding nature of this Explanation as enacted by the legislature. It is settled law that the Tribunal cannot compel for the disclosure of the reasons recorded by the competent authority while authorizing the search, and the department is within its rights to withhold such disclosure, relying on the statutory bar under the explanation to section 132(1) of the Act.

26.12 However, it is equally well-settled through judicial pronouncements that while the Tribunal cannot demand disclosure of the recorded "reason to believe," but it retains the jurisdiction to examine whether the search action, on the face of undisputed facts, conforms to the statutory preconditions under section 132 of the Act. In

holding so, we draw support and guidance from the decision of Hon'ble Allahabad High Court in the case of Vindhiya Metal Corporation vs. CIT reported in 156 ITR 233 where it was held as under:

*It is settled that the existence or otherwise of the condition precedent to exercise of power under these provisions is open to judicial scrutiny. The absence of the condition precedent would naturally have the effect of vitiating the authorisation made by the Commissioner in either of the two provisions and the proceedings consequent thereto. While the sufficiency or otherwise of the information cannot be examined by the court, the existence of information and its relevance to the formation of the belief can undoubtedly be gone into. Also, whether on the material available with the Commissioner, any reasonable person could have arrived at the conclusion that a search, seizure or requisition should be authorised is a field open to judicial review.*

26.13 In the present case, we are not seeking to examine or compel the disclosure of the recorded reasons as prohibited by the Explanation to section 132(1) of the Act. Instead, we have considered the factual backdrop leading up to the search — namely, the comprehensive disclosures made by the assessee during the earlier survey operation under section 133A of the Act, the absence of any new material or concealment thereafter, and the limited scope of the so-called "search" being restricted only to known bank accounts from which the income was already admitted.

26.14 Accordingly, while we respect the legislative bar under the Explanation to section 132(1) of the Act, but we also note that the search action in the instant case, based solely on known and admitted bank accounts and without any premises being searched or new incriminating material being found, was legally unsustainable, and hence, all the proceedings under section 153A of the Act flowing from such action are invalid and liable to be quashed. Hence the assessment order passed for A.Y. 2012-13 to 2017-18 are hereby quashed as invalid.

26.15 As we have held the initiation of proceeding under section 153A of the Act and consequent assessment order as invalid in the above given background, we do not find necessary to adjudicate the other grounds of appeal raised by the assessee on technical ground as well as on merit. Hence, we dismiss the same as infructuous.

26.16 In the result, all the appeals filed by the assessee are partly allowed.

**Coming to ITA Nos. 586 to 591/Bang/2024, appeals by the assessee namely Protein Entertainment Pvt Ltd. For A.Ys. 2012-13 to 2017-18**

27. At the outset, we note that the issues raised by the assessee in captioned appeal for the AY 2012-13 to 2017-18 are identical to the issues raised by the assessee namely Shri Dommalur Shivanna Nandidh in ITA Nos. 334 to 339/Bang/2024 for the assessment years 2012-13 to 2017-18. Therefore, the findings given in ITA Nos. 334 to 339/Bang/2024 shall also be applicable for the appeals of present assessee for A.Ys. 2012-13 to 2017-18. The appeals of the assessee Dommalur Shivanna Nandidh in ITA Nos. 334 to 339/Bang/2024 have been decided by us vide paragraph No. 26 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessee Shri Dommalur Shivanna Nandidh in ITA Nos. 334 to 339/Bang/2024 shall also be applied for the appeals of the present assessee for A.Ys. 2012-13 to 2017-18. Hence, the ground of appeals filed by the assessee for A.Ys. 2012-13 to 2017-18 are hereby partly allowed.

28. In the result, all the appeals of the assessee are hereby partly allowed.

**Coming to ITA No. 1566/Bang/2024, an appeal by the assessee namely Docket Tech Solution Pvt Ltd. For A.Y. 2017-18**

29. At the outset, we note that the issues raised by the assessee in captioned appeal for the AY 2017-18 is identical to the issue raised by the assessee Shri Dommalur Shivanna Nandidh in ITA Nos. 334 to 339/Bang/2024 for the assessment years 2012-13 to 2017-18. Therefore, the findings given in ITA Nos. 334 to 339/Bang/2024 shall also be applicable for appeals of the present assessee for A.Ys. 2017-18. The appeals of the assessee Shri Dommalur Shivanna Nandidh in ITA Nos. 334 to 339/Bang/2024 have been decided by us vide paragraph No. 26 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessee Shri Dommalur Shivanna Nandidh in ITA Nos. 334 to 339/Bang/2024 shall also be applied for the appeal of the present assessee for A.Y. 2017-18. Hence, the ground of appeal filed by the assessee for A.Y. 2017-18 is hereby partly allowed.

30. In the result, the appeal of the assessee is hereby partly allowed.

31. In the combined result, all the appeals of the different assesseees are hereby partly allowed.

Order pronounced in court on 23<sup>rd</sup> day of May, 2025

Sd/-

**(KESHAV DUBEY)**

Judicial Member

Bangalore

Dated, 23<sup>rd</sup> May, 2025

/ vms /

Sd/-

**(WASEEM AHMED)**

Accountant Member

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore