

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.617 to 620/Chny/2017
निर्धारण वर्ष /Assessment Years: 2008-09 to 2011-12

Mr.A.Sivashankar,
1/34, Pillayar Koil Street,
Ayyappan Thangal,
Chennai.
[PAN: ASKPS 6119 E]
(अपीलार्थी/Appellant)

v. The Dy. Commissioner-
of Income Tax,
Central Circle-III(1),
Chennai.
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.951, 952 & 953/Chny/2017
निर्धारण वर्ष /Assessment Years: 2008-09, 2010-11 & 2011-12

The Dy. Commissioner-
of Income Tax,
Central Circle-III(1),
Chennai.
(अपीलार्थी/Appellant)

v. Mr.A.Sivashankar,
1/34, Pillayar Koil Street,
Ayyappan Thangal,
Chennai.
[PAN: ASKPS 6119 E]
(प्रत्यर्थी/Respondent)

Assessee by : Mr.S.Sridhar, Adv.
Department by : Mr.M. Rajan, CIT
सुनवाई की तारीख/Date of Hearing : 11.04.2022
घोषणा की तारीख /Date of Pronouncement : 31.05.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This bunch of seven cross-appeals filed by the assessee, as well as the Revenue are directed against the common order passed by the Commissioner of Income Tax (Appeals)-19, Chennai, dated 31.01.2017 and pertains to assessment years 2008-09 to 2011-12. Since, the facts are

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identical and issues are common, for the sake of convenience, the appeals filed by the assessee and the appeals filed by the Revenue were heard together and are being disposed off, by this consolidated order.

ITA Nos.951-953/Chny/2017 (Revenue appeals):

2. The Revenue has, more or less, raised common grounds of appeal for all the three assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2008-09, are re-produced as under:

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

2. *The learned CIT(A) erred in restricting the sale consideration of Rs.1458/- per sq.ft adopted in the assessment order passed by the Assessing Officer u/s 143(3) r.w.s 153C r.w.s 153A of the Income Tax Act, 1961, for A.Y 2008-09 in the case of the assessee, to Rs.400/- per sq.ft as admitted by the assessee for computing the profit from sale of residential plots in this case for A.Y 2008-09.*

2.1 *Having held in para 10 of his appellate order in ITA Nos.218,217,216 & 215/14-15, dated 31.01.2017 that there is not much merit in the assessee's plea that some plots were more valuable than others and all plots were located in the same layout and had more or less similar advantages and that the Assessing Officer has gone to a great length to justify and explain why extrapolation has been done, the Id.CIT(A) is not justified in holding that the Assessing Officer is not within his privilege to extrapolate the sale consideration for A.V 2008-09 in this case.*

2.2 *The Id.CIT(A) ought to have appreciated that the facts in the decisions referred to by him in para 11 of his appellate order in ITA Nos.218,217,216& 215/14-15, dated 31.01.2017 are distinguishable from the facts of assessee's case, since in the present case, no estimated extrapolation has been made on account of on-money receipt or undisclosed income but what has been adopted is only the rate for which evidence in the form of agreement dated 18.01.2008 for sale of plot nos.1 to 7 to Mr. Salim, is available on record and admitted by the assessee in the return of income filed by him for the A.Y 2008-09.*

2.3 *The Id.CIT(A) ought to have appreciated that in the instant case, the Assessing Officer has adopted the sale price @ Rs 1458/- per Sq.ft on the basis of materials/documents furnished by the assessee during the assessment proceedings and the Assessing Officer resorted to addition on the basis of differential pricing culled out by him from out of the documents furnished by the assessee during assessment proceedings for A.Y 2008-9.*

2.4 *Having regard to the detailed reasons adduced in the assessment order passed by the Assessing Officer u/s 143(3) r.w.s 153C r.w.s 153A of the IT Act, 1961, for A.Y 2008-09 in the case of the assessee and the facts and circumstances of the case, the Id.CIT(A) ought to have upheld the action of the Assessing Officer and confirmed the addition made towards computation of profit from sale of residential plots at Ashok Nandavanam-11 layout at Noombal village for A.Y 2008-09.*

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3. 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 learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

RELIEF CLAIMED IN APPEAL

The order of the learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

3. The only issue that came up for our consideration from Revenue appeals for all the three AYs is estimated income from sale of plots by extrapolation of income detected during the course of search to remaining period. During the course of search, in the case of the assessee, a document in the form of sale agreement with Mr.M.A.Salim was found and seized, as per which, the assessee was entered into agreement to sale some of plots developed in the residential layout to Mr.M.A.Salim @ Rs.1,458/- per sq.ft., whereas, the assessee has sold remaining plots to other persons @ Rs.400/- to Rs.800/- per sq.ft. The AO has tabulated few examples of Sale Deed executed by the assessee to some buyers and then, compared to agreed rate between the assessee and Mr.M.A.Salim and opined that the assessee has understated the sale consideration of plots sold to other persons and thus, by considering the rate agreed to sell to Mr.M.A.Salim, has adopted for other Sale Deed executed to different persons and estimated undisclosed income on account of under reporting of sale price for all the three assessment years.

4. The assessee carried the matter in appeal before the First Appellate Authority and during the course of appellate proceedings, vehemently argued the case in light of certain judicial precedents, including the decision

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of the Hon'ble Madras High Court in the case of CIT v. P.V.Kalyanasundaram reported in 282 ITR 259, wherein, it has been held that there is no scope for the AO to estimate undisclosed income on the basis of incriminating material found for part of year to remaining part of year on the basis of one sole piece of evidence being sale agreement with one person by ignoring other evidences filed by the assessee, including the registered Sale Deed of properties entered into with other buyers.

5. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of certain judicial precedents, including the decision of the Hon'ble Karnataka High Court in the case of B.Nagendra Baliga reported in 363 ITR 410, deleted the addition made by the AO by holding that there is no scope for the AO to determine undisclosed income by extrapolation of documents in block assessment. Therefore, the Ld.CIT(A) opined that the AO is erred in extrapolating sale price of plots from Rs.400/- to Rs.1,458/- per sq.ft. and made additions towards differential sale consideration. The relevant findings of the Ld.CIT(A) are as under:

10. The submissions made by the AR are considered. The AR has now argued that the plot Nos 1 to 7 were located in a vantage place on the front portion of the layout and were serviced by roads on three sides. The AR has pleaded that Mr.Salim being a developer offered a good price. The AR has further argued that the assessee has not proved the issue beyond doubt and there is no positive proof for having sold all the plots at Rs.1458 per sq.ft. in all the cases. There is not much merit in assessee's plea that some plots were more valuable than others. All plots were located in same layout and had more or less similar advantages. The AO has gone to a great length to justify and explain why extrapolation has been done. Assessee may not have much of a case on facts. The issue is one of legality. The facts in dispute are reduced a legal question as below:

Whether the AO is within the boundaries of 'preponderance of probability' in extrapolating a value of xxx/ sft for plots sold at the rate of x/sft when the assessee was found to have sold similar plots at the rates of both xxx/ sft and x/sft in the same year?

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11. The AO has obviously extrapolated the discovery of market rate in the case of Plot Nos. 1 to 7 for determination of consideration on sale of other plots during A.Yrs.2008-09 to 2011-12. The assessee has not disputed the rate discovered of Rs.1458 in plots 1 to 7. The issue remaining to be addressed is whether the AO was right in extrapolating the rate to other plots also. In this regard, the following judicial decisions are considered. The Courts have not favoured extrapolation of sale consideration in cases of differential pricing by builders and developers. In the case of Barish Textiles Engineers Ltd (379 ITR 160), the Bombay High Court has not favoured extrapolation of on money received on sale of Stenter Machines for the block period when certain amounts had been added to the assessee's income on account of evidence of on money received. In the case of Standard Tea Processing Co. Ltd (215 Taxman 659), the Hon'ble Gujarat High Court has held that addition for undisclosed income on account of inflated purchase price could be made only for period to which document was related and not for the entire block period. Similarly, in the case of B.Nagendra Baliga (363 ITR 410), the Karnataka High Court had held that the AO is not entitled to extrapolate undisclosed income deducted in course of search for a particular period to entire block period on estimate basis despite adopting a rational basis for working out such an estimate and same having reasonable nexus to material discovered and statement of assessee recorded pursuant to search. Considering the judicial decisions as above, I am of the view that the AO is not within his privilege to extrapolate the sale consideration from Rs.400 to Rs.1458 per sq.ft. The additions made for the A.Yrs.2008-09, 2010-11 & 2011-12 by extrapolating the value of sale consideration to Rs.1458 are hereby deleted.

6. The Ld.DR submitted that the Ld.CIT(A) erred in deleting the additions made by the AO towards estimation of income from sale of plots on the basis of evidences found during the course of search in the form of agreement with Mr.M.A.Salim and extrapolating said rate to remaining plots sold during the year without appreciating the fact that when the assessee has sold residential plots in a single piece of land to different persons, there cannot be any variation of price to the magnitude between Rs.400/- to Rs.1,458/- per sq.ft. The Ld.DR, further, referring to various judicial precedents, including the decision of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax v. H.M.Esufali H.M.Abdulali reported in [1973] 90 ITR 271 (SC), submitted that the Hon'ble Supreme Court very categorically observed that when material found during the course of search, suggest under reporting of income for part of period, then, for remaining period, the AO can estimate escaped turnover for whole year on

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the basis of evidences found for part of the year. The Ld.DR, further, referring to the decision of the Hon'ble Supreme Court in the case of M/s.Orma Marble Palace P. Ltd. v. CIT, reported in [2019] 110 taxmann.com 436 (SC), submitted that the AO while carrying out the block assessment was definitely entitled to proceed on best of judgment and make estimations for block period, however, such estimation had to be made only on aspects which had a direct correlation to materials, transactions and aspects detected in search proceedings. The Ld.DR had also relied upon the decision of the Hon'ble Andhra Pradesh High Court in the case of Rajnik & Co. v. ACIT, reported in [2001] 117 Taxman 675 (AP) and argued that the AO can determine undisclosed income of the assessee on the basis of loose slips seized during the course of search, which indicate suppression of sales. The Ld.DR, further, referring to the Third Member decision in the case of Khopade Kisanrao Manikrao v. ACIT, reported in [2000] 74 ITD 25 (Pune) (TM), argued that in the block period, there is a scope for estimation of income provided therein, enough materials in the possession of the Department on undisclosed income of the assessee. In this case, during the course of search, an agreement between the assessee and Mr.M.A.Salim was found and as per the said agreement, the assessee agreed to sale few plots @ Rs.1,458/- per sq.ft. whereas, in the very same layout, the assessee has sold plots to other persons at the ranging between Rs.400/- to Rs.800/- per sq.ft. The AO after considering wide difference in rate charged by the assessee, had estimated the highest price derived from

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sale of plots to other persons and has made additions. The Ld.CIT(A) without considering the relevant facts deleted the additions made by the AO.

7. The Ld.AR for the assessee, on the other hand, supporting the order of the Ld.CIT(A) submitted that the AO has completely erred in estimating sales Revenue on the basis of sole evidence of one agreement between the assessee and Mr.M.A.Salim and adopted said rate to remaining sales made during the year and made additions without appreciating the fact that there is a huge time gap between the plots sold to other persons and agreement to sale with Mr.M.A.Salim. It is quite common in real estate segment, the rates are changing very rapidly within a short span of time. Further, the rates of properties are depended upon the buyer interest and sizes. Therefore, there cannot be any uniformity in sale price of any property. Therefore, when the evidences in the form of registered Sale Deed clearly indicating selling price of plots, the AO is completely erred in estimating sale price on the basis of agreement to sale with one person, that too when the assessee has explained the reasons for difference in sale price and offered to other persons and to Mr.M.A.Salim. The Ld.CIT(A) after considering the relevant facts has rightly deleted the additions made by the AO and their orders should be upheld.

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8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The first legal issue that needs to be resolved in the given facts and circumstances of the case is whether the AO is right in estimation of sales revenue from sale of plots by extrapolating sale price of few plots to remaining plots sold during the relevant period to other parties. It is a well settled principle of law by the decision of various Courts that there is no scope for the AO to extrapolate and estimate undisclosed income for block assessment proceedings. This legal principle is supported by the decision of the Hon'ble Bombay High Court in the case of M/s.Harish Textile Engrs. Ltd v. DCIT, reported in 379 ITR 160, wherein, it has been clearly held that on-money received on sale of Stenter Machines for the block period, cannot be estimated on the basis of evidences filed for few instances. A similar view had been taken by the Hon'ble Gujrat High Court in the case of M/s.Standard Tea Processing Co. Ltd., reported in 215 Taxman 659. The Hon'ble Karnataka High Court in the case of B. Nagendra Baliga, reported in 363 ITR 410, had also considered an identical issue and held that the AO is not entitled to extrapolate undisclosed income detected in the course of search for a particular period to entire block period on estimation basis. Therefore, from the above decisions, one common principle is very clear, in as much as there is no scope for the AO to estimate undisclosed income for the block assessments on the basis of evidences found during the course of search for part period or few instances. Although, the Ld.DR relied upon

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certain judicial precedents, including the decision of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax v. H.M.Esufali H.M.Abdulali (supra), we find that in case, before the Hon'ble Supreme Court, evidences were found for part of the period in respect of under reporting of sales turnover and on said basis, the Hon'ble Supreme Court held that the sales Revenue can be estimated for remaining period of the month. However, there is no findings from the court on extrapolation of said estimation of income to whole year or for entire block period. In this case, the AO has estimated undisclosed income of under reporting of sales Revenue from sale of plots on the basis of one agreement to sale with Mr.M.A.Salim and extrapolated said rate to remaining plots sold during the block period and estimated income. In our considered view, the reasons given by the AO to estimate income on the basis of one evidence of agreement to sale to entire block period is not in consonance with settled legal principles and thus, on this basis alone, additions made by the AO, cannot be sustained.

9. Be that as it may. The assessee has explained the reasons for difference in sale price received from other parties, when compared to price agreed between the assessee and Mr.M.A.Salim as per the sale agreement. The first reason given by the assessee is that Mr.M.A.Salim is a real-estate Agent who negotiates sale of price with the assessee and gets commission. Secondly, there is a time gap of 8-10 months between the properties sold to other parties and agreement to sale entered into with Mr.M.A.Salim. It is a well-known fact in real estate segment that there is a quick appreciation

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in property prices which depends upon various factors, including location of the property, size of the property and buyer demand. There cannot be any uniformity in rates of properties like any other goods. Therefore, on the basis of one agreement to sale with one person, there cannot be any estimation of income to remaining plots or properties sold during the relevant period when evidences clearly prove that the assessee has sold the properties for the rate specified in the registered Sale Deed. In this case, except agreement to sale for one plot with Mr.M.A.Salim, the AO does not have any other credible evidence to support his estimation of income by extrapolation of rate on the basis of agreement to sale with Mr.M.A.Salim to remaining plots sold during the block period. In our considered view, the estimation made by the AO towards undisclosed income of under reporting of sales Revenue from sale of plots, is purely a guess work, which is based on the suspicion and surmises, but not based on any material evidences. Therefore, we are of the considered view that the AO is completely erred in estimating sales Revenue from sale of plots for all the three assessment years. The Ld.CIT(A) after considering relevant facts has rightly deleted the additions made by the AO and thus, we are inclined to uphold the findings of the Ld.CIT(A) and accordingly, the appeals filed by the Revenue are dismissed for all the three assessment years.

ITA Nos.617-620/Chny/2017 (Assessee's appeals):

10. The first issue that came up for our consideration from assessee's appeals for the AYs 2008-09 to 2011-12 is head of income under which

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surplus derived from sale of land whether it is under the head 'income from capital gains' as claimed by the assessee or it is under the head 'income from business or profession' as considered by the AO. The Ld.AR for the assessee submitted that the Ld.CIT(A) is erred in sustaining the findings of the AO in assessing profit derived from sale of land under the head 'income from business or profession' as against income from capital gains declared by the assessee without appreciating the fact that the lands in question sold by the assessee during the relevant period, is an investment, but not stock in trade. The Ld.AR further submitted that the assessee has inherited those lands from his father and said lands were acquired and developed by his father when he was minor and not competent to enter into the business. The lands development cost was incurred by his father and the assessee did not incur any expenditure. Therefore, merely for the reason that those properties are residential plots, it cannot be held that the assessee was involved in commercial exploitation of properties in the nature of adventure in trade and commerce and thus, income is chargeable under the head 'income from business or profession'.

11. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A) submitted that the AO as well as the Ld.CIT(A) have brought out very clear facts to the effect that the assessee and his family members were in the business of real estate for many years. The assessee had acquired many land properties and has developed landed properties into residential

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townships. Therefore, from the nature of activity carried out by the assessee, it is abundantly clear that the properties were acquired for the purpose of commercial exploitation in the nature of adventure in trade and commerce and consequently, income derived from sale of said lands, is assessable under the head 'income from business or profession'

12. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts borne out from the records clearly indicate that the assessee and his family members were in the real estate business for the last many decades. The assessee's father had acquired many landed properties at Noombal, Mathura and Puliambedu Villages on the outskirts of Chennai on ECR. The lands owned by the assessee along with family members were acquired since 1984. Further, the assessee's group had developed those lands into modern layout after getting necessary conversion and other approvals from CMDA. The assessee had also incurred various expenditure for development of land and conversion into residential plots. Therefore, from the above facts, what is clear is that the purpose and intent of acquisition of land by the assessee and his family members, is for commercial exploitation which is in the nature of adventure into trade and commerce, but not as an investment. Therefore, income derived by the assessee from sale of said properties, need to be considered in light of activities carried out by the assessee, but not the entries in the books of accounts. If you consider the nature of activity carried out by the assessee, there is no doubt

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whatsoever, with regard to adventure in the nature of trade and commerce, because, the assessee has acquired landed properties and converted them into residential layouts by carrying out various procedure, including conversion of land into non-agricultural purpose, getting approvals from competent authorities and formation of layouts. Therefore, when a person acquires a land with a view to sell it after developing the same, it can be very clearly held that he has carrying on activity resulting in profit and the activity can only be described as business venture. The Ld.CIT(A) after considering relevant facts has very rightly observed that profit derived by the assessee from sale of lands, is assessable under the head 'income from business or profession', but not under the head 'capital gains' as claimed by the assessee. The relevant findings of the Ld.CIT(A) are as under:

4. As per the assessment orders passed, the AO had noted the background of the assessee group which has been in real estate business for the last many decades. The assessee's family had acquired a landed property at Noombal Mathura and Puliambedu Villages on the outskirts of Chennai on ECR. The lands owned by the assessee along with his mother and sister since 1984 had appreciated in value and the assessee group had developed the same into a modern layout by the name "Ashok Nandavanam-II" after getting necessary conversion and other approvals from MMDA. These profits on sale of residential plots had been declared by the assessee as Long Term Capital Gains. The AO disputed the same and held it as adventure in the nature of trade and brought it to taxation as business income. The AO had relied on the following decisions:

- 1. Indramani Bai & Another Vs. Addl.CIT (SC)200 ITR 594.*
- 2. G .Nenkatasami Naidu & Co Vs CIT 35 ITR 594.*
- 3. Addl. CIT vs. Chikkaveerayya Lingaiah (Kar) 164 ITR 41 &*
- 4. CIT Vs. R.Ramaiah & Others (Kar) 146 ITR 39*

5. The AR for the assessee has filed detailed written arguments as per which the AR has relied on the apex court's decisions in G.Venkataswamy Naidu & Co. (107 ITR 716), Rajputtana Textile Agency Ltd. (42 ITR 743) as well as Madras High Court's decisions in CIT Vs. Sairam (242 ITR 104) to make a case that facts and circumstances of the instant transaction should be considered before arriving at a decision to tax the income as arising out of adventure in the nature of trade. The AR has also alleged that the AO has not passed the test of establishing the burden of proof to arrive at the transaction as adventure in the nature of trade.

6. The submissions by the assessee are further considered. Assessee has owned a large estate of agricultural lands along with his mother and sister. The said lands have all been

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developed into Modern layouts and the residential plots have been sold over a period of 4 to 5 years. The assessee group members have acted together, have got the lands converted and approval obtained through MMDA. They have developed the layout in the name of "Ashok Nandavanam-II" by providing roads, culverts, drainages, street lights and other amenities. The plots of land have been marketed and sold at attractive rates. The series of actions undertaken by the assessee along with his family members reflect the concerted effort in business. To this extent, the assessee has in fact conducted a business venture and earned profits there from. This has been upheld by several judicial decisions as below.

When a person acquires land with a view to selling it later after developing the same, he is carrying on activity resulting in profit and the activity can only be described as a business venture.

Raja J. Rameswar Rao Vs. CIT (SC) 42 ITR 179

Joint purchase of land by 4 persons and joint sale thereof within a period of 15 months - Land fit only for house sites - Adventure in the nature of trade. There was no intention to use such large piece of land for constructing their houses - Business income.

Smt. Parvathi Devi & Ors. Vs. CIT (AP) 164 ITR 675

Sale of land after plotting - Business venture

CIT Vs. R.Ramaiah & Ors (Kar) 146 ITR 39

Indramani Bai & Another Vs. Addl.CIT (SC) 200 ITR 594

Addl.CIT Vs. Chikkaveerayya Lingaiah (Kar) 164 ITR 41

G. Venkataswami Naidu & Co Vs. CIT (SC) 35 ITR 594.

Agriculturist purchasing lands in a series of transactions and selling them within a reasonably short period - Adventure in the nature of trade.

Hemachand and Hirachand Shah Vs. CIT(Guj) 206 ITR 55

Land purchased had potentiality of being developed into building site - No agricultural operations were carried out on land by the assessee - Adventure in the nature of trade.

Badrilal Bholaram Vs. CIT (MP) 139 ITR 207

CIT Vs. B.Narasimha Reddy (Kar) 150 ITR 347

CIT Vs. M.Krishna Rao (AP) 120 ITR 101.

7. Considering the facts and circumstances, as well as the compelling nature of the judicial decisions, the incomes from sale of plots declared by the assessee for A.Y.2008-09 to 2011-12 are upheld to be brought to taxation as income from business. The grounds of appeal by the assessee on this issue are dismissed.

13. Considering the facts and circumstances of the case and also facts brought out by the AO as well as the Ld.CIT(A), we are of the considered view that the assessee is in the business of real estate and thus, profit derived from sale of properties is assessable under the head 'income from

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business or profession', but not under the head 'capital gains' as claimed by the assessee. The Ld.CIT(A) after considering relevant facts has rightly rejected the arguments of the assessee and sustained the findings of the AO in assessing profit under the head 'income from business or profession' and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee for the AYs 2008-09 and 2011-12.

14. The next issue that came up for our consideration from assessee's appeals for the AY 2009-10 is addition of Rs.20 lakhs u/s.69C of the Act, as unexplained expenditure. The facts with regard to the impugned dispute are that during the course of search, a document in the nature of agreement with one Mr.D.Sabapathy, was found, which was marked as ANN/VJ/LS/S. As per the said agreement, the assessee had agreed to produce a Tamil feature Film titled as '16' under the production banner 'Passion Movie Makers' and had entered into an agreement with Mr.D.Sabapathy for directing the motion picture. As per the terms of the agreement between the parties, the Director had agreed to produce the picture and release it for public viewing at a cost of Rs.150 lakhs. The assessee has made various payments to the Director, which was endorsed in the backside of the agreement, as and when, the payment is made, as per which, a sum of Rs.20 lakhs was paid to the assessee. The assessee could not explain the source for payment made to the Director. Therefore, the AO has made additions of Rs.24 lakhs u/s.69C of the Act, as unexplained expenditure.

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15. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in confirming the additions made by the AO towards payment alleged to have been made to the Director u/s.69C of the Act, without appreciating the fact that although, in the agreement, it was claimed to have made payment of Rs.20 lakhs, but, in fact, the assessee has made payment of Rs.4 lakhs only. In spite of producing all the evidences, the AO did not accept the explanation furnished by the assessee and made additions.

16. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A) submitted that the assessee could not explain the document found during the course of search and relevant payments made to the party. Therefore, there is no error in the reasons given by the AO to make additions of Rs.24 lakhs u/s.69C of the Act, and their orders should be upheld.

17. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the seizure of agreement between the assessee and Mr.D.Sabapathy, the person was supposed to direct and produce a motion picture. The dispute with regard to payment alleged to have been made to the party and source of said payment. According to the AO, a sum of Rs.24 lakhs paid to the party was unexplained. It was the explanation of the assessee before the AO that although, the agreement specifies payment of Rs.24 lakhs, but, in fact, the assessee had paid a sum of Rs.4 lakhs only and remaining amount, the assessee could not arrange. There are

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contradicting facts. The AO claims that the assessee has made payment of Rs.24 lakhs, whereas, the assessee claims that he has paid a sum of Rs.4 lakhs. The facts need to be examined. Therefore, we are of the considered view that this issue needs to be go back to the file of the AO for fresh examination. Hence, we set aside the issue to the file of the AO and direct the AO to re-examine the issue in light of various averments made by the assessee and decide the issue in accordance with law.

18. The next issue that came up for our consideration from Ground Nos.6 & 7 of the assessee's appeal for the AY 2011-12 is disallowance of sum of Rs.3.5 lakhs u/s.40A(3) of the Act, for payment in cash in excess of prescribed limit. During the course of assessment proceedings, the AO noticed that the assessee had furnished a list of payments made to various artists/technicians and in some cases, payments were made in cash in excess of Rs.20,000/- prescribed u/s.40A(3) of the Act. The AO has listed out cash payment to the Director on 06.03.2009, amounting to Rs.2 lakhs and cash payment to Music Director on 06.03.2009, amounting to Rs.1.5 lakhs. The assessee explained that a good portion of the film took place in remote villages, where there was no banking facility and thus, the assessee was required to make payments in cash which comes under the exceptions as provided u/r.6DD(g) of Income Tax Rules, 1962. The AO, however, was not convinced with the explanation furnished by the assessee and according to the AO, the assessee could not adduce any evidences in support of his

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arguments. Therefore, rejected the arguments of the assessee and made addition of Rs.3.5 lakhs u/s.40A(3) of the Act.

19. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the cash payment in excess of prescribed limit as per the provisions of Sec.40A(3) of the Act. In fact, the assessee admitted to have made cash payment to two persons in excess of prescribed limit. The only argument of the assessee is that there was a business exigency in making cash payment in as much as the film shooting was carried out in remote places, where there is no banking facility and because of this, the assessee was compelled to make payments in cash. We find that the arguments of the assessee that its case falls under exceptions as per Rule 6DD(g) of Income Tax Rules, 1962, goes unexplained. The assessee neither filed any evidences to prove its arguments that where payment is made, is not served by a banking facility nor justified its explanation that shooting was carried out in remote places, where there is no banking facility. Therefore, we are of the considered view that there is no error in the reasons given by the authorities below to make additions towards cash payment u/s.40A(3) of the Act. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

20. The next issue that came up for our consideration from Ground Nos.8 & 9 of the assessee's appeal for the AY 2011-12 is disallowance of certain

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expenses u/s.40(a)(ia) of the Act, for non-deduction of TDS. The assessee has incurred certain expenditure under the head 'garbage cleaning charges' paid to M/s.Sri Murugan Cleaning Services, without deduction of tax at source. The AO has disallowed such expenditure u/s.40(a)(ia) of the Act. It was the explanation of the assessee that the recipient has included the sum paid by the assessee in their return of income and offered to tax and thus, in view of provisions of Sec.40(a)(ia) of the Act, this issue can be verified by the AO.

21. Having heard both the sides and considering relevant materials on record, we find that although, the assessee does not dispute payments made to M/s.Sri Murugan Cleaning Services, for garbage cleaning work without deduction of tax at source, but claims that said party has included the sum paid by the assessee in their return of income and have paid necessary tax and thus, in view of provisions of Sec.40(a)(ia) of the Act, once the payee included the sum paid without deduction of tax at source in their return of income and paid taxes, then the same cannot be disallowed u/s.40(a)(ia) of the Act. We find that as per the provisions of Sec.40(a)(ia) of the Act, if assessee proves with necessary evidences that the payee had included the sum paid by the assessee without deduction of tax at source in the return of income and paid necessary taxes, then sum paid without deduction of taxes, cannot be disallowed u/s.40(a)(ia) of the Act. But, from the orders of the authorities below, these facts are not forthcoming. Further, the assessee has taken this argument for the first time before the

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Tribunal. Therefore, we are of the considered view that the issue needs to go back to the file of the AO for further verification. Hence, we set aside the issue to the file of the AO and direct the AO to re-examine the claim of the assessee in accordance with law.

22. In the result, the appeals filed by the assessee in ITA Nos.617 & 619/Chny/2017 for the AYs 2008-09 & 2010-11 are dismissed and the appeals filed by the assessee in ITA Nos.618 & 620/Chny/2017 for the AYs 2009-10 & 2011-12 are partly allowed for statistical purposes and the appeals filed by the Revenue in ITA Nos.951, 952 & 953/Chny/2017 for the AYs 2008-09, 2010-11 & 2011-12 are dismissed.

Order pronounced on the 31st day of May, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31st May, 2022.

TLN

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF