आयकर अपीलीय अधिकरण, **'बी'** न्यायपीठ**,** चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री वी. दुर्गा राव**, माननीय न्यायिक सदस्य** एवं
श्री **जी. मंजूनाथा, माननीय** लेखा सदस्य **के समक्ष**
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.13-15/Chny/2019**
निर्धारण वर्ष **/Assessment Years: 2012-13 to 2014-15**

The Dy. Commissioner of-Income Tax, Central Circle-2(4), Investigation Building, Chennai.	**v.**	Smt. A. Gandhimathi, Prop: East West Gandhimathi Combined Industries, Survey No.503/2A2A, Mambakkam Salai, Echankadu, Kayar, Kancheepuram District. [**PAN:** AGUPA 2409 B]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

Department by	:	Mr.Guru Bashyam, CIT-DR
Assessee by	:	Mr.Philip George, Adv.
सुनवाई की तारीख/Date of Hearing	:	11.07.2022
घोषणा की तारीख /Date of Pronouncement	:	10.10.2022

आदेश **/ O R D E R**

PER G. MANJUNATHA, AM:

These appeals filed by the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 18.09.2018 and pertains to assessment years 2012-13 to 2014-15. Since, the facts are identical and issues are common, for the sake of convenience, these appeals are being heard together and disposed off, by this consolidated order.

2. The Revenue has, more or less, raised common grounds of appeal for all the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2012-13, are re-produced as under:

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The learned CIT(A) erred in holding the assessment order passed u/s 143(3) r.w.s. 153C of the IT Act as invalid.

2.1 The learned CIT(A) ought to have appreciated the fact that the Chennai Tribunal in the case of ACIT vs. Leela Distilleries P. Ltd. (ITA no.2714-2716/Mds/2016 dt 28.07.2017) that where no asst. u/s.!43(3) has been completed, even though no incriminating materials were found during the course of search', the AO has jurisdiction to make additions U/S.153A.

2.2 The learned CIT(A) ought to have appreciated the fact that the Hon'ble Supreme Court in the case of CIT vs. S.Ajit Kumar (404 ITR 526) has held in the context of asst. U/S.158BC, that survey conducted simultaneously can be brought within the scope of asst. u/s.158BC.

2.3 The learned CIT(A) ought to have appreciated that the addition was made by the AO based on the fact that M/s.Butterfly Gandhimathi Appliances Ltd.(BGAL) was inflating its purchases of wet grinders and spare parts, of which the major supplier was Ms.A. Gandhimathi, as a higher price was claimed to be paid for the materials purchased from the assessee.

3. The learned CIT(A) erred in deleting the disallowance by the AO of purchases from unregistered dealers.

3.1 The learned CIT(A) failed to appreciate that the AO as directed verified the purchases and in his submission clearly reported that Sri.GJeba, for the F.Y 2012-13, claims that he had received Rs.8,50,960 only, whereas the Ledger shows a gross receipt of Rs.15,18,300, VAT deducted was at Rs.72,300 and net paid was Rs.14,46,000.

3.2 The learned CIT(A) failed to appreciate that the in the remand report the AO has in his submission clearly reported that Shri Rajesh Kumar, for the F.Y. 2012-13, claims to have received of Rs.9,36,00, whereas the enclosed ledger shows the net amount atRs.14,32,000.

3.3 The learned CIT(A) failed to appreciate that the assessee had inflated the purchases in the ledger account furnished as the vendors were dependent on the assessee for their livelihood as the vendors have deposed that "the ledger extracts enclosed along with their confirmation letters were taken from the assessee only as they do not maintain proper books of accounts"

3.4 The learned CIT(A) having called for a remand report from the AO, did not consider the discrepancies and differences pointed out by the AO in the report, between the purchases claimed by the assessee and the ledger accounts furnished

by the very same assessee and the claim of the vendors, though it was clearly brought out in the form of a tabular column.

4. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

RELIEF CLAIMED IN APPEAL

The order of the learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

3. The brief facts extracted from ITA No.13/Chny/2019 for the AY 2012-13 are that the assessee is a Proprietor of M/s.East West Gandhimathi Combined Industries, filed her return of income for the AY 2012-13 on 28.09.2012 admitting a total income of Rs.44,67,170/-. In this case, the assessment has been completed u/s.143(3) of the Income Tax Act, 1961, on 27.02.2015 by making addition of Rs.33,52,296/-. A search and seizure operation u/s.132 of the Act, was conducted in the case of M/s.Butterfly Gandhimathi Appliances Ltd., (in short "M/s.BGAL") on 19.03.2015 and during the course of search, it was found that the assessee was a major supplier of wet grinders and spare parts to M/s.BGAL. During the course of search, it was further noted that M/s.BGAL was inflating its expenditure in respect of its purchases. Therefore, a survey operation u/s.133A of the Act, was conducted in the case of the assessee on 19.03.2015. Consequent to survey, notice u/s.153C of the Act, dated 29.03.2016 was issued calling for return of income. In response, the assessee had filed her return of income on 08.06.2016 admitting total income of Rs.78,17,460/-.

4. During the course of assessment proceedings, the AO noticed that the assessee has made unregistered dealer purchases of Rs.5,25,66,330/- and for which, a sum of Rs.4,73,26,975/-, has been paid through banking channel. Further, a sum of Rs.10,95,793/- has been paid in cash, but each cash payment was less than Rs.20,000/-. The assessee had also made cash payment of Rs.41,43,562/- against unregistered dealer purchases and each cash payment is more than Rs.20,000/-. Therefore, the AO after considering relevant facts and also taken note of report submitted by the DDIT (Inv.), Unit-1, Coimbatore, opined that unregistered dealer purchases claims to have made from certain persons, is not genuine which is not supported by necessary evidences. Therefore, disallowed total purchases claims to have been made from unregistered dealers amounting to Rs.5,25,66,330/- to total income. The relevant findings of the AO are as under:

> *During the year under consideration, the AR stated that the assessee purchased stones worth Rs.5,25,66,330/- from unregister dealers and furnished the details of the mode of the payment as under:*

1	*Payment through banking channel*	*Rs.*	*4,73,26,975*
2	*Payment by Cash (wherein each payment is less than Rs.20,000/-)*	*Rs.*	*10,95,793*
3	*Payment by Cash (wherein each payment is more than Rs.20,000/-)*	*Rs.*	*41,43,562*
Total			*5,25,66,330*

> *From the above in respect of payments of Rs.41,43,562/- no deduction should be allowed in respect of such cash expenditure as per provision of sec. 40A(3) of the IT Act. However, this is subject to the condition that the purchases are genuine. It is also not clear why the payments are being made in cash if the assessee was having bank account. However, in this case the purchases are held to be not genuine for the reason as discussed under.*
>
> *When asked for confirmation from these unregistered suppliers, the AR stated that purchases are genuine but furnished the confirmation in respect of eight persons and that too amounting to Rs.75,46,261/- only.*

Sl.No.	***Name of the Unregistered dealers***	***Amount***
1	*Aarusamy*	*944000*
2	*Bannari*	*940145*
3	*Kavee*	*940145*
4	*Marimuthu S*	*944183*
5	*Ramesh*	*949145*
6	*Senkotayan*	*940460*
7	*Suresh*	*944000*
8	*Varadaraj*	*944183*
Total		***7546261***

He stated that the confirmations in respect of balance amount are not readily available. Even these confirmations filed by him cannot be relied upon as these confirmations are produced without any identity proof such as PAN number, Aadhar card etc. and the· postal addresses are also not correct. This office vide notice u/s 142(1) dated 22.12.2016 specifically asked for the balance continuations and identity proof of the suppliers who furnished the confirmations, bills raised by the unregistered dealers and their bank accounts. In that letter, the assessee was also asked to clarify whether those suppliers are filing Income-tax Returns, Sales tax Returns etc. and to furnish the postal addresses of all the suppliers. However, the asses see could not furnish the details.

