IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SOUNDARARAJAN K., JM

ITA Nos. 175 & 177/Coch/2024
Assessment Years: 2014-15 & 2012-13

DCIT, Central Circle Aayakar Bhavan, Karbala Junction, Kollam 691001	vs.	Valsala Raj Rajavalsam, Panangadu, Kulanada Pandalam, Pathanamthitta 680503 [PAN: ACAPR8941B]
(Appellant)		(Respondent)

Assessee by: Shri S.K. Tulsiyan, Advocate
Revenue by: Shri Suresh Sivanandan, CIT-DR

Date of Hearing: 21.03.2025
Date of Pronouncement: 09.06.2025

O R D E R

Per Bench

Theseare appeals filed by the Revenue directed against the orders of the Commissioner of Income Tax (Appeals)-3, Kochi [CIT(A)], dated 29.12.2023 for Assessment Years (AY) 2014-15 & 2012-13.

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

3. For the sake of clarity and convenience facts relevant to the appeal in ITA No. 175/Coch/2024 for AY 2014-15 are stated herein.

4. Brief facts of the case are that the assessee is an individual. Search and seizure operations under the provisions of section 132 of the Income Tax Act, 1961 (the Act) were conducted in the case of one Shri M.K. Rajendran Pillai, his wife Smt. Valsala Raj and sons Shri Varun Ran and Shri Arun Raj and also in the business concerns of Sreevalsam Group on 08.06.2017. This group of concerns is stated to be engaged in the business of running textile shops, jewellery shops, finance business, bar attached hotels, vehicle dealerships, fuel outlets, educational institutions, etc. The assessee is one of the family members of Shri Rajendran Pillai.

5. It is stated that during the course of search and seizure operations, it was found that the appellant was in receipt of funds from sources/entities located in Nagaland to the account of the assessee company which were not explained in the return of income filed for the year under consideration. Accordingly, issued notice u/s. 153A of the Act on 10.08.2018 calling upon the appellant to file the return of income. In response to the notice u/s. 153A, the appellant filed return of income on 01.12.2018 disclosing no additional income. During the assessment proceedings it is found that the respondent assesse:

i) made cash deposits in several bank accounts aggregating to Rs. 63,38,000/- during the previous year relevant to the assessment year under consideration

ii) received money through several bank accounts from various persons aggregating to Rs. 41,00,000/-

iii) received funds through banking channels from banks of Nagaland based persons/entities Rs. 1,19, 53,099/-

6. The assessing officer had brought to tax the above sum of Rs. 2,95,72,109/- as unexplained money of the appellant for the alleged failure of the assesse to offer any plausible explanation in support of the source of above mentioned investment vide order dated 18.03.2020 passed u/s. 143(3) r.w.s 153A of the Act.

7. Before we deal with the issues in the present appeal, it is significant to make a note of the factual matrix of the case of Shri Rajendran Pillai. Shri Rajendran Pillai is stated to be resident of Nagaland. He is stated to be looking after the police vehicles including procurement of spare parts, etc. Search and seizure operations u/s. 132 of the Act were conducted on 08.06.2017 in the case of Shri Rajendran Pillai along with family members and group concerns. It is found that Shri Rajendran Pillai and his family members and group concerns have received money from as many as 38 different bank accounts held in the names of various individuals and entities based at Nagaland. It is also further found that huge amount of cash was found in the bank accounts held by Shri Rajendran Pillai and his family members and group concerns. The funds received from persons as well as entities based at Nagaland

were utilised for the purpose of purchase of properties during 2012-13 to 2017-18. The Assessing Officer of Shri Rajendran Pillai found that the money lenders/loan creditors had not maintained any books of account and claimed exemption u/s. 10(26) of the Act. The confirmations obtained from these creditors are found to be defective for certain discrepancies and mismatch in signatures, etc. The AO further returned a finding that all these loan creditors were deriving income from executing contracts with the government of Nagaland, were mere name lenders and opened bank accounted operated by Shri Rajendran Pillai. Business receipts credited to the bank accounts were immediately transferred to the bank account of Shri Rajendran Pillai and his family members by persons and entities and in consideration for lending names they were paid commission by Shri Rajendran Pillai. In nutshell, the sum and substance of the case set out by the AO is that Shri Rajendran Pillai was actually carrying on the business in the name of other people based in Nagaland. The amounts so transferred to the family members of Shri Rajendran Pillai and his group business concerns actually belonged to him. Accordingly, he made addition of Rs. 305.59 crores for AY 2012-13 to 2017-18, details of which are as under; -

No.	Particulars	Amount (Rs.)
1	Credit received from 38 Bank Accounts of Nagaland based entities/concerns	243.19 crores
2	Cash Deposits in the bank accounts of assessee	24.74 crores

	and his family members	
3	Cash deposits in Vrindavan Builders Pvt. Ltd.	2.27 crores
4	Cash component in land transaction	16.10 crores
5	Other credits in bank accounts of assessee and his family members	19.28 crores
	Total	**305.59 crores**

8. The assessment was challenged before the CIT(A), who had confirmed the additions. On further appeal before the Tribunal, the Tribunal had deleted the addition made in respect of funds received by family members of Shri Rajendran Pillai and the group concerns by holding as under: -

> "10. After due consideration of material facts, we find that the debit / transfer entries aggregating to Rs.243.19 Crores have been treated to be the assessee's income on the allegation that assessee's unaccounted income has been routed through these accounts for the benefit of group as a whole. However, in para 7.10, we have already taken a position that the credit transfer received by the other family members and group concerns could not be assumed to be assessee's undisclosed income since it is nowhere been established by the lower authorities that the assessee was de-facto owner of either Nagaland based bank accounts or the owner of bank accounts of various recipients. The other family members and group concerns of the assessee were separate Income Tax assessee and subjected to separate assessment. Therefore, the credit received in those accounts ITA Nos.580 to 586/Coch/2022 - 57 - could not be held to be the assessee's income. Under these circumstances, the assessee's onus would remain confine to explain the credit received by it in his own bank accounts. Further, the assessment proceedings for AY 2018-19 have already been quashed by us on legal grounds. Therefore, at the outset, the

addition, to that extent, could not be sustained in the hands of the assessee. We order so."

9. This order was appealed by the Revenue before the Hon'ble Kerala High Court, which confirmed the findings of the Tribunal as under: -

"9. As for the cash deposits received in the bank accounts of the assessee, his family members and group concerns, the Appellate Tribunal found that, apart from adding the cash deposits found in all the accounts to the total income of the assessee towards unexplained cash deposits under Section 68 of the I.T. Act, the authorities below had also rejected the explanation given by the assessee that the amounts received by him were by way of loan from persons in Nagaland. Based on its earlier finding that the Revenue had not established that the bank accounts held by the other family members and group concerns actually belong to the assessee himself, the cash deposits in the said accounts were directed to be excluded from the additions made to the taxable income of the assessee."

10. Keeping in view this background, we proceed to adjudicate the issues in the appeals.

11. Being aggrieved, an appeal was filed before the CIT(A) contesting that the very basis of addition in assessment is bad in law as no incriminating was found as result of action u/s. 132 of the Act. Further contested that no addition on account of unexplained cash deposits, credits in the bank account and credits received from Nagaland, as the same were shown in books of account regularly maintained and the source of the same were self-explanatory. However, the CIT(A) considering the explanations of the appellant

that the cash deposits were made out of the income declared under the Income Declaration Scheme, 2016 of Rs. 42,05,000/- deleted the addition to the extent of Rs. 42,05,000/- on account of un explained cash and also deleted the addition to the extent of Rs. 82,26,966/- in respect of unexplained cash deposits in bank accounts accepting the explanation of the appellant in support of the credits. In respect of the credits received from Nagaland parties, the ld. CIT(A) deleted the addition to the extent to 1,08,64,182/- based on the declaration of the amount in IDS, 2016 declaration of the appellant and amount of 28,30,961/- was deleted by holding it as double addition as the same were added in the hands of one Shri Varun Raj Pillai. However, confirmed the addition of only Rs. 5,00,000/-. Thus, the ld. CIT(A) partly allowed the appeal.

12. Being aggrieved by the order of the CIT(A), the Revenue is in appeal before us in the present appeal.

13. The ld. CIT-DR submits that since the assesse could substantiate the source of cash deposits, credits in the bank accounts, the CIT(A) ought not have deleted the additions. He further submitted that the CIT(A) ought not have given credit to the income declared in the IDS scheme in the absence of direct nexus between the both. Thus, he prayed that the order of the CIT(A) be set aside.

14. On the other hand, the ld. Counsel submits that the additions cannot be sustained in the absence of any incriminating found as a

result of search and seizure action in view of the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (supra). On merits he submits that the CIT(A) deleted the addition based on the evidence and explanations furnished in support of the cash deposits, credits in the bank accounts. The Department had not rebutted the explanation filed by the assessee. Thus, he submitted that no interference by this Tribunal is called for in the impugned order.

15. We heard the rival submissions and perused the material on record. In the present appeal, the Revenue challenges the correctness of the findings of the CIT(A) deleting additions made on account of unexplained cash deposits, credits in the bank accounts and loans received from Nagaland parties. Now we shall take up the preliminary objections raised by the assessee challenging the very jurisdiction u/s. 153A to make the addition. It is the contention of the assessee company that in the absence of evidence found during the search and seizure action, no addition can be made u/s. 153A of the Act placing reliance on the decision of the Hon'ble Supreme Court in the case of Pr. CIT v. Abhisar Buildwell Pvt. Ltd. [2023] 454 ITR 212Therefore, we proceed to examine the facts of the case, to find out the existence of any incriminating material found as a result of search and seizure action which is a condition precedent to make addition in the assessment u/s 143(3) r.w.s. 153A of the Act.

16. We had carefully perused the assessment order and the order of the CIT(A), we are unable to discern reasons for making addition in the assessment made u/s. 143(3) r.w.s. 153A of the Act. From the case setup by the AO, it would reveal that the AO had proceeded with the making of the additions invoking jurisdiction u/s. 153A based on the statements given by Mr. M.K. Rajendran Pillai u/s 132(4) during the course of search and seizure operations in his hands that all the investments made in hands of the family members and the business concerns were made out of his unaccounted income. The outcome of the income tax proceedings in the case of Mr. M.K. Rajendran Pillai are discussed supra. The assessment order is totally silent as to what is the evidence found as a result of search and seizure action in the hands of the respondent assessee before us nor made any referenced to the statement recorded from the assessee company u/s. 132(4) of the Act in the course of search and seizure action in the hands of the assessee company. Thus, it is crystal clear that except the statement made by Mr. Rajendran Pillai there is no iota of evidence found as result of search and seizure in the hands of the assessee company leading to the impugned addition. Thus, the basis of the impugned assessment is the statement given by Mr. Rajendran Pillai in the course of search and seizure operations in his hands u/s. 153A. The said Rajendran Pillai is not a Director in the assessee company. Therefore, the question that is required to be determined is whether the statement given by third

party constitutes an incriminating material as envisaged u/s. 153A of the Act. The issue stands settled by the decision of the Hon'ble Delhi High Court in the case of PCIT v. Anand Kumar Jain 432 ITR 384(Delhi) and PCIT vs. Manoj Hora 402 ITR 175 (Delhi) and in the case of PCIT v. Kunvarji Commodities Brokers Pvt. Ltd. 432 ITR 180 (Guj). The relevant paragraphs of the judgement are extracted below: -

> *"10 Now, coming to the aspect, viz., the invocation of section 153A on the basis of the statement recorded in search action against a third person, we may note that the Assessing Officer has used this statement on oath recorded in the course of search conducted in the case of a third party (i. e, search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than the person searched (as referred to in section 153A), then the only legal recourse available to the Department was to proceed in terms of section 153C of the Act by handing over the same to the Assessing Officer who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under section 132(4) of the Act). As noted above, the assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the Income-tax Appellate Tribunal. Therefore, we do not find any substantial question of law that requires our consideration."*

In view of the above legal position, we are of the considered opinion that the assessing authority is not correct in assuming jurisdiction

u/s. 153A for the purpose of making the impugned addition. On this score, we dismiss the appeal filed by the Revenue. However, the contentions raised before the Revenue are kept open.

17. Since identical issues and facts are involved in ITA No. 177/Coch/2024, our findings in ITA No. 175/Coch/2024 shall apply *mutatis mutandis* to the appeal in ITA 177/Coch/2024.

18. In the result, the appeals filed by the Revenue stand dismissed.

Order pronounced in the open court on 9th June, 2025.

Sd/-	Sd/-
(SOUNDARARAJAN K.)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Cochin, Dated: 9th June, 2025

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2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
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By Order

Assistant Registrar
ITAT, Cochin