

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**'B' BENCH, CHENNAI**

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**ITA Nos. 1383, 1384, 1385, 1386 & 1387/Mds/2016  
Assessment Years: 1977-78, 1983-84,  
1984-85, 1991-92 & 1992-93**

Shri N.K.Mohnot,  
No.38, College Road,  
Nungambakkam,  
Chennai – 600 006.

v. The Asst. Commissioner of  
Income Tax,  
NCC-3,  
Chennai.

PAN : AACPN 2020 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri D.Anand, Advocate

प्रत्यर्थीकीओरसे/Respondent by : Shri Supriyo Pal, JCIT

सुनवाईकीतारीख/Date of Hearing : 20.10.2016

घोषणाकीतारीख/Date of Pronouncement : 25.11.2016

**आदेश / O R D E R**

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

All the appeals of the assessee are directed against the respective order of CIT(A) and pertains to assessment years 1977-78, 1983-84,

1984-85, 1991-92 & 1992-93. Therefore, we heard all the appeals together and disposing off the same by this common order.

2. Let us first take the assessee's appeal for the assessment year 1977-78 in ITA No.1383/Mds/2016. Shri D.Anand, the learned counsel for the assessee submitted that the assessee was a partner in M/s.Emkay Credit Corporation. The assessee made investment to the extent of Rs.1,67,000/- during the year under consideration. The investment made by the assessee was confirmed by the respective parties. In fact, the assessee invested a sum of Rs.35,000/- in M/s.Emkay Credit Corporation which was not disclosed in the return of income. The interest income from the advance of Rs.1,67,000/- and share income from the partnership also was not explained before the assessing officer. Therefore, the assessing officer made an addition of Rs.1,67,000/- as unexplained investment and after considering the capital balance available, the balance amount of Rs.1,27,000/- was taken as unexplained income by the assessing officer. Referring to the order of CIT(A), the learned counsel for the assessee submitted that the Cash Flow Statement was filed before the assessing officer and CIT(A). The assessee has disclosed credit from Shri Anjay Prakash to the extent of Rs.20,000/- and Smt.Meenakumari to the extent of Rs.40,000/-. The

assessee has also disclosed credit from Shri K.Parasmal Jain to the extent of Rs.30,000/- and M/s.Sanjay Commercial Corporation to the extent of Rs.22,000/-. This statement of account for the above said purpose were also filed before the assessing officer and CIT(A). The assessee has disclosed the source for making investment to the extent of Rs.1,27,000/-. Since the assessing officer himself admitted the capital balance of Rs.40,000/-, the CIT(A) is not justified in confirming the addition of Rs.1,27,000/-.

3. On the contrary, Shri Supriyo Pal, the learned representative for the department submitted that in the earlier round of litigation, this Tribunal remanded back the matter to the file of AO with a direction to redo the assessment. Accordingly, the assessing officer re-examined the matter afresh and made addition to Rs.1,27,000/-. According to the learned representative, the assessing officer worked out the undisclosed investment of Rs.1,67,000/- and reducing the capital balance of Rs.40,000/- he made a net addition of Rs.1,27,000/-. The assessee could not produce the so called creditors before the assessing officer for examination. Therefore, the assessing officer found that the assessee made unexplained investment to the extent of Rs.1,27,000/-. In the

absence of any material, the CIT(A) has rightly confirmed the addition made by the assessing officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessing officer made addition on the ground that the assessee could not produce the creditors for examination. This Tribunal is of the considered opinion that when the assessee furnished the name and other particulars of the creditors, merely because the assessee could not produce the creditors, that cannot be a reason for making addition. The Income Tax Act more particularly Section 131 of the Act gives ample power to the assessing officer to summon any person for examination. In this case, the assessing officer has not taken any pain to summon the creditors for examination. Under normal circumstances, this Tribunal would have remanded back the matter to the file of the AO with a direction to summon the respective creditors for examination. In this case, we are not doing so, because, the assessment year under consideration is 1977-78. After 38 years even if the matter is remanded back to the file of the A.O. for examination of the respective creditors may not serve any purpose. Moreover, the addition made by the assessing officer is only Rs.1,27,000/-. After taking into consideration, the lapse of time and also the fact that this is the second round of litigation, this Tribunal is of the

considered opinion that the addition made by the assessing officer to the extent of Rs.1,27,000/- cannot be sustained. Accordingly, the orders of both the authorities below are set aside and addition of Rs.1,27,000/- is deleted.

5. The next ground of appeal is with regard to addition of Rs.9,441/- and Rs.2,868/- towards interest income and undisclosed share income of the assessee from the partnership firm M/s.Emkay Credit Corporation. We heard Shri D.Anand, the learned counsel for the assessee and Shri Supriyo Pal, the learned department representative. The addition of Rs.9,441/- was made on account of interest said to be received by the assessee from the advances and another addition of Rs.2,868/- which is made towards undisclosed share of income from M/s.Emkay Credit Corporation. The addition was made on the ground that the assessee failed to prove the genuineness of the investment made. In the earlier part of this order, this Tribunal deleted the addition of Rs.1,27,000/- on the ground that the assessing officer has not taken any steps to examine those creditors. It is also a fact that the investment made by the assessee was admitted by the respective persons. In those circumstances, it cannot be said that the genuineness of the investment made by the assessee was not proved. Therefore, the addition of

Rs.9,441/- towards interest income on the advance made by the assessee is not sustainable. Moreover, the share income from M/s.Emkay Credit Corporation was made by the assessing officer without any inquiry and no reason was adduced in the assessment order. The assessing officer has simply observed that as per the original assessment order an addition of Rs.2,868/- is made. It is an admitted fact that the original order was set aside by this Tribunal and the assessing officer was directed to redo the assessment. The assessing officer without redoing the assessment as per the direction of the Tribunal has simply restored the addition made in the earlier assessment order. This Tribunal is of the considered opinion that such an addition cannot be made on the basis of earlier assessment order. Since the assessment was reframed by the assessing officer by the direction of this Tribunal, we are unable to uphold the addition of Rs.9,441/- and Rs.2,868/- respectively. Accordingly, the orders of both the authorities below are set aside and the addition of Rs.9,441/- and Rs.2,868/- are deleted.

6. In the result, assessee's appeal for the assessment year 1977-78 in ITA No.1383/Mds/2016 is allowed.

7. Now coming to the assessment year 1983-84 in ITA No.1384/Mds/2016, Shri D.Anand, the learned counsel for the assessee submitted that the first issue arises for consideration is addition of Rs.48,11,610/-. According to the learned counsel, the assessing officer made an addition on the basis of the so called credit found in the bank account of third parties. The assessing officer also made an addition of Rs.15,580/-. This addition was made on the basis of the credit found in the bank accounts of The Bank of Rajasthan Ltd. and The Vysya Bank Ltd. A credit also was found in the bank account of Indian Overseas Bank. According to the learned counsel, the assessee has furnished all the details for source of making deposit in the bank account. The learned counsel submitted that this Tribunal remanded back the matter to the file of the AO to consider the material filed by the assessee and thereafter decided the matter afresh. In spite of the direction of the Tribunal, the Assessing Officer confirmed the addition made in the original assessment without any reasons. The Assessing Officer failed to examine the material filed by the assessee as directed by this Tribunal. The learned counsel further submitted that the credit found in the bank account are from professional fees. According to the learned counsel, the assessee is a chartered accountant and the fees received from the respective client was deposited in all the banks. Merely because, the assessee could not

produce the books of accounts, it cannot be said that the assessee has not received any fees from the respective clients.

8. On the contrary, Shri Supriyo Pal, the learned department representative submitted that the AO found credit in three bank accounts maintained by the assessee in The Bank of Rajasthan Ltd. and The Vysya Bank Ltd. and Indian Overseas Bank to the extent of Rs.1,20,050/-. The assessee has not produced any material to support the source of making this deposit. Therefore, the AO found that this sum of Rs.1,20,050/- was over and above the professional fee disclosed by the assessee in the profit and loss account. In the absence of any material, the CIT(A) has rightly confirmed the addition made by the AO.

9. Shri Supriyo Pal, the learned department representative further submitted that some of the cheques and pay in slip was found with the assessee. Some of the pro-note executed in favour of M/s.Ashoka Traders was also found in the lockers of the bank of Rajasthan. Even though the assessee is not a partner, the partnership firm was totally controlled by the assessee. Therefore, the addition was rightly made by the assessing officer.

10. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, M/s.Ashoka Traders is a partnership firm and the assessee is not a partner. The addition made by the assessing officer is only in respect of the credit found in the bank account which stands in the name of M/s.Ashoka Traders. The AO claims that some of the pro-note, pay in slips and cheques of M/s.Ashoka Traders was found with the assessee.

11. The AO has found that the assessee was controlling M/s.Ashoka Traders. The fact remains that pro-notes, cheques and pay in slips belongs to Ashoka Traders. Therefore, it is for the revenue to prove how the cheques, pay in slips and pro-notes relates to the assessee, when it is apparently belong to M/s.Ashoka Traders. In the absence of any material on record, it cannot be said that the assessee was controlling M/s.Ashoka Traders. Therefore, as rightly submitted by the learned counsel for the assessee, the addition if any, has to be made in respect of cheques, pay in slips and pro-notes found only in the hands of M/s.Ashoka Traders and certainly not in the hands of the assessee. Therefore, the addition made in the hands of the assessee to the extent of Rs.20,13,000/- is not justified. Accordingly, the orders of the lower authorities are set aside and the addition of Rs20,13,000/- are deleted.

12. Now coming to addition of Rs.1,20,050/-, admittedly, there was a credit found in the Bank of Rajasthan Ltd. to the extent of Rs.71,050/- and in the Vysya Bank Ltd. to the extent of Rs.32,900/- and in the Indian Overseas Bank to the extent of Rs.16,000/-. The total deposit comes to nearly Rs.1,20,050/-. The assessing officer found that the assessee has not filed any material before him. Therefore, he treated the above said deposit as professional fees received over and above what was disclosed in the profit and loss account. The fact remains is that the assessee is a practicing chartered accountant and he deposited the fee in the bank account and also disclosed the same in the profit and loss account. From the order of the lower authorities, it appears that the assessee has furnished the list of professional receipts. The assessing officer found that the list given by the assessee was incomplete and the address of the person from whom the professional fee was collected is not available on record. Therefore, the assessing officer could not make any cross verification from whom the professional fee was said to be received by the assessee. The fact remains that the assessee has furnished additional information before this Tribunal in the first round of litigation. The information filed by the assessee was not examined by the AO as directed by this Tribunal. Even though the assessing officer observed

that there was obstacle in cross verifying the details filed by the assessee, it is not known, what are the obstacles faced by the assessing officer. The Assessing Officer has simply disallowed the claim of the assessee on the general observation without examining the details filed by the assessee as directed by the Tribunal. Therefore, this Tribunal is unable to uphold the order of the authorities below. Accordingly, the order of the authorities below are set aside and the addition of Rs.1,20,050/- is deleted.

13. Now coming to the addition of Rs.59,000/- on the loan to Shri Rajendra K.Sheth, the assessing officer for the reasons recorded by him of making addition in the hands of M/s.Ashoka Traders, made addition of Rs.50,000/- on the loan advanced to Shri Rajendra K.Sheth and another sum of Rs.9,000/- towards interest thereon. In the case of M/s.Ashoka Traders, there was a credit in the bank account of M/s.Ashoka Traders and the addition was made in the hands of the assessee on the assumption that the assessee was having control over M/s.Ashoka Traders. In the case of Shri Rajendra K.Sheth, no material was found by the revenue authorities during the course of search operation. In the absence of any material, this Tribunal is of the considered opinion that there cannot be any addition on a casual reference by the assessing

officer. The CIT(A) also has not discussed anything in the impugned order. Therefore, this Tribunal is unable to uphold the orders of the lower authorities. Accordingly, the orders of lower authorities are set aside and the addition made towards loan to Shri Rajendra K.Sheth to the extent of Rs.50,000/- and the interest of Rs.9,000/- is deleted.

14. Now coming to the loan to M/s.Vummiara (M.Frs.) Ltd., the assessing officer assumed that the assessee's silence amounts to admission. Therefore, he made addition of Rs.40,000/- towards loan and Rs.5,000/- towards interest. The CIT(A) also confirmed the addition. It is pertinent to note that this Tribunal has remitted back the matter to the file of the AO for re-consideration in the light of the material on record in the first round of litigation. There is no discussion with assessment order with reference to the material available on record to indicate that the assessee advanced loan of Rs.40,000/- to M/s.Vummiara (M.Frs.) Ltd. There is no discussion in the order of CIT(A) order as well. It is not known whether the assessee advanced loan to M/s.Vummiara (M.Frs.) Ltd. It is for the AO to bring on record the materials available on record to show that the assessee has advanced a sum of Rs.40,000/- on interest to M/s.Vummiara (M.Frs.) Ltd. In the absence of any such material, this Tribunal is of the considered opinion that the addition made by the AO to

the extent of Rs.40,000/- towards loan and interest of Rs.5,000/- is not justified. Accordingly, the orders of lower authorities are set aside and the addition of Rs.45,000/- is deleted.

15. The next addition is in respect of M/s.Emkay Credit Corporation. From the order of the lower authorities, it appears that certain materials like books of accounts, pay in slips relating to deposit of money in the The Vysya Bank Ltd. were found in the premises of the assessee. It appears from the orders of the lower authorities that the assessee explained them that the assessee is not a partner in M/s.Emkay Credit Corporation. The AO found that there are seven partners in M/s.Emkay Credit Corporation and the assessee is not a partner in M/s.Emkay Credit Corporation. However, it appears that the assessee's father Mr.P.D.Mohnot and assessee's brother, Mr.S.P.Mohnot are partners in M/s.Emkay Credit Corporation. The AO has also found that during the assessment year 1977-78 and 1978-79, the assessee was also one of the partners in M/s.Emkay Credit Corporation. Therefore, the AO found that the credit found in the bank account of M/s.Emkay Credit Corporation belongs to the assessee. The fact that M/s.Emkay Credit Corporation is a partnership firm and assessable separately under the Income Tax Act is not in dispute. The AO without any basis found that M/s.Emkay Credit

Corporation was controlled by the assessee. This Tribunal is of the considered opinion that when the assessee is not a partner in M/s.Emkay Credit Corporation during the year under consideration, merely because, he was a partner for the assessment year 1977-78 & 1978-79, there cannot be any addition for the year under consideration. The deposit of the money in the bank account of M/s.Emkay Credit Corporation can at the best be added to the total income of the partnership firm M/s.Emkay Credit Corporation. However, at any stretch of imagination, the same cannot be added in the hands of the assessee. Therefore, this Tribunal is unable to uphold the orders of the lower authorities. Accordingly, the orders of lower authorities are set aside and the addition made in the hands of the assessee in respect of deposit made in the bank account of M/s.Emkay Credit Corporation is deleted.

16. The next addition is made in respect of deposit of money in Savings Bank Account No.1176 in the name of one Shri Prakash Chandra K.Jain. From the order of the lower authorities, it appears that Shri Prakash Chandra K.Jain maintain a bank account in the bank of Rajasthan Ltd. The Assessing Officer found that the bank account was opened and operated by assessee in the name of Shri Prakash Chandra K.Jain. The existence of Shri Prakash Chandra K.Jain is not in dispute. It

appears that the assessee represented Shri Prakash Chandra K.Jain before the income tax authorities. The assessee also appears to have filed a writ petition. These facts were taken adversely by both the authorities below against the assessee. The fact remains that Shri Prakash Chandra K.Jain is an independent assessee. The existence of Shri Prakash Chandra K.Jain is not in dispute. Therefore, the deposit made in the bank account of Shri Prakash Chandra K.Jain can at the best be added in the hands of Shri Prakash Chandra K.Jain and not in the hands of the assessee. Merely because, the assessee represented Shri Prakash Chandra K.Jain before the income tax authorities and also filed a writ petition in connection with bank locker, this Tribunal is of the considered opinion that, that cannot be a reason for making any addition in the hands of the present assessee. Therefore, we are unable to uphold the order of the lower authorities. Accordingly, the orders of both the authorities are set aside and the addition made in respect of deposit of money in savings bank account No.1176 in the bank of Rajasthan Ltd. in the name of Shri Prakash Chandra K.Jain is deleted.

17. The next addition is with regard to deposit of money in the bank of Rajasthan Ltd. in the name of M/s.Emkay Enterprises. From the order of the AO, it appears that the letter pad, rubber stamp, etc. of

M/s.Emkay Enterprises was found in the premises of the assessee. M/s.Emkay Enterprises is a partnership firm. There are two partners. The assessee is admittedly not the partner in M/s.Emkay Enterprises. The money was deposited to the extent of Rs.5,05,000/- in the bank account of M/s.Emkay Enterprises maintained in the bank of Rajasthan Ltd. The AO presumed that the assessee was controlling the administration of M/s.Emkay Enterprises on the basis of letter pad and rubber stamp said to be found in the premises of the assessee. This Tribunal is of the considered opinion that in the absence of any material and the assessee is not a partner in M/s.Emkay Enterprises, merely because the letter pad and rubber stamp were found in the premises of the assessee that cannot be a reason for making any addition. This Tribunal is of the considered opinion that at the best, the addition can be made either in the hands of M/s.Emkay Enterprises or in the hands of any of its partner. Therefore, we are unable to uphold the order of the lower authorities. Accordingly, the orders of both the authorities are set aside and the addition of Rs.5,05,000/- in the hands of the present assessee is deleted.

18. The next ground of appeal is addition made in respect of M/s.Emkay Investments. The assessing officer found that M/s.Emkay Investments was having a bank account in the bank of Thanjavur Ltd.,

Egmore Branch. Shri S.K.Bhandari was the proprietor of M/s.Emkay Investments. The assessing officer found that the pay in slips and cheques of M/s.Emkay Investments was found in the premises of the assessee. Shri S.K.Bhandari, the so called proprietor of M/s.Emkay Investments was assessed to income tax and represented by the assessee being practicing chartered accountant. The AO doubted the existence of Shri S.K.Bhandari. It is not known when Shri S.K.bhandari was an independent person and he was also assessed by the Income Tax department and how it can be said that Shri S.K.Bhandari was not in existence. It is not the case of the revenue that the assessee was operating the bank account of M/s.Emkay Investments. The only objection of the department is that pay in slips, cheques were found in the possession of the assessee. Therefore, the assessee was controlling M/s.Emkay Investments. This Tribunal is of the considered opinion that even if it is presumed that the assessee was controlling M/s.Emkay Investments, M/s.Emkay Investments being a proprietorship concern, the addition can be made only in the hands of Shri S.K.Bhandari who is the proprietor of M/s.Emkay Investments. If Shri S.K.Bhandari was not in existence as claimed by the Assessing Officer, there cannot be any assessment in the name of Shri S.K.Bhandari. In the case before us, Shri S.K.Bhandari was assessed to tax. Therefore, now the revenue cannot

claim that Shri S.K.Bhandrari is a nonexistent person. In this case, without making any enquiry, the AO presumed that Shri S.K.Bhandari was not in existence since the assessee could not produce Shri S.K.Bhandari before AO. The inability of the assessee to produce Shri S.K.Bhandari cannot be a reason to treat that Shri S.K.Bhandari was not in existence especially when Mr.Bhandari was assessed to income tax. In view of the above, this Tribunal is of the considered opinion that the addition if any has to be made only in the hands of Shri S.K.Bhandari and not in the hands of the assessee. Therefore, we are unable to uphold the order of the lower authorities. Accordingly, the orders of both the authorities are set aside and the addition made by the assessing officer is deleted.

19. The next addition with regard to loan by Indu Investments. From the order of the AO, it appears that Xerox copies of two pro-notes executed in favour of Indu Investments for Rs.25,000/- and Rs.35,000/- was found in the premises of the assessee. The document does not disclose in whose favour the same was executed. Since the pro-note was found in the premises of the assessee, the assessing officer presumed that the money was advanced by the assessee. This Tribunal is of the considered opinion that unless and until it is established that the

assessee advanced money merely because a blank pronote that too Xerox copy was found, it cannot be said that the assessee advanced money to Indu Investments. This Tribunal is of the considered opinion that on the basis of the Xerox copy of the so called pro-note said to be executed by Indu Investments, there cannot be any addition in the hands of the assessee. Accordingly, the addition made to the extent of Rs.60,000/- towards loan and Rs.12,000/- towards interest is not justified. Therefore, we are unable to uphold the orders of the lower authorities. Accordingly, the orders of both the authorities are set aside and the addition made by the assessing officer is deleted.

20. The next addition is in respect of deposit in the bank account in name of Srhi N.Purushothaman and Shri C.Bella. From the order of the lower authorities, it appears that two passbooks relating to Savings Bank Account in Trivandrum Cooperative Bank Ltd., Trivandrum in the name of Srhi N.Purushothaman and Shri C.Bella was found in the premises of the assessee. Apparently, the bank account stands in the name of Srhi N.Purushothaman and Shri C.Bella. The existence of Srhi N.Purushothaman and Shri C.Bella is not in dispute. Therefore, this Tribunal is of the considered opinion that the bank account apparantly stands in the name of Srhi N.Purushothaman and Shri C.Bella. Merely

because of the passbook relating to that account was found in the premises of the assessee, that cannot be a reason for making any addition in the hands of the assessee. Therefore, this Tribunal is unable to uphold the order of the lower authorities. Accordingly, the orders of both the authorities are set aside and the addition of Rs.12,685/- is deleted.

21. The next ground of appeal is with regard to addition of Rs.1,18,000/- towards loan in the name of M/s.Bombay Finance and C.P.Enterprises. From the order of the lower authorities, it appears that M/s.Bombay Finance advanced a sum of Rs.50,000/- to one Mr.Premkumar Sheth. Certain documents relating to advance of money by M/s.Bombay Finance was found in the premises of the assessee. Similarly, certain documents relating to loan advance to C.P.Enterprises to Smt.Jasmine K.Sheth also was found in the premises of the assessee. In the absence of any explanation from the assessee, the assessing officer appears to have made an addition in the hands of the present assessee. The fact remains is that M/s.Bombay Finance and C.P.Enterprises advanced a sum of Rs.50,000/- each to Mr.Premkumar Sheth and Smt.Jasmine K.Sheth. It is apparent from the material available on record that the assessee is not a party to the loan

transaction. It is also not the case of the revenue that the assessee is related to M/s.Bombay Finance and C.P.Enterprises. This Tribunal is of the considered opinion that when the apparent loan transaction was between Bombay Finance and Mr.Premkumar Sheth, no addition can be made in the hands of the present assessee. Similarly, when the transaction was between C.P.Enterprises and Smt.Jasmine K.Sheth, there cannot be any addition in the hands of the present assessee. What is apparent from the face of the record cannot be ignored by the revenue authorities in the absence of any other material. Therefore, this Tribunal is unable to uphold the addition of Rs.1,18,000/-. Accordingly, the orders of both the authorities below are set aside and the addition made by the AO to the extent of Rs.1,18,000/- is deleted.

22. The next ground of appeal is in respect of credit in bank account in the name of Kushal Traders. From the order of the lower authorities, it appears that Kushal Traders is a partnership firm. The assessee's father is also one of the partner. It is also not in dispute that the assessee is not a partner in Kushal Traders. The AO presumed that the partnership firm Kushal Traders was owned and controlled by the assessee. It is not known when the assessee is not a partner, how he can own and control a partnership firm. Merely because the assessee's father was a partner in

M/s.Kushal Traders, this Tribunal is of the considered opinion that the deposit made in Kushal Traders account cannot be considered as deposit made by the assessee. At the best, the addition can be made either in the hands of the M/s.Kushal Traders or in the hands of the partners of the said firm. At any stretch of imagination, there cannot be any addition in the hands of the present assessee. Therefore, this Tribunal is unable to uphold the order of the lower authorities. Accordingly, the orders of both the authorities are set aside and the addition made by the AO is deleted. To sum up, the addition made to the extent of Rs.48,11,610/- is deleted.

23. Now coming to assessment year 1984-85 in ITA No.1385/Mds/2016, similar additions were made as it was made for the assessment year 1983-84. Similar arguments were advanced by the learned counsel for the assessee and the learned representative for the department, as it was advanced for the assessment year 1983-84. The CIT(A) also confirmed the order of the assessing officer on the same reason as it was given for the assessment year 1983-84. Since identical addition made was deleted by this Tribunal for the assessment year 1983-84 for the same reason, the addition made by the assessing officer for the assessment year 1984-85 is also deleted.

24. Now coming to Assessment Year 1991-92 in ITA No.1386/Mds./2016, the first issue arises for consideration is addition of Rs.55,795/-. On the basis of the refund said to be received by M.M. Enterprises on the basis of forged TDS certificate. Shri D.Anand, the learned counsel for the assessee submitted that the identical issue was considered by the Tribunal in the assessee's own case for the assessment year 1985-86 in ITA No.2318 (Mds)/90 and this Tribunal found that there was no material to indicate that the assessee was a beneficiary of the refund. For the assessment year 1985-86 also, there was an allegation that the assessee received refund on behalf of many persons. This Tribunal found that even though economic offense cases are pending against the assessee, the fact remains that the assessee was not beneficiary of the so called refunds. Therefore, the similar addition was deleted by CIT(A) which was confirmed by this Tribunal. In view of this, according to the learned counsel, addition made by the assessing officer was not justified.

25. We have heard the learned representative for the department also. The fact remains that there was an allegation against the assessee that on the basis of the forged TDS certificate, he received TDS amount

of Rs.55,795/- on behalf of M/s. M.M. Enterprises. The learned department representative submitted that the issue of TDS on the basis of the forged TDS certificate travelled up to the Madras High Court in the case of Thangamani. The Madras High Court in fact set aside the order of this Tribunal in the case of Thangamani. The CIT(A) in fact followed the order of the Madras High Court. The CIT(A) by following the judgment of the Madras High Court confirmed the order to the Assessing Officer.

26. We have considered the rival submissions on either side and perused the relevant material available on record. This Tribunal in the assessee's own case for the assessment year 1985-86 examined the issue and found that the assessee is not the beneficiary of the refund said to be received on the basis of the forged TDS certificate. The CIT(A) referred to the judgment of Madras High Court in CIT Vs. K.Thangamani, a copy of Madras High Court judgment is not available on record. Therefore, we are unable to go through the judgment of the Madras High Court. It is also an admitted fact that for the assessment year 1985-86, this Tribunal found that the assessee is not the beneficiary of the so called refund received on behalf of several other companies. It is not the case of the revenue that the order of this Tribunal in the assessee's own case for the assessment year 1985-86 was challenged before High Court. In the absence of copy of the judgment of the Madras High Court

in Thangamani's case before this Tribunal we are considered opinion that the matter need to be re-examined by the assessing officer. Accordingly, the orders of the lower authorities are set aside and the issue is remitted back to the file of the AO. The AO shall reexamine the matter afresh and thereafter decide the same in accordance with law after considering the judgment of the Madras High Court in CIT Vs. K.Thangamani and the decision of this Tribunal in the assessee's own case for the assessment year 1985-86 in ITA No.2318 (Mds)/90 after giving reasonable opportunity to the assessee.

27. In the result, the appeal in ITA No.1386/Mds/2016 is allowed for statistical purposes.

28. Now coming to assessment year 1992-93, the first issue arises for consideration is addition of Rs.1,15,000/- under Section 69 of the Act. Shri D.Anand, the learned counsel for the assessee submitted that the assessee has deposited Rs.1,15,000/- on various dates in the bank account. The assessee explained that the assessee has received professional fee to the extent of Rs.60,000/-. The assessing officer found that the total professional fee received by the assessee for the assessment year 1991-92 was Rs.2,13,515/- Out of this, the assessee

has spent Rs.49,400/- towards audit. The assessee has taken the net receipt of Rs.1,64,450/- to the profit and loss account. The assessing officer after considering the expenses of the family and the deposits made in the bank account maintained in Union Bank of India, Sowcarpet Branch, Madras made an addition of Rs.65,000/- under Section 69 of the Act. Similarly, the cash deposit made on 19.10.1991 was also taken as unexplained investment under Section 69 of the Act to the extent of Rs.50,000/-. According to the learned representative, these are of professional receipts. The assessee's family is a hindu undivided family. All the family members including the assessee's brother, father, etc. are living together. All of them have independent source of income. Therefore, the assessing officer is not justified in estimating the drawings for the personal expenditure. Therefore, the addition made by the assessing officer to the extent of Rs.1,15,000/- is not justified.

29. On the contrary, Shri Supriyo Pal, the learned representative for the department submitted that the assessing officer after considering the deposits made in the bank account and the total professional receipts found that the deposits made in the bank account in the month of April and May was from undisclosed source. Therefore, he brought the same to the extent of Rs.65,000/- for taxation. Similarly, the deposit made on

19.10.1991 for Rs.60,000/- was also from undisclosed source. Therefore, the CIT(A) has rightly confirmed the addition made by the assessing officer.

30. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee is practicing as chartered accountant. It is not in dispute that he has received professional fee from 226 clients. The assessing officer estimated the net professional fee at Rs.1,64,450/-. The assessing officer has also found that the assessee has paid Rs.44,000/- towards PPF and Rs.6,475/- towards LIC. The fact remains is that the assessee's family is a hindu undivided family. All the family members including the assessee's brother, father, etc. are living together. Therefore, the family expenses for meeting the day to day needs could be shared by all the members of the hindu undivided family. In those circumstances, this Tribunal is of the considered opinion that the AO is not justified in making addition of Rs.1,15,000/-. The professional receipt disclosed by the assessee and the fact that the assessee was living in a joint family cannot be ignored by the assessing officer while making an addition on estimate basis. Therefore, this Tribunal is of the considered opinion that the addition made by the assessing officer to the extent of Rs.1,15,000/- is not

justified. Accordingly, the orders of the lower authorities are set aside and the addition made by the AO to the extent of Rs.1,15,000/- is deleted.

31. The next issue arises for consideration is addition of Rs.97,000/- under Section 69C of the Act. Shri D.Anand, the learned counsel for the assessee submitted that during the year under consideration, the assessee has repaid jewel loan taken from Vysya Bank Limited, on 29.01.1992 to the extent of Rs.97,200/-. The assessee explained before the assessing officer that the jewel loan was in fact taken by his wife and repaid by his wife. The learned counsel for the assessee submitted that the loan taken by his wife and repayment thereof reflected in seized material. Merely because the jewel loan was not reflected in the ledger book maintained by the assessee's wife Smt.Hema Mohnot, the assessing officer made addition ignoring the material found during the course of search operation. Since the loan was taken by the assessee's wife according to the learned counsel, no addition can be made in the hands of the present assessee.

32. On the contrary, the learned representative for the department submitted that there is no reference about the jewel loan taken by the

assessee's wife in the ledger book maintained by Smt.Hema Mohnot. Moreover, the details of the jewel loan availed by the assessee was not produced before the AO. Therefore, the explanation of the assessee that the jewel loan was obtained by his wife is an afterthought.

33. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the seized material item No.58 shows that this jewel loan was availed by assessee's wife Smt.Hema Mohnot from Vysya Bank Ltd. This Tribunal is of the considered opinion that the assessing officer cannot ignore this vital document found during the course of search operation. Mere non reference in the ledger book maintained by the assessee's wife regarding the jewel loan availed by her cannot be a reason to ignore the information / material found during the course of search operation. Therefore, this Tribunal is of the considered opinion that the addition made by the assessing officer to the extent of Rs.97,200/- in the hands of the assessee is not justified. This Tribunal is of the considered opinion that the addition if any could be made only in the hands of Smt.Hema Mohnot in case she could not explain the source for repayment of jewel loan. Accordingly, the addition made by the assessing officer is deleted.

34. The next ground of appeal is with regard to addition of Rs.4,000/- under Section 68 of the Income Tax Act. Shri D.Anand, the learned counsel for the assessee submitted that the assessee has received hand loan of Rs.4,000/- from Mr.K.J.Joy. The AO made an addition on the ground that the assessee could not establish the claim of loan. According to the learned counsel, the assessee has furnished the address of Shri K.J.Joy who advanced money to the assessee. The AO has not taken any pain to examine Shri K.J.Joy. When the assessee claims that the assessee received Rs.4,000/- from Shri K.J.Joy, the Assessing Officer cannot reject the claim of the assessee merely because, no confirmation letter was filed from the creditor. It is for the AO to examine the creditor and find out the genuineness of the transaction.

35. On the contrary, Shri Supriyo Pal, the learned representative for the department submitted that though the assessee claimed before the CIT(A) that he furnished all the details of Shri K.J.Joy from whom the money was received by the assessee, there was no reference in the order of AO about the so called details said to be furnished by the assessee. Even before CIT(A), the assessee has not furnished any letter from the so called Shri K.J.Joy. Therefore, the CIT(A) has rightly confirmed the addition made by the assessing officer.

36. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims that he received a hand loan of Rs.4,000/- from Shri K.J.Joy. The assessee also claims that he furnished the name and address of the creditor before the AO. The AO however disallowed the claim of the assessee on the ground that the assessee was not successful in establishing the claim. The CIT(A) had been confirmed the order of the AO on the ground that there was no indication in the assessment order about furnishing of the address of the creditor before the AO. The fact remains is that the AO made addition of Rs.4,000/- on the ground that the assessee was not successful in establishing the claim of hand loan. That means the assessee has furnished certain details regarding the creditor. When the assessee has furnished certain details regarding the creditor, then it is for the AO to examine the creditors in order to find the genuineness of the transaction. Since the AO has not taken any such exercise to find out the genuineness of the transaction, this Tribunal is of the considered opinion that there cannot be any addition under Section 68 of the Income Tax Act merely because the assessee could not produce the creditor before the AO. Therefore, this Tribunal is of the considered opinion that the addition made by the AO to the extent of Rs.4,000/- is not justified. Accordingly, the orders of the lower authorities

are set aside and the addition made by the AO to the extent of Rs.4,000/- is deleted.

37. In the result, ITA Nos.1384, 1385 and 1387/Mds/2016 are allowed and ITA No.1386/Mds/2016 is partly allowed.

Order pronounced on 25<sup>th</sup> November, 2016 at Chennai.

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. Sunder Singh)**

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

**(N.R.S. Ganesan)**

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 25<sup>th</sup> November, 2016.

sp.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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