

**आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI**  
**श्री जी.मंजुनाथ, लेखा सदस्य एवं श्री अनिकेश बनर्जी, न्यायिक सदस्य के समक्ष**  
**BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**  
**AND SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

आयकर अपीलसं./I.T.A. Nos. 2624 to 2626/Chny/2019

(निर्धारणवर्ष / Assessment Years: 2014-15, 2012-13 & 2013-14)

1.Smt. R.Dharmambal, 2.Mr.Adithya & 3.Minor Ms.Anenya, L/Rs of S.Venkatraman(Deceased) 33, Co-operative B Colony, K.K.Pudur, Coimbatore-641 038 PAN: AAJPV 2539G (अपीलार्थी/Appellant)	Vs	The Assistant Commissioner of Income Tax, Central Circle-2 Coimbatore.  (प्रत्यर्थी/Respondent)
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अपीलार्थीकीओरसे/ Appellant by	:	Mr. S.Sridhar, Advocate (Erode)
प्रत्यर्थीकीओरसे/Respondent by	:	Dr. S.Palani Kumar, CIT

सुनवाईकीतारीख/Date of hearing	:	10.03.2022
घोषणाकीतारीख /Date of Pronouncement	:	17.03.2022

**आदेश / ORDER**

**PER G.MANJUNATHA, AM:**

These three appeals filed by the assessee are directed against common order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 08.07.2019 and pertain to assessment years 2014-15, 2012-13 & 2013-14. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for these three assessment years, therefore, for the

sake of brevity, grounds of appeal filed for the assessment year 2012-13 are reproduced 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 written submissions in proper perspective.*

*3) A) Krishna Nagar-Phase-7*

*While the appellant, while filing the return of income, arrived at the rate of Rs.1,25,000/- per cent, which workings are based on the seized materials, the learned CIT (A), by observing in more than one place, in the impugned order, about preponderance of probability", endorsed the rate of Rs.1,31,000/-, adopted by the Assessing Officer uniformly for all the sites sold.*

*B) Thirumurugan Nagar*

*While the appellant, while filing the return of income, arrived at the rate of Rs.1,00,000/- per cent, which workings are based on the seized materials, the learned CIT (A), by observing in more than one place, in the impugned order, about "preponderance of probability", endorsed the rate of Rs.1,40,000/-, adopted by the Assessing Officer uniformly for all the sites sold.*

*C) Green Fields*

*The learned CIT(A), while giving a relief towards brokerage of Rs.15,00,000/-, erred in not considering the material fact that all the sites were not sold at the rate of Rs.1,40,000/-, that some of the sites were sold for the rates ranging between Rs.50,000/- to Rs.1,20,000/- and that the statements recorded from the broker Sri. Rajan was not looked into properly."*

3. Brief facts of the case are that the assessee was engaged in real estate business filed his return of income for assessment year 2012-13 to 2014-15 u/s.139(1) of the Income

Tax Act, 1961. A search and seizure operation u/s.132 of the Act was carried out in M/s. Green Property Developers India P.Ltd. and group cases on 05.09.2013, in which case of the assessee was also covered . During the course of search at the residence of the assessee certain incriminating books and documents in the form of loose sheets, diaries were found and seized. The incriminating materials contained details of assessee's real estate business and financial transaction relating to his business and personal affairs. A sworn statement u/s.132(4) of the Act, was recorded from the assessee and on the basis of documents found and seized during the course of search, the assessee had admitted undisclosed income of Rs.2 crores from his real estate business to cover up various discrepancies, including difference in sale price consideration for sale of plots / sites. Consequent to search, notice u/s.153A of the Income Tax Act, 1961, was issued to the assessee for six assessment years immediately preceding assessment year in which search took place. In response to notice, the assessee has filed his return of income for assessment years 2012-13 to 2014-15 and included additional income declared during the course of search.

4. The case was taken up for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that during the impugned assessment years, the assessee had developed various projects, including project at Sri Krishna Nagar- Phase 7, Seerapalayam, another project at Thirumurugan Nagar, Seerapalayam and Green Fields at Kallipalayam. It was further observed that as per seized documents, the assessee has sold one cent of land at Rs.1,25,000/- in Sri Krishna Nagar, Phase 7, Seerapalayam project. However, while filing return of income, the assessee has adopted Rs.80,000/- per cent. Similarly, the Assessing Officer noticed that in respect of Thirumurugan Nagar project, the assessee has sold one cent of land at Rs.1,40,000/-, whereas, he has adopted Rs.1,00,000/- per cent, while determining profit from project. Similarly, it was noticed that the assessee has sold Green fields project land at Rs.1,40,000/- per cent, whereas the assessee has adopted Rs.1,00,000/- per cent to arrive at profit from the project. Therefore, taking note of various seized materials found during the course of search, coupled with statement recorded from the assessee and so called broker Mr. Rajan, the Assessing

Officer opined that the assessee has not declared actual sale consideration received from sale of plots / sites and thus, the Assessing Officer has reworked unaccounted income from real estate business at Rs.1,80,64,000/- for the assessment years 2012-13 to 2014-15 and has made addition of Rs.1,32,82,240/- for the assessment year 2012-13 and further Rs.42,19,200/- for the assessment year 2013-14 and Rs.5,62,560/- for the assessment year 2014-15. The relevant findings of the Assessing Officer are as under:-

*“ 4.7 It is difficult to accept the explanation of the assessee as above. The assessee has very clearly noted in the loose sheet about the entire investment in the land including brokerage, cost of pathway and expenses on legal heirship and further he has also very clearly noted the sale consideration received and also the profit derived therefrom. As mentioned earlier, in none of the notings made by the assessee regarding the sale of various plots has he noted the sale value and then deducted any brokerage or commission. It can be seen that the assessee always showed the actual sale consideration received and after accounting for the investment expenses, he would appropriate the balance amongst the partners of the project as per the profit sharing ratio. The appropriation is not shown after deducting any brokerage or commission and considering the statement of Shri. Rajan, the marketing person as discussed earlier that the rate at which the plot is to be sold is pre determined by the owner and after marking up his commission, he would deal negotiation with the prospective customers. As*

regards the other expenses claimed by him towards the purchase of 50 cents of land for approach road, again it can be seen that, if any such expenses had been incurred by the assessee, it ought to have found place in the notings made by him as above. In view of the discussion above, I hold that the assessee has not made a true disclosure in regard to the above project and in reality, the share of his profit has to be considered at Rs. 2,01,90,000/- as against Rs. 80 lakhs disclosed by him. I therefore, adopt the income from the project as accruing to him at Rs, 2,01,90,000/- In view of the discussion above his income from the real estate business from the five projects has to be taken as under as against the income disclosed by him at the time of search and in the return of income filed in response to notice u/s 153A

Project Name	Undisclosed income disclosed in the return	Undisclosed income determined as above.	Addition to be made
Sri Krishna Nagar-Phase 7	15,00,000	21,00,000	6,00,000
Venus Lakshmi Nagar	Nil		
Green Fields	80,00,000	2,01,90,000	1,21,90,000
Thirumurugan Nagar	44,26,000	97,00,000	52,74,000
Sri Krishna Nagar, MK Chettipalayam	Nil		
Total undisclosed income from the real estate projects	1,39,26,000	3,19,90,000	1,80,64,000

4.8 According to the assessee, the sale of plots in Krishna Nagar, Phase 7 were made during the financial year 2011-12, the sale of plots in Green Fields were completed in the financial year 2011-12 and in the case of Thirumurugan Nagar, 7 sites were sold in financial year 2011-12, 60 sites were sold in the financial year 2012-13 and 8 sites were sold in the financial year 2013-14. Accordingly the addition to be made at Rs. 1,80,64,000/- will be apportioned for the various assessment years on the ratio at which the sale has taken place according to the assessee. Thus the addition to the total income will be as under:

Project Name	Addition to be made	AY 2012-13	AY 2013-14	AY 2014-15
Sri Krishna Nagar-Phase 7	6,00,000	6,00,000		
Green Fields	1,21,90,000	1,21,90,000		
Thirumurugan Nagar	52,74,000	4,92,240	42,19,200	5,62,560
Total undisclosed income from the real estate projects	1,80,64,000	1,32,82,240	42,19,200	5,62,560

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has reiterated his arguments made before the Assessing Officer and submitted that the Assessing Officer has erred in making additions towards undisclosed income on account of income from real estate business without appreciating fact that the assessee has categorically stated in his sworn statement recorded during the course of search that he sold per cent of land ranging from Rs.80,000/- to Rs.1.00 lakhs in Sri Krishna Nagar Phase-7 project, Rs.1.00 lakh to Rs.1,40,000/- per cent in Thirumurugan Nagar project and Rs.80,000/- in Green field project. The assessee further contended that there is no basis for the Assessing Officer to adopt Rs.1,31,000/- for Sri Krishna Nagar Phase-7 project, when the assessee has determined average rate of Rs.1.00 lakh per cent. Similarly, the Assessing Officer has wrongly taken Rs.1,40,000/- for Green Field project when

the assessee has realized less amount after deducting commission paid to agent for marketing the sites.

6. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of various incriminating materials found during the course of search held that when seized material clearly indicates modus operandi of the assessee of selling sites/plots at higher rates and accounting lesser sales in books of account, then the Assessing Officer is right in computing undisclosed income on the basis of seized documents. The learned CIT(A) has discussed the issue in light of decision of the Hon'ble Andhra Pradesh High Court in the case of Gopal Lal Bhadraka Vs. DCIT 346 ITR 106 (AP) and held that estimation is possible in such assessments, when data found during the course of search indicates suppression of income / sales. Therefore, the learned CIT(A) has rejected arguments of the assessee and sustained additions made by the Assessing Officer towards estimation of undisclosed income from real estate business. The relevant findings of the learned CIT(A) are as under:-

*“11. I have bestowed my personal thoughts on the issue at hand and have considered relevant facts of the case. The important point to be kept in view is that the appellant had not maintained books of account. It is further important to note that credible and incriminating documents evidencing the appellant’s real estate business activities were recovered. These loose sheets and diaries contain financial transactions of the appellant’s business such as plot wise sales, rate per cent have been recorded systematically. It is not the case of the appellant that these seized documents are dumb documents and they are not capable of being deciphered. The AO has brought on record that they are pretty straightforward. The documents recovered are speaking ones that do not call for any second interpretation. Entries made in dairies can be construed as entries made in the books of account and those entries cannot be brushed aside. It is the duty of the AO to carry out investigation and correlation of such entries with reference to the source of the receipts, expenses and profits of the business. The AO has brought out the entries represent taxable events inasmuch as the appellant had effected sales; the profit as worked out as per the jottings in the documents; identities of parties in respect of buyers of plots; the year to which the activities and the attendant income relate to. It is not the case of the appellant that the entries are imaginary ones and coded ones. It is not the ease that they do not relate to his business. The appellant could not and produce any books of account in support of his financials and outcome represented by taxable income. It is a fact that these documents were recovered during the course of search proceedings in the case of the appellant; and that they represent the business activities of the appellant and the profits emanating out of such profits. It is, equally, if not more important and material, to observe that the appellant himself has given credence to these*

*seized documents while working out his undisclosed income and offering the worked out additional income in his returns of income filed in response to Sec.153A and 143(3) of the Act, The appellant has enhanced his taxable income vis-a-vis return filed u/s 139(1) wherever applicable. Thus the appellant's ground on the validity of loose sheets and dairies are not liable to be upheld. The facts of the appellant's case are distinguishable with that of the case sought to be relied on by the appellant.*

*12. It is pertinent to note that, these seized materials would not represent the full transactions but the quantum of evidence is too significant to be ignored and hence, the A.O. had resorted to the working that cannot be disregarded. It may be a fact the department probably did not get hold of all the evidences indicating the on- money transactions in all the sales and purchases. In fact, in practice, it cannot be expected that the taxpayer would keep all the incriminating materials that would go against him in tax proceedings. It is only natural that any tax payer, leave alone the appellant would have a tendency to purge the incriminating materials then and there. It is during such enforcement actions such as Search action u/s. 132(1) of the Act, the Revenue could lay its hands on such evidences in part at times and in full measure in certain rare and hot pursuit cases. However, it will not be correct to say that the Revenue should produce all the evidence. It is incomprehensible or at least improbable to say that the taxpayer, say in a real estate case, would have received on-money only in those specified cases where evidences have been seized and would not have received in all those other cases for which the Revenue could not have , for various reasons such as destruction of evidences at periodical levels, alertness of the taxpayer, time lag, location*

*and the counseling that he might have received from well-qualified Accountants and Attorneys laid its hands on all the incriminating materials.*

*13. It is not the case of the appellant that no incriminating materials have been seized. Sufficiency or otherwise of the magnitude of incriminating materials cannot be challenged by the appellant. In fact in determination of total income, it is permissible for the AO to determine true and correct income as per law keeping in view certain materials and to draw appropriate inferences. At times, it will not be possible for the AO to find out precisely the suppressed sales. He could make an estimate of the suppressed turnover on the basis of the material before him. Such estimate should not be arbitrary. It should have nexus with the material found and the facts discovered. If that is the basis followed, the estimate cannot be questioned.*

*14. Under the search assessment u/s.153A, even though there is no 'specific provision enabling application u/s.145, it is provided in the explanation to sec. 153A that all other provisions of the Act shall apply irrespective of assessment made under this section. The ratio of the Hon'ble High Court of Andhra Pradesh in the case of Gopal Lal Bhadraka Vs DCIT 346 ITR 106 (AP) supports the principle of estimation on sales.*

*15. In the light of the above the discussions, decision on addition of income represented by profits from the impugned projects for the relevant AYs is decided as under:*

*15.1. In respect of Sree Krishna Nagar, Phase -- 7 project [AY.2012-13], the AR sought to advance that the rate is*

*Rs.1,00,000 which is not correct. The AO on the basis of seized materials has worked out the average rate at Rs. 1.31 lakhs per cent after considering a number of seized documents that indicate this value. It is further relevant to observe that the AO has factored brokerage and commission expenses in arriving at Rs.21 lakhs as undisclosed profits. The AO after considering the undisclosed income of Rs. 15,00,000 offered on this project for the AY 2012-13 has added a sum of Rs.6,00,000 to the total income. It is relevant to note that the AO has on the basis of credible and valid documents [that contain specific details of site number, area of the plot, sale value, date of transaction for a pretty large number of sale transactions] recovered worked out this average rate by bringing on record the details of transactions embedded in certain sales in the same project. The appellant cannot argue that it had received cash component in only limited cases. The AO has reasonably worked out the profit keeping in view the cannon of preponderance of probability' and as per the principles of human probability theory. In view of the foregoing discussions, I am of the view that there is no infirmity in the decision of the AO, for he is reasonable in his conclusion. The addition is upheld. The appellant's ground on this addition is dismissed."*

*15.2. In respect of Thirumurugan Nagar project, the AO has on the basis of seized documents and after considering brokerage expenses has correctly worked out the profit at Rs.52,74,000 spread over the three AYs to the extent of Rs.4,92,240, Rs. 4219,200 and Rs.5,62,560 for AYs 2012-13,2013-14 and 2014-15 respectively. At the cost of repetition, it is relevant to note that the AO has on the basis of credible and valid documents [that contain specific details of site number, area of the plot, sale value, date of transaction for a pretty large number of sale*

*transactions] recovered worked out this average rate by bringing on record the details of transactions embedded in certain sales in the same project; the AO has reasonably worked out the profit keeping in view the cannon of 'preponderance of probability' and as per the principles of human probability theory. Besides, the appellant cannot argue that it had received cash component in only limited cases. In view of the fact that the AO 's working is reasonable and has basis, the conclusion and the working of profit is held as tenable. Accordingly, these additions are upheld. The appellant's grounds on this score for these three AYs are dismissed.*

*15.3. In respect of Green Fields project [AY2012-13], it is noticed that the appellant has carried out business on agreement basis in respect of the impugned area at the rate of Rs.1,41,000 per acre. The working is on the basis of records maintained by the appellant as discussed in detail in para 9 C supra. The working has been systematic and is not a random one. The appellant has not totally rejected the contents of these relevant entries. In fact, the appellant has given credence to these statement of affairs as evidenced by his admission and offer of additional undisclosed income of Rs.80 lakhs being profits from this impugned project. It is not case where the appellant has offered undisclosed income without any evidence. The working cannot be totally brushed aside. It is relevant to observe that the AO has given credence to claims of the appellant with reference to legal heirship, pathway sites and of course deduction of brokerage of Rs.7 lakhs has been deducted towards brokerage expenses. It is true that the appellant should demonstrate with reference to the quantum of brokerage of expenses supported by documents. At the same time, trade practice cannot be lost*

*sight of totally. It is relevant to observe that the AO needs to be reasonable while making estimates of income and expenditure. In view of the specific facts and keeping in view the trade practice and commercial expediency, a further deduction of Rs. 15 lakhs towards brokerage is held to be reasonable and justifiable, for that would meet the ends of justice. In respect of other claims of the appellant, it is settled position of law that the onus is on the person who makes such claims. The appellant has not adduced any evidence before the undersigned in this regard. Hence, further relief could not be considered, for they are not otherwise allowable. As discussed above, only a relief of Rs. 15 lakhs towards brokerage is liable to be given. Accordingly, the income from Green Fields is to be adopted as Rs. 1,06,90,000. The appellant's ground on this point is partly allowed."*

7. The learned A.R for the assessee submitted that the learned CIT(A) erred in not appreciating fact that the assessee has disclosed undisclosed income of Rs.2 crores for three assessment years during the course of search in the statement recorded u/s.132(4) of the Act, on the basis of various incriminating materials found and thus, further estimation of undisclosed income on the basis of very same seized materials is incorrect. The learned AR further submitted that the assessee has considered all seized materials found during the course of search and has estimated undisclosed income of

Rs.2 crores and hence, further estimation of sales revenue from very same seized material amounts to double addition. He further referring to statement recorded from the assessee during the course of search submitted that the assessee nowhere stated that he has sold sites/plots at the rate what the learned Assessing Officer has considered in his assessment order. But, the assessee stated that he has sold sites/plots ranging from Rs.80,000/- to Rs.1,25,000/- for Sri Krishna Nagar Phase-7 project, Rs.80,000/- to Rs.1,00,000/- for Thirumurugan Nagar project and Rs.50,000/- to Rs.1,20,000/- for Green Field project. But, the Assessing Officer has adopted higher rate received by the assessee for all sites without appreciating fact that the assessee did not realize sales revenue for all sites at that rate. The learned AR for the assessee further referring to statement recorded from Mr.Rajan, agent who marketed green field project, submitted that although, the assessee has realized higher price for certain plots, the assessee has paid commission to the agent for marketing the project and if you consider commission expenses, net rate considered by the assessee for arriving at sales revenue is correct. He further submitted that when the assessee has quantified undisclosed

income on the basis of seized materials during the course of search, there is no reason for the Assessing Officer to make further estimation of undisclosed income on the basis of very same seized materials. Therefore, the learned AR submitted that Assessing Officer as well as learned CIT(A) were erred in making further additions towards undisclosed income from sale of sites/plots.

8. The learned DR, on the other hand, strongly supporting order of the learned CIT(A) submitted that the Assessing Officer has brought out clear facts in the assessment order in respect of various facts in light of incriminating materials found during the course of search, as per which the assessee has understated his sales revenue from each project, which is evident from the fact that the assessee has accounted less sales when compared to actual realization from sales. The learned DR further referring to page no.7 of the assessment order submitted that in respect of Thirumurugan Nagar project, the assessee has sold all plots at Rs.1,40,000/- per cent, whereas while filing return of income, he has considered a sum of Rs.1.00 lakhs per cent. Similarly, in respect of Sri Krishna Nagar Phase-

7 project, the assessee has realized sales revenue of Rs.1,25,000/- to Rs.1,45,000/- per cent , whereas the assessee has adopted a sum of Rs.80,000/- per cent. Likewise, in respect of Green Fields project, the assessee has sold plots @ Rs.1,40,000/- per cent, whereas has accounted sale consideration at Rs.1,15,000/- per cent, after deducting commission of Rs.25,000/- per cent. If you go through seized materials found during the course of search, it is very clear that the assessee has realized higher sales revenue, whereas while filing return of income has considered less. Therefore, the Assessing Officer has computed undisclosed income on the basis of seized materials, which cannot be said that the Assessing Officer has made additions twice. The learned DR further referring to decision of the Hon'ble Andhra Pradesh High Court in the case of Gopal Lal Bhadraka Vs. DCIT (supra) submitted that the High Court has very categorically held that estimation of income is possible, when documents found during the course of search indicates suppression of income for part of the year. Therefore, the Assessing Officer has rightly estimated undisclosed income on the basis of seized materials and his order should be upheld.

9. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We have also carefully considered various seized materials referred to by the Assessing Officer in his assessment order along with sworn statement recorded from the assessee and Mr.Rajan, so called agent, who marketed green field project recorded during the course of search. From the incriminating materials found during the course of search coupled with statement recorded from the assessee, what we could notice was that the assessee has admitted additional undisclosed income of Rs.2 crores from his real estate business for the impugned assessment years and such admission has been given to cover various discrepancies noticed on the basis of incriminating materials found during the course of search, including under-statement of sales revenue from sale of plots / sites. The Assessing Officer has made additions towards undisclosed income generated from real estate business on the basis of very same seized materials . The Assessing Officer has computed sales revenue from each project on the basis of higher rate generated by the assessee from sale of plots / sites and has adopted said rate to all plots/sites sold during the

relevant financial years. It was the explanation of the assessee before the Assessing Officer that he had sold sites ranging from Rs.80,000/- to Rs.1,25,000/- per cent in Sri Krishna Nagar Phase-7 project, Rs.1,00,000/- to Rs.1,40,000/- in Thirumurugan Nagar project and Rs.1,15,000/- to Rs.1,20,000/- per cent in Green Field project. The assessee further contended that it has reduced commission paid to marketing agents from sales revenue, while computing revenue from each project. Therefore, AR for the assessee argued that when the assessee has declared undisclosed income of Rs.2 crores for all these assessment years to cover up various discrepancies, there is no reason for the Assessing Officer to make further estimation of undisclosed income on the basis of very same seized materials.

10. We have given our thoughtful consideration to reasons given by the Assessing Officer in light of various arguments made by the learned AR for the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer to estimate undisclosed income from real estate business for simple reason that the assessee himself has offered

undisclosed income of Rs.2 crores spread over for three assessment years and such undisclosed income has been determined by the department during the course of search on the basis of incriminating materials found and seized from the assessee. The assessee very categorically stated in statement recorded during the course of search that he has admitted additional income from real estate business and such income has been offered to cover up various discrepancies noticed during the course of search. Therefore, we are of the considered view that once, the department itself has determined undisclosed income on the basis of incriminating materials found during the course of search and quantified undisclosed income, then the Assessing Officer was completely erred in making further estimation of undisclosed income on the basis of very same incriminating materials. Therefore, on this count alone, the additions made by the Assessing Officer towards undisclosed income generated from real estate business cannot be sustained.

11. Be that as it may, but the fact remains that the assessee has explained reasons for adopting average rate of Rs.1.00

lakh per cent from Sri Krishna Nagar Phase-7 project. As per the assessee, he has considered average rate of Rs.1.00 lakh, after reducing various expenses, including commission paid to agents who marketed the project. If you exclude expenses incurred for marketing project, then rate arrived at by the assessee is correct. We find force in the arguments of the learned AR for the assessee, because the assessee had very categorically stated in his statement recorded during the course of search that he has sold sites/plots at Sri Krishna Nagar Phase-7 project ranging from Rs.1.00 lakh to Rs.1,25,000/- per cent. Further, the assessee has paid commission to agents to marketed the project. If you deduct commission expenses from sales revenue, average rate received by the assessee from sale at sites works out to Rs.1,00,000/- and same has been considered in his books of account. Whereas, the Assessing Officer on the other hand, has adopted higher rate received by the assessee from sale of one or few sites and has adopted said rate to all sites sold during the year and computed additional income without giving valid reasons as to how rate received for one site can be adopted to all sites sold during the relevant period. Therefore, in our considered view, sales

revenue computed by the Assessing Officer on the basis of highest price received for sale of one or few sites and extrapolating such rates to all sites sold in the year is incorrect. Although, there is no dispute with regard to ratio laid down by the Hon'ble Andhra Pradesh High Court in the case of Gopal Lal Bhadraka Vs. DCIT (supra) that estimation is possible in search assessments, but fact remains that such estimation should be based on materials found during the course of search and further it should not be arbitrary. In this case, estimation made by the Assessing Officer in addition to undisclosed income quantified during the course of search on the very same seized material is arbitrary and thus, we are of the considered view that the Assessing Officer was erred in estimating additional undisclosed income from real estate business.

12. As regards sales revenue computed from Thirumurugan Nagar project, once again, the Assessing Officer has adopted higher sale price received from one or two sites and has adopted said rate to all other sites/plots sold during the period, without giving any valid reason as to how highest rate derived from one site can be adopted to all other sites. On the other

hand, the assessee has filed necessary evidences to justify average rate adopted after considering necessary expenses incurred for selling sites. Therefore, we are of the considered view that additional undisclosed income computed by the Assessing Officer from Thirumurugan Nagar project is arbitrary and cannot be sustained. Likewise, in respect of Green Fields project, the Assessing Officer has taken support from page 96 of the seized materials vide annexure SV, SJ /B&D/S/3 which shows certain computation of sales revenue and profit from project and has adopted assessee's share of profit from projects to arrive at undisclosed income of Rs.52,74,000/- from the project. Whereas, the assessee has computed net profit from the project, after considering various expenses, including brokerage paid to person who marketed the project. We find thus, once again, the Assessing Officer has considered highest sale price received by the assessee for one or few plots sold during the year and has extrapolated sales rate to all sites sold during the year without bringing on record any evidence to prove that the assessee has received said price for all sites. Therefore, in our considered view, estimation made by the Assessing Officer on the basis of seized materials that too, by

taking highest sale price of sites sold during the year and extrapolating said rates to all other sites is arbitrary and incorrect. Therefore, additions made by the Assessing Officer towards undisclosed income from Green Fields project cannot be sustained. The learned CIT(A), without appreciating these facts, has simply sustained additions made by the Assessing Officer. Hence, we set aside order passed by the learned CIT(A) and direct the Assessing Officer to delete additions made towards undisclosed income computed from Sri Krishna Nagar Phase-7 project, Thirumurugan Nagar project and Green Fields project for the assessment years 2012-13 to 2014-15.

13. In the result, appeals filed by the assessee for these three assessment years are allowed.

Order pronounced in the open court on 17<sup>th</sup> March, 2022

Sd/-

**(अनिकेश बनर्जी)**

(Anikesh Banerjee)

न्यायिक सदस्य /Judicial Member  
चेन्नई/Chennai,

दिनांक/Dated 17<sup>th</sup> March, 2022

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

**(जी. मंजुनाथ)**

(G.Manjunatha)

लेखा सदस्य / Accountant Member