

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 247/VIZ/2016  
(Asst. Year : 2010-11)**

**And**

**ITA No. 323/VIZ/2017  
(Asst. Year : 2011-12)**

M/s. Gowthami Builders, vs. ITO, Ward-1(4),  
D.No. 48-3-6, Srinagar, Visakhapatnam.  
Visakhapatnam.

PAN No. AAIFG 6738 K (Appellant) (Respondent)

**ITA No. 314/VIZ/2016  
(Asst. Year : 2010-11)**

**And**

**ITA No. 392/VIZ/2017  
(Asst. Year : 2011-12)**

ITO, Ward-1(4), vs. M/s. Gowthami Builders,  
Visakhapatnam. D.No. 48-3-6, Srinagar,  
Visakhapatnam.

(Appellant) PAN No. AAIFG 6738 K  
(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.  
Department By : Shri T. Satyanandam – Sr.DR

Date of hearing : 07/03/2018.  
Date of pronouncement : 14/03/2018.

**ORDER****PER V. DURGA RAO, JUDICIAL MEMBER**

ITA Nos. 247 & 314/VIZ/2016 are the cross appeals by the assessee and the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-1, Visakhapatnam, dated 25/03/2016 for the Assessment Year 2010-11.

ITA Nos. 323 & 394/VIZ/2017 are the cross appeals by the assessee and the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-1, Visakhapatnam, dated 28/04/2017 for the Assessment Year 2011-12.

**ITA No. 314/VIZ/2016**

**2.** Revenue has raised as many as 07 grounds, in which the effective ground reads as under:-

*"2. The Id. CIT(A)-1 erred in deleting the addition of Rs.73,30,000/- made towards unexplained capital introduction in the name of partners of the assessee firm relying on the decision of Hon'ble High Court of Andhra Pradesh reported in 232 Taxmann 123 in the case of CIT vs. Venkateswara Rao."*

**3.** Facts of the case in brief are that during the course of assessment proceedings, the Assessing Officer has noted from the balance sheet that as on 31/03/2010, a sum of Rs. 56,55,000/- & Rs. 16,75,000/- was introduced into the business as partners

capital contribution and partners current account, the details of which are as follows:-

Name of the partner	Capital contribution	Partners current account	Total
Sathi Ramakrishna Reddy	2001000		
Sathi Achiyamma	801000		
Sathi Venkayamma	1401000		
Sathi Rani	1001000		
Tadi Satyanarayana Reddy	451000		
S. Achiyamma		975000	
S. Venkayamma		700000	
Total	5655000	1675000	73,30,000

The Assessing Officer has called upon the assessee to explain the source for the amounts brought into the business by the partners towards capital contribution and current account contribution. The Assessing Officer also called for identity and creditworthiness of the partners as well as genuineness of these transactions. The Assessing Officer after careful consideration of the assessee's explanation, partners income tax returns copies and their affidavits and other details, came to a conclusion that the above mentioned partners did not have sufficient source for introducing amounts into the business towards their capital contribution and current account contribution. The Assessing Officer also examined the Manager Partner of the assessee and his recorded sworn statement. Accordingly, the Assessing Officer added a sum of Rs. 73,30,000/- towards unsubstantiated cash

credits under section 68 of the Act to the total income of the assessee by observing as under:-

*"Introduction of capital by the partners: It is noticed from the balance sheet furnished that an aggregate of Rs. 63,55,999/- has been introduced as partners capital during the financial year relevant to the asst. Year under consideration. When it was asked, vide this office notice u/s 142(1) of the IT Act dt. 23-01-2014, to explain the sources for the partners along with supporting evidences, vide its Letter submitted on 06-02-2014 the firm has furnished a statement which contains date wise details of amounts allegedly received from the respective partners during the year under consideration along with copies of returns of income of the partners viz. Sri Satti Ramakrishna Reddy, Smt. Satti Rani and Smt. Satti Achiyamma for the Asst. Year 2010-11 only. As the Xerox copies of the Income Tax returns for the Asst. Year 2010-11 of the Partners is not sufficient to explain the sources and creditworthiness of the partners to introduce such huge capitals, as the incomes offered by respective partners are not commensurate with the capitals introduced by them respectively and also as it is noticed from the statement furnished that all the amounts were allegedly received through cash, the assessee firm was once again requested to explain the sources of the partners along with their creditworthiness towards the amounts alleged to be invested by them in the firm and the identification of the partners and genuineness of the transactions along with necessary supporting verifiable evidences on or before 14-03-2014. In response to the same the assessee firm has filed a written submission stating that all the partners are income tax assesseees on the rolls of the Income Tax Officer, ward-1, Kakinada by enclosing the affidavits stated to be obtained from the respective partners. As per the information filed by the firm the partners have allegedly introduced the following amounts in the firm.*

Name of the Partner	Amount invested in F.Y 2009-10 relevant to A.Y 2010-11	Amount invested in F.Y 2010-11 relevant to AY 2011-12
Sathi Ramakrishna Reddy	2001000	0
Sathi Achiyamma	801000	1200000
Sathi Venkayamma	1401000	600000
Sathi Rani	1001000	1000000
Tadi Satyanarayana Reddy	451000	1550000

*However neither the assessee firm nor its partners Smt S. Achiyamma and Smt. S. Venkayamma have explained anything about the amounts invested by the above two partners at Rs. 9,75,000 and Rs. 7,00,000/- respectively aggregating Rs. 16,75,000/-.*

*The assessee firm's explanation along with the copies of affidavits filed by the respective partners of the firm are carefully examined and found the explanation ) offered by the firm and the partners towards the sources for the introduction of such huge capitals is not acceptable in view of the following reasons.*

*All the partners in their affidavits have stated that alleged capitals introduced have been received from their debtors, who are due to them. Neither the assessee firm nor its partners have given any details of the debtors from when the said amounts have been received, the date of receipt and the mode of receipt They have not given any proof in support of their contention that the partners have received amounts from their debtors. It is also noticed from the copies of returns of income filed by all the partners except Sri Lathi Rarnakrishna Reddy, that the returns for the Asst. Year 2010-11 and 2011-12 have been filed by them 30-03-2012 subsequent to the survey action carried out in the assessee firm's business premises on 27-01-2012. None of the partners or the Firm have produced individual books of the partners in order to verify the assessee firm's contention that the amounts withdrawn from the regular books maintained by the said partners. The assessee firm has not filed any information evidencing the filing of returns of income of the partners before the Asst. Year 2010-11. Further it is also pertinent to mention here that the assessee firm's Managing Partner Sri Sathi Ramakrishna Reddy has admitted in the statement recorded from that he does not have any sources of income, he is totally dependent on his brother and he has not been filing any returns of income for the past 5-6 years as he does not have any taxable income. The relevant excerpts of the statement of the Mng. Partner of the Assessee firm recorded on 27-03-12 are reproduced here under.*

*Q.6 before constituting the firm M/s. Gowthami Builders what was your business activity, please give complete details?*

*Ans. I was not carrying any business activity before constituting the firm M/s. Gowthami Builders in the year 2009.*

*Q.7 If so how you were surviving without any income*

*Ans. I was receiving amounts from my father, brother and mother-in-law.*

*9. What was your total domestic expenditure you have incurred per year for the last six years?*

*Ans. I was completely dependent on my brother with whom I am staying in the same house who was earning income from his advocate profession.*

*11. Are you filing your individual returns of income, if so, please give details? Ans. I have been regularly filing my returns of income*

*individually as and when I was earning taxable income. However, I was not filing my returns of income for the last 5-6 years as I was not having taxable income for all these years.*

*Therefore as discussed above: In the absence of any proof towards the sources for the partners in introducing the capital in cash as alleged by the assessee firm, in the light of the deposition of the Managing Partner of the assessee that does not have any sources of income and also in view of the fact that the assessee firm was not maintaining any books of account on the date of survey and also in view of the fact that the assessee firm has filed its return of income for the Asst. Year 2010-11 only in response to the notice issued u/s 148 of the IT Act., subsequent to the survey operation conducted in its business premises, the assessee firm's contention towards the partners introduction of capital in cash during the year under consideration aggregating Rs. 56,55,000/- is not acceptable and hence the same has been treated as unexplained cash credit in the assessee firm's books of account and brought the same to tax as per sec. 68 of the IT Act.*

*Further as discussed above as neither the assessee firm nor the respective partners viz. Smt. S. Narasayamma and Smt. S. Venkayamma have explained the sources towards amounts introduced through their current accounts aggregating Rs.16,75,000/- though the current account, in the written submission or in the affidavits filed by them, the same has been treated as assessee firm's unexplained Investment and brought to tax."*

4. On appeal before the Id. CIT(A), it was submitted that the partners of the firm have brought in a sum of Rs. 56,55,000/- through their capital account and Rs. 16,75,00/- through their current account. Partners also filed their affidavits before the Assessing Officer by stating that all partners are assessed to income tax and PAN numbers have been allotted to them. Further, all the partners are confirmed the fact that they have invested in the capital of the firm. Such being the case, addition if any in this regard has to be made in the hands of the partners of

the firm and as far as the firm is concerned the capital brought in by the partners cannot be treated as unexplained. The Id. CIT(A) after considering the explanation given by the assessee and also by following the judgment of the Hon'ble Jurisdictional High Court in the case of *CIT vs. M. Venkateswara Rao* reported in (2015) CTR 313 (AP) has held that the contribution made by the partners and confirmed by them, cannot be assessed in the hands of the firm and directed the Assessing Officer to delete the addition made in the name of the firm and Assessing Officer has been given at liberty to examine and consider these amounts (contribution to the capital accounts and current accounts) in the hands of the respective partners.

**5.** On being aggrieved, Revenue carried the matter in appeal before the Tribunal.

**6.** Ld. Departmental Representative strongly relied on the order passed by the Assessing Officer.

**7.** On the other hand, Id. Counsel for the assessee has relied on the order of the Id. CIT(A) and also placed reliance in the case of *M. Venkateswara Rao* (supra).

**8.** We have heard both the sides, perused the material available on record and orders of the authorities below.

9. In this case, the Assessing Officer has noted from the balance sheet that a sum of Rs. 56,55,000/- was introduced by the partners towards capital contribution, and Rs. 16,75,000/- towards current account contribution. The Assessing Officer has called for identify, creditworthiness of the partners and also genuineness of the transactions. The partners have filed their affidavits before the Assessing Officer that the contributions are made by them. However the Assessing Officer has not accepted the explanation given by the partners and came to a conclusion that the partners did not have sufficient source for introducing the amounts into the business towards their capital contribution and current account contribution and the investments made by the partners are added in the name of the firm as unsubstantiated cash credits under section 68 of the Act. On appeal before the Id.CIT(A), it was submitted that all the partners filed their affidavit and having PAN numbers and also their return of incomes, and therefore, if at all addition has to be made, it is to be made in the hands of the partners and not in the hands of the firm. Ld. CIT(A) by considering the submissions of the assessee and also by following the judgment of the Hon'ble Jurisdictional High Court in the case of M. Venkateswara Rao (supra), deleted the addition made by the Assessing Officer and given liberty to the Assessing

Officer to examine and consider these amounts in the respective partners. The relevant portion of the order is extracted as under:-

*"7.3 I have carefully considered the above submissions I have also gone through the assessment order, statement of facts and other details Even though the business is carried out in the name of the firm the entire business is owned, managed and run by the partners When the partners confirm that they contributed to capital account and current account it is not correct to assess these amounts in the hands of the firm. It would be more appropriate to consider these amounts in the hands of the respective partner. On identical facts, the Hon'ble Andhra Pradesh High Court in the case of CIT Vs Venkateswara Rao (232 Taxmann 123) held that the amounts received by the firm from its partners cannot be assessed in the hands of the firm though they may be assessed in the hands of the individual partners. The relevant extract of the decision of the Hon'ble High Court is reproduced hereunder:-*

*Section 68 of the Act no doubt directs that if assessee fails to explain the nature and source of credit entered In the books of account of any previous year, the same can be treated as income In this case, the amount, that Is sought to be treated as income of the firm, is the contribution made by the partners, to the capital In a way, the amount so contributed constitutes the very su1tratum for the business of the firm It is difficult to treat the pooling of such capita!, as credit It is only when the entries are made during the course of business that can be subjected to scrutiny under section 68 of the Act.*

*It is evident that the respondent explained the amount of Rs 76,57,263/- as the contribution from Its partners That must result in a situation, where Section 68 of the Act can no longer be pressed into service However, In the name of causing verification under Section 68 of the Act, the Assessing Officer has proceeded to identify the source for the respective partners, to make that contribution. Such an enquiry can, at the most be conducted against the individual partners. If the partner is an assessee the concerned Assessing Officer can require him to explain the source of the money contributed by him to the firm. If on the other hand, the partner is not an assessee, he can be required to file a return and explain the source. Undertaking of such an exercise, vis-a-vis the partnership firm itself, is impermissible in law.*

*7.3.1 Thus the capital contribution made by the partners and confirmed by them cannot be assessed in the hands of the firm Respectfully following the decision of the Hon'ble Jurisdictional High Court, the AO is directed to delete the addition of Rs.73.30,000/-. However, the AG is at liberty to examine and consider these amounts (contribution to capital accounts and current accounts) in the hands of the respective partners.*

**10.** We find that Id. CIT(A) by flowing the decision of the Hon'ble Jurisdictional High Court in the case of M. Venkateswara Rao (supra) deleted the addition made in the hands of the firm. Therefore, respectfully following the above referred to judgment of the Hon'ble Jurisdictional High Court, we find no infirmity in the order of the Id. CIT(A). Thus, this appeal filed by the Revenue is dismissed.

**ITA No. 392/VIZ/2017**

**11.** The revenue has raised a similar ground as has been raised in Assessment Year 2010-11, which reads as under:-

*"2. The Id. CIT(A)-1 erred in deleting the addition of Rs.43,50,000/- made towards unexplained capital introduction in the name of partners of the assessee firm relying on the decision of Hon'ble High Court of Andhra Pradesh reported in 232 Taxmann 123 in the case of CIT vs. Venkateswara Rao."*

**12.** In view of our decision in the Assessment Year 2010-11 shall apply *mutatis mutandis* to this appeal also. Thus, this appeal filed by the Revenue is also dismissed.

**ITA No. 247/VIZ/2016**

**13.** The assessee has raised the following grounds:-

- "1. The order of the learned Commissioner of income Tax(Appeals) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The learned Commissioner of income Tax (Appeals) is not justified in sustaining the addition of Rs 19,00,000/- made towards unexplained unsecured loans in spite of the confirmations given by the loan creditors.*
- 3. The learned Commissioner of Income Tax (Appeals) is not justified in confirming the disallowances of Rs 1,90,000/- and Rs. 1,04,865/- made by the assessing officer u/s 40A(3) of the Act.*
- 4. The learned Commissioner of Income Tax (Appeals) is not justified in allowing deduction of only 5% towards difference in CPWD rates and local rates as against 15% to 20% consistently allowed by the Hon'ble Income Tax Appellant Tribunal, Visakhapatnam.*
- 5. The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs 9,75,000/- made by the assessing officer towards alleged unexplained flat advances from customers.*
- 6. The learned Commissioner of income Tax (Appeals) is not justified in confirming the addition of Rs 9,00,000/- and Rs.45,000/- made towards unexplained cash credits in the bank account.*
- 7. Any other ground that may be urged at the time of appeal hearing."*

**14.** The Ground Nos. 1 & 7 are general in nature. No adjudication is required, therefore, same is dismissed.

**15.** Ground No. 2 is relating to sustenance of addition of Rs.19,00,000/- towards unexplained unsecured loans.

**16.** In the assessment order, the Assessing Officer has noted in respect of the above addition as under:-

*"Unsecured loans:- It is noticed from the balance sheet for the year 2010-11 filed during the scrutiny proceedings that the firm has claimed fresh unsecured loans to the tune of Rs. 1,68,99,450/-. As the assessee firm has stated that the sources for the lenders in respect of the unsecured loans were out of their agricultural income and other savings and as the assessee has not filed any proof in support of the same during the course of survey proceedings or during the course of scrutiny proceedings, vide this office notice under section 142(1) dated 23-01-2014, besides asking the names and complete addresses of the parties from whom the loans were alleged to be raised, the assessee firm was asked to explain the sources and creditworthiness of the lenders and genuineness of the transactions along with verifiable supporting evidences. In response to the same vide its letter submitted on 06/02/2014, the firm has furnished copies of the confirmation letters alleged to be given by the lenders. Except the confirmation letters the firm has not furnished any evidences towards the identification, sources and creditworthiness of the lenders and the genuineness of the transactions. Therefore in the absence of any supporting evidences towards the identification, sources and creditworthiness of the alleged lenders and also genuineness of the transactions it was proposed to treat the entire amount of Rs.1,68,99,450/- brought into the assessee firm's, in the guise of unsecured loans, as unexplained investment and bring the same to tax. Accordingly vide this office letter dated 07-03-2014 the assessee firm was requested to file its objections for the same along with necessary supporting evidences. In response to the same the assessee firm has submitted a letter on 18-03-14 submitting that the amounts due to the land owners viz Sri Sathi Ram Krishna Reddy and Sri Sathi Sybbi -Reddy-- from whom the firm has taken their site for development, aggregating Rs 1,49,99,450/- has been by mistake shown as unsecured loans and submitted the copies of confirmation letters stated to be issued by the following lenders towards the balance amount of Rs. 19,00,000/-. The firm has also submitted that since the parties are away from Vizag they could not submit further evidence and they will submit the necessary explanation from them within a week.*

G. Syam, Visakhapatnam	Rs. 2,00,000
Kota Ayyappa Gupta, Visakhapatnam.	Rs. 1,00,000/-
Tetali Subbirami Reddy, Rayaaram	Rs. 15,00,000/-
Datla Sitarama Raju, Visakhapatnam	Rs. 1,00,000/-

*Though, the assessee firm has submitted that it will file explanation from the respective parties within one week on 18-02-14, till today no explanation has been furnished Therefore in the absence any proof towards the genuineness of the transaction, identification, sources and creditworthiness of the alleged lenders, as proposed the aggregate amount of Rs.19,00,000/- has been treated as assessee firm's unexplained investment and brought the smetotax.acedrd1ngly.*

**17.** On appeal before the Id. CIT(A), it was submitted that the assessee has borrowed a sum of Rs. 19,00,000/- from 4 parties and the creditors are also issued confirmation letters. In the confirmation letters issued by the loan creditors, the addresses and PAN numbers of them are available and submitted that the assessee has discharged his burden casted upon him to prove that the loan creditors are genuine creditors and the addition has to be deleted. The Id. CIT(A) after considering the explanation of the assessee observed that though the assessee filed confirmation letters, no evidence is filed before the Assessing Officer and even during the appellate proceedings also, no evidence with regard to prove the creditworthiness of these creditors and merely filing of confirmation letters, is not amounting to discharge of its onus and confirmed the order of the Assessing Officer.

**18.** On being aggrieved, assessee carried the matter in appeal before the Tribunal.

**19.** Ld. counsel for the assessee has drawn our attention to page Nos. 50 to 53 of the paper book and submitted that the assessee has borrowed Rs. 19,00,000/- from four parties namely G. Syam, Kota Ayyappa Gupta, Tetali Subbirami Reddy & Datla Sitaram Raju. He further submitted that all the details in respect of loan creditors are available and once the assessee has filed all the details in respect of loan creditors, the assessee has discharged his onus and therefore, if at all any doubt, the Assessing Officer has to make enquiries. In this case, without making any enquiry, simply addition is made, therefore same may be deleted.

**20.** On the other hand, Id. Departmental Representative relied on the orders passed by the authorities below.

**21.** We have heard both the sides, perused the material available on record and orders of the authorities below.

**22.** The assessee has borrowed an amount of Rs. 19,00,000/- from four loan creditors. From Datla Sitaram Raju, assessee has borrowed Rs. 1,00,000/- through State Bank of Hyderabad cheque No. 258080 dated 21/12/2009, the same was returned on 28/09/2010 through Indian Bank, Visakhapatnam by Cheque No. 3357201. In his confirmation letter, complete address is

available. He also submitted that he is an income tax assessee. When the assessee has filed confirmation letter by giving all the details of the loan creditors, the Assessing Officer without making any enquiry, simply addition cannot be made. In the case of loan creditor of Tetali Subbirami Reddy, in his confirmation letter he has stated that he has given advance of Rs. 15,00,000/- i.e. Rs.9,00,000/- on 09/10/2009 through Andhra Bank via DD No. 67788 and Rs. 6,00,000/- on 09/10/2009 through Andhra Bank via DD No. 169787 to M/s. Gowthami Builders, Kakinada. He also given his PAN number and also stated that Rs. 9,00,000/- was repaid on 04/10/2010 through Indian Bank, Visakhapatnam Cheque No. 335723 and the balance amount of Rs. 6,00,000/- was not paid. Another loan creditor Kota Ayyappa Gupta has stated that he has advanced an amount of Rs. 1,00,000/- to the assessee on 21/12/2009 through ING Vysya Bank Cheque No. 938741, the same is repaid on 29/09/2010 through Indian Bank, Visakhapatnam Cheque No. 335720. He also stated that he is Income tax assessee and also given address and PAN number. Another loan creditor G. Syam has stated in his confirmation letter that he has advanced an amount of Rs. 2,00,000/- on 22/12/2009 through ING Vysya Bank Cheque No. 930723 and Rs. 1,00,000/- on 03/12/2009 through ING Vysya Bank Cheque No. 930725 to

the firm M/s. Gowthami Builders. It is also stated that some amount was repaid by the assessee on 29/09/2010 through Indian Bank, Visakhapatnam Cheque No. 335719. From the above confirmation letters issued by the loan creditors, it is very clear that all the loan creditors have given their addresses and PAN numbers, and payments were received through cheques and also repaid through a cheque, except an amount of Rs. 6,00,000/- yet to be paid. We find that the assessee filed confirmation letters from the loan creditors with complete details, all payments and repayments were made through cheques. Under these facts and circumstances of the case, we are of the opinion that assessee has discharged his burden casted upon him. If at all Assessing Officer is having any doubt with regard to creditworthiness of the creditors, he has to summon the loan creditors and examine them. In this case, all the payments received through banking channels and repayments also through banking channels. Therefore, we find that the finding given by the Id. CIT(A) that the assessee failed to discharge his burden, is not correct. Therefore, we reverse the order passed by the Id. CIT(A) and hold that the assessee has discharged burden in respect of loan received from four creditors and Assessing Officer failed to make enquiries,

therefore we reverse the order of the Id. CIT(A). Thus, this ground of appeal raised by the assessee is allowed.

**23.** The next ground of appeal relating to difference between the rates of CPWD & PDW.

**24.** In the assessment order, the Assessing Officer has noted that the assessee has not maintained any books of account and any construction account of the complex, i.e. Gowthami Complex, constructed by the assessee. The Assessing Officer referred the building valuation to the Departmental Valuation Officer (DVO) to estimate the total cost of construction of the said property. The DVO vide his report dated 03/06/2013 estimated the cost of construction at Rs. 2,49,10,606/- as against the cost of construction admitted by the assessee-firm at Rs. 211.62 lakhs. The Assessing Officer from the DVO's report, arrived at the cost of construction incurred during the previous year relevant to the Assessment Year 2010-11 at Rs. 29,89,272/-. However, the assessee has shown construction expenditure for the year at Rs.23,77,410/-. Thus as per the Assessing Officer, the assessee incurred unexplained cost, during the previous to the tune of Rs.6,11,862/-. The explanation submitted by the assessee with regard to excess expenditure incurred of Rs. 6,11,862/- was not accepted by the Assessing Officer and accordingly the Assessing

Officer treated the impugned amount of Rs. 6,11,862/- as unexplained expenditure under section 69C of the Act and added the same to the total income of the assessee.

**25.** On appeal before the Id. CIT(A), it was submitted that the Assessing Officer has not considered the claim in respect of deduction towards different between CPWD and local rates and therefore, deduction of 20% may be given. The Id. CIT(A) has allowed the claim of deduction at 5% between the CPWD rates and the local rates.

**26.** On appeal before us, Id. counsel for the assessee has submitted that the coordinate bench of the tribunal has considered the deduction in respect of local rates and CPWD rates and allowed 15% of deduction towards rates between CPWD and PWD and prayed that same may be followed.

**27.** We have heard both the sides, perused the material available on record and orders of the authorities below.

**28.** The only ground raised by the assessee in this appeal regarding further deduction of 10% in the rates variation between CPWD and PWD. In this case, the Id. CIT(A) has already granted 5% deduction towards the rate variation between CPWD and PWD. The coordinate bench of the tribunal in the case of *ITO v. K.Satish* in ITA No. 49/VIZ/2013 dated 04/12/2015 has considered the

issue and allowed deduction at 15% as the rates variation between CPWD and PWD. For the sake of convenience, the relevant portion of the order is extracted as under:-

*"11. Considering facts and circumstances of the case and also respectfully following the coordinate bench decision, we are of the opinion, that the assessee is entitled for 15% deduction towards rate variation between CPWD and State PWD and a further 10% deduction towards self-supervision charges from the value arrived by the DVO applying the CPWD rates. The CIT(A), after considering the facts that the assessee has maintained books of accounts and bills for construction, scaled down the addition to Rs.7,25,000/-. We do not find any error or infirmity in the order of the CIT(A). Therefore, we inclined to upheld the order of the CIT(A) and reject the ground raised by the revenue."*

**29.** By respectfully following the order of the coordinate bench of the tribunal, we allow further deduction of 10% in addition to 5% which has already been granted by the Id. CIT(A) to meet the ends of justice. Accordingly, Assessing Officer is directed to allow deduction of 15% on variation of rates between CPWD and PWD. Thus, this ground of appeal raised by the assessee is partly allowed.

**30.** Ground No.5 relates to sustenance of addition of Rs.9,75,000/- towards unexplained flat advances from customers.

**34.** In the assessment order, the Assessing Officer has noted that there was a negative balance of Rs. 9,75,000/- under the head sundry debtors. The Assessing Officer called upon the

assessee to furnish the explanation for the above. The assessee firm submitted before that Assessing Officer that an amount of Rs.9,75,000/- was received from one Sri W. Raju towards advance for purchase of flat. It was also submitted that the said person had withdrawn the proposal and received back money on 15/12/2010. The Assessing Officer noted that the assessee firm had not filed any proof in support of the said claim. The Assessing Officer, thus, treated the impugned amount of Rs. 9,75,000/- as unexplained cash credit under section 68 of the Act.

**31.** On appeal before the Id. CIT(A), Id. counsel has reiterated the submissions which he was made before the Assessing Officer but, no evidence is filed. Therefore, Id. CIT(A) confirmed the order of the Assessing Officer. Even before us also, no evidence with reference to the advance received from Sri W. Raju for purchase of flat. Therefore, we find no infirmity in the order passed by the Id. CIT(A). Thus, this ground of appeal raised by the assessee is dismissed.

**32.** Ground No.6 relating to addition of Rs. 9,00,000/- & Rs.45,000/- on account of cash credits in the bank account.

**33.** In the assessment order, the Assessing Officer has noted that the assessee has not explained the credits in the bank account held with Indian Bank of Rs. 9,00,000/-. The Assessing

Officer, thus, treated the said credit as unexplained and added the same to the total income of the assessee. The relevant portion of the order of the Assessing Officer is extracted as under:-

*“In response to this office query towards the sources for various deposits made into firm's bank account held with M/s Indian .Bank vide account No. 858761196, the assessee firm has submitted an analysis of remittances in the said bank account on 11-02-14 in which It has categorically stated that the cash remittances have been passed through cash book. However It is noticed that a cash deposit of Rs, 9,00,000/- was made on 27-09-09 in the said bank account and on a perusal of the cash book produced for verification no entry to that effect was found available In the cash book as against the assessee firm's submission that the cash remittances are passed through cash book, Therefore In the absence of the some It was proposed to treat the above cash deposit as unexplained investment made by the firm and bring the same to tax. Accordingly vide this office letter dated 0703-2014 the assessee firm was requested to file its objections for the same along with necessary supporting evidences. In response to the same the assessee firm submitted a letter on 18-03-14, with a fresh explanation stating that the firm has opened the Said bank account only on 20-10-2039, and they are not in a position to explain why this amount of Rs. 9,03,000/- was remitted in the bank on 27-09-09. It was further stated by the assessee firm that the bankers were also unable to clarify the same. Therefore as the assessee firm was unable to explain the deposit, as proposed the cash deposit of Rs. 9,00,000/- made in the aforesaid bank account on 27-09-2014, has been treated as assessee firm's unexplained Investment and brought the same to tax accordingly.*

*It is noticed from the analysis of remittances made into the firms bank account held with M/s. Indian Bank, Maharanipet, Visakhapatnam Vide A/c No. 858761196, filed on 11-02-2014, that sources for an amount of Rs. 45,000/- credited in the bank account was on account of receipt of the said amount from one Sri BS Patnaik towards flat advance. As the assessee firm has not filed any proof in support of the same it was, proposed to treat the same as assessee firm's unexplained credit in the books of account and bring the same to tax. Accordingly, vide this office letter dated 07-03-2014 the assessed-firm was requested to file its objections for the same along with necessary supporting evidences. In response to the same the assessee firm submitted a letter on 18-03-14, stating that the amount was received from*

*one Sri BS Patnaik towards advance for the flat and the same was returned as he was not interested to take the flat. However the assessee has not filed any proof in support of his explanation. He has not furnished details of the flat towards which the advance was stated to be given and the address of the party even. Therefore in the absence of any supporting evidences, the assessee's explanation is not acceptable and hence as proposed the credit of Rs. 45,000/- has been treated as assessee's unexplained credit and brought the same to tax accordingly."*

**34.** On appeal before the Id. CIT(A), it was submitted that the cash deposits of Rs. 9,00,000/- were made by the assessee on 27/10/2009. The Assessing Officer instead of placing reliance in the bank account issued by the bank, referred to analysis of remittances prepared by the assessee firm, wherein the date was wrongly mentioned as 27/09/2009. In the absence of any deposit on 27/09/2009 there is no question of treating any sum as unexplained and hence, it is prayed that this addition may kindly be deleted. The Id. CIT(A) after considering the explanation of the assessee, confirmed the order of the Assessing Officer by observing that the assessee has failed to file bank statement for September, 2009. Therefore, the discrepancy pointed out by the Assessing Officer remains unconciled and unexplained.

**35.** Before us, Id. counsel for the assessee has submitted that the assessee has deposited a sum of Rs. 9,00,000/- in cash on 27/10/2009 wherein remittance prepared by the assessee firm, the date was wrongly mentioned as 27/09/2009. Ld. Counsel for

the assessee has pointed out at page No. 32 of the paper book No.1, which is statement of account with Indian Bank, Maharanipecta, Visakhapatnam and submitted that the assessee has opened this account on 20/10/2009 and an amount of Rs. 9,000/- is a opening cash deposited. Therefore, it is not possible for the assessee to deposit the said amount of Rs. 9,00,000/- on 27/09/2009 prior to the date of opening of the bank account. This fact was not disputed by the Id. Departmental Representative. We have considered the assessee's bank account maintained with Indian Bank (page no. 32 of the paper book No.1) and a perusal of the bank statement shows that on 20/10/2009 the assessee has opened the bank account with initial deposit Rs.9,000/-. It is also very clear that on 27/10/2009 the assessee has deposited cash of Rs. 9,00,000/- nor on 27/09/2009. Under these facts and circumstances of the case, the Assessing Officer as well as Id.CIT(A) is not correct in taking the date as 27/09/2009 contrary to the bank statement on 27/10/2009. Thus, this addition made by the Assessing Officer and confirmed by the Id. CIT(A) are deleted by reversing the order passed by the Id. CIT(A). Thus, this ground of appeal raised by the assessee is allowed.

**36.** So far as addition of Rs. 45,000/- is concerned, the assessee has not placed any evidence before the Assessing Officer nor

before the Id. CIT(A), even before us also. Under these circumstances, we find no infirmity in the order passed by the Id.CIT(A). Thus, this ground of appeal raised by the assessee is dismissed.

**ITA No. 323/VIZ/2017**

**37.** The assessee has raised the following grounds of appeal:-

- "1. *The order of the learned Commissioner of income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*
8. *The learned Commissioner of income Tax (Appeals) is not justified in sustaining the addition of Rs. 3,03,000/- made by the Assessing Officer towards alleged unexplained advance from Sri Surya Rao.*
9. *The learned Commissioner of Income Tax (Appeals) is not justified in partly sustaining the addition of Rs. 43,72,498/- made by the assessing officer towards disallowance u/s 40A(3) of the Act.*
10. *The learned Commissioner of Income Tax (Appeals) ought to have granted deduction of 15% towards difference in CPWD rates and local rates as against 5%.*
11. *The learned Commissioner of Income Tax (Appeals) is not justified in partly sustaining to the extent of Rs. 9,06,000/- the addition made by the Assessing Officer towards alleged unexplained deposits in the bank account.*
12. *The learned Commissioner of income Tax (Appeals) is not justified in sustaining the addition of Rs. 2,70,804/- made by the Assessing Officer towards unexplained expenditure.*
13. *Any other ground that may be urged at the time of appeal hearing."*

**38.** Ground Nos. 1 & 7 are general in nature, no adjudication is required, therefore, same is dismissed

**39.** Ground No.2 is relating to sustenance of addition of Rs.3,03,000/-.

**40.** In the assessment order, the Assessing Officer has noted that the assessee had shown unsecured loans to the tune of Rs.3,03,000/- and submitted that the same has been received from one Sri Surya Rao. This advance was received for the purpose of purchase of flat and submitted that same is returned back to the customer. The assessee has not filed any evidence, therefore, the same is added to the total income of the assessee.

**41.** On appeal before the Id. CIT(A), he was reiterated the submissions which he made before the Assessing Officer, but not filed any evidence to show that the impugned advance received by the assessee from the customer is returned back. Even before us also, no evidence is filed. In view of the above, this ground raised by the assessee is deserves to be dismissed for want of evidence. Accordingly, same is dismissed.

**42.** Ground No. 3 relating to sustenance of addition of Rs. 43,72,498/- towards disallowance under section 40A(3) of the Act.

**43.** The Assessing Officer has disallowed in respect of construction amount of Rs. 34,36,489/-, which was debited to the profit & loss account.

**44.** The said amount of Rs. 34,36,489/- was incurred towards purchase of material for the period from 30/04/2010 to 31/03/2011. Out of the said amount, as per the cash book produced at page No. 28 of the paper book, the assessee stated that a sum of Rs. 15,75,134/- was transferred to Sathi Ramakrishna Reddy & Sathi Subbi Reddy and the balance amount of Rs. 18,61,355/- was debited to the profit & loss account and claimed as expenditure. This is evidenced from the construction material account placed in the paper book. Therefore, the actual expenditure debited to the profit & loss account towards construction material was Rs.18,61,355/- and not Rs. 34,36,489/- If at all, the expenditure required to be disallowed under section 40A(3) in respect of construction material, the aggregate amount of Rs. 18,61,355/- should be disallowed but not Rs. 34,36,489/- as worked out by the Id. Assessing Officer. The Assessing Officer has disallowed the entire amount of Rs. 34,36,489/- stating that the amount of expenditure was incurred in excess of Rs. 20,000/- in cash, which is incorrect. The actual expenditure was only Rs. 18,61,355/-.

**45.** Even otherwise also, on verification of the construction material account, the assessee has debited the construction material account month-wise, but not item-wise or party-wise. As

per the provisions of section 40A(3), the payment in excess of Rs. 20,000/- to the individual parties required to be disallowed, but not the monthly expenditure incurred for purchase of the material. In this case, the Assessing Officer failed to bring on record the details with regard to the amounts of expenditure incurred in excess of Rs.20,000/- party-wise. The Assessing Officer has not even made the effort to demonstrate that the assessee had incurred the expenditure in excess of Rs. 20,000/- in aggregating party-wise also. Therefore, we are unable to sustain the addition made by the Assessing Officer in respect of construction material account under section 40A(3) of the Act. Accordingly, we set aside the order passed by the Id. CIT(A) and allow this ground of appeal raised by the assessee.

**46.** In respect of remaining payment of Rs. 9,36,009/- (Rs.43,72,498 – Rs. 34,36,489/-), the Assessing Officer has brought on record the details clearly, hence, we uphold the order of the Id. CIT(A) and the appeal of the assessee is partly allowed.

**47.** Ground No.4 relating to deduction in respect of difference in CPWD rates and PWD rates.

**48.** This ground of appeal has already been considered and adjudicated in assessee's appeal for the Assessment Year 2010-11

at para No.28. The same is applicable during the year under consideration also. Assessing Officer is directed accordingly.

**49.** Ground No.5 is relating to unexplained deposits in the bank account of Rs. 9,06,000/-.

**50.** In the assessment order, the Assessing Officer has noted that the assessee has deposited an amount of Rs. 6,00,000/- on 13/03/2011. When the Assessing Officer asked the assessee, it was submitted that the amount in question is received from Shri Subbirema Reddy through cheque, however, the assessee has not filed any evidence to support the case of the assessee. Therefore, the Assessing Officer has added the same in the hands of the assessee. On appeal before the Id. CIT(A) also, no evidence is filed.

**51.** Before us, the Id. counsel for the assessee has submitted that the amount of Rs. 6,00,000/- is received from Mr. Subbirema Reddy through a cheque and all the details are available with the assessee and therefore he may be permitted to substantiate his case before the Assessing Officer.

**52.** We have heard both the sides and find that assessee received the amount in question through cheque, but failed to explain on what purpose this amount is received and whether the creditor Mr. Subbirema Reddy has creditworthiness or not.

Therefore, in the interest of justice, this issue has to be remitted back to the file of the Assessing Officer for fresh adjudication. We therefore, set aside the order passed by the Id. CIT(A) and direct the Assessing Officer to re-adjudicate this ground afresh in accordance with law after providing reasonable opportunity of being heard to the assessee. It is also directed the assessee to file all the relevant material before the Assessing Officer. This ground of appeal is allowed for statistical purposes.

**53.** Insofar as credit of Rs. 3,06,000/- is concerned, it was submitted before the Assessing Officer that the amount has been received from the customer, but no name, no details / information has been given. Therefore, the same is added in the hands of the assessee. Even before the Id. CIT(A) no explanation is given. Even before us the assessee has not given any explanation. Therefore, the addition made by the Assessing Officer of Rs. 3,06,000/- is hereby confirmed. Thus, this ground of appeal is dismissed.

**54.** Ground No.6 relating to sustenance of addition of Rs.2,70,804/- towards unexplained expenditure.

**55.** In the assessment order, the Assessing Officer has noted from the balance sheet and profit & loss account that the assessee has arrived at an excess claim expenditure of Rs. 2,70,804/- in

the profit & loss account for the Assessment Year 2011-12, but not able to explain the same before him. Therefore, Assessing Officer has disallowed and added back to the total income of the assessee.

**56.** It was submitted, on appeal, before the Id. CIT(A) that the assessee is following double entry system of accounting and hence, accounts would not tally if there was any excess amount brought into the books without correspondence outflow. The Id. CIT(A) considered the same and confirmed the order of the Assessing Officer. Even before us, the assessee is not able to explain the discrepancy pointed out by the Assessing Officer. Therefore, we find no infirmity in the order of the Id. CIT(A). Thus, this ground of appeal raised by the assessee is dismissed.

**57.** In the result, appeals filed by the Revenue are dismissed and the appeals filed by the assessee in ITA No.247/VIZ/2016 is partly allowed and in ITA No. 323/VIZ/2017 is partly allowed for statistical purposes.

Order Pronounced in open Court on this 14<sup>th</sup> day of March, 2018.

Sd/-  
**(D.S. SUNDER SINGH)**  
Accountant Member

sd/-  
**(V. DURGA RAO)**  
Judicial Member

**Dated : 14<sup>th</sup> March, 2018.**

**vr/-**

Copy to:

1. The Assessee - M/s. Gowthami Builders, D.No. 48-3-6, Srinagar, Visakhapatnam.
2. The Revenue - ITO, Ward-1(4), Visakhapatnam.
3. The Pr.CIT-1, Visakhapatnam.
4. The CIT(A)-1, Visakhapatnam.
5. The D.R., Visakhapatnam.
6. Guard file.

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.

