

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

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

1. आयकरअपील सं. ITA No.1428/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)
&
2. आयकरअपील सं. ITA No.1429/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)
&
3. आयकरअपील सं. ITA No.1430/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2019-20)
&
4. आयकरअपील सं. ITA No.1431/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2020-21)
&
5. आयकरअपील सं. ITA No.1432/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2021-22)

DCIT Central Circle-2, Trichy.	बनम/ Vs.	M/s SEBCO Property Private Limited 24D, Mahalakshmi Nagar, K.K. Nagar, Trichy-620 021.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAOCS-0810-R		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

&

6. आयकरअपील सं./ ITA No.1467/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)
&
7. आयकरअपील सं./ ITA No.1468/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)
&

8. आयकरअपील सं./ ITA No.1469/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2019-20)

&

9. आयकरअपील सं./ ITA No.1470/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2020-21)

&

10. आयकरअपील सं./ ITA No.1471/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2021-22)

M/s SEBCO Property Private Limited 24D, Mahalakshmi Nagar, K.K. Nagar, Trichy-620 021.	बनाम/ Vs.	DCIT Central Circle-2, Trichy.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAOCS-0810-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Assessee by	:	Shri R. Venkata Raman (CA) - Ld.AR
प्रत्यर्थीकीओरसे/Revenue by	:	Shri Nilay Baran Som (CIT) - Ld. DR

सुनवाईकीतारीख/Date of Hearing	:	09-01-2025
घोषणाकीतारीख /Date of Pronouncement	:	15-01-2025

आदेश / ORDER

Per Bench

1.1 Aforesaid cross-appeals for Assessment Years (AY) 2017-18 to 2021-22 arise out of the separate orders of learned Commissioner of Income Tax (Appeals), Chennai-19, [CIT(A)] all dated 18-03-2024 in the matter of separate assessments framed by Ld. AO u/s.143(3) r.w.s 153A of the Act. It is an admitted position that the facts as well as issues are quite identical in all the years. For the purpose of adjudication, facts from case records of AY 2017-18 have been culled out in this order.

1.2 The grounds taken by the assessee read as under: -

1. That the Learned Commissioner of Income Tax (Appeals) - 19, Chennai [Ld. CIT(A)] failed to appreciate that the assessment order dated 31.03.2022 passed by the Deputy Commissioner of Income Tax, Central Circle- 2, Trichy ["AO] 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.7,98,94,213/- made by the Assessing Officer towards unaccounted business income.
5. That the Ld. CIT(A) is not justified in adopting a higher percentage of 18.75% in estimating the business income of the appellant.
6. That the Ld. CIT(A) ought to have held that excess of income returned by the appellant over the income estimated by the Ld. CIT(A) shall be eligible for carry forward and set off against the income of the subsequent assessment year.

1.3 The grounds taken by the Revenue 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 rejecting the books of account of the assessee and directing to estimate 18.75% of Net profit on total sales (both accounted and unaccounted and other income), while adjudicating the assessee's ground against the addition towards undisclosed income of Rs.48,97,13,161/- arrived on the basis of Net profit worked out as per the entries found in parallel account maintained in "Z" server which contained unaccounted transactions and adoption of value of stock as appearing excel sheets maintained in pen drive seized.
 - 2.1. The Ld.CIT(A) failed to appreciate that the assessee's cash receipts and cash payments towards sale/purchase of land and the same had been entered in "Z" server. The above cash receipts and payments were further supported by scanned vouchers (signed) found uploaded in "Z" server. Similarly the assessee had made entries in respect of both accounted and unaccounted expenses in "Z" server. The AO has correctly arrived undisclosed income on the basis of entries in "Z" server after giving credit to income returned. The CIT(A)'s action of rejecting books of accounts without considering the evidence collected in the form of seized materials is erroneous.
 - 2.2 The Ld. CIT(A) erred in rejecting the books of accounts by invoking provisions of Sec.145(3) of the Act, without appreciating that the assessing officer did not find fault with the method of accounting but additions were made in the order u/s.143(3) r.w.s.153A on the basis of incriminating seized materials evidencing unaccounted transactions and claim of bogus expenses.
 - 2.3 The Ld.CIT(A) failed to appreciate that the value of opening & closing stock was adopted based on excel sheets viz. "STOCK 16-17.xlsx", "STOCK 17-18.xlsx" & "STOCK 18-19.xlsx" maintained by the assessee's Finance Manager Smt.R. Deepa (seized vide annexure ANN/SB/SPPL/ED/S-3) wherein the amount appearing in purchases, sales were matching with the assessee's accounted financials and the value of stock includes the unaccounted portion of the transactions made by the assessee company.
3. The CIT(A) erred in directing to delete bogus expenses of Rs.3,20,40,973/- in the books of accounts maintained in "Y" server which contained accounted transactions for the purpose of filing return of income.

3.1 The Ld.CIT(A) failed to appreciate that the assessee involved in booking of bogus expenses as payment made to contractors and then receiving back the same in cash. It was seen from "Y" server which contained accounted transactions, the assessee company is making payments through banking channel to certain contractors which are claimed as expenses in the Profit and Loss account. However, in "Z" server which contained unaccounted transactions, there were entries proving that the amount have been received back in cash. In support of the above findings, scanned vouchers for payments and receipts were found uploaded in "Z" server.

3.2 The Ld.CIT(A) failed to appreciate that in the office premises of M/s.SEBCO Property Pvt Ltd and in the residence of Smt.Deepa, Finance Manager of assessee company, various cheque books in the name of different contractors were found and seized. She admitted in her sworn statement that the amounts have been received back in cash and utilized for unaccounted cash expenses.

4. The Ld.CIT(A) erred in deleting the addition of Rs.11,33,98,384/- made towards disallowance made u/s.37(1) and 40A(3) in respect of expenses recorded in the "Z" server.

4.1 The Ld.CIT(A) failed to appreciate that the AO has arrived taxable income on the basis of accounts maintained in "Z" server, hence applied the provisions of Sec.37(1) and 40A(3) in respect of expenses recorded in "Z" server in the computation of total income.

4.2 The Ld.CIT(A) failed to appreciate that certain expenses recorded in "Z" server are related to personal expenses of promoters of the company and certain other expenses are prohibited by law which attracted disallowance u/s.37. Further, the "Z" server contained unaccounted cash transactions, hence the AO invoked the provisions of Sec.40A(3) in respect of cash expenses debited in the account maintained in "Z" server. Thus the CIT(A) erred in rejecting the books of accounts of the assessee and directing to estimate 18.75% Net profit without considering that additions have been made in the search assessment on the basis of seized materials unearthed during search.

5. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

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. The case was put up or clarification which was duly been responded to by both the sides. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

1.5 The assessee being resident corporate entity is stated to be engaged in real estate property development and construction activities. The assessee was subjected to search action u/s 132 on 22-03-2021 on the basis of which impugned assessments have been framed. The search was carried out at the office premises of the assessee and also at the residence of its Managing Director (MD) Shri Leyronne Morais as well as at the residence of Deepa, Finance Manager and Personal Secretary to MD. In addition to certain material, cash of Rs.919.50 Lacs was seized. During the course of search, unaccounted cash and incriminating books and documents were found and seized. Subsequently, a notice u/s 153A was issued to the assessee on 08-11-2021 and in response thereof, the assessee admitted income of Rs.134.15 Lacs on 06-12-2021.

1.6 During search, it transpired that the assessee maintained accounts in Tally in two separate servers i.e., 'Y-server' and 'Z-server'. The 'Y-server' was used for recording and maintaining regular business transactions whereas 'Z-server' contained unaccounted transactions. Both the servers were seized and analyzed. Several scanned vouchers were also found stored in digital format which endorsed the transactions recorded in Tally. These vouchers had information which corroborated the cash transactions as recorded in 'Z-server' as maintained by the assessee. Certain documents and materials were also seized which contained sale deeds, details of payments received through banking channels as well as in cash. During search, sworn statements were recorded from MD and Smt. Deepa. On the basis of all this material, various issues were identified by Ld. AO during the course of assessment proceedings.

Assessment Proceedings

2.1 The Ld. AO noted that the assessee made payments to contractors for development work and allied works on lands under the assessee's control. However, the said payment was received back in cash from the payees. Accordingly, it was found that the assessee booked bogus expenses in its regular books of accounts.

2.2 The Ld. AO also identified that 'Y-server' contained guideline value of the properties as sold by the assessee whereas 'Z-server' contained cash component as received from customers on these sales transactions. Similar entries for cash purchases as well as cash expenditure were also noted in 'Z-server'. The Ld. AO also found discrepancies in the opening and closing stock which was on the basis of certain excel sheet found during the course of search.

2.3 On these facts, it was concluded by Ld. AO that the business of the assessee was partly accounted and partly unaccounted. By combining the data of two servers, Ld. AO made an attempt to re-work the profit of the assessee-company. For this year, the Ld. AO re-worked additional profit of Rs.48.97 Crores and proposed addition thereof in the hands of the assessee. The same has been worked out in Para 7.1.1 of the assessment order.

2.4 The Ld. AO elaborated the facts of each addition under each head and proposed addition of bogus expenses to contractor for Rs.320.40 Lacs. The expenses as found in 'Z-server' which were personal in nature or incurred for the purposes prohibited by law were quantified at Rs.205.95 Lacs. As per 'Z-server', the assessee incurred cash expenditure as well as interest and chit expenses which was proposed to

be disallowed u/s 40A(3). The opening and closing stocks values were substituted by the values reflected in the excel sheet.

2.5 The profit as re-worked by Ld. AO as well as final income as determined by Ld. AO was as under: -

	Particulars	Amount	Particulars	Amount
Y	Opening Stock	25,46,72,181	Sales	22,14,42,459
	Purchases	4,49,63,050	Closing Stock	22,94,96,311
	Direct Expenses	9,28,77,748	Indirect Income	-
	Indirect Expenses	4,51,41,362		
	Nett Profit	1,32,84,429		
Total		45,09,38,770		45,09,38,770

	Opening Stock	36,42,36,999	Closing Stock	83,11,23,753
	(-) OS as per Rol	-25,46,72,181	(-) CS as per ROI	-22,94,96,311
	Exp. for business	10,49,84,073	Sale Receipts	24,74,04,661
	Purchases	12,28,02,259	Chit Receipt	1040000
Z&ED	Interest Payments	2,95,16,891	Other Income	2,77,66,859
	Chit Payment	6,62,525		
	Non business exp.	2,05,95,235		
	Revised Profit	50,29,97,590		
	As per Rol	1,32,84,429		
	Undisclosed income	48,97,13,161		

Computation of Assessed Income For AY 2017-18

	Particulars		Amt Rs.
(1)	Total income as per Return filed u/s.139		1,34,15,910
(1a)	Additional income offered as per Return filed u/s.153A		Nil
(2)	Total income as per Return filed u/s.153A		1,34,15,910
	Add: additions as discussed above		
(3)	Undisclosed income (as per para 7.1)		48,97,13,161
(4)	Disallowance of expenses u/s 37 & 40A(3) (as per para 7.29 and 7.3.8)	5,26,36,208	
(5)	Disallowance of expenses u/s.40A(3) (as per para 7.7.7.)	9,28,03,149	
(6)	(4) + (5)		14,54,39,357
(7)	(3) + (6) Total additions proposed		63,51,52,518
(8)	Total income assessed (2) + (7)		64,85,68,428

2.6 Similar assessments were framed for all the subsequent years. The income as determined by Ld. AO for various years was as under: -

PARTICULARS	ASSESSMENT YEARS				
	2017-18	2018-19	2019-20	2020-21	2021-22
Undisclosed Income	48,97,13,161	4,39,34,522	11,95,79,723	26,44,89,686	8,11,73,513
Contractors Payments disallowed u/s.37(1)of the Act	3,20,40,973	2,11,99,751	2,18,29,313	7,63,43,737	10,23,44,700
Expenses not for the purpose of business disallowed u/s.37(1) and 40A(3) of the Act	2,05,95,235	3,68,53,301	--	--	5,20,93,563
Purchases and expenses disallowed u/s.40A(3)of the Act	9,28,03,149	21,46,49,523	26,12,00,605	36,71,63,736	37,81,88,877
Unexplained Money - Cash Seized during search added u/s.69Aof the Act	--	--	--	--	9,19,50,000
Less: Additional Income Offered	--	7,66,89,580	5,69,61,770	13,55,57,540	--
Total additions	63,51,52,518	23,99,47,517	34,56,47,871	57,24,39,619	70,57,50,653

Aggrieved, the assessee assailed the assessment made by Ld. AO before Ld. CIT(A).

3. Appellate Proceedings

3.1 The assessee assailed the action of Ld. AO by way of elaborate written submissions which have already been extracted in the impugned order. The assessee, inter-alia, submitted that valuation of closing stock was on the basis of uncorroborated excel sheet calculations as found in the computer system and the excel sheet was prepared merely for attracting potential investors and customers. The rate adopted in the excel sheet was not at cost and therefore, this rate could not be adopted by Ld. AO. It was also submitted that the cash sales as taken by the AO while reworking the Profit & Loss Account includes advance component

for which sale deeds were never executed in the respective assessment years. The sales could be recognized only in the year in which sale deeds were executed and advance receipts could not be assessed as sales. The assessee also submitted that the additional income as offered by the assessee consequent to search was adequate enough to take care of the shortfall in income, if any. The assessee assailed the various computations / additions made by Ld. AO.

3.2 The adjudication of Ld. CIT(A) is contained in para 6.4.6 onwards. The Ld. CIT(A) rendered factual finding that Ld. AO reworked the profit from unaccounted portion on the basis of accounting entries made in 'Z-server'. However, the assessee had furnished a copy of its Balance Sheet as on 31.08.2018 to 31.03.2021 from the "Z-server" which was also made available before Ld. AO during the course of assessment proceedings. Upon perusal, it was noticed that in all the years, there was difference in opening balances as under: -

No	As on	Difference in opening balance (Rs.)
1	31.03.2018	7,07,45,819
2	31.03.2019	16,82,66,487
3	31.03.2020	11,60,94,084
4	31.03.2021	77,72,267

The assessee failed to reconcile the above differences at any point of time. It was also noted that the 'Current Liabilities' were reflected on Assets side and 'Current Assets' were reflected on Liabilities side of the Balance Sheet. All these factors would prove that the accounts as maintained in 'Z-server' were incomplete and the same could not be

relied upon to assess the income of the assessee. In view of so many defects, there exists every possibility that receipts which are not in the form of income would have been credited to the Profit & Loss Account. At the same time, receipts which are income would have been taken to 'Current Liabilities'. It was further noted that the assessee did not maintain any stock register / stock records.

3.3 In para 6.4.13, it was noted that if the working of Ld. AO was to be accepted, the same would yield abnormal Net profit (NP) Rates as follows: -

No	AY	NP Rate (%)
1	2017-18	107.28
2	2018-19	13.21
3	2019-20	34.62
4	2020-21	54.93
5	2021-22	24.13

The average NP rate would be 46.85% which would be abnormally high in this line of business. The same was indicative of the fact that the accounts relied upon by Ld. AO were not reflecting true state of affairs of assessee-company. Further, high profit rate in one year and low profit rate in another year indicate the probability of income of one year being accounted in another year. The same was also evident from the ratio of assessed income to total turnover as follows: -

No	AY	Ratio of Assessed Income to Total Turnover (%)
1	2017-18	138.33
2	2018-19	76.03
3	2019-20	107.61
4	2020-21	141.79
5	2021-22	88.03

Thus, the assessed income for all the AY(s) put together was much more than the accounted and unaccounted turnover as considered by AO. The same was wholly justified and it was to be concluded that the reworking of Profit in the manner as done by Ld. AO could not be relied upon.

3.4 On the issue of valuation of stock, it was submitted that the stock has to be valued at lower of Cost or the Market Price. Another submission was that substantial amount of cash receipts entered in 'Z-Server' represent advance in respect of which sale deeds were not registered in the respective Assessment Years. If these two items were excluded, there would not be any positive income. To bolster its claim, the assessee enumerated certain workings and computations.

3.5 The Ld. CIT(A) concurred with the argument of the assessee and arrived at a conclusion that the valuation of stock as arrived at by Ld. AO was unreliable. However, in the absence of stock records / stock registers and cost sheets, it was not possible to arrive at the correct cost. Since there were deficiencies in the books of accounts as maintained by the assessee in 'Y-server' as well as in 'Z-server', the computations could not be made on the basis of such deficient books of accounts. The books were inaccurate unreliable, incomplete and incapable of reflecting the true and correct picture of assessee's financial affairs. The same could, therefore, be not relied upon to determine the income of the assessee. The assessee failed to reconcile the errors in its books of account. Under these circumstances, the books were to be rejected u/s 145(3) as held by Hon'ble Allahabad High Court in **Shri Venkateshwar Sugar Mills (341 ITR 588)** upholding the decision of Tribunal in rejecting the books of accounts since the same were not properly maintained. Similarly, Hon'ble Punjab & Haryana High Court in **Mahavir Rice Mills v.**

CIT (153 Taxmann.com 686) upheld the estimation made by rejecting the books of account of the assessee in the absence of details of stock. Similar was the decision of Hon'ble Calcutta High Court in **Amiya Kumar Roy & Bros. vs. CIT (206 ITR 306)** holding that non-maintenance of stock would have substantial effect justifying an inference that the accounts were maintained in a manner from which the true and correct profits were not deductible. On similar facts, similar was the decision of Chennai Tribunal in the case of **M/s Beach Minerals Company (ITA No.366/Chny/2023 dated 09-08-2023)**.

3.6 By placing reliance on all these decisions, Ld. CIT(A) rejected the books of accounts and proceeded to estimate the income of the assessee in all these years. The Turnover and Net profit as reflected by the assessee as per audited financials was tabulated as under: -

(Rs in Crores)

AY	2017-18	2018-19	2019-20	2020-21	2021-22
Turnover	22.14	23.71	11.98	15.51	26.00
Net Profit	1.32	1.34	1.48	1.60	15.46
NP Rate (%)	6%	5.65%	12.35%	10.31%	59.46%

The average Net Profit worked out to be 18.75% which could be applied to estimate the income of the assessee. This ratio was arrived at after including the other income credited to the Profit & Loss Account. The estimated income for the years under consideration was thus worked out as under: -

AY	Amt. (Rs.)				
	2017-18	2018-19	2019-20	2020-21	2021-22
Sales as per the Profit & Loss Account	22,14,42,459	23,71,64,001	11,98,27,904	15,51,20,090	26,00,30,391
Cash Sales as taken by the AO on the basis of Z Server	24,74,04,661	19,71,33,410	26,83,67,882	35,56,40,793	71,73,11,357
Other Income	2,77,66,859	5,54,360	95,02,621	4,05,45,649	6,18,58,718
Chit Receipt	10,40,000	-	-	-	9,81,500
Gross Income which is to be considered by the AO for estimation	49,76,53,979	43,48,51,771	39,76,98,407	55,13,06,532	104,01,81,966
Net Profit Ratio to be adopted by the AO for estimation	18.75%	18.75%	18.75%	18.75%	18.75%
Total Income estimated	9,33,10,121	8,15,34,707	7,45,68,451	10,33,69,974	19,50,34,118
Less: Income Returned in response to the notice issued u/s.153A of the Act for the AY(s)2017-18 to 2020-21 and for the AY 2021-22 u/s.139(1) of the Act	1,34,15,908	9,02,69,338	7,21,23,497	15,17,76,920	15,46,79,340
Addition(s) sustained	7,98,94,213	NIL	24,44,954	NIL	4,03,54,778

3.7 In view of the above, the addition made by the Assessing Officer towards undisclosed income and on account of difference in valuation of

stock was deleted. Since the income of the assessee was estimated, the excess income admitted by the assessee u/s 153A over and above the estimated income for the AY(s) 2018-19 and 2020-21 were required to be ignored. The grounds were partly allowed. Aggrieved, the assessee as well as the revenue is in further appeal before us.

3.8 On the issue of proposed disallowances u/s 37(1) and 40A(3) as made by Ld. AO in all the years, Ld. CIT(A) held that once the income was estimated, no separate addition of expenses would be warranted. This was as per the ratio of decision of Hon'ble Madhya Pradesh High Court in **CIT v. Purshottam Lal Tamrakar (270 ITR 314)** holding that no separate disallowance u/s. 40A(3) is required when income is estimated by adopting Net Profit Rate. Similar ratio was laid down by Hon'ble Punjab & Haryana High Court in the case of **CIT (Central) v. Gobind Ram (229 Taxman 491)** as well as by Hon'ble Rajasthan High Court in **PCIT v. Jadau Jewellers & Manufacturers (P.) Ltd. (409 ITR 85)**.

3.9 The Hon'ble High Court of Madras in **CIT v. Amman Steel & Allied Industries (377 ITR 568)** held as under: -

"13. On the issue relating to disallowance under Section 40A (3) of the Act, the same was considered by the CIT (Appeals) by holding that income has been arrived at an estimate of turnover and computed applying the gross profit and, therefore, no expenditure shall be allowed, since the gross profit applied would take care of the amount incurred by purchases, etc. The CIT (Appeals), to justify the said stand, drew strength from the decision of this Court in S.Mohammad Dhurabudeen's case (supra), wherein this Court has held thus :-

"The question for consideration is when no deduction was sought and allowed under S. 40A (3), was there any need to go into S.40A(3) and Rule 6DD(j). We see force in the view taken by the Tribunal that when the income of the assessee was computed applying the GP rate and when no deduction was allowed in regard to purchases of the assessee, there was no need to look into the provisions of Section 40A (3) and Rule 6DD (j). No disallowance could have been made in view of the provisions of S. 40A (3) read with Rule 6DD (j) as no deduction was allowed to and claimed by the assessee in respect of purchases. When the GP rate is applied, that would take care of everything and there was no need for the AO to make scrutiny of the amount incurred on the purchases by the assessee."

14. Following the ratio laid down by this Court in the above said decision, the CIT (Appeals) held that the additions made under Section 40A (3) of the Act are to be deleted since the basis of the additions had been faulted and are no more valid and since the income is estimated, no disallowance on this account can be made. The said view of the CIT (Appeals) has been affirmed by the Tribunal.

15. This Court has already held in the former portion of the order, that the assessment order came to be passed only on the basis of the show cause notice issued by the Central Excise Department and no independent enquiry has been conducted by the Assessing Officer. Further, the ratio of the decision of the Supreme Court in K.T.M.S. Mohammed's case (supra), clearly applies to the facts of the present case. Such being the case, in the absence of any independent enquiry by the Assessing Officer, the disallowances ought to be made under the Income Tax Act, by the Assessing Officer, on the basis of the show cause notice, issued under the Central Excise Act cannot be sustained. When the assessable income was arrived at by applying a percentage rate, as held by this Court in S.Mohammad Dhurabudeen's case (supra), the said exercise would take care of everything and there is no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases by the assessee for the purposes of disallowance. Therefore, this Court is of the considered view that the order of the Tribunal in concurring with the CIT (Appeals) on this issue is justified and this Court finds no reason to differ with the same."

By placing reliance on all these decisions, it was concluded by Ld. CIT(A) that separate disallowance as made by Ld. AO u/s 37(1) and 40A(3) could not be sustained. Accordingly, the corresponding grounds raised by the assessee were allowed. Aggrieved, the revenue is in further appeal before us.

3.10 The Ld. AO had made addition of cash seized for Rs.919.50 Lacs u/s 69A for AY 2021-22. It was noted that cash of Rs.819.50 Lacs was seized from the residence of Smt. R. Deepa, Finance Manager whereas further cash of Rs.100 Lacs was seized from the office premises of the assessee-company. The assessee explained that the source thereof was additional income offered by the assessee for AYs 2020-21 and 2021-22. The Ld. AO rejected the submissions on the ground that no evidences were furnished by the assessee in this regard and accordingly, the same was separately added u/s 69A of the act.

3.11 The Ld. CIT(A) noted that during search, it was found that the

assessee made unaccounted sales and payments. There was no finding either by the Investigation Team or by Ld. AO that the assessee was having any other source of income. Therefore, the physical cash would have been sourced only from the business of the assessee-company and therefore, the same could not be subjected to tax u/s.69A r.w.s 115BBE of the Act. It is a settled principle that when there is an unaccounted income on one side and unexplained cash or asset on the other side, the benefit of telescoping has to be given in respect of one against the other. The objective of telescoping is to bring real income to tax and to eliminate the double taxation of same income i.e., once at the time of receipt and again at the time of its application. The Hon'ble Apex Court in **Kale Khan Mohammad Hanif (1963 50 ITR 1)** explained the issue of double taxation as propounded by the theory of telescoping as under: -

"The question would seem to suggest that because the income from a disclosed source has been computed on the basis of an estimate and not on the basis of the return filed in respect of it, an income represented by a credit entry in the books of account of that source cannot be held to be income from another and undisclosed source. We do not see why it cannot be so held. It appears from the judgment of the High Court that the reason given in support of the suggestion was that if that income was held to be income of an undisclosed source, the result would be double taxation of the same income which the Income-tax Act does not contemplate. Apparently, it was said that there would be double taxation because it was assumed that the same income had once been earlier taxed on the basis of an estimate. This reason is obviously fallacious, for, if the income is treated as one from an undisclosed source which the question postulates, it is not treated as income of the disclosed source which had previously been assessed to tax and, therefore, there is in such a case no double taxation. It is not a case where the income sought to be taxed was held to be undisclosed income of a disclosed source, the income of which source had previously been taxed on the basis of an estimate. If it were so, the question of double taxation might have been legitimately raised. That, however, is clearly not the case here as the question as framed itself shows."

3.12 It was noted that the assessee filed return of income in response to notice issued u/s 153A and offered additional income of 26.92 Crores from AYs 2018-19 to 2020-21. As against this, the cash was found only

to the extent of Rs.919.50 Lacs. Therefore, the assessee would be entitled for telescoping benefit of additional income. Since additional income as offered by the assessee was much more than the physical cash found, separate addition of physical cash as made by Ld. AO was deleted. Aggrieved, the revenue is in further appeal before us.

Our findings and Adjudication

4. The basic facts are not in dispute. The assessee is engaged in real estate development and construction activities. Pursuant to search action on the assessee, it transpired that besides regular books of accounts as maintained on 'Y-server', the assessee maintained unaccounted transactions on 'Z-server'. On the basis of transactions reflected in the 'Z-server', Ld. AO proposed impugned additions. During the course of search action, incriminating material was found and sworn statements were also recorded. The cash for Rs.919.50 Lacs was found and seized. The assessee filed return of income and offered additional income to make-up for all these shortcomings. However, Ld. AO has not accepted the computations / workings made by the assessee and proposed further additions / disallowances by invoking the provisions of Sec.37(1) and 40A(3). These disallowances include payments to contractor for development / allied work which were subsequently received back by the assessee. In other words, the assessee booked bogus expenses in its regular books of accounts. The unaccounted portion of sale consideration was found recorded in 'Z-server'. Similar entries for cash purchases as well as cash expenditure were also found therein. Certain excel sheets were found on the basis of which discrepancies were found in the value of opening and closing stock. In the light of all these facts, Ld. AO reached a conclusion that the business of the assessee was

partly accounted and partly unaccounted. By combing the data of two servers, Ld. AO made an attempt to re-work the profit of the company and alleged that there was additional profit to the extent of Rs.48.97 Crores in this year which has been computed as under: -

	Particulars	Amount	Particulars	Amount
Y	Opening Stock	25,46,72,181	Sales	22,14,42,459
	Purchases	4,49,63,050	Closing Stock	22,94,96,311
	Direct Expenses	9,28,77,748	Indirect Income	-
	Indirect Expenses	4,51,41,362		
	Nett Profit	1,32,84,429		
Total		45,09,38,770		45,09,38,770

	Opening Stock	36,42,36,999	Closing Stock	83,11,23,753
	(-) OS as per Rol	-25,46,72,181	(-) CS as per ROI	-22,94,96,311
	Exp. for business	10,49,84,073	Sale Receipts	24,74,04,661
	Purchases	12,28,02,259	Chit Receipt	1040000
Z&ED	Interest Payments	2,95,16,891	Other Income	2,77,66,859
	Chit Payment	6,62,525		
	Non business exp.	2,05,95,235		
	Revised Profit	50,29,97,590		
	As per Rol	1,32,84,429		
	Undisclosed income	48,97,13,161		

Computation of Assessed Income For AY 2017-18

	Particulars		Amt Rs.
(1)	Total income as per Return filed u/s.139		1,34,15,910
(1a)	Additional income offered as per Return filed u/s.153A		Nil
(2)	Total income as per Return filed u/s.153A		1,34,15,910
	Add: additions as discussed above		
(3)	Undisclosed income (as per para 7.1)		48,97,13,161
(4)	Disallowance of expenses u/s 37 & 40A(3) (as per para 7.29 and 7.3.8)	5,26,36,208	
(5)	Disallowance of expenses u/s.40A(3) (as per para 7.7.7.)	9,28,03,149	
(6)	(4) + (5)		14,54,39,357
(7)	(3) + (6) Total additions proposed		63,51,52,518
(8)	Total income assessed (2) + (7)		64,85,68,428

It could be seen that valuation of closing stock is at huge variance and substantial addition arises out of that. The remaining addition arises out of disallowance made by Ld. AO u/s 37(1) as well as u/s 40A(3). The variation in closing stock is on the basis of few excel sheets found during the course of search.

5. At the same time, Ld. CIT(A) has noted that the assessee has not maintained any stock details / stock records. Besides carrying out own business activities, the assessee also acted as a facilitator for others. However, the assessee was unable to reconcile the same. No stock details / stock records have been maintained by the assessee and except for excel sheet, nothing in that regard has been found by the department during the course of search. The assessee rebutted the allegation of Ld. AO and submitted that valuation of closing stock was on the basis of uncorroborated excel sheet calculations found in the computer system whereas these excel sheets were prepared merely for attracting potential investors and customers. The rate adopted in the excel sheet was not at cost and therefore, this rate could not be adopted by Ld. AO. As per accounting practices, the stock has to be valued at lower of cost price or market price. However, it was duly demonstrated by the assessee before Ld. CIT(A) that there was glaring discrepancies in the computations made in the excel sheet and the valuation of stock was not done therein as required under law. The computations were not on the basis of any cost sheets. In our considered opinion, the valuation of stock would have direct bearing on the profits of the assessee and it has to be determined on the basis of lower of cost price or market price. The same could not be done arbitrarily. However, the workings of stock

in excel sheet is not done on this basis. Unless it was established by Ld. AO that the stock was valued scientifically in the excel sheets and the same was based on cost sheets, the same could not be adopted as such to work out the profit of the assessee. The Ld. CIT(A) has also rendered factual finding that the assessee had furnished a copy of its Balance Sheet as on 31.08.2018 to 31.03.2021 from the "Z-server" which was also made available to Ld. AO during the course of assessment proceedings. Upon perusal, it was noticed that in all the years, there was substantial difference in opening balances of the Balance Sheets for various years as prepared on the basis of 'Z-server'. Therefore, the valuation of stock on the basis of excel sheet has rightly been discarded by Ld. CIT(A). The valuation as reflected therein has no basis and therefore, the same are to be ignored completely.

6. We further find that there were gross discrepancies in the financial statements as extracted from 'Z-server'. The Ld. CIT(A) has noted that the 'Current Liabilities' were reflected on Assets side whereas 'Current Assets' were reflected on Liabilities side of the Balance Sheet. All these factors would prove that the accounts as maintained in 'Z-server' were incomplete and could not be relied upon to assess the income of the assessee. In view of so many defects, there exists every possibility that receipts which are not in the form of income would have been credited to the Profit & Loss Account. At the same time, receipts which are income would have been taken to 'Current Liabilities'. In such a scenario, there would be no option but to reject the books of accounts. The action of Ld. CIT(A) in rejecting the books of accounts is backed up by working of Net profit Rates for various years. If the working of Ld. AO was to be accepted, the same would yield exorbitant net profit rates ranging from

107% in AY 2017-18 to approx. 55% in AY 2020-21. The average NP rate works out to be approx. 47% which would be abnormally high in this line of business. The same would be indicative of the fact the accounts as relied upon by Ld. AO were not reflecting true state of affairs of assessee company. Further, high profit rate in one year and low profit rate in another year indicate the probability of income of one year being accounted in another year. The same is also evident from the ratio of assessed income to total turnover as follows: -

No	AY	Ratio of Assessed Income to Total Turnover (%)
1	2017-18	138.33
2	2018-19	76.03
3	2019-20	107.61
4	2020-21	141.79
5	2021-22	88.03

Upon perusal of above tabulation, it could be seen that the profits / income has ultimately been determined at figures which are much more than even the gross sales turnover worked out by Ld. AO. It could never be possible that the assessee has earned income which is much more than its gross receipts. The assessed income for all the AY(s) put together was much more than the accounted and unaccounted turnover as considered by AO. Therefore, the working of Ld. AO is clearly illogical and without any rational basis and accordingly, the same has rightly been rejected by Ld. CIT(A).

7. In the light of all these facts, the inevitable conclusion would be that the books of the assessee were inaccurate unreliable, incomplete and

incapable of reflecting the true and correct picture of assessee's financial affairs. The same could, therefore, be not relied upon to determine the income of the assessee. The assessee failed to reconcile the errors in its books of account. In such a situation, the action of Ld. CIT(A) in rejecting the books u/s 145(3) is to be upheld. The same was quite logical on the given facts. The various judicial decisions support such an action. These decisions have already been enumerated in preceding paragraphs. Therefore, the action of Ld. CIT(A) in rejecting the books is in accordance with law. We concur with the same.

8. Coming to the profit estimation by Ld. CIT(A), we find that the same is based on average net profit earned by the assessee on regular receipts in all the years. The process of averaging would take care of any abnormal situation and iron out the differences that may be arising in various financial years. Therefore, this methodology of estimating the income of the assessee also found our concurrence. The methodology could not be faulted with. We concur with the working made by Ld. CIT(A).

9. Having confirmed the aforesaid action of Ld. CIT(A), it would be quite logical that separate additions as made by Ld. AO u/s 37(1) or u/s 40A(3) would have no legs to stand. It is quite logical that once the books have been rejected and the income has been estimated on gross receipts, no separate addition / disallowances would be warranted. This view is duly supported the cited decision of Hon'ble High Court of Madras in **CIT v. Amman Steel & Allied Industries (supra)**, the substantive portion of which has already been extracted in preceding paragraphs. The other decisions of Hon'ble High Courts also lays down similar ratio. Therefore, the separate disallowance as made by Ld. AO u/s 37(1) and

40A(3) has rightly been deleted by Ld. CIT(A). We order so. The Ld. CIT-DR has referred to the decision of Hon'ble Punjab & Haryana High Court in the case of **CIT vs. Sai Metal Works (11 Taxmann.com 61)** for the submission that disallowance u/s 40A(3) could still be made in the given situation. Upon study, we find the same to be contextually different. In that decision, the Hon'ble Court primarily held that the provisions of Sec. 40A(3) would apply to block assessment proceedings under Chapter XIV-B also. The same is not the case here and this case law has no application. Finally, we upheld the profit estimation as made by Ld. CIT(A) which has been extracted by us in preceding para 3.6. Since profit has been re-apportioned over impugned years, the excess returned income for AYs 2018-19 and 2020-21 shall be ignored by Ld. AO. In other words, the total estimated income of the assessee for various years would be as under: -

AY	Amt. (Rs.)				
	2017-18	2018-19	2019-20	2020-21	2021-22
Total Income estimated	9,33,10,121	8,15,34,707	7,45,68,451	10,33,69,974	19,50,34,118

10. On the issue of cash found and seized for AY 2021-22, it is a fact that the assessee has filed return of income in response to notices issued u/s 153A and offered additional income of 26.92 Crores from AYs 2018-19 to 2020-21. The same is much more than the cash found for Rs.919.50 Lacs. In the absence of any other source of income, the benefit of telescoping would be available to the assessee. Therefore, the action of Ld. CIT(A) in granting of benefit thereof to the assessee could

not be faulted with.

11. The assessee, in all the years, has raised legal grounds to submit that assessment proceedings would be bad-in-law. The assessee has also assailed the grant of approval by higher authorities. The legal issue of non-quoting of DIN has also been raised. However, all these grounds have not been urged by Ld. AR before us during the course of hearing. No argument has been made in that regard and no material has been shown to us which would show any defect in the jurisdiction of Ld. AO. Accordingly, all such grounds stand dismissed.

Conclusion

12. In the result, all the appeals stand dismissed.

Order pronounced on 15th January, 2025.

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

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

चेन्नई Chennai; दिनांक Dated : 15-01-2025

DS

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT Madurai.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF