

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री एस एस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI S.S. VISWANETHRA RAVI, HON'BLE JUDICIAL MEMBER
AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **560, 561, 562, & 563/Chny/2024**

निर्धारण वर्ष / Assessment Years: 2016-17, 2017-18, 2018-19 & 2019-20

Narasimmaraj Varadhan,
Jagadisan & Co.,
Chartered Accountants
Residency Apartments,
New No. 245, Old No. 108,
T.T.K Road, Alwarpet,
Chennai – 600 018.

Assistant Commissioner of
v. Income Tax,
Central Circle -3,
Coimbatore – 641 018.

[PAN: AAEPN-4973-B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Shri. V. Nandakumar, CIT

सुनवाई की तारीख/Date of Hearing

: 29.08.2024

घोषणा की तारीख/Date of Pronouncement

: 26.11.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

These appeals filed by the assessee are directed against the common order passed by the learned Commissioner of Income Tax (Appeals), Chennai-20, all dated 17.01.2024 and pertains to assessment years 2016-17 to 2019-20. Since, facts are identical and issues are common, for the sake of

convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The grounds of appeal raised by the assessee for the assessment year 2016-17 are as under:

"1. The CIT(A) is not justified in confirming the assumption of jurisdiction u/s 153C on the specious ground that alleged incriminating materials are found in the premises of JPRI Hotels de-hors the survey u/s.133A in the appellant's premises.

2. The CIT(A) is not justified in relying upon an illegal and inchoate sworn statement of the appellant during survey, which is not mandated under sub-clause (iii) of first proviso to Section 133A(3) of the Act.

3. The CIT(A) is not justified in confirming the levy of interest u/s.234A for alleged late filing of return when no impounded material was available with the Assessing Officer on the date of issue of notice u/s.153C to call for a return there under.

4. The CIT(A) failed to construe that 7 days time limit for filing a return u/s.153C in respect of search and seized proceedings is a supervening impossibility for compliance when benefit of alleged incriminating materials were not made available to the appellant to take cognizance thereof in the return of income being filed.

5. The CIT(A) is not justified in giving truncated directions on determination of alleged income based on a "quotation" impounded during survey without due regard to contemporaneous materials available on record justifying the correct disclosure of income qua impounded as well as seized materials on record.

6. The CIT (A) is not justified in relying upon a mere quotation showing alleged margin of 18% when the said material itself grants 10% discount without qualification as to civil work or otherwise.

7. The CIT(A) has no basis to give direction on alleged estimate when impounded records show impeccable evidence on the profit margin of 8% declared in the Return of Income.

8. The CIT(A) failed to understand the purport by seized materials showing cash payments found in JPRI Hotels case when clarification was given by the appellant that he was merely a trustee of cash receipts to expend on their behalf due to geographical distance of the searched party to the place of execution of contract at Chennai.

9. In any event, the order of CIT(A) is illegal, arbitrary, capricious and made without due regard to the facts and circumstances of the appellant's case and the law applicable thereto.

10. For these grounds and for such other grounds that may be adduced at the time of hearing it is prayed that the additions made at Rs.4,00,000/- be deleted and the income returned by the appellant restored on file."

3. The assessee is an individual and a proprietor of M/s. Anurag Constructions engaged in Real estate business and construction of building. A search and seizure operation u/s. 132 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was conducted in the case of M/s. JPRI Hotels Pvt Ltd., Shri. A. Ramesh and Shri. S. Kulanthaian at the Hotel Park Elanza, Valluvarkottam Road, Nungambakkam, Chennai on 06.03.2019. During the course of search, electronic devices were found and seized from the premises. On verification of tally data contained in seized electronic devices, the details of unaccounted cash payments were made to the assessee's proprietorship concern M/s. Anurag Constructions from assessment year 2016-17 to 2019-20 were found.

4. A survey u/s. 133A of the Act was conducted on 12.02.2021 at the business premises of M/s. Anurag Constructions and sworn statement was recorded on 12.02.2021, wherein the assessee admitted that the cash was received from the accounts person of M/s. JPRI Hotels Pvt. Ltd., which was not recorded in the books of accounts. Consequently, notices u/s. 153C of the Act were issued and directed to file a return of income. Accordingly, the assessee filed his return of income for the assessment years 2016-17 to 2019-20 on 22.07.2021. Later, the AO completed the assessment u/s. 153C of the Act on 30.09.2021 for all the above assessment years by making an addition as undisclosed business income u/s. 28 of the Act for all the four years as detailed below:

AY	Date of original return	Income as per original ROI	Date of return filed u/s. 153C	Total income as per 153C	Addition made u/s. 28	Total assessed income
2016-17	17.10.2016	31,83,010	16.08.2021	35,03,009	4,00,000	39,03,009
2017-18	02.11.2017	36,25,220	22.07.2021	39,45,220	4,00,000	43,45,220
2018-19	31.10.2018	38,08,260	22.07.2021	39,98,240	2,37,481	42,35,721
2019-20	14.12.2019	36,06,930	22.07.2021	43,24,930	8,97,140	52,22,070

The Assessing Officer's observation in making an addition is given below:

"A Show cause notice incorporating the findings from the impounding materials was issued on 09/09/2021, which was delivered on the same day through e-mail. In response to the

notice Assessee filed letter mentioning a that out of Rs.50,00,000/- Rs.10,00,000 was a Cheque payment, Computation of Income. and stating that assessee e-filed return for the AYs 2016-17. Notice U/s 143(2) dated 20/09/2021 was issued for the Return of Income filed. Notice U/s 142(1) dated 20/09/2021 was issued requesting the Assessee's to furnish the details for return filed u/s 153C. In response to the notice Shri.J.Prabhakar, FCA authorized Representative appeared and submitted the details. After verifying the submission it is found that the assessee admitted the cash receipts from M/s JPRI Hotels Private Limited at 8% (i.e.3,20,000/-). But as per the document impounded from the premises of M/s Anurag Structural Private Limited and Anurag Constructions vide ANNNSPIASILS/Imp1 in page No.38 & 39 (Copy attached), his quotation for renovation work for hotel park Assessee quoted 18% margin in the cost. Hence the remaining 4,00,000/- (7,20,000-3,20,000) is added as Assessee's undisclosed business income."

5. Aggrieved by the orders of the AO u/s. 153C of the Act for assessment years 2016-17 to 2019-20, the assessee preferred an appeal before the Id.CIT(A):

6. Before the Id.CIT(A), the assessee submitted that the addition made @18% as income from business of construction contract on the basis of cash received from M/s. JPRI Hotels Pvt Ltd is far reaching from the real income earned in execution of works contract. Therefore, the declared income of 8% in the return of income filed u/s. 153C of the Act may please be accepted and prayed for deleting the addition of Income to the tune of further 10% on cash received and submitted as under:

"The crux of the appeal aforesaid is the estimation of turnover with reference to cash component of receipts from JPRI hotels(P) Ltd whose search and seizure operations has led to the survey in the premises of the assessee under section 133A of the Act..

The appellant admitted additional offer of income based on impounded records @ 8% of suppressed cash turnover, admitted as received in the Sworn statement of the appellant which works out to Rs.3,20,000 on Rs 40 lakhs.

The assessing officer has estimated the probable profits arising out of the impounded materials with respect to cash receipts aforesaid at the rate of 18% based on a quotation rendered to the client found at page 38 and 39 of the materials impounded.

An ex facie perusal of the material relied upon by the assessing officer would reveal that there is an endorsement stating that 10% discount is given for civil Works; the assessee has admitted additional income based on impounded materials and the cash component aforesaid at 8% which tallies with the estimation if the discount endorsed is taken into account.

This admission is in tune with not only the material relied upon by the assessing officer which is nothing but a quotation showing a standard 10% discount on civil works which is seamlessly found in the bills raised on the aforesaid client and impounded from the assessee's premises.

Copy of the material relied upon by the assessing officer being a mere quotation as well as the impounded bills showing the 10% discount given to the party searched would prove that the admission at 8% of alleged suppress turnover in the form of cash is in tune with the realities of the situation found in the records of the appellant and seized from his premises.

There is no cause for estimating the profits at 18% when the material relied upon itself not only being a quotation which does not form part of the actual bill but also contains an endorsement that 10% discount if given will result in the profit arising on the transactions would only be 8% of turnover and not beyond.

The instances of granting 10% discount on bills is manifest in the impounded documents especially at pages 41, 76, 104 & 132 of ANN/VSP/ACI/Imp-1 containing 165 pages.

In view of the above, there is no case for estimating assessable profits at 18% and that too from a quotation which is not the reality of the situation obtaining on the actual profits realised

based on materials impounded, especially when factoring a discount of 10% of bills is manifest even in the estimated quotation cited in the assessment order.

For the reason aforesaid, the admission of 8% on cash turnover of Rs. 40 lakhs@ Rs.3,20,000 in the return filed pursuant to section 153 C is reflective of the margin found in the impounded records and hence in order.

7. After considering the submissions made by the assessee, the AO dismissed the appeal of the assessee as unacceptable by confirming the order of the AO by holding as under:

8.Decision:

8.1 Main issue to be adjudicated vide present appeals are profit percentage to be charged on payments made by M/s JPRI Hotels in cash for renovation of Hotel Park Elanza which were not originally recorded in books of accounts of appellant prior to date of survey u/s 133A on 12-02-2021 in case of appellant.

8.2 Undisputed facts of case are that M/s JPRI Hotels Pvt Ltd which wanted to renovate Hotel park Elanza run by it, has engaged appellant who undertake construction work under proprietary concern name M/s Anurag Constructions. Cash Payments Rs.50,00,000/-, Rs.40,00,000/- Rs.30,74,805/- and Rs.70,00,000/- made by M/s JPRI Hotels Pvt Ltd for Assessment years 2015-16, 2016-17, 2017-18 and 2018-19 respectively were not found recorded in books of appellant during course of survey conducted in case of appellant consequent to search. The appellant also vide sworn statement dated 12-02-2021 accepted the fact. In the return of income filed u/s 153C, admitted profit 8% on cash receipts from JPRI Hotels. The AO relying on impounded document which is reproduced at page 13 of assessment order has taxed the profit @18%. It is a quote given by appellant in which 18% margin on entire work was mentioned.

8.3 Grounds of Appeal No. 2 to 4 and 7 to 8 for AY 2016-17 & Grounds of Appeal No. 2 to 4 and 7 to 9 for AY-17-18, 18-19 & 19-20:

8.3.1 During appeal proceedings, the appellant raised various technical grounds. One of them is with regard to jurisdiction of AO

to issue notice u/s 153C. It is the contention of appellant that since no incriminating material was found during the survey, notice u/s 153C should not have been issued. The AO gets jurisdiction u/s 153C, if documents pertaining to assessee are found during the course of search for the year under consideration. In the present case, during course of search in JPRI Hotels, cash payment made to Appellant was found in ledgers maintained in name of appellant in Tally data of JPRI Hotels under head JPRI Hotels Pvt Ltd 18-19, Building 16-17 and Building A/C 17-18 which were seized Building, ANN/KV/JPRI/ED/S. During course of survey it was ascertained that cash payments made by JPRI Hotels were not recorded by appellant in its books. Since documents found during search in form of ledger accounts showing cash payment to appellant pertain to the year under consideration, provisions of section 153C are attracted. In this case AO of searched person and appellant is same. Seized documents were handed over to AO on 14-05-2019 itself. But the AO has issued notice u/s 153C on 14-04-2021 to appellant only after centralisation of case with him on 25-03-2021. No separate handing over of material was required since he was already in possession of seized documents pertaining to appellant. Therefore, it is in correct on part of appellant to say that there was no incriminating impounded material as books of appellant showed non recording of cash payments received from JPRI Hotels. Secondly, the AO has not issued notice basing on impounded material but notice was issued based on documents found during search which pertain to appellant. Therefore, it is held that AO has validly issued notice u/s 153C.

8.3.2 It is clear from assessment order that Assessing Officer has not made assessment solely relying on sworn statement of appellant but basing on incriminating material found during search in JPRI hotels, impounded material impounded during survey in appellant's case. Consequently, Grounds of appeal are related to these issues are Dismissed."

Aggrieved by the order of the Id.CIT(A), the assessee is before
us.

8. The Id.AR for the assessee in his grounds of appeal stated that income added by the AO is based on "quotation" impounded during the survey without due regard to contemporaneous materials available on record. Further, in ground no. 6 of the assessee assailing the action of the Id.CIT(A) is not justified in relying upon a mere quotation showing alleged margin of 18% when the said material itself grants 10% discount without qualification as to civil work or otherwise and as prayed in his grounds to delete the addition made by the AO which has been confirmed by the Id.CIT(A) in the impugned order.

9. Per contra, the Id.DR stated that the AO has made an addition based on the incriminating material i.e., quotation and also supported by the sworn statement of the assessee in the quotation clearly states that the margin on construction contract to be executed by the assessee at M/s. JPRI Hotels Pvt Ltd and hence, accordingly the AO calculated 18% of the amounts received by the assessee in cash for all the four assessment years as an assessee's income and reduced the additional income declared in the return of income filed u/s. 153C of the Act to the extent of 8%. Therefore, there is no error in the

impugned order of the Id.CIT(A) in confirming the addition made by the AO and hence, prayed for dismissing the appeal of the assessee.

10. We have gone through the records and material available on record and heard the Id.DR. It is an admitted fact that the assessee is engaged in the real estate business and construction activities and has filed his return of income regularly. On 06.03.2019, a search was conducted u/s. 132 of the Act at M/s. JPRI Hotels Pvt Ltd., Nungambakkam, Chennai, and found that certain cash payments were made to assessee's proprietorship concern M/s. Anurag Constructions from 2016-17 to 2019-20. Consequently, a survey u/s. 133A of the Act was conducted on 12.02.2021 by the business premises of M/s. Anurag Constructions and taken a sworn statement dated 12.02.2021 from the assessee, wherein the assessee has admitted that the cash was received from the accounts person of M/s. JPRI Hotels Pvt Ltd, which was not recorded in the books of accounts. Further, the assessee declared an additional income at 8% on the cash received from M/s. JPRI Hotels Pvt Ltd for assessment years 2016-17 to 2019-20 and paid the taxes accordingly. However, the AO based on the incriminating

material found at M/s. JPRI Hotels Pvt Ltd i.e., 'quotation', wherein the margin of the profit shown as 18% and hence additional 10% of the cash received as additions u/s. 28 of the Act which was confirmed by the Id.CIT(A) in his impugned order. We note that the assessment u/s. 153C of the Act has been completed based on the incriminating material seized i.e., quotation given by the assessee to Hotel Park View dated 19.03.2015, wherein the basic rates of the material have been quoted along with the applicable rates and taxes and other conditions including the profit margin shown as 18% along with the sworn statement taken from the assessee at the time of survey in his business premises on 12.02.2021. We find that both the AO as well as the Id.CIT(A) have conveniently ignored the words written in the same quotation **"civil 10% discount"** while assessing the income of the assessee and considered only the margin of 18% as shown in the quotation without considering the discount offered by the assessee towards the renovation work for 'Hotel Park View'.

11. Therefore, the assessee's return of income filed u/s. 153C of the Act by declaring an income of 8% of the cash received from M/s. JPRI Hotels Pvt Ltd towards renovation work

after considering the margin shown at 18% and reduced by 10% of the discount is correct. We also find that both the AO and that of the Id.CIT(A) did not have any other material evidence to show that the assessee had profit more than 8% and hence, we cannot countenance the action of the Id.CIT(A) in confirming the addition made by the AO. Hence, in the present facts and circumstances of the case, we are of the considered view that the amount declared as income @8% by the assessee in the return of income filed u/s. 153C of the Act for the assessment years 2016-17 to 2019-20 is justified and hence, we set aside the order of the Id.CIT(A) by allowing the grounds of appeal raised by the assessee.

12. In the result, appeals filed by the assessee for all the four assessment years 2016-17 to 2019-20 are allowed.

Order pronounced in the court on 26th November, 2024 at Chennai.

Sd/-
(एस एस विश्वनेत्र रवि)
(S.S. VISWANETHRA RAVI)
न्यायिक सदस्य/**Judicial Member**

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 26th November, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF