

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री चंद्र पूजारी, लेखा सदस्य के समक्ष।

[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A.Nos.110 & 111/Mds/2015

निर्धारण वर्ष /Assessment years : 2005-06 & 2006-07

& C.O. Nos. 28 & 29/Mds/2015.

in assessment years : 2006-07 & 2005-06

The Assistant Commissioner of
Income Tax,
Non Corporate Circle-20,
Chennai 600 034.

(अपीलार्थी/Appellant)

Vs. Justice P.D. Dinakaran,
J-81, New No.2, First Main Road,
Anna Nagar East,
Chennai 600 102.

[PAN AAGPD 5496F]

(प्रत्यर्थी/Respondent/Cross Objector)

आयकर अपील सं./I.T.A.Nos.154, 155, 156 & 157/Mds/2015

& C.O.Nos. 34, 35, 36 & 37/Mds/2015.

निर्धारण वर्ष /Assessment years : 2005-06, 2006-07, 2007-08 & 2009-2010.

The Income Tax Officer,
Non Corporate Ward 5(3)
Coimbatore

(अपीलार्थी/Appellant)

Vs. Smt. M.G. Paripooranam,
124- Kovai Thiru Nagar,
Nehru Nagar East,
Civil Aerodrome Post,
Coimbatore 641 014.
[PAN AIPPP 9843F]

(प्रत्यर्थी/Respondent/Cross Objector)

अपीलार्थी की ओर से/ Appellant by

: Shri. A.V. Sreekanth, IRS, JCIT.

प्रत्यर्थी की ओर से /Respondent by

: Shri. B. Ramakrishnan, C.A.

सुनवाई की तारीख/Date of Hearing

: 04-08-2015

घोषणा की तारीख /Date of Pronouncement

: 28-08-2015

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

These are group appeals by the Department and Cross Objections by the assessee, wherein certain issues in these appeals and Cross objections are common in nature, these appeals and Cross objections are clubbed, heard together, and disposed of by this common order for the sake of convenience.

2. First we take up Revenue appeals in ITA No.110 & 111/Mds/2015 for adjudication. The first common ground raised by the Department is with regard to deletion of addition made by treating the agricultural income as non agricultural income for ₹4,62,500/- for the assessment year 2005-06 and ₹4,21,845/- for the assessment year 2006-07.

3. The facts of the case for the assessment year 2005-06 are that the assessee, in his returns of income of assessment year 2005-2006 claimed agricultural incomes of ₹4,62,500/- . As per the contents of the assessment order, the assessee owns 48.38 acres of agricultural lands at Kaverirajapuram and Orathur villages, Tiruthani Taluk. As per the assessee, he was growing paddy, groundnut, and inter-crops in these

lands. The net agricultural incomes admitted by the assessee in his returns of income filed for assessment year 2005-2006 is ₹4,62,500/-. The Assessing Officer did not accept the assessee's contentions of agricultural income. The Assessing Officer opined that no agricultural crops could have been raised on these lands in that crop year so as to derive agricultural income. The Assessing Officer treated the entire amounts of ₹4,62,500/- claimed 'as the gross agricultural incomes', as incomes from other sources and added to the total income of the assessee for the assessment year 2005-2006. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. The Commissioner of Income Tax (Appeals) observed that the assessee owns 48.38 acres of agricultural lands, which were purchased by him in late 1980s and early 1990s. As per the Revenue records, majority of the lands are wet lands. Even the registration documents reveal that the lands are wet lands. Once the lands are wet lands, they are fit for cultivation of paddy. The normal expected net income from paddy cultivation ranges from Rs.10,000/- to

₹20,000/- per acre per annum. More or less, same amount of profits can also be expected from groundnut crop, if there was no failure of monsoons. Whereas, in the instant case, the assessee's net income from 48.38 acres of lands, from cultivation of paddy, groundnut etc., were ₹4,62,500/- (i.e at an average of ₹9,559/-) during the financial year 2004-05. The Assessing Officer in his orders, noted that "it is apparent that no crops could have raised on those lands in that crop year so as to derive agricultural income". The observation of the Assessing Officer was a total presumption only and not based on any real material evidence.

4.1 The Commissioner of Income Tax (Appeals) observed that the agricultural lands are classified as wet lands only when they are having assured irrigation facilities. When there are assured irrigation facilities available, no person will leave the lands without cultivation of crops. If it was not possible for a person to cultivate the lands on his own, there are several people in the villages. to take such lands on lease. In fact, in rural India, especially in states like Tamilnadu, Andhra Pradesh and Karnataka, there are more number of landless farmers/marginal farmers, who are eager to take the

agricultural lands on lease. If the wet agricultural lands are given on lease, the lease income from the agricultural lands alone with fetch not less than ₹5,000/- per acre per annum. Under these circumstances, it was hard to accept the proposition of the Assessing Officer that "no crops could have been raised on these lands".

4.2 The Commissioner of Income Tax (Appeals) further observed that the assessee and other family members own sizeable extents of agricultural lands in the same vicinity. For example, the assessee's brother-in-law, Shri K. Raja Rabidev, owns 52.75 acres of land in averirajapuram village, where the assessee's lands are also situated. In fact, these lands are contiguous. Shri Raja Rabidev, in his returns of income, declared ₹6,75,700/- as agricultural income from his lands of 52.75 acres, for A.Y. 2005-06 and Rs.7,93,520/- as agricultural income for A.Y. 2006-07. The Assessing Officer relying on the report from the District Collector concluded that the maximum yield possible from the lands of 52.75 acres of Shri Raja Rabidev is Rs.4,34,900/- (₹8,245/- per acre per annum) in the A.Ys.2005-06 and allowed the claim of agricultural income to that extent only and the balance was treated as income from other sources. The Assessing Officer brought the

amounts in the hands of the present assessee. In other words, the Assessing Officer himself has confirmed and also allowed the claim of agricultural income at ₹4,34,900/- from the lands owned by Shri K. Raja Rabidev, for the same A.Y 2005-06. When the Assessing Officer himself arrived at the agricultural income from 52.75 acres at ₹4,34,900/- from the lands of Shri Raja Rabidev, it was not known as to how the Assessing Officer can come to the conclusion that the lands owned by the assessee are not capable of yielding, especially when the lands are located in the same vicinity, under the same survey Nos. and contiguous to each other.

