

**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई**

IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : CHENNAI

**श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष**  
**एवं ए. मोहन अलंकामणी, लेखा सदस्य**

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER & SHRI  
A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

**I.T.A.Nos.1445, 1446, 1447, 1448, 1449, 1450, 1451 & 1452**  
**/Chny/2018**

Assessment years :2009-10, 2010-11, 2010-11, 2011-12, 2012-13,  
2013-14, 2014-15 & 2015-16

Assistant Commissioner of Income  
Tax,  
46,Nungambakkam High Road,  
Chennai 600 034.

**Vs. M/s.Jubilee Plot and Housing  
Pvt Ltd.,**  
1379,"Golden Villa",1<sup>st</sup> Block,  
6<sup>th</sup> street, 18<sup>th</sup> Main Road,  
Vallalar Kudiyeruppu,  
Anna Nagar(W),  
Chennai 600 040.

**(अपीलार्थी/Appellant)**

**[PAN AABCJ 3938 J]**  
**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Mr.S.Bharath,CIT,D.R  
: Mr.K.M.Mohandass,C.A

सुनवाई की तारीख/Date of Hearing

: 13-12-2018

घोषणा की तारीख /Date of Pronouncement

: 24-12-2018

**आदेश / O R D E R**

**PER GEORGE MATHAN, JUDICIAL MEMBER**

ITA Nos.1445 & 1447/Chny/2018 are the appeals filed by the  
Revenue against the common order of the Commissioner of  
Income Tax (Appeals)-18, Chennai, in ITA Nos.211 & 212/16-17

dated 12.01.2018 for assessment years 2009-10 & 2010-11, ITA No.1446/Chny/2018 is the appeal filed by the Revenue against the order of Ld.CIT(A)-18, Chennai, in ITA No.296/16-17 dated 12.01.2018 for assessment year 2010-11, ITA Nos.1448, 1451 & 1452/Chny/2018 are the appeals filed by the Revenue against the common order of the Commissioner of Income Tax (Appeals)-18, Chennai, in ITA Nos.213 & 216/16-17 & 94/17-18 dated 12.01.2018 for assessment years 2011-12,2014-15 & 2015-16, and ITA Nos.1449 & 1450/CHNY/2018 are the appeals filed by the Revenue against the common order of the Commissioner of Income Tax (Appeals)-18, Chennai, in ITA Nos.214 & 215/16-17 dated 12.01.2018 for assessment years 2012-13 & 2013-14.

2. As all the appeals are related to the same assessee and inter-connected, all appeals are disposed off by this common order.

3. Mr.S.Bharth Id,CIT D.R represented on behalf of the Revenue and Mr.K.M.Mohandass represented on behalf of the Revenue.

4. The grounds raised in the appeals of Revenue of ITA Nos.1445 & 1447/Chny/2018 being identical, they are disposed off together. Both the appeals of the Revenue are against the action of

Ld.CIT(A) in deleting the addition made by the Id. Assessing Officer.

The assessee raised the following grounds in both the appeals.

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

*2. The Id. CIT(A) erred in deleting the additions of Rs.1,21,31,712/- (A.Y.2009-10) and Rs.57,05,287/-(A.Y.2010-11) towards estimation of Turnover based on weighted average, made by the Assessing Officer(AO) in the assessment order u/s.143(3) r.w. sec 153A of the IT Act, 1961. for the AY 2009-10 & 2010-11 respectively.*

*2.1. The Id. CIT(A) erred in holding that addition in assessment u/s 153A of the IT Act 1961 can be made only on the basis of incriminating documents seized when as per section 153A of the IT Act, the Assessing officer is required to assess the total income of the assessee for each assessment year falling within the six assessment years, immediately preceding the previous year, in which search was conducted.*

*2.2. The Id. CIT(A) is not justified in holding that, it was not possible for the Assessing Officer to reopen the issues concluded in the original assessments and make additions of those amounts in the assessments completed under section 153A, when the Assessing Officer has rightly followed the provisions of the Act, in accordance with the legal mandate under section 153A of the I.T. Act, 1961.*

*2.3. The Id. CIT(A) erred in not following the decision of Hon'ble Kerala High Court in the case of CIT, Thrissur Vs St. Francis Clay Decor Tiles (2016) 385 ITR 624 and the decision of the Hon'ble Karnataka High court in ITA No. 38/2014 dated 25.07.2014 in the*

*case of M/s Canara Housing Development Company vs DCIT, Central Circle-1(1),Bangalore.”*

5.            The appeal of Revenue was originally posted for hearing on 11.12.2018. The same had been adjourned to 13.12.2018 at the request of the Id.D.R for verification as to whether any incriminating material had been found in the course of search. There was a search and seizure operation on the assessee company on 03.09.2013. Consequent to the search notice u/s.153A came to be issued on 29.04.2014 and the assessment was completed on 31.03.2016 wherein the expenses of the assessee in respect of its business of property development was disallowed to an extent of 24.35% on the ground that in the earlier years, similar disallowance to the extent of 24.35% was made. No seized material has been considered in the course of assessment for assessment years 2009-10 & 2010-11. Ld.D.R also submitted that except for two ledgers, which had been found and seized, no incriminating material was found during the course of search.

6.            In reply, the Id.A.R submitted that the order of the CIT(Appeals) was liable to be upheld in so far as no incriminating material has been found in the hands of assessee or was used against

the assessee, in the course of assessments in the case of assessee. The Id.A.R vehemently supported the order of the CIT(Appeals).

7.            We have considered the rival submissions. A perusal of the order of the CIT(Appeals) shows that the Ld.CIT(A) has followed the Special Bench decision of Mumbai Tribunal in the case of All Cargo Global Logistics Ltd. Vs. DCIT [2012] 137 ITD 287(Mum)(SB), as also the decision of Hon'ble High Court of Rajasthan in the case of Jai Steel (India) Vs.ACIT in 88 DTR(Raj) 1 where it has been held that in the absence of any incriminating materials found in the course of search, no addition can be made in the search assessment. As the Revenue has not been able to dislodge these findings of facts by the Ld.CIT(A) and as it is an admitted fact that no incriminating material in the case of the assessee had been found in course of search, we find no reason to interfere in the order of the CIT(Appeals) in respect of assessment years 2009-10 & 2010-11 in ITA Nos.1445 & 1447/Chny/2018.

ITA No.1446/Chny/201 (A.y.2010-11)

8.            The appeal of Revenue is against the action of Ld.CIT(A) in deleting the addition made by the Id. Assessing Officer on account of expenses claimed under "land development cost" amounting to ₹14,24,017.

9.            When the appeal is taken up for hearing, the representative of the Revenue and the representative for the Assessee fairly submitted that the tax effect involved in this appeal is less than ₹20 lakhs. It was a submission that the CBDT in its latest Circular No.3/2018 dated 11.07.2018 instructed its officers to withdraw all the appeals pending before the ITAT where the tax effect is less than ₹20 lakhs. This Tribunal is of the considered opinion that this Circular of CBDT is binding on the officers of the Department. Therefore, the Revenue cannot proceed further in this appeal. Accordingly, the appeal filed by the Revenue in ITA No.1446/Chny/2018 stands dismissed.

ITA Nos.1448,1451 & 1452/Chny/2018 (A.Ys 2011-12,2014-15 & 2015-16)

10.          Ld.D.R submitted that in the course of assessment, the Id. Assessing Officer has estimated the assessee's income by disallowing the expenditure in respect of land development at 24.35% as has been disallowed in the earlier years. It was a submission that the Ld.CIT(A) had deleted the disallowances on the ground that there is no incriminating material found the course of search, as also on the ground that estimation of income was not permissible.

11.          In reply, the Id.A.R submitted that the issue of estimated income was squarely covered by the decision of Co-ordinate Bench of this Tribunal in assessee's own case for assessment years 2008-08 &

2008-09 in ITA Nos.1097/Chny/2011 & 1315/Chny/2017 dated 21.06.2013 wherein the Tribunal has held as follows:-

*"We heard both sides in detail and perused the orders of the lower authorities and the records of the case. We have to accept the fact that the assessee has maintained proper books of accounts. It is also true that the accounts are produced before the Assessing Officer. The assessee had produced the vouchers also, in support of the claim of expenditure made by it. The Assessing Officer has made a test check of the vouchers. That is one of the accepted methods of audit procedure. In high volume of business, where thousands and thousands of vouchers are produced by an assessee, it is not possible for an Assessing Officer to verify all the vouchers one by one. In such cases it is enough if he makes a random check/test check. In the present case such a check has been made and, therefore, it is not possible to pass an adverse comment against the books of accounts and vouchers and evidences available with the assessee.*

*Now, regarding the nature of the vouchers, there is an allegation that in many of the vouchers the addresses of the payees are not readily available. The particulars like the date of payment, the work for which the payment was made, the amount paid, the name of the payee etc., are all available. The detailed addresses alone are not available. In this type of land development expenditure in rural and peripheral areas, it is just a luxury to expect all the formal foolproof vouchers and receipts in support of the expenses incurred by an assessee. These are all non organized industries. As and when it is required, the labourers are called and the labourers are often supplied by middlemen. Equipments are called for and supplied by agents in a great hurry and the activities are carried on at different points at*

*different levels and in many of such cases self vouchers alone will be available.*

*It is in this context that we have to examine the reasonableness of the quantum of expenditure claimed by the assessee. The Commissioner of Income-tax (Appeals) has analysed the profit pattern of the assessee for the three assessment years 2006- 07, 2007-08 and 2008-09. On an analysis, the Commissioner of Income-tax (Appeals) found that the assessee has declared a profit of more than 23.47% which is an excellent result in the case of a new entrant into the business. The average net profit rate before depreciation and income-tax worked out to 23.47%. In the case of a similar company MIs BLB Estates Pvt.Ltd., the said rate is 22.92% In the case of another builder, MIs Annai Builders Real Estates Pvt.Ltd., the average profit before depreciation and income-tax is 16.56%. In the case of MIs Arihant Shelters (India) Ltd., the said profit is 21.67%. Therefore, we find that as rightly held by the Commissioner of Income-tax (Appeals), the profit ratio reflected in the accounts of the assessee is more than in similar cases, whereas the assessee is a novice in this business compared to other players in the field. It is in the light of the above comparison that the Commissioner of Income-tax (Appeals) has held that the vouchers are acceptable as evidences and there was no justification in making adhoc adjustments. Taking an overall view of the case, we find that the Commissioner of Income-tax (Appeals) is justified in deleting the addition made in, the case of the assessee. The addition has been made by the Id. Assessing Officer on general observations and on adhoc basis. He has not applied his mind in analyzing the real working pattern of the assessee and the profit rate disclosed by the assessee and he has not made any comparative study. In*

*these circumstances, this ground raised by the Revenue is liable to be dismissed."*

12. We have considered the rival submissions. ITA No.1448/Chny/2018 for assessment year 2011-12 is an appeal in respect of search assessment. Admittedly, no incriminating material has been found in course of search. Consequently, our findings in respect of ITA Nos.1445,1446/Chny/2018 referred to supra would apply directly to the present case of the assessee. Accordingly, the appeal of Revenue stands dismissed.

13. ITA Nos.1451 & 1452/Chny/2018 for assessment years 2014-15 & 2015-16 are appeals in respect of the regular assessments. In respect of these two assessments, the findings of the Co-ordinate Bench of this Tribunal for assessment years 2007-08 & 2008-09 referred to supra would directly apply and as it is noticed that the Ld.CIT(A) has followed the judicial discipline in following the decision of Co-ordinate Bench of this Tribunal in assessee's own case, we find no reason to interfere in the order of the Ld.CIT(A) and consequently the same stands upheld. The appeals of Revenue in ITA Nos.1451 & 1452/Chny/2018 stand dismissed.

ITA Nos.1449 & 1450/Chny/2018 (A.Ys 2012-13 & 2013-14)

14.        ITA Nos.1449 & 1450/Chny/2018 for assessment years 2012-13 & 2013-14 are appeals in respect of search assessments. It was submitted by Id.D.R that the Id. Assessing Officer had estimated the net profit at 31.55%. It was a submission that Ld.CIT(A) had deleted the addition on the ground that the books of accounts of the assessee had not been rejected. Consequently no estimation was permissible.

15.        In reply the Id.A.R supported the order of the CIT(Appeals).

16.        We have considered the rival submissions. A perusal of the order of the CIT(Appeals) shows that he has considered the fact that the Id. Assessing Officer has not brought any cause or evidence for rejecting the books of accounts, but on the other hand, applied another system of accounting against the spirit of applicable section i.e Section 145 of the Act, though he has not categorically rejected the books of the assessee. This findings of the Ld.CIT(A) stands and the Revenue has not been able to dislodge it. This being so, when complete accounts have been maintained by the assessee and no defect has been pointed out, it is not open to the Id. Assessing Officer to make an estimate for the said periods compare to the profits for earlier periods. This being so, we find no reason to interfere in the order of the CIT(Appeals) and consequently, the same stands upheld.

17. In the result, all the appeals of the Revenue in 1445, 1446, 1447, 1448, 1449, 1450, 1451 & 1452 /Chny/2018 are dismissed.

Order pronounced in the open court on 24<sup>th</sup> December, 2018, at Chennai.

Sd/-  
(ए. मोहन अलंकामणी)  
(A.MOHAN ALANKAMONY)  
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-  
( जॉर्ज माथन)  
(GEORGE MATHAN)  
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 24<sup>th</sup> December, 2018.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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