

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**
(Through web-based video conferencing platform)

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 27/VIZ/2020
(Asst. Year : 2015-16)**

ITO, Ward-3(1),
Visakhapatnam.

Vs. M/s. Devisai Constructions
and Developers (Vizag) Pvt.
Ltd., Plot No.502, D.No.
25-4-11, Kalyan Classic
Apartments, Pedagantyada,
Visakhapatnam.

(Appellant)

PAN No. AAECD 0053 H
(Respondent)

**C.O.No. 58/VIZ/2021
(Arising out of I.T.A. No. 27/VIZ/2020)
(Asst. Year : 2015-16)**

M/s. Devisai Constructions
and Developers (Vizag) Pvt.
Ltd., Plot No.502, D.No.
25-4-11, Kalyan Classic
Apartments, Pedagantyada,
Visakhapatnam.

Vs. ITO, Ward-3(1),
Visakhapatnam.

PAN No. AAECD 0053 H
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari, Advocate.
Department by : Shri V.Srinivasa Rao, Sr.DR

Date of hearing : 09/09/2021.
Date of pronouncement : 23/09/2021.

ORDER

PER BENCH

This appeal has been preferred by the Revenue Department and the cross objection by the Assessee against the order dated 10/02/2020 impugned herein passed by the Id. Commissioner of Income Tax (Appeals)-1 [for short, "Id. Commissioner"], Visakhapatnam u/sec. 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the A.Y. 2015-16.

2. The Revenue Department has raised the following grounds of appeal:-

- “1. The order of the Ld.CIT(A)-1, Visakhapatnam is erroneous both on facts and in law.*
- 2. On the facts and in the circumstances of the case, the Ld.CIT(A) erred in holding that provisions of sec.69A of the Income-tax Act, 1961, is not applicable to the case in spite of the fact that the assessee received cash/money(on-money) outside the books of account.*
- 3. On the facts and in the circumstances of the case, the Ld.CIT(A) erred in directing the AO to estimate profit @15% of the unaccounted sale receipts of Rs. 2,49,70,000/- when provisions of sec.69A of the Act are clearly applicable to the facts of the case.*
- 4. On the facts and in the circumstances of the case, the Ld.CIT(A) erred in not accepting the fact that the provisions of sec.69A of the Act are applicable to the addition made on account of unrecorded sale receipts-(on- money receipts) as the assessee is found to be the owner of such money(on-money) as per the material impounded during the survey of operations.*
- 5. The appellant craves leave to add or delete or amend or substitute any ground of appeal before and/or at the time of hearing of appeal.*

For these and other grounds that may be urged at the time of appeal hearing, it is prayed that provisions of sec.69A of the Act to the addition made by the AO on account of unrecorded sale receipts be restored.”

3. Having heard the parties and perused the material available on record. Though, the Revenue Department has preferred five grounds of appeal in total, however, more or less only one issue is involved which relates to non-application of the provisions of section 69A of the Act and directing the AO to estimate the profit @15% of the unaccounted sale receipts by the Id. Commissioner.

4. The AO in the instant case made the addition of Rs.2,49,70,000/- u/sec. 69 of the Act on the ground that Assessee had received on-money over and above the consideration mentioned in the registered sale deeds.

5. On appeal, Id. Commissioner held that the provisions of section 69A are not applicable in Assessee's case and the AO has erred in applying the provisions of this section. The concluding part of the impugned order is reproduced herein for ready reference:-

”it is only when an Assessee is found in any financial year to be the owner of any money which is not recorded in the books of account and the Assessee offers no explanation about the nature and source of acquisition of money, the money may be deemed to be the income of the Assessee for such financial year. In the present case, no money was found at the time of survey u/sec. 133A of the Act. Whet was found was only certain

information suggesting that the appellant sold the flats at a higher rate than what was recorded in the sale deed. Moreover, the assessing officer himself gave a finding that the transaction is one that of sale of flats. Such being the case, I am unable to comprehend as to how the assessing officer invoked the provisions of section 69A of the Act. I am of the opinion that the provisions of section 69A of the Act are not applicable in the case of the appellant and the assessing officer erred in invoking the provisions of this section”.

5.1 We may also observe that section 69A of the Act mandates that “ where the Assessee is found to be owner of any money.....and such money.....is not recorded in the books of account, if any, maintained by him for any source of income and the Assessee offers no explanation about the nature of source of acquisition of money.....or explanation offered by him is not in the opinion of the AO, satisfactory, the money.....may be deemed to be the income of the Assessee for such financial year.” In the instant case, it is an admitted fact that no money was found at the time of survey conducted u/sec. 133A, however, certain information was found qua selling of flats at higher rate than the rate recorded in the sale deeds, however the AO without corroboration and fulfilling the ingredients of section 69A of the Act made the addition u/s 69A of the Act, hence we are in concurrence with the finding of the Ld. Commissioner qua non-application of the provisions of section 69A to the issue in hand, consequently no interference is warranted qua conclusion drawn by the Ld. Commissioner.

6. The Revenue Department has also raised a grievance that the Ld. Commissioner erred in directing the AO to estimate the profit @ 15% on unaccounted sale receipts, when the provisions of section 69 of the Act clearly applicable to the facts of the present case. The Ld. Commissioner while deciding non-applicability of the provisions of section 69A of the Act to the case of the Assessee, directed the AO to estimate profit @15% on unaccounted sale receipts. We are of the considered opinion that the Ld. Commissioner though decided that section 69A of the act is not applicable to the facts of the case, however used his own wisdom by considering the peculiar facts and circumstances while following the decision of Hon'ble Gujarat High Court in the case of *Jay Builder Vs. ACIT* in Tax Appeal No. 255/2012, dated 11/12/2012 by estimating profit @15% on unaccounted sale receipts. The direction of the Ld. Commissioner is based on the judgement of Hon'ble High Court and even otherwise in favour of the Revenue Department and against the Assessee, therefore, on overall consideration, no interference is called for on this issue as well.

Consequently the grounds raised by the Revenue Department are liable to dismissed, hence ordered accordingly.

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7. The cross objection filed by the Assessee is in support of the order of the Ld. Commissioner, hence, does not require any interference, consequently the same is dismissed being infructuous.

8. In the result, appeal filed by the Revenue Department and the cross objection filed by the Assessee stands dismissed.

Order Pronounced in open Court on this 23rd day of Sep., 2021.

sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(N.K. CHOUDHRY)
Judicial Member

Dated: 23rd Sep., 2021.

vr/-

Copy to:

1. *The Assessee - M/s. Devisai Constructions and Developers (Vizag) Pvt. Ltd., Plot No.502, D.No. 25-4-11, Kalyan Classic Apartments, Pedagantyada, Visakhapatnam.*
2. *The Revenue - ITO, Ward-3(1), Visakhapatnam.*
3. *The Pr.CIT-1, Visakhapatnam.*
4. *The CIT(A)-1, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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