

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

श्री एम. बालगणेश, लेखा सदस्य के समक्ष एवं. श्री एस एस विश्वनेत्र रवि, न्यायिकसदस्य  
**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER**  
**AND SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

आयकर अपीलसं./ITA No.:1129/Chny/2025  
निर्धारणवर्ष / Assessment Year:2018-19

<b>Ramalingam Ellalan,</b> 279/1, Sathy Road, Erode – 638 003. Tamil Nadu.	vs.	<b>The Assistant Commissioner of Income Tax,</b> Central Circle-2 Coimbatore.
<b>[PAN:AAFPE-9379-M]</b> (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकी ओरसे/Appellant by : Mr. N. Arjun Raj, Advocate.  
प्रत्यर्थीकी ओरसे/Respondent by : Ms. R. Anitha, CIT.

सुनवाईकी तारीख/Date of Hearing : 13.10.2025  
घोषणाकी तारीख/Date of Pronouncement : 14.10.2025

**आदेश / O R D E R**

**PER M. BALAGANESH, AM :**

This appeal by the assessee is filed against the order of the learned Commissioner of Income Tax (Appeal), NFAC, Delhi, (in short Ld.CIT(A) for the assessment year 2018-19, vide order dated 22.03.2025.

2. The grounds raised by the assessee challenging the validity of assumption of jurisdiction under section 147 of the Act. We find pursuant to survey conducted in the business premises of the assessee under section

133A of the Act on 3-3-2020, a loose sheet was found containing certain unaccounted transactions to the tune of Rs 37,70,000/-. Since the same was not disclosed by the assessee in the original return of income filed, the said impounded material in survey certainly becomes tangible material in the possession of the Learned AO to assume jurisdiction under section 147 of the Act. Hence the grounds challenging the validity of assumption of jurisdiction under section 147 of the Act are hereby dismissed.

3. The only effective issue to be decided in this appeal on merits is as to whether the Learned CITA was justified in confirming the addition made in the sum of Rs 37,70,000/- in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. The Assessee is an individual and managing partner of M/s Pandian Agency and M/s Pari Pipe Traders engaged in the wholesale business of hardware and pipes. The return of income for the assessment year 2018-19 was filed by the Assessee under section 139(4) of the Act on 30-3-2019 determining declaring total income of Rs 2,30,000/-. This return was duly processed under section 143(1) of the Act on 14-4-2019. A survey under section 133A of the Act was conducted in the Assessee's business premises on 3-3-2020. During the course of survey, incriminating loose sheets were found and impounded vide Ann/GV/PA/LS/IMP-1 which revealed that the Assessee had constructed a residential house at Coonoor

and cash payments were made to the builder. Further the Assessee had paid cash for the interior construction to various suppliers. As the Assessee had not admitted the investments in the return of income filed for assessment year 2018-19, the Learned AO had reason to believe that income of the Assessee had escaped assessment within the meaning of section 147 of the Act and issued notice under section 148 of the Act dated 4-9-2019. In response to the notice under section 148 of the Act issued to the Assessee, the Assessee filed a return of income declaring additional income of Rs 37,70,000/- and total income of Rs 40 lakhs. The additional income of Rs 37,70,000/- was emanating out of the incriminating loose sheet found during the course of survey. The Assessee offered this additional income of Rs 37,70,000/- as 'income from other sources' in the return filed in response to notice under section 148 of the Act. The Learned AO completed the assessment and by treating this additional income of Rs 37,70,000/- to be eligible for special rate of tax prescribed under section 115BBE of the Act at the rate of 60%.

5. The Learned CITA appreciated the factual position that out of Rs 37,70,000/- offered by the assessee as additional income, a sum of Rs 19,00,000/- pertain to payments made in financial year 2016-17 relevant to assessment year 2017-18. A sum of Rs 30,98,000/- was paid in financial year 2017-18 relevant to assessment year 2018-19. The Learned CITA also noted from the incriminating loose sheet that a sum of Rs 12,28,000/- was

sourced out of housing loan obtained from City Union Bank, Erode branch on 10-08-2017. The Learned CITA concluded that to the extent of housing loan obtained from the bank, the source remains explained. With regard to the balance sum of Rs 18,70,000/- (30,98,000 minus 12,28,000), the Learned CITA noted that the same remains unexplained, but since the assessee has offered 37,70,000/- (19,00,000 of assessment year 17-18 plus 18,70,000 of assessment year 18-19) both in assessment year 18-19 in the return of income filed in response to notice under section 148 of the Act, the amount of Rs 19,00,000/- which pertain to assessment year 17-18 was sought to be taxed in assessment year 18-19 at the normal rate of 30 percent, after given a categorical finding that the same does not pertain to the year under consideration and indeed pertains to assessment year 17-18. With regard to remaining sum of Rs 18,70,000/-, the Learned CITA observed that the same represent unexplained investment made during the year under consideration to be taxed at the enhanced rate of tax prescribed under section 115BBE of the Act. Aggrieved, only the assessee is in appeal before us.

6. The assessee always pleaded before the Learned CITA that the amounts reflected in the impounded loose sheet represent only business receipts of the assessee and hence the same is to be brought to tax only under the head 'income from business' eligible to be taxed at the rate of 30%

only. In this regard, the observations of the Learned CITA in Para 6.5. of his order are relevant which are reproduced below:-

6.5. ....

*On examination of the contents of the impounded material, it is found that the appellant had made payment of Rs 19,00,000/- in the FY 2016-17 and only Rs 30,98,000/- in the year under consideration i.e. FY 2017-18. It is also observed that the amount of Rs 30,98,000/- which relates to the AY 2018-19, includes Rs 12,28,000/- which was paid subsequently to the date of availing the housing loan. Hence, the actual amount of unexplained investment made in the year under consideration is only Rs. 18,70,000 (Rs. 30,98,000 minus Rs. 12,28,000. However, the appellant had offered an amount of Rs. 37,70,000 (Rs. 19,00,000 plus Rs. 18,70,000) in the year under consideration as additional income while filing the return of income in response to notice under section 148 of the Act. Since, the appellant had included the amount of Rs. 18,70,000 pertaining to the investment made during the year under consideration, the AO is directed to bring only Rs. 18,70,000 under the provisions of section 69 r.w. 115BBE of the Act. It is concluded that the balance amount of Rs. 19,00,000 cannot be treated as unexplained investment made during the year under consideration under section 69 r.w. section 115BBE of the Act. Thus, the said amount of Rs. 19,00,000/- is to be taxed under normal provisions. With these directions, these grounds of the appellant are partly allowed.*

7. It is pertinent to note that the revenue has not preferred any appeal before this Tribunal against the aforesaid observations of the Learned CITA. From the aforesaid observations, it is very clear that the Learned CITA had sought to treat the sum of Rs. 19 lakhs being payments made in assessment year 2017-18 to be brought to tax only at the normal rate of 30%, construing the same to be business receipts, as claimed by the assessee. Having done so, there is absolutely no reason for the Learned CITA to take

a divergent stand for taxing the remaining sum of Rs. 18,70,000/- as an unaccounted investment to be taxed at an enhanced rate of tax of 60% under section 115BBE of the Act. This is the contradictory stand taken by the revenue for the two different figures emanating out of the same impounded material. Hence we hold that the sum of Rs 18,70,000/- being payments made during the assessment year 2018-19 is to be taxed only as business receipts chargeable to tax at the rate of 30% and not 60%.

8. Eventhough the assessee had offered Rs 37,70,000/- in the return filed in response to notice issued under section 148 of the Act, what is to be taxed in the year under consideration is only Rs 18,70,000/- even according to the aforesaid observation of the Learned CITA. Hence the sum of Rs 19,00,000/- being payments made in assessment year 2017-18 (which is not disputed before us) does not pertain to the year under consideration and cannot be taxed in assessment year 2018-19, eventhough the assessee had offered the same in the return. It is trite law that the Learned AO cannot take advantage of the ignorance of an assessee and right income is to be taxed in the right person's hands for the right assessment year. In this process, even if the assessed income goes below the returned income, then also, the assessee would be entitled for relief and the Learned AO cannot take advantage of ignorance of an assessee erroneously offering a particular receipt in the return of income and bring it to tax. Reliance in this regard has been rightly placed by the Learned AR on the following:-

- a) CIT vs Bakelite Hylam Ltd reported in 237 ITR 392 (AP)
- b) Gujarat Gas Co. Ltd vs JCIT reported in 245 ITR 84 (Guj)
- c) Milton Laminates Ltd vs CIT reported in 37 taxmann.com 249 (Guj)
- d) CBDT Circular No. 14 dated 11-4-1955 wherein CBDT has emphasized that the Department should not take advantage of the assessee's ignorance to collect more tax out of him than the liability due from him. This Circular is very much binding on the Department.

9. In view of the above, we direct that the sum of Rs 19,00,000/- cannot be brought to tax in the year under consideration as it does not pertain to the year under consideration.

10. Accordingly, the grounds raised by the assessee on the merits of the additions are allowed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the court on 14<sup>th</sup>, October, 2025 at Chennai.

Sd/-

(एस एस विश्वनेत्र रवि)

**(S.S. VISWANETHRA RAVI)**

न्यायिकसदस्य/**JUDICIAL MEMBER**

Sd/-

(एम .बालगणेश)

**(M. BALAGANESH)**

लेखासदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai, दिनांक/Dated 14<sup>th</sup>, October, 2025

KB/-

आदेश की प्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF