

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1104 & 1105/Chny/2013

निर्धारण वर्ष / Assessment Years : 2005-06 & 2008-09

The Deputy Commissioner of  
Income Tax,  
Central Circle – I,  
Coimbatore.

(अपीलार्थी/Appellant)

v. M/s Sri Krishna Construction Co.,  
78, East Peramanur Street,  
1<sup>st</sup> Cross, Mayor Nagar, Salem.

PAN : AASFS 6015 R  
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.814/Chny/2013

निर्धारण वर्ष / Assessment Year : 2008-09

M/s Sri Krishna Construction Co.,  
C/o Shri S. Sridhar,  
Sh. A.S. Sriraman, Advocates,  
New No.14, Old No.82, Flat No.5,  
1<sup>st</sup> Avenue, Indira Nagar, Adyar,  
Chennai - 600 020.

(अपीलार्थी/Appellant)

v. The Deputy Commissioner of  
Income Tax,  
Central Circle – I,  
Coimbatore.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.589/Chny/2014

निर्धारण वर्ष / Assessment Year : 2009-10

आयकर अपील सं./ITA No.1422/Chny/2015

निर्धारण वर्ष / Assessment Year : 2010-11

&

आयकर अपील सं./ITA No.849/Chny/2016

निर्धारण वर्ष / Assessment Year : 2011-12

M/s Salem Shri Krishna Construction  
Company Pvt. Ltd.,  
C/o Shri S. Sridhar,  
Sh. A.S. Sriraman, Advocates,  
New No.14, Old No.82, Flat No.5,  
1<sup>st</sup> Avenue, Indira Nagar, Adyar,  
Chennai - 600 020.

(अपीलार्थी/Appellant)

v. The Deputy Commissioner of  
Income Tax,  
Central Circle – I,  
Coimbatore.

(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by : Smt. Ruby George, CIT  
निर्धारिती की ओर से /Assessee by : Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 22.05.2018

घोषणा की तारीख/Date of Pronouncement : 24.07.2018

### **आदेश /ORDER**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

While both the assessee and the Revenue have filed appeals for assessment year 2008-09, and in addition, the Revenue has filed appeal for 2005-06 and the assessee has filed appeals for assessment years 2009-10, 2010-11 and 2011-12 against the various orders of the Commissioner of Income Tax (Appeals)-II, Coimbatore. Since common issues arise for consideration, we heard all the appeals together and disposing of the same by this common order.

2. There was a delay of 5 days in filing both the appeals by the Revenue. The Revenue has filed petitions for condonation of delay. We have heard the Ld. Departmental Representative and the Ld.counsel for the assessee. We find that there was sufficient cause for not filing the appeals before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Let's first take Revenue's appeal for assessment year 2005-06.

4. Smt. Ruby George, the Ld. Departmental Representative, submitted that the only issue arises for consideration is addition of ₹27,80,000/- as unexplained expenditure under Section 69 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. D.R., there was a search in the premises of one Shri A.R. Santhakumar. A simultaneous survey was conducted under Section 133A of the Act in the business premises of the assessee. During the course of assessment proceeding, according to the Ld. D.R., it was found by the Assessing Officer that there was a civil dispute between the assessee-firm and owner of the land. The assessee has also filed a

caveat before a Civil Court at Salem in respect of development of land. The assessee has spent ₹20.2 lakhs towards development. However, in the caveat it was claimed that more than ₹50 lakhs was invested in the said property. According to the Ld. D.R., when the assessee claimed before the Civil Court in the caveat, it cannot go beyond the statement made before the Civil Court. Therefore, according to the Ld. D.R., the Assessing Officer made an addition of ₹27,80,000/-, the difference between the investment disclosed in the books of account and what was disclosed in the caveat petition.

5. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the caveat petition is only signed by the counsel on the basis of oral instructions given by the assessee. The assessee had no occasion to read the averment contained in the caveat petition. Caveat petition, according to the Ld. counsel, is nothing but a petition in anticipation of civil dispute and requesting the Court to serve the notice before passing any interim order. Moreover, according to the Ld. counsel, it was not a sworn statement, therefore, a casual reference made by the counsel in the caveat petition cannot be a basis for making addition in the absence

of any other material. Moreover, the reference in the caveat petition is only based upon the market value and inflation which has to be considered on the investment. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer.

6. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the addition was made based on the caveat petition said to be filed before the Civil Court at Salem. It is not the case of the Revenue that a statement was also recorded. Other than the caveat petition, no other material is available on record to suggest that the assessee has invested more than ₹50 lakhs. The contention of the assessee that the market rate after considering the inflation may be equal to ₹50 lakhs cannot be brushed aside. This Tribunal is of the considered opinion that since the statement made in the caveat petition is not a sworn statement, there cannot be any addition only on the basis of the statement contained in the caveat petition filed before the Civil Court. Therefore, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer. This Tribunal

do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. Now coming to assessment year 2008-09 in the case of Sri Krishna Construction Co., for which both the Revenue and the assessee have filed appeals.

8. Smt. Ruby George, the Ld. Departmental Representative submitted that during the course of survey operation at the project site, namely, Viswa Apartments, Coimbatore, certain incriminating documents were found and impounded. As per the impounded documents, according to the Ld. D.R., transaction relating to some landed property was found and also a receipt of ₹30 lakhs in the stamp paper dated 30.11.2006 given by one Shri Rajavelu to Shri Prabhakaran. On issue of show cause notice by the Assessing Officer, the assessee clarified that the source of making the payment was the sale proceeds of debris on demolition of building. According to the Ld. D.R., the Assessing Officer found that the accounted and documented value of the site was ₹12 lakhs and the assessee has paid on-money of ₹18 lakhs. According to the Ld. D.R., the CIT(Appeals), after considering the payment of ₹18 lakhs,

deleted the addition made by the Assessing Officer to the extent of ₹18 lakhs and confirmed the addition of ₹12 lakhs. According to the Ld. D.R., the addition made by the Assessing Officer was on the basis of seized material and there was no such presumption that the assessee could have received the entire money on sale of debris on the date of power of attorney.

9. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the demolition of building was permitted by the Coimbatore Municipality by an order dated 07.09.2006. The power of attorney was given on 30.11.2206. Therefore, according to the Ld. counsel, it is not correct to say that the assessee sold entire debris on the date of power of attorney. According to the Ld. counsel, there was negotiation between the parties before entering into joint development agreement and execution of power of attorney. During the course of negotiation, according to the Ld. counsel, the assessee was permitted to demolish the building, therefore, it is not correct to say that the assessee sold the debris on the date of power of attorney. The fact remains that there was source for payment of ₹30 lakhs.

10. Shri S. Sridhar, the Ld.counsel for the assessee, further submitted that the consideration was ₹14,30,000/- and the difference of ₹15,70,000/- was realized from sale of demolished material. The CIT(Appeals) is not justified in confirming the order of the Assessing Officer to the extent of ₹12,00,000/-.

11. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee appears to have claimed that the demolition work was undertaken by its power of attorney agent Shri K. Prabhakaran and realized ₹12 lakhs on sale of debris. The lower authorities disbelieved the case of the assessee on the ground that no voucher was produced. The assessee appears to have claimed that the payment of ₹12 lakhs on 30.11.2006 was out of ₹15.7 lakhs obtained from sale of debris and not from sale proceeds of the land. The assessee also claims that ₹12 lakhs was received on 30.11.2006 from Shri Prabhakaran. The balance of ₹18 lakhs was received only after 30.11.2006. In fact, the payment was made only on 04.07.2007. The power of attorney given by Shri Rajavelu on 30.11.2006 to Shri K. Prabhakaran to put up a residential construction on the land after demolition of the

super structure. Therefore, this Tribunal is of the considered opinion that the payment of ₹12 lakhs on 30.11.2006 and another payment of ₹18 lakhs on 04.07.2007 was from the sale proceeds of debris and the sale of land, therefore, the CIT(Appeals) ought to have allowed the entire claim of the assessee. This Tribunal do not find any reason to disallow the claim of the assessee. Therefore, the orders of both the authorities below are set aside and the Assessing Officer is directed to allow the claim of ₹30 lakhs.

12. In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is allowed.

13. Now coming to the appeals filed by the assessee, M/s Salem Shri Krishna Construction Company Pvt. Ltd., for assessment years 2009-10, 2010-11 and 2011-12.

14. The only issue arises for consideration is whether the assessee is developer or contractor.

15. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the Assessing Officer concluded that the assessee is a contractor, therefore, not eligible for deduction under Section 80-IB

of the Act and protective assessment was made to the extent of ₹1,73,71,258/- on project completion method. The Ld.counsel further submitted that the assessee is a developer of the project. By way of amended deed, the assessee-company stepped into the shoes of partnership firm and promoted the housing project. According to the Ld. counsel, both the authorities below misunderstood the amended deed executed between the parties. According to the Ld. counsel, it is clearly stated that the assessee-company is the developer of the project, therefore, the assessee-company is entitled for all the attended benefits to the profit. According to the Ld. counsel, the Assessing Officer made protective assessment based on the certificate said to be issued by the Municipal Corporation. According to the Ld. counsel, the CIT(Appeals) ought to have seen whether the income has to be assessed substantially in the hands of the assessee or in the hands of the partnership firm. Therefore, according to the Ld. counsel, the CIT(Appeals) cannot continue the protective assessment in the absence of any material available on record. The Ld.counsel further submitted that the CIT(Appeals) confirmed the order of the Assessing Officer ignoring the claim of the assessee that the

assessee was following project completion method. In fact, the assessee is following project completion method and the entire income was offered for taxation for the assessment year 2012-13 and the Assessing Officer accepted the return on scrutiny.

16. On the contrary, Smt. Ruby George, the Ld. Departmental Representative, submitted that as per the amended deed, the assessee was the developer of the project. According to the Ld. D.R., the other rights and liabilities as per the original joint development agreement were not taken over by the assessee-company, therefore, the assessee is not eligible for any deduction under Section 80-IB of the Act. According to the Ld. D.R., the original agreement was between M/s Sri Krishna Construction Company and M/s Vaithamanidhi Construction. The assessee-company is not a party to the amended deed. According to the Ld. D.R., the amended deed also does not speak about the taking over of responsibility of Sri Krishna Construction Company. No share of income was given to the assessee-company. The assessee was expected to construct the project. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly found that the assessee is only a

contractor and not eligible for deduction under Section 80-IB of the Act. The CIT(Appeals) further found that since the assessee is considered as a contractor, the protective assessment made in the hands of the assessee was deleted. Therefore, according to the Ld. D.R., it is not correct to say that the protective assessment made by the Assessing Officer was continued in the hands of the assessee by the order of the CIT(Appeals).

17. We have considered the rival submissions on either side and perused the relevant material available on record. We have carefully gone through the joint development agreement, a copy of which is available at page 123 of the paper-book. This document was executed between M/s A.V.R. Vaithamanidhi Constructions, partnership firm, being the owner of the land and M/s Sri Krishna Construction Company, another partnership firm called as promoter. The rights and liabilities of the parties were mentioned in the joint development agreement. Sri Krishna Construction Company, partnership firm, was expected to develop the housing project which consists of Ground + 3 floors. The complex consists of 72 flats. It is designed in such a way that every floor shall have 18 flats. The

total area of construction excluding car parking, compound wall, sumps, overhead tanks, septic tank, lift machine room, electrical room, common toilets, would approximately come to 90,000 sq.ft. 30% of the constructed area would go to M/s A.V.R. Vaithamanidhi Constructions, being the owner of the land.

18. By way of amended deed dated 07.10.2006, M/s A.V.R. Vaithamanidhi Constructions and Sri Krishna Construction Company agreed that the profit and loss of the project shall be shared only on completion of flats on project completion method. They also mutually agreed that the joint development project has to be executed by the assessee-company, i.e. M/s Salem Shri Krishna Construction Company Pvt. Ltd. instead of Sri Krishna Construction Company, the partnership firm. It is to be noted that the Managing Director of the partnership firm, namely, Sri Krishna Construction Company and the Managing Director of M/s Salem Shri Krishna Construction Company Pvt. Ltd. are one and the same person, i.e. Shri K. Prabhakaran. It is also not the case of the Revenue that shareholders of the assessee-company and partners of the partnership firm are different persons. When the land owner

M/s A.V.R. Vaithamanidhi Constructions executed joint development agreement for construction of multi-storied complex with Sri Krishna Construction Company and by way of another deed the execution of joint development agreement was assigned to the assessee-company by the land owner and joint developer, this Tribunal is of the considered opinion that the entire work of joint development was assigned to the company, namely, M/s Salem Shri Krishna Construction Company Pvt. Ltd. The very fact that by way of amended deed, M/s A.V.R. Vaithamanidhi Constructions and Sri Krishna Construction Company mutually agreed that the joint development would be executed by M/s Salem Shri Krishna Construction Company Pvt. Ltd. shows that the attended benefits and liabilities were shifted to M/s Salem Shri Krishna Construction Company Pvt. Ltd. In other words, the partnership firm relinquished its all rights indirectly in favour of M/s Salem Shri Krishna Company Pvt. Ltd.

19. The joint development agreement as well as the amended deed executed between M/s A.V.R. Vaithamanidhi Constructions and Sri Krishna Construction Company has to be read harmoniously

so as to give effect to the intentions of the parties. If the amended deed alone is read and interpreted as if the other liabilities of the original deed were not transferred to M/s Salem Shri Krishna Construction Company Pvt. Ltd., then it will create an anomaly as to who will fund for construction of multi-storied building as per the agreement. If M/s Salem Shri Krishna Construction Company Pvt. Ltd. puts its own funds instead of Sri Krishna Construction company, naturally M/s Salem Shri Krishna Construction Company Pvt. Ltd. is entitled for the share of profit in construction of the building as per the original joint development agreement. Therefore, this Tribunal is of the considered opinion that M/s Salem Shri Krishna Construction Company Pvt. Ltd., the assessee herein, is a developer, therefore, entitled for deduction under Section 80-IB of the Act. Even otherwise, the assessee offered the profit for taxation for the assessment year 2012-13 as per project completion method and the Assessing Officer also accepted the same on scrutiny of return. Hence, we are unable to uphold the orders of both the authorities below. Accordingly, orders of both the authorities below are set aside and the Assessing Officer is directed to allow deduction under Section 80-IB of the Act.

20. In the result, all the three appeals of the assessee stand allowed.

21. To sum up the result, both the appeals of the Revenue in I.T.A. No.1104 & 1105/Chny/2013 are dismissed. The assessee's appeal in I.T.A. No.814/Chny/2013 is allowed, whereas, the assessee's appeals in I.T.A. No.589/Chny/2014, I.T.A. No.1422/Chny/2015 and I.T.A. No.849/Chny/2016 are allowed.

Order pronounced on 24<sup>th</sup> July, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 24<sup>th</sup> July, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-II, Coimbatore
4. DGIT (Inv.), Chennai
5. CIT, Central III, Chennai
6. विभागीय प्रतिनिधि/DR
7. गार्ड फाईल/GF.