

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA Nos.644 to 650/Chny/2019
(निर्धारण वर्ष / Assessment Years: 2009-10 to 2015-16)

&

C.O Nos.51 & 60 to 65/Chny/2019
(Arising out of ITA Nos.988 to 992, 803 & 823/Chny/2019)

Shri T.R. Shanmugasundaram 8/113, Thimampalayam, Maruthur, Karamadai, Tamil Nadu – 641 104.	बनाम/ Vs.	DCIT Central Circle-1, CBE Coimbatore.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AHFPR-3844-M		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./ ITA Nos.988 to 992, 803 & 823/Chny/2019
(निर्धारण वर्ष / Assessment Years: 2009-10 to 2015-16)

DCIT Central Circle-1, CBE Coimbatore.	बनाम/ Vs.	Shri T.R. Shanmugasundaram 8/113, Thimampalayam, Maruthur, Karamadai, Tamil Nadu – 641 104.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AHFPR-3844-M		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent/Cross Objector)

Assessee By	:	Shri S. Sridhar (Advocate)-Ld. AR
Revenue by	:	Shri M. Rajan- Ld. CIT-DR

सुनवाई की तारीख/ Date of Hearing	:	21-12-2021
घोषणा की तारीख / Date of Pronouncement	:	14-02-2022

आदेश / ORDER

Per Bench:

1. These are cross-appeals for Assessment Years (AY) 2009-10 to 2015-16. The appeals for AYs 2009-10 to 2014-15 arises out of common order dated 18-01-2019 passed by learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] in the matter of assessment framed by learned Assessing Officer (AO) vide separate orders passed u/s 143(3) r.w.s. 153A of the Act on 30.12.2016. The cross-appeals for AY 2015-16 arises out of the order dated 18.01.2019 passed by learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] in the matter of assessment framed by Ld. AO on 30.12.2016. The assessee has filed cross-objections against revenue's appeal which are only in support of impugned order and therefore, would not require any specific adjudication on our part.

2. It was point of agreement between both the sides that the facts as well issues in all the years are same and adjudication in any one year shall equally apply to all the other years also. It transpired that the cross-appeals for AY 2013-14 would cover all the issues arising out of these appeals and therefore, AY 2013-14 was taken as the lead year.

3. The grounds raised by the assessee read as under: -

1. The order of the Learned CIT(A) is bad and erroneous in law and against the principles of natural justice.
2. The learned CIT (A) erred in not considering the grounds of appeal and written submissions in proper perspective.
3. a) The learned CIT (A) erred in not considering the vital fact that when the time to serve notice u/s.143(2) is already over and when there is no incriminating material. Any addition made requires deletion.
b) **Unaccounted Sales**
(i) The findings by the learned CIT (A) that the accounts of the appellant were not audited u/s.44AB is factually wrong, for the same was done, copy provided to the Assessing Officer during the assessment proceedings, which was rejected to be

received and that copy was provided to the learned CIT (A) during the appellate proceedings.

(ii) The learned CIT (A) erred in not considering the vital fact that the figures in the seized materials do include sums meant for construction activities carried on by the appellant and that the profit accrued/rose to the appellant have been offered as income in the relevant year.

c) Development Expenses

The learned CIT(A) erred in sustaining the disallowance at 40% without there being any material so to do.

d) Sales Commission

The reasoning on which the learned CIT(A) sustained the addition is baseless, more particularly in the absence of any incriminating material so to do.

And for other reasons that may be adduced at the time of hearing, the appellant prays that this appeal be admitted, considered and justice be rendered.

The legal grounds as urged in the appeal has not been pressed by Ld. AR during hearing before us. Ground Nos.1 & 2 are general in nature. Ground No.3(a) stand dismissed as not pressed. In remaining ground, the assessee is aggrieved by addition of unaccounted sales and estimated disallowance of development expenses and sales commission expenses.

The ground raised by the revenue read as under: -

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.
2. The learned CIT(A) erred in directing the A.O. to restrict the addition made on account of Development expenses from 70% to 40%.
3. Having regard to the observation by the Id. CIT(A) himself in the impugned order that the assessee has not maintained regular and contemporaneous books of account supported by documents, vouchers that are capable of being verified, the Id. CIT(A) ought to have upheld the disallowance made by the A.O. @70% of the Development expenses.
4. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of Id. CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

Ground No.1 & 4 is general in nature. In remaining grounds, the revenue is aggrieved by partial relief provided by Ld. CIT(A) against development expenses.

The grounds raised by the assessee in cross-objections read as under: -

1) The order of the learned CIT (A) is correct and sustainable to the extent allowed by him in the facts and circumstances of the case.

2) The learned CIT(A), after duly considering the magnitude of the disallowance made by the Assessing Officer without there being any material to support disallowance, allowed 60% of the expenditure incurred under the development expenses by the appellant.

And for other reasons that may be adduced at the time of appellate hearing, the Cross Objector prays that this cross objection may be admitted, considered and justice be rendered.

As evident, the cross-objection merely support the impugned order to the extent relief granted by Ld. CIT(A). Therefore, the same would not require any specific adjudication on our part.

4. The registry has noted a delay of 19 days in revenue's appeal, the condonation of which has been sought by revenue on the strength of an affidavit wherein it has been submitted that delay occurred due to non-receipt of assessment records on time. The Ld. AR did not raise any serious objection against condonation of delay. Keeping in view the period of delay, the delay is condoned and the appeals are admitted for all the years for adjudication on merits.

5. The Ld. AR, drawing out attention to the factual matrix of the case, submitted that estimation made by lower authorities was on a very high side and having accepted part of the expenses, such a high estimation was not, at all, justified. The Ld. AR also advanced argument to submit that entire unaccounted sales could not be considered to be the income of the assessee since the assessee had incurred expenditure towards construction and such a high margin could not be derived by the assessee from construction activities. The Ld. CIT-DR, on the other hand, submitted that in the absence of satisfactory documentary evidences, lower authorities did not have any option but to estimate the

income of the assessee. The Ld. CIT-DR also assailed the relief granted by Ld. CIT(A) in the impugned order.

6. Having heard rival submissions and after considering the orders of lower authorities, our adjudication would be as under.

Assessment Proceedings

7.1 The assessee being resident individual was subjected to search action by the department u/s 132 on 18.11.2014. As a result of search, evidences indicating undisclosed income and investments made by the assessee were found which have been tabulated in para 1.2 of the assessment order. Notices u/s. 153A were issued by Ld. AO during the course of assessment proceedings. In response, the assessee filed return of income for various years as under:

AY	Date of filing original R/I	Income originally returned	Date of filing R/I u/s 153A /142(1)	Income returned u/s 153A	Date of Notice u/s 143(2)
2009-10	15.02.2009	1,90,591	02.06.2016	8,19,023	02.06.2016
2010-11	15.02.2011	2,00,224	02.06.2016	3,65,345	02.06.2016
2011-12	Not fled	-	20.06.2016	7,64,635	20.06.2016
2012-13	Not filed	-	07.07.2016	15,71,050	08.09.2016
2013-14	12.07.14	8,72,780	11.08.2016	36,46,090	08.09.2016
2014-15	Not filed	-	18.08.2016	38,39,690	08.09.2016
2015-16	-	-	16.09.2016	47,55,320	20.09.2016

7.2 After considering assessee's submissions and explanations, Ld. AO made four addition / disallowances in assessee's income- (i) Addition on account of unaccounted / suppressed sales; (ii) Addition of unaccounted investment in Land; (iii) Disallowance of development expenses claimed by the assessee; (iv) disallowance of Sales Commission expenses claimed by the assessee. These additions / disallowances are the subject matter of cross appeal before us. The facts leading to impugned additions are as under: -

(i) Addition on account of unaccounted / suppressed sales

The assessee sold several developed sites altogether admeasuring 2240 cents in Karamadai and Pogalur village in Coimbatore District during AYs 2009-10 to 2015-16. During search operation, incriminating documents in the form of agreement and advance receipts were found which indicated that the assessee was suppressing sale receipts to the extent of about 2 to 5 times. The assessee was reflecting only 20% to 50% of actual sale consideration in the registered sale deeds. To substantiate the same, the Ld. AO has quoted one instance, wherein on 23.01.2013, the assessee sold site admeasuring 5.02 cents in Vijaylakshmi Park at Karamadai vide registered Document No.497/2013. In this document, the consideration was shown as Rs.4.03 Lacs as against actual consideration of Rs.20.50 Lacs. Thus only 19.65% of actual consideration was reflected in the registered document. In other words, sales were found to be about 5 times of sale price recorded in the registered documents. The site supervisor, during the course of survey confirmed that for vacant site, the cost was about Rs.2 Lacs per cent whereas the cost of construction was around Rs.1200/- to Rs.1300/- per square feet. Accordingly, on the basis of values recorded in the registered documents, year-wise gross sales receipts earned by the assessee were worked out which are tabulated in para 3.1.5 of the assessment order. The estimated sale value of 2240.53 Cents sold by the assessee during AYs 2009-10 to 2015-16 was worked out to be Rs.3982.68 Lacs. The differential of total sales as worked out by Ld. AO and the sales value as shown in the registered documents, was proposed to be added to the income of the assessee as unaccounted sales and the assessee was put to notice. The assessee refuted the

allegations of Ld. AO by submitting that the working was not based on any credible evidences and no additions were to be made in the absence of material evidences. However, disregarding the same, Ld. AO added the differential sale receipts to the income of the assessee. The addition for this year was worked out to be Rs.1184.14 Lacs.

ii) Unaccounted Investment in Land

The assessee made investment in land during AYs 2009-10 to 2015-16. It was alleged that the assessee did not submit any details regarding source of such investment and therefore, the same was to be treated as unaccounted investment. For this year, the addition proposed by Ld. AO was Rs.144 Lacs on 14.81 acres of land. The assessee again refuted the allegations of Ld. AO and submitted that the land was purchased for Rs.38.70 Lacs which was already reflected in the regular books of account. However, disregarding the same, Ld. AO made this addition.

(iii) Development expenses

The assessee claimed development expenses of Rs.764.23 Lacs in the Profit & Loss Account. Though the assessee produced self-made vouchers, however, the same were held to be not acceptable by Ld. AO. The assessee submitted that it has produced all the vouchers / documents / evidences related to development expenses. It was a normal practice in the trade of real estate development that most of the services obtained for road laying, civil work, laying-off of plants, electrical works etc. was done by unorganized sector which would not issue proper bills / vouchers. However, Ld. AO opined that the assessee failed to discharge onus of substantiating the expenditure and accordingly, disallowed 70% of this expenditure. The same resulted into disallowance of Rs.534.96 Lacs in the hands of the assessee.

(iv) Sales Commission

The assessee debited sales commission of Rs.14.67 Lac. However, it could not produce the details of TDS on such payment. It was submitted that it was referral commission paid one time and generally, the payments were below Rs.5000/-. However, Ld. AO estimated disallowance of 70% against this expenditure and added an amount of Rs.10.27 Lacs to the income of the assessee.

Appellate proceedings & Our Adjudication

8. During appellate proceedings, the assessee challenged the validity of assessment proceedings on legal grounds. However, these grounds were rejected by Ld. CIT(A) in the light of statutory provisions and in terms of various judicial pronouncements as enumerated in the impugned order. At the same time, Ld. CIT(A) adjudicated the issues on merits which were as under.

(i) Addition on account of unaccounted / suppressed sales

Regrading addition of unaccounted sales, it was observed that there was incriminating material evidencing the difference between sale value shown in the registered documents and actual sales value derived by the assessee. The assessee did not maintain regular books of account and did not get his accounts audited as required u/s 44AB of the Act. The Ld. AR contested the addition by submitting the figures in the seized material did not refer to sums for the plots only but also the cost of construction. The assessee already offered profit / commission earned on such construction activities. However, the same were rejected by Ld. CIT(A) on the ground that the submissions were not backed up by any evidences. The seized material would not represent full transactions but the quantum of evidence was too strong to be ignore and therefore, the

working done by Ld. AO could not be disregarded. It was permissible for Ld. AO to determine true and correct income as per law keeping in mind the incriminating material and draw appropriate inferences therefrom. It would not be possible for Ld. AO to find out precise suppressed sales. He could make an estimate of the suppressed turnover on the basis of material before him. Such an estimate should not be arbitrary and it should have nexus with the material found and the facts discovered. The assessee did not maintain regular and contemporaneous books of account nor the accounts were audited. The quantum-jump between the returns filed u/s 139 as those filed u/s 153A clearly demonstrate that the assessee was regularly suppressing its income. The assessee, in the sworn statement u/s 132(4), deposed that he had bought lands, developed and sold them and had work-in-progress as well as lands that were yet to be developed and sold. The AO had assessed income on the basis of income method and did not consider the investment since the income assessed is higher than the investments and year-wise apportionment for the investment was not produced by the assessee before AO as well. Thus, the unaccounted sales assessed by AO had the backing of the assets to an extent. Therefore, the addition of unaccounted sales for AYs 2013-14 & 2014-15 were confirmed.

In AY 2009-10, the sale shown by the assessee was Rs.42.24 Lacs as against Rs.44.12 Lacs estimated by Ld. AO and the difference was merely 4% of sales offered. No reference to cash receipt or agreement indicating cash receipt in respect of sale of plots was brought on record as apparently no such material was available on record. Further, the sales had just commenced during the previous year relating to AY 2009-10 in respect of impugned project sites. Therefore, the addition for AYs

2009-10 was to be deleted. Similar addition for AYs 2010-11 & 2012-13 were deleted on the same reasoning / logic that there was no direct reference to any specific material indicating unaccounted cash sale transaction. No reference to cash receipt or agreement indicating cash receipt in respect of sale of plot was brought on record as apparently no such material was available before Ld. AO. In other words, the additions for AYs 2009-10, 2010-11 & 2012-13 were deleted whereas the additions for AYs 2013-14 & 2014-15 was confirmed. Aggrieved, the assessee is in further appeal before us for AYs 2013-14 & 2014-15. We find that the revenue has not assailed the findings of Ld. CIT(A) for AYs 2009-10, 2010-11 & 2012-13 and therefore, the impugned order, to that extent has attained finality. No such addition was made by Ld. AO in AY 2011-12.

Unaccounted investment in Land

This addition was made for AYs 2009-10, 2012-13 & 2013-14. Upon perusal of loose papers, it was observed that the assessee purchased most of the land at a price 5 times the registered deed value. Since the source thereof remained unexplained, this addition was made by Ld. AO. During assessment proceedings, the assessee had refuted the allegation of Ld. AO. The Ld. CIT(A) observed that while making this addition, Ld. AO had referred to same set of seized material in the assessment orders for AYs 2009-10 and 2012-13 but there was no reference to seized material in respect of AY 2013-14 towards the impugned addition on account of investment in land. It was noted that as per seized document, the agreement was executed on 14.02.2008 which fall in AY 2008-09. As per the agreement, the balance payment was to be made in next three months. The Ld. AO did not bring on record any material to show that the

balance was paid by the assessee and no documentary evidence was available on record. Similar was the status of another agreement dated 15.02.2008. For another agreement dated 14.04.2010, Ld. AO did not bring on record any material or evidence to show that the transaction related to the assessee. Finally, for agreement dated 30.10.2008, there was no evidence of any on-money to the extent mentioned in the agreement. Similar was the status of agreement dated 06.03.2008 wherein there was no credible evidence which would indicate that excess cash was paid. In other words, upon perusal of all these agreements, it could be observed that in few cases the transaction did not materialize, in few cases the transactions did not relate to impugned AY, in few cases there was no other incriminating evidence in the form of receipts or enquiries that the purchase price was extrapolate for all the other land purchased by the assessee. Therefore, to presume that the assessee would have paid 5 times of the registered sale deed value would not be correct particularly when there was no adverse material on record. The value of land would depend upon various factor such as location of site, extant market conditions, position of the parties, nature of sale etc. and all these relevant factors could not be brushed aside. Moreover, it was incumbent on Ld. AO to prove that extra money was paid by the assessee. There was no such finding on record. The extrapolation done by Ld. AO had no basis and the action of Ld. AO in estimating the additions could not be upheld. The action of Ld. AO was totally untenable and devoid of any merits for it was based on conjectures and surmises. Therefore, the addition made in all these three years was deleted. We find that the revenue has accepted the

findings of Ld. CIT(A) for all the three years and the issue has thus, attained finality.

Development Expenditure

The Ld. CIT(A), after considering the factual matrix, noted that the assessee had brought tracts of land and developed those into saleable lay outs by converting these lands into plots. It was not possible to have developed layouts without incurring any expenditure like clearing of debris, levelling of grounds, lay out of roads, installation of posts. It was also acceptable that some the activities would involve engagement of labour and service provider in unorganized sector. At the same time, the assessee was duty bound to furnish full details / particulars in support of the claim. However, the assessee failed to demonstrate that all the expenditure was incurred for the purpose of business. Therefore, keeping in mind the entirety of facts and circumstances, the disallowance to the extent of 40% would meet the end of justice. Accordingly, partial relief was granted to the assessee which has given rise to cross appeal before us.

After considering the impugned order, we find that this issue has rightly been clinched in the proper perspective by Ld. CIT(A). The assessee had brought tracts of land and developed the plots into saleable lay outs by converting these lands into plots. It could not be possible to have developed layouts without incurring any expenditure like clearing of debris, levelling of grounds, lay out of roads, installation of posts etc. The finding is also acceptable that some the activities would involve engagement of labour and service provider in unorganized sector. Therefore, a disallowance as high as 70% was not justified. The estimation of 40% as made by Ld. CIT(A), in our considered opinion, is

quite reasonable and fair. Therefore, the same would not require any interference on our part. The grounds raised in assessee's appeal as well as revenue's appeal, on this issue, stand dismissed.

Sales Commission

We find that Ld. AO has estimated this disallowance @70% which has been confirmed by Ld. CIT(A). However, we find that the assessee had sold large chunk of lands during all the years. The same would not be possible without engaging the services of the broker. Most of the payment was stated to be below Rs.5000/- which would not require TDS compliance on the part of the assessee. These payments were one-time payment as referral payment. Therefore, we estimate this disallowance @40% as done for development expenses. The Ld. AO is directed to restrict the disallowance to 40% as against 70% confirmed by Ld. CIT(A). The assessee's ground of appeal, for all the year, stand partly allowed.

9. The only issue which has remained to be adjudicated by us in assessee's appeal is addition of alleged unaccounted sales as confirmed by Ld. CIT(A) for AYs 2013-14 & 2014-15. We find that on the basis of seized material, citing few instances, Ld. AO has concluded that the assessee has suppressed sales to the extent of 2 to 5 times. However, the sale for these two years have been extrapolated only on the basis of few instances and by extending the sale value to other registration of the properties. A blanket 2/3rd has been considered to be the one reflected in the registered document. The said approach, in our considered opinion, is not a correct approach since in an assessment framed on the basis of search action, the additions are strictly to be based on incriminating material found and seized by the revenue during the course of search

proceedings. Only on the basis of few instances, to presume that such concealment was done by the assessee in all the transactions, in a blanket manner, was not a correct presumption. It could also be seen that Ld. AO has also not considered the fact that the assessee might have incurred expenditure on cost of construction and other expenses in the same manner for which benefit should have been granted to the assessee. The sale figures could not be said to be the income of the assessee. It is trite law that only the real income earned by the assessee could be brought to tax. It is the finding that the assessee has sold developed sites during these years which would entail incurring of expenditure on the part of the assessee. Therefore, on the given facts and circumstances, it would be in the fitness of things to estimate profit element embedded in unaccounted sale transactions since entire sales figures could not be held to be the income of the assessee. As per statutory mandate, a presumptive rate of 8% is applicable on civil construction business. Taking cue from the same, we apply the same rate to the unaccounted sales as computed by Ld. AO. Accordingly, Ld. AO is directed to estimate profit rate of 8% on unaccounted sales of Rs.1184.14 Lacs for AY 2013-14. The balance addition stand deleted. Similar estimation shall also be made for AY 2014-15. The ground raised by the assessee stand partly allowed.

10. In AY 2015-16, the assessee has been saddled with addition of unaccounted sales, estimated disallowance of development expenses and estimated disallowance of sales commission. Facts being *pari-materia* the same, our adjudication as for AY 2013-14 shall *mutatis-mutandis* apply to this year also. Accordingly, the addition of unaccounted sales shall be estimated @8%. The disallowance of

development expenses stands confirmed. The disallowance of sales commission stands restricted to 40%.

11. To summarize, the appeals for various years are disposed-off as follows. The common issue in cross-appeals for AYs 2009-10 to 2015-16 is disallowance of development expenses. By confirming the stand of Ld. CIT(A), we dismiss the grounds raised by the assessee as well as revenue, for all these years. The other issue in assessee's appeal, for all the years, is disallowance of sales commission which stand partly allowed to the extent indicated in the order. In AYs 2013-14 to 2015-16, the common issue in assessee's appeal is unaccounted sales which stand partly allowed to the extent indicated in the order.

12. The assessee's appeal stands partly allowed whereas the revenue's appeal stand dismissed. The assessee's cross-objections stand dismissed as infructuous.

Order pronounced on 14th February, 2022

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 14-02-2022
EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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