

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH " C "

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER AND  
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

I.T.A. No.446 to 448/Bang/2013  
(Assessment Years : 2008-09 to 2010-11)

**M/s. Nandini Delux,**  
No.114/2, Lalbagh Fort Road,  
Bangalore-560 004.  
PAN AABFN 2447B

.... Appellant.

Vs.

**Asst. Commissioner of Income Tax,**  
Central Circle 1(2), Bangalore.

.... Respondent.

I.T.A. No.499 to 501/Bang/2013  
(Assessment Years : 2008-09 to 2010-11)

**Asst. Commissioner of Income Tax,**  
Central Circle 1(2), Bangalore.

.... Appellant.

Vs.

**M/s. Nandini Delux,**  
Bangalore-560 004.

.... Respondent.

**Assessee By : Shri Babu Prasad, Advocate.**  
**Revenue By : Ms. Priscilla Singsit, CIT-III (D.R)**

Date of Hearing : 28.10.2014.  
Date of Pronouncement : 5.12.2014.

**O R D E R**

**Per Bench :**

These are a group of six appeals, three each filed by the assessee and Revenue, directed against the order of the Commissioner of Income Tax (Appeals)-VI, Bangalore dt.15.1.2013 for Assessment Years 2008-09 to 2010-11. As all the above appeals emanate from

the common order of the CIT (Appeals) - VI, Bangalore dt.15.1.2013 and involve common issues, these appeals were heard together and we deem it appropriate to dispose them off by way of this common order.

2. The facts of the case, briefly, are as under :-

2.1 A search and seizure operation u/s.132 of the Income Tax Act, 1961 (in short 'the Act') was conducted in the case of this assessee on 20.11.2009. In the course of search, a statement on oath u/s.132(4) of the Act was recorded, inter alia, from the partner of the assessee firm, in which an amount of Rs.1 Crore was admitted by the assessee as made towards undisclosed investments in the hotels run by it in the period relevant to Assessment Year 2008-09. The assessee similarly admitted, on oath, to undisclosed investments of Rs.1.50 Crores and Rs.2 Crores in the periods relevant to Assessment Years 2009-10 and 2010-11 respectively. Pursuant to the notices issued u/s.153A of the Act by the Assessing Officer, for Assessment Year 2008-09 and 2009-10, the assessee filed returns of income for, inter alia, the three impugned Assessment Years 2008-09 to 2010-11 including the additional income admitted in the statement u/s.132(4) of the Act recorded in the course of search action, the details of which are as under :=

Assessment Year	Notice u/s.153A	Total income declared (Rs.)	Date of filing of Return of Income
2008-09	27.10.2010	29,60,870	30.11.2010
2009-10	27.10.2010	2,31,14,460	29.11.2010
2010-11	Not applicable.	2,00,80,950	29.11.2010

2.2 The assessments for the impugned assessment years 2008-09 to 2010-11 were completed by orders dt.28.12.2011. The Assessing Officer, inter alia, made additions towards gross profit from alleged unrecorded sales, over and above the additional income admitted and disclosed by the assessee, in all the three impugned assessment years 2008-09 to 2010-11 as under :

i) Asst. Year 2008-09 :	Rs.2,64,201.
ii) Asst. Year 2009-10 :	Rs.40,41,098.
iii) Asst. Year 2010-11 :	Rs.5,73,045.

Apart from the above additions, the Assessing Officer made another addition / disallowance of Rs.28,37,185 in the order of assessment for A.Y. 2008-09. In this regard, the assessee had incurred expenses of Rs.29,86,511 towards flooring and wiring in the hotel premises which was claimed as a deduction treating them as revenue expenditure by the assessee. The Assessing Officer disallowed this claim, by holding these expenses to be capital in nature and allowed depreciation thereon (viz. Rs.29,86,511 - Less Depreciation Rs.149,326).

2.3 Aggrieved by the order of assessment for Assessment Years 2008-09 to 2010-11 dt.28.12.2011, assessee preferred appeals before the CIT(Appeals) - VI, Bangalore. The learned CIT (Appeals) disposed off the assessee's appeals for the above three years by way of a common order dt.15.1.2013 wherein, inter alia, the learned CIT (Appeals) deleted the additions related to the suppression of gross profits on alleged unrecorded sales, but confirmed the disallowance of expenditure incurred towards flooring and wiring of hotel

premises by upholding the Assessing Officer 's action in treating this expenditure as capital in nature.

3. Aggrieved by the order of the CIT(Appeals) - VI, Bangalore dt.15.1.2013 for Assessment Years 2008-09 to 2010-11, both the assessee and revenue are in appeal before this Tribunal.

**Assessee's appeals in**  
**ITA Nos.446 to 448/Bang/2013 for A.Ys 2008-09 to 2010-11.**

4. The assessee's grounds of appeal for Assessment Year 2008-09 are as under :

*"1. The order of the lower authorities is contrary to law facts and evidence available on record and is not maintainable.*

*2. The learned CIT (Appeals) has erred in upholding the decision of the learned A.O. to disallow expenses on interior decoration and renovation of rented building as capital expenditure and allow only depreciation under section 32(1) acting under section 153A of the Act without any seized material on this issue.*

*3. The learned CIT (Appeals) has erred in taking the view that the learned A.O. can review a decision already taken under section 153A or disturb an assessment which was allowed to become final without any seized material pointing out to undisclosed income.*

*4. The learned CIT (Appeals) has erred in upholding the decision of the learned A.O. to disallow expenditure on interior decoration and renovation of rented building as capital expenditure and allowing only depreciation under section 32(1) acting under section 153A of the Act without any seized material on this issue.*

*5. The learned authorities has failed to appreciate that even the decision of the Hon'ble Delhi H C relied on the by the learned CIT (Appeals) lays down the rule that there should be seized material indicating undisclosed income to get jurisdiction under section 153A in regard to assessments which have become final and as such should have accepted the claim of the appellant in this regard by following the decision of the Hon'ble Special Bench in the case of All Cargo and other decision in this regard.*

*6. The learned authorities failed to appreciate that a decision taken already after thorough scrutiny cannot be reviewed under section 153A and the dept. cannot change its stand without any change in facts and circumstances vide 349 ITR 309, 202 taxman 14 (MAG) (Kar) 192 taxmann 28 and as such the learned CIT (Appeals) should have reversed the decision of the learned A.O. treating the revenue expenditure as capital expenditure.*

*7. The learned authorities also failed to appreciate that the first enquiry to apply explanation (1) to S 32(1) is to find out whether the expenditure is capital or revenue in nature and since the judicial decision shows that it is revenue in nature and there is*

*nothing in section 32(1) to convert a revenue expenditure into a capital expenditure and as such should have desisted from invoking the said explanation and provision of section 32(1) and accepted the claim of the appellant as done by the learned DCIT in the A.Y. 2005-06 in the case of appellant himself and as such the learned CIT (Appeals) should have allowed the claim on merits also.*

*8. The learned CIT (Appeals) erred in upholding the charge of interest under section 234B and C without appreciating the fact that the assessee could not have paid any advance tax on an income which he has not earned at all.*

*9. The learned CIT (Appeals) should have deleted the levy of interest under section 234B & C on incomes surrendered by the appellant voluntarily as held by the Hon'ble Karnataka High Court in 322 ITR 454 (Kar) since it is an undisputed fact that but for the surrender of income by the appellant there are no evidences found in search or in assessment in regard to this income."*

For A.Ys 2009-10 and 2010-11, the assessee has raised the following common grounds;

which are identical to grounds at S.Nos.1, 8 and 9 in the appeal for Assessment Year 2008-09;

which are extracted hereunder :

*"1. The order of the lower authorities is contrary to law facts and evidence available on record and is not maintainable.*

*2. The learned CIT (Appeals) has erred in upholding the charge of interest u/s. 234B and C without appreciating the fact that the assessee could not have paid any advance tax on an income which he has not earned at all.*

*3. The learned CIT (Appeals) should have deleted the levy of interest u/s.234B & C on incomes surrendered by the appellant voluntarily as held by the Hon'ble Karnataka High Court in 322 ITR 454 (Kar) since it is an undisputed fact that but for the surrender of income by the appellant there are no evidences found in search or in assessment in regard to this income."*

5. Ground No.1 in all three appeals for Assessment Years 2008-09 to 2010-11 is general in nature and not being urged before us, no adjudication is called for thereon.

6. Grounds Nos.2 to 5 only for A.Y. 2008-09

6.1.1 These grounds, in the assessee's appeal for Assessment Year 2008-09, pertain to the disallowance of revenue expenditure of Rs.29,86,511 incurred towards flooring and wiring in the assessee's hotel premises, claimed by the assessee as deduction treating it as revenue

expenditure, but held by both the Assessing Officer and the learned CIT (Appeals) to be expenses capital in nature. From the grounds raised (supra), it is seen that the assessee has assailed this disallowance not only on merits but also on the technical grounds that such a disallowance cannot be made in the assessment u/s.153 of the Act. It is the contention of the assessee that since no incriminating evidence relating to this transaction was found in the course of search u/s.132 of the Act, the resultant disallowance was not called for in the assessment of income u/s.143(3) rws 153A of the Act.

6.1.2 The learned Authorised Representative was heard in support of the grounds raised by the assessee. In this regard, the learned Authorised Representative contended that no assessment for A.Y. 2008-09 was pending on the date of search, which could abate and empower the Assessing Officer to compute the total income, even without any incriminating material being found, in the course of search u/s.132 of the Act, relating to the transaction in question. It was submitted that in the absence of any such incriminating material relating to the transaction in question being found in the course of search, there was no scope to make such a disallowance. Relying on certain judicial pronouncements rendered in this regard, the learned Authorised Representative contended that no addition / disallowance can be made in respect of concluded assessments, as on the date of search u/s.132 of the Act, unless some incriminating material was found during the course of search. The assessee has cited and placed reliance on the following judicial pronouncements :-

- i) CIT V Anil Kumar Bhatia (2010) 1 ITR (Trib) 484 (Delhi)
- ii) Jai Steel V ACIT (2013) 34 taxmann.com 523 (Raj HC)

iii) ACIT V Pratibha Industries Ltd. (2013) 23 ITR (Trib) 766 (Mumbai)

iv) The Himalaya Drug Co. V DCIT (IT(TP)A No. 1634 to 1639/Bang/2012)

6.2 Per contra, the learned Departmental Representative supported the orders of the authorities below and submitted that the Assessing Officer was empowered to make such additions / disallowances as per the provisions of section 153A of the Act.

6.2.2 Subsequent to the completion of hearing on 31.7.2013, it came to our notice that a decision has been rendered by the Hon'ble High Court of Karnataka in the case of Canara Housing Development co. V DCIT CC-1(1) in ITA No.38/2014 dt.25.7.2014, the findings of which have a bearing on the decision in this case. As this decision of the Hon'ble High Court was not before the Bench in the course of hearings, the case was fixed for hearing on 28.10.2014 when both parties were heard with reference to this decision of the Hon'ble High Court and its implication on the facts of the assessee's case.

6.3.1 We have heard the rival submissions at length and perused and carefully considered the material on record, including the judicial decisions cited. The relevant portions of section 153A of the Act are extracted hereunder :

*" 153A. Assessment in case of search or requisition. - (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—*  
*(a) 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;*

*(b) 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 :*

*Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:*

*Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate."*

6.3.2 A perusal of section 153A of the Act shows that it starts with a non-obstante clause relating to normal assessment procedure which is covered by Sections 139, 147, 148, 149, 151 and 153 of the Act in respect of searches carried out after 31.5.2003. These sections, the applicability of which has been excluded, relate to returns of income, assessment and reassessment provisions. As per the provisions of section 153A of the Act, the Assessing Officer is bound to issue notice to the assessee to furnish returns for each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which the search under section 132 of the Act or requisition under section 132A of the Act, was made. As has been held by the Hon'ble Delhi High Court in the case of Anil Kumar Bhatia (supra), there is no dispute to the proposition that where a search is carried out under section 132 or a requisition under section 132A of the Act, the Assessing Officer shall issue notice requiring the person searched to furnish his return of income in respect of each assessment year relevant to the previous year in which such search is conducted or requisition is made. Therefore, the Assessing Officer gets jurisdiction for passing orders under section 153A of the Act, once search action is initiated, whether or not any incriminating material is found during the course of search action.

6.3.3 The next issue is the scope of assessment under section 153A of the Act. The jurisdiction to issue notices under section 153A cannot be equated with the scope of assessment under this section. This has been lucidly explained by the order of the ITAT, Mumbai in the case of *Pratibha Industries Ltd. (supra)* wherein it has been observed that when we examine the provisions of section 153A(1)(b) of the Act, the 2<sup>nd</sup> proviso thereto and the judicial decisions cited before us, three possible circumstances emerge on the date of the initiation of search under section 132(1) of the Act.

- i. assessment proceedings are pending;
- ii. proceedings are not pending but some incriminating material is found in the course of search, indicating some income and / or assets not disclosed in the return of income; and
- iii. proceedings are not pending and no incriminating material is found in the course of search.

6.3.4 When we examine the cases covered under these three circumstances, the cases covered under (i) above, where proceedings are pending, is answered by the Act itself; i.e. since proceedings are still pending, all those pending proceedings abate and the Assessing Officer gets a free hand to make the assessment. Where incriminating material relating to the earning of income not declared to the Department is found in the course of search, then there is no dispute as to the jurisdiction as well as the scope of assessment where an assessment proceedings for any Assessment Year is pending on the date of search, then proceedings relating to that assessment will abate and the scope of assessment will be wide enough to include issues emerging from abated proceedings as well as issues emerging from seized incriminating material.

6.3.5 The circumstance laid out at (ii) above, has been answered by the Courts interpreting the 2<sup>nd</sup> proviso read with section 153(1)(b) of the Act. The Hon'ble Delhi High Court in the case of Anil Kumar Bhatia (supra) at para 21 of its order has observed that :

*" ..... in cases where the assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the assessee's total income and such orders are subsisting at the time when the search or the requisition is made, there is no question of any abatement since no proceedings are pending. In this latter situation, the Assessing Officer will reopen the assessments or reassessments already made (without having the need to follow the strict provisions or complying with the strict conditions of sections 147, 148 and 151) and determine the total income of the assessee. Such determination in the orders passed under section 153A would be similar to the orders passed in any reassessment, where the total income determined in the original assessment order and the income that escaped assessment are clubbed together and assessed as the total income. In such a case, to reiterate, there is no question of any abatement of the earlier proceedings for the simple reason that no proceedings for assessment or reassessment were pending since they had already culminated in assessment or reassessment orders when the search was initiated or the requisition was made."*

6.3.6 Therefore, where no incriminating material is found in the search proceedings relating to any assessment year, then the scope of assessment will depend on whether the original assessment is pending or completed. Where the original assessment in any assessment year is pending on the date of search, then the proceedings relating to the pending assessment shall abate and the proceedings initiated as a result of search will be continued. The scope of this assessment would cover issues arising from the pending assessment and the freshly initiated proceedings will cover issues which arise from the search and the originally pending proceedings also.

6.3.7 The third circumstance at (iii) above, i.e. where proceedings are not pending and no incriminating material is found in the course of search; has been left unanswered by the Hon'ble

Delhi High Court in the case of Anil Kumar Bhatia (supra). In this case, the Hon'ble Court has held that even if the assessment order has been passed in respect of one or any of the six relevant assessment years, either under section 143(1)(a) or 143(3) of the Act prior to the initiation of search, the Assessing Officer is still empowered to reopen those proceedings under section 153A of the Act without any fetters and reassess the total income taking note of undisclosed income, if any, unearthed during the search. It is clear that the Hon'ble Court dealt with a situation in which some incriminating material was found in respect of a non-pending assessment. It was in this background that the Hon'ble Court held that section 153A of the Act applies if incriminating material is found in the course of search even if assessments are completed. The question as to whether any addition can be made in respect of completed assessments when no incriminating material was found, was apparently left open. At para 23 of its order, the Hon'ble High Court has observed that -

*"23. We are not concerned with a case where no incriminating material was found during the search conducted under section 132 of the Act. We, therefore, express no opinion as to whether section 153A can be invoked even in such a situation. That question is therefore left open."*

The above observation appears to indicate a doubt in the mind of the Hon'ble High Court as to whether the proceedings under section 153A of the Act can still be initiated if no incriminating material is found in the course of search. To our minds, had it been an open and shut case, i.e. acquiring of jurisdiction under section 153A of the Act does not depend upon recovery and of seizure of any incriminating material, the Hon'ble Court would not have so commented.

6.3.8 It is in this context that the decision of the Hon'ble High Court of Karnataka in the case of *Canara Housing Development Co. (supra)* assumes significance. Interpreting the decision of the Hon'ble High Court of Delhi in the case of *CIT V Anil Kumar Bhatra (supra)*, the Hon'ble High Court of Karnataka held as under :

“ 18. A perusal of Section 153A shows that it starts with a non obstante clause relating to normal assessment procedure which is covered by Sections 139, 147, 148, 149, 151 and 153 in respect of searches made after 31.5.2003. These Sections, the applicability of which has been excluded, relate to returns, assessment and reassessment provisions. Prior to the introduction of these three Sections, there was Chapter XIV-B of the Act which took care of the assessment to be made in cases of search and seizure. Such an assessment was popularly known as “block assessment” because the Chapter provided for a single assessment to be made in respect of a period of a block of ten assessment years prior to the assessment year in which the search was made. In addition to these ten assessment years, the broken period up to the date on which the search was conducted was also included in what was known as “block period. Though a single assessment order was to be passed, the undisclosed income was to be assessed in the different assessment years to which it related. But all this had to be made in a single assessment order. The block assessment so made was independent of and in addition to the normal assessment proceedings as clarified by the Explanation below Section 158BA(2). After the introduction of the group of Sections namely, 153A to 153C, the single block assessment concept was given a go-by. Under the new Section 153A, in a case where a search is initiated under Section 132 or requisition of books of account, documents or assets is made under Section 132A after 31.5.2003, the Assessing Officer is obliged to issue notices calling upon the searched person to furnish returns for the six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted or requisition was made. The other difference is that there is no broken period from the first day of April of the financial year in which the search took place or the requisition was made and ending with the date of search/requisition. Under Section 153A and the new scheme provided for, the AO is required to exercise the normal assessment powers in respect of the previous year in which the search took place.

19. Under the provisions of Section 153A, as we have already noticed, the Assessing Officer is bound to issue notice to the assessee to furnish returns for each assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which the search or requisition was made. Another significant feature of this Section is that the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. This is a significant departure from the earlier block assessment scheme in which the block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the “total income” of the six assessment years in question in separate assessment orders. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax.

20. A question may arise as to how this is sought to be achieved where an assessment order had already been passed in respect of all or any of those six assessment years, either under Section 143(1)(a) or

Section 143(3) of the Act. If such an order is already in existence, having obviously been passed prior to the initiation of the search/requisition, the Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note of the undisclosed income, if any, unearthed during the search. For this purpose, the fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters, if need be.”

10. Section 153A of the Act starts with a non obstante clause. The fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters, if need be. Therefore, it is clear even if an assessment order is passed under Section 143(1) or 143(3) of the Act, the Assessing Officer is empowered to reopen those proceedings and reassess the total income taking note of the undisclosed income, if any, unearthed during the search. After such reopening of the assessment, the Assessing Officer is empowered to assess or reassess the total income of the aforesaid years. The condition precedent for application of Section 153A is there should be a search under Section 132. Initiation of proceedings under Section 153A is not dependent on any undisclosed income being unearthed during such search. The proviso to the aforesaid section makes it clear the assessing officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. If any assessment proceedings are pending within the period of six assessment years referred to in the aforesaid sub-section on the date of initiation of the search under Section 132, the said proceeding shall abate. If such proceedings are already concluded by the assessing officer by initiation of proceedings under Section 153A, the legal effect is the assessment gets reopened. The block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the “total income” of the six assessment years in question in separate assessment orders. The Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note of the undisclosed income, if any, unearthed during the search. He has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax. When once the proceedings are initiated under Section 153A of the

Act, the legal effect is even in case where the assessment order is passed it stands reopened. In the eye of law there is no order of assessment. Re-opened means to deal with or begin with again. It means the Assessing Officer shall assess or reassess the total income of six assessment years. Once the assessment is reopened, the assessing authority can take note of the income disclosed in the earlier return, any undisclosed income found during search or and also any other income which is not disclosed in the earlier return or which is not unearthed during the search, in order to find out what is the "total income" of each year and then pass the assessment order. Therefore, the Commissioner by virtue of the power conferred under Section 263 of the Act gets no jurisdiction to initiate proceedings under the said provision because the condition precedent for initiating proceedings under Section 263 is any order passed under the Act by the Assessing officer is erroneous insofar as it is prejudicial to the interest of the revenue. Once the order passed by the Assessing officer gets reopened, there is no order which can be said to be erroneous insofar as it is prejudicial to the interest of the revenue which confers jurisdiction on the Commissioner to exercise the power of the jurisdiction.

11. The Tribunal has proceeded on the assumption by virtue of the judgment of the special bench of the Mumbai, the scope of enquiry under Section 153A is to be confined only to the undisclosed income unearthed during search and if there is any other income which is not the subject matter of search, the same cannot be taken into consideration. Therefore, the revisional authority can exercise the power under Section 263. In the entire scheme of 153A of the Act, there is no prohibition for the assessing authority to take note of such income. On the contrary, it is expressly provided under Section 153A of the Act the Assessing Officer shall assess or reassess the "total income" of six assessment years which means the said total income includes income which was returned in the earlier return, the income which was unearthed during search and income which is not the subject matter of aforesaid two income. If the commissioner has come across any income that the assessing authority has not taken note of while passing the earlier order, the said material can be furnished to the assessing authority and the assessing authority shall take note of the said income also in determining the total income of the assessee when the earlier proceedings are reopened and that income also shall become the subject matter of said proceedings. ...."

6.3.9 Respectfully following the decision of the Hon'ble High Court of Karnataka in the case of Canara Housing Development Company (supra), we hold that once the assessment is reopened, the Assessing Officer can take note of the income disclosed in the earlier return, any undisclosed income found during the course of search and also any other income which is not disclosed in the earlier return of income OR which is not unearthed in the course of search under section 132 of the Act, in order to find out and determine what is the 'total income' of each year and then pass the order of assessment. The grounds of appeal raised by the

assessee at S.Nos. 2 to 5 are accordingly dismissed for all four assessment years 2005-06 to 2008-09.

7. **Treatment of certain expenditure as capital in nature.**

7.1 Grounds Nos. 6 and 7 relate to the issue of treatment by the authorities below of expenditure incurred by the assessee on renovation and cost of improvement of building leased by him as capital expenditure, thereby disallowing the assessee's claim that the said expenditure be allowed as revenue expenditure.

7.2.1 In the case on hand, for the impugned assessment years in appeal before us, additions / disallowances have been made in respect of items of expenditure claimed as deduction in the assessee's profit and loss account. In the course of assessment proceedings, the Assessing Officer observed that the assessee had claimed expenditure towards renovation / investment in the hotels taken on lease which were added to the assessee's business during the year under consideration. The Assessing Officer held that these expenses were incurred towards capital items and by invoking the provisions of Explanation 1 to section 32 of the Act and placing reliance on the decision of the Delhi ITAT in the case of ACIT V Flour Daniel India (P) Ltd; reported in (2007) 11 SOT 349 disallowed the expenses claimed as revenue, held them to be capital in nature and allowed depreciation thereon.

7.2.2 On appeal, the learned CIT(A) upheld the decision of the Assessing Officer in treating the said expenditure incurred on renovation / investment in hotels acquired by the assessee on lease, as being capital in nature, making the following observations :-

(i) Explanation 1 to Section 32(1) of the Act provides for fictional ownership to the lessee and therefore the issue of ownership is irrelevant;

(ii) Due to the insertion of Explanation 1 to section 32 of the Act, the judgement of the Hon'ble Apex Court in the case of *CIT V Madras Auto Services (P) Ltd.* reported in (1998) 233 ITR 468 (SC) is no longer applicable;

(iii) The lease period for the hotel buildings is for 10 years and therefore it cannot be said that the benefit is not of enduring nature;

(iv) Renovation of building and interiors normally forms part of important capital expenditure.

7.3.1 Before us, the contention of the assessee is that it has taken hotels on lease and for carrying out its business effectively and efficiently, has incurred expenditure for renovation the same. According to the learned Authorised Representative of the assessee, the expenditure incurred by the assessee in renovating the hotels is only in the process of earning profits in the course of the business activities and the expenditure so incurred has not brought into existence any new asset or any new advantage to the assessee. It is submitted that the business of the assessee remains the same even after the said expenditure was incurred and the asset, hotel building, continued to be lease holding assets. Therefore, according to the learned Authorised Representative, it is not correct to say that the assessee has obtained an enduring benefit after incurring the expenditure on renovation of hotel buildings. The learned Authorised Representative further submitted that the incurring of the said expenditure was absolutely necessary for the purpose of carrying on its business and the said expenditure are incurred in the process of earning business profits and not for the

acquisition of any capital assets. In support of its averments, the learned Authorised Representative placed reliance on the following judicial pronouncements, copies of which were placed on record :-

(i) CIT V Madras Auto Services (P) Ltd. (1998) 233 ITR 468 (SC)

(ii) CIT V Haridas Bhagath & Co. (P) Ltd. (1999) 240 ITR 169 (Mad);

(iii) CIT V Amway India Enterprises - LD/60/71 (Del) dt.4.10.2011.

7.3.2 Placing particular reliance on the decision of the Hon'ble Apex Court in the case of CIT V Madras Auto Services (P) Ltd. (supra), the learned Authorised Representative held that the expenditure incurred in construction of a building in a leased premises to be revenue expenditure.. In view of the facts of the case on hand and the decision of the Hon'ble Apex Court in the case of Madras Auto Services (P) Ltd. (supra) which is squarely applicable to the facts of the case, the learned Authorised Representative submits that the assessee's appeals on this issue are to be allowed.

7.3.3 Per contra, the learned Departmental Representative supported the orders of the authorities below. According to the learned Departmental Representative, the assessee had taken the hotel building on lease and had incurred substantial amounts towards renovation thereof. The learned Departmental Representative submits that the incurring of this expenditure has resulted in the assessee obtaining enduring benefit and has brought into existence a capital asset. Referring to Explanation 1 to Section 32 of the Act, the learned Departmental Representative submitted that after the introduction of Explanation 1, the assessee at best is entitled only for depreciation on the capital assets brought into existence

by virtue of the said expenditure incurred on the leased hotel building, which has allowed by the Assessing Officer. The learned Departmental Representative supported the findings of the Assessing Officer and placed reliance on the judicial decisions relied on by the Assessing Officer.

7.4.1 We have heard the rival contentions and perused and carefully considered the material on record, including the judicial decisions cited. It is not in dispute that the assessee has taken the hotel on lease. As per the details on record it is seen that the assessee has incurred expenditure on renovation of plant design system, computer cabling, fire detection and alarm system, card access system, plumbing and air conditioning work, electrical works, fixing of carpets, interior work, etc. In the course of assessment proceedings, the Assessing Officer on examination of the same observed that this expenditure indicated that major renovation works had been undertaken and therefore cannot be treated as revenue expenditure. The Assessing Officer, referring to Explanation 1 to Section 32 of the Act, was of the view that the assessee has incurred capital expenditure and therefore is entitled to depreciation thereon @ 10%. Accordingly, the Assessing Officer disallowed the assessee's claim for the aforesaid expenditure to be allowed as revenue expenditure, treated the same as capital expenditure and allowed the assessee depreciation thereon @ 10%.

7.4.2 The question that now arises for consideration is, when the assessee has incurred expenditure on renovation of the hotel taken on lease, then whether the assessee is entitled for deduction of the expenditure incurred on such repairs as revenue expenditure OR whether it has to be treated as capital expenditure in view of Explanation 1 to section 32 of the Act.

7.4.3 Explanation 1 to Section 32 of the Act reads as follows :-

" Explanation 1 : Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing any work in or relation to, and by way of renovation or extension of, or improvement to, the building, then, the provisions of this claim shall apply as if the said structure or work is a building owned by the assessee."

This Explanation to Section 32 of the Act was introduced by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 w.e.f. 1.4.1988. By introduction of this Explanation, the Legislature intended to allow depreciation on the capital expenditure incurred by the assessee in relation to renovation, extension or improvement to the building in which the assessee carried on business as lessee.

7.4.4 It may be useful to examine the Legislative history of the introduction of Explanation 1 to Section 32 of the Act. The taxation Laws (Amendment) Act,1970 w.e.f. 1.4.1971 introduced sub-section 1A to grant some benefit to the assessee on the capital expenditure incurred by a tenant in leased premises'. Therefore, it is obvious that prior to the introduction of sub-section 1A to Section 32 of the Act w.e.f. 1.4.1971 by the Taxation Laws (Amendment) Act, 1970, the assessee who takes the business premises on lease was not entitled to any depreciation on capital expenditure incurred thereon. In other words, prior to 1.4.1971, assesseees who incurred capital expenditure on leased premises were not entitled to any benefit at all in this regard. Therefore, by removing the legal restrictions in respect of capital

expenditure incurred by the assesseees who take business premises on lease, Parliament intended to grant / allow depreciation on the capital expenditure incurred on such leased premises. On a careful perusal of the provisions of section 32(1A) of the Act and the circumstances in which it was introduced in the statute, it is clear that in case revenue expenditure was incurred by the assessee on the premises taken on lease, the question of allowing any depreciation u. 32(1A) of the Act would not arise for consideration. In other words, section 32(1A) of the Act introduced w.e.f. 1.4.1971 by Taxation Laws (Amendment) Act, 1970 would not be applicable in case the assessee incurred revenue expenditure on the leased premises.

7.4.5 However, sub-section 1A of Section 32 of the Act introduced by Taxation Laws (Amendment) Act, 1970 was omitted and Explanation 1 to Section 32 was introduced by Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 w.e.f. 1.4.1988. This was done when the concept of depreciation on individual asset was changed to depreciation on the block of assets. When Parliament introduced depreciation on block of assets, sub-section (1A) of Section 32 of the Act was deleted, an identical provision was incorporated in Explanation 1 to Section 32 of the Act. Therefore, the position of law as it remains after the introduction of sub-section 1A of Section 32 of the Act w.e.f. 1.4.1971 continued to be the same in respect of revenue expenditure incurred by the assessee on premises taken on lease. In other words, the concept of allowing depreciation on the capital expenditure in relation to renovation, extension or improvement of the premises taken on lease continued to be the same w.e.f. 1.4.1971. Therefore, whenever the assessee incurred the expenditure, in the process of

earning profit while carrying on the business in the leased premises, the expenditure has to be treated as revenue expenditure and neither sub-section (1A) to Section 32 OR Explanation 1 to Section 32 of the Act would come in the way of allowing the same as revenue expenditure. However, when the assessee incurred expenditure which is of capital nature, then the Parliament allows the benefit to the assessee for claiming depreciation on such capital expenditure in relation to renovation, extension or improvement w.e.f. 1.4.1971 u/s. 32(1A) and in accordance with the provisions of Explanation 1 to Section 32 of the Act w.e.f. 1.4.1988. Hence, this is a benefit allowed to the assessees who have taken premises on lease and incurred expenditure in the capital field. However, as explained earlier, if the expenditure incurred falls in the revenue field, the assessee is entitled to claim it as revenue expenditure irrespective of Section 32(1A) or Explanation 1 of Section 32 of the Act. In our considered view, this being the correct position of law, the conclusions of both the Assessing Officer and the learned CIT(A) in the impugned orders that the expenses incurred on leased premises have to be capitalised and only depreciation can be allowed thereon is not in tune with the provisions of law and is therefore incorrect.

7.4.6 To fall within the ambit of the provisions of Explanation 1 to Section 32 of the Act, the question to be answered is, whether the assessee has incurred any capital expenditure for the purposes of business on the construction of any structure or doing of any work in or in relation to and by way of renovation or extension or improvement in the building.

7.4.7 In the case on hand, on an appreciation of the facts of the case and details on record, we find that after incurring the expenditure on the leased premises, the assessee has neither

obtained any enduring benefit nor has any new capital asset has come into existence. The assessee continued to run the hotel in the very same leased premises. It is not anybody's case that the seating capacity was not increased after the expenditure. The expenditure incurred was only for carrying on the business and was an integral part of the profit earning process. Therefore, we find that no case has been made out to say that the assessee has obtained any enduring benefit by virtue of this expenditure. The nature of the work undertaken by the assessee is to carry on the business and not obtain any asset. Further, as already observed, no capital asset of an enduring nature came into existence. In other words, the assessee has not acquired any asset / income earning apparatus. It is well settled principle of law that the expenditure incurred for acquisition of an asset is a capital expenditure and expenditure incurred in the process of earning profit is revenue expenditure. In the case on hand, we are of the view that the assessee incurred the expenditure for efficient running of the business and therefore the expenditure incurred is revenue in nature.

7.4.8 It is settled principle that the test of enduring benefit is neither certain nor conclusive. Even if this fact is applied, the expenditure incurred by the assessee is only in the process of earning profit and not to acquire any capital asset. As a result of the expenditure incurred by the assessee, the hotel remains a hotel and the capacity does not increase. At the most, the assessee might have carried on the business in a profitable manner. The assessee has not obtained any enduring advantage in the capital field. Therefore, the expenditure incurred facilitated the assessee to carry on its business effectively and more profitably. In

this factual matrix of the case on hand, we are of the considered opinion that the expenditure incurred by the assessee has to be treated as revenue in nature.

7.4.9 In view of the judicial decisions cited by the assessee (supra), it is obvious that whenever an expenditure was incurred in the process of earning profits it has to be allowed as revenue expenditure. In such a case the expenditure incurred by the assessee would be out of the ambit and purview of the provisions of Explanation 1 to Section 32 of the Act of the Act. In the case on hand, it is not in dispute that the expenditure was incurred for renovation. These expenses were incurred only for the purpose of carrying on day to day business and earn profits and do not result in the bringing into existence of any capital asset. Therefore, in the light of the discussion from paras 7.1 to 7.4.9 of this order and the facts and circumstances of the case, in our view, the learned CIT (Appeals) was not right in upholding the disallowance of the expenditure by holding it as capital in nature. We, accordingly, reverse the findings of the authorities below on this issue and allow the assessee's claim for deduction of expenditure incurred towards renovation of plant design system, computer cabling, fire detection and alarm system, plumbing, air conditioning work, electrical works, interior work etc. on the hotel / building taken on lease. Accordingly the assessee's grounds raised at S.Nos.6 & 7 are allowed for Assessment Years 2005-06 to 2008-09.

8. **Common grounds raised by assessee on the chargeability of interest u/s.234B and 234C of the Act for A.Ys 2008-09 to 2010-11.**

8.1 The assessee has challenged the orders of the learned CIT (Appeals) in upholding the Assessing Officer's action in charging it interest u/s.234B and 234C of the Act for the A.Ys

2008-09 to 2010-11. The respective grounds of appeal are at S.Nos.8 and 9 for A.Y. 2008-09 and S.Nos. 2 and 3 for Assessment Years 2009-10 and 2010-11.

8.2 On appeal, the learned CIT (Appeals) while considering this issue, did not agree with the contentions of the assessee and held that the charging of interest u/s. 234A, 234B and 234C of the Act is mandatory, as upheld by the Hon'ble Apex Court in the case of CIT V Anjum H Ghaswal & Others reported in 252 ITR 1 (SC). The learned CIT (Appeals) also distinguished the judicial decision relied upon by the assessee and upheld the Assessing Officer's action in charging the assessee interest under sections 234B and 234C of the Act for the impugned Assessment Years 2008-09 to 2010-11.

8.3 The contentions of the learned Authorised Representative of the assessee is that the additional income disclosed by the assessee was voluntarily made in the course of search proceedings and such additional income was not related to any incriminating document or material found during search action under section 132 of the Act. The learned Authorised Representative submits that since the additional income was offered in the course of search action, the assessee was not aware of the income at the time of payment of advance tax and therefore interest under section 234B and 234C of the Act is not liable to be charged. In support of the proposition, the Id. A.R. placed reliance on the decision of the Hon'ble Karnataka High Court in the case of P. Indra Kumar V ITO reported in 322 ITR 454.

8.4 Per contra, the learned Departmental Representative supported the orders of the CIT (Appeals) upholding the Assessing Officer's action in charging the assessee interest under section 234B and 234C of the Act for the impugned assessment years.

8.5.1 We have heard the rival contentions and have perused and carefully considered the material on record, including the judicial decisions relied on.

Section 234B(3) of the Act reads as follows :-

*" Section 234B (1) .....*

*(2) .....*

*(3) Where, as a result of an order of re- assessment or re- computation under section 147, the amount on which interest was payable under subsection (1) is increased, the assessee shall be liable to pay simple interest at the rate of two per cent for every month or part of a month comprised in the period commencing on the day following<sup>2</sup> the date of determination of total income under sub- section (1) of section 143<sup>3</sup> and where a regular assessment is made as is referred to in sub- section (1) following the date of such regular assessment]] and ending on the date of the re- assessment or re- computation under section 147, on the amount by which the tax on the total income determined on the basis of the reassessment or re- computation exceeds the tax on the total income determined<sup>4</sup> under sub- section (1) of section 143 or] on the basis of the regular assessment aforesaid."*

8.5.2 A perusal of the provisions of section 153A(1)(a) of the Act clearly mandates that the Assessing Officer is to issue notice on the searched person requiring him to furnish, within such period as may be specified in the notice, the returns of income in respect of each assessment year falling within six assessment years etc. and the provisions of this Act shall, so far as may be, apply accordingly as if such return of income were a return to be furnished under section 139 of the Act. From the above, it is clear that a return of income filed in response to a notice under section 153A of the Act is to be treated on par with a return filed under section 139(1) of the Act. Thus, by virtue of the provisions of section 153A of the Act, where a notice has been issued thereunder to the assessee, the return of income so filed, in response thereto, is to be treated on par with the return filed under section 139(1) of the Act.

This is in view of the following words contained in section 153(1)(a) ".....apply accordingly as if such returns were a return required to be furnished under section 139."

8.5.3 In the case on hand, the facts as emerge from the record before us, is that the assessee had filed returns of income for the impugned assessment years 2008-09 to 2010-11 in response to notices under section 153A of the Act and has verified the income returned therein to be true and correct. In view of this, the assessee's contentions that the disclosure / admission of additional income was voluntary and not related to any seized material is of no consequence. The assessee itself has filed the returns of income and had declared the additional income as its income for the impugned three assessment years. Further, as pointed out by the learned CIT (Appeals), it is settled principle, upheld by the Hon'ble Apex Court, that the charging of interest under sections 234A, 234B & 234C of the Act is mandatory and the Assessing Officer has no discretion in the matter.

8.5.4 We have had occasion to peruse the decision of the Hon'ble Karnataka High Court in the case of P. Indra Kumar (supra), relied on by the assessee. We are in agreement with the view of the learned CIT (Appeals) that the said decision has been rendered on the specific facts and circumstances of the case and that the Hon'ble High Court has not adjudicated on any general principle. It is specifically mentioned in the above order that it is rendered on the facts and circumstances of that case. The facts of the cited case are quite different from those of the case on hand. In the cited case, the Assessing Officer made an addition related to loan credits made in the course of assessment proceedings. In the case on hand, the

assessee has filed returns of income for the three assessment years 2008-09 to 2010-11 under section 153A of the Act declaring the additional income, disclosed / admitted in the partners statement under section 132(4) of the Act in the course of search, as its income. In view of the above discussion from para 9 to 9.5.4 of this order, we uphold the decision of the learned CIT (Appeals) confirming the action of the Assessing Officer in levying interest under section 234B and 234C of the Act. The grounds raised by the assessee at S.Nos.8 & 9 for Assessment Year 2008-09 and at S.Nos.2 and 3 for Assessment Years 2009-10 and 2010-11 are dismissed.

9. In the result, the assessee's appeal for Assessment Year 2008-09, 2009-10 and 2010-11 are partly allowed.

**Revenue's appeals for Assessment Years 2008-09 to 2010-11**

**in ITA Nos.499 to 501/Bang/2013.**

10.1 Revenue has raised similar grounds of appeals for its three appeals for Assessment Years 2008-09 to 2010-11 in respect of the order of the learned CIT (Appeals) deleting the addition made towards profit on alleged unrecorded sales are as under :

*"1. The learned CIT (Appeals) has erred in deleting the following amount on account of suppression of sales : A.Y. : 2008-09 : Rs.;2,64,201.*

*2. The learned CIT (Appeals) has failed to appreciate that the A.O. has the power to draw inference from the seized material which contains evidence only for a limited period to the effect that similar transactions have happened during the entire period of assessment.*

*3. The learned CIT (Appeals) has failed to follow the rationale of the decision of the Hon'ble Delhi HC in the case of CIT Vs. Chetan Das Lachman Das reported in 2012-TIOL-628-HC-DEL-IT has held that the seized material can be relied upon to draw an inference that there can be similar transactions throughout the period of six years covered by section 153A."*

The only difference in the grounds raised in that the quantum of profit on suppression of unrecorded sales is Rs.40,41,095 for Assessment Year 2009-10 and Rs.5,73,045 for Assessment Year 2010-11.

10.2 A search action under section 132 of the Act was carried out in the case of this assessee on 20.11.2009. In the course of search, certain text messages were found / detected in the Mobile phone of Sri Rupesh Anand, a partner of the assessee firm transmitted through SMS to Sri Nair, another partner in the assessee firm. These messages contained certain figures related to 11 days period between 3.10.2009 and 12.10.2009. Based on the statement of Sri K.P. Suresh, an employee of the assessee firm, the Assessing Officer concluded that these figures represented total sales figures, in thousands, and he therefore computed the unaccounted sales for 11 days, as the difference between the sales as per the figures in the text messages / SMS and the sales reflected in the books of account. Based on this, the Assessing Officer concluded that the unaccounted sales by the assessee firm is 47.96% and the Assessing Officer, accordingly, adopted this percentage as the unaccounted sales for all the days in the assessment years under consideration. The Assessing Officer applied the Gross Profit rate at 25.02% on the revised figure of sales for Assessment Years 2008-09 and 2009-10 and 31.64% for Assessment Year 2010-11 and accordingly worked out the profit from unaccounted suppressed sales at Rs.2,64,201; Rs.40,41,098 and Rs,5,73,045 respectively.

10.3 On appeal, the learned CIT (Appeals) deleted these additions made by the Assessing Officer, on account of profits earned on suppressed / unaccounted sales as not justified and

farfetched, without bringing on record any evidence to substantiate the additions made.

These observations of the learned CIT (Appeals) at page 5 of her order are extracted

hereunder: -

*"I have examined the statement of facts, written submissions, etc.*

*On going through the facts of the case, it is clear that the conclusion of the Assessing Officer is based merely on certain text messages which pertained to 11 dates in October and November, 2009. Merely, on the basis of these text messages and the statements of Sri Roopesh Anand and Sri K P Suresh referred to by the Assessing Officer as recorded by the investigation Wing Officers pertaining to these 11 text messages, the inference drawn, by the Assessing Officer with regard to 'suppression of sales' is a little far fetched without bringing on record any evidence in the form of sales bills, or statement of clients, or other evidence etc. It is observed that these text messages relate only to 11 dates which fall in A.Y. 2010-11 only. ; ;Inference of suppression of sales or its extrapolation to the entire year, actually 3 financial years, on the facts and circumstances of the case is not justified."*

10.4 The learned Departmental Representative was heard in support of the grounds raised by Revenue (supra). It is revenue's contention that the addition made by the Assessing Officer is valid and that the Assessing Officer is entitled to make the kind of estimation, made in the orders of assessment for Assessment Years 2008-09 to 2010-11. In support of this contention, Revenue has placed reliance on the decision of the Hon'ble Delhi High Court in the case of ACIT V Chetan Das Lachman Das (2012) TIOL-628-HC-Del-IT, wherein it was held that the seized material can be relied on to draw an inference that there can be similar transactions through the period of six years covered by section 153A of the Act.

10.5 Per contra, the learned Authorised Representative supported the findings in the order of the learned CIT (Appeals) on this issue.

10.6 We have heard the rival contention and perused and carefully considered the material on record. On an appreciation of the facts on record, on this issue, we are inclined to agree

with the findings of the learned CIT (Appeals) that the conclusions arrived at by the Assessing Officer are farfetched, and the additions made on account of profit on suppressed / undisclosed sales, are not substantiated by any material evidence for the following reasons :-

- (i) No incriminating material was found during the course of search under section 132 of the Act, evidencing suppression of sales and of sales made outside the books of account.
- (ii) The only evidence relied upon by the Assessing Officer is the few text messages (SMS) found in the mobile phone of the partner of the assessee firm.
- (iii) The text messages contained certain figures in three digit denominations.
- (iv) No evidence has been brought on record to substantiate the claim of the Assessing Officer that these figures represented the figures of total sales.
- (v) Even assuming that these figures represented sales, it is not known as to how the Assessing Officer concluded that these figures were in thousands.
- (vi) In the statements recorded under section 132(4) of the Act, on 20.11.2009, Sri Rupesh Anand partner of the assessee firm was repeatedly questioned about these figures and he has consistently stated that these figures were the difference between the sales figures and cash collection.
- (vii) It is seen that even the statements recorded from the employees of the assessee firm, do not mention that these figures represented actual sales of these days.
- (viii) We find that no material corroborative / evidence was brought on record by the Assessing Officer in assessment proceedings to substantiate the claim of unaccounted sales.

(ix) The admission / disclosure of additional income made by the assessee firm under section 132(4) of the Act in the course of search, was on account of investments made in the hotels which were related to understatement of profits. Here again, it appears that there was no mention of any unaccounted / suppressed sales.

10.7 In view of the facts and circumstances of the case, as laid out above at paras 10.1 to 10.6 of this order, we concur with the view of the learned CIT (Appeals) that the said additions made by the Assessing Officer on account of profits earned on suppressed sales for Assessment Years 2008-09 to 2010-11 are unsubstantiated and therefore uphold the order of the learned CIT (Appeals) deleting the said additions of Rs.2,64,201 for Assessment Year 2008-09, Rs.40,41,098 for Assessment Year 2009-10 and Rs.5,73,045 for Assessment Year 2010-11. We, accordingly, dismiss the grounds raised by revenue at S.Nos.1 to 3 for Assessment Years 2008-09 to 2010-11.

11. In the result, Revenue's appeals for Assessment Years 2008-09 to 2010-11 are dismissed.

Order pronounced in the open court on 5<sup>th</sup> Dec., 2014.

Sd/-  
**(RAJPAL YADAV)**  
Judicial Member

Sd/-  
**(JASON P BOAZ)**  
Accountant Member

\*Reddy gp