

आयकर अपीलीय अधिकरण, 'एस.एम.सी' 'डी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL ,  
'SMC' 'D' BENCH, CHENNAI  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष  
Before Shri A. Mohan Alankamony, Accountant Member

आयकरअपीलसं./I.T.A.Nos.235 & 236/Mds/2017

(निर्धारणवर्ष / Assessment Years: 2005-06 & 2006-07)

Shri M.K. Krithivasan, 59, Pattamangala Street, Mayiladuthurai – 609001.	Vs	The Income Tax Officer (OSD), Circle 1(1), Kumbakonam
PAN: AALPK6187H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकरअपीलसं./I.T.A.Nos.237 & 238/Mds/2017

(निर्धारणवर्ष / Assessment Years: 2005-06 & 2006-07)

K. Mangalam By L/H M.K. Krithivasan, 59, Pattamangala Street, Mayiladuthurai – 609001.	Vs	The Income Tax Officer, Ward 1(2) Kumbakonam
PAN: AALPK6186G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकरअपीलसं./I.T.A.No.239 /Mds/2017

(निर्धारणवर्ष / Assessment Year: 2005-06)

Estate of M.R. Kannappan By L/H M.K. Krithivasan, 59, Pattamangala Street, Mayiladuthurai – 609001.	Vs	The Income Tax Officer, Ward 1(2) Kumbakonam
PAN: AAAPPE0143Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

**आयकरअपीलसं./I.T.A.No.240/Mds/2017**  
(निर्धारणवर्ष / Assessment Year: 2005-06)

Estate of M.K. Ravikumar By L/H M.K.R. Geetha, 59, Pattamangala Street, Mayiladuthurai – 609001.	Vs	The Income Tax Officer, Ward 1(2) Kumbakonam
PAN: AAABE0136F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

**आयकरअपीलसं./I.T.A.No.241/Mds/2017**  
(निर्धारणवर्ष / Assessment Year: 2006-07)

M.K.R. Bhavani, 59, Pattamangala Street, Mayiladuthurai – 609001.	Vs	The Income Tax Officer, Ward 1(2) Kumbakonam
PAN: AAHPB2004L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

**आयकरअपीलसं./I.T.A.No.242/Mds/2017**  
(निर्धारणवर्ष / Assessment Year: 2006-07)

M.K.R. Krishnakumar, 59, Pattamangala Street, Mayiladuthurai – 609001.	Vs	The Income Tax Officer, Ward 1(2) Kumbakonam
PAN: AAKPK8850A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

**आयकरअपीलसं./I.T.A.No.243/Mds/2017**  
(निर्धारणवर्ष / Assessment Year: 2006-07)

M.K.R. Geetha, 59, Pattamangala Street, Mayiladuthurai – 609001.	Vs	The Income Tax Officer, Ward 1(2) Kumbakonam
PAN: AAFPR7962M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellants by	:	Shri N. Quadir Hoseyn, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Supriyo Pal, JCIT

सुनवाईकीतारीख/Date of hearing	:	20.03.2017
घोषणाकीतारीख /Date of Pronouncement	:	21.03.2017

### **आदेश / ORDER**

These appeals filed by the assesseees are directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-2, Thiruchirappalli dated 15.11.2016 in ITA Nos.354/355/356/357/358/359/360/411 & 412/2010-11/CIT(A-2)/TRY passed u/s. 250(6) r.w.s.143(3) of the Act for the assessment years 2005-06 & 2006-07. Since the issue with respect to related parties is identical in all the appeals, they are heard together and disposed off by this common order for the sake of convenience.

2. The assesseees have raised several grounds in their respective appeals with respect to a common issue, however the concise common ground in all those appeals is stated herein below for adjudication:-

The Ld. CIT(A) has erred in confirming the proportional addition in the case of all the assesseees with respect to the construction cost of building jointly owned by all the assesseees by relying on the DVO's report.

3. The brief facts of the case are that all the assessees are joint owners of the property situated at Patullos Road, Chennai. During the assessment years 2005-06 & 2006-07, all the assessees jointly constructed a building named M.R.K. Towers. During the course of scrutiny assessment in the case of all the assessees, it was observed that the assessees had understated the cost of construction of the building as it was revealed from the DVO's report which was based on CPWD rates. Thereafter the Ld. AO estimated the amount of Rs.10,32,808/- as the undisclosed investment for constructing the building based on the DVO's report after giving allowance to certain adjustments pointed out by the assessees which is reproduced herein below for reference:-

*“Accordingly, the cost of construction of the building has been fairly estimated at Rs.3,56,92,000/-. The value does not include, the cost of land, furniture, generator, transformer, air-conditioners, lift and interior works. The relevant details are also available in the Copy of Valuation Report of the OVO already supplied to the assessee.*

*As the tenant vide their letter dated 30-11-2010, have owned up the works executed by them, it has to be deducted from the cost estimated by the DVO, as under:*

<i>Cost estimated by the DVO</i>		<i>Rs.3,56,92,000</i>
<i>Less:</i>		
<i>1. Terrace Floor</i>	<i>8,28,960</i>	
<i>2. Vitrified Tiles with dark shade pigments</i>	<i>39,56,119</i>	
<i>3. Landscaping with Korean Grass .</i>	<i>1,16,690</i>	
	<hr/>	<i>Rs. 49,01,769</i>
		<hr/>
		<i>Rs.3,07,90,231</i>

*Less: The assessee has requested for grant of 10% of the cost of work executed by him as Self-supervision rebate as he is engaged in the same trade for the past several years citing that he will be able to get the materials at cheaper rates and with all discounts etc. considering the plea, it is allowed @ 7.5%. it works out to*

*Rs. 23,09,267*

---

*Rs.2,84,80,964*

*The assessee has reported the total cost of construction at Rs.3,12,96,386 in the Balance Sheet for A.Y.2006-07. Out of the same, the assessee has incurred the following expenditures which is not forming part of the DVO's Report.*

		<i>Rs.3,12,96,386</i>
<i>1. Fire fighting equipments</i>	<i>Rs. 1,70,000</i>	
<i>2. Generator</i>	<i>Rs.25,20,000</i>	
<i>3. Lift purchased</i>	<i>Rs. 4,00,000</i>	
<i>4. Lift erection</i>	<i>Rs. 6,78,230</i>	
<i>5. Lift expenses</i>	<i>Rs. 80,000</i>	
	<hr/>	<i>Rs. 38,48,230</i>
<i>Net cost of construction</i>		<hr/>
		<i>Rs.2,74,48,156</i>

*The difference between the cost estimated by the DVO and admitted by the assessee as above is (2,84,80,964 - 2,74,48,156 ) = Rs.10,32,808/-. This difference is to be allocated between A.Y.2005-06 & 2006-07 in the ratio of expenditures reported by the assessee.”*

4. This amount of Rs.10,32,808/- was apportioned between all the assessees according to their respective share in the property and the same was added in their respective hands as the undisclosed investment in the property as detailed herein below:-

Assessee	Assessment year	Unexplained investment (Rs.)
M.K. Kirthivasan	2005-06	1,63,700
M.K. Kirthivasan	2006-07	94,502
M.K. Kirthivasan L/H of Mangalam K	2005-06	1,63,700
M.K. Kirthivasan L/H of Mangalam K	2006-07	1,18,125
Estate of M.R. Kannappan By L/H M.K. Srinivasan	2005-06	1,63,700
Estate of M.K. Ravikumar By L/H M.KR. Geetha	2005-06	1,63,700
M.K.R. Bhavani	2006-07	23,625
M.K.R. Krishnakumar	2006-07	23,625
M.K.R. Geetha	2006-07	1,18,125
		-----
Total:-		<b>10,32,802</b>
		=====

5. On appeal, the Ld. CIT(A) confirmed the order of the Ld. AO by agreeing with his view by stating that:-

- i. The Ld. AO had rightly rejected the books of accounts with respect to the cost of construction of the building because many of the vouchers were self-made.
- ii. The Ld. AO had rightly rejected the claim of 10% deduction on account of self supervision because the assessee is not in the business of building construction but they are traders in hardware's and other building materials.
- iii. There is scope for the assesseees to accumulate unaccounted construction materials which might have been utilized for the construction of the building.
- iv. CPWD rate adopted by the DVO is the most appropriate method in the case of the assessee for estimating the cost of construction of the building.
- v. The fee for preparation of drawings, approvals, etc., at 2% of the project cost is appropriate in the case of the assessee's project.

6. At the outset, the Ld. AR submitted before me that the difference between the cost of construction worked out by the Ld. AO and that is reported by the assessee is only Rs.10,32,808/-

which is very nominal considering the total cost of the project estimated by the DVO at Rs.3,56,92,000/-. The Ld. AR further argued stated that the Ld. DVO had estimated the cost of construction by applying the CPWD rates which is very much higher than the rate adopted by the PWD. Since the PWD rates is the most reliable method for estimating the cost of construction of the building because it take into consideration of the local market rates of the raw materials cost required for construction of the building, the same should have been adopted. And if such rate is adopted the estimated cost of Rs.3,56,92,000/- would substantially come down and the cost of construction disclosed by the assesseees would be higher than such estimate. It was therefore pleaded that the addition made by the Ld. AO which is sustained by the Ld. CIT(A) may be deleted in the case of the assesseees.

7. The Ld. DR on the other hand vehemently argued in support of the orders of the Ld.AO and Ld. CIT(A) and pleaded that the same may be sustained.

8. We have heard the rival submissions and carefully perused the materials on record. It is apparent from the facts of

the case that the difference between the estimated cost of construction by the Revenue and the construction cost declared by the assessee is only Rs.10,32,808/- which works out to 3% approximately on the total estimated cost of construction by the Revenue. Further it is also revealed that the estimated cost worked out by the Ld. DVO is based on the CPWD rate which is higher than the PWD rates. Moreover from the order of the Ld. AO and the Ld. CIT(A), it is evident that the Revenue has not categorically made any finding for rejecting the books of accounts maintained by the assessee with respect to the cost of construction of the building. In construction activities, there will be certain self-made vouchers due to payments made towards labourers etc.. Therefore the books/vouchers maintained by the assesseees cannot be simply rejected if proper valid signatures are obtained from the recipients. The family business of the assesseees is trading in cement, paints, steels, hardwares, building materials etc., for more than half century and therefore they are in a position to obtain the raw materials at the most optimal cost. These facts will reduce the cost of the construction of the building which has been not taken note of by the Revenue. Moreover the entire estimate of the building cost by the Ld. DVO is based on the valuation made on the basis of CPWD rates

which is higher than the PWD rates. In this situation, I am of the considered view that the assessee would have been in a reasonably advantageous position to bring down the cost of the construction of the building than what is estimated by the Ld. DVO. In the case of the assessee the variance is only 3% which is very meager. Therefore considering the facts and circumstance of the case, I hereby direct the Ld. AO to delete the addition made on account of unexplained investment with respect to construction of the building in all the above mentioned assessee's case since these additions are not warranted.

9. In the result, all the appeals of the assessee's are allowed in their favour.

Order pronounced on 21<sup>st</sup> March, 2017 at Chennai.

Sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 21<sup>st</sup> March, 2017

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.