In this connection, it is to mention that this office had issued Commissions to the DDIT(Inv), Unit 1, Coimbatore; to cause enquiry regarding the genuineness of the supplies made by the unregistered dealers to the assessee. The DDIT(Inv), Unit 1, Coimbatore after causing enquiry and verification in respect of some of the unregistered dealers stated that in response to summons issued to Eashwaran on 14.12.2016, he appeared before the DDIT(Inv.), Coimbatore, and has categorically stated that no transaction were done with. Smt. A Gandhimathi. Also summons issued to Nachimutthu and Verakumar by the DDIT(Inv.), Coimbatore were returned un-served due to insufficient addresses. Also the postal addresses given by the assessee in respect· of Kasi and Aayakannu are not clear. These findings were confronted to the assessee who did not have any further submission to be made.

During the course of scrutiny proceedings, the AR also stated that the VAT was paid by the assessee on behalf of the suppliers. It is not clear why the assessee should pay VAT on behalf of the suppliers. It casts a doubt on genuineness of the purchases. This therefore appears to be last minute attempt to prove the purchases as genuine. However, such a stance is self-serving and not corroborated by third party confirmations.

Also the assessee is unable to furnish any invoices from the unregistered suppliers, delivery Challan, weightment receipt and mode of transportation with vehicle number.

In view of the above and as the assessee is unable to furnish the full details and establish the genuineness of these purchases, the entire purchases of Rs.5,25,66,330/- are treated as bogus purchases and accordingly disallowed.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee challenged the assessment order passed by the AO u/s.143(3) r.w.s.153C of the Act, on the ground that the conditions precedent for invoking provisions of Sec.153C of the Act, are not satisfied. Because, the AO has not recorded

his satisfaction to issue notice u/s.153C of the Act, having regard to the books of accounts and other relevant documents found during the course of search in the case of the other person, which belongs to the assessee. The assessee had also challenged additions made by the AO towards purchases made from unregistered dealers on the ground that if you consider the nature of the business of the assessee, the assessee procures wet grinders from unregistered dealers, which are mainly a cottage industry without any VAT or PAN. Therefore, in absence of such details, the assessee cannot furnish any details of VAT or PAN, for which reason, no addition can be made. During the course of appellate proceedings, the assessee had filed certain additional evidences u/r.46A of Income Tax Rules, 1962, and accordingly, the Ld.CIT(A) forwarded additional evidences to the AO, for his comments. The AO submitted the Remand Report dated 31.08.2018 and commented on additional evidences filed by the assessee and its admissibility. The assessee has filed its rejoinder dated 18.09.2018 to the Remand Report and negated all observations made by the AO on additions made towards purchases from unregistered dealers.

6. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of certain facts opined that the AO is erred in making additions towards purchases from unregistered dealers in the assessment framed u/s.153C of the Act, in absence of incriminating material found as a result of search. The Ld.CIT(A) further observed that when the survey

was conducted u/s.133A of the Act, the AO cannot frame the assessment u/s.153C of the Act. The relevant findings of the Ld.CIT(A) are as under:

> *5. I have perused the Asst. Order, statement of facts, grounds of appeal, written submissions, remand report and the rejoinder. After going through the same, the issue is decided as under:*
>
> *5.1 While vehemently contending against the additions made in all the A.Ys, the stand taken by the appellant was that when there were no incriminating documents seized in the course of search at the premises of M/s. Butterfly Gandhimathi Appliances P Ltd, (the main person) relating to such other person (here the appellant) issuance of notice u/s. 153C is not legally correct.*
>
> *5.2 The AR further contended that even in the satisfaction note it has been clearly mentioned that there was only a survey operation u/s. 133A. This clearly renders the issuance of notice u/s. 153C not sustainable.*
>
> *5.3. As can be seen from the records, the action (survey u/s. 133A) in the case of the appellant was not consequent to unearthing of any incriminating*
>
> *documents during search in the case of the main person. This inference is drawn from the fact that both the search in the main case and the survey in the appellant's case were conducted simultaneously and on the same day.*
>
> *5.4 The invocation of the provisions of Sec. 40A(3) should not have been done in a case where notice u/s. 153C has been issued and any addition / disallowance should be backed by incriminating documents. Further, in the instant case most of the recipients are small time sellers and are illiterate too. Hence, naturally the appellant would have to resort to making cash payments.*
>
> *5.5 The AO have also raised a query regarding payment of VAT by the appellant on behalf of the suppliers. As per the TNVAT where the suppliers or sellers are not paying VAT, they being unregistered/small time sellers under TNVAT, the purchaser has to pay the VAT.*
>
> *5.6 Certainly for manufacturing the wet grinders, grind stones have to be purchased and the action of the AO in disallowing the entire purchase cost seems to be surprising.*

7. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeals before us.

8. The Ld.DR referring to Remand Report submitted by the AO dated 31.08.2018 submitted that there is a clear mismatch between purchases

claim to have been made by the assessee from unregistered dealers and amounts mentioned in ledger annexed with submissions. However, the Ld.CIT(A) without considering the above facts simply deleted the additions made by the AO on technical grounds that when survey was conducted u/s.133A of the Act, assessment cannot be framed u/s.153C of the Act, ignoring the fact that when search and survey was simultaneously conducted, materials collected during the course of survey can be used while making block assessment in respect of assessee. In this case, although, a survey u/s.133A of the Act, was conducted in the case of the assessee, but the AO framed assessment u/s.153C of the Act, because, certain incriminating material belongs to the assessee was found and seized during the course of search in the case of the other person. The Ld.DR further referring to plethora of judicial precedent submitted that as per plain reading of Sec.153A & 153C of the Act, it is very clear that when search took place, the AO shall have the power to assess / re-assess total income of a person for six assessment years immediately preceding to the assessment year, in which, search taken place whether or not any incriminating was material found and seized. In this case, during the course of search in the case of M/s.BGAL on 19.03.2015, the fact of inflation of purchases made from the assessee was noticed and on this basis, the AO recorded satisfaction that income of the assessee is under assessed and thus, invoked the provisions of Sec.153C of the Act. The Ld.CIT(A) without

appreciating the above facts simply deleted the additions made by the AO. In this regard, he relied upon the following judicial precedents:

1. *CIT v. Anil Kumar Bhatia [2012] 24 Taxmann.com 98, Delhi.*
2. *Kamlesh Bhai Dhamashibha Patel v. CIT [2013] 31 Taxmann.com 50, Gujarat.*
3. *Canara Housing Development Co. v. DCIT [2014] 49 Taxmann.com, 98 Karnataka.*
4. *CIT, Thichur v. St. Francis Clay Décor Tiles [2016] Taxmann.com 234, Kerala*
5. *E.N.Gopakumar v. CIT [2016] 75 Taxmann.com 215, Kerala*

9. The Ld.AR for the assessee, on the other hand, supporting the order of the Ld.CIT(A) submitted that during the course of search in the case of M/s.BGAL, nothing was found which belongs to the assessee and her business. However, the AO has framed assessment u/s.153C of the Act, only on the basis of statement recorded from Mr.V.M.Seshadri, Managing Director of M/s.BGAL, even though, nothing against assessee was made out from said statement. Further, the AO alleged that M/s.BGAL inflated purchases made from assessee, but the fact remains that no addition on this regard was made in the assessment of M/s.BGAL, which is evident from the order of Income Tax Settlement Commission, where the application filed by the assessee has been accepted without making any addition towards purchases. From the above, it is very clear that there is no material of whatsoever which indicates inflation of purchases from the assessee and thus, the Ld.CIT(A) rightly held that invoking jurisdiction u/s.153C of the Act, is incorrect. He further submitted that assuming for a moment, but not considering, the AO has rightly framed assessment u/s.153C of the Act, but fact remains that nothing was brought on record to prove that the assessee has received excess consideration for purchases.

Further, during the course of assessment proceedings, the AO has made additions towards purchases made from unregistered dealers only on the ground that the assessee could not file confirmation from the parties, ignoring the fact that unregistered dealers are cottage industries who does not have any VAT registration or PAN. Therefore, merely for the reasons of non-furnishing of confirmation, total purchases cannot be disallowed.

10. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts borne out from records clearly indicate that a search operation u/s.132 of the Act, was conducted on 19.03.2015 in the case of M/s.BGAL. A simultaneous survey operation u/s.133A of the Act, was conducted in the case of the assessee on 19.03.2015. Generally, when a survey was conducted u/s.133A of the Act, assessment should be framed for those assessment years u/s.143(3) of the Act. In this case, the AO has completed assessment u/s.153C of the Act, in pursuant to search action conducted u/s.132 of the Act in the case of M/s.BGAL. The conditions precedent for initiation of proceedings u/s.153C of the Act is that if any document was found and seized during the search proceedings of another person belonging to the assessee is concerned then, the AO of such person should record his satisfaction, having regard to the books of accounts and other materials found during the course of search that undisclosed income of other person is escaped from tax and further, the AO of such other person should hand over books of accounts and other money, bullion, jewellery, etc., to the AO

having jurisdiction over the other person. In this case, nothing was found which belongs to the assessee during the course of search on 19.03.2015 in the case of M/s.BGAL, except a statement from Mr.V.M.Seshadri, Managing Director of M/s.BGAL. No other incriminating material was found and seized during the course of search which suggest undisclosed income belongs to the assessee. Further, even if you go through statement u/s.132(4) of the Act, recorded from Mr.V.M.Seshadri, Managing Director of M/s.BGAL, he never accepted inflation of purchases made from the assessee, but what he was stated in the statement is that for one lot of purchases, they have paid Rs.20/- per piece extra when compared to purchases from other parties, which is once against based on demand and supply and requirement of the business. Therefore, from the above statement nothing can be found that any undisclosed income or money or jewellery or bullion etc., belongs to the assessee was found during the course of search. Therefore, in our considered view, in absence of any incriminating material found during the course of search of other person, the AO cannot initiate proceedings u/s.153C of the Act, and complete assessment, when a simultaneous survey u/s.133A of the Act, was carried out on very same day in the case of the assessee.

11. No doubt, material found during the course of search can be used while framing the block assessment u/s.153A / 153C of the Act. But, in this case, nothing was found during the course of survey with reference to the additions made by the AO towards purchases from unregistered

dealers. Therefore, we are of the considered view that the conditions precedent for initiation of proceedings u/s.153C of the Act, was not satisfied and in absence of such materials, the AO cannot proceed to complete assessment u/s.153C of the Act, and make additions towards purchases from unregistered dealers. This view is supported by the decision of ITAT Mumbai Bench in the case of M/s.Sitara Builders Pvt. Ltd. & Ors. reported in [2019] 56 CCH 0099 (Mum-Trib.), where the Tribunal by considering various decisions, including the decision of the Hon'ble Supreme Court in the case of CIT v. Sinhgad Technical Education Society reported in [2017] 397 ITR 0344 (SC) held that the condition precedent for invoking of sec.153C of the Act, that the seized material/documents belong to the third party was a jurisdictional issue and failure to satisfy it, made the entire proceedings taken u/s.153C of the Act, is null and void. The relevant findings of the Tribunal are as under:

> *'Although the AO has tried to establish nexus between incriminating materials found during the course of search and other undisclosed asset to the assessee, but he has failed to prove the nexus between seized materials and business activity of the assessee and also receipt of on-money. Unless, the AO has brought out some cogent materials or evidences which establish receipt of on-money from sale of flats, no addition could be made, that too, on adhoc estimation of on-money on the basis of regular sales declared by the assessee. Although the AO has placed his reliance on the statement of Mr. Haresh M Mehta recorded on 05-06-2011, but on perusal of affidavit of Shri Haresh M Mehta dated 11-02-2014, it is seen that reference to on-money is made by Shri Haresh M Mehta only in the answer to question No. 12 and that such reference is general inasmuch as Shri Haresh M Mehta stated that he looked after project clearance and tenant association matter and that these areas required Jot of cash which was spent through on-money taken in cash on sale of flats. Even in respect of statements of employees of group, nowhere they have specifically attribute the name of the assessee with reference to receipt of on-money while answering questions to statement recorded during the course of search. All along the director as well as the employees made a general statement about receipt of on-money with reference to a question posed by the Investigation wing*

without any reference to particular seized material found as a result of search. Similarly, the AO has taken circumstantial evidence of cash and unexplained jewellery found during the course of search to argue that the assessee is in the habit of suppression of sales by showing under valuation which was used in its business, but on perusal of cash and other assets found during the course of search it was very clear that the cash was found from 112-122, Hira Bhavan, Rajaram Mohan Roy Road, Prarthana Samaj, Mumbai, which was common premises for four entities of the assessee group and that the total cash found from various premises was almost equivalent to cash balance maintained in the books of account. Although, there is a difference of cash balance of Rs.25,86,687, the same has been offered to tax in the hands of directors and also M/s Rohan Developers Pvt Ltd. Neither the Panchanama drawn during the course of search nor the statement recorded during search indicated that cash and other unaccounted assets found during the course of search belonged to the assessee. The AO has even failed to establish nexus between incriminating materials found during the course of search to the business of the assessee. Unless there is a direct nexus between incriminating material found during the course of search coupled with statement recorded from the director and employees of the group, merely on the basis of admission of certain parties, that too, after retraction of such statements by the parties, addition cannot be made towards receipt of on-money on adhoc basis taking a clue from statement of those persons. No doubt, estimation is possible in assessment proceedings provided the AO is having sufficient information with him regarding suppression of sales or receipt of on-money. In a case, where the department is in possession of material regarding suppression of sales or receipt of on-money for part of a period, then for the remaining period, the AO may go for estimation by taking into account various parameters including certain degree of estimation. But, then this cannot be extended or enlarged to the extent of extrapolation of information to another assessee, though the same belongs to one group, unless there is specific material in the possession of the AO with regard to suppression of sales or receipt of on-money. Further, statement recorded during the course of search including confession may be a best piece of evidence, but that by itself would not be conclusive evidence unless such statement is further supported by evidence in the form of incriminating material found during the course of search. The AO before estimating income has to bring on record some cogent materials to justify his action. In this case, it is abundantly clear that nowhere the AO linked the seized material found during the course of search to the income estimated towards on-money received from sale of flats. While it is true that retraction by itself does not provide an impenetrable shield to the concerned person, but it is also equally true that a statement per se by itself is not conclusive evidence. In this case, the AO has failed to bring any corroborative evidence to support the statement of directors as well as employees in order to support his action of estimation of on-money on sales declared by the assessee for the relevant financial years. Therefore, AO was erred in estimating adhoc on-money received from sale of flats on the basis of statement of some employees even after such statement has been retracted and a/so nothing on record to indicate that the assessee is in receipt of on-money.

(Para 16)

ITAT has accepted the fact that if the date of search, i.e. on 26-05-2011 is considered, the assessment for AY 2009-10 is unabated, because the

assessment for the impugned assessment is completed u/s 143(3) on 31-12-2009 and further, no proceedings of whatsoever was pending as on the date of search. Once an assessment is unabated as on the date of search, it is a settled law that no addition can be made in absence of any incriminating material found as a result of search. There is no doubt of whatsoever with regard to the reference of incriminating material found during the course of search to addition made by the AO with regard to the estimation of 30% on-money on total sales declared by the assessee. Therefore, the addition made by the AO towards estimation of on-money for AY 2009-10 cannot be sustained. In this case, there is no clarity with regard to date of receipt of receiving the books of account or documents or asset seized by the AO having jurisdiction over such other person. In absence of such date, no presumption as to date of issue of notice u/s 153C cannot be considered as date of receipt of assets and books by the AO having jurisdiction over person other than the person searched. There was nothing on record to indicate that the AO was in possession of any money, bullion, jewellery or other valuable article which was found and seized during the course of search. Therefore, in terms of section 153C of the act, the proceedings u/s 153C could be initiated against a party only if the document seized during the search and seizure proceedings of another person belonging to the assessee concerned. The requirement of section 153C could not have been ignored. The department had to strictly comply with section 153C. Unless, the AO has arrived at a satisfaction with reference to material found during the course of search and non-satisfaction of the condition precedent qua seized material belonging third party was a jurisdiction issue and non-satisfaction thereof would make the entire proceedings taken thereunder null and void. The Revenue has to strictly comply with sect/on 153C of the Act. Noh satisfaction of the condition precedent which the seized document must belong to the assessee is a jurisdictional issue and non-satisfaction thereof would make the entire proceedings taken thereunder null and void. There is nothing on record to indicate that1 there is a reference to seized material found during the course of search vis-a-vis addition made by the AO towards estimation of 30% on-money on total sales declared for the year. The CIT(A) has rightly come to the conclusion that the addition made by the AO cannot be sustained either on jurisdictional issue or on merits.

(Para 17)

12. In this case, there is no dispute with regard to the fact that absolutely there is no incriminating material was found during the course of search in the case of M/s.BGAL, which pertains to the assessee and which shows undisclosed income pertains to these assessment years. Therefore, we are of the considered view that the AO ought not to have made assessment u/s.153C of the Act, and made additions towards purchases made from unregistered dealers. The Ld.CIT(A) has rightly apprised the facts and held

that the action of the AO in framing the assessment u/s.153C of the Act, was only survey u/s.133A of the Act, conducted is legally incorrect.

13. Having said so, let us come back to additions made towards purchases from unregistered dealers. The assessee has declared said purchases to Commercial Tax Authorities and paid VAT applicable to URD purchases. The assessee claimed that it has purchased wet grinders and accessories from unregistered dealers who are mainly a cottage industry situated in remote areas. The assessee further claimed that they do not have any VAT registration and PAN. Therefore, merely for the reason of non-furnishing of confirmation from them, additions cannot be made, more particularly when the assessee has filed all details including invoices for purchases, payment by cheque and VAT returns filed for relevant months which contains details of URD purchases. We find that as claimed by the assessee wet grinders and accessories were purchased from unregistered dealers who were mainly a cottage industry without any VAT registration and PAN. Therefore, the assessee has declared purchases made from unregistered dealers in the VAT returns filed for the respect month and paid relevant VAT on said purchases. The assessee had also made 90% of payments against said purchase through proper banking channel. Although, the assessee has made small portion of payment by cash in excess of prescribed limit, but in our considered view, payment made by the assessee does not hit by provisions of Sec.40A(3) of the Act, because, any payment made to a cottage industry is excluded u/r.6DD(f) of IT Rules.

Therefore, we are of the considered view that the AO is erred in invoking the provisions of Sec.40A(3) of the Act, for payments made in cash in excess of prescribed limit, even though, the case of the assessee comes u/r.6DD(f) of IT Rules. As regards remaining purchases on which payment made through proper banking channel, the assessee had filed complete details including name and address of the person from whom purchase was made, payment details and also filed relevant VAT returns to prove that said purchases were declared to Commercial Tax Authorities and paid applicable VAT. Therefore, we are of the considered view that on this count also additions made by the AO cannot be sustained. The Ld.CIT(A) after considering relevant facts has rightly deleted additions made by the AO and thus, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeal filed by the Revenue in ITA No.13/Chny/2019 for the AY 2012-13.

ITA Nos.14 & 15/Chny/2019 for the AYs 2013-14 & 2014-15:

14. The facts and issues involved in ITA Nos.14 & 15/Chny/2019 for the AYs 2013-14 & 2014-15 are identical to the facts and issues which we had already been considered in ITA No.13/Chny/2019 for the AY 2012-13. The reasons given by us in the preceding paragraphs in ITA No.13/Chny/2019 shall ***mutatis mutandis*** applies to ITA Nos.14 & 15/Chny/2019, as well. Therefore, for similar reasons, we are inclined to uphold the findings of the

Ld.CIT(A) and dismiss the appeals filed by the Revenue for the AYs 2013-14 & 2014-15.

15. In the result, appeals filed by the Revenue in ITA Nos.13-15/Chny/2019 are dismissed.

Order pronounced on the 10th day of October, 2022, in Chennai.

Sd/-	***Sd/-***
(वी. दुर्गा राव)	**(जी. मंजूनाथा)**
(V. DURGA RAO)	**(G. MANJUNATHA)**
न्यायिक सदस्य**/JUDICIAL MEMBER**	लेखा सदस्य**/ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 10th October, 2022.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF