

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

माननीय श्री महावीर सिंह, उपध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं. ITA No.1301/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2015-16)
&
2. आयकर अपील सं. ITA No.1302/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2016-17)
&
3. आयकर अपील सं. ITA No.1303/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)
&
4. आयकर अपील सं. ITA No.1304/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2018-19)
&
5. आयकर अपील सं. ITA No.1305/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2019-20)

M/s V.V. Titanium Pigments Pvt.Ltd Mahadevankulam, Keeraikaranthattu Tisayanvillai, Tirunelveli-627 657.	बनाम/ Vs.	ACIT Central Circle-2 Madurai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AADCV-7723-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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6. आयकर अपील सं./ ITA No.1316/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2015-16)
&
 7. आयकर अपील सं./ ITA No.1312/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2016-17)
&
 8. आयकर अपील सं./ ITA No.1313/Chny/2024

(निर्धारण वर्ष / Assessment Year: 2017-18)

&

9. आयकरअपील सं./ ITA No.1314/Chny/2024

(निर्धारण वर्ष / Assessment Year: 2018-19)

&

10. आयकरअपील सं./ ITA No.1315/Chny/2024

(निर्धारण वर्ष / Assessment Year: 2019-20)

DCIT Central Circle-2 Madurai.	बनाम/ Vs.	M/s V.V. Titanium Pigments Pvt. Ltd. Mahadevankulam, Keeraikaranthattu Tisayanvillai, Tirunelveli-627 657.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AADCV-7723-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri R. Venkata Raman (CA) - Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Nilay Baram Som (CIT) -Ld. DR

सुनवाईकीतारीख/Date of Hearing	:	23-07-2024
घोषणाकीतारीख /Date of Pronouncement	:	09-10-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross appeals for Assessment Years (AY) 2015-16 to 2019-20 arises out of separate orders of learned first appellate authority. However, the facts as well as issues are stated to be substantially the same in all the appeals. First, we take up cross-appeal for AY 2015-16 which arises out of an order passed by learned Commissioner of Income Tax (Appeals), Chennai-19 [CIT(A)] on 05-03-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 153A of the Act on 18-02-2021.

1.2 The assessee's grounds of appeal are as under: -

1. That the Learned Commissioner of Income Tax (Appeals) - 19, Chennai ["Ld. CIT(A)"] failed to appreciate that the assessment order dated 18.02.2021 passed by the Assistant Commissioner of Income Tax, Central Circle - 2, Madurai ["Assessing Officer"]

u/s.153A r.w.s 143(3) Of the Income-tax Act ,1961 ["Act"] is without jurisdiction, bad in law, barred by limitation and consequently erred in upholding the assessment.

2. That the Ld. CIT(A) ought to have appreciated that the approval accorded by the Range Head u/s.153D of the Act was mechanical and consequently the impugned assessment order is invalid and void ab initio.

3. That the Ld. CIT(A) erred in not quashing the assessment order since the same lacks DIN as mandated by the CBDT Circular No.19/2019 dated 14.08.2019 w.e.f 01.10.2019.

4. That the Ld. CIT(A) is not justified in sustaining the addition to the extent of Rs.94,69,529/- made by the Assessing Officer towards unaccounted cash sale of scarp and rutile.

1.3 The revenue's grounds of appeal read as under: -

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

2 The Ld.CIT(A) erred in restricting the addition made towards unaccounted sales to 23.67% of Gross profit rate on such unaccounted sales of Rs.4,06,94,150/- quantified on the basis of seized materials.

2.1 The Ld.CIT(A) failed to appreciate that most of the cash payments mentioned in the seized note book against unaccounted sales are related to payments made to bureaucrats and political parties which are not allowable expenses u/s. 37 of the Act, hence the entire receipts are to be treated as unaccounted income.

2.2 The Ld.CIT(A) erred in failing to appreciate that the assessee company have not produced any evidence to prove that the expenses have been incurred in connection with unaccounted sales other than the expenses recorded in the books of accounts.

3. The Ld.CIT(A) erred in deleting the addition of Rs.12,28,60,730/- towards unaccounted cash receipts made on the basis of incriminating material in the form of email back up seized during the course of search reflecting e mail communication between Shri. S. Jagatheesn, Managing partner of M/s. V. V. Minerals and Smt. Jeyanthi, employee of M/s. V.V. Minerals wherein excel sheets containing data of cash receipts on sale of scrap made by

3.1 The Ld CIT(A) failed to appreciate that M/s. V.V. Titanium Pigments Pvt Ltd and M/s. V V Minerals are closely related to group concerns and maintenance of data in respect of cash receipts of one company by managing partner of other concern cannot be considered as illogical or without basis.

3.2 The Ld.CIT(A) erred in holding that the AO had not proved that the entries in excel sheets are related to assessee company without appreciating that excel sheets attached clearly indicate the buyer name as "vvtip scrap' and head of account as "Scrap sales" and as such it is evident that the said cash receipts are related to M/s. V. V. Titanium Pigments Pvt Ltd.

As is evident, the impugned issues arise out of a search conducted by the department in the case of assessee group.

1.4 The Ld. AR advanced arguments and supported the case of the assessee with various case laws and documents containing workings / computations etc. The Ld. CIT-DR supported the findings rendered by Ld. AO and likewise, relied on various case laws. It is admitted position that all the issues that arises under the captioned appeals have elaborately been discussed by Ld. AO while framing an assessment for AY 2013-14 on 18-02-2021. The copy of the same has been placed on record. For reference purposes and for the purpose of adjudication, the said order is taken to be the lead order and the findings rendered by Ld. AO therein have been considered while adjudicating these appeals. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

1.5 The assessee entity is stated to have been established in the year 1994. It is stated to be engaged in manufacturing & sale of anatase grade Titanium dioxide. Pursuant to search action on assessee group on 25-10-2018, notices u/s 153 were issued for AYs 2013-14 to 2018-19 on 16-07-2019. In response, the assessee filed returns of income which were subjected to scrutiny by Ld. AO.

Assessment Proceedings

2. Based on search findings, Ld. AO proposed addition of- (i) Sales Suppression; (ii) Unexplained investments; (iii) Income by way of unaccounted scrap sales; (iv) Bogus expenses; (v) Unaccounted cash receipts; & (vi) other additions. The brief facts leading to addition in each head are as under.

3. Sales Suppression

This addition is based on scanned image of print out of whatsapp chat between Shri J. Thangadurai (GM, Finance & Accounts) and Shri V.P.

Menon (Vice President-Marketing). These were extracted from the mobile of Shri J. Thangadurai during the course of search. A statement was recorded u/s 132(4) from Shri Thangadurai, the relevant extract of which has been reproduced in the assessment order. On the basis of the same, Ld. AO alleged that there was sales suppression from two parties (M/s Meta Trading Company and M/s QRS Paints & Labs) during FYs 2017-18 & 2018-19 which are tabulated on Page No.10 of the assessment order. The aggregate addition made in these two years against the two parties was quantified at Rs.55.25 Lacs.

4. Unexplained Investments

4.1 The addition is on account of 1.83 acres of land purchased by the assessee during October, 2017 at Tutikorin District. The land was adjacent to company's factory. Shri J. Thangadurai was authorized by Board of Directors to sign the documents on behalf of the company. The sale consideration as per Sale Deed dated 16-10-2017 was Rs.7.51 Lacs including stamp duty. However, there was an email communication between Shri Thangadurai and Shri M. Subramanian (MD) on 16-10-2017 which showed that on-money was paid for Rs.31.73 Lacs towards purchase of this land. Accordingly, the same was added as unexplained investment for AY 2018-19.

4.2 Similar addition of unexplained investment of Rs.25 Lacs was made for AY 2016-17 for purchase of land from Shri SDR, Vijayaseelan. The same was based on Page-13 of note books which was seized vide ANN/MP/VVTP/B&D/S-2 dated 28-10-2018 (red colour sarathy student note brand classic) wherein amount of Rs.25 Lacs was written against the date 12-05-2015 as amount paid for land.

5. Income by way of unaccounted scrap sales

Upon perusal of entries made in note book which was seized vide ANN/MP/VVTP/B&D/S-2 dated 28-10-2018 (red colour sarathy student note brand classic), it was observed that the assessee made payment to officers, politicians etc. on regular basis. Similar entries were noted in Ambal notebook which was seized vide ANN/MP/VVTP/B&D/S-1. The same was also noted in whatsapp conversation between Shri Thangadurai and Shri V. Subramanian (MD). On the basis of all this material, Ld. AO alleged that the assessee was generating unaccounted cash through sale of scrap and also incurring expenditure in cash. The notings in that respect were found in the notebooks. The unaccounted sales receipts were quantified at Rs.20.41 Crores for AYs 2015-16 to 2019-20 and added as unaccounted income in the hands of the assessee. Since the receipts were brought to tax, no separate addition was made for the cash payments / expenditure.

6. Bogus Expenses

6.1 This addition is based on the allegation of Ld. AO that the assessee generated unaccounted cash by booking bogus expenses in the books by raising bills in the name of bogus parties. The same was based on whatsapp conversation between Shri Thangadurai and Shri Subramanian (MD). In this regard, a statement was also recorded from Shri K. Ramesh (Deputy Manager, indirect taxes) as well as from Shri S. Vasudevan (Sr. Executive, purchase) u/s 132(4) which is extracted in the assessment order. The Ld. AO quantified the same at Rs.32.30 Crores for FYs 2015-16 to 2017-18 which are tabulated in para 53 of assessment order for AY 2013-14.

6.2 The Ld. AO noted another payment of Rs.25 Lacs to M/s Sree Chandra Auto Components Pvt. Ltd. The same was based on an email sent on 04-10-2018 by Shri Adhi Maran (MD) of that concern to Smt. Chitra Raghuram (Finance Manager of M/s V.V. Minerals, the flagship concern of assessee group) attaching an invoice. The same was corroborated by whatsapp chat between Shri Thangadurai and Smt. Chitra Raghuram. Accordingly, Ld. AO made disallowance of Rs.25 Lacs for AY 2019-20.

7. Unaccounted Cash Receipts

This addition is based on notebooks found from the premises of Shri Subramanian (MD) during search at his residence. The same were seized vide ANN/KS/PK/B&D/S-1 to S-6. The same was maintained by Shri Raja, Office Manager. He admitted to have maintained these books for various individuals. He stated that he received cash and made cash payments on behalf of various persons. On the basis of the same, it was concluded by Ld. AO that the assessee indulged in cash sales for Rs.13.65 Crores for AYs 2014-15 and 2015-16. This addition for AYs 2017-18 to 2019-20 was quantified at Rs.6.10 Crores.

8. Other Additions: Addition for alleged manipulation in the accounts

This addition is based on email dated 24-10-2018 sent by Shri Thangadurai to Shri Subramanian (MD) and a copy of the same was marked to Smt. Chitra, CA. In this email the figures of total income and advances tax was mentioned. On the basis of the same, Ld. AO alleged that there was manipulation in stock and value of the assets. The same was quantified at Rs.1930.36 Lacs for AY 2018-19 and added to the income of the assessee.

9. At the time of search, physical cash was found for Rs.1.49 Lacs whereas the books had cash balance of Rs.0.93 Lacs. The differential of Rs.0.56 Lacs was treated as undisclosed income for AY 2019-20.

10. Finally, the assessment for all the years was completed by making above additions in the hands of the assessee. The additions under each head, for all the years, for ease of reference, could be tabulated as under: -

AY	Sales suppression under-invoicing	Unexplained investments	Sale of scrap and rutille unaccounted	Bogus expenses	Unaccounted cash receipts	Others
2014-15	-	-	-	-	1,36,81,250	-
2015-16	-	-	4,06,94,150	-	12,28,60,630	-
2016-17	-	25,00,000	4,32,55,900	11,60,05,873	-	-
2017-18	-	-	2,11,45,000	13,08,80,531	1,82,80,064	-
2018-19	39,25,000	31,73,000	6,62,03,000	7,61,69,210	3,20,24,342	19,30,36,000
2019-20	16,00,000	-	3,28,87,000	25,00,000	1,07,70,000	56,368
TOTAL	55,25,000	56,73,000	20,41,85,050	32,55,55,614	19,76,16,386	19,30,92,368

Aggrieved as aforesaid, the assessee assailed the assessment so made before Ld. first appellate authority.

Appellate Proceedings

11. The assessee assailed the impugned assessments on legal grounds as well as on merits by way of elaborate written submissions which have already been extracted in the impugned order for AY 2015-16. This order is being considered by us for the purpose of adjudication.

12. The Ld. CIT(A), in para 7.2, confirmed addition of sales suppression of Rs.55.25 Lacs for AYs 2018-19 & 2019-20 on the ground that the cash generated by the assessee was proved with corroborative evidences. The Ld. AR has not pressed for this ground of appeal. Accordingly, the corresponding grounds raised in these years stand dismissed.

The addition of unexplained investment of Rs.25 Lacs for AY 2016-17 as allegedly paid to Shri SDR Vijayaseelan was deleted on the observation that there was no material to corroborate the fact that the land was ultimately registered in the name of the assessee company. When there was no registration in the name of the assessee company, the question of making this addition would not arise. Further, noting made in Page No.13 was an extract of noting made in Page No.138 and therefore, this noting was duplication which could not be added again since the receipts as mentioned on Page No.137 was separately added as unaccounted receipts from sale of scrap and rutile. Therefore, this addition was deleted. These findings have attained finality and not the subject matter of appeal before us.

The Ld. AO made addition of Rs.31.73 as unexplained investment for AY 2018-19 alleged to be paid on purchase of 1.83 acres of land at Tuticorin District. The Ld. CIT(A) observed that this addition was not based on any incriminating material found during the course of search but purely based on statement recorded from Shri J. Thangadurai. In the absence of any incriminating material, no such addition could have even made. The Ld. AO did not attempt to make any enquiry from the vendors of the land. Finally, this addition was deleted. These findings have also attained finality and not the subject matter of appeal before us.

13. Unaccounted Sales and Scrap Sales

13.1 The issue of unaccounted scrap and rutile sale arose for AYs 2015-16 to 2019-20. The same was based on five notebooks and diaries as seized from Shri J. Thangadurai. The Ld. AO analyzed the same and based on sworn statements and certain whatsapp conversations arrived at a conclusion of unaccounted sales. For AY 2016-17, Ld. CIT(A) noted that there was totalling mistake to the extent of Rs.30.55 Lacs. For AY 2017-18, there was double addition to the extent of Rs.66 Lacs. For AY 2018-19, there was totalling mistake to the extent of Rs.3.25 Lacs & Rs.0.37 Lacs. For AY 2019-20, the amount of Rs.2 Lacs was amount received back which was earlier given and therefore, the same could not be considered to be the income of the assessee. The assessee could demonstrate all these facts. Accordingly, the impugned additions, to the extent of Rs.102.17 Lacs was deleted by Ld. CIT(A). The revenue has not contested these findings of Ld. CIT(A).

13.2 The assessee also submitted that there were circular transactions to the extent of Rs.732.30 Lacs which was evident from Sarathy Student Notebook for AYs 2015-16 and 2016-17. These were stated to be received from Head office of M/s V.V. Minerals for making payments on their behalf. It was also submitted that the aforesaid payments were returned back to the Head Office due to non-payment. Accordingly, the assessee pleaded for deletion to that extent. For the remaining unaccounted sales, the assessee pleaded for adoption of Gross-Profit (GP) Rate considering the unaccounted expenditure incurred by the assessee out of these receipts.

13.3 The Ld. CIT(A) concurred that there were circular transactions between M/s V.V. Minerals and the assessee. The Ld. AO did not give

deduction of corresponding expenditure incurred by the assessee for its business purposes. Considering this fact, only estimated profit embedded in these transactions was to be taxed.

13.4 The Ld. CIT(A) considered the declared Gross Profit Rate for AYs 2015-16 to 2019-20 and applied these rates to the balance addition. The same was computed as under: -

AY	2015-16	2016-17	2017-18	2018-19	2019-20
Total addition made by A.O in assessment order	4,06,94,150	4,32,55,900	2,11,45,000	6,62,03,000	3,28,87,000
Less: Double addition / totaling mistake as discussed above	-	30,55,400	66,00,000	3,62,000	2,00,000
Balance upon which profit element is to be estimated	4,06,94,150	4,02,00,500	1,45,45,000	6,58,41,000	3,26,87,000
Gross Profit ratio to be adopted	23.27	19.61	17.40	17.55	10.96
Total addition to be sustained in the hands of appellant company as unaccounted business income	94,69,529	78,83,318	25,30,830	1,15,55,095	32,82,495
Total addition to be deleted	3,12,24,621	3,53,72,582	1,86,14,170	5,46,47,905	2,93,04,505

AY	2015-16	2016-17	2017-18	2018-19	2019-20
Total addition made by A.O in assessment order	4,06,94,150	4,32,55,900	2,11,45,000	6,62,03,000	3,28,87,000
Addition sustained as unaccounted business income	94,69,529	78,83,318	25,30,830	1,15,55,095	32,82,495
Addition(s) directed to be deleted by the Assessing Officer	3,12,24,621	3,53,72,582	1,86,14,170	5,46,47,905	2,93,04,505

However, the benefit of circular transactions as urged by the assessee was not granted by Ld. CIT(A) to the assessee. Accordingly, the grounds were partly allowed. Aggrieved, the assessee as well as revenue is in further appeal before us.

Our findings on this issue

14. From the facts, it emerges that this addition is based on five notebooks and diaries as seized from Shri J. Thangadurai. The Ld. AO analyzed the same and based on sworn statements and certain whatsapp conversations, arrived at a conclusion of unaccounted sales. In our considered opinion, there was ample material before revenue to make this addition. However, we also find that these notebooks contain details of expenditure incurred by the assessee out of unaccounted sales. It is trite law that only real income could be subject to tax. Though there are unaccounted sales, there are unaccounted expenditure also. The Ld. AO can not accept a part of the transaction. On the facts of the case, it could be seen that Ld. CIT(A) has estimated the profit on the unaccounted sales by applying regular Gross Profit rate shown by the assessee in respective years. The same, in our considered opinion, is quite logical and reasonable. Therefore, the methodology of Ld. CIT(A), in applying GP rates, could not be faulted with. However, the Ld. AR has urged that this estimation has been made on circular transactions also which merely represents circular amount received from another group entity viz. M/s V.V. Minerals and these receipts have been returned back to the group entity. Such circular transactions form part of above receipts. The fact of circular transaction has also been accepted by Ld. CIT(A) in the impugned order. In our considered opinion, circular transactions within group entities would not partake the character of

income in the hands of the assessee. Accordingly, the receipts for Rs.732.30 Lacs for AYs 2015-16 & 2016-17 could not be held to be part of unaccounted sales receipts and therefore, the same are to be excluded while estimating the profit on these transactions. Therefore, Ld. AO is directed to exclude the same while making the computations for respective years. The assessee is directed to furnish the year-wise working thereof. The corresponding ground raised by the revenue stand dismissed whereas the corresponding grounds of assessee stand partly allowed.

15. Bogus Expenditure

15.1 On the issue of booking of bogus expenses for AYs 2016-17 to 2019-20, the assessee pleaded that no enquiries were conducted by Ld. AO with respective vendors and therefore, the additions could not be sustained. The assessee also demonstrated that substantial expenses as disallowed by Ld. AO were never booked in its books of accounts. The detailed objections of the assessee, in this regard, has been tabulated in para 7.6.10 of the impugned order.

