IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE

Before Ms.Padmavathy S, Accountant Member
&
Shri Prakash Chand Yadav, Judicial Member

ITA No.1489/Bang/2024: Asst.Year : 2012-2013
ITA No.1490/Bang/2024: Asst.Year : 2013-2014
ITA No.1491/Bang/2024: Asst.Year : 2014-2015
ITA No.1492/Bang/2024: Asst.Year : 2015-2016
ITA No.1493/Bang/2024: Asst.Year : 2016-2017
ITA No.1494/Bang/2024: Asst.Year : 2017-2018

Late Kari Thimmegowda Rajashekhara L/R by daughter Bangalore Rajashekhara Megha #321, SRS Travels, TPS Road Kalasipalayam Bangalore – 560 002. **PAN: ACOPR3818F.**	vs.	The Deputy Commissioner of Income-tax, Central Cir.1(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by: Sri.V.Srinivasan, Advocate
Respondent by: Ms.Neha Sahay, JCIT-DR

Date of Hearing : 24.10.2024		Date of Pronouncement: 30.10.2024

O R D E R

Per Bench :

This is a bunch of six appeals arising out of the common order of the learned Commissioner of Income-tax (Appeals) dated 19th June, 2024 and relates to assessment years 2012-2013 to 2017-2018 having din numbers as mentioned herein below.

Asst.Year	ITA No.	DIN & Date
2012-2013	1489/Bang/2024	ITBA/APL/M/250/2024-25/1065822522(1)
2013-2014	1490/Bang/2024	ITBA/APL/M/250/2024-25/1065823029(1)
2014-2015	1491/Bang/2024	ITBA/APL/M/250/2024-25/1065823355(1)

2015-2016	1492/Bang/2024	ITBA/APL/M/250/2024-25/1065823865(1)
2016-2017	1493/Bang/2024	ITBA/APL/M/250/2024-25/1065824289(1)
2017-2018	1494/Bang/2024	ITBA/APL/M/250/2024-25/1065824703(1)

2.Since the facts and issues are common for all the years, we are adjudicating all these appeals by way of this consolidated order, taking assessment year 2012-2013 as a lead year.

3. The undisputed facts leading to the filing of the present appeals are like this. A search and seizure action was carried out on 19th July, 2017 in the case of the assessee and its business concerns. Thereafter, notices u/s.153A of the Income-tax Act, 1961, were issued to the assessee for filing the returns of Income covered by the provisions of section 153A of the Act. Accordingly, the assessee filed returns of income for all the years and thereafter the impugned assessments were framed.

4. Here it is pertinent to mention that at the time of search, the assessee has made a surrender of Rs.13 crores for all the years covered under search action.However, at the time of filing of the returns, the assessee has not obliged his surrender made at the time of search and has filed the returns of income by incorporating the additional income as mentioned herein below -

Asst.Year	Offered during search	Offered in return u/s.153
2012-2013	1,00,00,000	50,00,000
2013-2014	2,00,00,000	50,00,000

2014-2015	2,00,00,000	50,00,000
2015-2016	2,50,00,000	50,00,000
2016-2017	2,50,00,000	50,00,000
2017-2018	3,00,00,000	50,00,000

5. During the course of assessment proceedings, the Assessing Officer(AO) observed that the assessee has incurred certain expenses pertaining to its transport business under the head “route expenses”. As per AO, during the course of search, the statement of the assessee was recorded by the department, in which statement it has alleged to have been conceded by the assessee that certain expenses were not supported by proper vouchers. Relying upon the statement of the assessee, the A.O. disallowed these “route expenses”, ignoring the explanation of the assessee that these expenses were duly recorded in the books of account and were properly supported by vouchers.

6. Aggrieved with the order of the A.O, the assessee filed appeal before the CIT(A) and assailed the order of the A.O. Before CIT(A) the assessee *interalia* contended that no material during the course of search, corroborating the surrender made, has been found on the basis of which it can be said that the expenses incurred by assessee were bogus. The assessee also asked relief for the additional amount offered by him in the return of Income, on the ground that since no material has been unearthed during search, no addition is sustainable for the years which were not pending on the date of search. The Ld CIT(A) discarded the submissions of the assessee vis-à-vis relief sought in respect of additional income offered by observing that though there was no material for the additions made yet there

was some other material which has given jurisdiction to the AO to examine the matters a fresh. It is pertinent to observe here that the Ld AR of the assessee has also accepted that there was some material relatable to all years.

7. The CIT(A) partly affirmed the order of the A.O, observing that the assessee is entitled for the 40% deletion of the total disallowance made by the AO.

7. Aggrieved with the order of the ld.CIT(A), the assessee has come up in appeal before us and has raised five grounds of appeal. Ground No.1 is general in nature, ground No.2 and ground No 4 to 4.2 & 5 in AY 2012-13 to 2015-16 are related to merits of the additions made by AO and affirmed by CIT(A). So far as ground number 3 upto AY 2015-16 is concerned the AR of the assessee, on instructions, not pressed. For AY 2016-17 and 2017-18, the issue on merits is similar but the ground numbers are different.

8. Be that as it may be the solitary issue which we have to decide is whether the A.O. is correct in adding the difference of returned income as well as surrender made as the undisclosed investment / bogus expenses, in the hands of the assessee. The learned Counsel appearing on behalf of the assessee has contended that in this case the entire additions in the shape of disallowance of “route expenses” have been made on the basis of uncorroborated submissions of the assessee, which statement was made under pressure and coercion at the time of search. The learned Counsel for the assessee has also

drawn the attention of the Bench towards the relevant papers of the paper book such as the panchnama drawn by the search team, remand report called for by the CIT(A) during remand proceedings and contended that the additions made by the A.O. are based upon mere assumption and presumption without the support of any corroborative material found during the course of search supporting the alleged surrender made by the assessee,Ld Counsel for the assessee has also contended that CBDT has also instructed its officers not to obtain confessional statements of the assessee rather concentrate on collecting evidences.

9. The learned Departmental Representative appearing on behalf of the Revenue vehemently contended that in this case the assessee has admitted at the time of search that the expenses were not properly supported by vouchers and has also made a voluntary surrender of Rs.13 crore for all the years, and therefore, the A.O. is correct in making the additions.

10. We have heard the rival submissions and perused the material available on record. We observe that in this case though the assessee has made a surrender at the time of search, as depicted in the table mentioned in this orders elsewhere. However, the assessee has not obliged that surrender and has only offered Rs.50 lakh as additional income, while filing the return of income in response to the notices u/s.153A of the Act. The relevant questions recorded by the search team is reproduced hereunder:-

"28. During the course of search proceedings at office premises of M/s.SRS Travels and its other concerns at Lakshmi Complex and No.321/3, Kalasipalya, the expenditures incurred were examined. It is observed that some of the expenditures incurred were not backed with proper documentary vouchers. In absence of the same what do you have to say?

Ans: It is stated to me that the expenses are not properly backed by proper vouchers. I would like to reiterate that all the expenditures claimed are backed by proper vouchers. However, at this point of time in order to have closure of proceedings without litigation, I am voluntarily agreeing to offer a sum of Rs.13,00,00,000 as my additional income over and above the regular income with respect to lacuna stated as per below table:-

AY 2012-2013	1,00,00,000
AY 2013-2014	2,00,00,000
AY 2014-2015	2,00,00,000
AY 2015-2016	2,50,00,000
AY 2016-2017	2,50,00,000
AY 2017-2018	3,00,00,000

11.A perusal of the above answer given by the assessee at the time of search would show that the assessee has never admitted that the expenses were bogus at all. Further at various stages of the proceedings, the assessee has explained that the assessee was giving amounts to the drivers who were deployed on the various routes of transport business of the assessee for meeting small expenses, inevitable during the long journeys. The assessee also explained that at the time of search the surrender was made in order to close the proceedings. However, when the assessee has consulted his professional about the position of these expenses in the books of account then the assessee realized that the surrender made was not correct and hence at the time of filing of the return the assessee has not obliged that surrender made. It is also an admitted position of fact that the assessee in order to cover discrepancies, such as

absence of proper vouchers etc. has offered an amount of Rs.50 lakh as his additional income while filing return of income in response to the notice u/s.153A of the Act. It is worthy to note that the A.O. has considered these returns of income as final returns of income and then assessed these sum while concluding the assessment proceedings, which means that the department has impliedly accepted the revised offer of the assessee for additional income which is made while filing the return of income. It is settled position of law that there cannot be any estoppels against the statute. If an income, is not taxable within the four corners of law, then the same cannot be made taxable merely because the assessee has offered the same under misconception of facts and law. A reference can be made to the judgment of the Hon'ble Calcutta High Court in the case Mayank Poddar (HUF) v. WTO reported in (2003) 262 ITR 633, wherein the Hon'ble Calcutta High Court in paras 4 to 11 has observed as under:-

> *"4. We have heard the learned counsel for the parties at length. In our view whether an item of property is chargeable to tax or not is dependent on the true construction of s. 3 of the WT Act, in the strict sense it is enacted. There cannot be any ambiguity in a charging section. If two views are possible, the one beneficial to the assessee is to be adopted. Unless a property is chargeable under the charging section, no tax can be levied thereupon.*
>
> *5. Having regard to the definition of 'net wealth', we may refer to the definition of 'asset" and find out as to whether under the said provision, as it stood in 1993-94, the building let out to a tenant for commercial purposes could be treated to be an asset taxable under s. 3 of the WT Act. A plain reading of s. 2(ea) indicates that only a guest-house and/or residential building (including a farm-house situated within 25 kms of the local limits of any municipality) are assets. However, an exception was carved out in respect of house meant exclusively for residential purposes and those allotted by a company to an employee or an officer or director subject to the conditions laid down therein or used for business purposes forming part of stock-in-trade. If this definition is interpreted in the manner on the principle*

settled by law then it is very difficult to bring within the definition a building used for commercial purpose by the tenant on being let out. Character of the building is the determining factor under the existing provision for making it an asset. Guest-house, residential buildings including farm-houses were made taxable. But commercial building was not made taxable.

6. The buildings used for business or commercial purpose was not taxable under s. 3 of the WT Act until amended. The expression used in s. 3 before amendment is clear and unambiguous. It had specified the buildings, which were included in the definition of asset. It included guest-house, residential building, farmhouse situated within 25 kms of the municipal town, but did not include commercial building. It had specifically referred to some kind of building while omitted to include the other kinds. Therefore, only the kinds included are taxable and not the others.

7. In Ajax Products (supra), the Supreme Court, at p. 747, had relied on a passage from Cape Brandy Syndicate vs. IRC (1921) 1 KB 64 at p. 71, where Rowlatt, J. observed :

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied.One can only look fairly at the language used."

It was so echoed by the Supreme Court: "To put it in other words, the subject is not to be taxed unless thecharging provision clearly imposes the obligation. Equally important is the rule of construction that if the words of a statute are precise and unambiguous, they must be accepted as declaring the express intentions of thelegislature....."

8. This position becomes clear by reason of the amendment sought to be brought about, as is apparent from the amendment effective from 1st April, 1997. The amended provision included building used for commercial purposes. This itself indicates that buildings used for commercial purposes were not subject-matter of taxation prior to the said amendment. This was explained at p. 129 of 133 CTR (St)/p. 238 of 220 ITR (St). This Explanation is self-explanatory. We would do better if we leave at that and quote the Explanation itself, viz.,

"The proposed amendment seeks to enlarge the definition of assets. Under the existing provisions, assets include guest-house, residential house and farm-house. It is proposed to include in the definition any house whether used for residential or commercial purposes or as guest-house. It is also proposed to exclude any house allotted by a company to its employees, etc., and any house, which is used as

stock-in-trade or a house used by the assessee for the purpose of his business."

This is further clarified at p. 156 of 133 CTR (St)/p. 282 of 220 ITR (St), we do not think we need to explain or add anything to it except quoting it :

"The term 'assets', on which tax is to be levied, is defined in cl. (ea) of s. 2. This definition includes any guesthouse and any residential house (including a farm-house situated within 25 Kms of the local limits of any municipality) for levy of tax, except the exclusions made in items (1) and (2) of sub-cl. (i) of this clause. If residential houses have been taken as assets, there seems to be no reason why commercial properties, other that those used by the assessee wholly and exclusively in his business or profession, should also be not taken as assets. It is, therefore, proposed to tax commercial buildings, which are not used by the assessee in his business or profession, other than the business of letting out of properties."

9. However, we are not called upon to decide the meaning of the phrase 'other than the business of letting out of properties', therefore, we do not make any observation with regard thereto and keep it open to decision on an appropriate time and issue. However, this explanation clearly indicates that a commercial property whether let out or not was outside the scope of the existing provision of s. 2(ea) until amended in 1997.

10. Thus, unless the definition of 'net wealth' r/w the definition of 'asset' as provided in s. 2(m) and s. 2(ea), respectively, includes a building let out to a tenant used for commercial purposes, the same cannot be subjected to wealth-tax. Even if the assessee had included the same in his return, that would not preclude the assessee from claiming the benefit of law. There cannot be any estoppel against statute. A property, which is not otherwise taxable, cannot become taxable because of misunderstanding or wrong understanding of law by the assessee or because of his admission or on his misapprehension. If in law an item is not taxable, no amount of admission or misapprehension can make it taxable. The taxability or the authority to impose tax is independent of admission. Neither there can be any waiver of the right by the assessee. The Department cannot rely upon any such admission or misapprehension if it is not otherwise taxable.

11. This question was dealt with by this Court in Bhaskar Mitter (supra) at para 8 at p. 442. In this decision, this Court observed :

> *"..... An assessee is liable to pay tax only upon such income as can be in law included in his total income and which can he lawfully assessed under the Act. The law empowers the ITO to assess the income of an assessee according to law and determine the tax payable thereon. In doing so, he cannot assess an assessee on an amount, which is not taxable in law, even if the same, is shown by an assessee. There is no estoppel by conduct against law nor is there any waiver of the legal right as much as the legal liability to be assessed otherwise than according to the mandate of the law (sic). It is always open to an assessee to take the plea that the figure, though shown in his return of total income, is not taxable in law....."*

12. We further note that the above judgment though rendered in the context of Wealth-tax Act, however, the Hon'ble Calcutta High Court has followed the verdict of the same High Court in the case of CIT v. Bhaskar Mitter (1994) 73 Taxman 437 (Cal.), which decision was rendered in relation to the provisions of Income-tax Act. Therefore, in our view the ratio of the Calcutta High Court is mutatis mutandis applicable in the present proceedings. We also refer to the judgment of the Hon'ble Supreme Court in the case of CIT v. V.M.R.P.Firm Limited reported in 56 ITR 67, wherein the Larger Bench of the Hon'ble Supreme Court has held that the *"the doctrine of "approbate and reprobate" is only a species of estoppel; it applies only to the conduct of parties. As in the case of estoppel, it cannot operate against the provision of a statute.* ***If a particular income is not taxable under the IT Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. Equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not. If it is not, the ITO has no power to impose tax on the said income"(emphasis supplied)****.* We also observed that the statement on standalone basis would not be sufficient to sustain the addition particularly in search matters because as

observed by the Hon'ble Supreme Court in the case of Manish Maheswari case reported in 289 ITR 341 (SC) that a search is a serious invasion in the privacy of a citizen so after such invasion the department further cannot ask an assessee to prove against himself. Further, the Hon'ble Delhi High Court in the case of Mera-baba reality casein ITA Number 637 of 2017 order dated 21.08.2017 has categorically held that a search is a full-fledged inquiry, vis-à-vis, assessment of an assessee. Therefore, in our opinion the Revenue cannot shift the burden on an assessee to prove the genuineness of the expenses, when nothing contrary found in the search operations. Further the finding recorded by the AO during the course of assessment proceedings would show that the AO has not doubted the genuineness and allow ability of the expenses rather harped upon the production of drivers before him, ignoring the factum of search.So far as the reliance of the AO on the statement of assessee under section 132(4) and thereafter under section 131(1) we observe that recently the Hon'ble Delhi High Court in the case of Harjiv reported in 290 CTR 263 has held that the statement recorded at the time of search on a standalone basis has no evidentiary value and hence cannot be termed as incriminating material. Similar view has been reiterated by the Hon'ble Delhi High Court in the case of Best Infrastructure reported in 397 ITR 82. Therefore, merely because the drivers not available at the time of assessment no addition is permissible in this case, in absence of any corroborating material. It is not the case of the revenue that there was any material showing that these expenses were either bogus or not incurred for the purpose of business, or there was some material which would prove that the invoices of these

vouchers were fake. Therefore, we are of the firm view that the additions sustained by the CIT(A) that 60% of the hypothetical surrender is not tenable in law. Hence, we delete all these additions sustained by CIT(A).Here it is once again mentioned that the counsel for the assessee has fairly conceded the other ground asking for the relief vis-à-vis additional income offered in return therefore the same are dismissed as not pressed. So far as the ground regarding the levy of interest under section 234B is concerned it is consequential in nature.

13. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open court on 30th October, 2024.

Sd/-	**Sd/-**
(Padmavathy S)	**(Prakash Chand Yadav)**
Accountant Member	**Judicial Member**

Bangalore; Dated: 30th October, 2024
Devadas G*

Copy to:
1. The Appellant.
2. The Respondent.
3. The CIT(A) Concerned.
4. The DCIT concerned.
5. The Sr. DR, ITAT, Bangalore.
6. Guard File.

Asst.Registrar
ITAT, Bangalore