IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.3.2021
CORAM :
The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA
Tax Case Appeal Nos.228 of 2014, 570 & 571 of 2015 and 792, 991, 994, 995 & 997 of 2019

The Commissioner of Income Tax, Chennai. ...Appellant in TCA.Nos.228/2014 & 570 & 571/2015

The Principal Commissioner of Income Tax, Central 2, Chennai-34. ...Appellant in TCA.Nos.792, 991, 994, 995 & 997/2019

Vs

M/s.Jubilee Plot & Housing Pvt. Ltd.,
No.1379, 6th Street, I Block,
Golden Villa, Vallallar Kudiyeruppu,
18th Main Road, Anna Nagar,
Chennai - 600 040. ...Respondent in all cases

PRAYERS :

TCA.No.228 of 2014: Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 21.6.2013 made in ITA.No. 1315/Mds/2011 for the assessment year 2008-09 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai

1)against the order of the Commissioner of Income Tax (Appeals)-III,121,M.G.Road, Chennai-34 made in ITA No.800/10-11/a-III, order dated 15/4/2011, Assessment year 2008-2009

2)against the order of the D.C.I.T.Co.Circle-II(3),Chennai-34 made in PAN No. AABCJ3938J Assessment year 2008-2009 dated of order 28.12.2010

TCA.Nos.570 & 571 of 2015: Appeals under Section 260A of the Income Tax Act, 1961 against the common order dated 21.6.2013 made in ITA.Nos.915 and 1097/Mds/2011 for the assessment year 2007-08 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai.

1)against the order of the Commissioner of Income Tax (Appeals)-III,121,M.G.Road, Chennai-34 made in ITA No.488/09-10/A-III, dated 18.03.2011,Assessment year 2007-2008.

2)against the order of the A.C.I.TCo.Circle II(3), Chennai-34 made in PAN No.AABCJ3938J, Assessment year 2007-08, order dated 29.12.2009

TCA.No.792 of 2019: Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 28.3.2019 made in ITA.No. 2258/Chny/2018 for the assessment year 2008-09 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench.

1)against the order of the Commissioner of Income Tax (Appeals)-18, 46,M.G.Road, Chennai-34 made in ITA Nos.210/16-17, dated 03.04.2018, assessment year 2008-2009.

2)against the order of the Assistant Commissioner of Income Tax Central Circle-2(2) Room No.109, Ist Floor, N.No.46,M.G.road, Chennai-34 made in PAN No.AABCJ3938J date of order 31.3.2016, assessment year 2008-2009.

TCA.Nos.991, 994, 995 & 997 of 2019: Appeals under Section 260A of the Income Tax Act, 1961 against the common order dated 24.12.2018 made in ITA.Nos.1450, 1451, 1448 and 1449/Chny/2018, respectively for the assessment years 2013-14, 2014-15, 2011-12 and 2012-13 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench.

1)against the order of the Assistant Commissioner Income Tax Central Circle-2(2) Room No.109, Ist Floor, N.No.46,M.G.Road, Chennai-34 made in PAN No.AABCJ3938J, order dated 31/03/2016, Assessment year 2011-2012.

2)against the order of the Asssistant Commissioner of Income Tax central Circle -2(2) Room No.109, Ist Floor, N.No.46, M.g.Road, Chennai-34 made in PAN No.AABCJ3938J, order dated 31/03/2016,Assessment year 2012-2013.

3)against the order of the Assistant Commissioner of Income Tax Central Circle-2(2) Room No.109, Ist Floor, N.No.46, M.g.Road, Chennai-34 made in PAN No.AABCJ3938J, order dated 31/03/2016, assessment year 2013-14.

4)against the order of the Assistant Commissioner of Income Tax Central Circle -2(2) Room No.109 Ist Floor, N.No.46,M.G.Road, Chennai-34 made in PAN No.AABCJ3938J, order dated 31/03/2016,Assessment year 2014-15.

For Appellants :Mr.T.R.Senthil Kumar, SSC
assisted by Mrs.K.G.Usharani, JSC
For Respondent: Ms.Pushya Sitaraman, SC for Mr.R.Murali

COMMON JUDGMENT
(Judgment was delivered by T.S.Sivagnanam,J)

These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act), are directed against the various orders passed by the respective Benches of the Income Tax Appellate Tribunal, Chennai (for brevity, the Tribunal) in the respective cases.

2. Except TCA.No.792 of 2019, all the other tax case appeals were admitted on the following substantial questions of law:

(i) TCA.No.228 of 2014 (admitted on 17.4.2014) :

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the disallowance made under Section 40(A)(3) amounting to Rs.3.93 crores is to be allowed? and

2. Whether the Tribunal was right in upholding the action of the CIT(A), towards land development expenses amounting to Rs.12.13 crores is to be allowed even though the assessee failed to produce any evidence in support of such claim?"

(ii) TCA.Nos.570 & 571 of 2015 (admitted on 01.9.2015):

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the disallowance made under Section 40A(3) amounting to Rs.22.56 lakhs is to be allowed? and

2. Whether the Tribunal was right in upholding the action of the CIT(A), towards land development expenses amounting to Rs.9.84 crores is to be allowed even though the assessee failed to produce any evidence in support of such claim?"

(iii) TCA.Nos. 994 & 995 of 2019 (admitted on 17.12.2019) :

"(i) Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that the assessing officer cannot initiate proceedings under Section 153A of the I.T.Act, where there was no incriminating material found during the course of search operation u/s.132 of the Act?

(ii) Whether the ITAT was correct in not taking cognizance of the Kerala High Court's decision in the case of CIT v. St.Francis Clay Decor Tiles (385 ITR 624) and the Karnataka High Court's decision in the case of Canara Housing Development Co. V. DCIT (49 taxmann.com 98)? and

(iii) Whether the ITAT was correct in confirming the disallowance of land development expenses @ 24.35% of the said expenditure is not warranted, relying upon its earlier order in the assessee's own case for the assessment years 2007-08 and 2008-09, against which appeal has been preferred by the department?" and

(iv) TCA.Nos.991 and 997 of 2019 (admitted on 17.12.2019):

"(i) Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that the assessing officer cannot initiate proceedings under Section 153A of the I.T.Act, where there was no incriminating material found during the course of search operation u/s.132 of the Act?

(ii) Whether the ITAT was correct in not taking cognizance of the Kerala High Court's decision in the case of CIT v. St.Francis Clay Decor Tiles (385 ITR 624) and the Karnataka High Court's decision in the case of Canara Housing Development Co. V. DCIT (49 taxmann.com 98)? and

(iii) Whether on the facts and in the circumstances of the case, the ITAT was justified in deleting the addition made by estimating the net profit at 31.55% and 24.39% of the turnover, for the assessment years, 2012-13 and 2013-14 respectively, when the assessee has not maintained books of accounts for the said assessment years?"

3. The Revenue filed TCA.No.792 of 2019 by raising the following substantial questions of law :

"1. Whether on the facts and the circumstances of the case, the ITAT is correct in law in deleting the addition made by the Assessing Officer by invoking the provisions of Section 40A(3) even though the assessee has not brought out any specific evidence that its case falls within any of the exceptions provided in Rule 6DD, which has been framed to give relief from the rigours of Section 40A(3) and to cover extraordinary circumstances?

2. Whether on the facts and the

circumstances of the case, the ITAT's conclusion that the CIT(A) has rightly deleted the addition made u/s.40A(3) of the Act was correct, in spite of the fact that many payments have been made by cheque also and both the assessee and the sellers had bank accounts and the assessee has been resorting to cash payments as per his convenience?

3. Whether on the facts and the circumstances of the case, the ITAT was correct in law, in deciding that the additions are not based on incriminating materials without appreciating that these additions are based on solid evidences found during search proceedings? and

4. Whether on the facts and the circumstances of the case, the ITAT was justified in deleting the addition in respect of the receipts from Kannagapattu land purchased from Smt.D.Sangupathi and M/s.SSD Homes & Estate Developers P limited later transferred to the assessee as advances which ought to have been accounted for sales but has been classified under advances?"

4. We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Mrs.K.G.Usharani, learned Junior Standing Counsel appearing for the appellant-Revenue and Mrs.Pushya Sitaraman, learned Senior Counsel appearing for Mr.R.Murali, learned counsel for the respondent-assessee.

Prelude :

AY 2007-08 :

5. For the relevant assessment year namely 2007-08, the assessee filed e-return on 15.11.2008 admitting an income of Rs.11,39,56,780/-. The return was duly processed under Section 143(1) of the Act. Subsequently, the case was taken up for scrutiny and a notice under Section 143(2) of the Act along with a questionnaire was issued on 11.6.2009. The assessee was in the business of property development and the main business was to purchase land, develop it into housing plot and market the same. During the relevant period, the assessee had shown a net profit of Rs.11,36,39,027/- on a total receipt of Rs.70,98,43,848/- from the sale of lands. After verification of the details called for, it was found that out of total purchase, a huge part of the amount was paid by cash and a part by cheque. The assessee was asked to explain as to why the purchase of land made in cash should not be disallowed and added to the total income and the

assessee filed a reply dated 15.12.2010.

6. After examining Rule 6DD of the Income Tax Rules, 1962 (for short, the Rules) and on perusal of the said reply, the Assessing Officer was of the view that exemption from the transaction was provided through account pay cheque drawn on bank on purchase of agriculture or forest produce or like provided that the payment was made to cultivator, grower or producer of such article produced or products. In the assessee's case, for the relevant year, the payment was neither made for such product nor to the producer of such products. Ultimately, the total disallowance under Section 40A(3) of the Act was made amounting to Rs.22,56,596/- and added back to the total income.

7. The other disallowance was with regard to the claim of exemption under the development cost of the land. The assessee claimed substantial expenses towards development cost. The Assessing Officer found that more than 90% of the payments had been made by cash. The Assessing Officer sought supporting materials for the break up of the development cost towards cutting of trees, removing water and other cleaning, supply of sand, jelly, rubbish, gravel stone and quarry dust. However, the assessee failed to discharge the onus nor furnished necessary documents such as bills, register, etc.

8. In the absence of any supporting materials, the Assessing Officer estimated the expenses towards land development cost. In addition, on verification of the documents, it came to light that a part of the expenses was made through self made vouchers incurred in cash and that the assessee did not deduct tax at source in respect of that portion of the payments. In furtherance of it, cash expenses to the tune of Rs.39,08,78,254/- was accounted to self made debit vouchers, which only contained the amount paid and the signature of the recipient and it did not contain the address of the party. The assessee also claimed a total cash payment of Rs.39,08,78,254/- during the relevant year namely AY 2007-08 and the average expenses per day were shown as Rs.10,70,900/-. In the absence of proper documents, the Assessing Officer disallowed a sum of Rs.6,22,75,902/- towards 20% of the claim of expenditure made in cash and added back to the total income and finally arrived at the assessed income to the tune of Rs.22,09,77,552/-, completed the assessment by order dated 29.12.2009 and raised a demand to the tune of Rs.5,68,31,528/-.

9. As against the order of assessment, the assessee filed an appeal before the CIT(A), who, by order dated 18.3.2011, partly allowed the appeal by confirming the disallowance made by the Assessing Officer under Section 40A(3) of the Act and allowing the claim of the assessee towards development expenses among other things. Aggrieved by that, both

the Department as well as the assessee filed two appeals before the Tribunal, which, by order dated 09.7.2013, deleted the disallowance made under Section 40A(3) of the Act and allowed the claim of the assessee towards land development expenses. Hence, the Revenue is before us by filing TCA.Nos.570 and 571 of 2015.

AY 2008-09 :

10. The assessee filed their return of income on 30.9.2008 disclosing the income to the tune of Rs.70,05,56,400/-. The assessment was completed under Section 143(3) of the Act on 28.12.2010 by making two disallowances, the first of which was for a sum of Rs.14,18,77,251/- under Section 40A(3) of the Act the and the second was to the tune of Rs.12,13,61,729/- towards land development cost claimed. Aggrieved by that, the assessee filed an appeal before the concerned Commissioner of Income Tax (Appeals) [for short, the CIT(A)], who, by order dated 15.4.2011, partly allowed the appeal by deleting the disallowance to the tune of Rs.12,13,61,729/- towards land development cost and by deleting the addition to the tune of Rs.3,93,00,000/- out of the total disallowance to the tune of Rs.14,18,77,251/- made under Section 40A(3) of the Act. Aggrieved by that, both the assessee as well as the Revenue filed appeals before the Tribunal. Ultimately, by order dated 21.6.2013, the Tribunal confirmed the adjudication made by the CIT(A) with regard to deletion of disallowance towards land development cost and a part deletion of the disallowance under Section 40A(3) of the Act. But, in respect of the balance disallowance to the tune of Rs.10,25,77,251/- sustained by the CIT(A) out of the total disallowance of Rs.14,18,77,251/- made by the Assessing Officer under Section 40A(3) of the Act, the Tribunal remitted the issue back to the Assessing Officer. As against the order dated 21.6.2013, the Revenue is on appeal by filing TCA.No.228 of 2014.

11. In the meanwhile, there was a search and seizure conducted in the premises of the assessee on 03.9.2013 and a notice under Section 153A of the Act was issued. Thereafter, the assessee filed revised return by disclosing the same income returned originally. Pursuant to that, the assessment was completed on 31.3.2016 under Section 143(3) read with Section 153A of the Act, by which, the Assessing Officer confirmed the disallowance of Rs.10,25,77,251/- sustained by the CIT(A) in the earlier round of litigation on the ground that the assessee effected cash and cheque payments for purchasing the land in Kannagapattu village.

12. Aggrieved by the order of assessment dated 31.3.2016, the assessee filed an appeal before the CIT(A), who allowed it by order dated 03.4.2018. As against the same, the

Revenue filed an appeal before the Tribunal, which, by order dated 28.3.2019, dismissed the same. Hence, the Revenue is on appeal before us by filing TCA.No.792 of 2019.

AY 2011-12 to 2014-15 :

13. For these assessment years also, the assessments were completed on 31.3.2016 pursuant to the search and seizure operations conducted on 03.9.2013. For the assessment years from 2011-12 to 2013-14, the notices under Section 153A of the Act 29.4.2014 were issued. But, in all the four cases, a notice under Section 142(1) came to be issued. Pursuant to that, the assesssee filed their return of income declaring the income to the tune of Rs.6,09,19,530/-, Rs.10,70,23,600/-, Rs.8,05,82,670/- and Rs.1,01,46,150/- respectively.

14. The Assessing Officer arrived the total income at Rs.15,99,81,007/- and Rs.4,53,69,402/- respectively for the assessment years 2011-12 and 2014-15 in view of disallowance of the amounts claimed towards land development expenses. As against the assessment orders dated 31.3.2016 for the years 2011-12 and 2014-15, the assessee filed appeals before the CIT (A), who, ultimately, allowed the appeals by a common order dated 12.1.2018 and deleted the additions towards land development cost.

15. For the assessment years 2012-13 and 2013-14, the income were determined at Rs.20,65,16,835/- and Rs.18,21,41,348/- including long term capital gains. As against the orders of assessment for the years 2012-13 and 2013-14, the assessee preferred appeals before the CIT(A), who, by another common order dated 12.1.2018, also allowed the appeals and deleted the additions on the ground that the books of accounts of the assessee had not been rejected by the Assessing Officer.

16. As against the two common orders dated 12.1.2018 respectively for the assessment years 2011-12 and 2014-15 as well as 2012-13 and 2013-14, the Revenue preferred appeals before the Tribunal, which, by the common order dated 24.12.2018, dismissed the appeals. Therefore, the Revenue is before us by way of TCA.Nos. 991, 994, 995 and 997 of 2019.

17. The following table would be a ready reckoner with regard to the issues involved in the above tax case appeals :

S.No.	TCA.No.	Assessment Year	Issues
1.	228 of 2014	2008-09	1. Land Development Expenses 2. Disallowance U/S 40A (3)
2.	570 and 571 of 2015	2007-08 for both cases	1. Land Development Expenses 2. Disallowance U/S 40A (3)
3.	792 of 2019	2008-09	1. Land Development Expenses 2. Disallowance U/S 40A (3) 3. Incriminating materials
4.	991 of 2019 994 of 2019 & 995 of 2019	2011-12 2012-13 2013-14 &	1. Land Development Expenses 2. Incriminating materials
5.	997 of 2019	2014-15	1. Land Development Expenses
6.	792 of 2019	2008-09	1.Addition on account of escapement of sales

I. Issue pertaining to land development expenses :

18. One of the issues involved in the batch of cases, which is common to the all the assessment years namely 2007-08, 2008-09, 2011-12, 2012-13, 2013-14 and 2014-15, is with regard to land development expenses incurred by the respondent/assessee.

19. Since the issue is common for all the aforementioned assessment years, we have examined the order of assessment passed under Section 143(3) of the Act for the assessment year 2007-08 dated 29.12.2009. On appeal by the assessee, the CIT(A), by order dated 18.3.2011, partly allowed the appeal by confirming the disallowance made by the Assessing Officer under Section 40A(3) of the Act and by allowing the claim of the assessee towards development expenses. Aggrieved by that, both the Department as well as the assessee filed two appeals before the Tribunal. The two salient features in the order dated 09.7.2013 passed by the Tribunal are (i) upholding the order passed by the CIT(A) in deleting the disallowance made under Section 40A(3) of the Act and (ii) allowing the claim of the assessee towards land development expenses.

20. The Assessing Officer was of the opinion that the expenditure claimed by the assessee towards land development was highly excessive and bogus. The Assessing Officer examined each of the heads of expenses namely JCB work, bulldozer hire charges, tractor hire charges, land leveling charges, expenses towards jelly and sand materials, etc. and disallowed the expenses claimed by the assessee, which was approximately to the tune of Rs.27 lakhs per acre of land.

21. On appeal before the CIT(A), the assessee had elaborately made submissions and primarily contended that the Assessing Officer did not reject the books of accounts of the assessee, that the accounts were duly certified by a Chartered Accountant and that there was no debit entry, etc. After taking note of the factual position, the CIT(A) held that the disallowance was not justified. The CIT(A) noted that the assessee produced vouchers, which contained the details of the names, amounts and signatures and merely because the addresses were not given, the vouchers could not be treated as bogus vouchers. Further, the CIT(A) agreed with the assessee that the debit vouchers were not created for claiming any expenditure, but they actually vouched the expenses incurred by the assessee. Furthermore, the CIT(A) noted that the Assessing Officer had checked only the vouchers for the period from 25.3.2007 to 31.3.2007 on a test check basis and not for the whole year. In addition, the CIT(A) observed that the Assessing Officer had not brought out any material on record to establish that the vouchers were bogus.

22. One more important fact, which the CIT(A) noted was that in spite of the so called high expenditure incurred for

land development, the assessee was able to show the net profit rate of 16.01%, which, by any standard, was very reasonable. Thus, the Tribunal set aside the disallowance made by the Assessing Officer.

23. The finding rendered by the CIT(A) was tested for its correctness by the Tribunal, which re-appreciated the facts and concurred with the CIT(A). Therefore, we find no good ground to interfere with the said factual finding. We also find that there are no questions of law, much less substantial questions of law arising in these appeals.

24. Accordingly, with regard to the issue of land development expenses, all the above tax case appeals filed by the Revenue stand dismissed.

II. Issue pertaining to disallowance under Section 40A(3) for the assessment year 2007-08 :

25. The second issue is with regard to disallowance under Section 40A(3) of the Act for the assessment year 2007-08.

26. The Assessing Officer did not agree with the assessee that cash payments were made to the vendors and went by the letter and spirit of Section 40A(3) of the Act that cash payments have been effected beyond the threshold limit and therefore disallowed the same. The assessee preferred an appeal before the CIT(A), who examined the genuineness of the transaction as to whether the assessee would be entitled to claim the benefit of the proviso to Section 40A(3) of the Act. The CIT(A) rejected the finding on the fact that the cash payments were duly recorded in the registered sale deed and they were endorsed by the concerned Sub-Registrar and the total sale consideration was taken into consideration for the purpose of demanding the stamp duty and registration purposes. Therefore, the CIT(A) held that when the Government official namely Registering Authority certified that the payments were actually made to the sellers and when the genuineness of the sale was not doubted, the disallowance under Section 40A(3) of the Act could not be made. The CIT(A) did not agree with the assessee and confirmed the disallowance.

27. The Tribunal tested the correctness of the decision of the CIT(A). The assessee was a builder and developer and the lands purchased by the assessee were in the nature of stock-in-trade and certain purchases were made in cash and such purchases by cash would be hit by Section 40A(3) of the Act unless otherwise exempted under Rule 6DD of the Rules. The Tribunal noted that the assessee was a business man and the cash payments were done for the purchase of lands and also took note that in majority of land dealings, land owners would insist upon payment of money in cash. Furthermore, the Tribunal also noted that the

payments were duly recorded in the sale deed, that the same has been registered by the Sub-Registrar and that the amount had been taken into consideration for the purpose of calculating stamp duty and registration.

28. Thus, we find, on facts, that there is no question of law, much less substantial question of law arising in the relevant appeals. Accordingly, with regard to the issue of disallowance under Section 40A(3) of the Act for the assessment year 2007-08, TCA.Nos.570 and 571 of 2015 stand dismissed. No costs.

III. Issue pertaining to disallowance under Section 40A(3) of the Act for the assessment year 2008-09 :

29. The issue relating to disallowance under Section 40A (3) of the Act also arises for the assessment year 2008-09, which is a question of law to be decided in TCA.Nos.228 of 2014 and 792 of 2019.

30. The assessee purchased the land from 67 vendors, out of which, in respect of 12 vendors, the assessee paid the amounts by cheques. For 40 vendors, the payments were effected both by cheques and by cash and for the remaining 15 vendors, payments were made only by cash. The assessee was called upon to explain as to why payments were effected especially to the extent of such a huge amount of money. They stated that the land owners, from whom, the agricultural lands were purchased, were residing in Kannagapet and Chettipunniyam villages where there was no banking facility, that as per the details given by the vendors, they did not have any bank account, that the payments were made at their respective houses in the villages, that in some cases, the initial advance was paid through agents only and that subsequently, on account of compulsion, some of the vendors opened the bank account in the nearby town and the assessee paid the amounts by cheque. They further stated that the vendors were uneducated, that they were not able to come out of their village to open the bank account, that in such a situation, the assessee was compelled to pay the amount by cash and that in some cases, the assessee paid the amount by cash on holidays as the vendors had to honour their commitments.

31. The Assessing Officer was not convinced with the explanation offered by the assessee and accordingly disallowed that portion of the payments, which were made by the assessee by cash to the vendors excluding the amounts paid for stamp duty and registration charges.

32. Aggrieved by such an order, the assessee preferred an appeal before the CIT(A). The factual position was explained before the CIT(A), who found that for the payment made in respect of 15 land owners to the tune of Rs.3,93,00,000/-, the

vendors were residents of Kannagapattu Village, that they did not have banking facilities and that the Village Administrative Officer concerned certified that there was no bank in Kannagapattu Village. Hence, the explanation offered by the assessee was accepted and the disallowance to that extent was deleted. With regard to the balance payments namely the payments made to 40 vendors, which were by cash as well as by cheque to the tune of Rs.10,25,77,251/-, the CIT(A) did not agree with the assessee stating that there was no acceptable reason given by the assessee as to why they could not effect the entire payment by cheque when they were able to pay certain amounts through cheque. Therefore, the disallowance made by the Assessing Officer to that extent was sustained.

33. The assessee carried the matter by way of appeal to the Tribunal. The Revenue was also on appeal. The findings rendered by the Tribunal in its order dated 21.6.2013 in ITA.No.1241/Mds/2011 were in paragraphs 9 and 10. The Tribunal stated that the order passed by the CIT(A) was a cryptic order and that he had not examined as to whether any part of the extent would be covered by Rule 6DD of the Rules. Further, the Tribunal commented upon the Assessing Officer for having made observations, which, in the opinion of the Tribunal, were without application of mind. Accordingly, the orders passed by both the CIT(A) and the Assessing Officer were set aside and the matter was remitted back to the Assessing Officer for a fresh examination.

34. In our considered view, the order passed by the CIT (A) cannot be taken to be a cryptic order as could be seen from paragraph 7 of the order dated 15.4.2011. The CIT(A) tested the correctness of the order passed by the Assessing Officer and granted partial relief to the assessee. In respect of the remaining amount where the disallowance was sustained, the CIT (A) assigned reasons as to why he did not agree with the assessee. The decisions, which were relied upon by the assessee, were taken note of by the CIT(A) and reasons were given as to why they would not apply to the case of the assessee. Hence, we do not agree with the finding of the Tribunal that the order passed by the CIT(A) is a cryptic order.

35. So far as the order passed by the Assessing Officer is concerned, the Tribunal stated that it was without application of mind. This observation also seems to be factually incorrect because sustainability of the reply given by the assessee was examined by the Assessing Officer. In paragraph 3.2 of the assessment order dated 28.12.2010, the Assessing Officer extracted the explanation offered by the assessee in their written submission dated 15.12.2010. To say the least, the said written submission is absolutely vague without furnishing any details. Consequently, the Assessing Officer cannot be faulted for having completed the assessment and assigning reasons as to

why the disallowance has to be made.

36. Therefore, we are of the view that it is not a case where the CIT(A) passed a cryptic order nor the order passed by the Assessing Officer is without application of mind. The assessee has to be blamed for the same because of not giving a proper explanation/reply to the query raised by the Assessing Officer. In any event, we do not propose to non suit the assessee on the ground that certain details were not furnished in proper form. The assessee would state that certain of the vendors, who did not have bank accounts, could not come out of the village to open up the bank account and after insistence, they had opened the bank accounts and in certain cases, advance was paid to the vendors so as to enable them to keep up various other commitments, to which, they had been fastened.

37. Therefore, while vacating the remarks made by the Tribunal as against the CIT(A) and the Assessing Officer, we remand the matter to the Assessing Officer to consider the genuineness of the stand taken by the assessee in so far as the payments made to the tune of Rs.10,25,77,251/-, afford an opportunity of personal hearing to the authorized representative of the assessee and redo the assessment only to the extent indicated in accordance with law. In the light of the order of remand passed by us for the assessment year 2008-09 with regard to disallowance under Section 40A(3) of the Act, TCA.Nos.228 of 2014 and 792 of 2019 stand allowed. The relevant substantial questions of law are left open.

IV. Issue pertaining to the presence of incriminating materials for the assessment years 2008-09 and 2011-12 to 2013-14 :

38. The issue as to whether incriminating materials should be available for initiation of proceedings under Section 153A of the Act is a question of law (i) raised for consideration in TCA.No.792 of 2019 for the assessment year 2008-09 and (ii) framed for consideration for the for the assessment years from 2011-12 to 2013-14.

39. The Revenue rests their arguments by placing reliance on the following decisions :

(i) of the Kerala High Court in the case of CIT Vs. St.Francis Clay Decor Tiles [reported in (2016) 70 Taxmann.com 234];
(ii) of the Allahabad High Court in the case of CIT Vs. Raj Kumar Arora [reported in (2014) 52 Taxmann.com 172];
(iii) of the Kerala High Court in the case of E.N.Gopakumar Vs. CIT [reported in (2016) 75 Taxmann.com 215];
(iv) of the Delhi High Court in the case of Filatex India Ltd. Vs. CIT [reported

in (2014) 49 Taxmann.com 465];

(v) of the Kerala High Court in the case of Dr.A.V.Sreekumar Vs. CIT [reported in (2018) 90 Taxmann.com 355]; and

(vi) of the Kerala High Court in the case of Sunny Jacob Jewellers and Wedding Centre Vs. DCIT [reported in (2014) 48 Taxmann.com 347].

40. These decisions are pressed into service by the Revenue for the proposition that there has been no requirement under the provisions of the Act for the Department to collect information and evidence for six previous years preceding the assessment year in order to initiate proceedings under Section 153A of the Act. Further, during the assessment under Section 153A of the Act, additions need not be restricted or allowed to incriminating materials found during the course of search.

41. So far as the assessee is concerned, they would place heavy reliance on the following decisions

(i) of the High Court of Delhi in the case of PCIT Vs. Smt.Amita Garg [reported in (2020) 114 Taxmann.com 551];

(ii) of the Rajasthan High Court in the case of Jai Steel (India) Ltd. Vs. ACIT [reported in (2013) 219 Taxmann 223];

(iii) of the Bombay High Court in the case of CIT Vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. [reported in (2015) 374 ITR 645]; and

(iv) of the Delhi High Court in the case of CIT Vs. Kabul Chawla [reported in (2016) 380 ITR 573].

42. It is pointed out by the learned Senior Standing Counsel that as against the decision of the Delhi High Court in the case of Smt. Amita Garg, the Revenue filed a special leave petition before the Hon'ble Supreme Court, in which, leave has been granted and the matter has been tagged along with Civil Appeal No.14702 of 2015 as reported in (2020) 114 Taxmann.com 552 [PCIT Vs. Devi Dass Garg].

43. As against the decision of the Bombay High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd., an appeal was filed before the Hon'ble Supreme Court, leave has been granted and the appeal has been directed to be tagged along with Civil Appeal No.8900 of 2012 as reported in (2015) 64 Taxmann.com 34.

44. Further, we note that the same issue was decided

against the assessee and the assessee is on appeal before the Hon'ble Supreme Court in the case of Dayawanti Vs. CIT [S.L.P. (C).No. 20559 of 2017], in which, an order of interim stay has been granted by the Hon'ble Supreme Court by order dated 03.10.2017.

45. Thus, the issue as to whether the incriminating materials are required to be present or not is now before the Hon'ble Supreme Court. What is required to be seen in the case on hand is as to whether the relief was granted to the assessee solely for the reason that there was no incriminating material available pursuant to the search. A perusal of the orders impugned before us and more particularly the order passed by the Tribunal dated 28.3.2019, which is impugned in TCA.No.792 of 2019, we find that the Tribunal examined the correctness of the order passed by the CIT(A), who proceeded entirely on the merits of the matter and therefore, the assessee was granted relief by the CIT(A) solely for the reason that there was no incriminating material. But, the CIT(A), having been satisfied on facts, held that no addition needed be made.

46. So far as the order of the Tribunal for the assessment year 2011-12, which is impugned in TCA.No.991 of 2019 is concerned, Mr.T.R.Senthilkumar, learned Senior Standing Counsel appearing for the appellant/Revenue is right in his submission that the Tribunal granted relief to the assessee for the reason that no incriminating material had been found in the course of search and confirmed the order passed by the CIT(A).

47. However, when we peruse the common order passed by the CIT(A) dated 12.1.2018 for the assessment years 2011-12, 2014-15 and 2015-16 (with which, we are not concerned in this judgment), we find that the CIT(A) examined the merits of the matter and found that there was no justification for various disallowances. Therefore, the Tribunal probably missed out this factual position presumably because a batch of cases were before the Tribunal and in all probabilities, both the assessee and the Revenue might not have placed full break up details in a convenient format.

48. Be that as it may, the relief granted to the assessee is on facts and on merits of the disallowances made and not on the ground that no incriminating material was available. In one of the cases, the correctness of this decision was tested by the Tribunal and the view taken by the CIT(A) has been affirmed. Since the entire dispute revolves on the factual matrix, we are not expected to substitute our opinion in an appeal under Section 260A of the Act. Thus, we hold that there is no question of law, much less substantial question of law arising for consideration on this issue.

49. Accordingly, on this issue, we dismiss TCA.Nos.792, 991, 994 and 995 of 2019.

V. Issue pertaining to addition on account of escapement of sales :

50. This leaves us with only one question to be decided in TCA. No.792 of 2019, which is substantial question of law No.4 framed for consideration. At the risk of repetition, it is extracted as hereunder :

> "Whether on the facts and the circumstances of the case, the ITAT was justified in deleting the addition in respect of the receipts from Kannagapattu land purchased from Smt.D.Sangupathi and M/s.SSD Homes & Estate Developers P limited later transferred to the assessee as advances which ought to have been accounted for sales but has been classified under advances?"

51. We have carefully considered the submissions made by the learned counsel on either side. On perusal of the order passed by the CIT(A) dated 03.4.2018, it is seen that the CIT(A) considered the factual aspects in a detailed manner and deleted the additions. This finding has been affirmed by the Tribunal after re-appreciating the facts. We find no substantial question of law arising for consideration. Hence, with regard to this issue, TCA.No.792 of 2019 stands dismissed.

52. In fine,

(i) with regard to the issue of land development expenses, all the above tax case appeals filed by the Revenue stand dismissed as no substantial question of law arises for consideration;

(ii) with regard to the issue of disallowance under Section 40A(3) of the Act for the assessment year 2007-08, TCA.Nos. 570 and 571 of 2015 stand dismissed as no substantial question of law arises for consideration;

(iii) In the light of the order of remand passed by us for the assessment year 2008-09 with regard to disallowance under Section 40A(3) of the Act, TCA.Nos.228 of 2014 and 792 of 2019 stand allowed. The relevant substantial questions of law are left open;

(iv) with regard to the issue pertaining to presence of incriminating materials for the assessment year 2008-09 and 2011-12 to 2013-14, we dismiss TCA.Nos.792, 991, 994 and 995 of 2019 as no substantial question of law arises for consideration; and

(v) with regard to the issue pertaining to addition on account of escapement of sales, TCA.No.792 of 2019 is dismissed as no substantial question of law arises for consideration.

No costs.

sd/-
Assistant Registrar(CS III)

/True Copy/

Sub Assistant Registrar

hvk/RS

To

1.The Income Tax Appellate Tribunal,
'A' and 'C' Benches, Chennai

2.The Commissioner of Income Tax(Appeals)-III, 121, M.G.Road, Chennai-34.

3.The Commissioner of Income Tax(Appeals)-18,
46,M.G.Road, Chennai-34.

4.The Deputy Commissioner of Income Tax Co.Circle-II(3), Chennai-34.

5.The Assistant Commissioner of Income Tax Co.Circle -II(3), Chennai-34.

6.The Assistant Commissioner of Income Tax,
Central Circle -2(2) room No.109., Ist Floor,
No.No.46,M.G.road, Chennai-34

+1cc to Mr.T.R.Senthilkumar, Advocate , SR.NO. 13496

T.C.A.No.228 of 2014
etc.cases

SR-II
KKN 17.04.2021