

## **ITAT: ITAT: Sec.153A assessments invalid sans incriminating evidence; Loose sheets/sworn statements not reliable absent corroborative evidence**

Jun 18, 2024

Ramachandra Setty & Sons [TS-422-ITAT-2024(Bang)]

### **Conclusion**

Bangalore ITAT quashes the assessment under Section 153A for AYs 2013-14 and 2014-15 pursuant to the search operation conducted under Section 132 and deletes the additions made for the relevant AYs; Holds that notice issued under Section 143(2) was barred by limitation as on the date of search, the assessment shall be considered as completed and no assessment could be made in the absence of incriminating material found during the course of search; Opines that *"to make an addition in case of completed assessment year, there should be a positive seized material/incriminating material found during the course of search action. In the absence of such seized material/incriminating material, Id. AO is precluded from making any additions"*, by relying on SC judgment in [Abhisar Buildwell](#); For AY 2015-16, ITAT holds that Revenue's assumption of jurisdiction under Section 153A to be valid by observing that the assessment cannot be said to be complete on the date of search, as the Revenue was within limitation to issue notice under Section 143(2) at the time of search; However, on merits, deletes the addition made by the Revenue as solely based on loose sheets seized and statement of the managing partner recorded under Section 132(4), during the course of search operation; Holds that placing reliance on the seized material by the Revenue is unjustified on the ground that: (i) there are no documentary evidence either to support the statements recorded under Section 132(4) and (ii) seized material in the form of various loose sheets, has no signature or authorization and are unsubstantiated documents, in absence of any material suggesting existence of any undisclosed assets; Relies on plethora of judgments including SC judgment in [Andaman Timber Industries](#) and [Common Cause \(A Registered Society\)](#), SC judgment in [Vinod Solanki](#) and Delhi HC judgment in [Best Infrastructure](#) and [Pavitra Realcon](#), and holds that, *"addition cannot be made on the basis of statement recorded u/s 132(4) of the Act supported by the unsubstantiated loose slips"*; For AY 2017-18, ITAT rejects Revenue's claim that the excess stock found during the course of search operation is liable to tax as undisclosed income under Section 69 r.w. Section 115BBE @60% and not as business income; Opines that unless the Revenue possesses any material to show that Assessee has earned the said income from any unknown sources of income, the excess stock of gold found during the search has to be treated as business income only; Relies on Amritsar ITAT ruling in [Deepak Setia](#) and ITAT Chennai ruling in [Overseas Leathers](#) wherein it was held that when the assessee has explained the source for acquisition of stock out of business income, the Revenue ought to have assessed the income under the head of business income and not as unexplained investment under Section 69B as the excess stock found during the course of search does not have any independent identity as the asset is a mixed part of overall stock; Thus, deletes the addition of Rs. 1.36 Cr as sustained by the CIT(A) and directs the Revenue to treat the same as business income and assess accordingly.:ITAT Bang

### **Decision Summary**

The ruling was delivered by the Division Bench of Bangalore ITAT comprising Shri Chandra Poojari, Accountant Member and Shri Keshav Dubey, Judicial Member.

Mr. C. Ramesh appeared for the Assessee while the Revenue was represented by Ms. Neera Malhotra.

### **Facts and Key Considerations**

Assessee, a partnership firm, engaged in the business of trading in gold jewellery and also silver articles, was subject to a search operation under Section 132. No incriminating evidence was recovered by the Revenue for AY 2013-14, 2014-15, 2015-16, except for a statement of the managing partner of the firm under Section 132(4) admitting to income of Rs. 2 Cr, 3.5 Cr and 4 Cr, respectively. Accordingly Revenue completed the assessments for the relevant AYs under Section 153A and made addition of the admitted

amounts as per the statement recorded under Section 132(4); Revenue, during the course of search action, found the undisclosed stock of quantity of gold and gold jewellery of Rs. 5.48 Cr and treated the same as income from other sources taxable under Section 115BBE @ 60 %. CIT(A) deleted the said additions by holding that in the absence of any incriminating material seized during the course of search no additions can be made. Further treated gold stock found at the business premises of Rs. 4.11 Cr as income from business and the balance amount of gold jewellery found at residence as income u/s 69B r.w. Section 115BBE. Aggrieved, Revenue and Assessee both preferred the present appeals.

ITAT noted that the search was conducted in Assessee's case on Jun 26, 2016 and consequently the assessment for the assessment year 2013-14 & 2014-15 were reopened by issuing notice under Section 153A; Further noted Assessee's contention that the additions made in the impugned AYs are not based on any seized material unearthed during the course of search u/s 132 and the addition is not supported by any material other than statement recorded under Section 132(4). Found that the impugned additions not based on any cogent material other than the statement recorded under Section 132(4). Pointed out that Revenue reliance on VAT record is misplaced without verifying the figures independently.

Analyses Section 153A and observed that the scope of assessment under Section 153A would be restricted to incriminating material found during the course of search and since no assessment was pending there would be no abatement of any proceedings. Noted that on the date of search Revenue was out of limitation to issue scrutiny notices to the Assessee for the relevant AYs. Relied on Mumbai ITAT Special Bench order in [All Cargo Global Logistics](#) wherein it was held that in cases of unabated assessments, the assessment under Section 153A will be made on the basis of incriminating material. Thus concurred with Assessee's contention that since the limitation for issuing notice under Section 143(2) was already lapsed on the date of search, the assessment shall be considered as completed and no assessment could be made in the absence of incriminating material found during the course of search. Peruses the assessment order and observed that the seized materials found during the course of search do not reflect any undisclosed income and the additions are solely based on the statement recorded under Section 132(4) and unverified VAT records. Expounded that in case of assessment under Section 153A the completed assessment can be tinkered if there is incriminating material found during the course of search, but since no incriminating material was recovered during the search operation for the relevant AYs, the additions are not justified. Relied on Jurisdictional HC judgment in Delhi International Airport, SC judgment in [Abhisar Buildwell](#). wherein it was held that, "the Assessing Officer while passing the order under Section 153A read with Section 143(3) of the Act, ordinarily cannot disturb the assessment / reassessment order which has attained finality, unless the materials gathered in the course of the proceedings establishes that the finalized assessments are contrary to the material unearthed during the course of 153A proceedings". Thus opined that, "to make an addition in case of completed assessment year, there should be a positive seized material/incriminating material found during the course of search action. In the absence of such seized material/incriminating material, Id. AO is precluded from making any additions". Accordingly quashes the assessment for the AYs 2013-14 and 2014-15.

For AY 2015-16, ITAT noted that the CIT(A) deleted Rs. 4 Cr addition on the ground that there was no incriminating material and the addition was solely based on the statement recorded under Section 132(4) is not proper. Further noted that Assessee's original return for AY 2015-16 was processed under Section 143(1). Considered Revenue's contention that the assessment cannot be said to be complete on the date of search, as the Revenue was within limitation to issue notice under Section 143(2) at the time of search, thus there was no error in the impugned assessment order under Section 153A. Further observed that the intimation under Section 143(1) is not akin to assessment, thus even though the return was processed under Section 143(1), it will be a case where return has not been attained finality. Thus the Revenue would have authority/jurisdiction to assess the entire income similar to jurisdiction in regular assessment u/s 143(3), by relying on Mumbai ITAT Special Bench ruling in [All Cargo Logistics](#). Opines that, "on the date of search i.e. 24.6.2016 there is a time limit to issue notice u/s 143(2) so as to complete the assessment u/s 143(3) of the Act. Hence, this assessment cannot be said that assessment has not been pending on this date and the assessment is not abated". Thus held that the SC judgment in Abhisar Buildwell is not applicable to the present case, therefore Revenue's assumption of jurisdiction under Section 153A is valid.

On merits of the addition of 4 Cr in total, being Rs. 3 Cr as unaccounted sales and Rs. 1 Cr for unaccounted URD purchases, ITAT observed that the Revenue made the said addition on the basis of the statement recorded under Section 132(4) wherein the managing partner admitted to the said undisclosed

sales and expenditure. Noted Assessee's contention that the statement recorded under Section 132(4) has no evidentiary value, as it was not supported by any corresponding incriminating material seized during the search operation, thus no addition can be made on the basis of the same. Peruses the seized material and the reply to the queries from the statement of Mr. R. Ravish, which is relied upon by the Revenue, and observed that these are not conclusive evidence to hold that the assessee has earned any undisclosed income. Found that the seized material in the form of loose sheets/slips discovered by the Assessee during the course of search, does not mention anything about the alleged unaccounted transactions by the Assessee nor the details of when such alleged undisclosed sales or unaccounted purchases. Observed that the loose slips do not mention any details and the same cannot be treated as incriminating material to sustain the addition as there is nothing in the loose sheets to evidence the undisclosed sales or unaccounted purchases.

Opines that, "These are dumb sheets which have no relevance and its authenticity to rely upon on its face value. Such loose sheets and scribbings cannot be the primary evidence to base the assessment upon. These sheets also cannot be relied upon to hold that the assessee has earned any undisclosed income by way of unaccounted sales or unaccounted investments in the form of unaccounted purchases". Thus held that it cannot be inferred that the unaccounted transactions have taken place in the hands of Assessee and it's not in good faith to presume it to be the unaccounted transaction and that the Revenue's observations to be perverse and devoid of merits.

Remarks that, "loose slips cannot be incriminating material or evidence to support the contention of the AO that there were unaccounted transactions carried on by the assessee. This is a mere case of guess work of investigating team as well as assessing officer as there is no concrete evidence to prove such unaccounted transactions...the additions were made as per AO's discretion and arrived at an imaginary amount by treating the unaccounted transactions. This addition has no legs to stand alone as such it was not based on any corroborative material other than statement recorded u/s 132(4)".

Relied on plethora of judgments including SC judgment in [Andaman Timber Industries](#) and [Common Cause \(A Registered Society\)](#) wherein it was held that addition is made by AO on arbitrary basis relying on the loose papers, containing scribbling, rough and vague noting's in the absence of any corroborative material and this material cannot be considered as transactions carried on by assessee giving rise to income which are not disclosed in the regular books of accounts by assessee. Further relied on plethora of judgments including SC judgment in [Vinod Solanki](#) and Delhi HC judgment in [Best Infrastructure](#) and [Pavitra Realcon](#), wherein it was held that a sworn statement cannot be relied upon for making any addition and must be corroborated by independent evidence for the purposes of making assessments. Observed that as per Section 31 of the Indian Evidence Act, 1878, admissions are not conclusively proved as against admitted proof. Referred to CBDT circular dt. Dec 18, 2014, wherein the CBDT has emphasized on its officers to focus on gathering evidences during search/survey operations and strictly directed to avoid obtaining admission of undisclosed income under coercion/under influence. Thus opined that the above additions cannot be made solely based on the statements recorded under Section 132(4). Thus, held that, "addition cannot be made on the basis of statement recorded u/s 132(4) of the Act supported by the unsubstantiated loose slips".

On cross appeal for AY 2017-18, ITAT noted that during the course of search action, Revenue found the undisclosed stock of quantity of gold and gold jewellery of Rs. 5.48 Cr and treated the same as income from other sources taxable under Section 115BBE @ 60 %. Further noted that he CIT(A) treated gold stock found at the business premises of Rs. 4.11 Cr as income from business and the balance amount of gold jewellery found at residence as income u/s 69B r.w.s. 115BBE. Considered Assessee's contention that the jewellery found at the residence of the managing partner was kept there for safety purposes, thus the entire excess jewellery found both at the business premises and residence of Mr. Ravish, to be considered as business income of the Assessee and it cannot be treated as income from other sources under Section 69B r.w. Section 115BBE. Pointed out that he Assessee admitted to the excess stock found during the course of search and offered the same for taxation by bringing the same to profit and loss account of the Assessee, and filed a revised return which was accepted by the Revenue. Noted Assessee's submission that excess stock found during the course of search action had emanated from the stock of earlier years and it is nothing but the flow back of the business income earned by assessee from year to year. Opined that unless the Revenue possesses any material to show that the Assessee has earned the said income from any other unknown sources of income, the excess stock of gold found during the course of search has to be treated as business income only. Held that, "when the assessee

has explained that the source was from the business and except stock difference no other investment with any other asset was found and particularly, this unexplained excess stock is surrendered as business income has to be assessed as business income and not under the head unexplained investment under the head investment u/s 69B". Reiterated the settled legal principle of law that when there is no separate source of income identified during the course of search action or survey or during the course of assessment proceedings or appellate proceedings, any income arising to the assessee shall be treated to be out of the normal business of the assessee only. Relied on Amritsar ITAT ruling in [Deepak Setia](#) and ITAT Chennai ruling in [Overseas Leathers](#) wherein it was held that when the assessee has explained the source for acquisition of stock out of business income, the Revenue ought to have assessed the income under the head of business income and not as unexplained investment under Section 69B as the excess stock found during the course of survey does not have any independent identity as the asset is a mixed part of overall stock. Thus deleted the addition of Rs. 1.36 Cr as sustained by the CIT(A) and directed the Revenue to treat the same as business income and assess accordingly.

## Case Law Information

### Taxpayer Name

- Ramachandra Setty & Sons

### Judicial Level & Location

- Income tax Appellate Tribunal Bangalore

### Appeal Number

- ITA Nos.1163 to 1165/Bang/2023

### Date of Ruling

- 2024-06-10

### Ruling in favour of

- Assessee

### Section Reference Number

- [153A](#)
- [132](#)
- 132(4)

### Nature of Issue

- incriminating material
- Search Assessment
- Search and Seizure

### Judges

- Chandra Poojari, Accountant Member
- Keshav Dubey, Judicial Member

### Counsel for Tax Payer

- Mr C. Ramesh

**Counsel for Department**

- Mr. Neera Malhotra