

आयकर अपीलीय अधिकरण , 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI

श्री एनगणेशन .एस.आर., न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. Nos. 216 to 220/Chny/2017

निर्धारण वर्ष/Assessment Years : 2008-09 to 2012-13

Shri N. Ragothaman,
Prop: Ravi Jewellery,
No 1, Prakasam Road,
T. Nagar,
Chennai – 600 017.

The Income Tax Officer,
Vs. Non-Corporate Ward – 2(3),
Chennai – 600 034.

[PAN: AAFPR 6790K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No. 112/Chny/2017

निर्धारण वर्ष/Assessment Years : 2009-10

The Income Tax Officer,
Non-Corporate Ward – 2(3),
Chennai – 600 034.

Vs. Shri N. Ragothaman,
Prop: Ravi Jewellery,
No 1, Prakasam Road,
T. Nagar,
Chennai – 600 017.

[PAN: AAFPR 6790K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by
Revenue by

: Shri. S. Sridhar, Advocate
: Shri. S. Vijayaprabha, JCIT

सुनवाईकीतारीख/Date of Hearing

: 04.01.2018

घोषणाकीतारीख/Date of Pronouncement

: 03.04.2018

आदेश/ ORDER**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee filed the appeals in ITA Nos. 216 to 220/Chny/2017 against the consolidated order passed by the CIT(A), Chennai in ITA Nos.155 to 158/CIT(A)-2/14-15 dated 31.10.2016 for assessment years 2008-09 to 2011-12 & ITA No.242/CIT(A)-2/14-15 dated 31.10.2016 for assessment year 2012-13. The Revenue filed the appeal in ITA No.112/Chny/2017 for the assessment year 2009-10 alone.

2. Shri Ragothaman, the assessee, is proprietor of M/s. Ravi Jewellery. A survey was conducted at his business premises on 23rd& 24th April 2012. At that time, inter alia, physical stock of gold, silver and diamond items were taken and it was found that shortage of stock worth Rs.1,28,75,320/- was found. In the sworn statement, the assessee admitted ,inter alia, that most of his sales were outside the books and he could not furnish evidence for purchase in respect of gold and silver. He admitted the entire stock deficit valued at Rs.1,28,75,320/- is on account of sales outside the books and offered to tax. On 30.09.2012, the assessee filed return for assessment year 2012-13 admitting a total income of Rs.1,31,69,420/- which included Rs.1,28,75,320/- admitted at the time of survey towards shortage of stock. When the AO issued a show cause notice dated 26.03.2014 on credit card

sales issue for assessment year 2012-13, the assessee filed a revised return revising his total income at Rs.9,37,860/-, as against the total income admitted in the original return at Rs.1,31,69,420/-. In the revised return, the assessee estimated @ 5% on the value of shortage of stock found at the time of survey at Rs.1,28,76,500/-. After affording adequate opportunity to the assessee, the Assessing Officer held, inter alia, that the revised return filed by the assessee is an afterthought and assessed the income admitted in the original return. Further, he made an addition of Rs.29,82,625/- on account of credit card sales. On appeal, the CIT(A) upheld the assessment made based on the original return but deleted the addition made on account of credit card sales.

3. Based on the survey findings, the AO issued notices U/s.148 on 27.04.2012 for assessment years 2008-09 to 2011-12. The assessee requested to treat the original returns filed for each of these assessment years as the return in response to notices U/s.148. The AO found that the net profit admitted by the assessee for the assessment year 2012-13 in its original return, after the survey, was at 11.32%. However, in the returns for assessment years 2008-09 to 2011-12, the assessee has admitted very low net profit and hence adopted the admitted net profit rate @ 11.32% in ay 2012-13 as the base for these assessment years and brought the difference sum to tax in the respective assessments. Further, in the assessment made in

assessment year 2009-10, the AO found that the assessee sold his land and claimed deduction u/s.54F on the capital gains. On examination, he found that the sale proceeds were not deposited in the capital gains account scheme and hence he denied the exemption claimed U/s.54F. Aggrieved against these assessment orders, the assessee filed appeals before the CIT(A). The CIT(A) held, inter alia, that the AO has validly reopened the impugned assessments. Keeping in view the minimum percentage of 8 % of turnover prescribed u/s. 44AD and at the same time, taking into account the various discrepancies such as non- updation of stock register, non-accounting of major portion of sales, non-availability of purchase bills and sales bills, the deficit stock unearthed on physical stock taking and the admission of the assessee during the survey proceedings that the unaccounted stock has accumulated over the years, it would be fair to estimate the Net Profit at 10 % of the sales, for each of the years. Against these decisions, the assessee filed the above appeals for ays 2008-09 to 2011-12.

3.2 In respect of denial of deduction u/s 54F in ay 2009-10, the CIT(A) directed the Assessing Officer to call for the details such as payments made towards purchase/construction of the flat at Vanniar Street, Completion Certificate etc., to cross-verify the claim of the appellant that the new property has been acquired within the prescribed time limit. Subject to fulfilment of the conditions laid down u/s. 54F, the Assessing Officer shall pass

a speaking order, allowing exemption u/s. 54F to the appellant. Aggrieved against this decision, the Revenue filed the above appeal.

4. Let us take the assessee's appeal in respect of ay 2012-13 first :

4.1 The AR submitted that the CIT(A) erred in sustaining the addition based on the original return overlooking the valid revised return filed by the assessee without assigning proper reason and justification. He submitted that the entire sales representing deficit stock cannot be assessed as such as income and at best the profit embedded in such sales alone should be assessed. He has submitted that the survey statements had no sanctity in the eyes of the law especially in the absence of impounded materials and hence he pleaded that the addition sustained by the CIT(A) be deleted and suggested to direct a reasonable % of the impugned sales as income of this ay. Per contra, the DR invited our attention to the following portion of the statement recorded on Oath at the time of survey which was extracted by the CIT(A).

"Qn.29: Are you maintaining Separate Sales and Purchases register?

Ans: No, I am not maintaining separate Sales and Purchase registers. I am Maintaining the details of Sales & Purchases In the day book itself.

Qn.30: Are you in the habit of issuing bills for sales made?

Ans: In majority of cases the sales are made without issuing bills. However, if the customers insist on bills, the bills are issued.

Qn 31: Now I am showing you a slip which was issued by you on 21.4.2012, at the time of Purchase made by me. Have you raised any bill for this.

Ans: No.

Qn 32: You have stated in the answer to the question No 30 that majority of sales are without bills. Please state how the sales are accounted.

Ans: We issue small slips to the customers which will contain the quantity of jewellery and amount payable by the customer. The customer will pay the cash at the cash counter by showing the slip. We do not maintain any account for such sales.

Qn 33: On 31.3.2009 the value of closing stock was shown at Rs.1.89 crores. Where as the value of sales has been shown at Rs.34 lakhs only. Normally a prudent person won't keep so much dosing stock in correspondence with less sales made. In that case why so much closing stock has been maintained?

Ans: The stocks are accumulated over the years.

Qn 34: Since bills are not issued for majority of the sales and excess stock with corresponding Sales has been maintained, it amounts to treat that un-accounted sales has been made. Please explain.

Ans: Relevance in invited to the answers of the questions 30 and 32 and unaccounted sales was made.

Qn 35: During the course of survey conducted at your premises today inventory of Gold jewellery, silver articles and diamond jewellery were taken by our staff with the help of your employees. Do you agree that the inventory of stock was taken correctly?

Ans: Yes, I agree that the inventory of physical stock was taken correctly.

Qn 36: Have you kept the stock pertaining to M/s Ravi Jewellersany where else other than in the shop?

Ans: No, All the stock relates to shop are kept in the shop only.

Qn 37: Have you kept the stock of other persons in the shop?

Ans: No, All the stock found in the shop belongs to M/s Ravi Jewellers only.

Qn 38: The physical stock found in your shop during the course of survey is as under.

<i>Item</i>	<i>Physical Stock</i>	<i>Stock as per Book</i>	<i>Deficiency</i>	<i>Values as on the date of survey</i>
<i>Gold</i>	<i>16402.688 gm</i>	<i>19680.412 gms</i>	<i>3277.724 gms</i>	<i>Rs.85,69,657/-</i>
<i>Silver</i>	<i>284.701 Kg</i>	<i>355.711 Kg</i>	<i>71.07 Kg</i>	<i>Rs.42,11,447/-</i>
<i>Diamonds</i>	<i>37.68 ct</i>	<i>40.914 ct</i>	<i>3.23 ct</i>	<i>Rs.94,216/-</i>
			<i>Total</i>	<i>Rs.1,28,75,320/-</i>

Please state the reason for the discrepancy?

Ans: As stated earlier vide answers to question No 30 & 32 the deficiencies are due to unaccounted sales.

Qn 39: As per the books maintained by you the book stock of gold in 19680.412 gms and silver is 355.77 kgs. Please produce purchase bills for the same.

Ans: Bills in respect of purchase of diamond are here by produced. As regards the bills for purchase of gold and silver I am having partially.

Qn 40. The last return of income filed by you pertains to AY. 2010-11. Where in you have declared income from business to the extent of Rs.99,623/- and paid tax to the extent of Rs.16,165 (T.D.S.). On perusal of Balance sheet and P&L that the sales as reported as per P&L in only to the extent of 35.90 lakhs and the closing stock as on 31.03.2013 in to the extent of 1.92 crores. Please explain the huge, variation between the sales reported and the closing stock. It is also seen that the purchases inrespect of Gold, Silver & diamonds only to the extent of 25. 00 lakh. Please explain.

Ans: I wish to state that the sales made through credit card customers has not been entered in the books. I am not able to furnish bills for my purchasers. there has also been unaccounted purchasers for which funds were generated from the earlier years unaccounted sales, I agree that there is a huge variation in the sales reported by me as per books which in only Rs.35.90 lakhs as against the closing stock reported to the

extent of Rs.1.92 crores. Since the profit shown by me to the extent of Rs. 99, 623/- in distorted and does not show the correct and factual position of profits. I offered to pay the tax on the suppressed income for the assessment year 2010-11.

Qn 41. Have you filed return of income for A. Y 2011-12 and furnish your financial statements

Ans: Theve not filed return of income for the AY 2011-12 as on date. However, on the advice of my auditor I have paid on amount of Rs.13,46,000 as advance tax.

Q 42: What is the basis for the payment of advance tax of Rs. 13.46 lakhs for the A. Y 2011-12.

Ans: I have paid the "above tax onlv on the advice of my auditor M/s. Venkatgiri & Co, CA. I have no information for the basis on which the above payment was made.

Q 43: Have you paid any tax during the financial year 2011-12 i.e. A. Y 2012-13.

Ans: No, I have not paid any tax during the entire financial year relating to the A. Y. 2012-13.

Qn 44: During the course of Survey u/s 133A of IT Act 1961 on 23 & 24 Apr 2012, it is seen there is a deficit stock valued at Rs.1,28,75,320/-. Please explain.

Ans: I wish to state that most of my sales were made outside the books and I have also not been able to furnish the evidence in respect of the purchasers made by me with regard to gold & silver. I also wish to state that I have accumulated stock which is not disclosed to an extent. I will rectify the defects which are there in my books of accounts and co-operate with the department for completion of my income tax assessments as sale proprietor of M/s. Ravi Jewellers. I am giving post dated cheques of Federal Bank for Rs. 38,62,500/- (Four cheques).

Q 45: Do you wish to state anything further?

Ans; I wish to state that I will extend my full Co-operation with the department and ensure tax compliance in future. "

It is crystal clear from the fore-going, that on account of glaring lacunae in the maintenance of books especially the fact of unrecorded purchases as well as sales, accumulation of stock over the years, which is on account of unrecorded sales, etc., the assessee cannot justify his claim of set off of any expenditure whatsoever from the amount of admission made by him in the course of survey proceedings. Thus, the question of 'estimating' profit based on deficit stock does not arise at all."

and submitted that after the survey the assessee filed return of income for ay 2012-13 on 30.09.2012 admitting total income of Rs. 1,31,69,420/- which included the income admitted at the time of survey. This return was supported by a tax audit certificate. The assessee filed a revised return on 29.03.2014 in which the income is estimated at a mere 5% of stock shortage. The revised return is not supported by any tax audit report. A valid revised return can be filed when the assessee subsequently discovers any inadvertent

omission or error or mistake in-computation. However, the revised return is not supported by any tax audit report and hence, the AO has correctly held that it is filed by an afterthought and rejected the assessee's claim. The CIT(A) has also held that the retraction is made without any basis. The assessee's plea that the sworn statements recorded at the time of survey had no sanctity in the eyes of law is not applicable to the facts of this case where the survey has resulted in a finding of shortage of stock and all other defects and other information's are brought on record. The DR further said that even on merit the assessee's plea is not correct when the assessee has admitted that its purchases were also not accounted and the assessee has not placed any evidence to prove that all his purchases are accounted. In such facts and circumstances, the net profit addition is warranted and hence the addition sustained by the CIT(A) may be upheld.

5. We heard the rival submissions and gone through the relevant materials. It is clear from the survey findings that the assessee has not maintained books of accounts for his purchases as well as sales. The survey team found shortage of stock which was not disputed. The assessee by a sworn statement accepted the value representing deficit stock as his income. Further, he filed a return of income which was supported by a tax audit report. When the assessing officer proposed to make certain addition to the returned income only, the assessee filed a revised return which is not

supported by any tax audit report. Neither the assessee pointed out specific defects nor omissions in the original return. In the facts and circumstances, the admission made by the assessee in the original return and the addition made by the AO on such admission has to be sustained. Further, as per the ratio of the Gujarat High Court in the case of CIT vs President Industries 258 ITR 654 (Guj) when the sources for the assessee's purchases are not explained, the entire undisclosed sales made out of such purchases can be added as an income and hence, the addition made by the AO can be sustained on this principle also. Hence, the assessee's appeal grounds are dismissed.

6. Now, let us take the assessee's appeals from ays 2008-09 to 2011-12. The AR submitted that the CIT(A) erred in the sustaining the assumption of jurisdiction u/s. 147 and consequently erred in sustaining the re-assessment orders without assigning proper reasons and justifications. Per contra, the DR invited our attention to the relevant portion of the order of the CIT(A) which is extracted as under:

" The following table highlights the fact that for all the four AYs in question, the notices of re-opening issued u/s. 148 were all issued well within the time limit of four years from the end of the relevant Assessment Year, prescribed u/s. 149(a) of the Act. Besides, the Assessing Officer had with him fresh inputs in the form of the findings of the survey conducted in the assessee's case, on 23rd and 24th April 2012, specifically the discrepancies such as, that purchases and sales were not recorded properly in the books of accounts of M/s Ravi jewellery, of which the assessee is the Proprietor. The Assessing Officer also observed that, for each of these 4 AYs., the volume of and value

of the jewels sold were very high while comparing with the amount of sales offered for assessment:

<i>Sl.No</i>	<i>AY</i>	<i>Date of notice u/s. 148</i>	<i>Date of order u/s. 143(3) r.w.s. 147</i>	<i>Remarks</i>
1	2008-09	27.04.2012	28.03.2014	<i>(i) Re-opening is within 4 years from end of AY . (ii) New inputs – Survey findings (iii) Volume, value of jewels sold are very high vis-a-vis amount of sales offered for assessment</i>
2	2009-10	27.04.2012	28.03.2014	-do-
3	2010-11	27.04.2012	28.03.2014	-do-
4	2011-12	27.04.2012	28.03.2014	-do-

The Assessment Orders u/s. 143(3) r.w.s. 147 of the Act, for all the four AYs in question, have been passed within the time limit prescribed u/s. 153(2) of the Act, i.e. the orders have been passed within the prescribed period of one year from the end of the FY in which the notice u/s, 148 has been served.

