

आयकर अपीलीय अधिकरण, ' बी ' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, CHENNAI**

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 347/Mds/2016

&

C.O. No. 46/Mds/2016

निर्धारण वर्ष/Assessment Year : 2012-13

The Income Tax Officer,  
Ward 1(4),  
Erode.

Shri R. Sivalingam,  
Vs. 61/1B, Pavithra Apartment,  
Kumalan Kuttai,  
Collectorate Post,  
Erode - 638 011.

**[PAN: APAPS 0181H]**

**(Appellant)**

**(Respondent/ Cross objector)**

अपीलार्थी की ओर से/Appellant by

: Mr. Supriyo Pal, JCIT

प्रत्यर्थी की ओर से/Respondent by

: Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 28.09.2016

घोषणा की तारीख/Date of Pronouncement

: 20.12.2016

**आदेश / O R D E R**

**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

The appeal of the Revenue and the Cross Objections of the assessee are directed against the order of the Commissioner of Income Tax -

3, dated 23.11.2015 in ITA No. 598/2014-15 for the assessment year 2012-13 passed u/s. 143 and 250 of the Income Tax Act.

2. The Revenue has raised the following grounds:

2.1 The Ld. CIT(A) has ignored the fact that, undisclosed income was admitted by the assessee on the basis of material/document impounded during the survey operation and his sworn statement.

2.2 The Ld. CIT(A) has ignored the fact that, assessee has not retracted his statement or immediately after survey operation by way of any affidavit, by bringing fresh fact contradicting, evidences collected by the Assessing Officer during the survey proceedings.

2.3 The Ld. CIT(A) has erred in restricting the income of the assessee at 8% without having basis of any logic or evidence.

3. The Brief facts of the case that the assessee is Managing Director of M/s. Sigaram Construction (P) Ltd., and is in Civil Contract business. There was survey operations u/s. 133A of the Act on the company and the assessee's business premises. In the course of survey certain documents were impounded and also Diary containing entries aggregated to Rs. 1,61,50,000/-. Prima facie, assessee accepted the transactions. Subsequently, the Assessing Officer issued notice u/s. 148 of the Act and the

assessee filed Return of income for the assessment year 2012-13 on 10.10.2013 disclosing total income of Rs. 8,57,780/-. The Assessing Officer has provided reasons for re-opening of assessment u/s. 147 of the Act and the assessee has filed the objections referred at Page 4 and 5 of the Assessment Order. Further, the Ld. AO found the assessee has filed the Return of income after survey operations and the assessee has not come forward to collect the copy of impounded documents and the statement recorded in survey. Whereas, the assessee has requested for statement recorded on 11.12.2015. The Assessing Officer dealt elaborately on the submissions and the statement recorded in survey and entries in diary impounded in survey operations. The contentions of the Ld. AR that the assessee has requested for copy of impounded documents and diary and were not provided. Whereas, the Assessing Officer on verification of the survey records in the assessment proceedings found that the assessee is not interested in completion of the assessment by making various allegations and the Ld. AO relied exclusively on entries in the diary and made addition of Rs. 1,61,50,000/- and passed order and raised the demand.

4. Aggrieved by the order, the assessee filed an appeal before the CIT(A). In the appellant proceedings, the Ld. AR argued the grounds and submitted the information that there was a survey operation u/s. 133A of the Act in the Business premises of the assessee and notice was issued u/s. 148

of the Act and Return of income was filed by the assessee on 10.10.2013 disclosing total income of Rs. 8,57,780/-. The Assessing Officer made addition as unexplained cash credits and assessee filed objections in the assessment proceedings and further assessee was not provided with documents and Diary. The Ld. CIT(A) perused the Assessment Order and Arguments lead by the Ld. AR is of the opinion that the submissions on unexplained credits in the assessment based on the impounded material is not in order and the copy of diary does not contain information in writing of entries relating to the business of the assessee. The assessee is a Civil Contractor and the entries aggregate to Rs. 1,61,50,000/- comprising cash entries not reflected in the Business of Accounts. The assessee filed the Income Tax Returns for earlier Assessment years from 2009-10 to 2012-13, where the assessee was offering income of Rs. 2.51 lakhs to Rs. 8.57 Lakhs. The Ld. CIT(A) found the addition by the Ld. AO is more than 25 times of the taxable income and the re-assessment order does not specify with any evidence except the diary. The assessee being a Civil Engineer and not well verse with accounting knowledge and the sole evidence of Rs. 1,61,50,000/- cannot be treated as income of the assessee in comparison with the earlier years income as there is no authenticated evidence of source of income with the Revenue. The Ld. CIT(A) considering the nature of activity of the assessee as a Civil Contractor, 8% of total amount of Rs. 1,61,50,000/- is reasonable to consider as additional income of the assessee and worked out to Rs. 12,92,000/- and

treated 8% as additional income over refunded income and partly allowed the appeal.

5. Aggrieved by the order, the Revenue has filed an appeal before us, the Ld. DR argued that the CIT(A) erred in not considering the facts that the assessee has declared undisclosed income in the survey operations based on material and has not retracted in the assessment proceedings and the Ld. CIT(A) estimating 8% of income on total assessment is without any basis and Ld. DR substantiated his arguments with copy of documents and diary and prayed for setting aside the order of CIT(A). Contra, Ld. AR of the assessee relied on the order of the CIT(A).

6. We heard the rival submissions, perused the material on record and sworn statement. The Ld. DR arguments are based on the material that the CIT(A) has erred in not considering the real facts that the assessee has accepted in the survey operations to offer the disputed income and whereas, the assessee has not offered additional income and there are conflicting version of the assessee that he was not provided with the copy of impounded documents considered by the Ld. AO for addition. The Ld. AR of the assessee relied on the submissions in the sworn statement, where the assessee has specifically mentioned all the facts and shall offer additional income being a Civil Contractor. We perused the statement recorded u/s. 131 of the Act at

Page 6 with details of entries and we counter check the entries with diary and found that on the said date there is no other entry written except shown as cash and it is not clear whether this amount pertains to assessee or pertains to the company, where the assessee is a Managing Director or it is receipt or expenditure. The Ld. AO treated the same as unexplained money received without any independent investigation and proof to tax in the hands of the assessee. We are of the opinion that the Ld. CIT(A) has dealt on the disputed issue of Rs. 1,61,50,000/- and compared the income of current year with income as per Return of income filed for the earlier Assessment years 2009-10 Rs. 2.15 Lakhs, 2010-11 Rs. 6.25 Lakhs, 2011-12 Rs. 6.54 Lakhs and 2012-13 Rs. 8.57 Lakhs and is of the opinion that addition made is more than 25 times of the Returned income. Since the assessee is a Civil Contractor, Ld. CIT(A) took a reasonable view of addition @ 8% of the disputed amount as Additional income. The Revenue has not made investigation or supported with any records except rely on the diary found in the course of survey with inadequate information. The Ld. AO has considered the amount as unexplained cash credit and whereas, the Ld. CIT(A) to balance the action of the Assessing Officer has estimated 8% on Rs. 1,61,50,000/- being Rs. 12,92,000/- as additional income over and above the Return of income.

7. Considering the Apparent facts and material on record and the statement we are not inclined to interfere with the order of the CIT(A) who has discussed elaborately on the disputed issue vis-a-vis, the explanations of the assessee and partly allowed the appeal. Accordingly, we upheld the order of the CIT(A) and dismiss the Revenue ground.

8. The assessee has filed C.O. No. 46/Mds/2016, for the said assessment year since we have dismissed the Revenue appeal the CO become infructuous and is dismissed.

9. In the result, the appeal of the Revenue and CO of the assessee are dismissed.

Order pronounced on Tuesday, the 20th day of December, 2016 at Chennai.

**Sd/-**

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 20th December, 2016

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

**Sd/-**

(जी. पवन कुमार)

**(G. PAVAN KUMAR)**

**न्यायिक सदस्य/JUDICIAL MEMBER**