

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1620, 1621, 1622 & 1623/Chny/2023
निर्धारण वर्ष /Assessment Years: 2016-17, 2017-18, 2019-20 & 2020-21

Sithanathan Kalyana Mahall,
47, Aruljothi Street, Adivaram,
Palani, Dindigul – 624 601.
[PAN: AAPFS 7171M]
(अपीलार्थी/**Appellant**)

Vs. The Asst. Commissioner of
Income Tax,
Central Circle-1,
Madurai.
(प्रत्यर्थी/**Respondent**)

आयकर अपील सं./ITA Nos.1624, 1625, 1626 & 1627/Chny/2023
निर्धारण वर्ष /Assessment Years: 2016-17, 2017-18, 2019-20 & 2020-21

Sri Angala Eswari Thirumana
Mahal,
47, Aruljothi Street, Adivaram,
Palani, Dindigul – 624 601.
[PAN: AAPFS 7169F]
(अपीलार्थी/**Appellant**)

Vs. The Asst. Commissioner of
Income Tax,
Central Circle-1,
Madurai.
(प्रत्यर्थी/**Respondent**)

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

: Shri N. Arjun Raj, Advocate
: Ms. Sheila Parthasarthy, CIT

सुनवाई की तारीख/Date of Hearing

: 03.04.2025

घोषणा की तारीख /Date of Pronouncement

: 27.05.2025

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid appeals filed by the two assessee for Assessment
Years (AYs) 2016-17, 2017-18, 2019-20 & 2020-21 arises out of the

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orders of Learned Commissioner of Income Tax (Appeals)-19, Chennai [hereinafter "CIT(A)"] dated 26.10.2022.

2. There is a delay of 04 days in filing all the appeals by the assessee. The assessee has filed condonation petition/affidavit stating the reasons for delay in filing the appeals. We have considered the petition/affidavit of delay in filing the appeals and satisfied that there was sufficient cause for not filing the appeals within the prescribed time limit. Hence, the delay is hereby condoned.

3. The facts in all the appeals of both the assessees are identical and issues are common hence, we proceed to pass a common order. For brevity, we shall take up the appeals in ITA Nos.1620 & 1624/Chny/2024 for A.Y 2016-17 as lead cases. The grounds of appeal raised by the assessee in ITA No.1620/Chny/2024 A.Y 2016-17 are as under:

1. The order of the CIT (Appeals), Chennai - 19 dated 26.10.2023 vide DIN & Order No. ITBA/APL/M/250/2023-24/1057349684(1) for the above mentioned Assessment Year is contrary to law, fact and in circumstances of the case.

2. The CIT (Appeals), Chennai - 19 erred in confirming the assumption of jurisdiction under Section 153C of the Act and further erred in confirming the search assessment order passed in terms of Section 153C of the Act without assigning proper reasons and justification.

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3. *The CIT (Appeals), Chennai - 19 failed to appreciate that having executed the warrant of search dated 29.08.2019 issued to search the premises of "Sithanathan Sons, Sithanathan Abhisheka Store, S. Sithanathan Grand Sons" and further having taken on record the fact of consequential search in the premises of the appellant firm herein, there could not be any scope of assuming jurisdiction under Section 153C of the Act in contra distinction to the initiating the assessment under Section 153A of the Act, thereby vitiating the assumption of jurisdiction under Section 153C of the Act.*

4. *The CIT (Appeals), Chennai - 19 failed to appreciate that having used the disputed search materials for computing the disputed income, the assessment completed by reckoning the appellant as the "other person" should be reckoned as nullity in law.*

5. *The CIT (Appeals), Chennai - 19 failed to appreciate that in this context, the law declared by the Supreme Court on the scope of jurisdiction was completely overlooked and as a consequence ought to have appreciated that the search assessment order under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.*

6. *The CIT (Appeals), Chennai – 19 failed to appreciate that in any event, having not disclosed the satisfaction note recorded by the Assessing Officer assessing the searched person in terms of Section 153A of the Act and further having not disclosed satisfaction note recorded in terms of Section 153C of the Act by the JAO of the "other person" / appellant herein, the final search assessment order passed in terms of Section 153C of the Act would be fatal in view of glaring procedural irregularity committed by the Assessing Officer having jurisdiction over the "searched person" and the "other person".*

7. *The CIT (Appeals), Chennai – 19 erred in sustaining 85% of the total rental receipts of Rs. 40,92,276/- presumed to have been unaccounted as business income of the appellant without assigning proper reasons and justification.*

8. *The CIT (Appeals), Chennai – 19 failed to appreciate that the quantification of the rental income presumed to have been unaccounted for were based on loose sheets, which sheet did not reflect the true financials of the appellant firm and further ought to have appreciated that expenses incurred in running a Kalyana Mandapam were not considered holistically while quantifying such income, thereby vitiating such quantification on account of arbitrary, unreasonable and unjustified.*

9. *The CIT (Appeals), Chennai – 19 failed to appreciate that having not examined the business module of the appellant firm and further*

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having not examined the stand of the appellant consistently taken on the quantification of the expenses incurred at 30%, the partial sustenance of the said claim having direct impact on the computation of taxable total income was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

10. The CIT (Appeals), Chennai – 19 failed to appreciate that findings in the impugned order were wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

11. The CIT (Appeals), Chennai – 19 failed to appreciate that the entire recomputation of taxable total income was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

12. The CIT (Appeals), Chennai – 19 failed to appreciate there was no effective/proper opportunity given before passing the impugned order and any order passed in violation of the principles of natural justice is nullity in law.”

4. The grounds of appeal raised by the assessee in ITA No.1624/Chny/2024 A.Y 2016-17 are as under:

“1. The order of the CIT (Appeals), Chennai – 19 dated 26.10.2023 vide DIN & Order No. ITBA/APL/M/250/2023-24/1057390040(1) for the above-mentioned Assessment Year is contrary to law, fact and in circumstances of the case.

2. The CIT (Appeals), Chennai – 19 erred in confirming the assumption of jurisdiction under Section 153C of the Act and further erred in confirming the search assessment order passed in terms of Section 153C of the Act without assigning proper reasons and justification.

3. The CIT (Appeals), Chennai – 19 failed to appreciate that having executed the warrant of search dated 29.08.2019 issued to search the premises of “Sithanathan Sons, Sithanathan Abhisheka Store, S. Sithanathan Grand Sons” and further having taken on record the fact of consequential search in the premises of the appellant firm here in, there could not be any scope of assuming jurisdiction under Section 153C of the Act in contra distinction to the initiating the assessment under Section 153A of the Act, there by vitiating the assumption of jurisdiction under Section 153C of the Act.

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4. *The CIT (Appeals), Chennai – 19 failed to appreciate that having used the disputed search materials for computing the disputed income, the assessment completed by reckoning the appellant as the “other person” should be reckoned as nullity in law.*

5. *The CIT (Appeals), Chennai – 19 failed to appreciate that in this context, the law declared by the Supreme Court on the scope of jurisdiction was completely over looked and as a consequence ought to have appreciated that the search assessment order under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.*

6. *The CIT (Appeals), Chennai – 19 failed to appreciate that in any event, having not disclosed the satisfaction note recorded by the Assessing Officer assessing the searched person in terms of Section 153A of the Act and further having not disclosed satisfaction note recorded in terms of Section 153C of the Act by the JAO of the “other person” / appellant herein, the final search assessment order passed in terms of Section 153C of the Act would be fatal in view of glaring procedural irregularity committed by the Assessing Officer having jurisdiction over the “searched person” and the “other person”.*

7. *The CIT (Appeals), Chennai – 19 erred in sustaining 85% of the total rental receipts of Rs. 59,83,247/- presumed to have been unaccounted as business income of the appellant without assigning proper reasons and justification.*

8. *The CIT (Appeals), Chennai – 19 failed to appreciate that the quantification of the rental income presumed to have been unaccounted for were based on loose sheets, which sheet did not reflect the true financials of the appellant firm and further ought to have appreciated that expenses incurred in running a Kalyana Mandapam were not considered holistically while quantifying such income, there by vitiating such quantification on account of arbitrary, unreasonable and unjustified.*

9. *The CIT (Appeals), Chennai – 19 failed to appreciate that having not examined the business module of the appellant firm and further having not examined the stand of the appellant consistently taken on the quantification of the expenses incurred at 30%, the partial sustenance of the said claim having direct impact on the computation of taxable total income was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.*

10. *The CIT (Appeals), Chennai – 19 failed to appreciate that the related findings in the impugned order were wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.*

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11. The CIT (Appeals), Chennai – 19 failed to appreciate that the entire re-computation of taxable total income was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

12. The CIT (Appeals), Chennai – 19 failed to appreciate that there was no effective/proper opportunity given before passing the impugned order and any order passed in violation of the principles of natural justice is nullity in law.

5. A search was conducted in the case of Sithanathan Mahal group on 29.08.2019 and the premises of both the assessee firm, M/s. Angala Eswari Thirumanna Mahal and M/s. Sithanathan kalyana Mahal at Aruljothi Street, Advaram, Palani was also covered. During the course of search incriminating loose sheets of unaccounted receipts were found from these premises and Shri N. Vijaykumar, the partner of the firms has admitted that the amount under head 'Idhara Vagayil' included the room rent receipts from Kalyanamandapam which is not accounted. Consequently, the A.O initiated proceedings u/s. 153C of the Act and made addition on unaccounted receipts as under:

Sithanathan Kalyana Mahall

Sl. No.	FY	AY	Unaccounted Income in Rs.
1.	2015-16	2016-17	40,92,276/-
2.	2016-17	2017-18	26,19,731/-
3.	2018-19	2019-20	37,93,244/-
4.	2019-20	2020-21	19,38,415/-

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Sri Angala Eswari Thirumana Mahal

<i>FY</i>	<i>AY</i>	<i>Unaccounted Income in Rs.</i>	<i>Unexplained cash us</i>
<i>2015-16</i>	<i>2016-17</i>	<i>40,92,276/-</i>	<i>--</i>
<i>2016-17</i>	<i>2017-18</i>	<i>26,19,731/-</i>	<i>--</i>
<i>2018-19</i>	<i>2019-20</i>	<i>37,93,244/-</i>	<i>--</i>
<i>2019-20</i>	<i>2020-21</i>	<i>19,38,415/-</i>	<i>85,00,000/-</i>

6. The assessee before Ld. CIT(A) has submitted that the loose sheets cannot be construed as complete books of account as expenses for running the mandapam has not been recorded and pleaded that there are certain expenditure towards commission, rent for hired generator cost, its fuel expenses and maintenance of building expenses which are not recorded in the seized material and same should be considered before arriving net income. The assessee accordingly, requested to allow 30% of the gross unaccounted receipts as per the seized material as allowable expenditure. The Ld. CIT(A) accepted the assessee's argument, but allowed the relief of 15% instead of 30% sought by the assessee. Aggrieved, the assessee is in appeal to allow 30% of the receipts as expenditure.

7. The Ld. Authorized Representative (A.R) of the assessee has submitted that the A.O has made the addition on unaccounted receipt recorded in the loose sheets, but has not considered the

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corresponding expenditure which is not recorded or found during search. The Ld AR submitted that not allowing expenditure has resulted in 100% income on receipt which is against the principle of determining correct income by the A.O. The Ld. AR has further argued that the Ld. CIT(A) though admitted that corresponding expenditure is to be allowed, he has allowed only 15% of the expenditure which still results in a very high net profit .

8. On the other hand, the Ld. Departmental Representative (DR), has relied on the orders of lower authorities and argued that Ld CIT(A) has already given relief of expenditure of 15% , no further relief should be given as there are hardly any expenses in running the mandapam and assessee has booked those expenses in its accounted income.

9. We have heard the rival submissions, and perused the materials available on record. The A.O has made the addition of unaccounted receipt from running the mandapam, found during the course of search in the total income. The Ld CIT(A) has allowed expenditure to the extent of 15% of unaccounted receipt to arrive at net unaccounted income as the loose sheet is not complete books of account and there are certain unaccounted expenditure which too have not been

recorded in the books of account. The Ld AR has claimed that 30% expenditure will be reasonable estimate after considering the nature of business. It is settled principle that in the absence of complete books of account, income is to be reasonably estimated keeping in mind nature of business and past expenditure. In our considered view the claim of the assessee for 30% of deduction is not fully supported by detailed evidence or documentation, but allowing only 15% of expenditure by Ld CIT(A) is on lower side. The normal business profit in running Kalyanmandalam is between 15% to 25% of gross receipt. We, therefore, considering the nature of the assessee's business and profit involved in such business, allow 25% of the unaccounted receipt as expenditure in place of 15% allowed by the Ld. CIT(A). Therefore, the A.O is directed to compute the income accordingly.

ITA Nos. 1621, 1622, 1623, 1625, 1626 & 1627/Chny/2023:

10. We find that the identical issue is involved in assessee's appeals in ITA Nos. 1621, 1622, 1623, 1625, 1626 & 1627/Chny/2023 also and accordingly, our adjudication in ITA Nos.1620 & 1624/Chny/2023 is *mutatis mutandis* to these cases also. Therefore, for the similar reasons, we direct the A.O to allow 25% unaccounted receipts as expenditure.

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11. In the result, all the eight appeals filed by the assessee are allowed for statistical purposes only.

Order pronounced on 27th May, 2025.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)

न्यायिक सदस्य / Judicial Member

Sd/-
(जगदीश)
(Jagadish)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 27th May, 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