15.2 The Ld. CIT(A), upon perusal of ledger of M/s Sree Chandra Auto Components Pvt. Ltd., concurred that the said sum was not claimed as an expenditure by the assessee. Accordingly, the addition so made by Ld. AO was deleted.

15.3 The addition of 32.55 Crores was made for AYs 2016-17 to 2018-19 against various vendors, the details whereof have been extracted on Para Nos.7.6.13 of the impugned order. The assessee assailed the same on the ground that Ld. AO relied on whatsapp conversation between Shri Thangadurai and Shri V. Subramanian. In the said conversation, it was mere proposal to obtain bills from Raja

Transporter and Devashayam Contractors. However, no such bills were actually obtained by the assessee which was evident from the list of vendors as noted by Ld. AO. The whatsapp conversation was only a proposal which did not fructify. Therefore, the same was irrelevant and not incriminating. Further, the ledger accounts would show that the assessee has not made any payment to the said vendors and therefore, the question of receiving back the cash would not arise at all. The Ld. AO did not make any further enquiries. No material evidence was brought on record to prove that the cash was received from the vendors.

15.4 The Ld. CIT(A) concurred that during the course of search, it was found from one of the Whatsapp conversation that it was proposed to obtain bills from Raja Transporter and Devashayam Contractor for FY 2017-18. However, upon perusal of the list of vendors, it was quite clear that no such bills were actually obtained by the assessee from such vendors. Accordingly, the said whatsapp conversation was merely proposal which had not materialized. The said conversation alone was not sufficient enough to make addition of bogus expenses. The Ld. AO should have travelled further to bring on record the additional evidence to corroborate the allegation. However, Ld. AO failed to cross-verify the same from any of the vendors. Upon perusal of ledger of all the vendors, it was quite clear that the assessee had not made any payment to any of the vendors except for a small payment in AY 2017-18. When the assessee did not make any payment, there was no question of receiving back the same in cash. In the absence of corroborative evidences, the addition lacks merits. The Ld. AO did not conduct any enquiries from the vendors to ascertain the genuineness of the expenditure. Without corroborative and incriminating material, no addition could be made as

per the decision of Hon'ble Apex Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)**. Finally, it was to be held that disallowance of expenses was not sustainable.

15.5 At the same time, the Ld. CIT(A) opined that inflation of expenditure by the assessee could not be ruled out. Therefore, by considering various judicial decisions, Ld. CIT(A) estimated the addition @ 12.5% of alleged bogus expenses. These decisions include the decision of Hon'ble Bombay High Court in the case of **PCIT vs. Suraj Infrastructures P. Ltd. (295 Taxman 758)** as well as the decision of Hon'ble Gujarat High Court in the case of **CIT vs. Simit P. Sheth (356 ITR 451)** and various other decisions as enumerated in the impugned order. The addition thus sustained by Ld. CIT(A) for AYs 2015-16 to 2017-18 was Rs.403.81 Lacs as computed in para 7.6.23 of the impugned order. The same was as under: -

No.	AY	Amt. of Addition	Addition sustained @12.5%	Addition to be deleted
1.	2016-17	11,60,05,873	1,45,00,734	10,15,05,139
2.	2017-18	13,08,80,531	1,63,60,066	11,45,20,465
3.	2018-19	7,61,69,210	95,21,151	6,66,48,059
	Total	32,30,55,614	4,03,81,951	28,26,73663

Aggrieved, the assessee as well as revenue is in further appeal before us.

Our findings on this issue

16. So far as the addition of Rs.25 Lacs for AY 2019-20 is concerned, the factual position that emerges is that the assessee has not booked this expenditure during this year. The revenue is unable to controvert the same before us. Therefore, this addition has rightly been deleted by Ld.

CIT(A). The corresponding grounds urged by the revenue stand dismissed.

17. So far as the issue of alleged bogus expenses for AYs 2016-17 to 2018-19 is concerned, we concur that no enquiries, whatsoever, has been conducted by Ld. AO to support his conclusion. It is another fact that the substantial expenses as disallowed by Ld. AO has never been booked by the assessee in its books of accounts. This addition is merely based on certain whatsapp conversation between Shri Thangadurai and Shri V. Subramanian. In the said conversation, it was mere proposal to obtain bills from Raja Transporter and Devashayam Contractors. However, no such bills have actually obtained by the assessee which is quite evident from the list of vendors as extracted by lower authorities. This being the case, the said conversation, on standalone basis, would not be sufficient enough to disallow expenditure of that magnitude. The ledger accounts would show that the assessee has not made any payment to the said vendors and therefore, the question of receiving back the cash would not arise at all. The Ld. AO has not made any independent enquiries and no material evidence has been brought on record to prove that the cash was actually received back from the vendors. The Ld. CIT(A), in our considered opinion, has clinched the issue in correct perspective and was quite logical in estimating the disallowance by following various judicial decisions holding the field. The estimation of 12.5% is quite reasonable and justified enough to plug the leakages of revenue. Therefore, we see no reason to interfere in the same. The grounds raised in cross-appeals, in respective years, stands dismissed.

Unaccounted Cash Receipts

18.1 The issue of cash receipts aggregating to Rs.19.76 Crores arose in AYs 2014-15, 2015-16, 2017-18 to 2019-20. The addition for AYs 2014-15 & 2015-16 for Rs.13.65 Crores was based on certain excel sheet as exchanged in e-mail between Shri Jegatheesan (Partner of M/s V.V. Minerals) and Smt. Jeyanthi (an employee of M/s V.V. Minerals). The addition for AYs 2017-18 to 2019-20 for Rs.6.10 Crores was based on seized notebooks and dairies as maintained by Shri S. Raja, Manager of M/s V.V. Minerals. The assessee assailed the same on the ground the entries in the excel sheet did not pertain to the assessee and no such sales receipts were received by the assessee. It was also pointed out that Shri S. Raja was not the employee of the assessee company and the presumption u/s 132(4A) would not arise. The assessee also submitted that the sheet was an unsigned sheet and it would thus, have no evidentiary value. The Ld. AO did not make any enquiries to corroborate the notings in the excel sheet. On the issue of entries in the notebooks, it was submitted by the assessee that Shri Raja was not employee of the assessee company. He handled cash on behalf of promoters of M/s V.V. Minerals. During the course of search, six notebooks maintained by Shri Raja were seized from the residential premises of Shri Subramanian (Director of assessee company). The notebooks, as seized and identified by Shri Raja in his sworn statement, were as follows: -

No.	Annexure of seized note book	Note book maintained & identified by Shri S. Raja
1	ANN/KS/PK/B&D/S-1	Maintained for Shri Velmurugan and Shri Jayapaul
2	ANN/KS/PK/B&D/S-2	Maintained for Shri Jegatheesan
3	ANN/KS/PK/B&D/S-3	Maintained for Shri Subramanian
4	ANN/KS/PK/B&D/S-4	Maintained for Shri Jegatheesan
5	ANN/KS/PK/B&D/S-5	Maintained for Shri Chenthilrajan and Shri Muthurajan
6	ANN/KS/PK/B&D/S-6	Commonly maintained for the above persons

18.2 On the basis of assessee's submissions, Ld. CIT(A) noted that Ld. AO did not examine / confront the excel sheets to Shri Jegatheesan or Smt. R. Jeyanthi to ascertain the author and purpose of excel sheet. In fact, no statement was either recorded from Shri J. Thangadurai or Shri V. Subramanian in connection with the excel sheet. In the absence of valid details and the circumstances in which the excel sheet was prepared and the corresponding entries, the same could not be relied upon to make impugned additions. In the excel sheet, there exist no narration relating to the quantity of scrap sold and the details of buyer to whom it was sold. Had the assessee company been receiving cash from the sale of scrap as stated in the excel sheet, the same should have been mentioned in the note books seized from Shri J. Thangadurai (GM Finance & Accounts). Further, there was no corroborative evidences to prove that the noting in the excel sheet were actual cash receipts of the assessee company. In such circumstances, this sheet could not be relied upon. This sheet was neither recovered from the office of the assessee company nor from its employees and therefore, the presumption laid u/s 132(4A) of the Act cannot be invoked. The author of the excel sheet was not conclusively established. There was no corroboration from any of the party and the evidence being relied upon by Ld. AO was merely hearsay evidence carrying no evidentiary value. At the time of seizure, the excel sheets were not authenticated either by the assessee company nor by the witnesses or by an authorized officer. This was an unsigned document and as such loses its evidentiary value for want of authentication. The evidences relied upon by the AO in the form of excel sheets does not constitute adequate evidence to draw adverse inference against the assessee, in the absence of any other

corroborative evidence. Reliance was placed on the decision of Hon'ble Delhi High Court in the case of **CIT vs Sant Lal (118 Taxman.com 432)** holding that the assessee could not be put to any liability on the action of a third-person where the material was not found from the premises of the assessee nor was it in the handwriting of the assessee since the third person may write the name of any person at his sweet will and the revenue did not make any effort to gather corroborative evidences in this relation.

18.3 It was further held by Ld. CIT(A) that in the present case, Ld. AO failed to link any cash transactions recorded in excel sheet with any other corroborative evidences. The entries in the excel sheets did not contain complete information with regard to date, amount of cash payment / receipt and the name of recipient and payer. There was absolutely no reference in the seized material regarding the nature of the said transactions of cash payments / receipts and the purpose of said payments / receipts. Therefore, no addition could be made on the basis of said document. To support the same, Ld. CIT(A) referred to the decision of Jabalpur Bench of Tribunal in the case of **ACIT vs Satyapal Wassan [TS-5104-ITAT-2007 (Jabalpur)-O]** and also various other decisions which have been enumerated in paras 7.7.15 of the impugned order. On these facts, the additions made for AY 2014-15 and 2015-16 was deleted.

18.4 Similar observations were made by Ld. CIT(A) for additions made for AYs 2017-18 to 2019-20. It was contended by the assessee that Shri Raja was not authorized to conduct any sales on behalf of the assessee company and he was an employee of another entity viz. M/s V.V. Minerals. He handled cash and made payments as per the

instructions of the promoters of M/s V.V. Minerals. Therefore, the cash received as stated in his notebooks could not be treated as unaccounted sales of the assessee company. It was further submitted that 'cash received from VVTI' as mentioned in the note-book merely refer to the payment received from the plant which is duly reflecting on the payment side of the note books as seized from Shri J. Thangadurai. Since receipts side of the material seized from Shri J. Thangadurai was added separately, subsequent payments out of such receipts as received by Shri S. Raja could not be added again on the basis of receipts entry made by Shri S. Raja in his notebooks as it would amount to double addition of the same amount. The assessee furnished reconciliation statement correlating the payments transferred from plant office to Shri S. Raja and other apparent mistakes in the noting.

18.5 The Ld. CIT(A) concurred that Shri S. Raja was not an employee of the assessee company. Further, most of the notings on the basis of which impugned addition was made, were bald notings without any reference to the name of the assessee company. During the course of search, no enquiries were conducted from Shri S. Raja in order to understand the source of each and every cash receipt. Further, no corresponding enquiry was also conducted either with Shri J. Thangadurai or Shri V. Subramanian. The Ld. AO did not bring on record any finding establishing nexus of receipts with that of assessee-company. There was no material to indicate that 'cash received' as narrated by Shri S. Raja in his note book was actually an unaccounted sale of the assessee company. Therefore, no such addition could be made on the basis of noting in the seized note-books by Shri S. Raja.

18.6 However, considering the inconsistencies in generation and accounting of unaccounted sales by the assessee company, Ld. CIT(A) held that it would be fair to estimate probable income of the assessee company as embedded in the cash receipts recorded by Shri S. Raja. The same could be made by adopting Gross Profit Ratio of the respective Assessment Year on the unreconciled items of income. After analyzing the entries in note-book, the Ld. CIT(A), in para 7.8.7, noted that the receipts to the extent of Rs.140.35 Lacs for AYs 2018-19 & 2019-20 did not pertain to the assessee company. Further, there was double addition of Rs.204.40 Lacs for AYs 2018-19 & 2019-20. Therefore, no estimation was to be made to that extent. Finally, the unreconciled receipts were quantified as Rs.178.87 Lacs, Rs.24.73 Lacs & Rs.3.20 Lacs for AYs 2017-18 to 2019-20 against which Gross Profit rate was applied to arrive at quantum of additions that were required to be sustained. This working has been given in para 7.8.8 of impugned order as under: -

Particulars	AY 2017-18	AY 2018-19	AY 2019-20
Total addition made by the A.O. on the basis of receipts in the note book	1,82,80,064	3,20,24,342	1,07,70,000
Less: Exclusion of the following items as per the above discussion:			
(i) Return of payments	3,92,564		
(ii) Addition of sales suppression by under invoicing		39,25,000	16,00,000
(iii) Receipts not relating to the Appellant Company as evident from the seized material		1,39,10,842	1,25,000
(iv) Amounts received by Shri S. Raja from the plant where corresponding payments are available in the material seized from Shri J. Thangadurai (GM-Finance & Accounts)		1,17,15,000	87,25,000
Unreconciled Receipts on which	1,78,87,500	24,73,500	3,20,000

estimation is to be made			
Gross Profit Ratio as per the audited financial statements of the Appellant Company	17.40%	17.55%	10.96%
Addition sustained in the hands of the Appellant Company as per above discussion	31,12,425	4,34,100	35,072
Addition to be deleted	1,51,67,639	3,15,90,242	1,07,34,928

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

Our adjudication on this issue

19. We find that the additions for AYs 2014-15 & 2015-16 are based on certain excel sheet as exchanged in e-mail between Shri Jegatheesan (Partner of M/s V.V. Minerals) and Smt. Jeyanthi (an employee of M/s V.V. Minerals). However, these sheets are unsigned sheets and unless corroborated by independent evidences, would bear no evidentiary value. The Ld. AO has not made any enquiries to corroborate the notings in the excel sheet. The Ld. CIT(A) has correctly noted that Ld. AO did not examine / confront the excel sheets to any of the parties. In the absence of valid details and the circumstances in which the excel sheet was prepared and the corresponding entries, the same could not be relied upon to make impugned additions in the hands of the assessee. The sheet has no narration relating to the quantity of scrap sold and the details of buyer to whom it was sold. It could also be noted that had the assessee company been receiving cash from the sale of scrap as stated in the excel sheets, the same should have been mentioned in the notebooks as seized from Shri J. Thangadurai (GM Finance & Accounts). Further, there was no corroborative evidences to prove that the noting in the excel sheet were actual cash receipts of the assessee company. In such circumstances, this sheet could not be relied

upon. This sheet was neither recovered from the office of the assessee company nor from its employees and therefore, the presumption laid u/s 132(4A) of the Act could not be invoked. The author of the excel sheet was not conclusively established. There was no corroboration from any of the party and the evidence being relied upon by Ld. AO was merely hearsay evidence carrying no evidentiary value. At the time of seizure, the excel sheets were not authenticated either by the assessee company nor by the witnesses or by an authorized officer. This was an unsigned document and as such loses its evidentiary value for want of authentication. The evidences relied upon by the AO in the form of excel sheets does not constitute adequate evidence to draw adverse inference against the assessee, in the absence of any other corroborative evidences. We concur with all these findings of Ld. CIT(A) and also confirm reliance on the decision of Hon'ble Delhi High Court in the case of **CIT vs. Sant Lal (supra)** holding that the assessee could not be put to any liability on the action of a third-person where the material was not found from the premises of the assessee nor was it in the handwriting of the assessee since the third person may write the name of any person at his sweet will and the revenue did not make any effort to gather corroborative evidences in this relation. We also concur with the findings of Ld. CIT(A) as enumerated by us in preceding para 18.3. Accordingly, the adjudication for AY 2015-16 do not call for any interference on our part. The corresponding grounds raised by the revenue stand dismissed.

20. The additions for AYs 2017-18 to 2019-20 are based on notebooks as seized from Shri S. Raja who was not an employee of the assessee company. Further, these notings are bald notings without any reference to the assessee company. The action of Ld. AO lack sufficient

enquiries to establish the nexus of receipts with that of assessee-company. There was no material to indicate that 'cash received' as narrated by Shri S. Raja in his note book was actually an unaccounted sale of the assessee company. At the same time, considering the inconsistencies in generation and accounting of unaccounted sales by the assessee company, Ld. CIT(A) has examined the factual position and applied Gross Profit Rate to the un-reconciled receipts and sustained the additions to that extent. On the facts and circumstances of the case, the aforesaid estimation, in our considered opinion, is quite logical and reasonable which do not call for any interference on our part. Therefore, we confirm the adjudication of Ld. CIT(A) for AYs 2017-18 to 2019-20. The corresponding grounds raised in the cross-appeals stand dismissed.

21. Addition for alleged manipulation in the accounts

The Ld. CIT(A) noted that this addition was merely based on e-mail communication between Shri J. Thangadurai and Shri V. Subramanian. In the said e-mail, there was no incriminating noting to suggest that the stated accounting adjustments were manipulations to evade the tax liability. It was only the view of the person handling taxation issues of the assessee company. It was the duty of Ld. AO to examine each issue by analyzing the books to prove that the suggestions in the e-mail actually resulted in tax evasion by the assessee. The said communication could not be presumed to be accounting manipulations carried out by the assessee company in the absence of any corroboration thereof. It was further observed that the books of account of the assessee-company were duly audited by an Independent Firm of Chartered Accountants. There was no adverse noting either in the Statutory Audit Report or in

the Tax Audit Report relating to valuation of Ilmenite, stock-in-process and depreciation claim. No incriminating material was found during the course of search to prove that the contents of the e-mail communication between Shri J. Thangadurai and Shri V. Subramanian were an outcome of a planned accounting manipulation. Therefore, the impugned addition was deleted. Aggrieved, the revenue is in further appeal before us.

Our findings on this issue

22. We find that this issue has been considered in correct perspective by Ld. CIT(A). The e-mail has merely suggested accounting adjustments. It was only the view of the person handling taxation issues of the assessee company. It was incumbent on Ld. AO to examine each issue by analyzing the books of account to prove the allegation of tax evasion by the assessee. The books of accounts are duly audited under law and no adverse comments have been given by statutory auditors. There is no finding as to how the tax evasion has happened. The addition merely based on an e-mail communication could not be sustained without establishing that there was accounting manipulations which resulted into tax evasion by the assessee. The adjudication of Ld. CIT(A) does not call for any interference on our part. The corresponding grounds raised by the revenue stand dismissed.

Conclusion

23. The assessee has raised many legal grounds in its appeals. However, the same has not been pressed by Ld. AR during the course of hearing before us. Accordingly, no finding is rendered on the same. These grounds stand dismissed.

24. The assessee's appeals ITA Nos.1301/Chny/2024 and ITA No.1302/Chny/2024 for AYs 2015-16 and 2016-17 stand partly allowed. All the other appeals stand dismissed.

Order pronounced on 9th October, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

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

चेन्नई Chennai; दिनांक Dated :09-10-2024
DS

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Assessee
2. प्रत्यर्थी/Revenue
3. आयकरआयुक्त/CIT Madurai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF