IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SONJOY SARMA, JM

ITA No. 267/Coch/2021 – AY : 2012-13
ITA No. 268/Coch/2021 – AY : 2013-14
ITA No. 269/Coch/2021 – AY : 2015-16
ITA No. 270/Coch/2021 – AY : 2016-17
ITA No. 271/Coch/2021 – AY : 2014-15

Reena Engineers and Contractors Pvt. Ltd. ..... Appellant
602, Shiv Towers, Patto, Panaji, Goa 403001
[PAN: AACCR7201F]

vs.

ACIT, Central Circle-1, Kozhikode ..... Respondent

Appellant by: Shri G. Surendranath Rao, CA
Respondent by: Shri Suresh Sivanandan, CIT-DR

Date of Hearing: 04.06.2025
Date of Pronouncement: 31.07.2025

O R D E R

Per: Inturi Rama Rao, AM

These appeals filed by the assessee are directed against the common order of the Commissioner of Income Tax (Appeals)-3, Kohi [CIT(A)] dated 25.10.2021 for Assessment Years (AY) 2012-13 to 2016-17.

2. Since identical issues and facts are involved in these appeals, they are heard together and disposed of by this common order.

3. For the sake of convenience and clarity the facts relevant to the appeal bearing ITA No. 267/Coch/2021 for AY 2012-13 are stated herein.

4. Brief facts of the case are that the appellant is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of execution of government contracts. The return of income for AY 2012-13 was filed on 12.09.2012 at a total income of Rs. 5,38,30,550/-. Subsequently, search and seizure operations were carried out in the business premises of the appellant on 10.06.2015. During the course of search and seizure operations, certain incriminating material was stated to have been found and seized. Accordingly, the ACIT, Central Circle-1, Calicut (hereinafter called "the AO") issued notices u/s. 153 A of the Income Tax Act, 1961 (the Act) on 16.08.2016 calling upon the appellant to file return of income for AY 2010-11 to 2015-16.

5. In response to the notice u/s. 153A, the appellant filed the return of income. The return of income for AY 2012-13 was filed on 28.06.2017 disclosing income of Rs. 9,41,29,750/- against the original return of income of Rs. 7,18,19,852/-. Against the said return of income, the assessment was completed by the AO vide order dated 29.12.2017 passed u/s. 143(3) r.w.s. 153A of the Act at total income of Rs. 9,48,70,560/- after making addition of Rs. 7,40,810/- on account of statutory disallowances, which was made

in the original assessment order completed u/s. 143(3) of the Act dated 20.03.2015.

6. Being aggrieved, an appeal was filed before the CIT(A), who dismissed the appeal of the as since no addition was made in the assessment made pursuant to notice u/s. 153A of the Act.

7. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

8. The learned counsel for the assessee submitted that the CIT(A) is erred in not admitting the additional grounds seeking deduction u/s. 80(IA) of the Act in respect of profit derived from the project of water works.

9. We have heard the rival contentions and perused the material available on record. The claim for deduction u/s. 80(IA)(4) of the Act was made for the first time before the CIT(A). Admittedly, the appellant had not made the claim, in the original return of income filed u/s. 139(1) of the Act. The appellant had not made the claim even in the return of income filed in response to notice u/s. 153A of the Act. In the present case, the original assessment was completed on 20.03.2015 and the search and seizure operations were conducted on 10.06.2015. Therefore, the original assessment stands concluded on the date of search. Therefore, the assessment made u/s. 143 r.w.s. 153A dated 29.12.2017 is unabated assessment. It is settled position of law that no new claim can be entertained in the return of income

filed in response to notice u/s. 153A of the Act unless the claim is directly relatable to the undisclosed income unearthed during the course of search and seizure operations. Reliance in this regard can be made to the decision of the Special Bench of ITAT Hyderabad Bench in the case of DCIT v. SEW Infrastructure Ltd. [2024] 167 taxmann.com 446 wherein it has held as under: -

- The solitary issue for consideration is whether an assessee can make a claim for deduction under Chapter VI-A, for the first time in the return of income filed in response to the notice issued under section 153A, pursuant to a search conducted under section 132. It is an admitted fact that the assessee is carrying on the business of developing infrastructure projects and is otherwise eligible for deduction under section 80-IA(4), provided all other conditions are satisfied. However, the fact remains that the assessee did not make any claim towards deduction under section 80-IA(4) in the return of income filed under section 139(1), for all five assessment years. Further, the appellant has made a claim for deduction under section 80-IA(4), for the first time, in the return of income filed in response to the notice issued under section 153A, in pursuant to search and seizure operation conducted under section 132. Therefore, to answer the questions referred to, this Special Bench, it is necessary to understand the provisions of section 132 and the consequent procedure of assessment under section 153A etc. [Para 17]

- The provisions relating to assessment in the case of a search under section 153A, etc., were inserted by the Finance Act 2003, effective from 1-6-2003. These provisions are successor to the special procedure for the assessment of search cases under Chapter XIVB, starting with the provisions of section 158B. The special procedure for the assessment of search cases under Chapter XIVB required the assessment of undisclosed income as a result of search, which has been defined in section 158B(b). The new provisions of assessment in the case of a search under section 153A came into force with effect from 1-6-2003 and the said provisions require the Assessing Officer to determine the total income and not the undisclosed income. [Para 18]

- A plain reading of section 153A shows that, it starts with a non obstante clause, which states that notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153, in the case of a person where a search is initiated under section 132, or books of account or other documents, or any assets are requisitioned under section 132A, after 31-5-2003, the Assessing Officer shall issue notice to such person requiring him to furnish, within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed

manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly, as if such return were a return required to be furnished under section 139. The Assessing Officer shall further assess or reassess the 'total income' of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted, or requisition is made. Further, as per the second proviso to section 153A, assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this section pending on the date of initiation of such search under section 132 or making of a requisition under section 132A, as the case may be, shall abate. The scope and effect of insertion of the new section 153A by the Finance Act, 2003 has been explained by the CBDT in the Department"s Circular No. 7 of 2003, dated 5-9-2003, reported in (2003) 184 CTR (ST) 33. On a combined reading of the provisions of section 153A coupled with Circular No.7 of 2003, it is undisputedly clear that when a search is initiated under section 132, the Assessing Officer shall issue a notice to such person for six assessment years and assess or reassess the total income for those six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted. The first proviso is nothing but a reiteration of the provisions contained in clause (b) of section 153A(1) wherein it is provided that the Assessing Officer shall assess or reassess the total income for each of the six assessment years as mentioned above. The second proviso contemplates that if any assessment relating to any assessment year falling within the period of six assessment years is pending on the date of initiation of the search, the same shall abate. However, there is no provision stating that even the completed assessments for the six assessment years shall abate. Therefore, a distinction has been made between completed assessments and pending assessments. Further, under the proviso contained in sub-section (2), the assessment or reassessment relating to any assessment year which has been abated under the second proviso, and if such an assessment is annulled in appeal or any other legal proceedings, it shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Further, such revival ceases to have effect if such order of annulment is set aside. Therefore, insofar as the completed assessments are concerned, they do not abate, and the pending assessments, abate. Thus, the completed assessments become final unless some incriminating material is found during the course of the search. If we go by the provisions contained in section 153A, the intention of the legislature is to restrain the Assessing Officer to undo what has already been completed and has become final. Therefore, no reassessment in respect of completed assessment is contemplated under this provision in case no incriminating material is found as a result of the search. Insofar as the pending assessments are concerned, the jurisdiction to make an original assessment and the assessment under section 153A merge into one, and only one assessment for each assessment year shall be made separately on the basis of findings of search and any other material existing or brought on the record of the Assessing Officer. In respect of non-abated assessments, *i.e.*, the assessments that have been concluded on the date of search, the assessments shall be made on the basis of incriminating material

unearthed during the course of the search. [Para 19]

- The provisions of section 153A, relating to the procedure of assessment in pursuant to search conducted under section 132, have been examined by various courts, including the Supreme Court, in many cases. Although few High Courts have taken a contrary view on the issue, but the majority of the High Courts have taken a consistent view on the issue and held that insofar as pending assessments are concerned, the jurisdiction to make original assessment and the assessment under section 153A merges into one and only one assessment for each assessment year shall be made and insofar as non-abated assessments, the assessment shall be made on the basis of incriminating material unearthed during the course of the search. In respect of non-abated assessments, the Assessing Officer shall assume jurisdiction and the assessment shall be made based on incriminating material unearthed during the course of the search, and in case, there is no incriminating material, then the Assessing Officer cannot tinker with the completed assessment. Insofar as pending assessments are concerned, the Assessing Officer shall assume jurisdiction to assess the total income of those assessment years on the basis of regular books of account and any incriminating material found as a result of the search. In case no incriminating material is found during the search, the Assessing Officer cannot assess or reassess, taking into consideration other material in respect of completed assessment/unabated assessment. Meaning thereby, in respect of completed assessments, no additions can be made by the Assessing Officer in the absence of incriminating material found during the search under section 132. When a search is conducted under section 132, all pending assessments within the block of six assessment years immediately preceding the assessment year in which such search is conducted abates and the Assessing Officer shall have jurisdiction to assess or reassess the total income of those assessment years on the basis of incriminating material found as a result of the search and any other material or information provided in the returns. In case no incriminating material found, the completed assessment/unabated assessment is final and the Assessing Officer shall not have the power to make any additions. [Para 20]

- Having analyzed the legal position as enumerated under section 153A in respect of assessments pursuant to search action under section 132, now lets come back to whether the assessee is entitled to make a fresh claim under Chapter VI-A, which has not been claimed in the original return of income under section 139(1). It is seen that the department resists any new or subsequent claim in the return filed under section 153A, primarily on the plea that such assessments are for the benefit of the revenue rather than the assessee. The predominant view of the department in this regard is the return filed under section 153A is a consequence of search action taken under section 132 on the assessee and, thus, cannot be for the benefit of the assessee and moreover, the proceedings under section 153A are analogous to proceedings under section 147 to the extent that these proceedings are for the benefit of the revenue and not for the assessee. The submission on behalf of the revenue is that the assessee cannot be permitted to use reassessment proceedings as appeal or revision in disguise and seek relief in respect of items not claimed in the original return of

income. According to the department a search under section 132, also cannot be utilized by the assessee to seek relief not claimed earlier. The department, while disallowing such claims had also taken support from the decision of a Supreme Court, wherein it has been laid down that the Assessing Officer cannot entertain a claim for deduction otherwise than by filing a revised return. Since the assessee neither made any such claim in the original return filed under section 139(1), nor in any regular assessment proceedings by way of filing any revised return and, therefore, return in response to notice under section 153A is not a substitution of a revised return for making claim of such benefits. Further, the Department also took support from the provisions of section 80A(5) and section 80AC to deny such claims on the ground that, as per the provisions of section 80AC, where the assessee fails to make any claim in his return of income for any deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the Head 'C- Deductions in respect of certain income', no deduction shall be allowed to them. Further, the provisions of section 80AC deal with deductions not to be allowed unless return of income is furnished and as per the said provisions, no deduction under section 80IA or other deductions/exemption provisions as contemplated are admissible unless the assessee furnishes a return of income for such assessment year on or before the due date specified under section 139(1). Although the return filed in response to notice under section 153A partakes the nature of a return required to be furnished under section 139, that is provided for the limited purpose of filing the return and consequent limitation provided under various provisions of the Act and thus, same cannot be construed as the original return filed under section 139(1) for the purpose of deductions/exemptions. [Para 21]

- It is well settled that in case of search assessments, where search is conducted under section 132, all pending assessments within the block of six assessment years immediately preceding the assessment year in which such search is conducted shall abate and the Assessing Officer shall have power to assess or reassess the 'total income' of those assessment years on the basis of incriminating material found as a result of the search and any other material available with the Assessing Officer, including the information provided by the appellant in the return of income filed for those assessment years. In case of unabated/concluded assessments, the Assessing Officer shall have the power to reassess the total income, but such reassessment should be confined only to the incriminating material found as a result of the search. In other words, in case there is no incriminating material found as a result of the search, the completed assessment cannot be disturbed. [Para 23]

- Having said so, now lets come back to the question in the present appeals *i.e.*, whether an assessee can make a claim for deduction under Chapter VI-A, for the first time in the return of income filed in response to the notice issued under section 153A, pursuant to search conducted under section 132. This legal position is no longer res integra. It is not open for the assessee to seek deductions or claim expenses which have not been claimed in the original return for which assessment has already been completed only because assessment under section

153A in pursuance of search or requisition is required to be made. Even otherwise, going by plain reading of provisions of section 153A, it is analogous to erstwhile provisions of section 158B(1). From the above provisions, it is undisputedly clear that the purpose of assessment in relation to search cases is to assess undisclosed income, if any, on the basis of incriminating material found as a result of the search, but not to disturb the completed/unabated assessment. Further, going by the argument of the assessee, in light of the provisions of section 153A(1)(a), once return is filed in response to a notice under section 153A, the said return shall be treated as return which was furnished under section 139, it defeats the whole purpose of initiation of search and consequent assessments. Although provisions of section 153A make it very clear that return filed in response to a notice under section 153A, partakes the nature of return filed under section 139, said interpretation cannot be enlarged so as to say that even in case where the assessee has filed a regular return under section 139 and not made any claim towards deduction and further for the first time, the assessee has made a claim of deduction under section 80IA(4) in the return of income filed in response to notice under section 153A, also to be considered as if the assessee has made a claim on or before filing the return under section 139(1), and further, it is contrary to the scheme of regular assessment and search assessment and is devoid of merits. Further, the argument of the assessee that ITR Form provides for separate schedule for claiming deduction under section 80IA is also devoid of merit, because, unlike the erstwhile special procedure for the assessment of undisclosed income of the block period, a separate form is provided for filing return of income for a block period, in the instant scheme of assessment of search cases, there is no separate form prescribed by the legislature, which means in a new scheme assessment of each assessment year in consequent to search, the appellant has to file his return of income under very same ITR 6 which is used for filing regular return of income and the return filed under ITR Form 6 provides for various information including deductions under section 80IA. Therefore, merely because, separate schedule is provided for deductions under chapter VI-A, it cannot be construed that even in a case of filing return of income under section 153A, the appellant can make a fresh claim. Further, once the assessment is abated, the original return which has been filed loses its originality, and the subsequent return filed under section 153A takes the place of the original return. In such cases, the return of income filed under section 153A(1), would be construed to be one filed under section 139(1) and the provisions of the Act, shall apply to the same and accordingly, all legitimate claims would be open to the assessee to raise in the return of income filed under section 153A(1). [Para 24]

- Further, the requirement of assessment or reassessment under the provisions of section 153A has to be read in the context of section 132 or section 132A, inasmuch as, in case if no incriminating material is found as a result of the search or requisition, the question of reassessment of the concluded assessment does not arise, which would require mere reiteration and it is only in the context of the abated assessment under the second proviso, which is required to be assessed. The underlying purpose of making the ‘total income’, under section 153A is, therefore, to assess income which was not disclosed or would not have been disclosed. The

purpose of the second proviso is also very clear, inasmuch, as once assessment or reassessment is pending on the date of initiation of the search or requisition, and in terms of section 153A, a return is filed, and the Assessing Officer is required to assess the same, there cannot be two assessment orders determining the total income of the assessee for the said assessment year and therefore, the proviso provides for the abatement of such pending assessments and reassessment proceedings, and it is only the assessment made under section 153A that would be the assessment for the said year. The necessary corollary of the above provision is that the assessments or reassessments which have already been completed and the assessment orders have been passed, determining the assessee''s total income and such orders are subsisting at the time when the search or requisition is made, there is no question of any abatement since no proceedings are pending. In such cases, when the assessment has already been completed, the Assessing Officer can reopen the assessment or reassess the assessment already made without following the procedure under section 147 or section 148 and determine the total income of the assessee. The arguments raised by the assessee, in light of the provisions of section 153A(1)(a) and Form ITR-6, that the moment the assessee files a return in response to section 153A, it partakes the nature of the return filed under section 139(1) and it satisfies all the conditions, including the provisions of section 80A(5) and section 80AC, is devoid of merit and is rejected. [Para 25]

- In unabated or concluded assessment, the Assessing Officer cannot make any additions in the absence of any incriminating material found as a result of the search, particularly in the case of unabated or concluded assessments, and since the Assessing Officer cannot tinker with unabated or concluded assessments in the absence of any incriminating material, with equal force, the same ratio should be applicable to the assessee as well. Thus, the appellant also cannot make any fresh claim of deduction or expenditure for the first time in the return of income filed in response to the notice issued under section 153A. Insofar as the abated assessment is concerned, the assessee can make all claims, provided the return of income is filed in adherence to the timeline to furnish as per notice under section 153A, failing which the assessee shall not be able to claim any deduction in view of section 80A. [Para 26]

- Consequent to notice under section 153A, the earlier return filed for the purpose of assessment which is pending would be treated as non-est in law. Further, section 153A(1) itself provides filing of the return consequent to notice, the provisions of the Act will apply to the return of income so filed. Consequently, the return filed under section 153A(1) is a return furnished under section 139. Consequently, the respondent/assessee is being assessed in respect of abated assessment for the first time under the Act. Therefore, the provisions of the Act, which would be otherwise applicable in case of return filed in the regular course under section 139(1) would also continue to apply in the case of return filed under section 153A. [Para 28]

- The assessment or reassessment made in pursuance to section 153A is not a de novo assessment and, therefore, it was not open to the assessee to claim and be allowed

such deduction or allowance of expenditure which it had not claimed in the original assessment proceedings which in the case of assessee stood completed *vide* order dated 15-1-2009 passed under section 143(1). If one goes by the abovesaid, it is only in the context of abated assessments which are pending as on the date of search under section 132, the return filed in response to notice under section 153A partakes the nature of return filed under section 139 and the assessee can make/lodge any claim which otherwise, it would have raised in the return of income to be filed under section 139. In other words, in case of unabated/concluded assessments like the Assessing Officer, who cannot make additions in the absence of any incriminating material, the assessee cannot make any fresh claim, including the claim of deduction under Chapter VI-A. Therefore, the assessee cannot make any fresh claim of deduction or allowance of the expenditure for the first time in the return of income filed under section 153A. [Para 29]

- The provisions of section 147 are analogous to provisions of section 153A. Section 147 deals with income escaping assessment, and as per the said provisions, if any income chargeable to tax in case of an assessee has escaped assessment for any assessment year, the Assessing Officer shall assess or reassess such income for such assessment year. Further, section 147 makes it very clear that in order to invoke provisions of section 147, there should be income which has escaped assessment, and such escapement should be based on fresh tangible material which comes to the possession of the Assessing Officer subsequent to the completion of the original assessment and further, the formation of belief of escapement of income should have a live nexus with reasons to believe and fresh tangible material. Similarly, the provisions of section 153A deal with assessment in case of search or requisition, and as per the said provisions, notwithstanding anything contained in certain provisions of the Act, in case of a person where search is initiated after 31-5-2003, the Assessing Officer shall issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year in which such search is conducted or requisition is made. According to the provisions of sections 147 and 153A, although both operate in different fields, the purpose is the same. Section 147 deals with income escaping assessment, and section 153A deals with assessment consequent to search and seizure under section 132, where any money, bullion, jewellery, valuable article or things found as a result of the search. Therefore, the provisions of section 147 are for the benefit of revenue, and the assessee cannot make any fresh claim of deduction towards any income or expenditure. Going by the scheme of assessment under section 153A, there is no doubt that said provisions are only for the purpose of detection of undisclosed money, bullion, jewellery, or any other article or thing. And said provisions are also for the benefit of revenue, and the assessee cannot take to its advantage. [Para 31]