4.3 According to the Commissioner of Income Tax (Appeals) The above facts only goes to prove that the Assessing Officer's conclusions are only presumption and are not based on any material facts. Under these circumstances, the Commissioner of Income Tax (Appeals) opined that the Assessing Officer has no material evidences in his possession to show that the assessee has not cultivated the lands. The Assessing Officer observation are all on presumptions only. Since the assessee owns the lands of 48.38 acres, the majority of which are wet lands, it was quite normal that the lands are put to use agricultural use

and derived some agricultural income. Since there are no contrary evidences available with the revenue, the assessee's claim. of agricultural income, in normal course, is to be accepted. Further, since the quantum of agricultural income declared by the assessee was quite nominal, and also below the average agricultural income determined by the Assessing Officer in the same vicinity, the assessee's claim of agricultural income of ₹4,62,500/- from the total land holdings of 48.38 acres of agricultural lands, during the financial year 2004-05 are quite reasonable. It was also observed that on identical facts and circumstances, in the assessee's own case of A.Y.2004-05, vide order in ITA No.567/2011-12 dated 28.03.2013, held that the agricultural income of Rs.2, 13,930/ - shown by the assessee in his return was genuine. Therefore, he directed the Assessing Officer to allow the assessee's claim of agricultural incomes of ₹4,62,500/- in the assessment year 2005-06. Thus, the addition made by the Assessing Officer was deleted by the Commissioner of Income Tax (Appeals). Against this, the Revenue is in appeal before us. Similarly

for the assessment year 2006-07 also, the Revenue is in appeal before us.

5. We have heard both the parties and perused the material on record. It was brought to our notice that similar issue was decided by this Tribunal in assessee's own case in ITA No.1492/13 and C.O.No.149/2013 for the assessment year 2004-05, dated 18.11.2014, wherein it was held as under:-

"13.1 The first issue raised in the appeal is with regard to agriculture income. The Revenue has treated the agriculture income of the assessee as 'Income from other Sources'. The Id.Standing Counsel for the Revenue has contended that the land owned by the assessee is not cultivable and thus, could not produce huge yield as claimed by the assessee. It is not disputed that the assessee owns land measuring 48.38 acres. As per revenue records, majority of lands are wet lands. The Revenue has placed on record District Collector's report at page 52 to 128 of the Paper Book. As per the report, the land of the assessee is cultivable, irrigated, have high yielding fruit bearing trees and thus have potential of generating income ₹9,000/- to ₹10,000/- per acre. A further perusal of Collector's Report shows that Mango, Amla, Sapota and Guava trees are standing on the land owned by the assessee. The Collector in his report has further confirmed inter-crop cultivation. Thus, the stand of the assessee that he is getting agriculture yield of ₹4,000 to ₹5,000/- per acre is justified. The Id.Standing Counsel for the Revenue has not been able to controvert the observations given in the Survey Report which has been placed on record in the form of Paper Book by Revenue itself. The CIT(Appeals) while giving well reasoned findings on the issue has held that the Assessing Officer's conclusions are only presumptions and are not based on any material facts. We see no reason to differ with the findings of CIT(Appeals). This

ground of appeal of the Revenue is accordingly dismissed”.

6. Since the facts are identical, we are inclined to confirm the order of the Commissioner of Income Tax (Appeals) on this issue by placing reliance on the above order of the Tribunal. This ground of the Revenue in both the appeals are rejected.

7. The next ground raised by the Revenue is with regard to the deletion of addition in respect of gift received from Shri. Jacob William at ₹7,50,000/- for the assessment year 2006-2007.

8. The facts of the case are that the assessee received the unproved gift of ₹7,50,000/- received from Shri Jacob Williams, in the assessment of assessment year 2006-2007. The assessee in his return of income filed for assessment year 2006-2007 claimed a gift of ₹7,50,000/- received from his brother-in-law (sister's husband), Shri Jacob Williams. However, the Assessing Officer disbelieved the assessee's claim of gift by noting that "the explanation to justify the receipt of these gifts is full of unanaturality. There was no necessity for Shri Jacob Williams to make unilateral gifts on two different points in time that too of huge sums to the

assessee and no occasion was pointed out. The receipt of a considerable amount of ₹7,50,000/- allegedly as a gift is thus found improbable. The records filed in this behalf does not inspire any confidence whatsoever besides the version being against all human probabilities therefore the alleged gift is nothing but unexplained credit and added to the income of the assessee under the head income from other sources. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

9. The Commissioner of Income Tax (Appeals) observed that assessee submitted that the amount was received from Shri Jacob Williams, (assessee's sister's husband), who owns 55.82 acres of agricultural lands and has sufficient sources of income and independently assessed to tax. Hence, the assessee claimed the gift received is a genuine gift. The Commissioner of Income Tax (Appeals) observed that the unproved or non-genuine gifts can be brought to tax as unexplained cash credits u/s.68 of the At. Inorder to attract the provisions of Sec. 68, where unexplained cash credits

can be brought to tax as the assessee's income, three criteria have to be fulfilled.

- (i) Identity of the donor/creditor.
- (ii) Genuineness of the transaction ; and
- (iii) Creditworthiness of the donor/creditor.

Since the gift has been received from assessee's own uncle, that too, by way of Bank only, and the existence and address of the donor is available, the first two criteria are fulfilled in favour of the assessee. The sources in the hands of Shri Jacob Williams are also available before making the gift. In fact, the Assessing Officer has never questioned the creditworthiness of the donor. Hence, even the third criteria is also fulfilled in favour of the assessee. Further, Shri Jacob Williams is an independent assessee with PAN: AALPW2915M. Consequent to the above allegations in the case of the assessee, the assessments of Shri Jacob Williams are also re-opened. The Assessing Officer of Shri Jacob Williams, while completing the assessment for the assessment year 2006-07, u/s.143(3) r.w.s. 147 on 28.12.2011, examined the issue of agricultural income, of ₹5,57,840/- - claimed in the return and held that claim of

agricultural income is reasonable, genuine and true. The Assessing Officer's apprehensions were basically on two counts. One, as to why the donor has to obtain unilateral gifts on two different points of time and two, the gift is against the human probabilities. It is an undisputable fact that there is a family relation between the assessee and the donor, the latter being the husband of the assessee's sister. When there is such a close family relation, gifts are not uncommon. When the donor has explainable sources and out of such sources, if he donates some amount, the revenue should not suspect the transaction as doubtful. In the instant case, the donor has clear and explainable sources. He has made the gift to the assessee by way of Bank. He has confirmed the gift and there was a close family relation. Therefore, the gift cannot be treated as against the human probabilities. Further, since all the three ingredients, which are required to be examined before treating a credit as unexplained credit u/s.68, are clearly fulfilled in favour of the assessee. Under these circumstances, the Assessing Officer is not justified in rejecting the assessee's claim of gift of ₹7,50,000/- from Shri J. Williams. Therefore, the addition

of ₹7,50,000/- made by the Assessing Officer as unexplained cash credits, in the assessment of A.Y.2006-07, is deleted. Against this, the Revenue is in appeal before us.

10. We have heard both the sides and perused the material on record. It was brought to our notice that similar issue was decided by this Tribunal in assessee's own case in ITA No.1492/13 and C.O.No.149/2013 for the assessment year 2004-05, dated 18.11.2014, wherein it was held as under:-

13.2 The next issue in appeal is with regard to gift of ₹1,05,000/- from Mr.Jacob Williams. Mr. Williams has confirmed the fact of making gift. It is undisputed that the donar and the assessee are closely related. The gift has been made by way of Demand Draft. The donor has been able to show the source of income for making the gifts. Since, the assessee has been able to show the source of gift and the creditworthiness of the donor has also been established, the Assessing Officer has acted in an arbitrary manner & without any justification in making the addition of gift amount as 'Income from other sources.' We do not find any error in the findings of the CIT(Appeals) on this issue. Accordingly, this ground of appeal of the Revenue is dismissed.

11. Since the facts are identical, we are inclined to confirm the order of the Commissioner of Income Tax (Appeals) on this issue by placing reliance on the above order of the Tribunal. This ground of the Revenue in assessment year 2006-2007 is rejected.

12. The next ground is with regard to deletion of addition in respect of deposits in the bank account for ₹4,61,500/- for the

assessment year 2005-2006 and ₹4,27,454/- for the assessment year 2006-2007.

13. The facts of the case for the assessment year 2005-06 are that the assessee's bank account contained cash deposit of ₹4,61,500/- during the financial year 2004-05, relevant to the assessment year 2005-06. The assessee explained that these deposits is on account of the agricultural income earned during the year and deposited in the bank. However, the Assessing Officer did not accepted the assessee's explanations. The Assessing Officer was of the view that the assessee have not generated any agricultural income during the year and hence the deposits could not have made out the agricultural income. Accordingly, the Assessing Officer added a sum of ₹4,61,500/- to assessee's total income. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

14. The Commissioner of Income Tax (Appeals) observed that the addition made by the Assessing Officer was not justified in two reasons. i.e. (i) when the assessee claims certain agricultural income the same forms a source for investments/ assets including the cash etc. If the Assessing Officer is of the opinion that the agricultural

income is not genuine the same can be brought to tax as income from other sources. In such a case also, the amount so brought to tax as income from other sources can be source for investments/assets including the cash etc. In either of the situations the sources stands explained and no separate addition was warranted u/s.68 on account of the deposits into bank account. Therefore the action of the Assessing Officer in the present case of assessing the agricultural income as income from other sources, on one hand, and also bringing the deposits into the bank account as unexplained cash credits, on the other hands, clearly amounts a double addition, which was not permitted in the I.T. Act. The assessee's claim of agricultural income of ₹4,62,500/- during the financial year 2004-2005 was allowed as the credits stands explained. Thus, the Commissioner of Income Tax (Appeals) deleted the addition of ₹4,61,500/- made by the Assessing Officer in the assessment year 2005-2006 on account of deposits in the bank account. Against this, the Revenue is in appeal before us.

15. We have heard both the sides and perused the material on record. There was enough evidence to show that agricultural income was deposited in the bank account, therefore the source is explained. Being so, there cannot be any undisclosed income u/s.68 of the Act.

Hence, we confirm the order of the Commissioner of Income Tax (Appeals). Since, this issue is common in both the appeals, this ground of the Revenue in both the appeals are rejected.

16. The next ground raised by the Revenue in this appeal is with to deletion of addition in respect of assessee's spouse's agricultural income at ₹2,45,113/- and ₹5,90,992/- for the assessment years 2005-06 and 2006-2007 respectively.

17. The facts of the case for the assessment year 2005- 2006 are that Dr. (Smt.) Vinodini Dinakaran (wife of the assessee), filed her return of income for the assessment year 2005-06, showed agricultural income of ₹2,45,113/-. However the Assessing Officer opined that "agricultural income could not have been generated from those lands". Hence the Assessing Officer disallowed the claim of agricultural income of Smt. Vinodini Dinakaran and treated the same as income from other sources. Further, the Assessing Officer brought the said amount to tax in the hands of the assessee by observing that Smt. Vinodini Dinakaran has no substantial income of her own and hails

from modest family background and hence the reported income could not be attributed to her but has to be necessarily treated as the income of the assessee. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

18. The Commissioner of Income Tax (Appeals) observed that Dr. Vinodini Dinakaran is a professionally qualified and a practicing medical doctor. She has her own sources of income and independently assessed to tax, vide PAN: ACDPV6530F. The returned income of Dr. Vinodini Dinakaran in her return of income for the assessment year 2005-2006 are ₹4,20,190/- before considering the agricultural income of ₹2,45,113/- claimed. The Assessing Officer's apprehensions were that 'the background of Dr. Vinodini Dinakaran was modest and hence she was not capable of generating such funds . This opinion of the Assessing Officer was purely on presumptions and surmises and not based on any material facts/evidences. The Commissioner of Income Tax (Appeals) observed how the Assessing Officer framed an opinion that the background of a professionally qualified

and practicing medical doctor could be treated as modest. Nor there were any such evidences / information brought on record by the Assessing Officer that the sources of funds have flown from the assessee. In fact, the Assessing Officer i.e ACIT, Business Circle –II, Chennai of Dr. Vinodini Dinakaran while completing the assessments of A.Y.2005-06 u/s.143(3) r.w.s. 147 dated 29.12.2011, examined the issue of agricultural income and held that only ₹ 97,125/ - represents true agricultural income for A.Y.2005-06, and allowed the claim of agricultural income to that extent only. The Assessing Officer treated the differences of ₹1,44,969 / - (i.e. ₹2,45,113/- – ₹97,125/-) as the income from the other sources and added to the total income of Dr. Vinodini Dinakaran, in the assessments of A.Ys.2005-06. These assessments of Dr. Vinodini Dinakaran are on substantive basis and not on protective basis. The above clearly proves that the above claim of agricultural income of ₹2,45,113/- by Dr. Vinodini inakaran, in her return of income of A.Y.2005-06, belongs her only. Further, the District Collectors / Horticultural Board's report shows that there are 296 mango trees in

9.47 acres, capable of yielding an income of ₹4,14,400/- (during the financial year 2004-05). She is an independent assessee with her known sources of income from the professional "practice of medicine (doctor)". Further the lands are owned by Dr. Vinodini Dinakaran for a period of more than 10 years as on 31.03.2004. Under a such a situation, it was not possible to presume or conclude that "the reported agricultural income in the hands of Dr. Vinodini Dinakaran could not be attributed to her". Further, the Assessing Officer of Dr. Vinodini Dinakaran has clearly examined the issue of agricultural incomes of Rs.2,45, 113/- claimed in the returns of income of A.Y.2005-06 and held that only ₹97,125/- represents true and possible agricultural income agricultural income for A.Y.2005-06, and the balance represents unaccounted income and assessed to tax, In other words, the Assessing Officer of Dr. Vinodini Dinakaran) has accepted the presence of agricultural income and its taxability in the hands of Dr. Vinodini Dinakaran, that too on substantive basis. Therefore, as per the revenue (i.e. the Assessing Officer of Dr. Vinodini Dinakaran), the claim of agricultural

income of Rs.2,45,113/- claimed in the returns of income of A.Y 2005-06 declared by Dr. Vinodini Dinakaran had actually belonged to her only. The present Assessing Officer of the instant assessee, has no contrary evidences or information in his possession to prove that the agricultural income of ₹2,45,113/- declared by Dr. Vinodini Dinakaran, in her return for the assessment year 2005-06 had actually belonged to the instant assessee (Justice PD Dinakaran). Further , the Commissioner of Income Tax (Appeals) that on identical facts and circumstances, in the assessee's own case of A.Y.2004-05, vide order in ITA No.567 /2011-12 dated 28.03.2013, It was held that the agricultural income shown by the assessee's wife in her return should not be considered for the purpose of assessment of the instant assessee. Therefore, the Assessing Officer's action of treating and assessing the said agricultural incomes under the head 'income from other sources' in the hands of the assessee, is only on presumptions and not based on any material facts / evidences. The Commissioner of Income Tax (Appeals)

deleted the addition. Against this, the Revenue is in appeal before us.

19. We have heard both the sides and perused the material on record. A similar issue was considered by the Tribunal in assessee's own in ITA No.1492/Mds/2013 and C.O.No.149/2013 for the assessment year 2004-05, wherein it was held as under:-

"13.3 The next issue in appeal is with regard to addition of agriculture income of Dr.Vinodini Dinakaran, wife of assessee, in the income of assessee. The Assessing Officer has included the income of Dr.Vinodini Dinakaran, in the hands of assessee on the ground that Dr.Vinodini Dinakaran does not have independent source of income as she hails from modest family. The Revenue has failed to take into consideration the fact that Dr.Vinodini Dinakaran is a qualified medical practitioner and is working with CSI Kalyani Hospital. Thus, she is having independent source of income. It is also an admitted fact that Dr.Vinodini Dinakaran is having more than 29 acres of agriculture land in her name. The said land is cultivable and she is carrying on agriculture operation thereon. She is having mango orchard with 296 mango trees of high yielding varieties. The CIT(Appeals) in his order has categorically held that Dr.Vinodini Dinakaran is having independent source of income from her profession as well as agriculture income. The Id.Counsel for the Revenue has not been able to controvert the findings of CIT(Appeals). Thus, in view of the unrebutted findings, the arguments raised by the Id. Standing Counsel that the wife of assessee is not having independent source of income does not hold ground. The CIT(Appeals) has rightly held that the Assessing Officer's action of assessing Dr.Vinodini Dinakaran's agriculture income in the hands of the assessee is only on presumptions and not based on any material facts and evidences. We confirm the findings of CIT(Appeals) on the issue. Accordingly, this ground of appeal of the Revenue is dismissed".

20. Since the issue is covered by the order of the Tribunal in assessee's own case, taking a constant view, we are inclined to confirm the order of the Commissioner of Income Tax (Appeals). This ground of the Revenue in the both appeals is dismissed.

21. The next ground raised by the Revenue is with regard to deletion of addition in respect of gift received by the assessee's wife at ₹12,16,260/- and ₹12,50,000/- for the assessment year 2005-2006 and 2006-2007 respectively.

22. The facts of the case are that the gifts received by Dr. Vinodini Dinakaran from Shri Raja Rabidev, Shri Jacob Williams and mother Smt.M.G.Paripooranam. Dr (Mrs). Vinodini Dinakaran, in her returns of income of A.Y.2005-06 and 2006-07 respectively, claimed of gifts of ₹12,16,260/- and ₹12,50,000/- from Shri Raja Rabidev, Shri. Jacob Williams and mother Smt.M.G.Paripooranam. The Assessing Officer opined that the said gifts are improbable and non-genuine. Accordingly, the Assessing Officer disallowed the claim of gifts received and brought to tax as income from other sources, in the hands of the assessee on the presumption that the source is ultimately attributable to the

assessee only. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

23. The Commissioner of Income Tax (Appeals) observed that the assessee submitted that his wife Dr. Vinodini Dinakaran, is a qualified medical Doctor and practicing with M/s. C.S. Kalyani Hospitals. She had her own and regular income from her medical profession. Her husband's sister's husband (Jacob Williams), Mother (Smt. M.G. Paripoornam) and brother (Shri. Raja Rabidev) are all established agriculturists owning agricultural lands of 45 aces to 60 acres each, in the village of Kaverirajapuum. They were cultivating the said lands for the past 15 years or so and have sufficient sources of income of their own. The assessee further stated that since all the persons involved in the gift transaction are independent assesseees and the sources are also available, the said gift was to be treated as a genuine one. The assessee stated that if the Revenue disbelieves the transaction, the amount should be assessed either in the hands of the recipient or the donor and not in the hands of some other person. The Commissioner of Income Tax (Appeals) further observed

that the Smt. (Dr.) Vinodini Dinakaran (the assessee's wife) is a professionally qualified and practicing medical doctor. She has her own sources of income and independently assessed to tax, vide PAN: ACDPV6530F. The returned income of Dr. Vinodini Dinakaran in her returns of income for the assessment years 2005-06 and 2006-2007 are ₹4,20,190/- and ₹7,19,060/- before considering the agricultural incomes of ₹.2,45,113/- and ₹5,90,992/- Similarly, her father (Sri James Kuppusamy), mother (Smt. M.G Paripoornam], brother (Shri Raja Rabidev) and husband's sister's husband (Jacob Williams) also independent assesseees and are all established agriculturists owning substantial extents of agricultural lands ranging from 45 acres to 60 acres each, in the village of Kaverirajapuram. Thus, all the persons i.e. Dr. Vinodini Dinakaran, Shri. Jacob Williams, Shri. Raja Rabidev, Smt. M.G. Paripooranam, are independent not only in terms of the affairs but also in terms of financial matters. During the financial years 2004-05 and 2005-06, Dr. Vinodini Dinakaran received total gifts of ₹12,16,260/- and ₹12,50,000/- from the above relatives. The relations are

very close and blood relations. A claim of gift, if not accepted by the revenue, can be brought to tax as unexplained cash credit only, u/s.68 of the Act. In order to attract the provisions of sec.68, where unexplained cash credits can be brought to tax as the assessee's income, three criteria have to be fulfilled

- (iv) Identity of the donor/creditor.
- (v) Genuineness of the transaction ; and
- (vi) Creditworthiness of the donor/creditor,

Since the gifts have been received by Dr. Vinodini Dinakaran from close relatives only, that too, through Bank channels, the existence and identity of the donors is available and the genuineness of the transaction stands established. Hence, the first two criteria are fulfilled in favour of the assessee. The sources in the hands of Shri Raja Rabidev, Jacob Williams and Smt MG Paripoornam. are also available before making the gifts. In fact, the Assessing Officer has never questioned the creditworthiness of the donors. The Assessing Officer's apprehensions were basically on two counts i.e. firstly, that there was no necessity or occasion to give the gift, and secondly, the gift is found to be improbable. It is an undisputable fact that

there are close family blood relations between Dr. Vinodini Dinakaran and the donors. When there was such a close blood relation, gifts are quite common and natural. When the donors have explainable sources and out of such sources, if they donate some amount, the revenue should not suspect the transaction as doubtful. In the instant case, the donors have clear and explainable sources. They have made the: gifts to the assessee's wife (Dr. Vinodini Dinakaran), that too, through banking channels only. Therefore, the gift cannot be treated as improbable or non-genuine. Further, all the three ingredients, which are required to be examined before treating a gift (or a credit) as unexplained credit u/s.68 are clearly fulfilled in favour of the assessee. Under these circumstances, the Assessing Officer was not justified in rejecting the claim of gift of ₹12,16,260/- and ₹12,50,000/- declared by Dr. Vinodini Dinakaran in her returns of A.Ys 2005-2006 and 2006-2007. It is also important to mention here that the Assessing Officer of Dr. Vinodini Dinakaran, while completing the assessment of A.Ys. 2005-06 and 2006-2007 of Dr. Vinodini Dinakaran, u/s.143(3) r.w.s. 147 dated

29.12.2011, examined the issue of claim of gifts ₹12,16,200/- and ₹12,50,000/-. The Assessing Officer in his order, rejected the claim of said gift of ₹12,16,200/- and ₹12,50,000/- and treated as the income from other sources and added to the total income of Dr. Vinodini Dinakaran for the assessment year 2005-06 and 2006-2007. The said assessment of Dr. Vinodini Dinakaran is on substantive basis and not on protective basis. The acts clearly show that the transaction of gifts between Dr. Vinodini Dinakaran and her relatives are totally independent and no way connected to the affairs of the present assessee (Justice P.D. Dinakaran). When the Assessing Officer of Dr. Vinodini Dinakaran has examined the issue of gifts, took a conscious decision and brought to tax in her hands only, the said amount (gifts) can not be treated as the income (whether accounted or not) of some other person. Further, the present Assessing Officer of the instant assessee, has no contrary evidences or information in his possession to prove that the above gifts of ₹12,16,200/- and ₹12,50,000/- received by Dr. Vinodini Dinakaran from her relatives, had actually originated from the assessee's unaccounted sources of income. It was also important to state that on

identical facts and circumstances, in the assessee's own case of assessment year 2004-05 vide order in ITA No.567/2011-12, dated 28.03.2013, it was held that the gifts claimed by the assessee's wife in her return are genuine and should not be considered for the purposes of assessment of the instant assessee. Therefore, the Assessing Officer action of treating and assessing the gift of ₹12,16,200/- and ₹12,50,000/- under the head income from other sources in the assessment orders 2005-06 and 2006-07 was only on presumptions and not based on any facts/evidences. According, the Commissioner of Income Tax (Appeals) deleted the addition. Against this, the Revenue is in appeal before us .

24. We have heard both the parties and perused the material on record. A similar issue was considered by the Tribunal in assessee's own case in ITA No.1492/Mds/2013 and C.O.No.149/2013 for the assessment year 2004-05, dated 18.11.2014 wherein it was held as under:-

"13.4 The next ground on which the Revenue has assailed the findings of CIT(Appeals) is with regard to gifts received by wife of the assessee from her brother Shri Raja Rabidev. The Assessing Officer made addition of ₹15,00,000/- in the hands of the assessee on account of gifts received by his wife from her brother. The wife of the assessee is an

independent assessee having separate Permanent Account Number (PAN) and has been filing her separate return of income. She is independently assessed to tax. The total sum of ₹15,00,000/- has been gifted by her brother Raja Rabidev on different dates i.e., ₹7,00,000/- on 07-01-2004, ₹3,00,000/- on 16-03-2004 and ₹5,00,000/- on 08-01-2004. He is a close blood relative of Dr.Vinodini Dinakaran. The donor has been able to explain the source of gifts. Once the identity and the creditworthiness of the donor is established, there is no reason to doubt the veracity of the gift.

In view of the fact that the wife of the assessee is filing her separate return of income and the fact that it has been clearly established that the gifts were given by Shri Raja Rabidev to her sister-Dr.Vinodini Dinakaran, there is no question of making addition of the said gifts in the hands of the assessee. The CIT(Appeals) has rightly deleted the addition made by Assessing Officer . Therefore, this ground of appeal of Revenue is dismissed being devoid of merit”.

In view of the above order of the Tribunal and since the facts are identical, we are inclined to confirm the order of the Commissioner of Income Tax (Appeals) in this issue. This ground of the Revenue in both the appeals is rejected.

25. The next ground raised by the Revenue is with regard to deletion of addition of agricultural income of assessee's brother in law

(Shri.Raja Rabidev), assessee's mother-in-law and assessee's sister's husband for the assessment year 2005-06 and 2006-07.

26. The Commissioner of Income Tax (Appeals) observed that it is an undisputable fact that above mentioned three relatives owns agricultural lands of 52.75 aces, 50.36 acres and 55.80 acres respectively in Kaverirajpuram Village and were purchased away back in late 1980s and early 1990s. All the three persons have their own sources of income and independently assessed to tax. The returns of income filed by these three persons for the assessment years 2005-2006 and 2006-07 also reflected the amount in agricultural incomes. Against this, the Revenue is in appeal before us.

27. A similar issue was considered by the Tribunal in assessee's own case in ITA No. ITA No.1492/Mds/2013 and C.O.No.149/2013 for the assessment year 2004-05, dated 18.11.2014 wherein it was held as under:-

13.7 The last issue in this appeal is with regard to addition of agriculture income of the relatives of the assessee i.e., Shri Raja Rabidev, Smt.M.G.Paripoornam and Mr.Jacob Williams, in the return of income of the assessee. All the three persons are independently assessed to tax and have been filing separate return of income reflecting agriculture income over the period of time. All the aforesaid persons are having land-holdings in their individual names. The lands were purchased by them way back in 1980s and 1990s. All the aforesaid persons are carrying agriculture operations on their respective lands. Nothing is emanating from records that the land cultivated by these

persons is in any way owned or controlled by the assessee. The Revenue has not been able to establish any credible reason for making addition of the agriculture incomes earned by the aforesaid persons in the hands of the assessee. The Assessing Officer in the case of Shri Jacob Williams in re-assessment proceedings have accepted his entire claim of agriculture income. Once the claim is found to be genuine in the hands of a particular assessee, the same amount cannot be added in the income of another person. In the case of other two persons also, the Assessing Officer has accepted part of agriculture income as genuine and assessed the remaining income as 'Income from other sources' in their respective return. If the income is assessed to tax in the hands of one person, the same income cannot be brought to tax on protective basis in the hands of some other person. We concur with the reasoned findings of the CIT(Appeals) in deleting the addition and uphold the same. Accordingly, this ground of appeal of the Revenue is also dismissed.

28. Since the issue is covered by the order of the Tribunal in assessee's own case cited supra, taking a consistent view, we are inclined to confirm the order of the Commissioner of Income Tax (Appeals). This ground of the Revenue in both appeals are dismissed.

29. The last ground raised by the Revenue in this appeal is with regard to addition of deletion of agricultural income for rate purposes for ₹7,53,980/- and ₹8,62,040/- for the assessment years 2005-06 and 2006-2007 respectively.

30. The Commissioner of Income Tax (Appeals) observed that the claims of the agricultural income of the three relatives were considered as genuine agricultural income, either in full or in part. The said amounts, even if represents income from other sources, the same

cannot be assessed in the hands of the assessee. Further, the amounts were also to be considered in their assessments for rate purposes. This clearly proved that the said claim of agricultural incomes by the three relatives, are not only the real and genuine agricultural incomes but also actually belonged to the concerned person. Therefore no amount, whether agricultural income or not, is attributable to the assessee. In the assessee's own case of assessment year 2005-05, vide order in ITA No.567/2011-12, dated 28.03.2013, the Commissioner of Income Tax (Appeals) held that the agricultural income determined by the Assessing Officer in the hands of the three relatives should not be considered for the purpose of assessment of the assessee. Hence, the Assessing Officer action of considering the agricultural income of the three relatives for rate purposes in the assessee's hands is not justified and the Commissioner of Income Tax (Appeals) deleted the addition. Against this, the Revenue is in appeal before us.

31. We have heard both the parties and perused the material on record. Since we have observed that in earlier para the agricultural income cannot be treated in the hands of the assessee as non-agricultural income, this ground of the Revenue is also dismissed.

32. Coming to C.O.Nos.28 & 29/Mds/2015, the assessee has raised the following ground:-

'The Id.CIT(A) erred in confirming the reopening of assessment by the Assessing Officer u/s.147 of the Act which is bad in law''.

33. This issue was considered by the Tribunal in assessee's own case in C.O.No.149/Mds/2013 for the assessment year 2004-05, dated 18.11.2014, wherein it was held as under:-

'12. The Id.AR on the other hand has placed reliance on the judgment of the Hon'ble Delhi High Court in the case of CIT Vs. Orient Craft (supra). The Hon'ble High Court in the peculiar facts of that case observed that 'reasons to believe', cannot have two meanings one applicable in assessment made u/s.143(3) and another applicable u/s.143(1). In Orient Craft notice u/s.148 of the Act was issued for reopening assessment on the ground that income chargeable to tax had escaped assessment. While recording the reasons for reopening, the Assessing Officer stated that on going through the return of income, it revealed that while deducting 90% of other income from the profits of the business, premium on sale of quota included in the sale, was not considered. The Hon'ble Court after discussion various judgments rendered by the Hon'ble Supreme Court of India held, that the reason disclosed by the Assessing Officer stating 'on going through the return of income' does not satisfy the expression 'reason to believe'. Thus, in the said case, re-assessment proceedings were initiated on the basis of information given in the return, no tangible material came to the possession of the Assessing Officer after the issue of intimation u/s.143(1).

Whereas, in the present case, original assessment was made u/s.143(1). The provisions of section 147 for re-opening were invoked after the information collected by JIC was passed on to the Assessing Officer of the assessee. The Assessing Officer had substantial material to believe that income has escaped assessment. In this background, we are of considered view that the judgment of the Hon'ble Delhi High Court cannot be applied in the case of assessee. In view of the well settled law and the facts of the case, the cross-objections filed by the assessee are

dismissed and the re-opening of assessment is held to be justified''.

34. In view of the above order of the Tribunal, this ground raised by the assessee in Cross Objections is dismissed.

35. In the result, the appeals of the Revenue in ITA Nos.110 &111/Mds/2015 and C.O.Nos. 28 & 29/Mds/2015 of the assessee are dismissed.

36. Coming to ITA Nos.154 to 157/Mds/2015, the only ground raised by the Revenue in these appeals is that the Commissioner of Income Tax (Appeals) erred in holding that the assessee had earned agricultural income to the extent declared in her return of income.

37. The facts of the case are that the assessee and other family members /relatives owns sizeable extents of agricultural lands in the same vicinity. For example, the assessee's sons' brother-in-law, Shri K. Raja Rabidev, owns 52.75 acres of land in Kaverirajapuram village, where the assessee's lands are also situated. In fact, these lands are contiguous. Shri Raja Rabidev, in his returns of A.Ys.2005-06 and 2006-07, declared agricultural incomes ₹6,75,700/- ₹7,93,520/- as from his lands of 52.75 acres. The ACIT,

Circle-I, Chennai, relying on the report from the District Collector concluded that the maximum yield possible from the lands of 52.75 acres of Shri Raja Rabidev is ₹4,34,900/- (₹8,245/- per acre per annum) in these years and allowed the claim of agricultural income to that extent. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

38. The Commissioner of Income Tax (Appeals) observed that the assessee owns 50.36 acres of agricultural lands, which were purchased by him in 1993. As per the revenue records, most of the lands are dry agricultural lands with irrigation facilities. The lands are suitable for cultivation of crops like ground nuts, vegetables etc. The normally expected net income from groundnut cultivation ranges from ₹10,000/- to ₹15,000/- per acre per annum. In the case of vegetable cultivation the incomes may range up to ₹20,000/- 30,000/- per acre per annum. Whereas, in the instant case, the assessee's net income from 50.36 acres of lands, from groundnut/vegetables cultivation during the financial year

2004-05, was only ₹.4,02,400/-, i.e. at an average of ₹7,990/- per acre only. In the financial year 2005-06, the agricultural income shown was still less. Subsequently, the assessee had taken 48.27 acres of agriculture lands on lease from M/s..Cannan Gardens P Ltd from 19.08.2005 onwards. Hence the incomes during the financial years 2005-06 to 2008-09 should be reckoned with respect to 98.63 acres (50.36 acres 48.27 acres) of agricultural lands. Hence the agricultural incomes shown by the assessee in the financial years 2006-07 and 2008-2009 are ₹9,74,926/- and ₹13,69,065/- respectively, with average of ₹9,885/- and ₹13,881/- per acre per annum. Thus the agricultural incomes shown by the assessee, in her returns of A.Ys.2005-06, 2006-07, 2007-08 and 2009-10, are neither unreasonable nor excessive. The Commissioner of Income Tax (Appeals) observed that the Assessing Officer in his orders noted that no crops have been raised on those lands in that crop year so as to derive agricultural income. The Assessing Officer came to the conclusion based on the non-mention of the crops grown in the chitta adangals/phaslis. This observation of the Assessing Officer

was a total presumption only. The chitta adangals/phaslis normally mention the perennial crops. In the case of annual crops, which keep on changing from year to year and from season to season, it may not be possible for the authorities to mention all the details. It was not the contention of the Assessing Officer that the lands are not fit for cultivation. It was also important to mention here that various members of Shri.Dinakaran's family and other relatives mentioned above owns more than 250 acres of agricultural lands in the village Kaverirajapuram. All the lands are located in the same area and contiguous to each other. These agricultural lands are classified as wet/dry agricultural lands and are having irrigation facilities. When there are irrigation facilities available, no person will leave the lands without cultivation of crops. If it is not possible for a person to cultivate the lands on his own, there are several people in the villages to take such lands on lease. In fact, in rural India, especially in states like Tamilnadu, Andhra Pradesh and Karnataka, there are more number of landless farmers / marginal farmers, who are eager to take the agricultural lands on lease. If the wet/dry agricultural

lands are given on lease, the lease income from the agricultural lands alone will fetch not less than ₹5,000/- per acre per annum. Under these circumstances, it is hard to accept the proposition of the Assessing Officer that "no crops have been raised on these lands" merely based on the chitta adangals. It is also important to state that the assessee and other family members /relatives owns sizeable extents of agricultural lands in the same vicinity. For example, the assessee's sons' brother-in-law, Shri K. Raja Rabidev, owns 52.75 acres of land in Kaverirajapuram village, where the assessee's lands are also situated. In fact, these lands are contiguous. Shri Raja Rabidev, in his returns of A.Ys.2005-06 and 2006-07, declared agricultural incomes ₹6,75,700/-, ₹7,93,520/- as from his lands of 52.75 acres. The ACIT, Circle-I, Chennai, relying on the report from the District Collector concluded that the maximum yield possible from the lands of 52.75 acres of Shri Raja Rabidev is ₹4,34,900/- (₹8,245/- per acre per annum) in these years and allowed the claim of agricultural income to that extent. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

In other words, the Assessee's lands are also capable of yield more or less similar incomes, especially when the lands are located in the same vicinity, and under the same survey Nos. and contiguous to each other. It clearly proves that the Assessing Officer's conclusions are only presumption and are not based on any material facts. Further, the average agricultural incomes declared by the assessee from her lands is also well below the average agricultural incomes determined and allowed by the revenue in the hands of other owners of the lands, like Shri Raja Rabidev, Shri Jacob Williams etc. Under these circumstances, the Commissioner of Income Tax (Appeals) opined that the Assessing Officer has no material evidences in his possession to show that the assessee has not cultivated the lands. The Assessing Officer observations are all on presumptions only. Since the assessee owns the lands of 50.36 acres (leased lands of 48.27 acres from M/s. Carman Gardens P Ltd from 19.08.2005 onwards), the majority of which are mango gardens, it is quite normal that the lands are put to use agricultural use and derived some agricultural income. Since there are no contrary evidences available with the Revenue, the assessee's claim of agricultural incomes, in normal course, is to be

accepted. Further, since the quantum of agricultural income declared by the assessee is quite reasonable, and also below the average agricultural income determined by the revenue in the same vicinity, the assessee's claim of agricultural incomes of ₹4,02,400/-, ₹2,24,500/-, ₹9,74,926/- and ₹13,69,065/-, declared in A.Ys.2005-06, 2006-07, 2007-08 and 2009-10, was quite reasonable. Therefore, the Assessing Officer was directed to allow the assessee's claim of agricultural incomes of ₹4,02,400/-, ₹2,24,500/-, ₹9,74,926/- and ₹13,69,065/-, as declared in the returns of A.Ys.2005-06, 2006- 07,.2007-08 and 2009-10. The assessee succeeds in her appeals in this regard. Against this, the Revenue is in appeal before us.

39. We have heard both the parties and perused the material on record. A similar issue was considered by the Tribunal in ITA No..1857 to 1868/Mds/2013 for the assessment years 2007-08 to 2009-2010, dated 18.11.2014, wherein it was held as under:-

"14.1 In all the appeals, the Revenue has raised common issue. The Assessing Officer had dis-allowed part of 'Agriculture Income' returned by the assessee-companies and treated the same as income from other sources/un-explained income. The Assessing Officer during the course of assessment proceedings observed that the assessee companies have shown substantial amount of agriculture income in their respective returns of income for the AYs.2007-08, 2008-09 & 2009-10.

The Assessing Officer held that the agriculture income shown by the assessee companies are excessive and un-reasonable and hence, treated the part of agriculture income as 'Income from Other Sources'. The details of agriculture income returned by the companies and the dis-allowance made by the Assessing Officers in case of respective companies are as under.

Name of the Company	Assessing Officer	Asst. Year	Agri. Income shown by the company	Agri. Income accepted by the Assessing Officer	Treated as Income from other Sources
M/s.Dearlands (I) P.Ltd.,	ITO, Company Ward-I(1), Chennai	2007-08	5,11,710	2,80,542	2,31,168
		2008-09	8,00,110	2,99,600	5,00,510
		2009-10	11,48,800	3,75,780	7,73,020
M/s.Canaan Gardens P. Ltd.,	ITO, Company Ward-I(1), Chennai	2007-08	7,86,000	1,53,330	6,32,670
		2008-09	11,06,300	3,59,153	7,47,147
		2009-10	11,71,300	3,58,810	8,12,490
M/s.Amudham Gardens P. Ltd.,	ITO, Company Ward-I(1), Chennai	2007-08	7,86,000	(-)4,68,032	12,54,032
		2008-09	5,27,350	(-)8,85,040	14,12,390
		2009-10	13,14,160	(-)3,36,135	16,50,295
M/s.Amirtham Gardens P. Ltd.,	ITO, Company Ward-I(1), Chennai	2007-08	75,800	(-)11,54,886	12,30,686
		2008-09	4,03,973	(-)9,13,471	13,17,444
		2009-10	11,36,106	(-)2,80,484	14,16,590

The companies were floated in the year 2005 and the lands were transferred to the above companies by the relatives of Shri P.D.Dinakaran. The extent of land transferred by various persons to these companies and crops grown thereon are as under.

Name of company	Land Transferred by	Extent of land transferred to Co. (in acres)	Crops grown
M/s.Canaan	K. Raja Rabidev	20.42	Mango, Inter

Gardens P.Ltd.,	Shanti Sangamithra	27.85 48.27	crop and Vegetables
M/s.Amudham Gardens P.Ltd.,	Jacob Willams	16.49	Mango, Ground nut, Vegetables and Paddy
	Dr. PKA Chandrasekar	04.75	
	M.G. Paripoornam	20.83	
	K. Raja Rabidev	15.91 57.98	
M/s.Amirtham Gardens P.Ltd.,	Dr. PKA Chandrasekar	13.72 16.59	Mango, Inter crop, Paddy, Ground nut and Vegetables
	Jacob Willams	18.21	
	M.G. Paripoornam	03.34	
	K. Raja Rabidev	51.86	
M/s.Dear Lands India P.Ltd.,	Jacob Willams	13.42	Vegetables, Mango and Ground nut
	K. Raja Rabidev	08.49	
	Shanti Sangamithra	18.37 40.28	

The shares in companies were allotted to the persons who transferred their land to the companies. The shares were allotted in the proportion of landholdings transferred. Subsequently, the companies leased out agricultural lands to some of its shareholders. M/s.Canaan Gardens P. Ltd. leased out its land to Smt.M.G.Paripoornam, M/s.Amudham Gardens P.Ltd. leased out its land to Shri K.Raja Rabidev and M/s.Dear Lands (India) P.Ltd. leased out its land to Shri Jacob Williams. As per the lease agreements, the proceeds of agriculture produce from the lands was to be shared between the company and the lessees in the ratio of 1:2. Since, the Assessing Officer in case of the companies and the lessees were different, the Assessing Officers followed different criteria for assessing agriculture income of the companies and the assessees. The same is evident from the table given as under:

Name of the Individual (Lessees of the lands owned by the companies)	Assessing Officer	Asst. Year	Agri. Income shown by the Lessee	Agri. Income accepted by AO	Treated as Income from Other Sources
Shri J. Williams [Lessee for the lands of M/s.Dearlands (I) P. Ltd]	ITO, Company Ward-I(6), Vellore	2007-08	9,92,500	9,92,500	0
		2008-09	9,46,418	9,46,418	0
		2009-10	13,52,100	13,52,100	0
Smt. M.G. Paripoornam [Lessee for the lands of M/s.Canaan Garden P Ltd]	ITO, Salary Ward-I(3), Coimbatore	2007-08	9,74,926	5,77,005	3,97,921
		2008-09	13,69,065	Not assessed	
		2009-10	13,69,065	3,48,465	10,20,600
Shri Raja Rabidev [Lessee for the lands of M/s.Amudham Gardens P Ltd]	ITO, Salary Ward-I(5), Coimbatore	2007-08	0	Not assessed	
		2008-09	45,000	Not assessed	
		2009-10	6,63,550	0	6,63,550

A perusal of the above table shows that, the Assessing Officer of Shri J.Williams, who is the lessee of M/s.Dear Land (India) P.Ltd., in re-assessment proceedings after verification of the details, accepted the agriculture income disclosed by Shri Williams in his return of income for the AYs.2007-08, 2008-09 and 2009-10. The Revenue has placed on record District Collector's Report which is based on a detailed survey of agricultural land conducted by the officials of Horticulture Department, Agriculture Department and Revenue Department. A perusal of report shows that the land owned by the assessee companies and other persons are wet lands, with irrigation facilities. The lands are under cultivation with inter-crop and high yielding fruit trees viz., Mango, Guava, Sapota etc., with age 5 years to 20 years. The agriculture land of all the

companies are located in the same area and are contiguous. Have same type of soil and irrigation facilities, the crops grown are also the same, the quality and yield of crops is more or less the same. Therefore, the agriculture income derived by one assessee is indicative of the agriculture income derived by the others. The Assessing Officer of Shri Jacob Williams before accepting the returned income, conducted field enquiries, recorded the statement of neighboring farmers and ultimately came to the conclusion that, apart from Mangoes, inter crops and Vegetables are grown on the agriculture land owned by the Lessor company. Based on the enquiries and reports, the Assessing Officer of Shri Jacob Williams came to the conclusion that the income disclosed by the assessee is reasonable and genuine. The Assessing Officer also accepted the yield and rates of Mangoes based on the report of District Horticulture and Revenue Departments. Once the agriculture income from the adjacent land is accepted, there is no question as to why the agriculture income from the contiguous parcel of land should not be accepted. We are in full agreement with the detailed findings of the CIT(Appeals) in deleting the additions made by the Assessing Officer in respect of all the four companies”.

40. In view of the above of the Tribunal, we are inclined to confirm the order of the Commissioner of Income Tax (Appeals) on this issue. This ground of the Revenue is dismissed. The appeals of the Revenue in ITA Nos.154 to 157/Mds/2015 are dismissed.

41. Coming to C.O.Nos. 34 to 37/Mds/2015, the assessee has raised the following ground:-

‘The Id.CIT(A) erred in confirming the reopening of assessment by the Assessing Officer u/s.147 of the Act which is bad in law”.

:- 45 -: *ITA Nos.110 & 111/Mds/2015 and
C.O.Nos.28 &29/Mds/2015, and
ITA Nos.154 to 157/Mds/2015
and C.O.Nos.34 to 37/Mds/2015*

42. This issue was considered by the Tribunal in C.O.No.149/Mds/2013 for the assessment year 2004-05, dated 18.11.2014, as discussed in para no. 33 of this order, the Cross Objections filed by the assessee are dismissed.

43. In the result, the appeals of the Revenue in ITA No.110 & 111/Mds/2015 and ITA Nos.154 to 157/Mds/2015 are dismissed and C.O.Nos.28 & 29/Mds/2015 and C.O.Nos.34 to 37/Mds/2015 filed by the assessee are also dismissed.

Order pronounced on Friday, 28th day of August, 2015, at Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai
दिनांक/Dated:28.08.2015
KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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