

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

श्री वी दुर्गा राव, न्यासदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **2407, 2408, 2409, 2410 & 2411/CHNY/2019**  
निर्धारण वर्ष / Assessment Years: 2011-12, 2012-13, 2013-14, 2014-15  
& 2015-16

**The DCIT,**  
Corporate Circle – 2(1),  
Chennai.

**M/s. GSNR Rice Industries**  
v. **Pvt. Ltd.,**  
(Formerly known as M/s. SNR  
Rice Industries Pvt. Ltd.,)  
No.21, C V Raman Raod,  
Alwarpet, Chennai – 600 018.  
**PAN: AAMCS 5834P**

आयकर अपील सं./ITA No.: **2406/Chny/2019**  
निर्धारण वर्ष / Assessment Year: 2016-17

**The DCIT,**  
Corporate Circle – 2(1),  
Chennai.

**Shri Kanakkilianallur**  
v. **Narayana Reddiyar**  
**Manivannan,**  
No.1, Tejas Park, Dhanalakshmi  
Bhavan, Aathupalayam Village,  
Thirumuruganpoondi,  
Tirupur-641652.  
**PAN: AFLPM1623F**

आयकर अपील सं./ITA No.: **2825/Chny/2019**  
निर्धारण वर्ष / Assessment Year: 2016-17

**The Income Tax Officer,**  
Non-Corporate Ward – 1(4),  
Chennai.

**Shri Kanakkilianallur**  
v. **Narayana Nehru,**  
No.19, Bishop Wallas Avenue,  
1<sup>st</sup> Street, Main Road,  
Mylapore, Chennai-600004.  
**PAN: ABQPN6268A**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Srinivasa Rao, CIT-DR  
प्रत्यर्थी की ओर से/Respondent by : Shri V. Nagaprasad, Advocate

सुनवाई की तारीख/Date of Hearing : 18.03.2021  
घोषणा की तारीख/Date of Pronouncement : 09.06.2021

## **आदेश /O R D E R**

### **Per G. MANJUNATHA, AM:**

These seven appeals filed by the Revenue are directed against common order of learned Commissioner of Income Tax (Appeals)-6, Chennai, dated 29.05.2019 and pertains to assessment years 2011-12 to 2015-16, order of learned Commissioner of Income Tax (Appeals)-6, Chennai, dated 29.05.2019 and pertains to assessment year 2016-17 and order of learned Commissioner of Income Tax (Appeals)-2, Chennai, dated 26.07.2019 and pertains to assessment year 2016-17. Since facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed of by this consolidated order.

2. The Revenue has more or less raised common grounds of appeal for all Assessment Years, therefore, for the sake of brevity, grounds of appeal raised for the Asst. Year 2011-12 are reproduced as under:-

The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.

1.1 CIT(A) erred in deleting the addition made u/s 68 of the Act, by holding that the addition was made on the cash receipts as per contents in diary/notebook and the retrieved data from the computer CPU

which was disowned by the assessee and these are not the regular “books of accounts” maintained by the assessee. In such a case, the provisions of section 68 have no application

1.2 CIT(A) ought to have appreciated the fact that as per section 68 of the Act, nowhere it is mentioned ‘regular’ books of accounts. The intention of the legislature to mention as ‘books’ is to include all the books whether it is regular or irregular: disclosed or undisclosed.

1.3 CIT(A) relying the diary to hold that the ‘cash receipts’ as reflected in the diary are on account of business transactions/receipts of the assessee when CIT(A) has not considered the diary/notebook and the retrieved data from the computer CPU are the regular “books of accounts” maintained by the assessee while deleting the addition made u/s68 of the Act which is contradictory in nature.

1.4 The decision of the CIT(A) is contrary to his findings vide para 6.1.36 wherein the CIT(A) held that the entries of ‘cash receipts’ found in the diary and the note book are to be treated as the transactions of the assessee company, since they were found in the business premises of the assessee.

1.5 CIT(A) erred in while deleting the addition u/s 68 by holding that none of the amounts as assessed to tax u/s68 of the Act, were found in the books of accounts which are maintained by the assessee for all the five AYs., under consideration, subjected the same for compulsory auditing u/s44AB of the Act, which is contradictory to the findings of CIT(A) vide para.6.1.41, wherein the CIT(A) himself confirms that there is unaccounted sales/purchases and on which the profit was calculated on the basis of GP ratio.

For these and other grounds that may be adduced at the time of hearing, it is prayed that the Order of the learned Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.

3. The brief facts of the case are that there was a Survey u/s. 133A of the Income Tax Act, 1961 conducted in the business premises of M/s. GSNR Rice Industries P Ltd (formerly known as M/s. SNR Rice Industries P Ltd) on 30.01.2018. During the course of

survey proceedings, several incriminating materials were found. These include (i) Diary (impounded as "Ann.SNR/PVD/B&D/Diary-S.no.2"); (ii) Note book (impounded as "Ann.SNR/PVD/B&D/Diary—S.no.6"); (iii) loose sheets (impounded as Ann.SNR/PVD/B&D/LS-1—44&45"); and (iv) Computer CPU, laptop, pen drives etc. Analysis of these materials revealed that the above diary (Ann.SNR/PVD/B&D/Diary-S.no.2) contained noting (in Tamil) showing cash receipts Rs.5.80 crores from XI' during the F.Y.2010-11 and cash receipts Rs.6.50 crores during the F.Y.2011-12. Further, in the Note book (Ann.SNR/PVD/B&D/Diary—S.no.6) at Page no.28 it was mentioned that Rice stock - Rs.17 lakh, Cash received from Minister - Rs. 16,23,90,000/- and at Page no.31 Money from Minister - Rs.16,24,00,000/-. Similarly, Loose sheets marked as (Ann.SNR/PVD/B&D/LS-1 — 44&45) contained details of expenditure Rs.3,00,30,312/- relating to DMK 10<sup>th</sup> Maanila Maanadu (DMK 10<sup>th</sup> State level conference) held in 2013-14. The Computer CPU was sent to Forensic examination and Forensic imaging of the CPU was done and the deleted data was retrieved and analyzed. The retrieved data was relating to the assessee transactions, maintained in 'Tally' software. The data was compared with the assessee regular books of accounts and found that the following transactions (found in the retrieved 'tally' software) were not reflected in the regular books of accounts.

Asst. Year: 2012-13:

Nature	Amount	Reference evidence
Unexplained cash credits	1,25,00,000	Cash received from True Value Homes P Ltd. Ledger – True Value Homes P Ltd – in the books of accounts of SNR Rice Industries P Ltd.

	4,49,50,000	Cash received from KN Manivannan into SNR Rice Industries P Ltd Ledger – KN Manivannan-Capital-in the books of account of SNR Rice Industries P Ltd
Unexplained Investments	76,78,250	Payments made for acquiring Agricultural land by KN Manivannan. Ledger-KN Manivannan-Agri Land – in the books of account of SNR Rice Industries P Ltd
	34,38,675 (cash) 4,00,000 (cheque)	Payments made for Land purchase by SNR Rice Industries P Ltd Ledger – Land purchase – in the books of account of SNR Rice Industries P Ltd
Total	6,90,12,925	

## Asst. Year: 2013-14:

Nature	Amount	Reference evidence
Unexplained cash credits	1,10,00,000	Cash received from True Value Homes P Ltd. Ledger – True Value Homes P Ltd – in the books of accounts of SNR Rice Industries P Ltd.
	5,30,55,000	Cash received from KN Nehru (KNN) into SNR Rice Industries P Ltd Ledger – KNNI RAVI - in the books of accounts of SNR Rice Industries P Ltd
	50,00,000	Cash received from Janani Minerals Trichy into SNR Rice Industries P Ltd Ledger – Janani Minerals Trichy – in the books of accounts of SNR Rice Industries P Ltd.
	98,00,000	Cash received from KN Manivannan into SNR Rice Industries P Ltd Ledger – KN Manivannan-Capital-in the books of account of SNR Rice Industries P Ltd
Unexplained Investments	1,84,84,000	Payments made for acquiring Agricultural land by KN Manivannan. Ledger-KN Manivannan-Agri Land – in

		the books of account of SNR Rice Industries P Ltd
	54,09,234 (cash)	Payments made for Land purchase by SNR Rice Industries P Ltd Ledger – Land purchase – in the books of account of SNR Rice Industries P Ltd
Total	10,27,48,234	

## Asst. Year: 2014-15:

Nature	Amount	Reference evidence
Unexplained cash credits	378,00,000	Cash received from KN Nehru (KNN) into SNR Rice Industries P Ltd Ledger – KNNI RAVI - in the books of accounts of SNR Rice Industries P Ltd
Unexplained Investments	2,86,63,000 (cash) 60,44,000 (cheque)	Payments made for acquiring Agricultural land by KN Manivannan. Ledger-KN Manivannan-Agri Land – in the books of account of SNR Rice Industries P Ltd
	4,80,000 (cash)	Payments made for Land purchase by SNR Rice Industries P Ltd Ledger – Land purchase – in the books of account of SNR Rice Industries P Ltd
Total	7,29,87,000	

## Asst. Year: 2015-16:

Nature	Amount	Reference evidence
Unexplained cash credits	25,00,000	Cash received from True Value Homes P Ltd. Ledger – True Value Homes P Ltd – in the books of accounts of SNR Rice Industries P Ltd. (reflected in loose sheet 77&78)
	1,76,63,000	Cash received from KN Nehru (KNN) into SNR Rice Industries P Ltd (including Rs.25 lakhs in loose sheet numbered 77&78) Ledger – KNNI RAVI – in the books of accounts of SNR Rice Industries P Ltd
	30,00,000	Cash received from KN Manivannan into SNR Rice Industries P Ltd

		Ledger – KN Manivannan-Capital-in the books of account of SNR Rice Industries P Ltd
Unexplained Investments	2,25,17,000 (cash) 22,00,000 (cheque)	Payments made for acquiring Agricultural land by KN Manivannan. Ledger-KN Manivannan-Agri Land – in the books of account of SNR Rice Industries P Ltd
	51,00,000 (cash) 16,50,000 (cheque)	Payments made for Land purchase by SNR Rice Industries P Ltd Ledger – Land purchase – in the books of account of SNR Rice Industries P Ltd
Total	5,46,30,000	

4. During the course of survey and post survey investigation, sworn statements of Shri. V Krishnamurthy, was recorded, where he had admitted that he works for the assessee as Manager and looks after total administration. He, further, stated that he had maintained the diary, but could not recollect the contents. Further, sworn statement of K. N. Maninavvan, Managing Director of Assessee Company, was also recorded where he had explained that diary (Ann.SNR/PVD/B&D/Diary-S.no.2) and the note book (Ann.SNR/ PVD/B&D/Diary—S.no.6) does not belong to assessee and its business transactions. The assessee explained that the diary and the note book belonged to one Mr. V. Krishnamurthy, who is not in the pay rolls of the assessee. The assessee disowned the contents of diary and note book. Regarding discrepancies found in the transactions maintained in retrieved 'Tally' software, the assessee company explained that these were amounts received from M/s. True Value Holes P Ltd and used for various purposes of the assessee group. The Accountant, who maintains accounts in tally software, made entries as and when

amount was received from M/s. True Value Holes P Ltd, and further, when amounts were spent for purposes other than that of the assessee company, or found to be not correct, he deleted the same. Regarding the loose sheets (Ann. SNR/ PVD /B&D /LS- 1—44&45), the assessee claimed that there was a DMK 10<sup>th</sup> State level conference held in Trichy in 2013-14 and the expenditure of Rs.3,00,30,312/- relates to said conference. The assessee further claimed that expenditure was incurred by the DMK party. The assessee further claimed that Shri. KN Nehru, the brother of Managing Director of the company was the District Secretary of DMK, and hence when he/his men who visited the premises, inadvertently left said papers in the assessee premises. This fact has been confirmed by one Mr. Ramesh, Accountant in his sworn statement recorded during the course of survey.

5. The Assessing Officer, during the course of assessment proceedings examined the information / contents or discrepancies found in the diary, note book, retrieved data from CPU, loose sheets and required the assessee to explain the same. As the assessee could not explain the transactions properly, the Assessing Officer treated the amounts found as received from different persons, as contained in the said books/documents, as unexplained cash credits u/s.68 of the Act and brought to tax. The amounts so brought to tax, u/s.68 of the Act, are as under:

Unexplained cash credits u/s.68:	A.Y. 2011-12	A.Y.2012-13	A.Y.2013-14	A.Y.2014-15	A.Y.2015-16
<b>Based on an entries in the diary</b>					
1. Cash received from 'X1'	5,80,00,000	-	-	-	-
2. Cash received	-	6,50,00,000	-	-	-
<b>Based on an entries in Note Book</b>					
1. Cash received from Minister	-	-	16,24,00,000	-	-



<b>Based on CPU 'tally' accounts</b>					
1. Cash recd. from True-Value-Home	-	1,25,00,000	1,10,00,000	-	25,00,000
2. Cash recd. from KN Manivannan	-	4,49,50,000	98,00,000	-	30,00,000
3. Cash recd. from Janani Minerals	-	-	50,00,000	-	-
4. Cash recd. from KNN	-	-	5,30,55,000	3,78,00,000	1,76,63,000
<b>TOTAL</b>	<b>5,80,00,000</b>	<b>12,24,50,000</b>	<b>24,12,55,000</b>	<b>3,78,00,000</b>	<b>2,31,63,000</b>

6. As the assessee could not furnish necessary evidences to prove expenditure of Rs.3,00,30,312/- relates to DMK 10th State level conference held in Trichy in 2013-14, and the expenditure was borne by the party, the Assessing Officer treated the same, as contained in the loose sheets, as unexplained expenditure and brought to tax u/s.69C of the Act. Similarly, when the assessee could not explain the transactions of payments for agricultural land or land purchases properly, as contained in the said books/documents, the Assessing Officer treated the same as unexplained investments u/s.69 of the Act, and brought to tax. The amounts so brought to tax, u/s.69 of the Act, are as under:

Unexplained cash credits u/s.69:	A.Y. 2011-12	A.Y.2012-13	A.Y.2013-14	A.Y.2014-15	A.Y.2015-16
<b>Based on an entries in the diary</b>	-	-	-	-	-
<b>Based on an entries in Note Book</b>	-	-	-	-	-
<b>Based on CPU 'tally' accounts</b>	-	-	-	-	-
1. Cash paid for Agri Lands (KNM)	-	76,78,250	1,84,84,000	2,86,63,000	2,25,17,000
2. Cash paid for land purchase	-	35,84,675	54,09,234	4,80,000	51,00,000
3. Difference in the bank ledger	-	-	-	-	5,00,000
<b>TOTAL</b>	-	<b>1,12,62,925</b>	<b>2,38,93,234</b>	<b>2,91,43,000</b>	<b>2,81,17,000</b>

7. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before, the Id. CIT(A), the assessee has filed detailed written submissions which has been extracted at para 5.3 on pages 7 to 20 of Id. CIT(A) order. The sum and substance of arguments of the assessee before the Id. CIT(A) are that provisions of section 68 is applicable only in a case where some is found credited in books of accounts maintained by an assessee in the ordinary course of his business, but not to some found recorded in a dairy, loose sheets and deleted data from a CPU. Further, dairy, note book and loose sheets cannot be called as regular books of accounts of the assessee, because those books are not prescribed books under the Income Tax Act, 1961 and further, those books are not considered for preparing financial statements of the assessee. The assessee further contended that the person who wrote dairy had admitted that he had written the dairy, but could not recollect the contents and purpose. Further, the Managing Director of assessee Company has disowned dairy and its contents, and hence, no addition can be made u/s 68 of the Act, in respect those entries which does not pertain to assessee. The assessee further submitted that most of the entries in dairy were reconciled to regular books of accounts of the assessee and therefore, on the basis of dairy and loose sheets addition u/s 68 of the Act is unwarranted. The assessee further submitted that deleted entries retrieved from tally software pertains to amount received from True Value Homes Private Limited, a Company belongs to Brother of Managing Director of assessee Company. During the financial years 2011-12 to 2014-15 M/s TVH has paid

a sum of Rs. 21.35 Crores and said amount has been used for various purposes other than the business of the assessee. Further, M/s TVH has paid money for their business purpose and the amount has been spent for their business purpose only. Further, M/s TVH has recorded amount given to us in their books of accounts under the head loans and advances. The Accountant who maintains books in tally software has entered the receipt of money in our books in their name and once amount is spent for the intended purpose, the entries were deleted from tally software, because said amount is not utilised in our business. This fact has been confirmed by M/s TVH and has filed confirmation letters along with their financial statements. Therefore, when source has been explained, no addition can be made towards entries found in deleted tally software u/s 68 of the Act.

8. The assessee further submitted that, as regards additions made towards unexplained investments u/s 69 of the Act, first up all deleted entries in tally software cannot give rise to any investment which can be brought to tax u/s 69 of the Act. Further, the accountant who has maintained accounts in tally software entered those receipts from M/s TVH in our books for his reference and finally deleted from our books, when he realised that said money is not belongs to our Company. Further, we had never made any payments for purchase of Agricultural lands in our Company name. Further, in computerised accounts, it is not uncommon to find deleted entries, because while feeding entries to computer, the Accountant may commit some mistakes and to

undue such mistakes he may delete entries, But, fact remains that the deleted entries in tally software is really unaccounted income or expenses has to be ascertained before bringing those entries in the tax net. Therefore, based on deleted entries from tally software no addition can be made. Further, assuming but not accepting for a moment, those payment entries relates to payment for acquisition of agricultural lands, but source for those payments is explained out of amount received from M/s TVH and hence, same cannot be considered as unexplained investments u/s 69 of the Income Tax Act, 1961.

9. In so far as the addition of Rs.3,00,30,312/- as unexplained expenditure u/s.69C of the Act, the assessee explained that there was a 10<sup>th</sup> State level conference of DMK held in Trichy in 2013-14, under the supervision of Shri KN Nehru, the District Secretary of DMK for Trichy district. Shri KN Nehru is one of the brothers of the Managing Director of the assessee company. The total expenditure incurred for the conference was Rs.3,00,30,312/- and the entire amount was paid by the DMK party through Shri KN Nehru. Further, Shri KN Nehru has explained the source for expenditure as per which, amount has been collected from office bearers and members of DMK party. No doubt, the documents showing a detail of expenditure was found in the business remises of the assessee. But, fact remains that Shri KN Nehru and his party workers sometimes used to visit the company's premises to chalk-out the strategies and logistics for the conference. Therefore, in the process, the papers relating to the said conference expenditure of Rs.3,00,30,312/- were mistakenly

left in the assessee's premises. Thus, the assessee claimed that the entire expenditure of Rs.3,00,30,312/- relates to DMK 10<sup>th</sup> State level conference held in Trichy, and was met by the DMK party only. In support of this claim, the assessee also submitted a confirmation letter from Shri KN Nehru, the District Secretary of DMK party.

10. The Id. CIT (A) after considering relevant submissions of the assessee and also by taking note of various facts brought out by the Id. AO held that Dairy, note book and deleted data in CPU are not books of accounts of the assessee in course of its business and thus, no addition could be made towards entries found in those dairy, note book and deleted entries of tally software as unexplained cash credits u/s 68 of the Act. The Id. CIT(A) further held that in order to consider any credit within the ambit of section 68 of the Act, it should fulfilled requirement of law that the credit should be emanate from books of accounts maintained by an assessee for that year and further the assessee fails to offer an explanation about source and nature of such credit. In this case, the AO has invoked section 68 of the Act, to entries found in dairy, note book and deleted entries of tally software retrieved from CPU without understanding the fact that those seized documents are not books within the meaning of books as defined under the Act. The Id. CIT(A) further noted that entries in dairy and note book are not in the handwriting of the director or his accountant. Further, neither the assessee nor the person who wrote the entries in dairy and note book did confirm that the transactions belong to the assessee. Further, no corroborative

evidence has been brought on record to show that the entries represented actual receipts of the assessee. The entries in dairy and note book do not contain any date of receipt of money nor did they show from whom such money was received. The Id. CIT(A) has analysed the transactions recorded in dairy and note book in light of provisions of section 68 of the Act, and observed that those transactions do not fall within the ambit of said section because credit entry is not found in the books of the assessee. He, therefore opined that the AO was erred in making additions towards entries found in dairy, note book and deleted entries of tally software retrieved from CPU u/s 68 of the Act, as unexplained cash credit, unexplained investment u/s 69 of the Act and unexplained expenditure u/s 69C of the Act.

11. The Id. CIT (A) further observed that even assuming but not accepting that entries in dairy and note book are true, but fact remains that the assessee has offered proper explanation about nature and source of such credit and hence, the same cannot be rejected. The Id. CIT (A) further noted that the assessee has filed valid evidence to prove source of credits found in dairy, note book and deleted entries of CPU as per which those amounts are receipt of fund from M/s True Value Homes Private Limited a group Company of assessee and owned by one of the brother of Managing Director of assessee company. Further, as per the ledger extract of M/s TVH, a sum of Rs. 21.35 crores has been paid from financial year 2011-12 to 2014 -15 and said sum were matched with entries found in dairy and note book. The Id. CIT(A) has discussed the issue at length in light of cash flow

statement filed by the assessee and held that all credits found in diary, note book and deleted entries of CPU are explained out of amount received from M/s TVH a group concern of assessee. He further held that the assessee could not explain source for sum found recorded in diary for Asst Year 2011-12 amounting to Rs. 5.80 crores and sum of Rs. 1.50 crores for Asst. Year 2012-13. Accordingly, those entries have been treated as unexplained sale receipts for the relevant year. Further, after taking gross profit declared by the assessee for the relevant year, he has estimated GP on unaccounted sales and made addition of Rs. 1,58,45,600/- and Rs.33,40,500/- for Asst. year 2011-12 and 2012-13 respectively. The relevant findings of the Id.CIT(A) are reproduced as under:-

“6.0. I have perused the assessment order and the contents assessee’s submissions carefully. The entire assessments of A.Ys.2011-12 to 2015-16 are based on certain entries in a diary, note book, loose sheets and the data retrieved from the computer CPU, only. The Assessing Officer treated the amounts shown as cash receipts in the diary, note book, retrieved data as unexplained cash credits in the respective years and brought to tax u/s.68 of the Act. Similarly, the Assessing Officer also treated the notings shown as ‘payments made’ as unexplained investments and brought to tax u/s.69 of the Act. While, the expenses of DMK conference shown in the loose sheets have been treated as unexplained expenditure u/s,69C of the Act and brought to tax. In this regard, let us examine the relevance of the contents of the diary, note book, loose sheets and the retrieved data from the CPU, vis-à-vis the applicability of sections 68, 69 and 69C of the Act, etc.

6.1. Unexplained cash credits u/s 68 of the Act: (A.Ys.2011-12 to 2015-16): The first issue is regarding the additions made by way of unexplained cash credits u/s.68 of the Act, in all the five assessment years under consideration. The additions made by the Assessing Officer in these assessment years, by way of unexplained cash credits u/s.68 of the Act, are:

Asst.Yea r	Source of information	Cash received from	Amount (Rs.)
2011-12	Impounded diary Impounded Note-	Cash received from ‘XI’ -	5,80,00,000 -

	book Data retrieved from CPU	-	-
		Total	5,80,00,000
2012-13	Impounded diary Impounded Note- book - Data retrieved from CPU	Cash received M/s. True Value-Homes P Ltd Shri KN Manivannan	6,50,00,000 1,25,00,000 4,49,50,000
		Total	12,24,50,000
2013-14	Impounded diary Impounded Note- book - Data retrieved from CPU	- From Minister M/s. True Value-Homes P Ltd Shri KN Manivannan M/s. Janani Minerals Cash received from KNN	16,24,00,000 1,10,00,000 98,00,000 50,00,000 5,30,55,000
		Total	24,12,55,000
2014-15	Impounded diary Impounded Note- book Data retrieved from CPU	- - Cash received from KKN	- - 3,78,00,000
		Total	3,78,00,000
2015-16	Impounded diary Impounded Note- book - Data retrieved from CPU	- - M/s. True Value-Homes P Ltd Shri KN Manivannan Cash received from KNN	- - 25,00,000 30,00,000 1,76,63,000
		Total	24,12,55,000

6.1.1 Thus, the additions of unexplained cash credits u/s.68 of the Act were made on the above impounded diary, note book, retrieved data from CPU found from assessee's business premises. These impounded diary, note book, retrieved data from CPU etc are not the 'books of account' maintained by the assessee in its regular course of business. Nor these were the books considered by the assessee for preparing the final annual financial statements and filing of the returns, in any of the assessment years under consideration. These impounded diary, note book, retrieved data from CPU etc can only form source of information, and if the contents are proved to be correct with corroborative facts, can become evidences.

6.1.2 Further, neither the diary nor the note book was in the hand writing of the managing director or any of the directors. The 'diary' and the 'note book', found during the survey, are in the hand writing of one Mr. V.



Krishnamoorthy. Apparently, Shri Krishnamoorthy is not in the pay rolls of the assessee company, though he was called as 'manager' by other staff of the assessee. As per the assessee, Mr. V. Krishnamoorthy was entrusted the work of identifying the 'lands' for the assessee and its group persons. However, as could be seen from the statement of Mr. V. Krishnamoorthy, vide answer to Q.Nos.3 and 5 of his statement dated 31.01.2018, he stated that he was working as manager of M/s. GSNR Rice Industries P Ltd (i.e. the assessee company) and M/s. Narayana Reddiyar Modern Rice Mill (a proprietary concern of Shri KN Manivannam), without receiving any salary and he was looking after the business affairs of these two concerns. Hence the assessee's claim that Shri Krishnamoorthy is not in the pay rolls of the company, is of little relevance and hence not taken into cognizance.

6.1.3 In any case, the assessee disowned the contents of the diary and note book. The assessee claimed that the diary and the note book belonged to Mr. V. Krishnamoorthy and the contents therein did not belong to the company. Even Mr. V. Krishnamoorthy, who has written the entries of 'cash receipts' in the diary and note book, has confirmed these facts, vide his reply to question No. 6 of his statement dated 12-02-2018. In this statement, Sri Krishnamurthy admitted that the relevant pages were written by him. However, he stated that he had forgotten the details. Thus, neither the assessee nor the person, who has written the diary and note book, has confirmed that the transactions belonged to the assessee company.

6.1.4 Regarding the entries in the retrieved data from CPU, Shri Ramesh (of the assessee's Auditor's Firm), has stated that as and when cash was received from M/s. True Value Homes P Ltd, the same was entered by Shri Ramesh Kumar (accountant of the assessee company) into the computer 'tally' software, in the ledger KNN—1 etc. Once the cash received is spent, the entry is deleted at the end of the financial year. These facts are confirmed Shri Ramesh (of the assessee's Auditor's Firm), vide his answer to Q.Nos.5 & 6 of the statement recorded on 01.02.2018.

6.1.5 Further, there were no corroborative evidences brought on record to show that the contents of the diary, note book, retrieved data from CPU are the actual receipts by the assessee company. Nor there were any statements given by the respective person(s) stating that the contents belonged to the assessee company. Therefore, in the absence of any corroborative evidences and confirmations, it will be difficult to conclude that the assessee had actually received the amounts as noted in the diary, note book, retrieved data from CPU. More so, these are not the regular 'books of account' maintained by the assessee. Under these circumstances, it is not possible to invoke the provisions of section 68 of the Act.

6.1.6 Further, before invoking the provisions of section 68 of the Act, one has to understand the meaning of 'unexplained cash credits' within the

meaning of section 68 of the Act. As per the provisions of section 68 of the Act, any credit found in the books of the assessee, if not explained to the satisfaction of the Assessing Officer, can be treated as unexplained cash credit, and assessed to tax. Provisions of section 68, for the sake reference, are reproduced as under:

*Cash credits.*

*68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.*

6.1.7 Thus, from the provisions of section 68, it is clear that a 'credit entry' must be found in the books of the assessee maintained for the previous year for the purpose of invoking the provisions of section 68. Only if a credit entry is found in the books of the assessee, the assessee needs to explain the nature and the source thereof to the satisfaction of the Assessing Officer. Therefore, for the purpose of invoking the provisions of section 68 of the Act, there should be books of accounts maintained by the assessee and in such books the 'sum' must be credited. This is the prerequisite for invoking the provisions of section 68 of the Act. Only then, the second limb of the provisions i.e. explanation of the assessee to the satisfaction of the Assessing Officer, regarding the nature of credit and its source, will come into picture.

6.1.8 The next question to be answered is — "what are the books of account?" Books of accounts means, the books maintained by the assessee for his/its regular business activities, and forms the basis for preparing the annual financial statements and filing of returns of income. Any other documents, diaries, scribblings, note books, computers etc., cannot be considered as books of account, unless the same are part and parcel of the regular books and the contents are taken into account while preparing the annual financial statements and filing of returns of income.

6.1.9 Further, perusal of section 68 shows that in relation to the expression 'books' the emphasis is on the word 'assessee'. In other words, such books have to be the books of the assessee himself and not of any other assessee, as held by the Punjab and Haryana High Court in the case of Smt. Shanta Devi v. CIT [19881 (171 ITR 532) (Punj.&Har.). Even the Hon'ble Bombay High Court, in the case of Sheraton Apparels v ACIT [2002] (256 ITR 0020(Bom), has held that the term 'books of account' means 'books of account' which have been maintained for determining any source of income. The term 'source of income', as understood in the Act, is to identify or classify income so as to determine under which head, out of the

various heads of income referred to in section 14, it would fall for the purposes of computation of total income for charging income-tax thereon. Thus, the term 'books of account' would mean those books of account whose main object is to provide credible data and information to file the tax returns. Though the judgment was with reference to the levy of penalty u/s.271(1)(c) of the Act, the meaning of 'books of account' observed by the Hon'ble court is with reference to the general and accounting principles and hence applicable for all provisions of the Act.

6.1.10 The Hon'ble Delhi Tribunal, in the case of Amitabh Bansal v. ITO (2019)(175 ITD 401) (Deihi-Trib.), has held that "Invocation of section 68 sans valid and proper books of account of assessee is invalid". The tribunal also observed that a mere credit in bank account simply or any other raw information available to Assessing Officer cannot be loosely called as books of account under section 68.

6.1.11 Therefore, if objectively and dispassionately section 68 is dissected, the key ingredients would be that it requires that where any sum is found credited in the books of an assessee maintained for any previous year' that is there is a 'sum' found to have been credited in books of assessee for previous year which mandates existence of books of account of assessee sans which section 68 cannot be pressed into service. Thus, it is crystal clear that mere bank statement which is issued by bank to its client etc., can't be elevated to status of books maintained by assessee within the meaning .of section 2(12A) and section 44AA. The judicial analysis of books of account and the dictum given by the Bombay High Court in case of Sheraton Apparels v. ACIT [2002] (256 ITR 20) (Bom.), leaves no room for any possible doubt that credit in bank account simply or any other raw information available to Assessing Officer cannot be loosely called as books of account under section 68.

6.1.12 Therefore, the first two pre-requisites for invoking the provisions of section 68 are — (i) presence of regular 'books of account' maintained by the assessee, and (ii) credit entries in such books. Only when these two prerequisites are existing, the Assessing Officer can proceed to examine the nature and source of such credits for the purpose determining / treating the credits as 'unexplained'. In other words, if the first two pre-requisites i.e. (i) presence of regular 'books of account', and (ii) credit entries in such books, are not found, the Assessing Officer cannot proceed to invoke the provisions of section 68.

6.1.13 What is the income to be assessed to tax? Under the provisions of the IT Act only the income that is earned by the assessee during the previous year alone is assessable to tax. The prime intention of the legislature, while enacting the Income Tax Act, was to collect a portion of the income earned by the assessee during the year, as tax for meeting the public

purposes/objects. The Act also defined the meaning and scope of income that is to be assessed. The income earned by the assessee falls under five different heads, i.e. (i) salary income, (ii) income from house property, (iii) income from business and profession, (iv) capital gains, and (v) income from other sources. Thus, the income earned by an assessee falls under these heads of income. This is possible only if the assessee declares all incomes earned during the previous year truly and fairly. However, there are several instances where the assessee is either suppressing their incomes (receipts) or inflating the expenses in order to declare lesser incomes and reduce their tax burden. The income so suppressed becomes unaccounted income. The assessee utilizes this unaccounted income for acquiring various assets / making investments, meeting various expenses etc; Sometimes, the unaccounted income so generated will be re-introduced into the books by way of loans, advances etc in various names and forms. Therefore, in order to curb this practice and to tax the unaccounted income so generated, the legislature introduced deeming provisions under sections 68, 69, 69A to 69D etc.

6.1.14 Normally the unaccounted income generated will be invested by the assessee in various forms. It may be in acquiring various assets, making investments, keeping in the form of cash, bullion etc. Since these items are acquired with the unaccounted (undisclosed) income, normally the taxpayers tend to keep them undeclared, i.e. by not reflecting in the books of accounts or income tax returns. In other words, these unaccounted cash, assets, investments etc., are generally acquired out of the unaccounted income of the assessee from the unknown and undisclosed sources. Therefore, whenever the assessee is found with such unaccounted investments, cash, bullion, assets etc., the same are deemed to have been acquired out of the unaccounted income of the assessee and brought to tax as unexplained investments, cash, assets etc., u/s.69, 69A, 693 etc., unless the assessee explains the sources to the satisfaction of the Assessing Officer. Similarly, when an assessee is found to have incurred certain expenses (like marriage expenses etc), and the same are not reflected in the books and/or the sources for such expenses are not furnished by the assessee, the same is treated as unexplained expenditure and brought to tax u/s.69C of the Act. In all these cases the basic presumption is that these investments/cash/assets or expenses are deemed to have been made out of the unaccounted income from the undisclosed sources. Though the basic principle of the IT Act is to tax the income earned during the previous year, in these situations the tax liabilities of the assessee are, determined based on the application of unaccounted income as and when such application in the form of investments/cash/assets/ expenditure is found to have been made, on deeming principle.

6.1.15 However, there could be some other forms of utilizing the unaccounted income generated by the assessee. In many a situations the

taxpayers may acquire the assets etc., with the regular accounted sources. For example, an entrepreneurial assessee can acquire a landed property with the monies realized from the debtors (i.e. business sale proceeds), instead of repaying the creditors. Subsequently, unaccounted income will be utilized to pay the creditors. In addition, there will be several situations, where the business of the assessee requires cash availability in order to meet its business commitments like purchases, payment of salaries, creditors etc., forcing the assessee to utilize their unaccounted incomes for business purposes. All these cases result in a situation of “excess of assets over liabilities”, at that given point of time, if the balance sheet is to be drawn. In order to bridge the gap, the assessee is forced to create matching liabilities on the liabilities side of the balance sheet. For this purpose, the assessee will generally bring their own unaccounted income into the books in the form of loans, advances, etc., in the names of various persons. In this process of bringing the unaccounted income into the books, in the names of various persons, the accounts of the said persons are credited with the said amount. It is a creation of liability in the books, in order to match the total of the assets on the assets side of the balance sheet at the given point of time. These are the unexplained cash credits within the meaning of the provisions of section 68 of the Act. Therefore, any income from undisclosed sources, if credited in the books maintained by the assessee, is liable to be assessed under section 68. If such income from undisclosed sources, though invested, has not been recorded in the assessee's books of account, such investment is liable to be assessed in terms of section 69 of the Act, as held by the Patna High Court, in the case of *Laxmi Narain Gupta v. CIT* [1980] (124 ITR 94) (Patna).

6.1.16 Normally, when an asset is acquired or investment/expenditure is made with unaccounted income, the same can be brought to tax based on the application / utilization of the unaccounted income. But in a complex scenario where the assets / investments, etc., are reflected in the books and acquired with mixed funds of accounted and unaccounted incomes, it is not possible to identify any specific assets/ investments/ expenditure which are acquired/met with the unaccounted income and the extent of such application. Therefore, in all these situations, the only way is to identify the bogus (non-genuine) credits introduced into the books. Once non-genuine credits are identified and eliminated from the balance sheet, there will be a net ‘excess of assets over liabilities’ and such net excess assets are deemed to have resulted on account of utilization of the assessee's unaccounted income. Therefore, in order to tackle this situation, the legislature introduced the provisions of section 68 in the statutes to treat such non-genuine (bogus) credits as unexplained cash credits u/s.68 of the Act and assess to tax.

6.1.17 Thus, non-genuine or unexplained cash credits means the liabilities claimed in the books of account, by way of creating credit entries in the

names of various person (either existing or fictitious), with the aim of explaining and matching the investments/ assets/expenses claimed in the books of the assessee.

6.1.18 Also, look at the nature of the credits. In the accountancy parlance, 'Credit' means a liability incurred. If a liability is genuine, it forms a source of funds for applications like making investments / assets / payments etc. If the liability (credit) shown in the books is not genuine, there will be excess of assets over liabilities, to the extent of such non-genuine liabilities (credits). In such a situation, the non-genuine credits so introduced in the books can be brought to tax as unexplained credits u/s.68 of the Act, as these non-genuine credits represent the excess of assets over the actual liabilities.

6.1.19 Thus, the pre-requisite for invoking the provisions of section 68 of the Act, is the maintenance of regular 'books of account' by the assessee and the 'credit entries' found in such books. In other words, only when some amounts are found credited in the books of accounts of the assessee, the provisions of section 68 gets attracted. Here the books of account means the regular books of accounts maintained by the assessee and based on which the annual financial statements are prepared and returns of income filed. Any other transaction, which is not found as a credit entry in such books, cannot be considered as unexplained cash credit u/s.68 of the Act.

6.1.20 In the present case, there are regular books of accounts are maintained by the assessee for all the five assessment years under consideration, subjected the same for compulsory auditing u/s.44A3 of the Act, prepared annual financial statements and filed the returns. None of the above amounts, assessed to tax by the Assessing Officer u/s 68 of the Act, were found in these books of accounts maintained by the assessee, as 'credit' entries. Hence the amounts written in the diary, note book, retrieved computer data etc, will not fit into the definition of 'unexplained cash credits' u/s 68 of the Act. Therefore, on this account alone, the additions made by the Assessing Officer, by way of unexplained cash credits u/s.68 of the Act, in all the five assessment years under consideration, needs to be deleted.

6.1.21 One of the explanations of the assessee is that there were cash receipts from M/s. True Value Homes P Ltd during the financial years 2011-12 to 2014-15, to the tune of Rs.21.35 crores. These amounts were initially received by the managing director of the assessee company and hence the accountant of the assessee entered some of these amounts in the tally 'software' in the computer as amounts received from M/s. True Value Homes P Ltd or Shri KN Manivannan etc. However, these amounts were not utilized for the assessee's activities. Instead, these amounts were utilized for the requirements of the other persons of the group. Thus, since

the amounts received from M/s. True Value Homes P Ltd were not finally utilized for the assessee's activities, the same are not reflected in the regular books of accounts maintained. In the process, even entries in the 'tally' software were also deleted from the computer as they do not represent the true affairs of the assessee company.

6.1.22 The above explanation of the assessee seems to be correct. In fact, as could be seen from the audited financials of M/s. True Value Homes P Ltd for the financial years 2011-12 to 20 14-15, there were payments (advances) made to the assessee company to the tune of Rs.21.35 crores, as reflected in the 'loans and advances' category on the assets side of the balance sheets. Also, the ledger extracts of the assessee company in the books of M/s. True Value Homes P Ltd also revealed these facts, as under:

In the books of M/s. True Value Homes P Ltd

Ledger: M/s. SNR Rice Industries — KNM

Fin. Year	Opening Balance	Debits during the year	Credits during the year	Closing Balance
2010-11	-	-	-	-
2011-12	-	5,00,00,000	-	5,00,00,000 Dr
2012-13	5,00,00,000 Dr	4,50,00,000	-	9,50,00,000 Dr
2013-14	9,50,00,000 Dr	6,75,00,000	-	16,25,00,000 Dr
2014-15	16,25,00,000 Dr	5,10,00,000	-	21,35,00,000 Dr

6.1.23 Therefore, the above amounts of Rs.5,00,00,000/-, Rs.4,50,00,000/-, Rs.6,75,00,000/- and Rs.5,10,00,000/- received from M/s. True Value Homes P Ltd during the financial years 2011-12 to 2014-15, form a clear source of funds for any unaccounted investments etc., in the hands of the assessee or its managing director or any other person in the group. Thus, the amounts reflected in the retrieved 'tally data' as the amounts received from M/s. True Value Homes P Ltd or Shri KN Manivannan or KNM or other members of the group etc., are on account of the above amounts received from M/s. True Value Homes P Ltd, to the extent of Rs.21.35 crores.

6.1.24 Further, as could be seen from the assessee's explanation, most of the 'cash receipts' of Rs.6.50 crores found in the diary, as 'cash received' during the financial year 2011-12, are accounted transactions. Perusal of the ledger extracts, bank statements etc., of the respective persons and also the assessee, shows that the first five transactions are the accounted transactions. The details are as under:

Cash received (as contained in diary)

1	03.01.2012	75 Lakhs
2	11.01.2012	1C
3	23.01.2012	1C
4	31.01.2012	1.25
5	07.02.2012	1.00
6	11-1-12	50 lakhs
7	14-1-12	1C
		6C 50 lakhs

## 1)Rs.75 lakhs (03.01.2012):

- Received from Shri KN Ravichandran by ch.no.00002360 (Indian Bank a/c.no.707493403), and accounted as receipt from M/s. True Value Homes P Ltd.
- Reflected in the assessee's Indian Bank (A/c No. 823769016), Tiruchirapalli Cant. on the same date (03.01.20 12).
- Also reflected in the assessee's books (ledger: M/s. True Value Homes P Ltd).

## 2)Rs.1.00 Crore (11.01.2012):

- Received from M/s. True Value Homes P Ltd. by ch.no.00930069 (Indian Bank a/c.no.709181550).
- Reflected in the assessee's Indian Bank (A/c No. 823769016), Tiruchirapalli Cant. on the same date (11.01.20 12).
- Also reflected in the assessee's books (ledger: M/s. True Value Homes P Ltd).

## 3)Rs.1.00 Crore (23.01.2012):

- Received from M/s. True Value Homes P Ltd. by RTGS (Axis Bank a/c.no.7648).
- Reflected in the assessee's Indian Bank (A/c No. 823769016), Tiruchirapalli Cant. on the same date (23.01.2012)
- Also reflected in the assessee's books (ledger: M/s. True Value Homes P Ltd).

## 4) Rs.1.25 Crore (31.01.2012):

- Received from M/s. True Value Homes P Ltd. by ch.no.00930078 (Indian Bank a/c.no.70918 1550).
- Reflected in the assessee's Indian Bank (A/c No. 823769016), Tiruchirapalli Cant. on the same date (31.01.2012). -
- Also reflected in the assessee's books (ledger: M/s. True Value Homes P Ltd).

## 5)Rs.1.00 Crore (07.02.2012):

- Received from M/s. True Value Homes P Ltd. by ch.no,00452258 (Indian Bank a/c.no.709181550).



- Reflected in the assessee's Indian Bank (A/c No. 823769016), Tiruchirapalli Cant. on the same date (07.02.20 12).
- Also reflected in the assessee's books (ledger: M/s. True Value Homes P Ltd).

6) Rs.50 Lakhs (11.01.2012) (CBE):

- Reflected in Indian Bank account of Sri Narayana Reddiar Modern Rice Mill - A/c No. 823769209, Tiruchirapalli Cantonment Branch on 11.01.20 12, as deposit.

However, the source for the receipt, either in the hands of the assessee company or Sri Narayana Reddiar Modern Rice Mill, was not explained by the assessee.

7) Rs. 1.00 Crore (14.01.2012) (MRK):

Assessee is not in a position to furnish any details.

6.1.25 Thus, out of the seven transactions mentioned in the diary, the first transactions are the receipts of the amounts from Shri KN Ravichandran and M/s. True Value Homes P Ltd, and accounted as received from the latter. These amounts were received through banking channels and accounted in the regular books of the assessee, as well as in the books of M/s. True Value Homes P Ltd. These amounts were separately reflected in the books of M/s. True Value Homes P Ltd, under a separate ledger:

Advance — SNR Rice Industries P Ltd (loan). This was in addition to the cash receipts of Rs.21.35 crores from M/s. True Value Homes P Ltd. In the books of the assessee also these amounts are clearly reflected. Though the amounts were received through banking channels, it is mentioned as 'being cash transferred' in the narration. Probably, for this reason, Shri Krishnamoorthy might have written these amounts as 'cash received' in his diary. The ledger extract of M/s. True Value Homes P Ltd, in the books of the assessee company is as under:

SNR RICE INDUSTRIES PRIVATE LIMITED - (2011-2012)  
True Value Homes India Pvt Ltd  
Ledger Account  
1-Apr.2011 to 31-Mar.2012

Date	Particulars	ch Type	Vch No.	Debit	Crec
28-7-2011	By INDIAN BANK OCC A/C NO: 823769016 Receipt transfer.				65,00,000.0
3-1-2012	By INDIAN BANK OCC A/C NO: 823769016 Receipt Being cash transferred.			642	75,00,000.0
11-1-2012	By INDIAN BANK OCC A/C NO: 823769016 Receipt				1,00,00,000.0

	Being cash transferred.	
23-1-2012	By INDIAN BANKOCCA/C NO: 823769016 Receipt	1,00,00,000.0
	Being RTGS received	
31-1-2012	By INDIAN BANK OCC A/C NO; 823769016 Receipt	1,2500,000.0
	Being RTGS received	
7-2-2012	By INDIAN BANK OCC A/C NO: 823769016 Receipt	1,00,00000.0
	Being cash transferred.	
16-2-2012	By INDIAN BANK OCC A/C NO: 823769016 Receipt	1,00,00,000.0
	Being cash transferred.	
24-2-2012	By INDIAN BANK OCC A/C NO: 823769016 Receipt	50,00,000.0
	Being RTGS received	
1-3-2012	By INDIAN BANK OCC A/C NO: 823769016 Receipt	2,00,00,000.0
	Being RTGS received from True Value Homes Chennai.	
		9,15,00,000.0
		9,15,00,000.00
	To Closing Balance	9,15,00,000.00 9,15,00,000.0

6.1.26 Thus, out of the above seven transactions considered by the Assessing Officer as unaccounted / unexplained receipts in A.Y.2012-13, the first five transactions (totaling to Rs.5.00 crores) are the accounted transactions in the regular books of the assessee and stands explained. This leaves the balance of only Rs. 1.50 crores to be explained by the assessee. In the case of sixth transaction of Rs.50 lakhs, the assessee claimed that it was the cash deposited into the bank of M/s. Sri Narayana Reddiar Modern Rice Mill (Prop: Shri KN Manivannan). But the assessee has not furnished the details of sources for the said deposit. Similarly, the assessee has no explanation for the seventh transaction of cash receipt of Rs. 1.00 crores. Therefore, these two transactions of Rs.1.50 crores (i.e. Rs.50 lakhs + Rs.1.00 crores) are treated as unaccounted cash receipts.

6.1.27 The additions of unexplained cash credits u/s.68 made by the Assessing Officer in various assessment years can broadly be grouped into three categories, i.e. (1) those based on the impounded diary, (ii) those based on the impounded note book, and (iii) those based on the retrieved data from CPU. Regarding the amounts shown as cash receipts in the diary, especially during the F.Y.2010-11, the assessee has no explanation except claiming that these entries are in the handwriting the Shri Krishnamoorthy and has nothing to do with the assessee's business affairs.

6.1.28 The second category of unexplained cash credits brought to tax by the Assessing Officer was based on entries made in the impounded note book, of Rs. 16,24,00,000/-. Regarding the amount of Rs. 16,24,00,000/- shown as 'Money from Minister' in the impounded note book, the explanation of the assessee is three-fold., i.e. firstly, the note book was written by a third person, and hence the assessee was not aware of the

notings in the said note book. Secondly, the notings in pages 28 and 31 of the note book do not contain any date(s) and hence it cannot be said that the amounts mentioned in the note book were the amounts received in the financial year 2012-13 only. Thirdly, there were cash receipts of Rs.5,00,00,000/-, Rs.4,50,00,000/-, Rs.6,75,00,000/- and Rs.5,10,00,000/- (totaling to Rs.2 1.35 crores) received from M/s. True Value Homes P Ltd, during the financial years 20 11-12 to 2014-15, respectively. M/s. True Value Homes P Ltd is also a group company, and since all financial decisions and major transactions are under the guidance and supervision of Shri KN Nehru (the elder brother of family), the staff of the assessee company and also Sri Krishnamoorthy might have treated the above receipts from M/s. True Value Homes P Ltd as the amounts from the 'minister'. The assessee also claimed that cash receipts of Rs.16,25,00,000/- (i.e. Rs.5,00,00,000 + Rs.4,50,00,000 + Rs.6,75,00,000) in the F.Ys.2011-12, 2012-13 and 2013-14, t lies with the amount of 16.24 crores found in the note book written by Shri Krishnamoorthy.

6.1.29 The above explanation of the assessee appears to be genuine. As could be seen from the copy of note book, there was no date mentioned against receipts of Rs. 16.24 crores shown as 'from minister'. The Assessing Officer in his order, at paragraph 10.2, has accepted this fact, but concluded that the receipts were during the financial year 2012-13, by observing that the dates mentioned in the starting page no.21 was 01.04.2012 and date mentioned in the page 32 was 25.12.2012, and hence the contents of the pages in between pages of 28 & 31 should be between these two dates. This observation of the Assessing Officer is not correct. Perusal of the copy of the note book shows entries are not only relating to the financial year 2012-13, but also other years. Various dates of the transactions found in the note book are as under:

Page no.(of note book)	Dates mentioned
21	01.04.2012 to 01.08.20 12
23	01.09.2010 & 01.10.2010*
25	01.04.2012 to 02.10.2012
32	25.10.2012 (or 25.12.2012—month not clear)

(\*the details on page 23 are relating to the purchase of K.Ponni and BPT varieties of paddy, on 02.09.2010 and 01.10.2010)

6.1.30 The above details and facts clearly show that the note book (or the entries) was neither maintained chronologically nor the contents (entries) relate to any particular year. The entries relate to different years. Therefore, the Assessing Officer's conclusion that the entries of amounts mentioned as 'received from minister', noted at page nos.28 & 31, pertain to the period between 01.04.2012 and 25.12.2012, is not justified. Since the amounts mentioned at page nos.28 & 31, as 'received from minister', do not contain

any date(s), it is not possible to conclude that these amounts were received in financial year 2012-13 only. The entries could be pertaining to other years also.

6.1.31 Further, as could be seen from the details and explanations furnished by the assessee, the managing director of the assessee company is the youngest among the four brothers, consisting of (in order), (1) Shri KN Nehru, (2) Shri KN Ravichandran, (3) Shri KN Ramjayam, and (4) Shri KN Manivannan. As stated by the assessee, all four brothers are together as a joint family. Being the elder brother of the family, Shri KN Nehru, who was also a minister in earlier DMK government, is in-charge of the joint family. Hence the assessee's claim that all the financial decisions and major business and other decisions are taken in the family through Shri KN Nehru, has certain credence. The total cash receipts from M/s. True Value Homes P Ltd, during the financial years 2011-12 to 2014-15, are Rs.21.35 crores. The cash receipts of Rs.16,25,00,000/- (i.e. Rs.5,00,00,000 + Rs.4,50,00,000 + Rs.6,75,00,000) in the first three financial years i.e. F Ys 2011-12, 2012-13 and 2013-14 almost tallies with the amount of 16.24 crores found in the note book written by Shri Krishnamoorthy. Therefore, the present claim of the assessee that the amount of Rs. 16.24 crores recorded in the note book as 'money received through minister', could be the amount withdrawn from M/s. True Value Homes P Ltd and made available to the group, appears to be correct and needs to be accepted, especially in the absence of any contrary evidences / information available on record.

6.1.32 Similarly, the other cash receipts shown in the retrieved data from computer CPU, etc., shown as cash receipts from the group persons are to be treated as the amount drawn from M/s. True Value Homes P Ltd. These amounts include the amounts shown as (i) cash received from M/s. True Value Homes P Ltd, (ii) cash received from KN Manivannan, (iii) cash received from Janani Minerals, (iv) cash received from KN Nehru / KNN etc., in various financial years. The details are:

Cash receipts	A.Y. 2011-12	A.Y.2012- 13	A.Y.2013- 14	A.Y.2014- 15	A.Y.2015- 16
<b>Based on CPU 'tally' accounts</b>					
1. Cash recd. from True- Value-Home	-	1,25,00,000	1,10,00,000	-	25,00,000
2. Cash recd. from KN Manivannan	-	4,49,50,000	98,00,000	-	30,00,000
3. Cash recd. from Janani	-	-	50,00,000	-	-

Minerals					
4. Cash recd. from KNN	-	-	5,30,55,000	3,78,00,000	1,76,63,000

6.1.33 Careful analysis of the above shows that most of amounts drawn from M/s. True Value Homes P Ltd were not entered in the computer CPU directly or as such. For example, the total amount drawn from M/s. True Value Homes P Ltd in F.Y.2011-12 was Rs.5.00 crores. But, in the retrieved data from computer CPU reflected Rs.1,25,00,000/- as the cash receipts from M/s. True Value Homes P Ltd and Rs.4,49,50,000/- shown as cash received from Shri KN Manivannan. Similarly, in the case of F.Y.2012-13, the total amount drawn from M/s. True Value Homes P Ltd in F.Y.2011-12 was Rs.4.50 crores. But the retrieved data from computer CPU reflected Rs.1,10,00,000/- as the cash receipts from M/s. True Value Homes P Ltd, Rs.98,00,000/- shown as cash received from Shri KN Manivannan, Rs.50,00,000/- from M/s. Janani Minerals, Rs.5,30,55,000/- from KNN.

6.1.34 Thus, the entries found in the retrieved data from CPU are only incomplete or partial data. In some cases, the cash receipts were entered more than once, i.e. in the name of M/s. True Value Homes P Ltd, and also other names. In some cases, when the amounts were used by other concerns and received back on later dates, the same is again entered once again as cash receipts from such persons. Thus, there are several duplicate entries in the computer CPU. Similarly, some of the amounts received from M/s. True Value Homes P Ltd were entered at multiple places, i.e. in the diary, note book and also in the computer CPU.

6.1.35 In any case, as detailed in the foregoing paragraphs, these cash receipts shown in the diary, note book, retrieved data from CPU cannot be considered as unexplained cash credits u/s.68 of the Act. At the same time, these cash entries cannot be considered as source of funds for the assessee's investments / expenditure if any. Hence only the amounts of Rs.2.135 crores given by M/s. True Value Homes P Ltd, and reflected as 'loans/advances' in its books, alone are considered as the source of funds for the assessee's investments / expenditure, if any.

6.1.36 At the same time the amounts mentioned as 'cash receipts in these diary, note book, retrieved computer data etc., cannot be ignored. It may be true some of the amounts received from M/s. True Value Homes P Ltd were entered at multiple places, i.e. in the diary, note book and also in the computer CPU. It may also be true that the diary and note book were in the hand writing of the One Mr. Krishnamoorthy and the assessee disowned the contents. But it is an admitted fact that Shri Krishnamoorthy has been assigned some work by the assessee group and, in fact, Shri Krishnamoorthy himself has admitted that he was supervising the business activities of the assessee company and M/s. Shri Narayana Reddiar Modern Rice Mill (vide answers to Q.Nos.3&5 of his statement dated 31.01.2018).

Therefore, the entries of 'cash receipts' found in the diary and the note book are to be treated as the transactions of the assessee company, since they were found in the business premises of the assessee.

6.1.37 However, as detailed in the foregoing paragraphs (6.1.6 to 6.1.20), the above entries of 'cash receipts' found in the diary and the note book and also the credits found in the retrieved computer data cannot fit into the definition of 'unexplained cash credits' within the meaning of section 68 of the Act. Then what could be the probable nature of these transactions?

6.1.38 In business organizations the receipts of monies are generally two types, i.e., (i) receipts of loans / advances (including recovery of loans/advances made by the assessee); and (ii) business receipts (either revenue receipts or capital receipts). In the former case, the receipts of loans / advances, the amounts will not be taxable as the entry itself acts a source of liability. However, it can be considered u/s.68, only if the assessee claims a credit for such entries. In the present case, the assessee disowned the contents of the diary, note book and the retrieved data from the computer CPU. In such a case, the provisions of section 68 have no application.

6.1.39 The only alternative possibility is that the entries could be of the second category, i.e. business receipts, especially in the absence of any other explanations offered by the assessee, or the corroborative evidences available on record. Again the business receipts could be either revenue receipts or capital receipts. In the present case, there are no evidences to show that there were any capital asset transactions. Hence, the 'cash receipts' reflected in the diary, note book cannot be presumed as capital receipts. Therefore the only possibility could be that these cash receipts are on account of business transactions, and can constitute business receipts of the assessee company.

6.1.40 As could be seen from the records, the assessee is running a rice mill. The main activity is purchasing paddy, mill it to produce rice (after removing the husk from paddy) and market. The above cash receipts of Rs.5.80 crores during the financial year 2010-11, found in the diary, represents unaccounted sales of the year, especially in the absence of any explanation from the However, in the case of cash receipts of Rs.6.5 crores during the financial year 2011-12, found in the diary, transactions to the extent of Rs.5.00 crores are the accounted transactions (as detailed in paragraph Nos.6.1.24. to 6.1.26 above). Hence the only the balance of Rs.1.50 crores is to be treated as the unaccounted sales of the year. This could be the only the possible interpretation for the entries found in the diary / note book maintained a person who is supposed to me managing the rice mill business affairs of the assessee.

6.1.41 The entire sale proceeds of the unaccounted sales cannot constitute the net profit of the assessee. Even unaccounted sales will have corresponding purchases. Also in the present case, the quantitative details of purchases, sales and stock of paddy/rice are maintained by the assessee, there are no discrepancies found in such quantitative details. Hence it is not possible to presume that the unaccounted sales are made from the accounted purchases. In other words, the unaccounted sales, in the present case, are from unaccounted purchases only. In such a case, the fair way is to estimate and determine the possible income from such unaccounted sales, is by adopting the gross profit ratio. The gross profit ratios of the assessee accounted business of the rice mill are as under:

Particulars	F.Y. 2010-11	F.Y.2011-12
Total Sales	10,16,69,043	15,92,84,8 83
Other Income	19,07,736	5,16,566
Total	10,35,76,779	15,98,01,449
Purchases	9,07,86,471	16,29,18,992
Net Increase / (decrease) in stock	4,09,36,290	6,63,77,550
Other Direct Expenses	2,54,32,262	2,76,65,724
Gross Profit	2,82,94,336	3,55,94,233
Gross Profit (%)	27.32%	22.27%
Indirect Expenses	2,64,30,727	3,58,34,462
Net Profit	18,63,609	-2,40,229
Net Profit (%)	1.80%	-0.15%

6.1.42 Therefore, by applying the above gross profit ratios, the profit from the assessee's unaccounted sales of Rs.5.80 crores and Rs.1.50 crores, in the F.Ys.2010-11 and 20 11- 12 will be Rs.1,58,45,600/- and Rs.33,40,500/-, respectively. Therefore the Assessing Officer is directed to treat the cash receipts of Rs.5.80 crores and Rs. 1.50 crores, shown in the diary / note book, in F.Ys.2010-11 and 2011-12, as unaccounted sales and adopt the .probable profit from such unaccounted sales, at Rs.1,58,45,600/- and Rs.33,40,500/-, respectively, in the A.Ys.2011-12 and 2012-13. Thus, additions to the extent of Rs.1,58,45,600/- and Rs.33,40,500/-, respectively, in the assessments of A.Ys.2011-12 and 20 12-13 are confirmed, in place of unexplained cash credits. The remaining amounts of cash credits assessed in A.Ys.2011-12 and 2012-13 and the total amounts of cash credits assessed in A.Ys.2013-14 to 2015-16 stands deleted.

6.2. Unexplained investments u/s.69 of the Act: (A.Ys.2012-13 to 2015-16): The next issue is regarding the additions made by way of unexplained investments u/s.69 of the Act, in the assessment years 2012- 13 to 20 15-16. The additions made by the Assessing Officer in these assessment years, by way of unexplained investments u/s.69 of the Act, are:

Source of information	Investments made in the form of	Amount (Rs.)
<b>A.Y. 2012-13</b>		

Impounded diary	-	-
Impounded Note-book	-	-
Data retrieved from CPU	Cash paid to KNM for purchase of agril.land	76,78,250
	Cash paid for land purchase	35,84,675
	<b>Total</b>	<b>1,12,62,925</b>
<b>A.Y.2013-14</b>		
Impounded diary	-	-
Impounded Note-book	-	-
Data retrieved from CPU	Cash paid to KNM for purchase of agril.land	1,84,84,000
	Cash paid for land purchase	54,09,234
	<b>Total</b>	<b>2,38,93,234</b>
<b>A.Y. 2014-15</b>		
Impounded diary	-	-
Impounded Note-book	-	-
Data retrieved from CPU	Cash paid to KNM for purchase of agril.land	2,86,63,000
	Cash paid for land purchase	4,80,000
	<b>Total</b>	<b>2,91,43,000</b>
<b>A.Y. 2015-16</b>		
Impounded diary	-	-
Impounded Note-book	-	-
Data retrieved from CPU	Cash paid to KNM for purchase of agril.land	2,25,17,000
	Cash paid for land purchase	51,00,000
	Difference in bank ledger	5,00,000
	<b>Total</b>	<b>2,81,17,000</b>

6.2.1 Thus, the above additions of unexplained investments u/s.69 of the Act, were made based on the retrieved data from CPU found from the assessee's premises. As narrated in the foregoing paragraphs, the impounded diary, note book, retrieved data from CPU etc., are not the 'books of account' maintained by the assessee in its regular course of business. Nor these were the books considered by the assessee for preparing the final annual financial statements and filing of the returns, in any of the assessment years under consideration.

6.2.2 The above payments for purchase of agricultural land and lands represent investments and since the same are not reflected in the regular books of accounts, they may constitute unaccounted investments. Therefore, if the assessee fails to explain the nature and source for the, said investments, they can be considered as 'unexplained investments' u/s.69 of the Act and brought to tax.

6.2.3 As per the provisions of section 69 of the Act, if an assessee is found to have made any investments during the previous year, which are not recorded in the books of account maintained by the assessee, and the



assessee fails to explain the nature and source of the investments to the satisfaction of the Assessing Officer, such investments becomes the deemed income of the assessee. The provisions of section 69 are reproduced as under:

**Unexplained investments.**

*69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.*

6.2.4 Therefore, the assessee is required to explain the nature and source for these investments. When this fact was brought to the notice of the assessee, the assessee's representative before the undersigned submitted that the company has not made any such investments. The assessee's representative also stated that there were cash receipts of to the tune of Rs.21.35 crores, received from M/s. True Value Homes P Ltd., through Shri KN Manivannan, the company's managing director, which in-turn, was used for various purposes in the hands of the various persons of the group. Hence the assessee claimed that the above investments, in the form of (i) cash paid to Shri KNM for purchase of agricultural lands, and (ii) cash paid for lands, if at all to be considered as actual investments, should be considered as the investments made out of the above amount of Rs.21.35 crores received from M/s. True Value Homes P Ltd.

6.2.5 The above explanation seems to be reasonable. As detailed in the foregoing paragraphs, there were cash receipts to the tune of Rs.21.35 crores from M/s. True Value Homes P Ltd. The amounts are clearly shown in the audited financial statements of M/s. True Value Homes P Ltd for the respective years. In the books of M/s. True Value Homes P Ltd, these amounts were shown as cash paid to the assessee company. However, these amounts, though reflected in the retrieved CPU data to some extent, were not reflected in the assessee's regular books of accounts. The assessee's explanation for this non-reflection of these cash receipts in its books, is that the amounts were not utilized by the company for its business purposes. Instead, these amounts were utilized for various purposes of the other persons in the group. Hence the assessee's explanation that these unaccounted investments, if considered as actually invested, are out of the above 21.35 crores, is logical and needs to be accepted. Further, there were no contrary evidences on record to show that the above amounts of Rs.21.35 crores received from M/s. True Value Homes P Ltd were utilized elsewhere and not used for making the present investments of payments for purchase of agricultural lands and other lands. In addition, there are estimated profits of Rs.1,58,45,600/- and Rs.33,40,500/-, by treating the cash receipts found in the diary as unaccounted sales, in the A.Ys.2011-12

and 2012-13, respectively (as detailed in paragraph No.6.1.42 above). This amount also forms a source for the subsequent investments/expenses etc.

6.2.6 Even the cash flow statement prepared, by considering the amounts of Rs.2 1.35 crores from M/s. True Value Homes P Ltd and the above estimated profits as the source of funds, and amounts paid by the group (as found in the retrieved data from computer CPU) as the application / investments, shows the following scenario. While doing so, the estimated GP (by considering the cash receipts of Rs.5.80 crores and Rs.6.50 crores of F.Ys.20 10-11 and 2011-12, reflected in the impounded diary) is also considered as the source funds for subsequent investments etc., by the assessee and its group.

Source of Income	Amount (Rs.)	Application	Amount (Rs.)
<b>A.Y. 2011-12</b>			
1. Opening Balance as on 1.4.2010	0	1. Unaccounted investments, expenditure in A.Y.2011-12	0
2. Additional Income brought to tax, by estimating income, by treating cash receipts as unaccounted sales	1,58,45,600	Closing Balance as on 31.3.2011	1,58,45,600
<b>Total</b>	<b>1,58,45,600</b>	<b>Total</b>	<b>1,58,45,600</b>
<b>A.Y. 2012-13</b>			
1. Opening Balance as on 1.4.2011	1,58,45,600	1. Cash paid to KNM for purchase of agril.land	76,78,250
2. Additional Income brought to tax, by estimating income, by treating cash receipts as unaccounted sales	33,40,500	2.. Cash paid for land purchase	35,84,675
3. Cash received from M/s. True Vale Homes P Ltd	5,00,00,000	Closing Balance as on 31.3.2012	5,79,23,175
<b>Total</b>	<b>6,91,86,100</b>	<b>Total</b>	<b>6,91,86,100</b>
<b>A.Y. 2013-14</b>			
1. Opening Balance as on 1.4.2012	5,76,23,175	1. Cash paid to KNM for purchase of agril.land	1,84,84,000
2. Cash received from M/s. True Vale Homes P Ltd	4,50,00,000	2.. Cash paid for land purchase	54,09,234
		Closing Balance as on 31.3.2013	7,90,29,941
<b>Total</b>	<b>10,29,23,175</b>	<b>Total</b>	<b>10,29,23,175</b>
<b>A.Y. 2014-15</b>			
1. Opening Balance as on 1.4.2013	7,90,29,941	1. Cash paid to KNM for purchase of agril.land	2,86,63,000
2. Cash received from M/s. True Vale Homes P Ltd	6,75,00,000	2.. Cash paid for land purchase	4,80,000
		Closing Balance as on 31.3.2014	11,73,86,941
<b>Total</b>	<b>14,65,29,941</b>	<b>Total</b>	<b>14,65,29,941</b>
<b>A.Y. 2015-16</b>			
1. Opening Balance as on 1.4.2014	11,73,86,941	1. Cash paid to KNM for purchase of agril.land	2,25,17,000
2. Cash received from M/s. True Vale Homes P Ltd	5,10,00,000	2.. Cash paid for land purchase	51,00,000
		Closing Balance as on 31.3.2015	14,07,69,941
<b>Total</b>	<b>16,83,86,941</b>	<b>Total</b>	<b>16,83,86,941</b>

6.2.7 Thus, from the above cash flow, it is clear that all the unaccounted investments etc., made by the group, in various financial years, are within the limits of funds received from M/s. True Value Homes P Ltd in the respective years. In other words, there are no unexplained investments in the hands of the assessee in any of the assessment years under consideration. Instead, there is excess of funds (sources) over the investments etc., as on 31.03.2015, to the tune of Rs.14,07,69,941/-, in the hands of the assessee or its managing director or the group.

6.2.8 Therefore, in the absence of any contrary evidences, the above investments of payments for purchase of agricultural lands and other lands, during the financial years 2011-12 to 2014-15 (A.Ys.2012-13 to 2015-16), are deemed to have been made out of the cash receipts of Rs.21.35 crores received from M/s. True Value Homes P Ltd. Consequently, the Assessing Officer's action of assessing the payments for purchase of agricultural lands and other lands, as unexplained investments u/s.69 of the Act, in the assessments of A.Ys.2012-13 to 2015-16, is not justified and stands deleted. The assessee succeeds in its appeals in this regard.

6.2.9 The next addition of unexplained investment u/s.69 of the Act, is regarding the difference in the bank ledger, of Rs.5,00,000/-, in the assessment of A.Y.2015-16. The assessee claimed that during the financial year 2014-15 (A.Y.2015-16) the company made investments (amounts paid for purchase of lands) of Rs.38,50,000/- (Rs.22,00,000 + Rs.16,50,000) through cheques. However the Assessing Officer in his order observed that the amounts paid through cheques was only Rs.33,50,000/-. Hence, restricted the accounted investments to only Rs.33,50,000/-, and brought the difference of Rs.5,00,000/- found in the bank ledger, to tax as unexplained investments u/s.69 of the Act.

6.2.10 The assessee before the undersigned claimed that the entire investment of Rs.38,50,000/- (Rs.22,00,000 + Rs.16,50,000) is fully accounted for in its books and the entire amount was paid through banking channels only. In support of the claim the assessee also furnished the bank extracts. The details of payments are as under:

Date	Amount	Cheque No.	Bank name / account no
20.09.2014	5,00,000	00104871	Indian Bank, Tiruchirapalli Cant

6.2.11 Perusal of the above bank extracts clearly shows that the entire amount of Rs.38,50,000/- (Rs.22,00,000 + Rs.16,50,000) was paid through banking channels. Hence there is no difference in the amounts claimed by the assessee and the amount found in the bank account. Therefore, the Assessing Officer is not justified in concluding that there was difference of Rs.5,00,000/-. The addition of Rs.5,00,000/- made by the Assessing Officer u/s.69 of the Act is deleted.

6.3. Unexplained expenditure u/s.69C of the Act: (A.Y.2014-15): The next issue is regarding the addition made by way of unexplained expenditure on account of DMK 10th State level conference held in Trichy in 2013-14. Perusal of the impounded documents (loose sheets) clearly shows that the expenses are in relation to' the conducting of DMK 10th State level conference only. There are no disputes in this regard. It is also a fact that Shri KN Nehru, who was the District Secretary of DMK for Trichy district, is one of the brothers of the Managing Director of the assessee company. Therefore, Shri KN Nehru, being the District Secretary of the party, is required to make arrangements for the conference. Further, since Shri Nehru is the brother of the assessee company's managing director, Shri Nehru and his party workers using the company's premises to chalk-out the strategies and logistics for the conference is quite natural and cannot be ruled out. In such a case, the assessee's claim that the above expenditure of Rs.3,00,30,312/- relates to DMK 10th State conference, is to be considered as genuine.

6.3.1 The next thing to be seen is regarding the person who has spent the amount and the sources for the said expenditure. The asses see company is running a rice mill. There is no need for the assessee company for incurring such heavy amount for conducting the conference of a political party. Nor the assessee is into the business of organizing any such activities of conducting the conferences, meetings etc. Therefore, it is not possible to presume that the expenses belonged to the assessee company. On the other hand, Shn KN Nehru, vide his letter dated 20.12.2018 before the Assessing Officer, had clearly stated that the above expenditure of Rs.3,00,30,312/- was borne by the DMK party and the sources for the said payment was the collections from the party workers who attended the meeting. Therefore, in the absence of any contrary evidences, and since the expenses are for the DMK's state level conference and the assessee company is not in the obligation of meeting such expenditure, it is not possible to arrive at a conclusion that the expenses are borne by the assessee company.

6.3.2 It may be true that the data retrieved from the computer CPU, in the books of M/s. Narayana Reddiyar Modern Rice Mill, showed the details of the above payments "as DMK conference expenses" in the ledger copy of KNN- 1. But as mentioned earlier, the company's accountant entered all the transactions in the computer 'tally' software, whether belonged to the assessee company, or other persons in the group. In fact, the retrieved data from CPU, itself showed cash receipts of Rs.5,30,55,000/- and Rs.3,78,00,000/-, respectively, during the financial years 2012-13 and 2013-14, in the name of Shri KN Nehru. In fact, the Assessing Officer himself treated the said cash receipts as 'unexplained cash credits' u/s.68 of the Act and brought to tax. These cash receipts from Shri KN Nehru, as reflected in the very same data retrieved from CPU, also stands as sources

for the above DMK conference expenses. Further, if the cash receipts from Shri KN Nehru are not to be believed, meeting of the above expenses by the assessee company also to be 'discarded because both of these entries are found in the same data retrieved from CPU.

6.3.3 It may also be true that the headquarters of DMK party, at state level, has not reflected the collections/receipts or the expenses relating to the DMK 10th State level conference held in Trichy in 20 13-14. In this regard, the explanation of Shri Nehru / the assessee company that since the collections were locally made at the time of conference, for the purpose of conference and expended for the conference locally, the details of the conference collections and its expenses were squared up locally and hence the same are not reflected in the DMK party state head office, has some merits and needs to be given credit.

6.3.4 Thus, from the above facts, it is clear that — (i) the expenses belonged to the DMK Conference's expenses, (ii) Shri KN Nehru, being the District Secretary, has confirmed that the expenses were borne by the party, (iii) data retrieved from CPU, also showed cash receipts from Shri KN Nehru to the tune of Rs.3,78,00,000/- during the same financial year 2013-14. Under these circumstances, I am of the considered opinion that the above conference expenses of Rs.3,00,30,312/- belonged to the DMK party, and the expenses are met by DMK District Secretary Shri KN Nehru. Hence these expenses cannot be considered as the assessee's expenses, leave alone whether it is explained or unexplained. In addition, there are evidences in the very same retrieved data from CPU, to show that the amount has been received from Shri KN Nehru. Hence the Assessing Officer is not justified in treating the said expenses as unexplained expenses u/s.69C of the Act, in the hands of the assessee company. The addition made by the Assessing Officer stands deleted. The assessee succeeds in its appeals on this ground.

12. The Id. DR for the Revenue submitted that the Id.CIT(A) has erred in deleting the addition made u/s.68 of the Act, by holding that addition was made on the cash receipts as per contents in diary / notebook and retrieved data from computer CPU, which was disowned by the assessee and these are not regular books of accounts maintained by the assessee and hence, provisions of section 68 of the Act cannot be applied, without appreciating the fact that as per section 68 of the Act, that nowhere it is

mentioned regular books of accounts. The Id. DR further submitted that the intention of legislature to mention as books is to include all the books whether it is regular or adhoc books of accounts and further those disclosed or undisclosed. In this case, seized diary, notebook and retrieved data from computer CPU clearly indicate credit entries pertain to assessee and its business affairs. Although, the assessee disowned said diary, notebook and retrieved data from computer CPU, but fact remains that entries recorded in diary, notebook and deleted entries in computer CPU also contains some of the entries recorded in regular books of accounts, which clearly suggest that those entries which are outside books of accounts of the assessee are clearly unexplained credit which needs to be brought to tax u/s.68 of the Act. The Id. DR further referring to various documents including statements recorded from Managing Director of the assessee company, Shri. K N Manivannan, one Shri. Krishnamurthy and Shri S. Ramesh, Accountant of the assessee company who looks after overall business affairs, argued that diary and notebook was maintained in his own handwriting. Although, he stated that he could not recollect details of entries recorded in books, but the AO has brought out various facts to link said transactions to entries recorded in regular books of accounts of the assessee which clearly proves nexus between transactions of the assessee and unrecorded receipts in the impounded diary and notebook. He, further submitted that Shri Ramesh claims to be accountant of assessee company has entered various transactions including amount received from Minister (Shri K.N. Nehru, Ex-Minister of DMK Government) and

later the same has been deleted from computer. The said transactions were further recorded in notebook by Shri V.Krishnamurthy. Therefore, there is a clear nexus between retrieved data from computer CPU and entries recorded in notebook and hence, the assessee cannot claim that entries recorded in diary and notebook does not belong to his business affairs. The Id. DR further submitted that books of accounts including diary and notebook were found in the business premises of the assessee and as per provisions of section 292C of the Act, presumption is always on the assessee that said books of accounts which belongs to the person from whose custody said books of accounts were found and further, entries recorded in said books of accounts are true and correct unless the assessee rebuts the presumption. In this case, although the assessee disowned diary and notebook and contents recorded therein, but the AO had brought out clear facts to link said entries to books of accounts of the assessee and hence, Id.CIT(A) was completely erred in deleting additions made by the AO towards entries recorded in seized diary and notebook and retrieved data of computer CPU u/s.68 of the Act.

13. The Id. DR further referring to letter of the assessee dated 26.11.2018 filed before the AO submitted that the assessee has voluntarily offered a sum of Rs.1,86,12,295/- for assessment year 2012-13 as undisclosed income on the ground that it was unable to explain source for said credits, but the Id.CIT(A) has accepted explanation furnished by the assessee in total without considering voluntary surrender of income by the assessee during

the course of assessment proceedings. The Id. DR further referring to paper book page No.47 submitted that impounded documents found during the course of survey clearly establishes the fact of receipt of money from Minister, but the Id.CIT(A) has ignored all evidences brought on record by the AO only on the ground that document does not contain date and name of the person from whom said money was received without appreciating the fact that in this diary, it was clearly mentioned that said money was received from Minister and Minister refers to Shri K.N. Nehru, Ex-Minister and brother of Managing Director of assessee company. The Id. DR further referring to page No.34 of Id.CIT(A) order submitted that the Id.CIT(A) has grossly erred in treating a sum of Rs.5.8 crores for assessment years 2011-12 and further Rs.1.5 crores for Asst. year 2012-13 as unaccounted sales and further estimating gross profit by taking gross profit declared by the assessee for relevant assessment years without appreciating the fact that said transactions are cash receipts outside regular books of accounts and does not form part of sales transactions of the assessee. He further submitted that the assessee has voluntarily offered a sum of Rs.5.77 crores as undisclosed income when it was unable to explain source for credits found in diary and notebook, but the same was not offered to tax without filing any valid retraction with evidence. He, further submitted that when assessee itself voluntarily accepts that entries in diary and notebook relates to business activity, the Id.CIT(A) was grossly erred in holding that said diary and notebook and retrieved data from computer CPU are not books of accounts and said entries cannot be considered as cash credits u/s.68 of the Act.



14. The Id.AR for the assessee, on the other hand strongly supporting order of the Id.CIT (A) submitted that stand taken by the AO is self-contradictory, because for the purpose of section 68 of the Act, the AO has considered diary, notebook and deleted entries from computer CPU data as books of accounts, whereas the same diary, notebook and deleted entries of CPU data was not considered as books for the purpose of section 69 of the Act. The AO's stand is inconsistent as both the provisions of section 68 and 69 do not operate simultaneously on the same material. The Id.AR for the assessee further referring to the provisions of section 68 of the Act, submitted that in order to invoke said provision, certain conditions to be fulfilled as per which any sum is found credited in the books of assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year. The word 'credited' does not mean every entry made anywhere in whatever manner. To treat a particular credit within the ambit of section 68 of the Act, the said entry should be on credit side of an account and further said amount has to be in the name of person / concern whose transactions are recorded, and further, there must be a corresponding entry on the debit side in another account and further the entries must represent transactions between parties. He, further submitted that in order to consider any credit within the ambit of section 68 of the Act, it must satisfy further conditions including said entry / transactions must be dated and

further accounts in which said entry is maintained is part of books of accounts maintained by the assessee for any previous year. The Act defines 'books of accounts' u/s.2(12A) of the Act, which includes ledgers, day-books, cash books, account books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disk, tape or any other form of electromagnetic data storage device. From the definition of 'books' or 'books of accounts', it is abundantly clear that books of accounts means regular books of accounts maintained by the assessee for any previous year to record day to day transactions of its business including ledgers, day-books, cash books, account books and other books. The term other books does not mean to include some dumb documents like diary, notebook or deleted entries of computer CPU. The term other books refers to any other books which are relevant and in consonance with ledgers, day-books, cash books, account books, etc. Therefore, in order to include any other books of accounts maintained by the assessee within the ambit of term 'other books', those books must be relevant in the business of the assessee to keep track of transactions. Hence, other books refers to in the ordinary course of any business of the assessee are stock books maintained in the ordinary course of business to record movement of stocks, books of accounts maintained for recording salary and wages as required under the Wages Act and other statutory books prescribed under any other law. But, it does not include diary, notebook and some other dumb documents maintained by any person for any reason. In this case, the AO has considered diary, notebook and deleted entries of computer CPU as books of

accounts maintained by the assessee for any previous year to treat said entries as unexplained cash credits within the meaning of section 68 of the Act, without bringing any evidence to prove that said books of accounts are maintained by the assessee and entries contained in said books of accounts are business transactions of the assessee. The Id.AR for the assessee further referring to paper-book filed for this purpose submitted that if you see the documents found during the course of survey, including impugned diary, those documents are maintained by some third person, where various transactions were recorded including disclosed transactions of the assessee and said transactions does not show whether entries represents credits or debits. Further, name of persons connected to entries are not found. Entries found in the notebook do not contain any date. There are no details about transactions. Therefore, said diary and notebook do not constitute books as contemplated u/s.68 of the Act, and further, on that basis no addition could be made u/s.68 of the Act. In this regard, he has relied upon plethora of judicial precedents including decision of Hon'ble Bombay High Court in the case of Sheraton Apparels v. ACIT (2002) 256 ITR 20. The case laws relied upon by the assessee is reproduced as under:-

- a) Amitabh Bansal v. ITO (2019) 175 ITD 401 (ITAT, Delhi)
- b) Smt. Shanta Devi v. CIT (P&H)
- c) Anand Ram Raitani v. CIT (Gauhati)
- d) Munshiram v. CIT (1980) 126 ITR 48 (Delhi)
- e) CIT v. Dulla Ram (P&H)

15. The Id.AR for the assessee further submitted that assuming for a moment diary, notebook and deleted data constitute books, even then the AO was required to bring corroborative evidence on record to prove that credits found in those books are income of the assessee. In this case, the AO has failed to do his part of work to ascertain facts with regard to nature of entries recorded in notebook and diary, but simply relied upon entries recorded in said notebook, even though the person who maintained diary and notebook categorically stated that he is unable to recollect the details recorded in said notebook. The Id.AR further submitted that although the Id.AO has relied upon statement of Shri Ramesh, Accountant, who made entries in deleted files but the AO has failed to examine Shri Ramesh, who know about the nature of entries recorded in tally software and the purpose of such entries. Similarly, the AO does not examine Shri V. Krishnamurthy as regards to persons against entries found in his diary and notebook. The AO has failed to bring on any corroborative evidence on record to find out whether transactions representing entries actually took place, whether money was actually received and if received, how such money was utilized.

16. The Id. AR for the assessee further submitted that further assuming that said diary and notebook constituted books of accounts and entries are corroborated, still the AO could not have made addition, as he did not consider evidences regarding receipts from M/s. True Value Homes Pvt Ltd, a group concern of assessee and owned by brother of Managing Director of assessee company. The Id.AR submitted that the assessee has filed various

evidences to prove that the group has received a sum of Rs.21.35 crores from M/s. True Value Homes Pvt. Ltd., (TVH) on various dates and said amount has been utilized for acquiring agricultural lands and making payments for various purpose of group. In this regard, M/s. TVH has filed confirmation letter along with their financial statements to prove that it has paid a sum of Rs.21.35 crores to assessee and same were recorded in the books of accounts of the assessee. In spite of filing various evidences, the AO has rejected account statement of M/s. True Vale Homes Pvt Ltd by relying upon statement of Shri S. Ramesh without appreciating the fact that Shri S. Ramesh was not an Accountant of assessee company but was an Assistant of Chartered Accountant and he do not aware of the facts of the assessee business transactions. The Id.AR further submitted that the Id.CIT(A) after considering relevant facts has rightly deleted additions made by the AO u/s.68 of the Act, by holding that diary, notebook and deleted accounts in CPU are not books of accounts and AO did not bring any corroborative evidences to show that transactions represents undisclosed income of the assessee.

17. The Id.AR further submitted that the AO has made additions towards payments made for acquisition of agricultural lands u/s.69 of the Act, as unexplained investment on the basis of entries recorded in loose papers, deleted data of computer CPU without appreciating the fact that deleted entries found in computer CPU and loose papers did not create any asset. He, further, submitted that other than entries, the AO did not gather

any evidence to corroborate that the assessee has made investments as alleged. The AO did not make any enquiry nor brought any evidence on record to show that investment actually took place. The Id.CIT(A) after considering relevant facts has rightly deleted said additions by holding that there is no iota of evidence on record to show that the assessee has made payments for purchase of agricultural lands, which is outside books of accounts.

18. The Id.AR for the assessee on the issue of additions made u/s.69C of the Act, towards expenditure incurred for 10<sup>th</sup> State Level Conference of DMK party, submitted that DMK is a political party and said amount represents amount spent by DMK for holding state level conference, 'Maanila Manadu' and source for said conference was collected from members of DMK party. Although, loose sheets containing particulars of expenditure incurred for DMK party function was found in business premises of the assessee but said documents was neither belongs to the assessee nor contains business transactions of the assessee. The assessee has explained reasons for keeping said documents in his possession as per which, Shri K.N. Nehru, a DMK functionary was brother of assessee company Managing Director and he used to visit business premises when state level conference was held at Trichy. The said documents may be left in his office by his brother unknowingly. However, Shri K.N. Nehru has admitted the fact that said expenditure was incurred by him on behalf of DMK party and source was out of collections from party functionaries. The AO has also made enquiries with various persons including

Shri K.N. Nehru, Treasurer of DMK party, where they have categorically accepted that expenditure was incurred out of voluntary donations collected from party units / cadre in the District. The AO has ignored all evidences filed by the assessee and had made additions u/s.69C of the Act, as unexplained expenditure without understanding that said expenditure is neither incurred by the assessee nor belongs to business activity of the assessee. The Id.CIT(A) after considering relevant facts has rightly deleted additions made by the AO and his order should be upheld.

19. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We have also carefully considered various case laws relied upon by both sides. The facts borne out from record indicate that a survey u/s.133A of the Act was conducted in the business premises of the assessee. During the course of survey, certain material including diary, notebook and computer CPU was found and seized. As per seized documents, diary was maintained by one Shri V. Krishnamurthy, who claims to have worked as 'Manager' for Assessee Company. The computer CPU was examined and data from computer CPU was retrieved as per which certain entries were recorded and deleted. The retrieved data from computer CPU indicate that the assessee has received some amounts from one Minister. During the course of survey, a statement was recorded from Shri K.N. Manivannan, the Managing Director of assessee company, Shri V. Krishnamurthy, claims to be the Manager of Assessee Company and Shri Ramesh,

claims to be Accountant of assessee company. During the course of survey, in the sworn statement recorded Shri K.N. Manivannan, Managing Director disowned diary and its contents. He, further stated that said diary was maintained by Shri V. Krishnamurthy and he may explain the purpose and contents recorded in said diary. As regards, notebook and its contents, once again he disowned said notebook and stated that Shri V. Krishnamurthy was recording entries in notebook and he may be able to explain the purpose and contents. Likewise, he has disowned deleted entries from CPU and stated that one Shri Ramesh has entered those entries and later deleted and he is not aware the purpose of entering those entries in its books of accounts and later deleting said entries. Further, a statement was recorded from Shri V. Krishnamurthy and asked about diary, notebook and its contents, where he had agreed that he was maintaining said diary and notebook, but he was not aware of contents of the diary. Likewise a statement from Shri Ramesh was also recorded, where he has categorically stated that he has entered certain amounts received from M/s. True Value Homs Pvt. Ltd., in books of accounts of the assessee and later after coming to know that said entries are not belongs to assessee, the same was deleted. The Id. AO, however was not accepted explanation of the assessee and has made additions towards certain entries found recorded in diary and notebook and also retrieved data from computer CPU u/s.68 of the Act, on the ground that said credits are unexplained credits and assessee is unable to explain nature and source for such credits. The AO has also made additions towards certain payments recorded for



purchase of agricultural land u/s.69 of the Act as unexplained investment on the ground that said entries are not recorded in regular books of accounts of the assessee and the assessee is unable to explain source for said investments. The AO had also made additions towards expenditure incurred for 10<sup>th</sup> state level DMK conference 'Maanila Manadu' u/s.69C of the Act, on the ground that the assessee is unable to explain source for such expenditure.

20. In this factual background, if we examine reasons given by the AO to invoke provisions of section 68 of the Act, to treat entries in diary and notebook and deleted entries from computer CPU as unexplained cash credit, one has to first understand provisions of section 68 of the Act. The provisions of section 68 deals with the cases where any sum is found credited in books of accounts of the assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or explanation offered by the assessee, in the opinion of the AO, satisfactory, then sum so credited may be charged to income-tax as the income of the assessee of that previous year. Thus, from the provisions of section 68 of the Act, it is clear that credit must be found in the books of the assessee maintained for any previous year. In the present case, what has been considered by the AO is diary, notebook and retrieved deleted entries of computer CPU. Therefore, whether those diary, notebook and retrieved data of computer CPU can be considered as books of accounts in order to invoke section 68 of the Act or not has to be seen.

21. The Income Tax Act, 1961 has defined books and books of accounts u/s.2(12A) of the Act, as per which books and books of accounts includes, ledgers, day-books, cash books, account books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disk, tape or any other form of electro-magnetic data storage device. Therefore when books of accounts are clearly defined under the Act, then diary, notebook and retrieved data of computer CPU can be considered as books of accounts or not is a question that needs to be considered. From the definition of 'books' or 'books of accounts', it is abundantly clear that books of accounts means regular books of accounts maintained by the assessee for any previous year to record day to day transactions of its business including ledgers, day-books, cash books, account books and other books. The term other books does not mean to include some dumb documents like diary, notebook or deleted entries of computer CPU. The term other books refers to any other books which are relevant and in consonance with ledgers, day-books, cash books, account books, etc. Therefore, in order to include any other books of accounts maintained by the assessee within the ambit of term 'other books', those books must be relevant in the business of the assessee to keep track of transactions. Hence, other books refers to in the ordinary course of any business of the assessee are stock books maintained in the ordinary course of business to record movement of stocks, books of accounts maintained for recording salary and wages as required under the Wages Act and other statutory books prescribed under any other law. But, it does not include diary, notebook and some other dumb

documents maintained by any person for any reason. Therefore, in our considered view books refer to under section 68 means, regular books of accounts maintained by an assessee in the ordinary course of business to record its business affairs and also to prepare financial statements for the relevant year. Any other documents, including, loose sheets, dairy, note book and other unconnected documents cannot be considered as books, unless the same is part of books of accounts maintained by the assessee. Further, perusal of section 68 shows that in relation to the expression 'books' the emphasis is on the word 'assessee'. In other words, such books have to be the books of the assessee himself and not of any other person, as held by the Hon'ble Punjab and Haryana High Court in the case of Smt. Shanta Devi v. CIT (1981) 171 ITR 532 (Punj.&Har). Even the Hon'ble Bombay High Court, in the case of Sheraton Apparels v ACIT [2002] (256 ITR 0020((Bom), has held that the term 'books of account' means 'books of account' which have been maintained for determining any source of income. The term 'source of income', as understood in the Act, is to identify or classify income so as to determine under which head, out of the various heads of income referred to in section 14, it would fall for the purposes of computation of total income for charging income-tax thereon. Thus, the term 'books of account' would mean those books of account whose main object is to provide credible data and information to file the tax returns. Though the judgment was with reference to the levy of penalty u/s.271(1)(c) of the Act, the meaning of 'books of account' observed by the Hon'ble court is with reference to the general and accounting principles and hence

applicable for all provisions of the Act. Similarly, Delhi Tribunal, in the case of Amitabh Bansal v. ITO (2019)(175 ITD 401) (Deihi-Trib.), has held that "Invocation of section 68 sans valid and proper books of account of assessee is invalid". The tribunal also observed that a mere credit in bank account simply or any other raw information available to Assessing Officer cannot be loosely called as books of account under section 68 of the Act.

22. In this case, the AO has considered diary, notebook and deleted entries of computer CPU as books of accounts maintained by the assessee for any previous year to treat said entries as unexplained cash credits within the meaning of section 68 of the Act, without bringing any evidence on record to prove that said books of accounts are maintained by the assessee and entries contained in said books of accounts are business transactions of the assessee. No doubt, the AO has invoked provisions of section 292C of the Act to bring in the theory of presumption as to assets, books of accounts, etc., and observed that since diary, notebook and computer CPU are found in the business premises of the assessee, it should be presumed that such books of accounts and other documents belongs to such person and that contents of such books of accounts and other documents are true and correct. It is a well settled position of law that presumption as contained under section 292C is a rebuttable presumption. If, assessee rebuts presumption with valid explanation, then the AO has to bring on record further evidences to prove that said books of accounts are belongs to that person and further contents in said books are true and correct. In this case, right from the

beginning, the assessee disowned the diary, notebook and contents recorded therein and further neither diary nor notebook was in the handwriting of the Managing Director or any of the Directors. The diary and the notebook are in the handwriting of one Shri V. Krishnamurthy and in fact, he had admitted the fact of maintaining said notebook and diary, however, categorically stated that he is unable to recollect the contents recorded in said diary and notebook. Moreover, the assessee very categorically stated that Shri Krishnamurthy is not a regular employee of the assessee and whatever recorded by him in his diary and contents cannot be considered as transactions pertains to business of the assessee. Further, Shri V. Krishnamurthy, who has written the entries in diary and notebook have confirmed these facts vide his reply to Q.No.6 of his statement, dated 12.02.2018. In the statement, Shri V. Krishnamurthy admitted that relevant pages were written by him. Therefore, from the above, it is very clear that neither the assessee nor the person who has written the diary and notebook has confirmed that transactions belong to the assessee company.

23. As regards entries in the retrieved data from CPU, Shri Ramesh (employee of assessee's auditor's firm) had stated that as and when cash received from M/s. True Value Homes Pvt. Ltd., same was entered by him into computer in tally software in the ledger KNN1, etc., Further, once cash received has been spent for the purpose, the entry is deleted at the end of the financial year. These facts are confirmed by Shri Ramesh in the statement recorded on 01.02.2018. Therefore, when the person who

entered the entries in computer software had clarified that said entries are not belongs to business affairs of the assessee and further, he had also categorically explained nature and source of such entries and the reason for deletion of entries in the computer software, then deleted entries cannot be considered as unexplained cash credit of the assessee to bring those entries within the ambit of section 68 of the Act. No doubt, it is for the assessee to explain each and every entry recorded in its books of accounts to the satisfaction of the AO. But, once the assessee has offered his explanation, then it is for the AO to bring on record some other corroborative evidences to show that the contents of the diary, notebook and retrieved data from CPU are actually receipts of the assessee company. In this case, although the assessee has disowned the diary, notebook and contents recorded therein and which was further strengthened by the statements of the persons who maintained the diary, notebook, but the AO has disregarded all the evidences and brought those entries within the ambit of section 68 of the Act, without bringing on record any other evidences to prove that said entries are in fact receipts from some other persons and related to business transactions of the assessee. Further, in order to bring any credit within the ambit of section 68 of the Act, there must be some credits in the books of accounts of the assessee in the name of some person. In this case, neither the person from whom such credits received are recorded nor the date of receipt of such credits. Further, in the diary, there is no reference to any information regarding date of receipt and the person from whom said credits were received. Therefore, those entries from the

diary and notebook cannot be considered as unexplained cash credits within the ambit of section 68 of the Act, because the prerequisite conditions for invoking provisions of section 68 of the Act, is maintenance of books of accounts by the assessee and further, credit entries must be found from such books of accounts. In this case, what was considered by the AO was some irrelevant documents which are nowhere connected to the assessee and his office and hence, those documents can only be treated as dumb documents and from those documents, no additions can be made u/s.68 of the Act. The Id. CIT(A) after carefully considered relevant fact has rightly held that no addition could be made u/s 68 of the Act, towards credit found in dairy, note book and retrieved data from computer CPU and hence, we do not find any reason to interfere with findings of Id. CIT(A).

24. Be that as it may. The assessee has also made an alternative argument and explained that during the financial years 2011-12 to 2014-15, there were cash receipts to the tune of Rs.21.35 from M/s. True Value Homes Pvt. Ltd., and those cash receipts matched with entries recorded in note book and retrieved data from computer CPU. The assessee has further explained that these amounts were initially received by the Managing Director of the assessee company for the purpose of other group companies and hence, the accountant of the assessee entered those cash receipts in tally software. However, when it comes to know that those cash receipts are not utilized for the business activities of the assessee, accountant has deleted those entries from the computer software. We have gone through

explanation given by the assessee in light of entries considered by the AO from computer CPU and find that above explanation of the assessee appears to be correct. In fact, as could be seen from the audited financials of M/s. True Value Homes Pvt. Ltd., for the relevant financial years, there were payments (advances) to the assessee company to the tune of Rs.21.35 crores and said payments are reflected under 'loans and advances' in the balance sheet of M/s. TVH. The assessee has filed ledger extract of M/s. SNR Rice Industries – KNM in the books of M/s. True Value Homes Pvt. Ltd. We have gone through said ledger extract and find that the assessee has received a sum of Rs.5 crores in financial year 2011-12 and further a sum of Rs.4.5 crores in financial year 2012-13. Similarly, a sum of Rs.6.75 crores and Rs.5.10 crores was received in the financial year 2013-14 and 2014-15 respectively. The assessee has further explained that deleted entries from computer CPU was exactly tallied with ledger account of M/s. SNR Rice Industries. Further, as could be seen from the explanation offered by the assessee, most of cash receipts of Rs.6.5 crores found in the diary as cash receipt during financial year 2011-12 are accounted transactions in the regular books of accounts of the assessee. We further note that Id.CIT(A) has recorded categorical finding in light of various evidences filed by the assessee that cash received as contained in diary were part of amount received from M/s. True Value Homes Pvt. Ltd., and accounted in books of accounts of the assessee through Indian Bank account. The Id.CIT(A) has examined cash received entries contained in diary and out of seven entries, five entries totalling to Rs.5 crores were exactly tallied with entries



recorded in regular books of accounts. Remaining two entries i.e., Rs.50 lakhs on 11.01.2012, although recorded in regular books of accounts through Indian Bank of the assessee, the source for receipt in the hands of the assessee company was not explained by the assessee. Similarly, for another entry of Rs.1 crore on 14.01.2012, the assessee is not in a position to furnish any details. Thus, out of seven transactions recorded in diary, first five transactions are receipts of amounts from Shri K.N. Ravichandran and M/s. True Value Homes Pvt. Ltd. Although, these amounts were received through banking channels but because it is mentioned as being cash transferred in the narration, particularly for these reasons, Shri Krishnamurthy might have written these amounts as cash received in his diary. Therefore, the Id.CIT(A) categorically recorded that out of Rs.6.5 crores recorded in diary, a sum of Rs.5 crores are explained transactions and the balance Rs.1.5 crores is unexplained transactions and the same has been treated as unaccounted cash receipts. The assessee before us, neither produced any evidence to prove that said cash receipts are explained credits nor proved any evidence to that said entries are not belongs to its business affairs except stating that third party has recorded entries in diary and he is not aware of the facts. Therefore, we are of the considered view that the findings recorded by the Id.CIT(A) was not confronted with any evidence and hence we are of the considered view that there is no error in the findings recorded by the Id.CIT(A) to hold that out of Rs.6.5 crores cash receipts recorded in diary, a sum of Rs. 5 crores was explained with

known source of income and remaining sum of Rs.1.5 crores is still unexplained.

25. Coming back to another set of cash receipts considered by the AO on the basis of notebook. The AO has considered entries recorded in notebook on pages 28 to 31 as unexplained cash credits of the assessee on the ground that said entries was recorded in the name of Ex-Minister, but the assessee could not explain the nature and source of such credits. We find that in the notebook in pages 28 to 31, a sum of Rs.16.24 crores shown as money from minister. The assessee explained that said notebook was written by third person and hence, he was not aware of the noting in the notebook. The assessee further claimed that noting in pages 28 to 31 did not contain any dates and hence, it cannot be attributed to any financial years. Thirdly, it was further claimed that these cash receipts recorded in diary may be the same amounts, which were received from M/s. True Value Homes Pvt. Ltd., in the financial year 2012-13 & 2013-14 amounting to Rs.16.25 crores. We have gone through explanation given by the assessee in light of the findings recorded by the Id.CIT(A) and found that above explanation of the assessee appears to be correct, because notebook considered by the AO is neither maintained by the assessee nor it shows any date against receipt of Rs.16.24 crores. Further, there is no signature of the assessee against those entries. Although, the AO has considered entries pertains to assessment year 2013-14 on the basis of dates of the notebook, but on perusal of copy of the notebook shows that those entries are not only relating to financial year 2012-13, but

also relates to other financial years. From the above, it is very clear that the so called notebook was neither maintained chronologically nor contents relate to any particular year. Therefore, the AO conclusion that entries of amount mentioned as received from Minister pertains to the period between 01.04.2012 to 25.12.2012 is not justified.

26. We, further noted that the Id.CIT(A) has recorded categorical finding that the assessee is a part of joint family consisting of four brothers and Shri K.N. Nehru, being the eldest brother of the family may have received some amount from M/s.True Value Homes Pvt. Ltd., as recorded in the notebook as well as entered by the accountant in the computer. We, further, noted that amounts received from M/s. True Value Homes Pvt. Ltd, are almost matched with the entries recorded in notebook. The total cash receipts from M/s. True Value Homes P Ltd, during the financial years 201 1-12 to 20 14-15, are at Rs.21.35 crores. The cash receipts of Rs.16,25,00,000/- (i.e. Rs.5,00,00,000 + Rs.4,50,00,000 + Rs.6,75,00,000) in the first three financial years i.e. F Ys 2011-12, 2012-13 and 2013-14 almost tallies with the amount of 16.24 crores found in the note book written by Shri. V Krishnamurthy. Therefore, the claim of the assessee that amount of Rs. 16.24 crores recorded in the note book as 'money received through minister', could be the amount withdrawn from M/s. True Value Homes P Ltd and made available to the group, appears to be correct and needs to be accepted, especially in the absence of any contrary evidences / information available on record. Even before us, the Id. DR failed to bring on record any evidence to

prove that said explanation of the assessee is incorrect and further, said entries are in fact really taken place between assessee and some third parties or between the assessee and the minister and hence, we are of the considered view that there is no error in the findings recorded by the Id.CIT (A).

27. Similarly, other cash receipts shown in retrieved data of the computer shown as cash receipts from the group persons are considered as amount drawn from M/s. True Value Homes Pvt. Ltd. These amounts include cash received from M/s. True Value Homes Pvt Ltd, cash received from Shri K.N. Manivannan and cash received from M/s. Janani Minerals. A careful analysis of the above, show that most of the amounts drawn from M/s. True Value Homes Pvt. Ltd., were not entered in computer CPU directly as such. Further, entries found in retrieved data from the CPU are incomplete and not depicts any particular nature of credits and further name from whom such credits were received. Therefore, based on some entries recorded in computer and later deleted for some purpose or for no reasons, the same cannot be considered as some cash receipts which are not disclosed in the regular books of accounts, unless the AO brought on record some evidences to show that said cash receipt was received from particular source and for particular purpose. Further, in any case as discussed in the preceding paragraph, the purported cash receipt shown in diary, notebook and deleted CPU cannot be treated as unexplained cash credits, which can be taxed u/s.68 of the Act. At the same time, these cash entries cannot be considered as source of funds for the assessee's investments /

expenditure if any. Hence, the finding of facts recorded by the Id.CIT(A) that amount received from M/s. True Value Homes Pvt. Ltd., and reflected as loans and advances in its books alone are considered as source of funds for assessee's investments / expenditure is based on evidences on record which is uncontroverted and hence, we are inclined to uphold findings of the Id. CIT(A) and reject arguments of the Revenue.

28. As regards, remaining unexplained cash receipts for Asst. Year 2011-12 for Rs. 5,80,00,000/- and a further sum of Rs. 1,50,00,000/- for Asst. Year 2012-13, the assessee could not relate to any source of funds, including amounts received from M/s True Value Homes Pvt. Ltd. Therefore, the Id. CIT(A) has held that said unexplained cash receipts recorded in note book needs to be considered as receipts pertains to business affairs of the assessee, because Shri. Krishnamurthy has been assigned some work by the assessee group and, in fact, Shri Krishnamurthy himself has admitted that he was supervising the business activities of the assessee company and M/s. Shri Narayana Reddiar Modern Rice Mill (vide answers to Q.Nos.3&5 of his statement dated 31.01.2018). Therefore, un-reconciled entries of 'cash receipts' found in the diary and the note book are to be treated as transactions of the assessee company, since they were found in the business premises of the assessee. However, as detailed in the foregoing paragraphs, the above entries of 'cash receipts' found in the diary and the note book and also the credits found in the retrieved computer data cannot fit into the definition of 'unexplained cash credits' within the

meaning of section 68 of the Act. Then what could be the probable nature of these transactions? In business organizations the receipts of monies are generally two types, i.e., (i) receipts of loans / advances (including recovery of loans/advances made by the assessee); and (ii) business receipts (either revenue receipts or capital receipts). In the former case, the receipts of loans / advances, the amounts will not be taxable as the entry itself acts a source of liability. However, it can be considered u/s.68, only if the assessee claims a credit for such entries. In the present case, the assessee disowned the contents of the diary, note book and the retrieved data from the computer CPU. In such a case, the provisions of section 68 have no application. The only alternative possibility is that the entries could be of the second category, i.e. business receipts, especially in the absence of any other explanations offered by the assessee, or the corroborative evidences available on record. Again the business receipts could be either revenue receipts or capital receipts. In the present case, there are no evidences to show that there were any capital asset transactions. Hence, the 'cash receipts' reflected in the diary and note book cannot be presumed as capital receipts. Therefore, the only possibility could be that these cash receipts are on account of business transactions, and can constitute business receipts of the assessee company. As could be seen from the records, the assessee is running a rice mill. Therefore, in absence of any explanation, the above cash receipts of Rs.5.80 crores during the financial year 2010-11, found in the diary can be treated as unaccounted sales of the year. However, in the case of cash receipts of Rs.6.5 crores during the financial year

2011-12, found in the diary, transactions to the extent of Rs.5.00 crores are the accounted transactions and hence, only the balance of Rs.1.50 crores is to be treated as the unaccounted sales of the year. This could be the only possible interpretation for the entries found in the diary / note book maintained by a person who is supposed to be managing the rice mill business affairs of the assessee.

29. Having said so, let us examine the taxability of said cash receipts. It is an admitted fact that entire proceeds of unaccounted sales cannot constitute net profit of the assessee. Even unaccounted sales will have corresponding purchases. Also in the present case, the quantitative details of purchases, sales and stock of paddy/rice are maintained by the assessee, and there are no discrepancies found in such quantitative details. Hence it is not possible to presume that the unaccounted sales are made from the accounted purchases. In other words, the unaccounted sales, in the present case, are from unaccounted purchases only. In such a case, the fair way is to estimate and determine the possible income from such unaccounted sales, is by adopting the gross profit ratio. The Id. CIT(A) has adopted gross profit as the basis for arriving at profit from business. The gross profit ratios of the assessee in accounted business of the rice mill for the Asst. year 2011-12 is about 27% and for Asst. year 2012-13 is about 22%. Therefore, if above gross profit rate is applied, the profit from unaccounted sales of Rs.5.80 crores and Rs.1.50 crores, for the A.Ys.2011-12 and 20 12- 12 will be Rs.1,58,45,600/- and Rs.33,40,500/-, respectively. Hence, he

has directed the Assessing Officer to treat cash receipts of Rs.5.80 crores and Rs. 1.50 crores, shown in the diary / note book, in F.Ys.2010-11 and 2011-12, as unaccounted sales and adopt profit from such unaccounted sales, at Rs.1,58,45,600/- and Rs.33,40,500/-, respectively, in the A.Ys.2011-12 and 2012-13. Thus, additions to the extent of Rs.1,58,45,600/- and Rs.33,40,500/-, respectively, in the assessments of A.Ys.2011-12 and 2012-13 are confirmed, in place of unexplained cash credits. The remaining amounts of cash credits assessed in A.Ys.2011-12 and 2012-13 and the total amounts of cash credits assessed in A.Ys.2013-14 to 2015-16 are deleted. The facts remain unchanged. The Revenue has failed bring on record any evidence to prove that findings of fact recorded by the Id. CIT(A) is incorrect. Hence, we are inclined to uphold findings of the Id. CIT(A) and reject grounds taken by the Revenue.

30. The next issue that came up for our consideration is addition towards unexplained investment u/s 69 of the Income Tax Act, 1961 for Asst. years 2012-13 to 2015-16. The additions made by the Assessing Officer in these assessment years, by way of unexplained investments u/s.69 of the Act, are as under:

Source of information	Investments made in the form of	Amount (Rs.)
<b>A.Y. 2012-13</b>		
Impounded diary	-	-
Impounded Note-book	-	-
Data retrieved from CPU	Cash paid to KNM for purchase of agril.land	76,78,250
	Cash paid for land purchase	35,84,675
	<b>Total</b>	<b>1,12,62,925</b>
<b>A.Y.2013-14</b>		
Impounded diary	-	-



Impounded Note-book Data retrieved from CPU	- Cash paid to KNM for purchase of agril.land Cash paid for land purchase	- 1,84,84,000 54,09,234
	<b>Total</b>	<b>2,38,93,234</b>
<b>A.Y. 2014-15</b>		
Impounded diary	-	-
Impounded Note-book Data retrieved from CPU	- Cash paid to KNM for purchase of agril.land Cash paid for land purchase	- 2,86,63,000 4,80,000
	<b>Total</b>	<b>2,91,43,000</b>
<b>A.Y. 2015-16</b>		
Impounded diary	-	-
Impounded Note-book Data retrieved from CPU	- Cash paid to KNM for purchase of agril.land Cash paid for land purchase Difference in bank ledger	- 2,25,17,000 51,00,000 5,00,000
	<b>Total</b>	<b>2,81,17,000</b>

31. The above additions of unexplained investments u/s.69 of the Act were made based on the retrieved data from CPU found from the assessee premises. As narrated in the foregoing paragraphs, the impounded diary, note book, retrieved data from CPU etc., are not the 'books of account' maintained by the assessee in its regular course of business. Nor these were the books considered by the assessee for preparing the final annual financial statements and filing of the returns, in any of the assessment years under consideration. The above payments for purchase of agricultural land and investment in lands represent investments and since the same are not reflected in the regular books of accounts, they may constitute unaccounted investments. Therefore, if the assessee fails to explain the nature and source for said investments, they can be considered

as 'unexplained investments' u/s.69 of the Act and brought to tax.

32. The provisions of section 69 of the Act, deals with unexplained investments. As per the provisions of section 69 of the Act, if an assessee is found to have made any investments during the previous year, which are not recorded in the books of account maintained by the assessee, and the assessee fails to explain the nature and source of the investments to the satisfaction of the Assessing Officer, such investments becomes the deemed income of the assessee. Therefore, the assessee is required to explain the nature and source for these investments. Admittedly, impugned note book entries refer to certain payments made for purchase of agricultural lands. The assessee explained that there were cash receipts to the tune of Rs.21.35 crores from M/s. True Value Homes P Ltd., through Shri. KN Manivannan, the company managing director, which in-turn, was used for various purposes including payment for purchase of Agricultural land in the name of various persons of the group. Therefore, the assessee claimed that the above investments, in the form of (i) cash paid to Shri KNM for purchase of agricultural lands, and (ii) cash paid for lands, if at all to be considered as actual investments, then the same should be considered as the investments made out of the above amount of Rs.21.35 crores received from M/s. True Value Homes Pvt. Ltd.

33. Having heard both sides, we find that above explanation seems to be reasonable. As detailed in the foregoing paragraphs,

there were cash receipts to the tune of Rs.21.35 crores from M/s. True Value Homes P Ltd. The amounts are clearly shown in the audited financial statements of M/s. True Value Homes P Ltd for the respective years. In the books of M/s. True Value Homes P Ltd, these amounts were shown as cash paid to the assessee company. Hence the assessee explanation that these unaccounted investments, if considered as actually invested, are out of the above 21.35 crores, is logical and needs to be accepted. Further, there were no contrary evidences on record to show that the above amounts of Rs.21.35 crores received from M/s. True Value Homes P Ltd were utilized elsewhere and not used for making present investments of payments for purchase of agricultural lands and other lands. In addition, there is estimated profits of Rs.1,58,45,600/- and Rs.33,40,500/-, by treating the cash receipts found in the diary as unaccounted sales, in the A.Ys.2011-12 and 2012-13, respectively. This amount also forms a source for the subsequent investments/expenses etc. The assessee has filed a cash flow statement, by considering the amounts of Rs.21.35 crores received from M/s. True Value Homes P Ltd and estimated profits on unaccounted sales as the source of funds, and amounts paid by the group (as found in the retrieved data from computer CPU) as the application/ investments. The cash flow statement filed by the assessee is as follows.

Source of Income	Amount (Rs.)	Application	Amount (Rs.)
<b>A.Y. 2011-12</b>			
1. Opening Balance as on 1.4.2010	0	1. Unaccounted investments, expenditure in A.Y.2011-12	0

2. Additional Income brought to tax, by estimating income, by treating cash receipts as unaccounted sales	1,58,45,600	Closing Balance as on 31.3.2011	1,58,45,600
<b>Total</b>	<b>1,58,45,600</b>	<b>Total</b>	<b>1,58,45,600</b>
<b>A.Y. 2012-13</b>			
1. Opening Balance as on 1.4.2011	1,58,45,600	1. Cash paid to KNM for purchase of agril.land	76,78,250
2. Additional Income brought to tax, by estimating income, by treating cash receipts as unaccounted sales	33,40,500	2.. Cash paid for land purchase	35,84,675
3. Cash received from M/s. True Vale Homes P Ltd	5,00,00,000	Closing Balance as on 31.3.2012	5,79,23,175
<b>Total</b>	<b>6,91,86,100</b>	<b>Total</b>	<b>6,91,86,100</b>
<b>A.Y. 2013-14</b>			
1. Opening Balance as on 1.4.2012	5,76,23,175	1. Cash paid to KNM for purchase of agril.land	1,84,84,000
2. Cash received from M/s. True Vale Homes P Ltd	4,50,00,000	2.. Cash paid for land purchase	54,09,234
		Closing Balance as on 31.3.2013	7,90,29,941
<b>Total</b>	<b>10,29,23,175</b>	<b>Total</b>	<b>10,29,23,175</b>
<b>A.Y. 2014-15</b>			
1. Opening Balance as on 1.4.2013	7,90,29,941	1. Cash paid to KNM for purchase of agril.land	2,86,63,000
2. Cash received from M/s. True Vale Homes P Ltd	6,75,00,000	2.. Cash paid for land purchase	4,80,000
		Closing Balance as on 31.3.2014	11,73,86,941
<b>Total</b>	<b>14,65,29,941</b>	<b>Total</b>	<b>14,65,29,941</b>
<b>A.Y. 2015-16</b>			
1. Opening Balance as on 1.4.2014	11,73,86,941	1. Cash paid to KNM for purchase of agril.land	2,25,17,000
2. Cash received from M/s. True Vale Homes P Ltd	5,10,00,000	2.. Cash paid for land purchase	51,00,000
		Closing Balance as on 31.3.2015	14,07,69,941
<b>Total</b>	<b>16,83,86,941</b>	<b>Total</b>	<b>16,83,86,941</b>

34. Thus, from the above cash flow statement, it is clear that all unaccounted investments etc., made by the group, in various financial years, are within the limits of funds received from M/s. True Value Homes P Ltd in the respective years. In other words, there are no unexplained investments in the hands of the assessee in any of the assessment years under consideration. Instead, there is excess funds (sources) over the investments etc., as on 31.03.2015, to the tune of Rs.14,07,69,941/-, in the hands of the assessee or its managing director or the group. The Ld. CIT(A) after considering relevant explanation and cash flow

statement, had recorded categorical finding that in the absence of any contrary evidences, the above investments of payments for purchase of agricultural lands and other lands, during the financial years 2011-12 to 2014-15 (A.Ys.2012-13 to 2015-16), are deemed to have been made out of cash receipts of Rs.21.35 crores received from M/s. True Value Homes P Ltd. Consequently, source for above payments for agricultural lands have been explained out of known source and hence, addition made towards payments for purchase of agricultural lands and other lands, as unexplained investments u/s.69 of the Act, in the assessments of A.Ys.2012-13 to 2015-16, cannot be sustained under law. The facts remain unchanged. The Revenue has failed bring on record any evidence to prove that findings of fact recorded by the Id. CIT(A) is incorrect. Hence, we are inclined to uphold findings of the Id. CIT(A) and reject grounds taken by the Revenue.

35. The next addition of unexplained investment u/s.69 of the Act, is towards difference in the bank ledger, of Rs.5,00,000/-, in the assessment of A.Y.2015-16 for purchase of lands. The facts with regard to impugned addition is that during the financial year 2014-15 (A.Y.2015-16), the company has made investments (amounts paid for purchase of lands) of Rs.38,50,000/- (Rs.22,00,000+ Rs.16,50,000) through cheques. However the Assessing Officer in his order observed that the amounts paid through cheques was only Rs.33,50,000/- and hence, balance amount of Rs. 5,00,000/- has been treated as unexplained investments u/s.69 of the Act.

36. We have heard both the parties, perused materials on record and gone through orders of the authorities below. Having considered relevant fact, we find that the. Ld. CIT(A) has recorded categorical findings that entire investment of Rs.38,50,000/- (Rs.22,00,000 + Rs.16,50,000) is fully accounted for in its books and the entire amount was paid through banking channels, including sum of Rs. 5,00,000/- considered as unexplained investment by the AO. We further note that the impugned payment of Rs. 5,00,000/- has been paid on 20-09-2014 by cheque number 00104871 of Indian Bank, Trichy Branch. Therefore, we are of the considered view that the Assessing Officer is not justified in adding sum of Rs. 5,00,000 as unexplained investment u/s.69 of the Act. The Id. CIT(A) after considering relevant fact has rightly deleted addition and hence, we are inclined to uphold findings of the Id. CIT(A) and reject grounds taken by the Revenue.

37. Coming to the issue of addition made u/s 69C towards unexplained expenditure on account of DMK 10th State level conference held in Trichy in the financial 2013-14. Having heard both sides, we find that the impounded documents (loose sheets) clearly shows that the expenses are in relation to' the conducting of DMK 10th State level conference. It is also a fact that Shri. KN Nehru, who was the District Secretary of DMK for Trichy district, is one of the brothers of the Managing Director of the assessee company. Further, Shri KN Nehru, being the District Secretary of the party, is admitted that he had made arrangements for the conference. Further, the argument of the assessee that Shri KN

Nehru used to visit its business premises to chalk-out the strategies and logistics for the conference and during his visit he might have left the paper containing details of expenditure incurred for party expenses is quite natural and cannot be ruled out. In such a case, the assessee claim that the above expenditure of Rs.3,00,30,312/- relates to DMK 10th State conference, is to be considered as genuine. The next question that needs be considered is who has spent the amount and the sources for the said expenditure. The assessee company is running a rice mill. There is no need for the assessee company for incurring such heavy amount for conducting the conference of a political party. Nor the assessee is into the business of organizing any such activities of conducting the conferences, meetings etc. Therefore, it is not possible to presume that expenses belonged to the assessee company. On the other hand, Shri KN Nehru, vide his letter dated 20.12.2018 before the Assessing Officer, had clearly stated that above expenditure of Rs.3,00,30,312/- was borne by the DMK party and the sources for the said payment was collections from the party workers who attended the meeting. Therefore, in the absence of any contrary evidences, and since the expenses are for the DMK's state level conference and the assessee company is not in any obligation of meeting such expenditure, it is not possible to arrive at a conclusion that the expenses are borne by the assessee company. It may be true that the data retrieved from the computer CPU, in the books of M/s. Narayana Reddiyar Modern Rice Mill, showed details of above payments "as DMK conference expenses" in the ledger copy of KNN- 1. But as mentioned

earlier, the company accountant entered all the transactions in the computer 'tally' software, whether belonged to the assessee company, or to other persons in the group. In fact, retrieved data from CPU, itself showed cash receipts of Rs.5,30,55,000/- and Rs.3,78,00,000/-, respectively, during the financial years 2012-13 and 2013-14, in the name of Shri KN Nehru. In fact, the Assessing Officer himself treated said cash receipts as 'unexplained cash credits' u/s.68 of the Act and brought to tax. These cash receipts from Shri KN Nehru, as reflected in the very same data retrieved from CPU, also stands as sources for the above DMK conference expenses. Further, if cash receipts from Shri KN Nehru are not to be believed, meeting of the above expenses by the assessee company also to be 'discarded because both of these entries are found in the same data retrieved from CPU.

38. It may also be true that the headquarters of DMK party, at state level, has not reflected collections/receipts or the expenses relating to the DMK 10th State level conference held in Trichy in 2013-14. In this regard, the explanation of Shri KN Nehru / the assessee company that since the collections were locally made at the time of conference, for the purpose of conference and expended for the conference locally, the details of the conference collections and its expenses were squared up locally and hence, the same are not reflected in the DMK party state head office, has some merits and needs to be given credit. Thus, from the above facts, it is clear that — (i) the expenses belonged to the DMK party Conference (ii) Shri KN Nehru, being the District



Secretary, has confirmed that the expenses were borne by the party, (iii) data retrieved from CPU, also showed cash receipts from Shri KN Nehru to the tune of Rs.3,78,00,000/- during the same financial year 2013-14. Under these circumstances, we are of the considered view that conference expenses of Rs.3,00,30,312/- belonged to the DMK party, and the expenses are met by DMK District Secretary Shri KN Nehru. Hence, these expenses cannot be considered as expenses of the assessee, leave alone whether it is explained or unexplained. In addition, there are evidences in the very same retrieved data from CPU, to show that the amount has been received from Shri KN Nehru. Hence, the Assessing Officer is not justified in treating said expenses as unexplained expenses u/s.69C of the Act, in the hands of the assessee company. The CIT(A) after considering relevant facts has rightly deleted addition made by the Assessing Officer towards DMK party expenses u/s 69C of the Act. Hence, we are inclined to uphold findings of the Id. CIT(A) and reject grounds taken by the revenue.

**39. In the result, appeals filed by the Revenue for Asst. year's 2011-12 to 2015-16 are dismissed.**

**ITA.NO. 2406/CHNY/2019 - AY 2016-17-KN MANIVANNAN**

40. The facts and issues involved in this appeal filed by the revenue are almost similar and identical to the facts and issues, which we have considered in the case of M/s GSNR Rice Industries Private Limited in ITA No.s 2407 to 2411/Chny/2019 for Asst. years 2011-12 to 2015-16. The sole basis for various

addition made by the AO towards unexplained cash credit u/s 68 of the Act, unexplained investments u/s 69 of the Act, and unexplained expenditure u/s 69C of the Act, is documents found during the course of survey u/s 133A, including diary, note book and retrieved data from computer CPU. We have considered an identical issue in the case of M/s GSNR Rice Industries Pvt. Ltd and held that diary, note book and retrieved data from computer CPU are not books or books of accounts as defined u/s 2(12A) of the Act, and hence, those diary, note book and retrieved data cannot be considered as books for invoking provisions of section 68 and 69/69A/69C of the Act. Further, addition made by the AO towards entries recorded in diary, note book and retrieved data from CPU u/s 68 and 69/69A/69C of the Act, as unexplained cash credits, unexplained investments and unexplained expenditure has been deleted. The reason given by us in preceding paragraphs in ITA No. 2407 to 2411/Chny/2019 shall mutatis mutandis apply to this appeal as well. Therefore, for similar reasons addition made u/s 68, 69 and 69C of the Act cannot be sustained.

41. As regards addition made towards unexplained cash credit u/s 68 of the Act, for Rs. 24,14,400/-, the Id. CIT(A) has recorded categorical finding that it is a payment by self, because the amount shown to have made from the books of proprietary concern to the proprietor and hence, it cannot be considered as cash credit which can be brought to tax u/s 68 of the Act. Because, proprietary concern is not a separate legal entity for income tax purposes. Further, said entry is a debit entry and

hence, it cannot be brought tax u/s 68 of the Act as cash credit. The Id. CIT(A) has further recorded a finding of fact that there is sufficient source available with the assessee to explain source for explaining cash payment out of amount received from M/s True Value Homes Pvt. Ltd and hence, if an isolated cash payment entry between proprietary concern and proprietor is treated as true, then the source available in the form of amount received from M/s TVH is also needs to be considered as genuine, because both transactions are from same retrieved data from computer CPU. Therefore, we are of the considered view that the assessee has explained source for cash credit of Rs. 24,14,000/- out of known source and hence, the same cannot be brought to tax u/s 68 of the Act. The Id. CIT(A) after considering relevant facts has rightly deleted addition made by the AO and hence, we are inclined to uphold findings of Id. CIT(A) and reject ground taken by the revenue.

42. The next issue that came up for our consideration is addition of Rs. 1,26,18,612/- u/s 69C of the Act, as unexplained expenditure towards alleged amount spent for house construction. The AO has considered certain deleted entries of tally software from retrieved data of computer CPU to make addition u/s 69C of the Act. As per retrieved data, one cash payment of Rs. 49,00,181/- from KN Manivanna to Shri. KN Nehru was considered as unexplained expenditure. Similarly, a sum of Rs. 77,18,431/- cash payment made for house construction/work of Shri. KN Nehru has been considered as unexplained expenditure. Both entries are retrieved from

computer CPU. According to the AO, above two payments were made from the account of M/s Narayana Reddiyar Modern Rice Mill to KN Nehru for house construction/work. The assessee has disowned deleted data from computer software. The assessee further claimed that he has not made any such payments to Shri. KN Nehru for house construction.

43. Having heard both parties and considered materials on record, we find that except retrieved deleted entries, the AO has not brought on record any corroborative evidence to prove that said transaction had been taken place between the parties. Further, impugned entries were retrieved from the tally software books of accounts of M/s GSNR Rice industries Pvt. Ltd and those books are nothing to do with assessee and M/s Narayana Reddiyar Modern Rice Mill. Further, both parties denied those entries and any cash payments. Under these facts, it is difficult to accept findings of the AO that said deleted entries of cash payments did actually took place and represents unexplained expenditure which can be brought to tax u/s 69C of the Act. We further noted that the person who maintained accounts in tally software had explained the reason for entering and later deleting those entries from tally software. Therefore, when the person who entered the entries in computer software had clarified that said entries are not belongs to business affairs of the assessee and further, he had also categorically explained nature and source of such entries and the reason for deletion of entries in the computer software, then deleted entries cannot be considered as unexplained expenditure of the assessee to bring those entries

within the ambit of section 69C of the Act. No doubt, it is for the assessee to explain each and every entry recorded in its books of accounts to the satisfaction of the AO. But, once the assessee has offered his explanation, then it is for the AO to bring on record some corroborative evidences to show that retrieved data from CPU are actually expenditure of the assessee. In this case, although the assessee has disowned deleted entries from tally software and which was further strengthened by the statements of the persons who maintained the tally software, but the AO has disregarded all the evidences and brought those entries within the ambit of section 69C of the Act, without bringing on record any other evidences to prove that said entries are in fact taken place. Further, in order to bring any expenditure within the ambit of section 69C of the Act, there must be some expenditure which was not recorded in the books of accounts of the assessee and further, the assessee fails to explain source for such expenditure. In this case, what was considered by the AO was some irrelevant entries which are nowhere connected to the assessee and his office and hence, those entries can only be treated as dumb documents and from those documents, no additions can be made u/s.69C of the Act. We, further noted that the Id. CIT(A) has also recorded a categorical findings that the assessee is having sufficient source to explain cash payments. In case, retrieved entries are considered to be true, then availability of source out of amount received from M/s True Value Homes Pvt. Ltd cannot be ignored. Therefore, we are of the considered view that there is enough source to explain said payment and hence, said payment cannot be considered as unexplained expenditure which can be

brought to tax u/s 69C of the Act. Facts remain unchanged. The Revenue has failed to bring on record any evidences to prove the findings of fact recorded by the Id. CIT(A) is incorrect or we can take a different view other than the view taken by the Id. CIT(A). Hence, we do not find any reason to interfere with findings of Id. CIT(A). Hence, we reject grounds taken by the Revenue.

44. Insofar as addition of Rs. 4,73,00,500/- u/s 69 of the Income Tax Act, 1961, once again above addition is based on three deleted entries from computer CPU. The AO had retrieved deleted entries from computer CPU as per which certain payments were made for purchase of agricultural lands by KN Manivannan and debited into land purchase account in the books of SNR Rice Industries Pvt. Ltd. According to the AO, the assessee has made certain payments for purchase of land, but could not explain the entries and source for said investment. Hence, he has treated those deleted entries as unexplained investment and brought to tax u/s 69 of the Income Tax Act, 1961.

45. We have heard both parties, perused materials available on record and gone through orders of the authorities below. Having considered relevant materials, we find that except retrieved deleted entries, the AO has not brought on record any corroborative evidence to prove that said transaction had been taken place between the parties. There is no iota of evidences with the AO to prove that said payments were made for purchase of agricultural lands. Further, impugned entries were retrieved

from the tally software books of accounts of M/s GSNR Rice industries Pvt. Ltd and those books are nothing to do with assessee and M/s Narayana Reddiyar Modern Rice Mill. Further, the assessee has denied those entries and any cash payments. Under these facts, it is difficult to accept findings of the AO that said deleted entries of cash payments did actually took place and represents unexplained investments which can be brought to tax u/s 69 of the Act. We further noted that the person who maintained accounts in tally software had explained the reason for entering and later deleting those entries from tally software. Therefore, when the person who entered the entries in computer software had clarified that said entries are not belongs to business affairs of the assessee and further, he had also categorically explained nature and source of such entries and the reason for deletion of entries in the computer software, then those deleted entries cannot be considered as unexplained investments to bring those entries within the ambit of section 69 of the Act. No doubt, it is for the assessee to explain each and every entry recorded in its books of accounts to the satisfaction of the AO. But, once the assessee has offered his explanation, then it is for the AO to bring on record some corroborative evidences to show that retrieved data from CPU are actual investments of the assessee. In this case, although the assessee has disowned deleted entries from tally software and which was further strengthened by the statements of the persons who maintained the tally software, but the AO has disregarded all evidences and brought those entries within the ambit of section 69 of the Act, without bringing on record any other evidences to

prove that said entries are in fact taken place. Further, in order to bring any Investments within the ambit of section 69 of the Act, there must be some investments which were not recorded in the books of accounts of the assessee and further, the assessee fails to explain source for such expenditure. In this case, what was considered by the AO was some irrelevant entries which are nowhere connected to the assessee and his office and hence, those entries can only be treated as dumb documents and from those documents, no additions can be made u/s.69 of the Act. We, further noted that the Id. CIT(A) has also recorded a categorical findings that the assessee is having sufficient source to explain cash payments. In case, the retrieved entries from CPU are considered to be true, then availability of source out of amount received from M/s True Value Homes Pvt. Ltd cannot be ignored. Therefore, we are of the considered view that there is enough source to explain said payment and hence, said payment cannot be considered as unexplained investments which can be brought to tax u/s 69 of the Act. We further noted that the Id. CIT(A) after considering cash flow statement filed by the assessee, very categorically held that the assessee is having source out of amount received from M/s True Value Homes Pvt. Ltd and which is used for making various payments, including payments made for purchase of Agricultural lands. Facts remain unchanged. The Revenue has failed to bring on record any evidences to prove the findings of fact recorded by the Id. CIT (A) is incorrect or we can take a different view other than view taken by the Id. CIT (A). Hence, we do not find any reason to interfere



with findings of Id. CIT (A). Accordingly, the ground taken by the revenue is rejected.

46. As regards estimated notional interest u/s 56 amounting to Rs. 1,18,58,712/-, we find that once again addition is based on excel sheet found from the laptop of Mr. S Ramesh, which was recovered subsequent to survey. The AO has made addition based on excel sheet as per which the assessee is engaged in money lending business and has advanced loans to various persons. Therefore, he opined that the assessee has advanced loans @24% interest per annum and hence, worked out interest of Rs. 1,18,58,712/- and brought to tax u/s 56 of the Income Tax Act, 1961.

47. We have heard both parties, perused materials available on record and gone through orders of the authorities below. Having heard both parties, we find that the Id. CIT(A) has recorded categorical findings that all most all advances claimed to have been given to various persons are accounted in regular books of accounts of M/s Ramjay Trading Company, a proprietorship concern of the assessee. The Id. CIT(A) has further noted that none of these loans are advanced in the financial year 2015-16, relevant to Asst year 2016-17. He further noted there is no details as to how interest of Rs. 1,18,58,712/- was calculated for a loan amount of Rs. 1,88,49,400/-. He further noted that out of total loan amount shown in excel sheet, a sum of Rs. 1,28,79,400/- was accounted in regular books and further entire amount was repaid in earlier financial year. Further, if accounted

loans are excluded from total advances as per excel sheet, the balance unaccounted advances is comes to Rs. 59,70,000/. On this balance unaccounted loans, interest @24% is calculated, then it works out to Rs. 14,32,800/-. Therefore, the Id. CIT(A), out of total interest addition of Rs. 1,18,58,712/-, sustained addition of Rs. 14,32,800/- and deleted balance amount of Rs. 1,04,25, 912/-. Facts remain unchanged. The Revenue has failed to bring on record any evidences to prove the findings of fact recorded by the Id. CIT(A) is incorrect or we can take a different view other than the view taken by the Id. CIT(A). Hence, we do not find any reason to interfere with findings of Id. CIT(A). Accordingly, the ground taken by the revenue is rejected.

**48. In the result, appeal filed by the Revenue for Asst. year 2016-17 is dismissed.**

**ITA No. 2825/Chny/2019 – AY 2016-17 - K.N. NEHRU**

49. The facts and issues involved in this appeal filed by the revenue are almost similar and identical to the facts and issues, which we have considered in the case of M/s GSNR Rice Industries Private Limited in ITA Nos 2407 to 2411/Chny/2019 for Asst. years 2011-12 to 2015-16. The sole basis for addition made by the AO towards unexplained money u/s 69A and unexplained investments u/s 69A of the Act, is documents found during the course of survey u/s 133A, including dairy, note book and retrieved data from computer CPU. We have considered an identical issue in the case of M/s GSNR Rice Industries Pvt. Ltd and held that dairy, note book and retrieved data from computer

CPU are not books or books of accounts as defined u/s 2(12A) of the Act, and hence, those diary, note book and retrieved data cannot be considered as books for invoking provisions of section 69/69A of the Act. Further, addition made by the AO towards entries recorded in dairy, note book and retrieved data from CPU u/s 69/69A of the Act, as unexplained Investments and unexplained money has been deleted. The reason given by us in preceding paragraphs in ITA No. 2407 to 2411/Chny/2019 shall mutatis mutandis apply to this appeal as well. Therefore, for similar reasons addition made by the AO u/s 69 and 69A of the Act cannot be sustained.

50. The first addition made by the AO is cash payment of Rs. 49,00,181/- purportedly paid by M/s Narayana Reddiyar Modern Rice Mill to the assessee as unexplained money u/s 69A of the Act. The AO has considered certain deleted entries of tally software from retrieved data of computer CPU to make addition u/s 69A of the Act. As per retrieved data, one cash payment of Rs. 49,00,181/- from KN Manivanna, prop: Shri. Narayana Reddiyar Modern Rice Mill account to Shri. KN Nehru was considered as unexplained money. The impugned entry is retrieved from computer CPU. According to the AO, above payment was made from the account of M/s Narayana Reddiyar Modern Rice Mill to KN Nehru for house construction/work. The assessee has disowned deleted data from computer software. The assessee further claimed that he has not received any such amounts from Shri. KN Manivannan.

51. Having heard both sides, we find that section 69A deals with unexplained money of which an assessee is found to be owner. Therefore, the primary condition for invoking section 69A is to establish ownership of money. In this case, the AO has considered certain entries retrieved from computer CPU which shows cash payment of Rs. 49,00,181/- from KN Manivannan to KN Nehru. The alleged ledger account "KNN-1 cash" apparently shows cash payment, but there is no other corroborative evidence to link alleged deleted entry to the assessee, because both parties have denied impugned payment. Therefore, we are of the considered view that ownership of money as required u/s 69A is not established and hence, we are of the view that there is no error in the order of the Id. CIT(A) in deleting impugned addition made u/s 69A of the Act. Further, we find that this issue has been dealt by us in the case of Shri. KN Manivannan for Asst. year 2016-17 and held that the AO was erred in making addition towards unexplained expenditure u/s 69C, on the basis of retrieved data from computer CPU. The same addition is once again made in the hands of the assessee u/s 69A, which is clearly a double addition not permissible under law. Therefore, on this count addition made by the AO is unsustainable. Further, in the case of Shri. KN Manivanna, we held that the assessee has explained source for expenditure which is out of amount received from M/s True Value Homes Pvt. Ltd and hence, no addition could be made u/s 69C of the Act. The reason given by us in preceding paragraph no 43 shall mutatis mutandis apply to this appeal, as well. Therefore, for similar reasons, we are of the considered view that assuming but not accepting, if deleted entries are considered

to be true, then availability of source in form of amount received from M/s True Value Homes Pvt. Ltd is also needs to accepted as genuine. Further, once source is explained, then no addition could be made u/s 69A of the Act. The Id. CIT(A) after considering relevant facts has rightly deleted addition. Hence, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the revenue.

52. The next addition of Rs. 5,02,78,431/- consisting of two deleted entries, viz., a sum of Rs. 4,25,60,000/- alleged to be cash payment by the assessee to M/s GSNR Rice Industries Pvt. Ltd and further, sum of Rs. 77,18,431/- towards alleged payment for KN Nehru house construction. The AO has made addition u/s 69 of the Income Tax Act, 1961 on the ground that the assessee has made an investment which is not recorded in books of accounts and further source for investment is not explained. We find that once again above addition is based on two deleted entries from computer CPU. The AO had retrieved deleted entries from computer CPU as per which one cash payment of Rs. 4,25,60,000/- was made by the assessee to GSNR Rice Industries Pvt. Ltd. Similarly, another entry of Rs. 77,18,431/- alleged to be cash paid for house construction. According to the AO, the assessee has made certain payments, but could not explain the entries and source for said investment. Hence, he has treated those deleted entries as unexplained investment and brought to tax u/s 69 of the Income Tax Act, 1961.

53. We have heard both parties, perused materials available on record and gone through orders of the authorities below. Having considered relevant materials, we find that except retrieved deleted entries, the AO has not brought on record any corroborative evidence to prove that said transaction had been taken place between the parties. There is no iota of evidences with the AO to prove that said payments were made and any asset is acquired. Further, deleted entries retrieved from computer did not give rise to any investment or assets. Further, impugned entries were retrieved from the tally software books of accounts of M/s GSNR Rice industries Pvt. Ltd and those books are nothing to do with assessee. Further, the assessee has denied those entries and any cash payments. Under these facts, it is difficult to accept findings of the AO that said deleted entries of cash payments did actually took place and represents unexplained investments which can be brought to tax u/s 69 of the Act. We further noted that the person who maintained accounts in tally software had explained the reason for entering and later deleting those entries from tally software. Therefore, when the person who entered the entries in computer software had clarified that said entries are not belongs to business affairs of the assessee and further, he had also categorically explained nature and source of such entries and the reason for deletion of entries in the computer software, then deleted entries cannot be considered as unexplained investments to bring those entries within the ambit of section 69 of the Act. No doubt, it is for the assessee to explain each and every entry recorded in its books of accounts to the satisfaction of the AO. But, once the assessee has

offered his explanation, then it is for the AO to bring on record some corroborative evidences to show that retrieved data from CPU are actual investments of the assessee. In this case, although the assessee has disowned deleted entries from tally software and which was further strengthened by the statements of the persons who maintained the tally software, but the AO has disregarded all evidences and brought those entries within the ambit of section 69 of the Act, without bringing on record any other evidences to prove that said entries are in fact taken place. Further, in order to bring any Investments within the ambit of section 69 of the Act, there must be some investments which were not recorded in the books of accounts of the assessee and further, the assessee fails to explain source for such expenditure. In this case, what was considered by the AO was some irrelevant entries which are nowhere connected to the assessee and his office and hence, those entries can only be treated as dumb documents and from those documents, no additions can be made u/s.69 of the Act. We, further noted that the Id. CIT(A) has also recorded a categorical findings that the assessee is having sufficient source to explain cash payments. In case, retrieved entries are considered to be true, then availability of source in form of amount received from M/s True Value Homes Pvt. Ltd is also needs to be accepted. Therefore, we are of the view that when there is enough source to explain said investment, then said payment cannot be considered as unexplained investments which can be brought to tax u/s 69 of the Act. We further noted that the Id. CIT(A) after considering cash flow statement filed by the assessee, very categorically held that the assessee is having

source out of amount received from M/s True Value Homes Pvt. Ltd and which is used for making various payments, including payments made for purchase of Agricultural lands, etc,. Facts remain unchanged. The Revenue has failed to bring on record any evidences to prove the findings of fact recorded by the Id. CIT(A) is incorrect or we can take a different view other than view taken by the Id. CIT(A). Hence, we do not find any reason to interfere with findings of Id. CIT(A). Accordingly, the ground taken by the revenue is rejected.

**54. In the result, appeal filed by the Revenue for Asst. year 2016-17 is dismissed.**

**55. As a Result, appeals filed by the Revenue in the case of M/s GSNR Rice Industries Pvt. Ltd for Asst. years 2011-12 to 2015-16 and appeals filed by the Revenue in the case of KN Manivannan and KN Nehru for Asst. year 2016-17 are dismissed.**

Order pronounced in the court on 9<sup>th</sup> June, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

**(V. Durga Rao)**

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

**(G. Manjunatha)**

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 9<sup>th</sup> June, 2021

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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