- The assessee vehemently argued that, once return is filed in response to notice under section 153A, as per provisions of section 153A(1)(a), such return should be considered as return filed under section 139, and further, it is treated as if, the

appellant has satisfied all the conditions prescribed under section 80A(5) and section 80AC. This argument of the assessee is not subscribed to for the simple reason that, the provisions of section 80AC are very clear, inasmuch as deduction shall not be allowed to any assessee, unless he furnishes return of income for such assessment year on or before the due date specified under section 139(1). Similarly, section 80A(5), in clear terms, states that when the assessee fails to make a claim in the return of income for any deduction under the heading 'C- Deductions in respect of certain incomes,' no deduction shall be allowed to him thereunder. A combined reading of section 80A(5) and section 80AC makes it very clear that, in order to make any claim including deduction under section 80IA(4), the assessee must file his return of income under section 139(1) and further, the said deduction should be claimed in the return furnished for relevant assessment years. Therefore, the argument of the assessee that in view of the specific provisions of section 153A, even in case of a return filed in response to notice under section 153A, the assessee satisfies all the conditions prescribed under section 80A(5) and 80AC is devoid of merit and cannot be accepted. If the argument of the assessee is accepted that even after search, an assessee can make a claim for the first time towards deduction under section 80IA(4) in the return of income filed under section 153A, then the provisions set out under section 80A(5) and section 80AC become redundant, and this is not the intention of the Legislature. Further, if the arguments of the assessee are accepted, it discriminates the persons, who file the return of income and make a claim in the said return of income on or before the due date under section 139 and the persons who do not file any return of income and also do not make any claim in the said return of income. Therefore, going by the wording of the provisions of sections 80A(5) and 80AC, in order to claim any deductions under section 80IA(4), the assessee should file its return of income on or before the due date prescribed under section 139(1) and further, the said claim should be made in the return furnished. Further, in order to claim deduction under section 80IA(4), as per section 80IA(7), furnishing of the audit report on or before the specified date referred to in section 44AB is mandatory and not directory as argued by the assessee. [Para 32]

- In this view of the matter and considering the facts and circumstances of the case, the assessee cannot make a fresh claim of deduction under Chapter VI-A, for the first time, in the return of income filed in response to notice issued under section 153A, pursuant to search conducted under section 132, in unabated/completed assessment as on the date of search. In case of abated assessments, like the Assessing Officer who can make assessment based on incriminating materials and any other information made available to him, including information furnished in return of income, the assessee may claim all deductions towards any income or expenditure, as if it is a first return of income and fresh assessment. [Para 33]

- The present discussion hereinabove is with reference to the questions referred to on the issue, *i.e.* whether a fresh claim of deduction under Chapter VI-A could be maintained for the first time in the return filed pursuant to a notice under section 153A or not. The assessee and the revenue did not argue on the merits as to whether the assessee is eligible for such a claim or not. Therefore, the present appeals filed

by the revenue are posted for hearing on the issue of deduction claimed under section 80IA(4) on merits. The Registry is directed to list the appeals in due course and inform both parties. [Para 34]

10. Further, we also find that this claim for deduction u/s. 80IA(4) was not made even in the return of income filed against the notice u/s. 153A of the Act. The claim for the first time was made before the CIT(A), therefore, it cannot be entertained as it had not undergone the process of assessment by the AO. In this connection reliance can be placed on the decision of the Hon'ble Bombay High Court in the case of Ultratech Cement Ltd.v. Addl. CIT [2018] 408 ITR 500 wherein it was held as under: -

22. Mr.Agarwal then placed reliance upon the Full Bench decision of this Court in *Ahmedabad Electricity Co. Ltd.* v. *CIT* [1993] 199 ITR 351/66 Taxman 27. In the above case, the issue involved was whether an additional ground could be raised before the Tribunal with regard to deductibility of the sums transferred to the contingency reserve and dividend control reserve. During the proceedings before the Assessing Officer for the AY 1962-63 to 1971-72, the appellant - assessee did not claim the deductions on account of sums transferred to contingency reserve and dividend control reserve. However, when the matter was pending before the Tribunal, this Court in the case of *Amalgamated Electricity Co.Ltd.* v. *CIT* [1974] 97 ITR 334 held that the amounts transferred to contingency reserve and dividend control reserve are allowed as deductions on revenue account. It is in view of the decision of this Court in the case of *Amalgamated Electricity Co. Ltd.* (*supra*) that the assessee sought to raise additional grounds before the Tribunal. However, the Tribunal refused to grant leave to the assessee to raise such an additional ground. As there was difference of opinion between various decisions of this Court, the matter was placed before the Full Bench to resolve the controversy. The Full Bench of this Court held that the parties are allowed to raise additional grounds before the Tribunal so long as they arise from the subject matter of the proceedings and not necessarily from the subject matter raised in the memo of appeal. The reliance was also placed upon the decision of the Apex Court in *Jute Corpn. of India Ltd.* v. *CIT* [1991] 187 ITR 688/[1990] 53 Taxman 85 wherein the Apex Court permitted the appellant to raise an additional ground for the first time before the appellate authority claiming deduction of purchase tax liability because the same had become liable to payment subsequent to the assessment order. The Full Bench observed that the Apex Court in *Jute Corpn. of India Ltd.* (*supra*) made reference to the decision of the Apex Court

in *Addl. CIT* v. *Gurjargravures (P.) Ltd*. [1978] 111 ITR 1, and held that it does not prohibit the raising of an additional ground before the appellate authority, when the ground so raised could not have been raised before the Assessing Officer or the ground now becomes available in view of changed circumstances such as a decision of a Court allowing a particular deduction.

23. Therefore, before an additional ground is allowed to be raised, the appellate authority must be satisfied that the ground raised could not have been raised earlier for good reasons. The underlying basis for allowing the raising the additional ground in the case of *Ahmedabad Electricity Co. Ltd*. (*supra*) was the subsequent decision rendered by this Court in *Amalgamated Electricity Co. Ltd*. (*supra*) when appeal was pending. As held by the subsequent decisions of the Apex Court in *National Thermal Power Corpn. Ltd.* (*supra*), a judicial decision when an appeal is pending will entitle raising of additional ground.

24. In any view of the matter, the aforesaid decision does not deal with the situation which arises for consideration in this case viz. relying upon the evidence on record for a subsequent assessment year to hold that the assessee is entitled to a benefit of deduction u/s 80IA of the Act for an earlier assessment year. A deduction under Chapter VIA of the Act under which Section 80IA of the Act falls would depend, as pointed out above, upon the satisfaction of the facts necessary for claiming a deduction. The allowing of a deduction in a subsequent year's assessment order cannot determine the facts as existing in the earlier assessment year, such as in this case so as to allow the deduction.

25. In fact, the issue with regard to the raising of new grounds in the absence of any evidence on record is no longer *res integra* in view of decision of the Apex Court in *Gurjargravures (P.) Ltd*. (*supra*). In the above case, it has been held that an additional ground cannot be raised before the appellate Authority when no claim for a particular deduction was made before the original authority nor was there any material on record to support such a claim. Further the Court held that merely by allowing the deduction for a subsequent assessment year, it could not be held that conditions for availing the deduction in the subject assessment were also satisfied. In the present facts also, the claim for deduction under Section 80IA of the Act was not made before the Assessing Officer or the CIT(A) but was made for the first time only before the Tribunal nor was there any evidence in support of the claim for the subject assessment year on record. Thus it stands covered by the above decision in *Gurjargravures (P.) Ltd*. (*supra*). The aforesaid decision of the Apex Court was subject matter of consideration in *Jute Corporation of India Ltd.(supra)* wherein the Court while distinguishing *Gurjargravures (P.) Ltd.* (*supra*) held that the additional ground could also be raised before the appellate Authority if such ground could not have been raised at the earlier stage i.e. when the return of income was filed. This is only when the assessee is able to satisfy the appellate Authority that the ground now raised was bona fide and the same could not have been raised earlier for good reasons. In such cases, the raising of additional ground could be allowed. In this case, there is nothing on record to indicate as to what was the reason which prevented the appellant assessee from raising a claim for deduction under Section 80IA of the Act for subject

assessment year during the proceedings before the Assessing Officer and the CIT(A). Therefore, in the above facts , the view taken by the Tribunal in not allowing the appellant to raise additional ground in appeal is in line with the decision of the Apex Court in *Gurjargravures Pvt. Ltd.* (*supra*), *National Thermal Power Corpn. Ltd.* (*supra*) and *Jute Corporation of India Ltd*.

26. None of the decisions cited by the appellant would render the decision of the Supreme Court in *Gurjargravures Pvt. Ltd.* (*supra*), read with *Jute Corpn. of India Ltd.* and *National Thermal Power Corpn. Ltd.* (*supra*) inapplicable to the present facts.

27. There can be no dispute that whether or not to allow an additional ground to be raised before the appellate authority is to be decided by the appellate authority in exercise of its discretion considering the facts and circumstances of the case before it. Where only a pure question of law arises from facts which are already on record, then there is no reason why the appellate authority should not consider the question of law so as to determine the correct tax liability of an assessee in accordance with law. However, where evidence is to be examined and that is not on record, then it will be considered only if the parties seeking to raise the additional ground satisfies the authority concerned that for good and sufficient reasons, the ground could not be raised before the lower authorities. In the present facts, no such ground has been made out by the assessee before the Tribunal. In the present facts, as pointed out above and being reiterated once more, the additional ground, which is raised, is not a pure question of law, but would depend upon the satisfaction of the authority as to the facts existing in the subject assessment year for allowing the benefit of Section 80IA of the Act. The additional ground is being raised for the first time before the Tribunal without relevant evidence being on record.

11. In view of the above legal position discussed supra, the CIT(A) had rightly denied the claim for deduction u/s. 80IA(4) of the Act. We shall make it clear that we have not entered into the merits of the claim. Therefore, all the contentions raised by the appellant on merits of the claim are kept open. The appeal stands dismissed.

ITA No. 268/Coch/2021 – AY: 2013-14

12. In this case the original return of income was filed on 29.09.2013 disclosing income of Rs. 5,38,30,550/-. Notice u/s. 153A of the Act was issued on 16.08.2016. In response to the notice u/s. 153A the appellant filed the return of income disclosing income of

Rs. 9,18,86,550/-. Against the said return of income, the assessment was completed by the AO vide order dated 30.12.2017 at a total income of Rs. 10,36,56,550/-. While doing so, the AO made disallowance of Rs. 1,17,70,000/- based on the analysis of the labour charges found in the ledger for the failure of the assessee to produce vouchers in support of labour charges.

13. Being aggrieved, an appeal was filed before the CIT(A), contending that such disallowance cannot be made based on estimates in the absence of any incriminating material found during the course of search and seizure operations. However, the CIT(A) confirmed the addition by holding that the AO returned a finding that all the labour charges were paid in cash not supported by vouchers and also relying the on the statement of the Chief Accountant of the appellant.

14. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

15. The learned counsel for the assessee contended that the CIT(A) ought not have confirmed the addition on account of labour charges in the absence of any incriminating material, without prejudice to the above, it is prayed that the CIT(A) ought to have estimated the profit, keeping in view the provisions of section 44AD of the Act. It is further submitted that the CIT(A) ought not have denied the claim for deduction u/s. 80IA(4) of the Act.

16. On the other hand, the learned CIT-DR submitted that the order passed by the CIT(A) is a reasoned one requires no interference by this Tribunal.

17. We have heard the rival contentions and perused the material available on record. We find that the grounds of appeal Nos. 1 & 2 are general in nature. Grounds of appeal Nos. 3 & 4 challenges the denial of claim for deduction u/s. 80IA(4) of the Act for the reasons stated by us in the appeal of AY 2012-13 in appeal ITA No. 267/Coch/2021 wherein we held that the CIT(A) was justified in denying the claim u/s. 80PIA(4) of the Act. Accordingly these grounds of appeal stand dismissed.

18. Grounds of appeal Nos. 5 to 9 challenges the correctness of the findings of the CIT(A) confirming the addition of Rs. 1,17,70,000/- being 10% of the labour charges on adhoc basis. The contention of the appellant that in the absence of incriminating material casting doubts on the genuineness of the expenditure incurred on labour charges, no addition can be made u/s. 153A of the Act cannot be accepted for the reason that it is an unabated assessment as noted by us supra. The fact that the appellant company had disclosed additional income in response to notice u/s. 153A of the Ac which clearly suggests existence of incriminating material and, therefore, the other limb of the decision of the Hon'ble Apex Court in the case CIT v. Abhisar Buildwell P. Ltd. [2023] 454 ITR 212, in which it is held that if some addition is made based on

incriminating material, the other addition, if any, can be made. Thus, these grounds of appeal stand dismissed.

19. Ground No. 10 challenges the decision of the CIT(A) not accepting the contention of the appellant that without rejecting the books of account no adhoc disallowance can be made. In case addition is warranted the income can be estimated by rejecting the books of account. On a perusal of the assessment order it is evident that the AO found that the books of accountant maintained by the assessee are incorrect as the labour charges for the entire year are booked on the last date of the accounting year in cash. This funding was not disputed by the appellant. However, there cannot be receipts from business of execution of contracts without incurring expenditure on labour. It is impossible to earn income from execution of contracts, without incurring expenditure on labour. In such a situation the AO ought to have rejected the books of account and estimated the profit. It is for the AO to reject the books if he finds the books of account are incorrect or incomplete before making addition instead of resorting to adhoc disallowance as held by the Hon'ble Madras High Court in the case of Pr.CIT v. Marg Ltd. [2017] 396 ITR 580 and the decision of the Hon’ble Rajasthan High Court in the case of CIT v. Pink City Developers [2017] 398 ITR 153. There is no embargo even to reject the books of account in the assessment made u/s. 153A of the Act. The Hon'ble Kerala High Court in the case of CIT v. Hotel Meriya [2011] 332 ITR 537 held

that estimation of income even in the search assessment had upheld. This reasoning was upheld in the recent judgement of the Hon'ble Kerala High Court in the case of Sunny Jacob Jewellers v. CIT [2024] 473 ITR 159 wherein it was held as under: -

> *"10. In the case of Hotel Meriya (supra) the Assessing Officer, during the search operations under Section 132 of the I.T. Act, in the premises of the Hotel had seized certain sale slips, copies of certain bills and also recorded statements of the partner of the Hotel and an employee in-charge of the bar. He then proceeded to finalise the block assessment under Section 158BB of the I.T. Act for the block period of five years from 1996-97 to 2000-01. The Appellate Tribunal, in an appeal preferred by the assessee, found that the statements recorded from the partner of the Hotel and the employee in-charge of the bar, and other materials collected, would not amount to evidence as contemplated under Section 158BB of the I.T. Act, and that the statements recorded under Section 132(4) of the I.T. Act had only very limited application. The reliance of those statements by the Assessing Officer was therefore found to be erroneous in law by the Tribunal. Similarly, while the Assessing Officer in that case found that the statement given by the partner of the Hotel, as also the employee in-charge of the bar, to the effect that only 80% of the actual sales were recorded in the cash book, justified a conclusion that there was a suppression of sale to the extent of 20 to 22%, and that the said suppression could be extended to cover all the assessment years within the block period, the Appellate Tribunal had found that inasmuch as there was no evidence regarding concealment of income for the period from 1996-97 to 2000-01, the assessments for those years could not be re-visited based on the evidence that was available for a subsequent year. The said findings of the Appellate Tribunal were reversed by the High Court, which opined that the statements recorded from the partner of the*

> *Hotel and the employee in-charge of the bar could be taken as incriminating evidence for the purposes of Section 132 read with Section 158BB of the I.T. Act, and further that, even if the incriminating material pertained to one of the years in the block period, in view of the admission of the partner of the Hotel that there had been a concealment of sales turnover, there was no reason to assume that there was no similar concealment in any of the other years during the block period. To the same effect is the decision of another Division Bench of this Court in Travancore Diagnostics Pvt. Ltd. (supra) where the concealment admitted in the statement made* on behalf of the assessee was held to extend to the block period concerned."

20. The next question that comes up is, what is the rate of profit to be applied. Even in the case of best judgement assessment, assessment of income should be based on evidence and estimation cannot be subjective. It must be honest guess work based on the material before the AO. It is trite law that when the AO makes an assessment to the best of his judgement against the assessee, who is in default in supplying information, the AO should not act dishonestly or vindictively. The AO must make a fair estimate of proper figure of assessment and for this purpose he must take into consideration legal knowledge and assessee's circumstance and his knowledge of previous assessment of the assessee and other matters which he may think assist him in arriving at a fair and proper estimation, though there must be a guess work in the assessment it must be honest guess work and the assessment must be based on adequate and relevant material. Reference in this case can be made

on the decision in the case of Abdul Baree Chowdhury v. CIT [1937] 5 ITR 170 PC. This decision was subsequently followed by several High Courts in following cases: -

i. CIT v. Popular Electronic Co. P. Ltd. [1993] 203 ITR 630 (Cal)
ii. Baliah v. CIT [1965] 56 ITR 182 (Mys)
iii. Muniratham Mudaliar v. CIT [1964] 51 itr 644 (Mad)
iv. Kodidasn Appalaswamy & Suryanarayana v. CIT [1962] 46 ITR 735 (AP)
v. Chouthmal Agarwalla v. CIT [1962] 46 ITR 262 (Assam)
vi. Swamy Bros v. CIT [1958] 34 ITR 123 (Ker)
vii. CIT v. Chopra Bros (India) Pvt. Ltd. [2001] 252 ITR 412 (P&H).

What follows from the above discussion is that the rate of profit to be the average profit reported in preceding 3 years, which in the present case works out as under: -

AY	Turnover as per ITR	Income Returned as per ITR	% of Income Returned to turnover
2007-08	118,609,437	6,662,975	5.62
2008-09	62,942,544	3,760,768	5.97
2009-10	78,707,217	5,637,793	7.16
		Average	6.25

Therefore, we direct the AO to adopt the net profit rate of 6.25% from the contract receipts as total income of the year. Accordingly the apple stands allowed.

21. We make it explicitly clear that since the income is estimated rejecting the books of account maintained by the assessee, any separate addition is required to be made on any other item like unexplained investment of undisclosed income or cash credits, keeping in view the judgement of the Hon'ble Andhra Pradesh High Court in the case of Indwel Constructions v. CIT [1998] 232 ITR 776 and Hon'ble Karnataka High Court in the case of CIT v. Bahubali Neminath Muttin [2016] ITR 72 taxmann.com 139 and Hon'ble Punjab & Haryana High Court CIT v. Dulla Ram, Labour Contractor [2014] 42 taxmann.com 349.

22. Since identical issues and facts are involved in assessee's appeal ITA Nos. 269, 270 & 271/Coch/2021, our findings in ITA Nos. 267 & 268/Coch/2025 shall apply mutatis mutandis to these appeals also.

23. In the result, the appeals filed by the assessee stand partly allowed statistical purposes.

Order pronounced in the open court on 31st July, 2025.

Sd/-	Sd/-
(SONJOY SARMA)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Cochin, Dated: 31st July, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin