

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, CHENNAI**

**माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI ABY T. VARKEY, JM AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

1. आयकरअपील सं./ ITA No.1611/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2013-14)  
&
2. आयकरअपील सं./ ITA No.1612/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2014-15)  
&
3. आयकरअपील सं./ ITA No.1613/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2015-16)  
&
4. आयकरअपील सं./ ITA No. 1614/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2016-17)  
&
5. आयकरअपील सं./ ITA No. 1615/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. New Saravana Stores Bramandamai 128 ,129 & 130 and 129 & 130 Usman Road, T. Nagar, Chennai-600 017.	बनाम/ Vs.	DCIT Central Circle-1(2) Chennai
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>ABSFS-1523-M</b>		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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6. आयकरअपील सं./ ITA No.1645/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2013-14)  
&
  7. आयकरअपील सं./ ITA No.1646/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2014-15)  
&
  8. आयकरअपील सं./ ITA No.1647/Chny/2023

(निर्धारण वर्ष / Assessment Year: 2015-16)

&

9. आयकरअपील सं./ ITA No. 1648/Chny/2023

(निर्धारण वर्ष / Assessment Year: 2016-17)

&

10. आयकरअपील सं./ ITA No. 1649/Chny/2023

(निर्धारण वर्ष / Assessment Year: 2017-18)

&

11. आयकरअपील सं./ ITA No. 1650/Chny/2023

(निर्धारण वर्ष / Assessment Year: 2018-19)

DCIT Central Circle-1(2) Chennai	बनाम/ Vs.	M/s. New Saravana Stores Bramandamai 128 ,129 & 130 and 129 & 130, Usman Road, T.Nagar, Chennai-600 017
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>ABSFS-1523-M</b>		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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12. आयकरअपील सं./ ITA No. 1608/Chny/2023

(निर्धारण वर्ष / Assessment Year: 2017-18)

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13. आयकरअपील सं./ ITA No. 1609/Chny/2023

(निर्धारण वर्ष / Assessment Year: 2018-19)

&

14. आयकरअपील सं./ ITA No. 1610/Chny/2023

(निर्धारण वर्ष / Assessment Year: 2019-20)

Shri Pondurai 128 & 129 North Usman Road, T.Nagar, Chennai-600 017.	बनाम/ Vs.	DCIT Central Circle-1(2) Chennai
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAAPP-5750-A</b>		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

15. आयकरअपील सं./ ITA No. 1642/Chny/2023

(निर्धारण वर्ष / Assessment Year: 2017-18)

&

16. आयकरअपील सं./ ITA No. 1643/Chny/2023

(निर्धारण वर्ष / Assessment Year: 2018-19)

&

17. आयकरअपील सं./ ITA No. 1644/Chny/2023

**(निर्धारण वर्ष / Assessment Year: 2019-20)**

<b>DCIT</b> Central Circle-1(2) Chennai	<b>बनम/</b> Vs.	<b>Shri Pondurai</b> 128 & 129 North Usman Road, T. Nagar, Chennai-600 017.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAAPP-5750-A</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Assessee by</b>	:	Shri D. Anand (Advocate)- Ld.AR
प्रत्यर्थीकीओरसे/ <b>Revenue by</b>	:	Shri V. Nandakumar (CIT)-Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	15-05-2024
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	06-08-2024

**आदेश / ORDER****Per BENCH:**

1.1 The facts as well as issues in captioned appeals are identical and the issues stem from a search carried out by the department in the case of assessee group on 29.01.2019. The firm M/s New Saravana Stores Barmandamai (NSSB) has initially carried on its business as partnership firm. The firm has been converted into proprietorship concern of Shri Y. Pondurai and accordingly, separate assessments have been framed in the case of the firm and individual assessee. For the purpose of adjudication, facts in the case of NSSB for Assessment Year (AY) 2013-14 have been culled out in this order. The cross-appeals for this year in the case of NSSB arises out of common order passed by learned Commissioner of Income Tax (Appeals)-18, Chennai, [CIT(A)] on 30-10-2023 in the matter of an assessment framed by Ld.AO u/s.153A r.w.s. 144 of the Act on 30.09.2021.

**1.2 The grounds raised by the assessee read as under: -**

1. The order of the learned Commissioner of Income Tax (Appeals)-18 to the extent of sustaining the addition made in the assessment order is wrong, illegal and is opposed to law.

2. The Learned CIT(A)-18 erred in sustaining a portion of addition made in the assessment order in proceedings-initiated u/s 153A in the absence of any incriminating material found during search. The learned CIT(A) failed to see that in assessments made u/s 153A of the Income-Tax Act, 1961 addition can be made only on basis of incriminating material found in search u/s 132 of the Income-Tax Act, 1961.

3. The learned CIT(A)-18 ought to have seen that there is no dispute regarding the quantum of undisclosed turnover and it is equally undisputed that there is no incriminating material based on which the gross profit could be estimated on the undisclosed turnover. In the above circumstance the Gross profit estimation made both by the assessing officer and the addition sustained by the learned CIT(A) has no basis.

4. The order passed by the learned CIT(A)-18 u/s 250(6) of the Income Tax Act, 1961 is against law and facts on the file in as much as the learned commissioner was not justified in arbitrarily upholding an addition of Rs.40,22,13,000/-, being G.P. rate calculated @ 21 % on alleged suppressed turnover of Rs.191,53,00,000/-, without any basis.

5. The learned CIT(A)-18 ought to have seen that the basis of estimation of gross profit should be either on the basis of industrial average or on the basis of gross profit declared by the appellant and accepted by the department. The learned CIT(A) failed to see that the estimation of G.P is neither made based on industrial average or based on accepted G.P declared by the appellant on disclosed turnover.

6. The learned CIT(A) ought to have seen that the appellant while filing his return of income in response to notice under section 153A has offered additional income by estimating gross profit @ 16.75% on undisclosed turnover in line with Gross profit admitted and accepted on disclosed turnover, however the learned CIT(A) has unfairly estimated the gross profit at a higher percentage of 21 %.

7. The learned CIT(A)-18 ought to have seen that the total turnover of the appellant includes both disclosed and suppressed turnover and the sale is composite one. While the revenue authorities accepted the G.P. of 16.75% on the disclosed turnover, the gross profit on suppressed turnover cannot be at variance and estimated at 21 %.

8. The learned CIT(A) ought to have seen that the sale being composite, be it part of disclosed or undisclosed turnover, the gross profit is to be estimated only in line with the G.P offered and accepted by the department on disclosed turnover, in the absence of any incriminating material to the contrary.

9. The learned CIT(A)-18 ought to have seen that it is a settled law that addition cannot be made only based on statement obtained at the time of search uncorroborated by material evidence. The learned CIT(A)-18 ought to have seen that the departmental circular F.No.286/2/2003-IT(Inv) dated 10/03/2003 is binding on the assessing officer and that the addition cannot be made only on the basis of statement obtained at the time of search de hors any material evidence.

10. The learned CIT(A)-18 ought to have seen that although admission is extremely an important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect. In the instant case the Gross profit declared and accepted by the department for the impugned year itself would stand as a testimony to the

additional income declared by the appellant in return filed under section 153A and that the addition made by the assessing officer is arbitrary, unreasonable and devoid of material basis. The appellant relies in the decision of Apex Court in Pullangode Rubber Produce Co. Ltd. v. State of Kerala (1973) 91 ITR 18(SC) is support of the aforesaid ground.

### 1.3 The grounds raised by the revenue read as under: -

1. The order of the Id. Commissioner of Income Tax (Appeals) is opposed to law and facts of the case
2. The Id. CIT(A) erred in directing the AO to adopt the estimated GP rate of 21% on the quantum of unaccounted sales as admitted by the assessee in the sworn Statement recorded u/s 132(4) during the course of search, as against the GP rate of 37.76% as worked out based on the seized materials.
3. The Id. CIT(A) has failed to appreciate that the GP rate adopted by the AO was based on the details in the seized materials and ought to have confirmed the adoption of the same.

1.4 The Ld. AR advanced arguments and placed on record tabulation of additions made in various years. It has been submitted that the only issue that arises for our consideration is estimation of Gross Profit rate on suppressed sales. The Ld. CIT-DR supported the assessment framed by Ld. AO for various years. The written submissions have also been filed along with case laws, which we have gone through. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

### **Assessment Proceedings**

2.1 Pursuant to search action u/s 132 on 29.01.2019, notice u/s 153A was issued to the assessee-firm on 18.10.2019 which was followed by notices u/s 142(1) calling for various details from the assessee. The assessee-firm filed return of income on 27.09.2021 admitting income of Rs.64.66 Crores. The assessee being resident firm carried out the business of running retail outlets for Gold, Textiles, Articles of Home

needs etc. under the name and style of The Legend Barmandamai Saravana Stores.

2.2 The assessee group had four units at 3 places. (i) NSSB, T. Nagar which was engaged in trading of furniture, Textiles and Electronic items. This was a partnership firm till August, 2017. After 2017, it was taken over by Shri Y. Pondurai as his proprietary concern; (ii) & (iii) NSSB, Padi was engaged in trading of Jewellery & Textiles. It was a proprietary concern of Shri Y. Pondurai since its inception in 2016; (iv) NSSB, Park Road which was exclusive furniture showroom. It was a new proprietorship concern of Shri Y. Pondurai and it started its business from April, 2018.

2.3 It transpired that the sales counters at outlets were being managed by customized software called 'Akshaya'. The billing software was being used to generate barcode stickers and billing. Every day, sales report was generated in each department / floor and handed over to Shri Pondurai along with the cash received from respective departments / floors. The accounts department maintained accounts in Tally Software which was used to record assessee's books of accounts. The cash collections were deposited in the bank accounts as per the instruction of Shri Pondurai.

2.4 It was found that 'Day End application' utility of the billing software as available in the pen drive was being used to suppress the recorded sales at the end of the day. The suppression of sales by this application involved removal of items in the bill and not deletion of the entire bill. This tool allowed change in sales turnover for a particular date as per the requirement of the assessee. After removal of sales, sales report was generated and sale was manually entered in the Tally server by

accounts section. This software was not linked to cash book. The software had another application by the name 'Akshaya Gold Application' which was similarly used for suppression of Sales and manipulation of accounts.

2.5 During the course of search at the business premises at T. Nagar and Padi, evidences of unaccounted sales and unaccounted purchases were found. The incriminating material was found and seized vide annexure ANN/GARS/LSS/B&D/S, ANN/GARS/LS/S1 TO S10, ANN/GARS/LSS/ED/S from the premises of The Legend Saravana Stores Barmandamai, T. Nagar. Further evidences and incriminating materials were gathered from the premises of the Legend Saravana Stores Barmandamai, Padi vide annexure ANN/VP/NSSB/B&D/S1 TO 15, ANN/VP/NSSB/ED/S1 TO 13, ANN/VP/NSSB/LS/S1 TO S7. The incriminating materials were also collected from the premises of M/s. Giri Technologies Pvt. Ltd at 5/11, First Floor, 3rd street, Dr. Thirumoorthy Nagar, Nungambakkam, Chennai-34 vide annexure ANN/SBS/GIPL/B&D/S, ANN/SBS/GIPL/ED/S which were found relevant to the case. Further incriminating material was gathered from the premises of S. Lingam at No. 13/10, Baroda Street, T. Nagar, Chennai-17 which was seized vide annexure ANN/DKS/SL/B&D/S, ANN/DKS/SL/LS/S. The sworn statements were also recorded from various persons including Shri Pondurai during the course of search proceedings. On the basis of these documents and statements, it was conclusively established that the assessee suppressed sales in the regular books of accounts. Finally, the issue, in all the appeals, boils down to determine estimated profits that has accrued to the assessee group on this suppression of sales.

2.6 The Ld. AO noted the modus operandi adopted by the group to generate unaccounted income. The Ld. AO arrived at conclusion that the sales were being manipulated through a customized software 'Akshaya'. At the end of each day, two sales report would be generated i.e., one Actual sales report and other one manipulated (Duplicate) sales report. These manipulated sales would be entered in Tally accounting software which is reflected in the regular books of accounts. The notings in the pocket diary seized vide ANN/DKS/SL/B&D/S-1,2,3 from the residence of Shri Lingam contained the original sales figure of New Saravana Stores Barmandamai, T. Nagar for the period FY 2012-13, FY 2013-14, FY 2014-15, FY 2015-16, FY 2016-17, FY 2017-18 and FY 2018-19 (Till Jan' 19). The hard disk contained backup data of original sales turnover seized vide ANN/GARS/LSS/ED/S3. The red colored bounded note book contained original sales report which was seized vide ANN/GARS/LSS/B&D/S-1.

2.7 The sales noted in the pocket dairy was compared with the sales shown by assessee firm and difference in sales was noted from FYs 2012-13 to 2018-19 (till Jan, 2019) which has been tabulated on Page-7 of the assessment order. The Ld. AO also noted unaccounted purchases in NSSB, T. Nagar. However, the documents evidencing unaccounted purchases were not fully available since it was frequently destroyed by the assessee. In the sworn statement, Shri Pondurai agreed to offer Gross Profit of 21% on sales differential.

2.8 The Ld. AO also tabulated suppression of sales at Padi unit on Page Nos.8 & 9 of assessment order. The suppression of sales in Textile division was computed as 15.69% of recorded sales whereas suppression of sales in furniture division was computed as 2.43% of

recorded sales. After deducting unaccounted purchases, Ld. AO worked out suppressed profit of these units on Page No.10 of assessment order.

2.9 During the course of assessment proceedings, the assessee-firm was confronted with all the above stated facts vide show-cause notice dated 30.03.2021. After considering detailed reply on behalf of the assessee, Ld. AO quantified sales suppression in the hands of the assessee-firm, for all the years, at Rs.922.24 Crores whereas sales suppression in the hands of Shri Pondurai, for all the years, was quantified at Rs.362.55 Crores. The estimated GP on aggregate sales suppression of Rs.1284.79 Crores would be Rs.271 Crores whereas the assessee group admitted undisclosed income of Rs.190 Crores in the respective returns of income. Accordingly, Ld. AO proceeded to make further addition to additional income as already offered by the assessee in respective returns of income.

2.10 The Ld. AO did not accept the profit estimation offered by the assessee. While estimating the income, Ld. AO, considering suppression of income in AY 2017-18 & 2018-19 and arrived at average profit rate of 37.76% for these two years. This rate was uniformly applied on suppressed sales for all the years to make impugned additions. The re-working resulted into addition of Rs.72.32 Crores in the hands of the assessee-firm for this year. The additions, in similar manner, were made in the hands of the assessee-firm as well as in the hands of Shri Pondurai in various assessment years. In other words, average GP rate of AYs 2017-18 & 2018-19 was uniformly applied to all the years to arrive at impugned additions.

## Appellate Proceedings

3.1 During appellate proceedings, the substantial grievance of the assessee was qua adoption of GP rate. The assessee filed elaborate written submissions which have already been extracted in the impugned order. The assessee assailed the working of Ld. AO on the strength of various facts and arguments and pleaded to accept the working made by it to offer additional income.

3.2 It was noted by Ld. CIT(A) that Shri Pondurai, at the time of search, accepted Gross Profit (GP) rate of 21% in respect of unaccounted sales and agreed to offer the same as additional income while filing the return of income u/s 153A. However, the assessee submitted that Gross Profit (GP) on unaccounted sales was taken to be the same GP on accounted sales in the regular books of accounts and the additional income was offered accordingly as per following details: -

Year	Sales As per Books of Account	Gross Profit as per Books of Accounts	GP Rate as per Books of Accounts	Sales not recorded as found during search	Additional income offered by the assessee
A	B	C	D=C/B	E	F=E*D
AY 13-14	3,80,63,47,217.00	63,75,58,963.23	16.75%	1,91,53,00,000.00	32,08,12,750
AY 14-15	3,31,04,77,173.00	62,23,10,784.53	18.80%	1,95,09,00,000.00	36,67,69,200
AY 15-16	3,16,21,91,719.00	58,68,04,743.00	18.56%	2,05,12,00,000.00	38,07,02,720
AY 16-17	2,94,98,03,881.00	51,56,90,280.90	17.48%	1,71,11,00,000.00	29,91,00,280
AY 17-18	2,97,66,06,681.00	51,09,90,844.42	17.17%	1,14,50,00,000.00	19,65,96,500
AY 18-19	1,47,41,76,953.00	31,96,60,044.15	21.68%	44,89,00,000.00	9,73,21,520
T Nagar	Proprietorship concern				
AY 18-19	1,99,71,70,315.00	32,27,61,142.75	16.16%	41,11,00,000.00	6,64,37,552
AY 19-20	3,87,89,74,983.09	59,54,82,060.75	15.35%	44,06,00,000.00	6,76,38,847
Padi	Proprietorship concern				
AY 19-20	7,16,54,01,033.96	1,10,40,62,932.87	15.41%	32,09,30,373.00	4,94,73,514
Padi	Furniture – Proprietorship concern				
AY 19-20	2,24,84,19,907.41	42,34,82,658.24	18.83%	1,35,80,060.00	25,57,761
AY 19-20	With respect to other omission and commission				90,00,00,000
				10,40,86,10,433.00	1,85,564,10,644

In other words, the assessee, in respective returns of income offered same GP rate on suppressed sales as offered on accounted / recorded sales of respective years.

3.3 The Ld. CIT(A) noted that by running day-end process, the software being used by the assessee would automatically delete certain products from certain cash bills on random basis. The deletion was stated to have been decided based on requirement of cash either for making cash purchases or for making investments in capital assets. The evidence for these unaccounted purchases were maintained manually which were regularly destroyed. The unaccounted purchases which were made with immediate cash payment were never entered in any software program. The random deletion of sales could relate to accounted purchases or unaccounted purchases. It was practically impossible to differentiate as to what purchases were accounted and what purchases were unaccounted. The purchases were centralized at one place and then goods were transferred to various places / outlets as per the requirements. The goods would be sold by way of accounted sales or unaccounted sales and therefore, unaccounted purchase as well as sales could not be compared with each other. It was not only impossible but unjust as well to compare these figures since complete data, in this regard, was not available. Under these peculiar circumstances, there was no option but to resort to estimated GP additions only.

3.4 The assessee claimed that the accounted and unaccounted sales were at same margins since articles were sold at same prices. However, Ld. CIT(A) held that cash purchases would be available on huge

discounts and therefore, GP rate on accounted stock could not be adopted to estimate GP on unaccounted sales.

3.5 The Ld. CIT(A) also noticed that computation of GP rate of 18.61% by Ld. AO for FY 2017-18 was incorrect. The correct GP rate was 15.69% only. The computation thereof has been given in para 7.7 of the impugned order. In FY 2018-19, the firm was taken over by Shri Pondurai and GP rate as computed by Ld. AO for that year was 56.92%. The average GP rate of 37.76% was applied to estimate the income of the assessee. The assessee submitted that since AO did not disturb the books results declared by the assessee for various AYs, the GP rate as admitted in the books of accounts should be considered. It was also claimed that the details of unaccounted purchases for AY 2018-19 in the case of the individual was not available fully during the search as it was destroyed frequently as stated in reply to Q. No.26 by Shri Pondurai during search. It was also claimed by the assessee that the assessee used to sell the same set of items in both the two years and therefore, such drastic increase in GP rate was unrealistic. It was impossible to achieve completely distinct GP in two consecutive years.

3.6 The Ld. CIT(A), partially accepting the assessee's submissions and going by the statement made by Shri Pondurai u/s 132(4) during search proceedings, accepted GP rate of 21% on suppressed turnover. It was observed by Ld. CIT(A) that the statement was a voluntary statement which was not retracted. Therefore, referring to various judicial decisions holding the field, Ld. CIT(A) held that it would be justified to adopt GP rate of 21% in case of assessee-firm. The computations were revised accordingly. Since for AY 2018-19, the assessee had offered GP rate of

21.8% on unaccounted sales which was more than estimated GP rate of 21%, the addition made for this year was deleted in its entirety.

3.7 In the case of individual assessee i.e., Shri Pondurai, the seized material contained evidences for unaccounted sales only for part of the year during the period relevant for AY 2019-20 in respect of Padi Branch. However, Ld. AO extrapolated sales suppression for AYs 2017-18, 2018-19 and 2019-20 on proportionate basis. The assessee offered additional income only in respect of sales suppression detected at the time of search by applying the GP rate of accounted sales in the books of account. For AY 2017-18, the individual assessee submitted that there was no incriminating material and therefore, no such addition could be made for this year. Similarly, for AY 2018-19, the assessee assailed extrapolation of suppressed sales based on 3 months unaccounted sales at Padi Branch relating to AY 2019-20. For AY 2019-20, similar extrapolation was made by Ld. AO for full year. However, Ld. CIT(A) rejected the same on the ground that the assessee was using the software throughout the period and it could not be said that the above software was used only during that period for which sales suppression was detected, Merely because this data was not available, it could not be concluded that the assessee did not suppress sales during that period. Therefore, this ground was rejected in all these years.

3.8 Aggrieved by aforesaid adjudication, the assessee as well as revenue is in further appeal before us.

#### **Our findings and Adjudication**

4. We find the dispute to be in a very narrow compass. It is admitted fact the search action has unearthed unaccounted sales in the hands of assessee-firm as well as in the hands of Shri Pondurai. Though Shri

Pondurai admitted GP rate of 21% in statement made during search action, however, at the time of filing of return of income, the rate of GP has been taken to be the same as GP declared on accounted sales. The same is on the logic that the goods / articles sold by the assessee, whether accounted or unaccounted, would have same price and the rate of GP would not vary in such a case. This argument has to be considered in the light of incriminating material found by the department during search operation. It could be seen that though there are unaccounted cash purchases, complete data in that regard is not available. Moreover, the purchases were centralized at one place which was distributed to various centers / outlets as per their requirement. The modus operandi to suppress the sales was that only few items in cash bills, on some random basis, would be removed at the end of each day. It is not the case that entire bill would be removed from the system. The goods sold by the assessee could be out of accounted purchases or out of unaccounted purchases. The random deletion of sales could relate to accounted purchases or unaccounted purchases. As rightly held by Ld. CIT(A), in the given scenario, it would be practically impossible to map accounted and unaccounted purchases with sales which could also be accounted or unaccounted. There would be no certainty either in purchases or in sales. Therefore, incomplete data of purchase could not be mapped with unaccounted sales. On given facts, there would be no option but to make an estimation of GP rate on suppressed sales as unearthed by the department during search action.

5. Evidently, the assessee is dealing in diversified nature of goods which include home appliances, textiles, jewellery etc. These goods would have separate nature of customers and GP rate, in all the

segments, could not be held to be uniform across range of goods being dealt with by the assessee. The realistic approach, in such a case, in our considered opinion, would be to adopt GP rate as reflected by the assessee on accounted / regular sales during the year since it would be a composite margin earned by the assessee across diversified range of goods. The same is further supported by the fact that the assessee has maintained regular books of accounts and the books are subjected to regular Tax Audit as per statute. The GP rate offered on accounted sales has been accepted by the department and no defect has been pointed out in the books of accounts. Therefore, application of uniform rate in all the years could not be held to be justified.

6. It is quite apparent that the GP rate as computed by Ld. AO is completely erroneous. Besides computational errors, as rightly noted by Ld. CIT(A), Ld. AO has taken average of GP rates of FY 2017-18 (18.61%) and FY 2018-19 (56.92%) and arrived at applied GP rate of 37.76%. It could be seen that the two rates are at huge variance with each other which is highly improbable and impractical considering the fact that there is no change either in nature of business or in the manner of carrying out business by the assessee. There is no justification for such great variation in GP rate of back-to-back financial years. Therefore, the methodology of Ld. AO is clearly fallacious and the same, therefore, could not be accepted.

7. Proceeding further, it is quite evident from following tabulation that the assessee has adopted the same accounted GP rate on suppressed sales and offered additional income in respective years as follow: -

## DETAILS OF INCOME AND GP % OFFERED BY APPELLANT ALONG WITH INCOME DETERMINED BY AO AND CIT(A)

A.Y	Accounted Sales as Per Return of Income u/s 139(1)	GP on accounted sales offered in return u/s 139(1)		Unaccounted Sales found during the search	GP on unaccounted sales offered while filing 153A		Unaccounted Sales determined by search team and AO	GP on unaccounted sales assessed by AO		GP on unaccounted sales as determined by CIT(A)	
		%	Amount		%	Amount		%	Amount	%	Amount
<b>T Nagar - Partnership Firm</b>											
AY 13-14	3,80,63,47,217.00	16.75%	63,75,58,963.23	1,91,53,00,000.00	16.75%	32,08,12,750.00	1,91,53,00,000.00	37.76%	72,32,17,280.00	21%	40,22,13,000.00
AY 14-15	3,31,04,77,173.00	18.80%	62,23,10,784.53	1,95,09,00,000.00	18.80%	36,67,69,200.00	1,95,09,00,000.00	37.76%	73,66,59,840.00	21%	40,96,89,000.00
AY 15-16	3,16,21,91,719.00	18.56%	58,68,04,743.00	2,05,12,00,000.00	18.56%	38,07,02,720.00	2,05,12,00,000.00	37.76%	77,45,33,120.00	21%	43,07,52,000.00
AY 16-17	2,94,98,03,881.00	17.48%	51,56,90,280.90	1,71,11,00,000.00	17.48%	29,91,00,280.00	1,71,11,00,000.00	37.76%	64,61,11,360.00	21%	35,93,31,000.00
AY 17-18	2,97,66,06,681.00	17.17%	51,09,90,844.42	1,14,50,00,000.00	17.17%	19,65,96,500.00	1,14,50,00,000.00	37.76%	43,23,52,000.00	21%	24,04,50,000.00
AY 18-19	1,47,41,76,953.00	21.68%	31,96,60,044.15	44,89,00,000.00	21.68%	9,73,21,520.00	44,89,00,000.00	37.76%	16,95,04,640.00	21%	9,42,69,000.00
<b>TOTAL (A) Partnership Firm</b>				<b>9,22,24,00,000.00</b>		<b>1,66,13,02,970.00</b>	<b>9,22,24,00,000.00</b>		<b>3,48,23,78,240.00</b>		<b>1,93,67,04,000.00</b>
<b>T Nagar - Proprietorship Concern</b>											
AY 18-19	1,99,71,70,315.00	16.16%	32,27,61,142.75	41,11,00,000.00	16.16%	6,64,37,552.00	41,11,00,000.00	37.76%	15,52,31,360.00	21%	8,63,31,000.00
AY 19-20	3,87,89,74,983.09	15.35%	59,54,82,060.75	44,06,00,000.00	15.35%	6,76,38,847.00	44,06,00,000.00	37.76%	16,63,70,560.00	21%	9,25,26,000.00
<b>TOTAL (T-Nagar, Proprietorship Concern)</b>				<b>85,17,00,000.00</b>		<b>13,40,76,399.00</b>	<b>85,17,00,000.00</b>		<b>32,16,01,920.00</b>		<b>17,88,57,000.00</b>
<b>Padi - Proprietorship Concern</b>											
AY 17-18	4,72,74,01,593.00			-		-	74,17,29,309.90	37.76%	28,00,76,987.42	21%	15,57,63,155.08
AY 18-19	6,55,14,72,084.00			-		-	1,02,79,25,970.00	37.76%	38,81,44,846.27	21%	21,58,64,453.70
AY 19-20	7,16,54,01,033.96	15.41%	1,10,40,62,932.87	32,09,30,373.00	15.41%	4,94,73,514.00	95,94,86,365.00	37.76%	36,23,02,051.42	21%	20,14,92,136.65
<b>TOTAL (PADI, Proprietorship Concern)</b>				<b>32,09,30,373.00</b>		<b>4,94,73,514.00</b>	<b>2,72,91,41,644.90</b>		<b>1,03,05,23,885.11</b>		<b>57,31,19,745.43</b>
<b>Padi Furniture - Proprietorship Concern</b>											
AY 17-18				-		-	-		-		-
AY 18-19				-		-	-		-		-
AY 19-20	2,24,84,19,907.41	18.83%	42,34,82,658.24	1,35,80,060.00	18.83%	25,57,761.00	4,48,56,415.00	37.76%	1,69,37,782.30	21%	94,19,847.15
<b>TOTAL (PADI Furniture , Proprietorship Concern)</b>				<b>1,35,80,060.00</b>		<b>25,57,761.00</b>	<b>4,48,56,415.00</b>		<b>1,69,37,782.30</b>		<b>94,19,847.15</b>
<b>TOTAL (B) Tnagar+Padi+Padi furniture Proprietorship Concern</b>				<b>1,18,62,10,433.00</b>		<b>18,61,07,674.00</b>	<b>3,62,56,98,059.90</b>		<b>1,36,90,63,587.42</b>		<b>76,13,96,592.58</b>
AY 19-20	TOWARDS OTHER OMISSION AND COMMISSION [C]					90,00,000.00					
<b>GRAND TOTAL (A+B+C)</b>				<b>10,40,86,10,433.00</b>	<b>17.84%</b>	<b>1,85,64,10,644.00</b>	<b>12,84,80,98,059.90</b>	<b>37.76%</b>	<b>4,85,14,41,827.42</b>	<b>21.00%</b>	<b>2,69,81,00,592.58</b>

The above methodology, in our opinion, is more practical and realistic one since estimations is based on authentic data rather than on incomplete data. Therefore, the aforesaid methodology as adopted by the assessee finds our concurrence. We order so.

8. Finally, on the facts and circumstances of the case, we would concur with the approach adopted by the assessee while estimating GP on suppressed sales. The approach of Ld. AO as well as Ld. CIT(A) is not accepted. In the result, the corresponding grounds raised by the assessee-firm as well as individual assessee, stand allowed for all the years. The corresponding grounds raised by the revenue, in assessee-firm as well as in the case of individual assessee, for all the years, stand dismissed.

9. The individual assessee Shri Pondurai has assailed the action of Ld. AO in extrapolating the sales for earlier years. We are of the opinion that considering the ratio of decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)**, no addition could be made for completed assessment in the absence of any incriminating material. We find that suppressed sales for AYs 2017-18, 2018-19 and part of 2019-20 with respect to Padi units are merely extrapolated sales based on 3 months unaccounted sales of AY 2019-20. There are no evidences of suppression of sales in AYs 2017-18, 2018-19 and remaining months of 2019-20. It is trite law that no addition could be made merely on the basis of assumption, conjectures or surmises. Unless evidences of suppression of sales in relevant years are brought on record in those years, the suppressed sales for only a part of month could not be extrapolated for those years. Therefore, the assessee has rightly offered additional income only in respect of sales

suppression detected at the time of search by applying the GP rate of accounted sales in the books of account. The corresponding grounds raised by the assessee, in these years, stands allowed.

### **Conclusion**

10. All the appeals of the revenue stand dismissed. All the appeals of the assessee stand allowed.

*Order pronounced on 6<sup>th</sup> August, 2024*

**Sd/-**  
**(ABY T. VARKEY)**  
**न्यायिक सदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखक सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :06-08-2024  
DS

### **आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF