

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

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

आयकर अपील सं./I.T.A.Nos.472 & 473/Viz/2017
(निर्धारण वर्ष/ A.Ys: 2007-2008 and 2010-11)

Pusarla Subhash
Prop.Sagar Durga Developers
Door No.15-13-6, Krishnanagar
Maharanipeta, Visakhapatnam
[PAN : AIGPP2446K]

Vs. Additional Commissioner of
Income Tax
Range-1
Visakhapatnam

आयकर अपील सं./I.T.A.Nos.474 & 475/Viz/2017
(निर्धारण वर्ष/ A.Ys: 2011-2012 and 2012-13)

Pusarla Subhash
Prop.Sagar Durga Developers
Door No.15-13-6, Krishnanagar
Maharanipeta, Visakhapatnam
[PAN : AIGPP2446K]

Vs. Assistant Commissioner of
Income Tax
Circle-1(1)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

आयकर अपील सं./I.T.A.Nos.481-486/Viz/2017
(निर्धारण वर्ष/ A.Ys: 2007-2008 to 2012-13)

Income Tax Officer
Ward-1(4)
Visakhapatnam

Vs. Pusarla Subhash
Prop.Sagar Durga Developers
Door No.15-13-6,
Krishnanagar, Maharanipeta,
Visakhapatnam
[PAN : AIGPP2446K]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

निर्धारिती की ओर से/ Assessee by
राजस्व की ओर से/ Revenue by

: Shri C.V.S.Murthy, AR
: Shri D.K.Sonowal, CIT DR /
Shri V.Appala Raju, DR

सुनवाई की तारीख / Date of Hearing

: 02.01.2019

घोषणा की तारीख/Date of Pronouncement

: 25.01.2019

आदेश /ORDER

PER D.S. SUNDER SINGH, Accountant Member:

These appeals are filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-2, Guntur dated 22.06.2017 for the Assessment Years (A.Ys.)2007-08, 2010-11 to 2012-13 and by the revenue for the A.Ys.2007-08 to 2012-13. Since the grounds raised and the issues involved in these appeals are common the appeals are clubbed, heard together and disposed off in common order for the sake of convenience as under.

2. The facts are common for all the appeals and extracted from the A.Y.2007-08. The assessee is engaged in the real estate business and filed its return of income declaring total income of Rs.1,68,531/-. For the assessment years under consideration the assessee has not maintained the books of accounts and estimated the income @8% on gross receipts. A survey u/s 133A of the Act was conducted in this case in the business premises of Sri Pusarla Subhash, Prop. M/s Sagar Durga Developer on 10.02.2011. During the course of survey, evidences were found in respect of unaccounted income and unexplained investment in the real estate

business. Therefore, the Assessing Officer (AO) reopened the assessments u/s 147 and issued the notice u/s 148 which were served on the assessee. Subsequently, notices u/s 143(2) and 142(1) were issued and the assessments were completed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter called as 'Act') for the A.Y. 2007-08 to 2012-13 on total income as under :

A.Y.	Return of income filed (in Rs.)	Assessed Income (in Rs.)
2007-08	1,68,531	4,38,16,100
2008-09	1,50,048	3,78,47,370
2009-10	2,25,880	4,82,10,079
2010-11	7,75,530	4,04,60,410
2011-12	15,99,084	3,07,56,629
2012-13	15,51,226	82,46,920

2.1 During the course of survey, incriminating material in the form of books of accounts, documents/diaries, loose papers, lap top and CPU was found in the business premises of the assessee which was impounded u/s 131 of the Act on 10.02.2011. The AO verified the material available in the business premises of the assessee during the course of survey and found that material contain the information for 13 real estate projects and the assessee has admitted the income only from the following projects during the period under consideration.

- (i) *Sagar Square*
- (ii) *Durgamma Dwellings*
- (iii) *KNR Plaza.*
- (iv) *Nagamalli Enclave*

The books of accounts, loose sheets and documents found evidencing the development and construction of 8 other projects and the assessee did not admit the income from the under mentioned projects (other projects). The material was found relating to the following projects during the survey which was denied by the assessee:

- (i) *Gokul Grandeur (Sita Residency, Near Gokul Theatre)*
- (ii) *China Waltair*
- (iii) *Chinnamvari street*
- (iv) *Madhura Nagar-1 (Aparna Apartments)*
- (v) *Pedawaltair (Gayatri Residency)*
- (vi) *PrakashraoPeta (Vishnu Apartment)*
- (vii) *Soldier Peta*
- (viii) *Madhura Nagar-2 (Madhura Meadows)*

2.2. The AO found from the incriminating material that the assessee has maintained the books of accounts and other details relating to the above projects in the names of landmarks situated near the construction site like Chinawaltair, Pedawaltair, Durgamma Dwellings, Sagar Square (CMR), Veterinary Hospital and Madhuranagar etc. From the impounded material, the AO observed that the assessee has carried out 12 projects, however, in the statement recorded u/s 131, accepted the construction in the following projects:

- (i) Nagamalli Enclave*
- (ii) Sagar Square*
- (iii) Durgamma Dwellings*
- (iv) KNR Plaza*
- (v) For Madhuranagar 2D project, the assessee stated that he is associated with it and purchased the land*
- (vi) In respect of Madhurawada constructions, he stated that the project is yet to be commenced.*

In respect of the remaining 7 other projects, the assessee denied having carried out any construction activity and submitted that those 7 projects were not related to him and they were carried out by other persons. In reply to Q.No.38 of the statement recorded u/s 131 on 10.02.2011, the assessee gave a reply stating that the accounts of the projects mentioned in the laptop were prepared by his wife, Mrs Deepika for the purpose of bank loans. The data was taken from the respective site promoters and was designed for two partnership firms by editing and adding figures in lieu of attracting bank authorities for obtaining the loans. Several debt equity ratios were taken as advices from several auditors namely Shri E.S.R.C.Murthy and others. In a nut shell, the assessee contended that the projects were not relating to the assessee and the assessee's wife has collected the data for the purpose of bank loans. However, the laptop impounded vide A/PS/106 contain the day to day accounts regarding purchase of land, various other expenses relating to construction, details of receipts from customers, payments made to various

government agencies for obtaining plan approvals etc. and the details of investments in each project. The AO verified the payments and receipts, project-wise as per the seized material and arrived at the receipts and payments project wise as per the material found in survey, marked as annexure A/PS/4 for Madhura Meadows, page No. 13 to 14, A/PS/8 in respect of Madhura Nagar, Aparna Apartments, A/PS/57 in respect of Pedawaltair Project (Gayatri Residency), A/PS/30 in respect of Gokul Grandeur (Sita Residency) etc. As per the working of the AO, the total unaccounted receipts and unaccounted payments, project wise and year wise are as under

2007-08

Sl. No.	Name of the Project	Receipts Rs.	Payments			
			Interest Rs.	Misc Rs.	Owner Rs.	Others Rs.
1	ChinnamVari Street	93000	83061	146385	62000	125098
2	China Waltair		76197			410362
3	CMR/Sagar Square		242437		1500000	1133205
4	Durgamma Dwellings		25387		1800000	515255
5	Madhura Nagar 2D/ Madhura Meadows				10259750	253479
6	Madhura Nagar -1 (MN-1)	11388790			9771750	
7	Pedawaltair Construction		1473814		11009000	301945
8	Soldier Peta		135903			255739
9	PrakashraoPeta		35251			216050
	Total	11481790	2300540	146385	34402500	3211133

2008-09

Sl. No.	Name of the Project	Receipts Rs.	Payments			
			Interest Rs.	Misc Rs.	Owner Rs.	Others Rs.
1	ChinnamVari Street	1007440	364217	419511	29250	2088631
2	China Waltair	3538525	370280			2855738
3	CMR/Sagar Square	4283000	844239	630928	2120000	
4	Durgamma Dwellings		742535		306000	999883
5	Madhura Nagar 2D/ Madhura Meadows	5359900			100000	776217
6	Madhura Nagar -1 (MN-1)	4408900				
7	Pedawaltair Construction	5327000	2438941			2526885
8	Soldier Peta		514882			349589
9	Veterinary Hospital (KNR Plaza)		802294		3630000	165801
10	PrakashraoPeta	50000	474067			3945535
	Total	23974765	6551455	1050439	6185250	13708279

2009-10

Sl. No.	Name of the Project	Receipts Rs.	Payments			
			Interest Rs.	Misc Rs.	Owner Rs.	Others Rs.
1	ChinnamVari Street	4395620	405933	239509	11250	1297174
2	China Waltair	4795500	140584			1841129
3	CMR/Sagar Square	3352000	583729	2920663	396000	
4	Durgamma Dwellings	4200000	1116576		902250	1105116
5	Madhura Nagar 2D/ Madhura Meadows	5233335	814954			5259625
6	Madhura Nagar -1 (MN-1)	118500				
7	Pedawaltair Construction	1674500	2797087			2675534
8	Soldier Peta	6494050	227397			4295655
9	PrakashraoPeta	8735000	449523		980000	1120885
10	Veterinary Hospital (KNR Plaza)		1096696			981118
11	Gokul Grandeur (Sita Residency) Deepika		94441		532500	78900
	Total	38998505	7726920	3160172	282200	18665106

2010-11

Sl. No.	Name of the Project	Receipts Rs.	Payments			
			Interest Rs.	Misc Rs.	Owner Rs.	Others Rs.
1	CMR/Sagar Square	7035992	376044		42000	3488598
2	Durgamma Dwellings	6614500	792763			7252026
3	Madhura Nagar 2D/ Madhura Meadows	8581400	1155070			2539905
4	Pedawaltair Construction	17928000	2685390		900000	2873778
5	PrakashraoPeta	1900000				101200
6	Veterinary Hospital (KNR Plaza)	4548011	1439935			3085369
7	Gokul Grandeur (Sita Residency) Deepika	680000			1644000	3289227
	Total	47287903	6449202	0	2586000	22630103

2011-12

Sl. No.	Name of the Project	Receipts Rs.	Payments			
			Interest Rs.	MiscRs.	Owner Rs.	Others Rs.
1	CMR/Sagar Square	1291787	13500	270941		
2	Durgamma Dwellings	8549898	190980	383730		
3	Madhura Nagar 2D/ Madhura Meadows	3209333	76052			
4	Pedawaltair Construction	9739962				
5	Veterinary Hospital (KNR Plaza)	11072757	653205			2305076
6	Gokul Grandeur (Sita Residency) Deepika	9089550	983999			5231080
	Total	42953287	1917736	654671	0	7536156

2.3. The AO proposed to estimate the income on gross receipts and to make the addition of unaccounted payments separately and given an opportunity to the assessee to explain as to why the income should not be estimated on the unaccounted receipts and why the expenditure should not

be added u/s 69C of the Act as the same was found to be unrecorded. Since there was no proper explanation from the assessee, the AO estimated the income @12% on unaccounted receipts, (i.e. receipts found as per the impounded material *minus* the receipts admitted by the assessee) and made the addition of unaccounted payments separately. Accordingly, the AO made the addition of income from real estate business on unaccounted receipts and the unexplained expenditure for the A.Y. 2007-08 to 2011-12 as under :

A.Y.	Unaccounted receipts (in Rs.)	Estimation of income on unaccounted receipts@12% (in Rs.)	Unexplained expenditure (in Rs.)
2007-08	1,14,81,790	10,37,014	4,00,60,558
2008-09	2,39,74,765	25,01,899	2,74,95,423
2009-10	3,89,98,505	42,42,005	3,23,74,198
2010-11	4,72,87,903	40,93,178	3,16,65,305
2011-12	4,29,53,287	32,79,781	1,01,08,563

2.4. The AO also made separate additions on account of unsecured loans accepted during the impugned assessment years for non furnishing of confirmation letters, defective confirmation letters, insufficient credit worthiness etc., for the assessment years from 2007-08 to 2012-13 as under :

A.Y.	Amount (Rs.)
2007-08	25.5 lakhs
2008-09	77 lakhs

A.Y.	Amount (Rs.)
2009-10	82.3 lakhs
2010-11	21.5 lakhs
2011-12	112.45 lakhs
2012-13	17 lakhs

2.5 Aggrieved by the order of the assessing officer the assessee went on appeal before the Ld.CIT(A) and the Ld.CIT(A) allowed the appeal of the assessee partly. Against the order of the Ld.CIT(A), both the revenue and the assessee filed cross appeals.

3.0. The common issues in revenue appeals for all the assessment years are

- (i) *Estimation of income on undisclosed gross receipts*
- (ii) *Addition on account of unexplained expenditure/payments and*
- (iii) *Unsecured loans.*

4.0. Estimation of income on undisclosed gross receipts. This issue is involved for the A.Ys 2007-08 to 2011-12. The AO found undisclosed gross receipts during the course of survey which was worked out project wise and the assessment year wise in the preceding paragraph No.2. Though the assessee denied having under taken 7 projects referred to above, basing on the material found during the survey, the AO held that all the projects were belonged to the assessee and accounted the receipts partly in the books of accounts. Even in the case of projects owned by the assessee, it was found

that the assessee had accounted the receipts partly (i.e. Nagamalli Enclave, Sagar Square, Durgamma Dwellings, KNR Plaza,). The AO quantified the unaccounted receipts from all the projects duly reducing the admitted receipts in the returns of income and estimated the income on the net unaccounted receipts @12% of the gross receipts and the same was brought to tax as unaccounted income in the real estate business.

4.1 On appeal, the Ld.CIT(A) observed that all 13 projects (*one yet to take off*) were not carried out by the assessee and they were carried out by various other / persons. The Ld.CIT(A) verified the statements recorded from the assessee on 14.02.2011, wherein, the assessee in question No.40 furnished the details of projects undertaken by himself and various other persons as under:

"Q. 40. Please furnish project wise details of the above projects ?

I furnish herewith the project wise details as under:

1. Chinnamvari street (00023) 1- Apr- 2005 to 31-March-2010

This is situated in one town are, sivalayam Street, vsp- developed by PLakshmi, w/o P. V.Satyararayana residing at D. No 43-19-1, T. S. N Colony, Vsp - 16, P. Lakshmi is sister of N. Nookaraju who was my father's friend.

2. Chinnawaltair (00027) 1- Apr- 2006 to 31-Mardi-2010

This project is situated at nearby DurgaMahalakshmi arch, Chinnawaltair, Visakhapatnam developed by A.MangaRaju, D.No.12-43-2, Gowsya Street, Indira Colony, Gajuwaka, Visakhapatnam. He was working under my father from 2000-2005 and has been associated with us till date.

3. CMR OppD(10005) 1-Apr-2006 to 31-March-2011

This project was done by me. It is near PrakasaRaopeta, adjacent to hotel Vijayabhanu Visakhapatnam. Landlord name is V.Vidyasagar, 12-11-1, Sagar square apartments, Prakasakao pets, Vsp.

4. *Durgamma Dwellings (00004) 1-Apr- 2006 to 31-March-2011*

This project was done by me. It is situated near Poorna Market, RRMR Road, Vsp. The Owner / Landlord name is ShriP.VenkataRamana, 51-8-40/29/3, Nakkavanipalem, Seetamrnadhara, Visakhapatnam - 13

5. *Gokul grandeur (10001) 1-Apr-2008 to 31-March-2011*

This project was done by my wife Smt.K.Deepika under development basis with land owner D.Sita Devi, residing at Nerella Koneru, 1stfloor of SVS High School, Allipuram, Vsp.

6. *K.Deepika (00012) 1- Apr- 2009 to 31-March-2010*

This is not a project

7. *Madhuranagar2D (10000) 1-Apr- 2006 to 31-March-2011*

This project name is Madhura Meadows I am associated as landowner of the site. I have purchased this site from S Suryakumari in the year 2006.

8. *Madhurawda Construction A/c (00054) 1-Apr- 2007 to 31-March-2011*

This project is yet to start of which I have invested in obtaining plan situated in Bakkavanipalem, Madhurawada, Visakhapatnam, The site owners are M.B.Venkat Rao and others.

9. *Mn-1 A/c (10003) 1-Apr- 2006 to 31-March-2007*

This project was taken up by B. Siva Prasad who used to work until 2005, since then he was associated with us. His status is contractor residing at 22-69-29, Vasanta Rao street, Vsp-1.

10. *M.S.P (10002) 1- Apr- 2008 to 31-March-2010*

M.Madhusudhan Prabhu, who is the contractor of Madhura Meadows, residing at 9-19-37, CBM Compound, Visakhapatnam,

11. *Pedawaltair construction (00052) 1- Apr- 2006 to 31-March-2011*

The project was taken up by contractor K.Ramya Lavanya Devi, wife of K. Venugopal who were our family friends, residing at flat G-5, Gr. Floor, Rockdale Residency, Rock Dale layout, Vsp.

12. *Prakasa Rao peta (00009) 1- Apr- 2006 to 31-March-2010*

This project was taken up by P.Satish / who used to work under my father until

2006. Since then he was associated with us. His residence address is MVP Colony, Plot na218, Sector -5_f Vsp-17

13. P.Subhash (00013) 1-Apr- 2009 to 31-March-2010
This is not a project.

14. P.Subhash (from 1-April 2009) (10004)1-Apr-2009 to 31-March-2010
This is not a project.

15. P.Subhash (from 1- April 2010) (10006) 1- Apr 2010 to 31-March-2011
This is not a project.

16. Sharat A/c. (10008) 1-Apr-2007 to 31-Mar-2011
Sharat is a proposed investor in one of the partnership firm which we thought of incorporating. He is resident of Tenali, his father is a friend of my father. His contact address in Visakhapatnam is T. Chandrasekhar, F-I, First Floor, Balaji Residency, Balayyasastri Layout, Vsp Mob-9948699918. Another address is GK11 Prasad, Naval Base Employee, Indian Naval Canteen Service, Vsp, Mob-9949827216.

17. Soldierpeta (00015) 1- Apr-2006 to 31 -Mar-2009
This project is situated in One town area, it was done by contractor P. Chitti Varahala Raju, Brother-in-law of N. Nookaraju, who is friend of my father. He is resident of Dondaparthi Bazar, Vsp. His contract address is N. Nookaraju, C-I, 2ndFloor, Sager Square, Beside Adjacent to Hotel VijjayaBhanu, Prakashrao Peta, Vsp.

18. Veternary Hospital (00053) 1-Apr-2007 to 31-Mar-2011
This project is taken up by me on development basis. The land owners name is kandula nagaraju, residing at D. No. 33-4-28/2, Allipuram, Vsp-4."

4.2. The Ld.CIT(A) observed from statement and submissions of the assessee

that the details of 13 projects were found during the course of survey and the projects undertaken by the assessee and others are as under:

S.No.	Name of the Project	Owner
1.	Chinnamvari Street	P.Laxmi
2.	ChinnaWaltair	A.MangaRaju
3.	CMR/Sagar Square	Assessee
4.	Durgamma Dwellings	Assessee

5.	Madhuranagar 2D/ Madhura Meadows	Assessee & M. Madhusudanprabhu
S.No.	Name of the Project	Owner
6.	Madhuranagar-1(MN-1)	B.Siva Prasad & Uma Devi
7.	Pedda Waltair Construction	K.Ramya Lavanya
8.	Soldier peta Project	P.Chitti Varahala Raju
9.	Prakasaraopeta	P.Satish
10.	K.N.R.Plaza / Veterinery Hospital	Assessee
11.	Gokul Grandeur/Sita Residency	K.Deepika
12.	Nagamalli Enclave (Project completed)	Assessee
13.	Madhurawada Constructions (activity yet to begin)	Assessee

4.3. The Ld.CIT(A) also observed that the AO, subsequent to the survey u/s 133A conducted the enquiries and recorded the statements from the developers / contractors who stated to have taken up the projects. The observations of the Ld.CIT(A) from the post survey enquiries are as under:

"The assessee could rebut the basic presumption cast on him as per section 292C.

The assessee either during survey or post survey never accepted that the other 7 projects belonged to him.

The post survey enquiries carried by the AO by summoning different individuals like Mr.B.Siva Prasad - Madhuranagar/MN-1 project and Smt K.Ramya Lavanya Devi - Peddawaltair project, only supported the claim of the assessee.

The post survey scrutiny proceedings in the cases of different individuals (whose receipts have been considered by the AO as belonging to the assessee) by different AOs, show that the department is treating those projects as belonging to those individuals but not to the assessee."

4.4. The Ld.CIT(A) after verifying the statements recorded from the assessee and the post survey enquiries, given a finding that out of 13 projects found in the impounded material, six projects were developed by

the assessee and seven other projects were carried out by other persons and the assessee had discharged the burden placed on him u/s 292C of the Act. Accordingly confirmed the estimation of income to the extent of 8% of the unaccounted receipts of own projects and deleted the remaining addition.

In respect of 7 other projects, the Ld.CIT(A) held that the other projects were carried out by the persons mentioned in table referred to in para No.4.2 and the returns of income were filed by the developers. The post search enquiries also revealed that the projects in fact were carried out by the other persons as per the details given in the statement, hence held that the unexplained expenditure or the estimation of income is not taxable in the hands of the assessee, since the burden placed on the assessee was effectively discharged.

5. Against the order of the Ld.CIT(A), the revenue filed the appeals challenging the deletion of estimation of income on all 13 projects. The revenue also challenged the deletion of addition on account of unaccounted payments. The above two issues are involved in the A.Ys 2007-08 to 2011-12. During the appeal hearing, the Ld.DR strongly supported the order of the AO and the Ld.AR heavily placed reliance on the order of the Ld.CIT(A).

6. We have heard both the parties and perused the material placed on record. In the revenue appeals, with regard to estimation of income two issues are involved. First issue is the restriction of estimation of income to 8% by the Ld.CIT(A) as against the estimation made by the AO @12% on the unaccounted receipts of own projects of the assessee. The second issue is estimation of income on other projects which was denied by the assessee and stated to have carried by others (in short 'other projects'). The third common issue is unaccounted payments of own projects as well as the other projects.

In this case, there are 13 projects for which the material was found and the following projects were accepted by the assessee as own projects:

S.No.	Name of the Project	Owner
1.	CMR/Sagar Square	Assessee
2.	Durgamma Dwellings	Assessee
3.	Madhuranagar 2D/ Madhura Meadows	Assessee & M. Madhusudanprabhu
4.	K.N.R.Plaza / Veterinery Hospital	Assessee
5.	Nagamalli Enclave (Project completed)	Assessee
6.	Madhurawada Constructions (activity yet to begin)	Assessee

6.1. From the above, it is observed that the six projects were carried out by the assessee and the remaining 7 projects were stated to have been

carried out by others. The AO conducted post survey enquiries and recorded statement from B.Siva Prasad on 18.02.2011 and K.Lavanya Devi on 14.02.2011. Both of them have agreed in the enquiries conducted by the AO that they have carried out construction activity in respect of Madhuranagar by B.Siva Prasad and Pedawaltair by K.Lavanya Devi. In the remaining projects, there was no indication of having recorded the statements. However, the Ld.CIT(A) basing on the information of returns of income filed by the respective developers held that the other projects were not carried out by the assessee and carried out by other persons. i.e. P.Chitti Varahala Raju in the case of Soldierpet project, P.Satish in the case of Prakasa Rao Peta Project, B.Siva Prasad and B.Uma Devi in the case of Madhuranagar project, K.Ramya Lavanya Devi in the case of Pedda Waltair Project, A.Manga Raju in the case of Chinna Waltair Project, Smt.Deepika Karpurapu in the case of Gokul Grandeur / Sita Residency project, P.Lakshmi in the case of Chinnam Vari Veedhi Project. The Ld.CIT(A) mainly relied on the income tax returns filed by the respective developers before survey or subsequent to survey, MoU reached by the developer with the landlord and the statement recorded from B.Siva Prasad and Lavanya and held that the assessee has discharged the presumption cast on him u/s 292C of the Act. Accordingly directed the AO to delete the additions

representing estimation of unaccounted income on unaccounted receipts and unexplained expenditure made in respect of the other projects stated to have been taken up by others.

6.2. We have gone through the assessment orders and orders of the lower authorities and observed that the Ld.CIT(A) heavily placed reliance on the post survey enquiries conducted by the department and the statement recorded from B.Siva Prasad. Though Sri Siva Prasad has accepted that he had carried out the Madhuranagar project known as Subadra Enclave, he has not maintained the books of accounts and books of accounts were not available with him. However, as per the material found during the course of survey, the AO has given a finding that the details of the expenditure incurred on various sites and the payments made to the various parties was available in the impounded material. The assessee in the statements recorded stated that the data was collected from site promoters and tabulated in the laptop. Thus the deposition made by the assessee is contradictory and inconsistent with the facts stated by B.Siva Prasad in his statement. In response to question No.16 and 17 Sri B.Siva Prasad could not explain the entries recorded in the impounded material and stated that he did not know the entries in the impounded material

found during the survey. For ready reference, we extract relevant part of the statement of Sri Siva Prasad which is available in the Ld.CIT(A) order in page No.28 question No.16 and 17, which reads as under :

“Q.16. I am showing you Ashwani Deluxe Register marked as A/PS/8, in pages serially numbered 353, impounded during the course of survey u/si 33A conducted in the case of Shri Poosarla Subhash on 10-022011, please go through the entries made in and explain the contents in the book?”

Ans. I have completed the project Madhura Nagar-1 by me only, but I do not know about the entries made in Page-5 serially numbered 353, impounded during the course of survey u/s.133A conducted in the case of Shri Poosarla Subhash on 10-022011.

Q.17. I am showing you Ashwani Deluxe Register marked as A/Ps/8, in page-4 serially numbered 353, impounded during the course of survey u/s. 133A conducted in the case of Shri Poosarla Subhash on 10-02-2011, please go through the entries made in and explain the contents in the book?”

Ans:I have completed the project Madhuranagar-1 by me only, but I do not know about the entries made in page-5 serially numbered 353 above.”

6.3. Similarly, during the post survey enquiries, the AO recorded the statement from Smt.K.Ramya Lavanya Devi who claimed to have completed the work in respect of Pedda Waltair project. She has admitted that she has no experience in construction activity and she has not maintained books of accounts for the project. She also admitted that the entries made in the impounded material were not known to her. For ready reference, we extract relevant part of the order of the statement of K.Ramya Lavanya Devi which was reproduced in the CIT(A) order in page No.29 from Q.No.9 to 15 which reads as under :

9. Do you file your returns of income, if so, please give the details?

Ans: No. Till date I have not filed my Income-tax returns for any assessment year

Q. 10 Have you maintained any books of accounts in respect of project (Peda Waltair Construction)?

Ans: Na I have not maintained any books of accounts in respect of my project Pedawaltair Construction.

Q.11. I am showing you Ashwani Deluxe Note book marked as A/PS/57, Please go through the entries made in and explain the contents in the book?

Ans; I do not know the details contained in the above note book marked as A/PS/5.

Q12. In the book marked as A/PS/57, there is noting in Page-32, on 26/09/10, that "By Customer (P.W) Shankar son-in-law Rs.10,00,000/- CQ in the name of K.R.L Devi (A1) And in Page 32 on 01/10/10 By Customer Shankar (P.W) son cash Rs.10,00,000/- for flat (A-2). Please go through the same and explain the nature of these entries shown in the Book A/PS/57?

Ans: In regards to entry made on 26-09-10, I confirm here that I have received cheque of Rs.10,00,000/- against the flat no.11-I from customer Shankar and subsequently returned to the customer Shankar on cancellation of the same. Entries pertaining to 01/10/10 I am not aware of that and I have not received any amount from customer Shankar son against Flat noA2.

Q.13. In book marked as A/PS157, there is noting in page -41, on 27/12/10, that 'By Bagya rao (p.w) cash Rs. 17,00,000/-, Please go through the same and explain the nature of these entry shown in the Book A/PS/57?

Ans: I do not know about the above transaction

Q14 Have you maintained any Day book or Cash Book pertaining to your above (project Peda Waltair construction)?

Ans: No, I have not maintained any Day book or Cash Book pertaining to my above project.

Q15. Have you given any Day book, Cash book or any rough book etc. (set of book of accounts) maintained by you to any other person?

Ans: No, I have not maintained any books of accounts he., Day book, cash book or Rough book etc. And hence, the question does not arise that whether .I have given any books of accounts to anybody."

6.4. From the replies of B.Siva Prasad and K.Ramya Lavanya Devi, they have categorically denied having knowledge of entries found during the course of survey in the impounded material. Whereas the assessee stated that the entries were made by his wife as per the information supplied by the promoters of the site. Submission made by the assessee during the course of survey and the replies given by the other promoters are apparently contradicting and inconsistent and does not match with each other. No other material was placed by the assessee to disprove that material found during the course of survey was untrue and not related to him. As per the provisions of section 292C, presumption is available to the department to believe that money, bullion, jewellery, documents, books of accounts found during the course of survey are belonging to the person surveyed or searched by the department and the contents are true. Mere filing of return of income by the others on estimation basis does not discharge the burden placed in section 292C of the Act. The explanation of the assessee that the accounts of the projects maintained in the laptop were prepared by his wife, Mrs Deepika for the purpose of bank loans and the data was collected appears neither convincing nor supported by any documents. It is the obligation of the assessee to substantiate his submissions with evidences with the entries made in the books of accounts

of the respective promoters, the bank accounts, registered sale deeds etc. When the entries made in the books of accounts found during the course of survey could not be explained by the other person it cannot be held that the burden placed u/s 292C is discharged by the assessee. For ready reference, we extract hereunder section 292C of the Act which reads as under :

Presumption as to assets, books of accounts etc.

292C. (1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed—

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

6.5. The assessee has denied having carried out the works in other 7 projects. Having found the books of accounts, documents, material, loose sheets, diaries etc. with the complete details of payments made to various parties, investments made in properties and the expenditure incurred in the premises of the assessee, it is burden on the assessee to prove that the entries in the books of accounts, documents, loose sheets, etc. found during the course of survey are in fact does not belong to him but belonged to the other parties with relevant evidences. In this case, the assessee has neither

discharged the burden nor disproved the fact that the entries made in the books of accounts of 13 projects was not carried out by the assessee. Therefore, in the interest of justice, we are of the view that the issue needs to be remitted back to the file of the AO for making fresh enquiries and to afford an opportunity to the assessee to prove that the entire 13 projects were not carried by him and only six projects were carried out by the assessee. Accordingly, we remit the issue of quantification of gross unaccounted receipts to the file of the AO for redoing the same afresh on merits. The appeal of the revenue on estimation of income on 13 projects is allowed for statistical purpose.

6.6. The other issue is addition made u/s 69C on account of the unaccounted payments. The Ld.CIT(A) deleted the addition relating to unaccounted payments in respect of 7 projects carried out by others since the assessee disowned the projects. In case of 6 projects carried out by the assessee (own projects), the Ld.CIT(A) has made cash flow /funds flow statement and found no deficit cash to meet the expenses accordingly deleted the addition. In the preceding paragraphs we have held that the issue regarding the 13 projects required to be reexamined, since the assessee has not discharged the burden placed on him u/s 292C of the Act.

With regard to the 6 projects owned by the assessee, the Ld.CIT(A) compiled the cash flow statement and held that the sources were available to make the payments. In the instant case it is observed that the assessee is not maintaining the books of accounts, hence, issue requires further examination by the AO. Therefore, the issue regarding unaccounted payments also remitted back to the file of the AO to examine the real developer of 13 projects and to consider the entire issue and decide the issue afresh on merits. Accordingly, the Revenue's appeal on unaccounted payments made u/s 69C is allowed for statistical purpose.

6.7. The next issue is estimation of income on the projects admitted by the assessee and the other projects. The AO observed that there was difference in the receipts admitted by the assessee in the return of income and the receipts found as per the seized material, the AO estimated the income @12% on unaccounted receipts and made separate addition for unrecorded expenditure. The material available with the AO consists of undisclosed receipts as well as the unrecorded payments. It is not correct to disregard the material available in respect of payments and receipts and make separate addition on account of undisclosed receipts and unrecorded expenditure. Even the receipts and the payments are unaccounted the AO has to compute the income with matching receipt and the payment.

Therefore the AO is directed to examine the receipts and expenditure and compute the income relating to unaccounted receipts.

6.8. Accordingly, the entire issue of estimation of income on undisclosed receipts and unaccounted payments u/s 69C, is set aside and the issue is remitted back to the file of the AO for denovo consideration. The assessee is free to take up all the contentions raised in the appeal before the AO. The AO is directed to afford reasonable opportunity to the assessee before completing the assessment.

7. The next issue in Revenue's appeal is Unsecured Loans. The AO made the additions of unsecured loans for the assessment years from 2007-08 to 2012-13 as under:

Sl. No.	Name of the Loan Creditors	Loan amount in Assessment Years in Rs.						Total amount taken
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	
1	Sri B Raghu	600000	0	0	0	0	0	600000
2	Sri K Parthasarathi	900000	0	0	0	0	0	900000
3	Smt M Anuradha	150000	0	0	0	0	0	150000
4	Sri K Harikrishna	800000	0	0	300000	100000	200000	1400000
5	Sri B.G.V. Narasinga Rao	100000	0	0	0	0	0	100000
6	N. Lakshmi	0	850000	0	0	0	0	850000
7	D. VenkataRao	0	1150000	600000	0	0	0	1750000
8	K. VeerabhdraRao	0	700000	0	0	0	0	700000
9	Reddy Ramu, NRI	0	5000000	0	0	0	0	5000000
10	SmtVaralakshmi	0	0	1000000	0	0	0	1000000
11	Sri V Nagamani	0	0	1500000	0	0	0	1500000
12	Sri R. Laxaman Murthy	0	0	500000	0	0	0	500000
13	Smt. K Harika	0	0	250000	0	0	0	250000

Sl. No.	Name of the Loan Creditors	Loan amount in Assessment Years in Rs.						Total amount taken
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	
14	Smt K S Deepika	0	0	100000	0	4920000	0	5020000
15	Sri BVR Murthy	0	0	200000	0	0	0	200000
16	PandariVeeraju	0	0	300000	200000	0	0	500000
17	KKVT Ramakrishna	0	0	100000	0	0	0	100000
18	K Vijayalakshmi	0	0	1250000	0	0	0	1250000
19	N Satyanarayana	0	0	2000000	0	0	0	2000000
20	MBL Prasad	0	0	300000	200000	300000	200000	1000000
21	K Bhavani	0	0	130000	0	125000	200000	455000
22	K Rajesh	0	0	0	150000	2800000	500000	3450000
23	K Bindu Mohan	0	0	0	300000	0	0	300000
24	K Nirmala	0	0	0	1000000	0	0	1000000
25	D VenkataRamu	0	0	0	0	1000000	0	1000000
26	K Indira Kumari	0	0	0	0	1800000	400000	2200000
27	Mucharla Kumar	0	0	0	0	200000	0	200000
28	M Kishore Kumar	0	0	0	0	0	200000	200000
	Total	2550000	7700000	8230000	2150000	11245000	1700000	

7.1. During the appeal proceedings, the assessee filed additional evidence which was admitted by the Ld.CIT(A) and called for the remand report from the AO. During the remand proceedings, the AO verified the information, recorded statements from the loan creditors and submitted the remand report. On receipt of the remand report, the Ld.CIT(A) has called for the objections from the assessee and after having considered the objections, the remand report and the statements recorded u/s 131 of the Act, the Ld.CIT(A) deleted all the additions made by the AO except in the case of Shri K.Harikrishna.

7.2. Aggrieved by the orders of the Ld.CIT(A), the department has filed appeal challenging the deletion of additions made by the Ld.CIT(A). The revenue has filed the appeal challenging the order of the Ld.CIT(A) for the A.Y 2007-08 to 2009-10 and 2011-12 to 2012-13. From the grounds of appeal filed by the Revenue we observe some lapses which are brought on record as under.

For the A.Y. 2009-10, the department raised the following ground for the deleting addition of cash credits as under :

8. *The Ld.CIT(A) ought to have appreciated that the creditors to the extent of Rs.62.80 lakhs (out of total addition of Rs.82.30 lakhs) failed to explain the source of the amount advanced to the assessee satisfactorily and therefore the same were rightly treated as unexplained creditors u/s 68 of the I.T.Act by the Assessing Officer.*

7.3 For the A.Y 2010-11, the department did not make appeal against the deletion of addition on account of unexplained cash credits, even though in couple of cases, the same cash credits were continued against which the department preferred appeal for the earlier assessment years.

7.4 For the A.Y. 2011-12, the department raised the following grounds against the deletion of cash credits.

9. *The Ld.CIT(A) erred in deleting the addition made by the Assessing Officer on account of unexplained unsecured loan creditors barring one loan creditor of Rs.1,00,000/- in the name of Sri K.Hari Krishna with an observation that the creditors confirmed the loans and explained the sources of the amount advanced to the assessee and all the three ingredients of genuine credits are satisfied.*

10. *The Ld.CIT(A) ought to have appreciated that in case of seven creditors (out of eight creditors) the creditors failed to explain the source of the amount advanced to the assessee satisfactorily and therefore the same were rightly treated as unexplained creditors u/s 68 of the I.T.Act by the Assessing Officer.*

For the A.Y. 2012-13, the department has raised the following ground and agitated the additions made by the AO :

3. *The Ld.CIT(A) ought to have appreciated that in case of other five creditors also amounting to Rs.15 lakhs, the creditors failed to explain the source of the amount advanced to the assessee satisfactorily and therefore the same were rightly treated as unexplained creditors u/s 68 of the I.T.Act by the Assessing Officer.*

Plain reading of the grounds of appeal raised by the department show that there is no application of mind in filing the appeal. In this connection, we observe that the Ld.CIT(A) deleted additions not in one case but in several creditors some of them were accepted by the AO and some of them were rejected in the remand report. In spite of the fact that several creditors loans were deleted the department did not make their appeal specifying the names. The way in which the grounds are framed shows very casual attitude with lot of ambiguity, lacking clarity. For the A.Y. 2009-10, the AO made the addition of 82.3 lakhs in 13 creditors out of which the department objects for deletion of addition for the amount of Rs. 62.80 lakhs without specifically mentioning the names of the creditors against whom the additions were deleted by the Ld.CIT(A). Similarly for the A.Y. 2011-12 also, the revenue did not specifically mention the names of

creditors in whose case, the deletion of addition are not acceptable by the department. The same is the case with the A.Y. 2012-13. We expect minimum care by the AO as well as the supervising authorities while filing the appeal. With the above observations we adjudicate the issue of the addition relating to unsecured loan creditors as under.

7.5 During the appeal proceedings, the assessee filed additional evidence before the Ld.CIT(A) which was admitted by the CIT(A) and called for the remand report. In the remand report the following unsecured creditors have accepted and confirmed the loan transactions and the source of which was accepted by the AO.

Sl. No.	Name of the Loan Creditors	Loan amount in Assessment Years in Rs.					
		2007-08	2008-2009	2009-10	2010-11	2011-12	2012-13
1	Sri B.G.V. NarasingaRao	100000	0	0	0	0	0
2	K. VeerabhdraRao	0	700000	0	0	0	0
3	Smt Varalakshmi	0	0	1000000	0	0	0
4	Smt. K Harika	0	0	250000	0	0	0
5	PandariVeeraju	0	0	300000	200000	0	0
6	KKVT Ramakrishna	0	0	100000	0	0	0
7	K Rajesh	0	0	0	150000	2800000	500000
8	K Nirmala	0	0	0	1000000	0	0
	Total	100000	700000	1650000	1350000	2800000	500000

7.6. The Ld.CIT(A) deleted the addition on the basis of the remand report submitted by the AO. Since there is no dispute with regard to source and the AO has accepted the transaction as genuine there is no case for filing

appeal. During the appeal hearing the Ld.DR could not place any material to controvert the finding given by the Ld.CIT(A). Hence the department's appeal in the case of above creditors for the impugned assessment years are dismissed.

7.7 In the following cases, at the remand stage the AO has conducted the enquiries and the creditors have accepted the transaction and explained the source.

Sl. No.	Name of the Loan Creditors	Loan amount in Assessment Years in Rs.					
		2007-08	2008-2009	2009-10	2010-11	2011-12	2012-13
1	Sri K Parthasarathi	900000	0	0	0	0	0
2	Smt M Anuradha	150000	0	0	0	0	0
3	D. VenkataRao	0	1150000	600000	0	0	0
4	Sri V Nagamani	0	0	1500000	0	0	0
5	Smt K S Deepika	0	0	100000	0	4920000	0
6	Sri BVR Murthy	0	0	200000	0	0	0
7	K Vijayalakshmi	0	0	1250000	0	0	0
8	K Rajesh	0	0	0	150000	2800000	500000
9	K Bindu Mohan	0	0	0	300000	0	0
10	D VenkataRamu	0	0	0	0	1000000	0
11	K Indira Kumari	0	0	0	0	1800000	400000
12	Mucharla Kumar	0	0	0	0	200000	0
	Total	1050000	1150000	3650000	450000	10720000	900000

7.8 As per the remand report and the observation of the Ld.CIT(A) most of them are assessed to income tax which was not disputed by the AO. The loans were given by cheque and interest also was paid by cheque. The Ld.CIT(A) has deleted the addition since the creditors have confirmed the

transactions assessed to income tax, the payment was made by cheque and interest was also received by cheque. Therefore, we are of the view that the assessee discharged his burden and shifted to the department. The AO could not shift the onus on the assessee. During the appeal hearing the department could not place any material to controvert the finding given by the Ld.CIT(A). Therefore, we do not see any reason to interfere with the order of the Ld.CIT(A), accordingly we uphold the order of the Ld.CIT(A) and dismiss the appeals of the revenue in the case of the said unsecured creditors for the impugned assessment years.

7.9 In the following creditors, there was ambiguity with regard to the name, the source and mismatch in the names and sources of funds

Sl. No	Name of the Loan Creditors	Loan amount in Assessment Years in Rs.						
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	
1	Sri B Raghu	600000	0	0	0	0	0	
2	N. Lakshmi	0	850000	0	0	0	0	
3	Reddy Ramu, NRI	0	5000000	0	0	0	0	
4	Sri R. Laxaman Murthy	0	0	500000	0	0	0	
5	N Satyanarayana	0	0	2000000	0	0	0	
6	MBL Prasad	0	0	300000	200000	300000	200000	
7	K Bhavani	0	0	130000	0	125000	200000	
8	M Kishore Kumar	0	0	0	0	0	200000	
	Total	0	5850000	2930000	200000	425000	600000	
	MVL Prasad is wrongly named as MBL Prasad							

8. B.Raghu. The Ld.CIT(A) has not discussed in the appellate order regarding the creditor. However, it is found that the Ld.CIT(A) has allowed the appeal for unsecured loan of Rs.6 lakhs in the name of Smt. B.Jayasree. There was no such creditor as per the assessment order. There is a mismatch of name, hence, the correct name is to be ascertained and the identity, genuineness, credit worthiness required to be established in this case. Fresh verification required to be conducted to establish the transaction.

8.1. N.Lakshmi. The Ld.CIT(A) allowed the unsecured loan since the creditor has confirmed the transaction, the sources are explained by the creditor and the interest was paid by cheque. As per the statement recorded on 13.02.2007, though she has confirmed the transaction, her annual source of income was Rs.70,000/- per annum. The annual income of Rs.70,000/- per annum does not allow the assessee to extend the loan of Rs.8.5 lakhs to the assessee unless there is sufficient source to meet the household expenditure. In this case, sources for the household expenditure, drawings and the surpluses required to be examined to establish the genuineness of loan.

8.2. Reddy Ramu, NRI. The Ld.CIT(A) has accepted the transaction. However, from the reading of the order of the Ld.CIT(A) as well as the

order of the AO, there is no proper explanation for the source. The assessee did not establish the source with matching dates of investment. Hence, this case needs to be examined in detail.

8.3. R.Lakshmana Murthy. In this case, the creditor has retired in 2001-02 and received the retirement benefits in the same financial year and claimed the same as source for the loans advanced to the assessee without proper cash flow. The AO required to examine the receipt of retirement benefits and its application with funds flow. The creditor required to match the source with the date of withdrawal and explain the same. The Ld.CIT(A) also opined that the source of deposit of cash needs to be properly examined in detail.

8.4. N.Satyanarayana. In the assessment order, the name was mentioned as N.Satyanarayana. The confirmation letter was given by Sri M.B.Venkata Rao. Therefore, the issue needs verification with regard to identity of the creditor, genuineness of the loan, sources of N.Satyanarayana or M.B.Venkata Rao both with the assessee as well as the creditor.

8.5. M.V.L.Prasad. There is mismatch in the name in the assessment order, the name was mentioned as M.B.L.Prasad, whereas in the appeal order the name was mentioned as M.V.L.Prasad. Therefore, the correct name of the creditor required to be established and credit worthiness of

the creditor, source and genuineness required to be examined with reference to correct name.

8.6. Smt. K.Bhavani. Smt. K.Bhavani has advanced a sum of Rs.1,30,000/- in the A.Y. 2009-10 and Rs.1,25,000 in the A.Y. 2011-12. In both the cases, the creditor has explained the source as receipt of rent. In the first instance, the AO rejected the credit for mismatch of signature in the remand report. In the second instance for the A.Y. 2011-12, the AO rejected the claim for want of proof of source. The creditor is not assessed to tax and there is no evidence for receipt of rental income and the rental income is very meagre which is not even sufficient to meet the household expenditure. Therefore, the case needs to be re examined to establish the identity and proper source.

8.7. M.Kishore Kumar. In this case, there was immediate cash deposit of Rs. 2 lakhs on preceding day and on 12.03.2012, Rs.2 lakhs was given as loan to the assessee. The creditor is not an income tax assessee and not filing returns. During the previous year relevant to the impugned assessment year, his salary income was only Rs.11,000/- and thus there is no evidence of cash accumulation. Therefore, the AO required to examine the source in this case with accumulation of savings for advancing the amounts to the assessee.

8.8. In all the above cases, identity, genuineness and credit worthiness of the creditors required to be verified with correct proofs. Therefore, in our considered opinion the issue needs to be remitted back to the file of the AO for further consideration. Therefore, we remit the matter back to the file of the AO to examine the sources, identity, credit worthiness and genuineness and decide the issue afresh on merits. Both the revenue as well as the assessee's AR agreed for remitting the matter back to the file of the AO in above cases of creditors. Accordingly, the appeals of the revenue in the case of above creditors for all the assessment years are allowed for statistical purposes.

9. The next issue in Revenue appeal for the A.Y.2009-10 is addition of Rs.31,38,000/- relating to unexplained investment in house property. During the course of survey, the AO found that the assessee had invested Rs.41,37,630/- towards purchase of flat at Akshya Aspira Apartment, Kirlampudi Layout on 23.07.2008. The assessee explained that Rs.10 lakhs was from maturity of FD from his wife and Rs.31,38,000/- from business receipts. The assessee later stated that the funds were sourced from housing loan taken from ING Vysya Bank and from Andhra Bank. The AO found that ING Vysya Bank has granted the loan of Rs.40,58,108/- on

31.10.2008 in the name of Dr.P.Visweswara Rao, father of the assessee. When this fact was confronted with the assessee, the assessee has taken different stand and tried to explain that he has taken unsecured loans from various other parties as shown in the books of accounts and the balance sheet. Since the assessee has given inconsistent replies and did not furnish the correct source for investment in the house property, the AO made the addition of Rs.31,38,000/-.

9.1. On appeal before the CIT(A), the CIT(A) observed that the amounts were paid from the books of accounts and surplus business receipts which is inclusive of the loan granted by ING Vysya Bank in favour of Dr.P.Visweswara Rao, father of the assessee. Therefore, the Ld.CIT(A) held that no addition is called for on this ground.

10. We have heard both the parties and perused the material placed on record. As per the assessment order, the assessee is not maintaining the books of accounts and estimated the income at 8% u/s 44AB of the Act. Therefore, payment from the books of accounts does not arise. The assessee explained that the source was the loan taken from Dr.P.Visweswara Rao which was granted by ING Vysya Bank. During the appeal hearing, the Ld.AR could not explain the source with matching

evidence that the loan granted to Dr.P.Viswesrara Rao was utilized for purchase of house. The Ld.AR also could not place the sanction advise of bank loan to examine the purpose for which the loan was granted and its end utilization. Therefore, we are unable to accept the contention of the assessee that the said loan was utilized for acquiring the house property. Hence, we hold that the sources remained unexplained, accordingly, we set aside the order of the Ld.CIT(A) and confirm the addition made by the AO.

Assessee's appeals:

11. The common issue involved in assessee's appeals for the A.Ys.2007-08, 2010-11, 2011-12 and 2012-13 is the unsecured loan accepted from Shri K.Harikishna. The assessee accepted the unsecured loans from Shri K.Harikrishna as follows:

Sl. No.	Name of the Loan Creditors	2007-08	2010-11	2011-12	2012-13
4	Sri K Harikrishna	800000	300000	100000	200000

11.1. For the A.Y. 2007-08, the AO considered the loan of Rs.8 lakhs instead of Rs.4 lakhs and accordingly made the addition of Rs.8.00 lakhs. Assessee explained that there was a mistake in quantum of loan advanced by the creditor in the A.Y. 2007-08 and the correct amount was Rs.4.00 lakhs but not Rs.8.00 Lakhs. Hence, the assessee filed additional evidence which was admitted by the Ld.CIT(A) and called for the remand report. The AO in

remand report dated 21.04.2014 accepted that the loan given by Sri K.Harikrishna for the A.Y.2007-08 was Rs.4 lakhs but not Rs.8 lakhs. The Ld.CIT(A) confirmed the addition of Rs.4 lakhs and held that there is no source to the creditor. The remaining amount of Rs.4 lakhs was deleted by the Ld.CIT(A).

11.2. The department filed appeal for deletion of addition of Rs.4 lakhs and the assessee filed cross appeal challenging the order of the Ld.CIT(A).

11.3. As discussed above, the actual amount advanced by Sri K.Harikrishna was Rs. 4 lakhs, but not Rs.8 lakhs which the AO has accepted in the remand report. Therefore, there is no justification for making addition of Rs.8.00 lakhs and the CIT(A) has rightly restricted the same to Rs.4 lakhs. Hence, we dismiss the appeal of the Revenue on this issue.

11.4. The assessee filed appeal before this Tribunal in its appeal No. 472/Viz/2017 against the order of the Ld.CIT(A). During the appeal hearing, the Ld.AR did not bring any fresh evidence to support the source of Rs.4 lakhs. Though assessee stated that he was having salary income, interest income and assessed to tax, the assessee could not furnish any evidence to support the sources for advances given to the assessee. As per the confirmation letter from Sri K.Harikrishna has given loan of Rs. 4 lakhs

in the A.Y. 2007-08, Rs. 3 lakhs in the A.Y.2010-11, Rs.1 lakh in the A.Y. 2011-12 and Rs.2 lakhs in the A.Y. 2012-13. For a query from the Bench, the Ld.AR could not furnish any evidence with regard to his source of income and accumulation of savings to substantiate the advances given by the creditor to the assessee. In the absence of satisfactory explanation of the source, we are unable to accept the contention of the assessee that the loans are genuine. The assessee failed to provide satisfactory evidence to support the credit worthiness and genuineness of the loans, therefore, the addition made by the AO for the A.Y. 2007-08, 2010-11, 2011-12, 2012-13 in respect of unsecured loans accepted from Sri K.Harikrishna amounting to Rs.4 lakhs, Rs.3 lakhs, Rs.1 lakh, Rs.2 lakhs respectively are confirmed and the orders of the Ld.CIT(A) are sustained. The appeals of both the assessee and the revenue are dismissed.

12. The next issue involved in assessee's appeal for the A.Ys 2010-11,2011-12 and 2012-13 is set off of house property loss. The assessee claimed interest of Rs.4,11,366/- under the head income from property. In this case, the assessee admitted rental income of Rs.60,000/- for six months @10,000/- per month and claimed interest payment of Rs.4,53,366/- to bank. The AO disallowed the interest payment since the

loan was not sanctioned to the assessee and sanctioned to Dr.P.Visweswara Rao, father of the assessee. The house property was owned jointly by the assessee with his wife K.Deepika and the property was sold by them during the year 2012. Since, there was no evidence to establish that the loan was utilized by the assessee for the purpose of construction of house or for acquiring the house, the AO disallowed the interest claim made by the assessee, thus rejected the claim of set off of loss under the head income from property. On appeal, the Ld.CIT(A) confirmed the addition in the A.Ys 2010-11 to 2012-13, Hence the appeal.

13. We have heard both the parties and perused the material placed on record. While deciding the appeal for the A.Y. 2009-10, we decided the issue with regard to the sources and held in favour of revenue and against the assessee. In the instant case, the assessee failed to establish that the loan granted to his father Dr.P.Visweswara Rao in fact was for the purpose of construction or acquiring the house property of the assessee. Hence, the assessee is not entitled for the deduction of interest paid to the Bank from property income. Therefore, we do not see any reason to interfere with the order of the Ld.CIT(A). Accordingly, appeals of the assessee for the A.Ys

2010-11,2011-12 and 2012-13 on set off of house property loss are dismissed.

In the result, the appeals of the revenue are partly allowed and the appeals of the assessee are dismissed.

Order pronounced in the open court on 25th January, 2019.

Sd/-

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/JUDICIAL MEMBER
विशाखापटणम /Visakhapatnam

दिनांक /Dated :25.01.2019

L.Rama, SPS

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखासदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती / The Assessee –Pusarla Subhash, Prop.Sagar Durga Developers Door No.15-13-6, Krishnanagar, Maharanipecta, Visakhapatnam
2. राजस्व / The Revenue–(i) Addl.CIT, Range-, Visakhapatnam (ii)Asst.CIT Circle-1(1), Visakhapatnam (iii) Income Tax Officer, Ward-1(4), Visakhapatnam
3. The Pr.Commissioner of Income Tax-1,Visakhapatnam
4. The Commissioner of Income Tax-(Appeals)-2, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT,Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM