

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखक सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.415 & 416/Chny/2024
निर्धारण वर्ष /Assessment Years: 2012-13 & 2013-14

T. Senthil Kumar,
No.29, Ramanujam Street,
Karur.
[PAN: AVQPS 2344J]

Vs. The Income Tax Officer,
Ward-1,
Karur.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri N. Quadir Hoseyn, Advocate
: Shri K. Rohan Raj, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 05.12.2024

घोषणा की तारीख /Date of Pronouncement

: 26.02.2025

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid two appeals filed by the assessee for Assessment Years (AYs) 2012-13 & 2013-14 arises out of the common orders of Learned Commissioner of Income Tax (Appeals)-18, Chennai [hereinafter "CIT(A)"] dated 22.12.2023 in the matter of assessments framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter "the Act") on 31.03.2015.

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2. The facts in both the appeals of the assessee are identical and issues are common hence, we proceed to pass a common order. For brevity, we shall take up the appeal in ITA No.415/Chny/2024 for A.Y 2012-13 as lead case.

3. The assessee is a partner in M/s Ashika Fabrics and M/s Akshay fabrics, Karur and has started business as developer in the name of M/s Apple Constructions. A survey u/s. 133A of the Act was conducted on 23.10.2013 in the business premises of the assessee at Karur. The A.O has completed the assessment u/s. 143(3) r.w.s 147 of the Act on 31.03.2015 by making addition on income from construction/sale of flats at Rs.1.92 Cr. on the basis of percentage completion methods of contract as against the complete contract method claimed by the assessee. The A.O has also added Rs.7,40,000/- towards family expenses on the basis of statement recorded during survey and further, Rs.10,20,600/- towards credit in the capital account and Rs.75,000/- interest on loan of Rs. 5,00,000/- advance to Mr. R. Aravind Kumar. Aggrieved, the assessee filed an appeal before Ld. CIT(A), which was dismissed by Ld. CIT(A) ex-parte. On further appeal, the Hon'ble Tribunal set aside the order of Ld. CIT(A) directing the Ld. CIT(A) to decide the issue involved in appeal

on merit. The Ld. CIT(A) in the set aside order has confirmed the addition in respect of construction/sale of flats to the extent Rs.60 Lakhs. The Ld. CIT(A) has deleted the addition of family expenses of Rs.7,40,000/- and credit in the capital account of Rs.10,20,600/- by telescoping the income as he has already confirmed the addition to the extent of Rs.60 Lakhs. In regard to addition of Rs.75,000/- towards interest, the Ld. CIT(A) has confirmed the addition. Now, the assessee is in appeal against the order of Ld. CIT(A) in confirming the additions.

4. The Ld. Authorized Representative (A.R) of the assessee has submitted that the Ld. CIT(A) has erred in estimating the income from construction/sale of flats on the basis of percentage of completion methods at Rs. 60 Lakhs as against the return loss of Rs. 9,80,154/- based on the books of accounts. The Ld. AR has argued that in the absence of defects pointed out in the books of account maintained by the assessee, the estimation of income by the Ld. CIT(A) was not sustainable in law. The Ld. AR has also argued that the Ld. CIT(A) while estimating the income has taken on money of Rs. 20 Lakhs per Flat, but there was no evidence found during the course of survey regarding on money payment. The Ld. AR has argued that Rs.50 Lakhs against each flat recorded in the excel sheet was for bank loan

purpose and all the agreement contains the sale value at Rs.30 Lakhs only. As regards to addition of family expenses of Rs.7,40,000/-, the Ld. AR has submitted that addition was based on statement during survey, which has got no evidential value. As regard to addition of unexplained credit of Rs.10,20,600/- in the capital account, the Ld. AR has argued that there was no opportunity given to the assessee to explain the credit and A.O has only seen one part of capital account. The Ld. AR against the addition estimated interest of Rs.75,000/- on the advance of Rs. 5 Lakhs given to Mr. Arvind Kumar, has submitted that the Ld. CIT(A) has confirmed the addition without making proper enquiry.

5. The Ld. Departmental Representative (DR), on the other hand, has relied on the orders of lower authorities.

6. We have heard the rival submissions, and perused the materials available on record. The A.O has made addition of Rs.1.95 Cr as income from contract on percentage completion methods in respect of Flats constructed in the name of M/s. Apple Construction. The A.O has noticed that the assessee has sold 12 Flats during the year for Rs. 30 Lakhs per Flat as per the sale deed executed by the assessee,

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whereas as per entry in the excel sheet each flat was sold for Rs. 50 Lakhs. The A.O has computed the sale price as per percentage completion methods @ 60% of Rs.3.6 Cr. for 12 Flats @ Rs. 30 Lakhs each to which he added the value of closing stock at Rs. 1.75 Cr. and arrived at Rs. 3.9 Cr. from which he deducted the total cost admitted by the assessee at Rs. 3.37 Cr. and arrived at profit of Rs. 0.54Cr. The A.O further computed unaccounted sale value of 12 Flats at Rs. 20 Lakh each, and worked out to Rs. 2.4 Cr. and computed 60% of Rs.2.4 Cr. as per percentage completion methods at Rs. 1.44 Cr. making total addition of Rs.1.9 Cr. On appeal, the Ld. CIT(A) noted that the assessee is neither following percentage completion methods or project completion methods as the assessee has not offered any income on completion of project in A.Y 2014-15. The Ld. CIT(A) therefore, estimated the income by taking 10% of profit on sale of Flat @ Rs. 50 Lakhs per Flat in respect of 12 Flats completed and assessed Rs. 60 Lakhs. The Ld. AR has argued that the Ld. CIT(A) has not pointed out defects in the books of accounts therefore, such estimate was not justified ignoring the books of account. We are in agreement with the arguments of Ld. AR and therefore, restore the matter back to the file of A.O to determine the profit on the basis of books of account adopting percentage completion method.

7. As regard to addition on family expenses of Rs. 7,40,000/-, the A.O has made the addition only on the basis of statement recorded during survey. The A.O has not considered the assessee's explanation that the assessee and his wife both are working and the withdrawals are sufficient to meet the expenses. Therefore, we restore this issue also to the file of A.O.

8. As regard to addition on unexplained credit of Rs. 10,20,600/-, the assessee has submitted that proper opportunity was not provided to the assessee and A.O has not examined the complete capital account. We, therefore, restore this matter back to the file of A.O for fresh consideration.

9. As regard to addition of estimated interest of Rs. 75,000/- towards interest on loan advanced, the A.O has estimated interest @ 10%. We do not find any infirmity in the order of Ld CIT(A) and A.O on this issue, the same is being confirmed .

ITA No.416/Chny/2024 for A.Y 2013-14:

10. We find that the identical issues are involved in assessee's appeal for A.Y 2013-14 as well. Accordingly, our adjudication above in

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A.Y 2012-13 applies *mutatis mutandis* applies therein also. Therefore, for the similar reasons, the appeal filed by the assessee for A.Y 2013-14 is partly allowed.

11. In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced on 26th February, 2025.

Sd/-
(यस यस विश्वनेत्र रवि)
(SS Viswanethra Ravi)

न्यायिक सदस्य / Judicial Member

Sd/-
(जगदीश)
(Jagadish)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 26th February, 2025.

EDN/-

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

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