

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos. 2174 to 2178/Mds/2013

निर्धारण वर्ष / Assessment Years :2002-03, 2003-04,2004-05,2005-06 & 2006-07

Smt. A. Jothimani,
No.11-D-2, Sivasakthi Nagar,
Bye-Pass Road,
Komarapalayam

v.

The Deputy Commissioner of
Income Tax,
Central Circle,
Salem.

PAN : ADOPJ2834Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No. 2183/Mds/2013

निर्धारण वर्ष / Assessment Year : 2001-02

The Deputy Commissioner of
Income Tax,
Central Circle,
Salem.

v.

Shri P. Anbazhagan
No.11-D-2, Sivasakthi Nagar,
Bye-Pass Road,
Komarapalayam-638183

PAN : AAVPA7006J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos. 2172 & 2173/Mds/2013

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

M/s. Anburaj Exports,
No.11-D, Sivasakthi Nagar,
Bye-Pass Road,
Komarapalayam

v.

The Deputy Commissioner of
Income Tax,
Central Circle,
Salem.

PAN : ADOPJ2834Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No. 2179/Mds/2013
निर्धारण वर्ष / Assessment Year : 2006-07

Shri P. Anbazhagan
No.11-D-2, Sivasakthi Nagar,
Bye-Pass Road,
Komarapalayam-638183

v.

The Deputy Commissioner of
Income Tax,
Central Circle,
Salem.

PAN : AAVPA7006J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Shri S. Sridhar, Advocate
राजस्व की ओर से /Revenue by : Shri A.V. Shreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 30.11.2016
घोषणा की तारीख/Date of Pronouncement : 31.01.2017

आदेश /ORDER

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

All the appeals of the assesseees and the Revenue are directed against the respective orders of Commissioner of Income Tax (Appeals), Salem in respect of three independent assesseees. Since common issue arises for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. Let us first take ITA No.2174 of 2013 for the assessment year 2002-03 in respect of Smt. A. Jothimani.

3. Shri S. Sridhar, Ld. Counsel for the assessee submitted that the only issue arises for consideration is addition of ₹1,50,000/- under Section 68 of the Income Tax Act, 1961 (in short 'the Act'). Shri S. Sridhar, the Ld. Counsel for the assessee submitted that there was a search operation under Section 132 of the Act on 10.11.2005 in the case of assessee's husband Shri P. Anbazhagan. According to the Ld. Counsel, the assessee filed the income tax return for the assessment year 2002-03 in regular course on 12.03.2003 before the search operation, disclosing the total income as ₹1,27,710/-. Consequent to the notice under Section 153C of the Act, the assessee has filed a return on 23.07.2007 disclosing the very same amount of ₹1,27,710/-. According to the Ld. Counsel, the assessee was engaged in the business of manufacturing cloth by name M/s. Sri Vishnu Durgaadevi Textiles. On perusal of the accounts, the Assessing Officer found that an amount of ₹1,00,000/- was credited in the personal capital account on 01.02.2002. Similarly another amount of ₹25,000/- was credited

on 07.03.2002. The Assessing Officer also found that ₹25,000/- was credited in the personal capital account on 18.03.2002. The assessee explained before the Assessing Officer that the amount was credited on transfer from her capital account in the proprietary concern. The Assessing Officer after verification found that there was no such transfer from her capital account in the proprietary concern as claimed by the assessee. Therefore the Assessing Officer made an addition of ₹1,50,000/- under Section 68 of the Act for the assessment year 2002-03. According to the Ld. Counsel, the assessee is a person other than the search person. The addition was admittedly made under Section 153C of the Act. Therefore the assessing officer cannot make any addition in the absence of the searched material. No material was found during the course of search operation. The addition was made on the basis of the accounts filed by the assessee before the Assessing Officer. In fact, the return of income was filed on 12.03.2003 in the regular course before the date of search operation. Therefore, according to the Ld. Counsel, in the absence of any search material there cannot be any addition for the block period under Section 153C of the Act.

4. On the contrary, Shri A.V. Shreekanth, the Ld. Departmental Representative submitted that the Assessing Officer found that the assessee's personal capital account was credited with ₹1,50,000/-. The assessee claimed before the Assessing Officer that the credit was made on transfer from her capital account in the proprietorship concern. On verification, the Assessing Officer found that there was no such transfer. Therefore the Assessing Officer rightly found that the cash credit remain unexplained. Accordingly an addition was made under Section 68 of the Act.

5. We have considered the rival submissions on either side and perused the material available on record. It is not in dispute that there was a search operation under Section 132 of the Act on 10.11.2005 in the case of assessee's husband Shri P. Anbazhagan. The assessment was made against the assessee under Section 153C of the Act. Therefore it is obvious that the assessee is a person other than the search person. We have carefully gone through the Section 153C of the Act. In respect of the person other than the search person, the Assessing Officer cannot initiate the proceeding for assessment or the Assessing Officer can assess the

income on the basis of the material found during the search operation. In the case before us, admittedly no material was found during the course of search operation. The assessee filed return of income for the assessment year 2002-03 on 12.03.2003 in the regular course before the date of search operation. Therefore this Tribunal has considerable opinion that in the absence of any material found during the course of search operation, there cannot be any addition under Section 158BC. Therefore we are unable to uphold the order of the lower authorities. Accordingly, the order of the lower authorities is set aside and the addition of ₹1,50,000/- is deleted.

6. In the result, the ITA No.2174/Mds/2013 stand allowed.

7. Now coming to assessment year 2003-04, the first issue arises for consideration is addition of ₹3,50,000/- under Section 68 of the Act.

8. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that no material was found during the course of search operation for the assessment year 2003-04. The Assessing Officer found credit

in the capital account in the Books of Accounts during the course of assessment proceedings. The assessee claimed before the Assessing Officer that it was only a transfer from her capital account from the proprietorship concern. According to the Ld. Counsel in the absence of any material found during the course of search operation, there cannot be any addition for the block period. The Ld. Counsel also submitted that for the assessment year 2003-04, the assessee has filed return of income in the regular course on 31.10.2003 before the date of search, disclosing the total income of ₹2,40,900/-. Therefore there was no justification in making addition in the hands of the assessee.

9. On the contrary, Shri A.V. Shreekanth, the Ld. Departmental Representative submitted that the Assessing Officer found several credits in the Books of Accounts. The assessee explained the two credits of ₹50,000/- each was received by way of gift from father and mother. However, no satisfactory material was filed to confirm the so called credit. The assessee has also claimed before the Assessing Officer that the amount was credited from her capital account in the proprietorship concerned business. The Assessing

Officer found it is also not correct. Therefore, the addition under Section 68 of the Act was made to the extent of ₹3,50,000/-.

10. We have considered the rival submissions on either side and perused the material available on record. During the course of search operation, no material was found in respect of credit in the personal capital account of the assessee. For the purpose of making addition under Section 153C especially when the assessee filed the return of income before the date of search operation, the Assessing Officer has to place his reliance on the material found during the course of search operation. In case, no material was found during the search operation, in respect of credit found in the Books of Accounts which is produced during the course of proceedings, this Tribunal is of the considered opinion that there cannot be any addition under Section 153C of the Act. In this case, admittedly no material was found during the course of search operation in respect of the addition made by the Assessing Officer to the extent of ₹3,50,000/- under Section 68 of the Act. Therefore the addition made by the Assessing Officer cannot be sustained. Accordingly, the same is deleted.

11. The next issue arises for consideration is disallowance of ₹1,00,000/-.

12. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that the Assessing Officer found that the assessee has under stated the gross profit for the assessment years 2004-05 & 2005-06. While considering the assessment of the assessee's husband Shri P. Anbazhagan who is also engaged in the similar business as of the assessee, the net profit was never below 1%. In the case of the assessee, according to Assessing Officer the net profit shall be more than 1%. The Assessing Officer further found that the net profit disclosed by the assessee was less than 1%. Accordingly, the Assessing Officer found that there shall be addition towards net profit. The assessee explained before the Assessing Officer that discounts were given to the customers more than what was given by Shri P. Anbazhagan. The Assessing Officer has estimated the net profit at ₹1,00,000/- for the assessment year 2003-04 and for the assessment year 2005-06. The Assessing Officer has also estimated the understatement, the net income at ₹50,000/- for the assessment year 2004-05. In the absence of any search material,

according to the Ld. Counsel there cannot be any estimation of net profit by comparing the net profit disclosed by the assessee's husband Shri P. Anbazhagan. This being a block period, under Section 153C of the Act, for the purpose of estimating the profit there shall be a material found during the course of search operation in the hands of the assessee. Comparison of the net profit with similarly placed traders cannot be made in the block assessment. Ofcourse, the Assessing Officer can compare the profit ratio of the other similarly placed traders in the course of regular assessment under Section 143(3) of the Act. Block assessment under Section 153C of the Act being a special provision for computing the undisclosed income, the Assessing Officer has to confine himself only to the material found during the course of search operation. In the absence of any material found during the course of search operation, the Assessing Officer cannot make any addition for the block period. Therefore the CIT (Appeals) is not justified in confirming the order of the Assessing Officer.

13. On the contrary, Shri A.V. Shreekanth, the Ld. Departmental Representative submitted that on verification of the details furnished

by the assessee, the Assessing Officer found that the discounts provided by the assessee are highly excessive compared to the discounts of Shri P. Anbazhagan. The assessee claimed before the Assessing Officer that heavy discounts were given since spot payment was made. The Assessing Officer further found that the expenses claimed by the assessee were not properly vouchered and the payments made by the assessee are not verifiable. Therefore the Assessing Officer made an addition of ₹1,00,000/- for the assessment year 2003-04, ₹50,000/- for the assessment year 2004-05 and another ₹1,00,000/- for the assessment year 2005-06.

14. We have considered the rival submissions on either side and perused the material available on record. Admittedly, the assessment was framed for understating the net profit for the block period under Section 153C of the Act. It is not in dispute that the undisclosed income for the block period has to be computed only on the material found during the course of search operation in respect of the person other than the search person under Section 153C of the Act. In the case before us, the Assessing Officer has not referred any search material in the impugned assessment order. The Assessing Officer simply compared the net profit of the

assessee's husband Shri P. Anbazhalagan with that of the assessee and found that the net profit disclosed by the assessee is less than 1% cannot be sustained. The fact remains is that no material was found during the course of search operation in respect of business of the assessee. Therefore, the comparison made by the Assessing Officer with that of the net profit of the assessee's husband Shri P. Anbazhalagan in the absence of any search material for the block period cannot be sustained. The matter would stand differently in case Revenue authorities found materials during the course of search operation for understatement of the profit. No such evidence was found during the course of search operation. Therefore this Tribunal is unable to uphold the order of the lower authorities. Accordingly, the addition made by the Assessing Officer for shortfall of net profit for the assessment years 2003-04, 2004-05 & 2005-06 are set aside and the addition made by the Assessing Officer for the respective assessment years are deleted.

15. Now coming to assessment year 2004-05, the only disallowance made by the Assessing Officer is ₹50,000/- towards expenses.

16. We heard Shri S. Sridhar, the Ld. Counsel for the assessee and Shri A.V. Shreekanth, the Ld. Departmental Representative. While disclosing of identical issue for the assessment year 2003-04, this Tribunal found that there was no material found during the course of search operation for disallowance of ₹50,000/- for the assessment year 2004-05. In view of the above finding recorded by this Tribunal in the earlier paragraph, the addition of ₹50,000/- cannot be sustained. Accordingly, the addition made by the Assessing Officer for the assessment year 2004-05 to the extent of ₹50,000/- is deleted.

17. Similarly for the assessment year 2005-06 also, this Tribunal found that in the earlier para of the order there was no material found during the search operation, for the same reason the addition made by the Assessing Officer to the extent of ₹1,00,000/- is deleted.

18. Now coming to the assessment year 2006-07, the Assessing Officer made an addition of ₹1,25,000/- towards suppression of net profit on estimation basis.

19. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that the assessee disclosed turnover of ₹2,34,76,885/- for the assessment year 2006-07 and estimated the net profit at 0.75%. The Assessing Officer found that the assessee ought to have maintained the Books of Accounts and obtained the audit report as required under Section 44AB of the Act. According to the Ld. Counsel, the Assessing Officer rejected the profit ratio estimated by the assessee at 0.75% and compared the profit of assessee's husband Shri P. Anbazhagan and estimated the net profit at ₹1,25,000/- over and above which was declared by the assessee. According to the Ld. Counsel this being a block assessment under Section 153C of the Act, the assessment has to be made only on the basis of the material found during the course of search operation. In the absence of any material found during the course of search operation, according to the Ld. Counsel there cannot be any addition on estimation basis.

20. On the contrary, Shri A.V. Shreekanth, the Ld. Departmental Representative submitted that the assessee admittedly has not maintained any Books of Accounts. The turnover of the assessee exceeded the prescribed limit under Section 44AB of the Act. Therefore, it is a clear case of suppression of the income, by not maintaining the Books of Accounts. Therefore, the Assessing Officer found that estimation of net profit at 0.75% by the assessee was not supported by any records. Accordingly, the Assessing Officer rejected the estimation made by the assessee and the net profit was estimated at 1.325% on the basis of the profit declared by the assessee's husband Shri P. Anbazhagan.

21. We have considered the rival submissions on either side and perused the material available on record. The block assessment under Section 153C was framed consequent to the search operation made in the case of Shri P. Anbazhagan. Therefore the Assessing Officer has to confine himself only to the material found during the course of search operation. Comparison of the net profit with that of the similarly placed traders can be made in the regular assessment under Section 143(3) of the Act. When the assessment

was framed under Section 153C of the Act, comparing the profit ratio of the similarly placed traders cannot be made in the absence of any search material. The matter would stand differently in case the Revenue authorities found some material regarding the suppression of sale by the assessee. Mere non-maintenance of Books of Accounts and failure of the assessee to get the Books of Accounts audited cannot be a reason for estimating the net profit by comparing the same with that of the similarly placed traders. Therefore this Tribunal is unable to uphold the orders of the lower authorities. Accordingly, the orders of the lower authorities are set aside and the addition made by the Assessing Officer is deleted.

22. Now coming to the case of Shri P. Anbazhagan, the Revenue filed the appeal for the assessment year 2001-02 in ITA No.2183 of 2013.

23. Shri A.V. Shreekanth, the Ld. Departmental Representative submitted that the assessee has received ₹20,00,000/- in cash and kind, consequent to the retirement from partnership firm M/s. Anburaj Textiles. The assessee was examined under Section

132(4) of the Act on 10.11.2005 in the course of search operation. In response to query Nos.23 & 24, the assessee explained that he received a sum of ₹20,00,000/- on retirement from the partnership firm M/s. Anburaj Textiles by cheque, cash and in kind. During the course of assessment proceeding, the assessee denied the statement made during the course of search operation. The Assessing Officer found that the statement made during the course of search operation remains as evidence. Accordingly, the Assessing Officer made an addition of ₹16,92,483/- as a benefit arising to the assessee under Section 28(i)(iv) of the Act. Further the CIT (Appeals) by placing reliance on the order of this Tribunal in the case of Shri S. Selvaraj in ITA Nos.1258 to 1264 deleted the addition. Placing the reliance on the judgment of the Himachal Pradesh High Court in Hirasing and Co. Vs. CIT (HP) 230 ITR 791, the Ld. D.R., submitted that addition can be made on the basis of the admission made by the assessee, when the assessee made a confession during the course of search operation. The CIT (Appeals) can still retain the addition made by the Assessing Officer. Referring to the judgment of the Kerala High Court in Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala 91 ITR 18,

the Ld. D.R., submitted that admission is a piece of evidence which cannot be ignored at all. Therefore the CIT (Appeals) is not justified in deleting the addition made by the Assessing Officer, by placing reliance on the order of this Tribunal in the case of Shri S. Selvaraj.

24. The assessee claimed before the Assessing Officer that he received ₹20,00,000/- on retiring from partnership firm M/s. Anburaj Textiles. The CIT (Appeals) found that this Tribunal examined an identical issue in the case of Shri S. Selvaraj. The above said Shri S. Selvaraj is none other than the person who took over the business of M/s. Anburaj Textiles after paying ₹20,00,000/- to each of the partners. This Tribunal found that the addition made by the Assessing Officer was without any basis. Referring to the order of this Tribunal in the case of Shri S. Selvaraj, the Ld. Representative for the Revenue submitted that there was no material other than the statement recorded from one of the partner Shri P. Easwaran. This Tribunal further found that all the payments made by the said Shri S. Selvaraj reflects in the respective capital accounts. Accordingly, the addition made by the Assessing Officer to the extent of ₹40,00,000/- was deleted in the case of Shri S. Selvaraj.

25. In this case before us, the assessee admitted that he received ₹20,00,000/- on his retirement from M/s. Anburaj Textiles. Therefore it is a benefit arising under Section 28(i)(iv) of the Act. Hence the CIT (Appeals) is not justified in allowing the claim of the assessee.

26. On the contrary Shri S. Sridhar, the Ld. Counsel for the assessee submitted that in the case of Shri S. Selvaraj in fact who took over the business of M/s. Anburaj Textiles, this Tribunal found that there was no evidence other than the statement made by one of the partner Shri P. Easwaran. In this case also, the entire addition was made only on the basis of the statement said to be made by the assessee. In the absence of any other evidence, according to Ld. Counsel there cannot be any addition for the assessment year on the basis of the statement alone.

27. We have considered the rival submissions on either side and perused the material available on record. Admittedly, there was a search operation in the premises of the assessee on 10.11.2005.

From the order of the Assessing Officer, it appears that a sum of ₹37,03,851/- was found and seized by the authorities. The assessee had already filed return on 30.10.2001 before the date of search, disclosing a total of ₹3,10,740/- which includes agricultural income of ₹50,600/-. The same income was returned by the assessee consequent to the notice issued by the Assessing Officer under Section 153A of the Act. According to the Ld. Counsel, when the assessee filed the return of income on 30.10.2001 in the regular course and time limit for issue of notice under Section 143(2) of the Act, expired, the assessment proceedings was terminated by operation of law. In other words, the regular assessment proceeding is not pending on the date of the search operation. Therefore it would not abate. Since, the regular assessment proceedings on the return of income filed on 30.10.2001 came to an end by operation of law, the Assessing Officer has to confine himself only to the material found during the course of search operation. In the case before us, according to Ld. Counsel no material was found during the course of search operation other than the so called statement said to be made by the assessee in the course of examination under Section 132 (4) of the Act. The

question now arises for consideration is whether there can be an assessment under Section 153A of the Act for the block period on the basis of the statement recorded during the course of search operation under Section 132 (4) of the Act. In the absence of any material found during the course of search operation, the CIT (Appeals) by placing reliance on the order of this Tribunal in the case of Shri S. Selvaraj found that there cannot be any addition on the basis of the statement all alone. In fact, from the order of the CIT (Appeals) it appears that the addition was made in the hands of Shri S. Selvaraj under Section 69C of the Act, for undisclosed investment. From the order of this Tribunal which was reproduced by CIT (Appeals), it appears that no statement was recorded from the said Shri S. Selvaraj, the addition was made only on the basis of the statement made by Shri P. Easwaran. Therefore this Tribunal found that there cannot be any addition on the basis of the statement recorded from the said Shri P. Easwaran.

28. In the case before us, admittedly the statement was recorded from the assessee under Section 132(4) of the Act during the course of search operation. When the assessee admits in the

course of search proceeding while examining under Section 132(4) of the Act, this Tribunal is of the considered opinion, the decision of this bench of the Tribunal in Shri S. Selvaraj cannot come to rescue of the assessee. The assessee himself admitted during the course of examination under Section 132(4) of the Act. Therefore the statement made by the assessee under Section 132(4) has an evidentiary value. The matter would stand differently in case the addition was made on the basis of the statement made by the third party. Since, the assessee himself made the statement and there is no reason why such statement made under Section 132(4) was denied subsequently, this Tribunal is of the considered opinion that the CIT (Appeals) is not justified in deleting the addition made by the Assessing Officer. Accordingly the order of the CIT (Appeals) is set aside and that of the Assessing Officer is restored.

29. Now coming to the assessment year 2005-06 in the case of M/s. Anburaj Exports, the assessee filed the appeal against the order of CIT (Appeals).

30. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that the Assessing Officer has estimated suppression of income to the extent of ₹76,804/- without any material found during the course of search operation. Admittedly, the search took place on 10.11.2005. The time limit for filing the return of income expired on 31.07.2005. The assessee apparently not filed the return of income. Therefore the Assessing Officer estimated the profit at 1.18% as was done for the assessment year 2006-07. According to the Ld. Counsel, the addition made by the Assessing Officer in the absence of any material cannot be sustained.

31. Shri A.V. Shreekanth, the Ld. Departmental Representative submitted that the addition was only in respect of net profit to the extent of ₹74,870/-. According to the Ld. D.R., the assessee all the time disclosed a low profit of 4.91%. For the assessment year 2005-06, according to the Ld. D.R., the earlier average profit was 6.03%. The Assessing Officer has found that the assessee has inflated the purchase. Therefore the Assessing Officer estimated the net average income at 1.18% and worked out the suppression

of income at ₹76,804/-. According to the Ld. D.R., the Assessing Officer has rightly estimated the suppression of income.

32. We have considered the rival submissions on either side and perused the material available on record. Admittedly the search took place on 10.11.2005. The estimation of income is for the assessment year 2005-06. The time limit for filing the return of income expired on 30.07.2005. From the order of the Assessing Officer, it appears that the assessee has not filed the return of income for the assessment year 2005-06. The assessee filed the returns on 23.07.2007, consequent to the notice issued under Section 153C of the Act, disclosing agricultural income of ₹96,110/-. Since, the assessee has not disclosed the income in the regular course by filing a return of income and time limit to complete the assessment under Section 143(3) of the Act has not expired, this Tribunal is of the considered opinion, the Assessing Officer has rightly compared the average profit for the assessment year 2006-07 and estimated the net income at 1.18% for the year under consideration. Therefore the addition made by the Assessing Officer was rightly sustained by the CIT (Appeals). This Tribunal did

not find any reason to interfere with the order of the lower authorities. Accordingly, the same is confirmed.

33. Now coming to assessment year 2006-07, in the case of M/s. Anburaj Exports, the only issue is addition of ₹76,800/- made by the Assessing Officer.

34. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that the Assessing Officer estimated the addition at 1.19% of the total turnover of ₹2,57,56,197/-. After reducing the net profit disclosed by the assessee at 0.89%, the Assessing Officer estimated the suppression of income at ₹76,800/-. According to the Ld. Counsel there is no material available on record for making such estimation. In the absence of any material, the Assessing Officer ought to have accepted the net profit disclosed by the assessee.

35. On the contrary, Shri A.V. Shreekanth, the Ld. Departmental Representative submitted that the assessment year under consideration is 2006-07. The search admittedly took place on 10.11.2005 and time limit for filing return of income was not expired.

Therefore the Assessing Officer has examined the matter on the basis of the material available on record. Since, the comparison of profit was made in respect of the assessee's net profit shown in the earlier assessment years, the CIT (Appeals) has rightly confirmed the assessment made by the Assessing Officer.

36. We have considered the rival submissions on either side and perused the material available on record. The CIT (Appeals) compared the profit ratio of the assessee right from the assessment years 2001-02 to 2006-07 and found that there was a marginal difference between the profit ratio disclosed in the earlier assessment year and for the assessment year 2006-07. Accordingly, the Assessing Officer estimated the profit at 1.19% being the average for the assessment year 2005-06. The Assessing Officer has taken the profit at 1.18% which was confirmed by the CIT (Appeals). This Tribunal has also confirmed the order of the CIT (Appeals). Therefore for the sake of consistency the order of the lower authorities is modified and the Assessing Officer is directed to estimate the profit at 1.18% instead of 1.19%.

37. Now coming to the appeal of Shri P. Anbazhagan for the assessment year 2006-07 in ITA No.2179/2013, the first issue is with regard to suppression of net profit to the extent of ₹1,50,000/-.

38. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that the assessee filed the return of income for the assessment year 2006-07 on 23.07.2007 disclosing the total income of ₹34,38,214/- including agricultural income of ₹61,500/-. According to the Ld. Counsel, the assessee disclosed the net profit at 0.75%. The Assessing Officer without any basis estimated the profit at 1.18% and made an addition of ₹1,50,000/-, in the absence of any search material. According to the Ld. Counsel there cannot be any addition.

39. On the contrary, Shri A.V. Shreekanth, the Ld. Departmental Representative submitted that the assessment year under consideration is 2006-07 and the addition made by the assessment year was on the basis of the profit ratio disclosed by the assessee in the earlier assessment years. For the earlier six assessment years,

the average income disclosed by the assessee was 1.18%. The Assessing Officer has found that the assessee has disclosed only 0.75% of the profit during the year under consideration. Accordingly, estimated the profit at 1.18% and determined the suppression at ₹1,50,000/-. Therefore the CIT (Appeals) has rightly confirmed the appeal made by the Assessing Officer.

40. We have considered the rival submissions on either side and perused the material available on record. The average income for earlier six years comes to 1.18%. This is not in dispute. The last three years average comes to 1.11%. This is also not in dispute. The assessee has disclosed only 0.71%. The Assessing Officer has computed the suppression of income by taking the difference of average income of earlier years and the income disclosed during the year under consideration. This Tribunal is of the considered opinion that the Assessing Officer computed the average income of the assessee by comparing the profit ratio disclosed by the assessee himself. Therefore there cannot be any reason to interfere with the order of the lower authorities, especially when the

assessee has not maintained the books of income. Therefore this Tribunal sustains the order of the lower authorities.

41. Next round of appeal is with regard to addition of ₹36,16,950/-.

42. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that the cash balance as on 31.09.1999 was ₹36,16,950/-. The deposit of ₹55,00,000/- was made on 16.09.2005. According to the Ld. Counsel, the Assessing Officer found that the assessee cannot explain the opening balance. According to the Ld. Counsel, the assessee was engaged in unregistered and unaccounted money lending business which has evidence by the diary found during the search operation. This diary was not considered by the Assessing Officer on the ground that, it does not relate to any business transaction. According to the Ld. Counsel, when the diary was found during the course of search operation, the credit found in the diary cannot be ignored by the authorities below. According to the Ld. Counsel, the unaccounted money lending business carried out by the assessee was unrecognized by the authorities below. Since

the diary was found during the search operation, according to the Ld. Counsel the same cannot be ignored.

43. On the contrary, the Ld. Departmental Representative submitted that even though the assessee claimed that the assessee had carried out unrecognized money lending business, the diary does not disclose anything. The diary doesn't reflect the business activity carried out by the assessee. The diary doesn't explain the opening balance referred therein, even though the closing balance was repeated three times. In the absence of any material for the opening balance, the Assessing Officer rejected the claim of the assessee and found that the cash balance as on 31.09.1999 has to be taken as undisclosed income of the assessee. Therefore CIT (Appeals) has rightly confirmed the addition made by the Assessing Officer.

44. We have considered the rival submissions on either side and perused the material available on record. The fact that the diary was found during the course of search operation is not in dispute. From the order of the Assessing Officer there was some reference

about the business activity for the period from 02.12.1997 to 21.07.1998. This is apparent from the observation made by the Assessing Officer at page 5 of the impugned order

“The assessee claims that they were doing unregistered and unaccounted money lending as evidenced by the Diary. But the Diary does not prove anything. It cannot be regarded as an account book. There is no proof that it relates to any business done by the assessee. And if at all any business is done, it does not explain why it is restricted to the period 02/12/97 to 29/07/98 only and why it is recorded in a 1997 Diary and that too in the months of April & May 1997. It also does not explain why no opening balance is mentioned notwithstanding that the closing balance is repeated three times”

45. In view of the above observation, it may not be correct to say that the assessee was not carrying any unaccounted business. There is a *prima facie* evidence to indicate that the assessee is carrying on some activity for the period 02.12.1997 to 21.07.1998. What actually was done by the assessee was to be examined by the Assessing Officer after giving opportunity to the assessee.

Accordingly the orders of the lower authorities are set aside and the issue is remitted back to the file of the Assessing Officer for re-examination in the light of the material available on record and thereafter decide in accordance with law after giving reasonable opportunity to the assessee.

46. The next ground of appeal is addition of ₹4,00,000/- under Section 68 of the Act.

47. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that in fact the capital account was credited on transfer from M/s. Sri Durga Textiles which is a proprietorship concern of the assessee. There was a journal entry for such transaction. Therefore the CIT (Appeals) is not justified in confirming the order of the Assessing Officer. The Ld. Counsel further submitted that the CIT (Appeals) ought to have allowed telescoping since it is an investment made by the assessee.

48. On the contrary, Shri A.V. Shreekanth, the Ld. Departmental Representative submitted that there was a credit of ₹4,00,000/- in

the capital account of the assessee. The assessee explained that a sum of ₹4,00,000/- was transferred from his capital account in M/s. Sri Durga Textiles. On verification, the Assessing Officer found that there was no debit in the account of M/s. Sri Durga Textiles. The Assessing Officer further found that there no matching entry in the Books of Accounts. Accordingly a sum of ₹4,00,000/- was treated as unexplained income under Section 68 of the Act.

49. We have considered the rival submissions on either side and perused the material available on record. As seen from the assessment order, it appears that the credit was made by cash. Even though, the assessee claims that it was a transfer from M/s. Sri Durga Textiles, there was no debit entry in the Books of Accounts of M/s.Sri Durga Textiles. The assessee appears to have proposed an arithmetical tally inside the account by relying on journal entries. When the capital account disclosed the investment by cash, this Tribunal is of the considerable opinion that the claim made by the assessee that it was transferred from M/s. Sri Durga Textiles is an afterthought. Therefore the CIT (Appeals) has rightly confirmed the addition made by the Assessing Officer.

50. The next issue arises for consideration is addition of ₹31,91,834/- towards excess stock.

51. The Ld. Counsel for the assessee submitted that at the time of search, the physical stock was quantified at ₹57,24,397/-. However Books of Accounts discloses the stock at ₹25,32,563/-. The difference of stock to the extent of ₹31,91,834/- was taken as excess stock by the Assessing Officer. According to the Ld. Counsel, the credit purchase were not taken in to consideration. Therefore the CIT (Appeals) is not justified in confirming the order of the Assessing Officer.

52. On the contrary, Shri A.V. Shreekanth, the Ld. Departmental Representative submitted that admittedly there was a difference between the physical stock verified by the department and the stock disclosed in the Books of Accounts. The assessee appears to have explained before the Assessing Officer that the closing stock was an aggregate stock of 4 concerns. If the stocks of all the 4 concerns were taken in to consideration there may not be any

excess of stock. The assessee cannot presume that the sock of ₹52,66,344/- as on 31.03.2005 continue to exist for all the years under consideration. The closing stock as on 31.03.2005 may not have any impact on the excess stock found by the authorities during the course of search operation. The CIT (Appeals) has rightly confirmed the addition made by the Assessing Officer.

53. We have considered the rival submissions on either side and perused the material available on record. During the course of search operation, the physical stock of the assessee was quantified and it was found that there was excess stock. It is not in dispute that the excess stock was computed after considering the opening balance, purchases and overhead expenditure furnished by the assessee. Therefore the claim of the assessee that the aggregate closing stock of all the 4 concerns were put together, there may not be any difference is misconstrued. Since, the Assessing Officer has taken the opening stock, purchases, overhead expenditure for all the 4 concerns, this Tribunal is of the considered opinion that the excess stock of ₹31,91,834 was rightly taken as business income of

the assessee. Therefore this Tribunal has no reason to interfere with the order of the lower authorities. The same is confirmed.

54. To sum up the result, the assesses appeals in ITA Nos. 2174 to 2178 of 2013 are allowed, ITA Nos. 2172 & 2173 of 2013 are dismissed, ITA No.2179 of 2013 is partly allowed and the Revenue's appeal in ITA No.2183 of 2013 is allowed.

Order pronounced on 31st January, 2017 at Chennai.

Sd/-

(अब्राहम पी.जॉर्ज)

(Abraham P. George)

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 31st January, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती की ओर से /Assesseees
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.