Hence, it is apparent that the grounds raised by the appellant are baseless and untenable. The validity of the re-opening of the assessments and the passing of the Assessment Orders u/s. 143(3) r.w.s. 147, for all the four years in question, are hence, upheld.

This ground, for all the four AYs., is dismissed.”

7. The AR submitted that the survey was conducted on 23rd and 24th of April, 2012. The re-opening of the assessment made for assessments years 2008-09 to 2011-12 is not based on the survey materials of those years. In this regard, he relied on the decisions of the jurisdictional High Court in the case of Tanmac India vs DCIT reported in [2016] 97 CCH 0189 ChenHC, Tax Case (Appeal) No. 1426 of 2007 dated 19.12.2016 and CIT vs Gupta Abhushan (P) Ltd., 312 ITR 0166. Per contra, the DR invited our attention to

the reasons recorded by the AO by inviting our attention to the assessment order which is extracted as under:

"2. During the course of survey the following discrepancies were found out.

Stock Registers were not updated

Purchase bills were partly available

Majority of the sales were not accounted for.

Bills were not issued for the sales made

Entire credit card sales were not accounted for

On physical stock valuation deficit stock was unearthed

Books of accounts were not updated

During the course of Survey operation Sworn statement was recorded from Sri Ragothaman the proprietor of M/s Ravi Jewellery, while deposing me statement that he has confirmed as follows:

2.1 "Q. 30 Are you in the habit of issuing bill for sales made?

Ans: In majority of cases the sales are made without issuing bill. However, if the customers insist on bills, the bills are issued

Q.31 Now I am showing you a slip which was issued by you on 21-04-2012, at the time of Purchase made by me. Have you raised any bill for this .

Ans: No

Qn 32: You have stated in the answer to the question No 30 that majority of sales are without bills. Please state how the sales are accounted.

Ans: We issue small slips to the customers which will contain the quantity of jewellery and amount payable by the customer. The customer will pay the cash at the cash counter by showing the slip. We do not maintain any account for such sales.

Qn 33: On 31.3.2009 the value of closing stock was shown at Rs.1.89 crores. Where as the value of sales has been shown at Rs.34 lakhs only. Normally a prudent person won't keep so much closing stock in correspondence with less sales made. In that case why so much closing stock has been maintained?

Ans: The stocks are accumulated over the years.

Qn 34: Since bills are not issued for majority of the sales and excess stock with corresponding Sales has been maintained, it amounts to treat that un-accounted sales has been made. Please explain.

Ans: Reference is invited to the answers of the questions 30 and 32 and unaccounted sales was made.

Qn 38: The physical stock found in your shop during the course of survey is as under.

<i>Item</i>	<i>Physical Stock</i>	<i>Stock as per Book</i>	<i>Deficiency</i>	<i>Values as on the date of survey</i>
<i>Gold</i>	<i>16402.688 gm</i>	<i>19680.412 gms</i>	<i>3277.724 gms</i>	<i>Rs.85,69,657/-</i>
<i>Silver</i>	<i>284.701 Kg</i>	<i>355.711 Kg</i>	<i>71.07 Kg</i>	<i>Rs.42,11,447/-</i>
<i>Diamonds</i>	<i>37.68 ct</i>	<i>40.914 ct</i>	<i>3.23 ct</i>	<i>Rs.94,216/-</i>
			<i>Total</i>	<i>Rs.1,28,75,320/-</i>

Please state the reason for the discrepancy?

Ans: As stated earlier vide answers to question No 30 & 32 the deficiencies are due to unaccounted sales.

Qn 39: As per the books maintained by you the book stock of gold in 19680.412 gms and silver is 355.77 kgs. Please produce purchase bills for the same.

Ans: Bills in respect of purchase of diamond are here by produced. As regards the bills for purchase of gold and silver I am having partially.

Qn 44: During the course of Survey u/s 133A of IT Act 1961 on 23 & 24 Apr 2012, it is seen there is a deficiency valued at Rs.1,28,75,320/-. Please explain.

Ans: I wish to state that most of my sales were made outside the books and I have also not been able to furnish the evidence in respect of the purchasers made by me with regard to gold & silver. I also wish to state that I have accumulated stock which is not disclosed to an extent. I will rectify the defects which are there in my books of accounts and co-operate with the department for completion of my income tax assessments as sale proprietor of M/s. Ravi Jewellers. I am giving post dated cheques of Federal Bank for Rs. 38,62,500/- (Four cheques).

Q 45: Do you wish to state anything further?

Ans; I wish to state that I will extend my full Co-operation with the department and ensure tax compliance in future. "

3. During the course of survey the Books of consisting of Day Book, Ledgers, Party Ledgers, for the Financial Years 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011- 2012 were impounded.

Due to this, there was every reason to believe that income chargeable to tax had escaped from assessment, and the assessment was reopened under section 147 of the IT Act 1961."

8. The DR submitted that the survey findings indicated that the following discrepancies:

Stock Registers were not updated
Purchase bills were partly available
Majority of the sales were not accounted for.
Bills were not issued for the sales made
Entire credit card sales were not accounted for
On physical stock valuation deficit stock was unearthed
Books of accounts were not updated

Further, the statement recorded from the assessee indicated that the assessee is habitually making sales without bills and if the customers insist on bills only the bills are issued. The other processes are extracted above. The main issue is shortage of stock, which has been accumulated over the period as per the sworn statement given by the assessee. Thus, the opening stock as well as the closing stock of the impugned assessment years are inextricably connected. Further, the officer has impounded the books relating to fys 2007-08 onwards etc. Based on such reasons, the assessing officer has re-opened the assessment. Thus, the basis for re-opening the impugned assessments emanated from the survey results and has clear nexus. These facts distinguish the cases relied on by the AR.

9. We have heard the rival submissions, gone through the above submissions and relevant materials. The reasons recorded by the AO indicate clear application of mind and hence, the facts and circumstances of the cases

relied on by the assessee are clearly distinguishable and not applicable to this case. The assessee's appeal grounds fail.

10. The next ground is that the CIT(A) erred in partly sustaining the addition to net profit based on the survey results/ statements in the respective assessment years. The AR submitted that the CIT(A) erred in sustaining the addition without assigning proper and justification. The method of arriving on such profits for taxation were wrong, erroneous, unjustified and non-sustainable in law. The CIT(A) failed to appreciate that the in any event the extrapolation of survey results in completing the re-assessments was bad in law. Per contra, the AR submitted that the AO has adopted the admitted net profit rate of assessment year 2012-13 as the base for arriving the total income of the impugned assessment years. However, the CIT(A) after examining the entire case including the provisions of section 44AD held as under:

"The fact remains that the appellant has declared extremely low Net Profit for all the four years in question. At the same time, the method adopted by the Assessing Officer i.e, working out the percentage of the total Net Profit vis-a-vis the total Closing Stock of all 5 years (including the Survey year i.e. 2012-13), and applying this percentage of 11.32% to the turnover of each year to arrive at the "addition does not seem to be very sound. Keeping in view the minimum percentage of 8 % of turnover prescribed u/s. 44AD and at the same time, taking into account the various discrepancies such as non-updation of stock register, non-accounting of major portion of sales, non-availability of purchase bills and sales bills, the deficit stock unearthed on physical stock taking and the admission of the assessee during the survey proceedings that the unaccounted stock has accumulated over the years, it would be fair to estimate the Net Profit at 10%

of the sales, for each of the years in question. As the Assessing Officer has applied 11.32%, the appellant gets relief for all the four years in question, as tabulated below:

Sl.No	AY	Sales (Rs.)	11.32% of sales	10% of sales	Difference Col 4 – Col 5) i.e., relief
(1)	(2)	(3)	(4)	(5)	(6)
1	2008-09	2670232	302270	267023	35247
2	2009-10	3406476	385613	340648	44965
3	2010-11	3590721	406469	359072	47397
4	2011-12	2036761	230561	203676	26885

This ground, for all the four AYs is partly allowed."

and supported the orders of the CIT(A).

11. We heard the rival submissions. The survey results indicated that the assessee is not accounting sales as well as purchases. The entire book results could not be relied for want of proper evidences. In the facts and circumstances, an estimate is warranted. It should be based on a reasonable basis. In the assessee's case, there is no internal verifiable base in the earlier years. The only base is the assessee's admission based on survey results, which indicated that the net profit ratio is 11.32%. But this too could be a reflection of accumulated profits. In the facts and circumstances, the AO could have compared the actual results in the trade. It is not done so. The CIT(A) examined the provisions of section 44AD and taken cognizance of the other relevant factors in the assessee's case and decided the net profit at 10%. This is just 2% over the rate fixed by the deeming provision u/s. 44AD. However, the assessee is aggrieved. Taking the entire facts and

circumstances into account and in the interest of fairness, we direct the AO to assess the assessee's income @ 8% on the declared sales turnover of the impugned assessment years. The assessee's appeal grounds are partly allowed for all these assessment years.

12. Let us examine the Revenue's appeal as under:

12.1 The DR submitted that the CIT(A) without appreciating the fact that the assessee has not invested the sales proceeds in the capital gains accounts scheme, as mandated u/s. 54F directed the AO to verify the construction details of the assessee and allow 54F deduction. In this regard, the DR submitted that the CIT(A) erred in not applying the Mumbai High Court decision in the case of Shri. Humayun Suleman Merchant reported in 73 taxmann.com 2 (Bombay) and the Hon'ble Bangalore Tribunal decision in the case of Shri Sabir Salim Ahmed, in ITA No. 941/Bang/2010, wherein, deposit of capital gains in Notified bank accounts were held as mandatory, to avail the benefit of section 54/54F of the Act. Per contra, the AR submitted that the CIT(A) after applying the decisions of AC Shyam Sundarvs ACIT, Range-XIV, Chennai of the ITAT, C Bench in ITA NO. 2279/Mds/2015 dated 06.05.2016, P. Sankaranvs ITO, Ward- IX(4), in ITA No. 1167/Mds/2016 dated 15.09.2016 and CIT, Bangalore vs K. Ramachandra Rao [2015][230 Taxman 334 (Karnataka) has directed the AO to call for the details such as payments made towards purchase/construction of the flat at Vanniar Street, Completion

Certificate etc., to cross-verify the claim of the appellant that the new property has been acquired within the prescribed time limit. Subject to fulfilment of the conditions laid down u/s. 54F, the Assessing Officer shall pass a speaking order, allowing exemption u/s. 54F to the appellant and hence pleaded that the decision of the CIT(A) may be upheld.

13. We considered the rival submissions. Since, the CIT(A) after due application of the ratios has directed the AO to verify the claim and pass a speaking order with which we do not find any reason to interfere. The Revenue's appeal is dismissed.

14. In the result, the assessee's appeal in ITA No. 220/Chny/2017 is dismissed and appeal Nos. 216 to 219/Chny/2017 are partly allowed and the Revenue's appeal in ITA No. 112/Chny/2017 is dismissed.

Order pronounced on Tuesday, the 03rd day of April, 2018 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 03rd April, 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF