

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1505, 1506, 1507, 1508 & 1509/Mds/2014

निर्धारण वर्ष / Assessment Years : 2007-08 to 2011-12

Shri K.S. Ravikumar,
No.26/3, Sasti Illam,
Vivekananda Nagar, Singanallur,
Coimbatore – 641 005.

v. The Assistant Commissioner of
Income Tax,
Central Circle II,
Trichy.

PAN : AJHPR 3493 A
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Ramasamy, FCA

प्रत्यर्थी की ओर से/Respondent by : Ms. C. Vatchala, JCIT

सुनवाई की तारीख/Date of Hearing : 19.01.2016

घोषणा की तारीख/Date of Pronouncement : 04.03.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the assessee are directed against the common order of the Commissioner of Income Tax (Appeals), Tiruchirappalli, dated 27.03.2014, for the assessment years 2007-08 to 2011-12. Therefore, we heard all the appeals together and disposing the same by this common order.

2. Shri G. Ramasamy, the Ld. representative for the assessee, submitted that there was a search in the premises of the assessee on 11.11.2010. Consequent to the search, the Assessing Officer framed the assessment under Section 153C of the Income-tax Act, 1961 (in short 'the Act'). Referring to Section 153C of the Act, the Ld. representative submitted that when a search was conducted in the premises of the assessee, the assessment has to be framed under Section 153A of the Act and not under Section 153C of the Act. According to the Ld. representative, Section 153C of the Act is in respect of the person other than searched person. In this case, the assessee was subjected to search. Therefore, the assessment has to be framed only under Section 153A of the Act and not under Section 153C of the Act. Therefore, according to the Ld. representative, the assessment framed by the Assessing Officer under Section 153C of the Act is null and void.

3. Shri G. Ramasamy, the Ld. representative for the assessee, further submitted that even assuming that the assessee was other than the searched person, still the Assessing Officer has to record his satisfaction as provided under Section 153C of the Act. Referring to the circular issued by the CBDT in circular No.24/2015

dated 31.12.2015, the Ld. representative submitted that recording of a satisfaction note is a pre-requisite and the satisfaction note must be prepared by the Assessing Officer before he transmits the record to the other Assessing Officer who has jurisdiction over the person, who is other than the searched person. Referring to para 4 of the above CBDT circular, The Ld. representative submitted that the CBDT has clarified that even if the A.O. of the searched person and the other than the searched person is one and the same, then also the Assessing Officer is required to record his satisfaction as has been held by the Courts. According to the Ld. representative, the Assessing Officer has to record his satisfaction in the file of the searched person when he is issuing notice in the case of the person other than the searched person. In the case before us, according to the Ld. representative, no satisfaction was recorded in the case of the searched person with regard to material found relating to the present assessee. Therefore, the assessment framed under Section 153C of the Act is not justified. Referring to the decision of the Delhi Bench of this Tribunal in *Super Malls Pvt. Ltd. v. DCIT* (2015) 45 CCH 330, a copy of which is filed before this Tribunal, the Ld. representative submitted that satisfaction has to be recorded in the case of the searched person. The satisfaction, if any, recorded

in the case of other person will not cure the defect because it is necessary that the satisfaction must be recorded by the Assessing Officer of the searched person. After recording satisfaction, according to the Ld. representative, the documents are to be handed over to the Assessing Officer of other person, other than the searched person. This position will not alter even if the Assessing Officer for the searched person and the other person are one and the same. In view of this decision of Delhi Bench of this Tribunal, according to the Ld. representative, the assessment framed by the Assessing Officer cannot stand in the eye of law.

4. Coming to the merit of the addition made by the Assessing Officer, Shri G. Ramasamy, the Ld. representative for the assessee, submitted that for the assessment year 2007-08, the Assessing Officer made an addition of ₹40,00,000/- being the gift received by the assessee from his father. According to the Ld. representative, the assessee has earned an income of ₹1,50,000/- being the interest from the advance of ₹40,00,000/- received from his father. The receipt of ₹40,00,000/- was mentioned in the loose sheets in KS/B&D/S.2 found by the Revenue authorities during the course of search operation. Ignoring the seized material, the Assessing

Officer has taken the sum of ₹40,00,000/- as income of the assessee. According to the Ld. representative, the assessee's father Shri K.A. Subbiah sold one portion of the land. The assessee has filed copies of sale document before the Assessing Officer to support the source of his father. The assessee's father Shri K.A. Subbian has also filed confirmation letter explaining his source. The Village Administrative Officer's certificate establishes that the assessee's father is also cultivating 5.56 acres of land. The Ld. representative further submitted that the claim of agricultural income of the assessee's father was rejected by the Assessing Officer on the ground that the assessee's father could not maintain any books of account for agricultural income. According to the Ld. representative, the fact that the assessee's father was holding agricultural land and he was cultivating the same is evidenced by the Village Administrative Officer's certificate. Merely because the assessee's father was not maintaining any record for his agricultural activity that cannot be a reason to reject the claim of the assessee. The Ld. representative further submitted that the assessee's father has also filed confirmation letter confirming the gift of ₹40,00,000/- to his son, the assessee. The confirmation letter further clarified that the assessee's father was doing finance business in his native

village by advancing to agriculturists. This fact was not denied by the Assessing Officer. Therefore, according to the Ld. representative, there is no need for making addition of ₹40,00,000/- under Section 68 of the Act.

5. Coming to the next addition of ₹35,40,000/-, the Ld. representative submitted that the Assessing Officer estimated the income of the assessee on the basis of computer generated loose sheet, which was marked as KS/LS/S-9. According to the Ld. representative, the Assessing Officer has taken the difference of ₹1,86,02,408/- between the debit side and credit side of loose sheet No.75 dated 25.02.2010 as undisclosed income of the assessee on estimate basis for the assessment years 2007-08 to 2010-11 and apportioned the same at ₹40,00,000/- for the assessment year 2007-08, ₹45,00,000/- for the assessment year 2008-09, ₹50,00,000/- for the assessment year 2009-10 and ₹51,02,408/- for the assessment year 2011-12. Referring to the seized material KS/B&D/S-3, the Ld. representative submitted that there was a mention about the advance made by one Shri V.T. Elangovan from 24.05.2009 to 17.12.2009. During the course of search operation, no material was found with regard to finance business. The Ld.

representative further submitted that in the absence of any search material, there cannot be any addition for the block period.

6. Referring to the computer generated loose sheets marked as KS/LS/S-9, the Ld. representative for the assessee submitted that the assessee has not disclosed the actual capital employed to carrying on the business of finance. Referring to loose sheet page No.35, the Ld. representative submitted that the debit and credit side was balanced by showing the amount of ₹1,97,28,573/-. The Ld. representative further submitted that the loose sheets were found only for some dates in the financial years 2009-10 and 2010-11 and no such slips were found or recorded in the books of account of the assessee for other assessment years. In other words, no seized material was available for financial years 2006-07, 2007-08 and 2008-09. Therefore, in the absence of any further material with regard to investment made by the assessee, estimating income for those assessment years is arbitrary. The Ld. representative placed his reliance on Chandigarh Bench of Punjab & Haryana High Court in CIT v. Faqir Chand ChamanLal (2003) 262 ITR 295. The Ld. representative submitted that the loose sheets found during the course of search operation are not admissible

evidence, therefore, when the Department itself is unable to quantify the undisclosed income, according to the Ld. representative, the Assessing Officer is not justified in making addition.

7. Coming to the assessment year 2009-10, the Ld. representative for the assessee submitted that on the basis of loose sheet in KS/LS/S-9, an addition of ₹38,03,653/- was made. According to the Ld. representative, the credit and debits found in the loose sheets relate to one Shri V.T. Elangovan and not to the assessee. According to the Ld. representative, without any concrete material found during the course of search operation, there cannot be any addition either for this year or for any other years. However, for making addition on estimate basis, no material was found during the course of search operation. No details of capital contribution made by the assessee were available on record. According to the Ld. representative, the addition made by the Assessing Officer to the extent of ₹7,30,000/- included the gift of ₹5,00,000/- received by the assessee from his father. The Ld. representative further submitted that the assessee's father received a loan from Smt. G. Ruckmani of Valasamuthuram of Kangayam Taluk and gifted a sum of ₹3,20,000/- to the assessee. The receipt

of ₹5,00,000/- from the assessee's father is also evidenced by the material found during the course of search operation. This was further confirmed by the statement made by the assessee's father before the Assessing Officer. However, the Assessing Officer rejected the claim of the assessee. According to the Ld. representative, the Assessing Officer estimated an amount of ₹50,00,000/- as income of the assessee for the assessment year 2009-10. The Ld. representative further clarified that after deducting an amount of ₹11,96,347/-, the balance amount of ₹38,03,653/- was added as undisclosed income for the block period. Therefore, addition of ₹38,03,653/- is not justified. Similarly, the addition made by the Assessing Officer towards interest of ₹7,46,930/- is also not justified.

8. Now coming to assessment year 2010-11, the Ld. representative for the assessee submitted that on estimate basis, the Assessing Officer made an addition of ₹44,39,908/- on the basis of loose sheets said to be found in KS/LS/S-9. According to the Ld. representative, the transaction of the assessee with Shri V.T. Elangovan was reflected in the loose sheet. No material was found during the course of search operation in the case of the assessee.

In the absence of any material found during the course of search operation, according to the Ld. representative, there cannot be any addition for the block period under Section 158BC of the Act.

9. Now coming to the addition of ₹3,20,000/-, the Ld. representative for the assessee submitted that it is a gift received from the assessee's father out of agricultural income. The assessee's father has also confirmed the gift of ₹3,20,000/-. The Ld. representative further submitted that the assessee has purchased a car for ₹4,50,000/- out of the loan from the finance firm. The Ld. representative further submitted that the assessee has demonstrated the available cash by way of cash flow statement filed before the Assessing Officer. For the assessment year 2010-11, the assessee has declared an income of ₹14,61,060/-. However, the Assessing Officer made an addition of ₹44,39,908/-. According to the Ld. representative, the addition made by the Assessing Officer in the absence of seized material is not justified.

10. Now coming to assessment year 2011-12, the Assessing Officer estimated the daily income of the assessee at ₹11,408/-. The Assessing Officer made an addition of ₹30,05,220/- after deducting the income declared by the assessee of ₹11,58,700/-.

The Assessing Officer has also made an addition of ₹12,70,000/- being an investment for purchase of a plot and ₹44,00,000/- being the purchase of house property at Coimbatore. Totally, the Assessing Officer made an addition of ₹56,70,000/- as undisclosed investment. According to the Ld. representative, the loose sheets found during the course of search operation relate to one Shri V.T. Elangovan and not to the assessee. The Assessing Officer conveniently ignored the material found during the course of search operation and estimated the income for making addition in the assessee's hands. According to the Ld. representative, no addition can be made on daily or monthly basis in the absence of search material. Therefore, the addition of ₹30,05,220/- made by the Assessing Officer is contrary to the provisions of Income-tax Act. Coming to the addition of ₹56,70,000/- being the investment made in the plot and house property at Coimbatore, the Ld. representative submitted that the assessee has disclosed ₹12,70,000/- for purchase of vacant plot and ₹31,00,000/- for the purchase of house property in the fund flow statement filed before the Assessing Officer. Therefore, according to the Ld. representative, the Assessing Officer is not justified in saying that the assessee has not shown any evidence towards purchase of vacant plot and house

property at Coimbatore. The Ld. representative further submitted that by telescoping the income earned by the assessee for all the years under consideration, the investment made by the assessee cannot at all be treated as undisclosed income. According to the Ld. representative, at page 178 of the seized material KS/B&D/S-6 Shri V.T. Elangovan mentioned some figures. This writing made in the loose sheet at page 178 does not mention any details about any particular house and investment made by the assessee. The assessee in fact purchased the house on 27.08.2010. Therefore, the loose sheet does not refer to the investment made by the assessee at all. Therefore, according to the Ld. representative, there is no justification for making any addition.

11. On the contrary, Ms. C. Vatchala, the Ld. Departmental Representative, submitted that no doubt, there was a search carried out by the Revenue in the residential premises of the assessee. According to the Ld. D.R., the search was initiated in the case of Shri T. Muniappan, Shri T. Elangovan and Shri V.T. Kumaravel of Karur on 11.11.2010. While carrying out the search in the case of Shri T. Muniappan, Shri T. Elangovan and Shri V.T. Kumaravel, a search warrant was also issued to search the residence of the

assessee at Singanallur, Coimbatore. Therefore, according to the Ld. D.R., the search was conducted only in the hands of Shri T. Muniappan, Shri T. Elangovan and Shri V.T. Kumaravel and not in the hands of the assessee. In the course of carrying on search in the hands of Shri T. Muniappan, Shri T. Elangovan and Shri V.T. Kumaravel, the assessee's residential premises was also subjected to search. Therefore, according to the Ld. D.R., the assessee is a person other than the searched person. Accordingly, proceeding has to be initiated only under Section 153C of the Act and not under Section 153A of the Act. Therefore, the contention of the assessee that the proceeding has to be initiated only under Section 153A of the Act and not under Section 153C of the Act is not justified at all.

12. Now coming to the satisfaction said to be recorded by the Assessing Officer, the Ld. D.R. has filed copies of the order sheet and submitted that the Assessing Officer has recorded the satisfaction by saying that the books of account and documents belonged to the present assessee. According to the Ld. D.R., the Assessing Officer of the searched person and the assessee being the person other than searched, are one and the same, therefore, the satisfaction recorded by the Assessing Officer on the file of the

assessee is more than sufficient as required under Section 153C of the Act. Therefore, it may not be correct to say that the Assessing Officer has not recorded any satisfaction for initiating proceeding against the assessee under Section 153C of the Act.

13. Coming to the merit of the addition made by the Assessing Officer, the Ld. D.R. submitted that she is placing her reliance on the observation made by the CIT(Appeals).

14. We have considered the rival submissions on either side and perused the relevant material available on record. The material available on record clearly establishes that the search was initiated against Shri T. Muniappan, Shri T. Elangovan and Shri V.T. Kumaravel of Karur on 11.11.2010. In the course of search operation, a warrant was also initiated to search the residence of Shri K.S. Ravikumar, the present assessee. Therefore, it is obvious that the search was in the case of Shri T. Muniappan, Shri T. Elangovan and Shri V.T. Kumaravel and the place of search was the residence of the assessee. Hence this Tribunal is of the considered opinion that the assessee is not the searched person. Therefore, the proceeding on the basis of material found during the course of search operation in the case of Shri T. Muniappan, Shri T.

Elangovan and Shri V.T. Kumaravel, has to be initiated against the assessee under Section 153C of the Act and not under Section 153A of the Act. Therefore, this Tribunal is of the considered opinion that the Assessing Officer has rightly initiated proceeding under Section 153C of the Act, which was confirmed by the CIT(Appeals). Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and the same is confirmed.

15. Now coming to merit of the addition made by the Assessing Officer, the Assessing Officer estimated ₹1,86,02,408/- as undisclosed income for the assessment years 2007-08, 2008-09, 2009-10 and 2010-11 and apportioned the same at ₹40,00,000/-, ₹45,00,000/-, ₹50,00,000/- and ₹51,02,408/- respectively. For the assessment year 2007-08, the assessee claimed receipt of ₹40,00,000/- as gift received from his father. This was disbelieved by the Assessing Officer. From the orders of the lower authorities it appears that the assessee was carrying on the business of money lending in the name and style of Covai Balaji Finance. The assessee explained before the Assessing Officer that his father Shri K.A. Subbian, Retd. Secretary of Agricultural Co-operative Bank,

advanced a sum of ₹40,00,000/- as gift to the assessee. The Assessing Officer found that the assessee has shown the capital of ₹40,00,000/- as opening capital out of the gift received from his father. The Assessing Officer found that the retirement benefit of the assessee's father was ₹2,50,000/-. Though the assessee claims that his father was cultivating 15.5 acres of land, the Assessing Officer found that other than the Village Administrative Officer's certificate, no other material is available to substantiate the claim of the agricultural activity. Even the VAO's certificate says that the assessee's father was holding only 5.56 acres of land. The assessee's father claims that he received loan from three persons to the extent of ₹5,00,000/-. By taking into consideration of the claim of the assessee, the Assessing Officer found that the assessee's father has no source for making gift of ₹40,00,000/-. The fact remains that the assessee's father, a retired employee of Agricultural Co-operative Bank, received retirement benefit of ₹2,50,000/-. The receipt of ₹5,00,000/- by way of loan by the assessee's father is also evidenced from the confirmation letter filed by his father Shri K.A. Subbian. The loan was said to be received from shri R. Balasubramanian, Shri C. Dharmaraj and Smt. G. Ruckmani. The Assessing Officer has not taken any effort to verify

the claim of the assessee's father about the receipt of loan from the above said three persons. The VAO's certificate shows that the assessee's father was cultivating 5.56 acres of land. The claim of the assessee's father that agricultural income to the extent of ₹25,000/- per acre was received is not in dispute. This Tribunal is of the considered opinion that the Village Administrative Officer, being the field officer of the State Government for taking the cultivation account in every six months, the certificate issued by the VAO in the course of its official duty, cannot be ignored at all. In the absence of any other document to show that the agricultural land was not at all cultivated, this Tribunal is of the considered opinion that the document, namely, the certificate of the VAO has sanctity relevance to estimate the agricultural income. By taking into consideration of the land holding and cultivation said to be made by the assessee's father, this Tribunal is of the considered opinion that the claim of accumulated agricultural income of ₹30,00,000/- cannot be doubted at all.

16. The assessee's father has also claimed a sum of ₹3,00,000/- given to his son during the year 2008-09 and another amount of ₹3,00,000/- during the year 2009-10. Totally, the assessee's father

has gifted ₹46,00,000/-. In view of the above, this Tribunal is of the considered opinion that the Assessing Officer may not be justified in disbelieving the claim of gift of ₹40,00,000/- by the assessee's father. The assessee's father being the Secretary of Agricultural Co-operative Bank, has exposed to the agricultural activities. Therefore, merely because the money was not invested in the bank that alone cannot be a reason for disallowing the claim of the assessee. Shri K.A. Subbian, father of the assessee, has filed confirmation letter which evidences the gift of ₹46,00,000/-. Therefore, in the absence of any further examination, this Tribunal is of the considered opinion that no addition can be made in the hands of the present assessee. At the best, if at all there was no source for the assessee's father, the addition has to be made only in the hands of the assessee's father and not in the hands of the present assessee. Therefore, the addition of ₹40,00,000/- for the assessment year 2007-08 is deleted.

16. Now coming to the assessment year 2008-09, the Assessing Officer has estimated undisclosed income as ₹45,00,000/-. The assessee claimed before the Assessing Officer that he was acting as agent of Shri V.T. Elangovan, Karur and the funds of Shri V.T.

Elangovan were advanced to various persons on his behalf. In support of his contention, the assessee placed his reliance on the seized materials, which were marked as KS/B&D/S3, S10, S12, S13 and S15. The Assessing Officer himself observed that in these documents Shri V.T. Elangovan brought funds in the business of money lending. Therefore, the loose sheets found in the course of search operation indicate that the funds were advanced by the assessee on behalf of Shri V.T. Elangovan. Shri V.T. Elangovan, in fact, advanced funds to the assessee. The Assessing Officer has also found that Shri V.T. Elangovan died on 28.02.2011 and he is not available for examination. Therefore, it is obvious that the details found in the seized material could not be verified by examining Shri V.T. Elangovan. Therefore, the details available in the seized material have to be taken as it is in the absence of any further examination. This Tribunal is of the considered opinion that reference found in the seized document cannot be ignored at all. From the order of the Assessing Officer it appears that the assessee has retracted his earlier statement with regard to business of Covai Balaji Finance. The assessee claimed before the Assessing Officer that the statement recorded during the course of search operation was the first one taken from him. This Tribunal is

of the considered opinion that this being a search matter under Section 153C of the Act, the material found during the course of search operation is more relevant than the statement recorded from the assessee. Since the material found during the course of search operation shows that the money was given to the assessee by Shri V.T. Elangovan and the assessee advanced money on behalf of Shri Elangovan, this Tribunal is of the considered opinion that there cannot be any addition in the hands of the present assessee. The addition, if any has to be made, that can be made only in the hands of Shri Elangovan and not in the hands of the present assessee. Therefore, the addition of ₹45,00,000/- is deleted.

17. Now for the assessment year 2009-10, the Assessing Officer made addition of ₹38,03,653/- being income from undisclosed sources. The Assessing Officer mainly placed his reliance on the statement said to be recorded from the assessee that Covai Balaji Finance is a proprietorship of the assessee. However, the seized material shows that the money was brought in by Shri V.T. Elangovan. This being the block assessment under Section 153C of the Act, seized material plays an important role than the oral statement recorded from the assessee. The seized material clearly

shows that Shri Elangovan has brought funds in the business of money lending. This material found during the course of search operation cannot be ignored on the basis of retracted statement of the assessee. The fact remains that Shri V.T. Elangovan died on 28.02.2011 and he is not available for examination. Therefore, the seized material found during the course of search operation is the only evidence available on record. Therefore, the money was advanced by Shri V.T. Elangovan and the addition, if any, has to be made only in the hands of Shri Elangovan and not in the hands of the assessee. Accordingly, the addition of ₹38,03,653/- made by the Assessing Officer is deleted.

18. Now coming to the addition of ₹7,30,000/-, the Assessing Officer made this addition considering that this is an additional capital and no details were available for the additional capital. This Tribunal is of the considered opinion that in the absence of any seized material which discloses the investment, there cannot be any addition for the block period. The addition has to be made only on the basis of seized material found during the course of search operation. The balance sheet filed in the course of assessment proceeding which discloses the additional capital of ₹7,30,000/-

cannot be taken as income of the assessee for the block period at all. Therefore, the Assessing Officer is not justified in making the addition of ₹7,30,000/-.

19. Now coming to the addition of ₹16,930/-, the Assessing Officer found that the assessee has disclosed ₹16,930/- as interest income. However, the same was not added to the total income. When the assessee has disclosed the income of ₹20,347/- which included the interest income of ₹16,930/-. This Tribunal is of the considered opinion that further addition is not justified. Therefore, the addition of ₹16,930/- is also deleted.

20. Now coming to assessment year 2010-11, the first addition made by the Assessing Officer is with regard to addition of undisclosed income to the extent of ₹44,39,908/-. As observed earlier, the seized material clearly shows that the capital brought in by Shri V.T. Elangovan was used for making advance in the money lending business. The assessee has also received gift of ₹40,00,000/- from his father. Therefore, this Tribunal is of the considered opinion that the seized material found during the course of search operation cannot be ignored. This Tribunal is of the considered opinion that the seized material has to be given

preference rather than the statement said to be recorded from the assessee under Section 132(4) of the Act. This being the block assessment, the Assessing Officer has to place reliance on the seized material which clearly discloses the advance made by Shri V.T. Elangovan. Since the said Shri V.T. Elangovan is not available for examination, this Tribunal is of the considered opinion that the addition made in the hands of the present assessee is not justified. Since the seized material discloses the capital contributed by Shri V.T. Elangovan, this Tribunal is of the considered opinion that the addition, if any, has to be made only in the hands of Shri V.T. Elangovan and not in the hands of the assessee.

21. Now coming to the addition of ₹3,20,000/- being the additional capital, the Assessing Officer made the addition on the ground that the assessee has not provided any details with regard to additional capital. The seized material clearly shows that Shri V.T. Elangovan advanced money in the money lending business. The assessee has also received a sum of ₹40,00,000/- from his father. The Assessing Officer ignoring these details, made addition of ₹3,20,000/-. Therefore, this Tribunal is of the considered opinion

that the addition of ₹3,20,000/- is not justified. Accordingly, the same is deleted.

22. Now coming to the investment to the extent of ₹4,50,000/- made in the purchase of Swift Desire car, the Assessing Officer made addition on the ground that the purchase of car was not shown in the balance sheet. This Tribunal is of the considered opinion that merely because the car was not shown in the balance sheet it does not mean that the assessee has purchased the car from undisclosed income. This Tribunal is of the considered opinion that the assessee had source for making investment. Therefore, the addition of ₹4,50,000/- was not justified. Accordingly, the same is deleted.

23. Now coming to assessment year 2011-12, the first addition made by the Assessing Officer is ₹30,05,220/-. The Assessing Officer made the addition only on the basis of the advance made by the assessee in the money lending business, relying on the statement recorded under Section 132(4) of the Act. The seized material found during the course of search operation discloses that the money was received from Shri V.T. Elangovan of Karur for making advance in the money lending business. This was

evidenced from seized material found during the course of search operation. Shri V.T. Elangovan died and not available for examination. The assessee has also retracted the statement made during the course of search operation. The claim of the assessee that he received a sum of ₹40,00,000/- from his father is also evidenced in the available record. In those circumstances, this Tribunal is of the considered opinion that there is no justification in making the addition of ₹30,05,220/- in the hands of the present assessee. This Tribunal is of the considered opinion that if at all any addition is to be made, it has to be made in the hands of Shri V.T. Elangovan and definitely not in the hands of the present assessee. Similarly, the addition of ₹1,10,000/- is also not justified since the material available on record suggests that the advance was made by the assessee on behalf of Shri V.T. Elangovan who, in fact, brought in the funds as capital. Therefore, the addition of ₹1,10,000/- is also deleted.

24. Now coming to the unexplained investment in plot and house property to the extent of ₹56,70,000/-, the Assessing Officer made addition only on the ground that the plot and house property purchased at Coimbatore were not shown in the balance sheet.

Therefore, he presumed that investment made in the properties were to be treated as unexplained income. The house property at Coimbatore was purchased from Shri V.T. Elangovan for ₹31,00,000/-. However, the Assessing Officer has taken the value at ₹44,00,000/- on the basis of seized material KS/B&D/S-6. While the Assessing Officer has taken the particulars in the seized document with regard to investment, he has not taken the very same document with regard to capital brought in by Shri V.T. Elangovan. This Tribunal is of the considered opinion that the capital brought in by Shri V.T. Elangovan and the gift received by the assessee were very much available on record. The cash flow statement indicates the availability of funds with the assessee. Therefore, merely because the purchase of plot and house property is not disclosed in the balance sheet that alone cannot be a reason for treating the income as undisclosed income. The availability of funds with the assessee is established on the basis of seized material. Therefore, making addition in the hands of the assessee is not justified. If at all any addition has to be made, at the best, it can be made only in the hands of Shri V.T. Elangovan and not in the hands of the assessee. The capital brought in by Shri V.T. Elangovan was very much available with the assessee. Therefore,

the assessee cannot be found fault for not disclosing the purchase of plot and house property in the balance sheet. Therefore, the addition of ₹56,70,000/- is also deleted.

25. Moreover, recording of satisfaction in respect of proceeding under Section 153C of the Act is mandatory. In the circular issued by the CBDT, which was brought to the notice of the Bench by the Ld. representative for the assessee, clearly shows that even in the case where the proceeding is initiated under Section 153C of the Act, recording of satisfaction is mandatory as required under Section 158BD of the Act. At para 4 of the circular, the CBDT clarified that even if the Assessing Officer is one and the same, then also recording his satisfaction is mandatory. The Delhi Bench of this Tribunal in Super Malls Pvt. Ltd. (supra) has found that the satisfaction has to be recorded by the Assessing Officer in the records of the person who is searched. In the case before us, the satisfaction was recorded in the records of the present assessee and not in the records of the persons who are searched. Since satisfaction was not recorded in the case of shri T. Muniappan, Shri T. Elangovan and Shri V.T. Kumaravel with regard to document relating to the present assessee, this Tribunal is of the considered

opinion that the assessment cannot stand on that score also. In view of the above, we are unable to uphold the orders of the lower authorities. Accordingly, the orders of the lower authorities are set aside.

26. In the result, the appeals of the assessee are allowed.

Order pronounced on 4th March, 2016 at Chennai.

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

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 4th March, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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