

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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.216 & 217/Mds/2013

आयकर अपील सं./ITA Nos.1315 & 1316/Mds/2016

निर्धारण वर्ष / Assessment Years : 2006-07 & 2009-10

Shri A. Ramalingam,
L/H Shri R. Ravanan,
279, 279/1,2&4, Sathy Main Road,
Erode – 638 003.

v. (1) The Income Tax Officer,
Ward – 1(1), Erode – 1.
(2) The Deputy Commissioner of
Income Tax, Central Circle 1,
Coimbatore.

PAN : AGGPR 7344 N
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.591/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Shri R. Ravanan,
279/2, Sathy Road,
Erode – 638 003.

v. The Deputy Commissioner of
Income Tax, Central Circle 1,
Coimbatore.

PAN : AGGPR 6530 G
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.590/Mds/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Shri R. Tamilarasan,
279/2, Sathy Road,
Erode – 638 003.

v. The Deputy Commissioner of
Income Tax, Central Circle 1,
Coimbatore.

PAN : ADJPT 0699 N
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.592/Mds/2016
निर्धारण वर्ष / Assessment Year : 2012-13

Shri R. Ellan,
 279/2, Sathy Road,
 Erode – 638 003.

v. The Deputy Commissioner of
 Income Tax, Central Circle 1,
 Coimbatore.

PAN : AAFPE 9379 M
 (अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1443/Mds/2016
निर्धारण वर्ष / Assessment Year : 2009-10

The Assistant Commissioner of
 Income Tax, Central Circle – I,
 Aayakar Bhavan,
 63, Race Course Road,
 Coimbatore – 641 018.
 (अपीलार्थी/Appellant)

v. Late Shri A. Ramalingam,
 By L/H Shri R. Ravanan,
 C/o Bharani Pipes & Tubes (P)
 Ltd., 279, Sathy Road,
 Erode – 638 003.
 (प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.568/Mds/2016
निर्धारण वर्ष / Assessment Year : 2008-09

The Assistant Commissioner of
 Income Tax, Central Circle – I,
 Aayakar Bhavan,
 63, Race Course Road,
 Coimbatore – 641 018.
 (अपीलार्थी/Appellant)

v. Shri R. Ravanan,
 No.98, Vishnu Apartments,
 Sanjay Nagar, Erode-638 001.
 (प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Shri S. Sridhar, Advocate
 राजस्व की ओर से /Revenue by : Smt. Ruby George, CIT

सुनवाई की तारीख/Date of Hearing : 31.07.2017
 घोषणा की तारीख/Date of Pronouncement : 27.09.2017

आदेश / O R D E R

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

All the appeals of the assessee and Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals). Since common issues arise for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. There was a delay of 4 days in filing the appeal in I.T.A. No.568/Mds/2016 by the Revenue. The Revenue has filed a petition for condonation of delay. We have heard the Ld. D.R. and the Ld.counsel for the assessee. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Let's first take I.T.A. No.216/Mds/2013.

4. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee is engaged in the business of trading in PVC pipes & fittings and G.I. pipes & fittings in the name and style of

Pavender Agency at Erode. According to the Ld. counsel, there was survey operation in the premises of the assessee under Section 133A of the Income-tax Act, 1961 (in short 'the Act') on 17.11.2009. Consequent to the survey operation, a notice under Section 148 of the Act was issued on 31.01.2011 for reopening the assessment under Section 147 of the Act. During the course of survey operation, according to the Ld. counsel, the Revenue authorities claimed to have found two receipts with regard to purchase of land from one Shri S.I. Basheer Ahmed. As per the sale agreement, the assessee agreed to purchase 57.38 acres of land at Senkulam Village, K. Abisekapuram, Trichy. According to the Ld. counsel, Shri Basheer Ahmed was also examined by the Revenue authorities during the course of survey operation. The Revenue authorities found that there was a difference of ₹2.38 Crores for the assessment year 2006-07.

5. The Ld.counsel for the assessee further submitted that during the course of assessment proceeding, Shri Basheer Ahmed filed an affidavit saying that he has not received any money as per the original agreement said to be impounded by the Revenue

authorities during the course of survey operation on 17.11.2009. According to the Ld. counsel, in answer to question No.14, Shri Basheer Ahmed admitted that the assessee has paid only ₹54 lakhs to him, out of which, ₹22,50,000/- was paid to him directly. Regarding ₹31,50,000/-, according to the Ld. counsel, Shri Basheer Ahmed appears to have told the Revenue authorities that the assessee has spent the money towards court cases. In fact, the assessee offered a sum of ₹1 Crore for taxation during the course of survey operation. According to the Ld. counsel, when the recipient has denied receipt of any money during the course of examination, the Assessing Officer is not justified in making addition of ₹2.38 lakhs. Shri Basheer Ahmed has also filed an affidavit before the Assessing Officer denying the receipt of money. In the absence of any material document, according to the Ld. counsel, there cannot be any addition on the basis of the so-called agreement said to be found during the course of survey operation. The statement made in the affidavit before the Assessing Officer cannot be rejected so lightly. Hence, according to the Ld. counsel, the CIT(Appeals) is not justified in confirming the addition of ₹2.38 lakhs.

6. On the contrary, Smt. Ruby George, the Ld. Departmental Representative, submitted that there was survey operation in the premises of the assessee on 17.11.2009. According to the Ld. D.R., during the course of survey operation, incriminating materials were found. The assessee was also examined during the course of survey operation. It was found during the course of survey operation that the assessee is engaged in the business of real estate also. According to the Ld. D.R., the assessee entered into a sale agreement with one Shri Basheet Ahmed, Trichy for purchase of 200 acres and 57 acres respectively. Two receipts were found which were impounded during the course of survey operation. Apart from that, three sale agreements were also found. According to the Ld. D.R., sale agreements dated 27.04.2005 and 11.06.2005 were impounded during the course of survey operation. The sale agreements were for ₹2 Crores and ₹11 Crores for an area of 7.38 acres and 50 acres of land respectively situated at Senkulam Village, K. Abisekapuram, Trichy. The cash receipt impound discloses the receipt of all the money by Shri Basheer Ahmed apart from balance of ₹10,62,00,000/- for the extent of 57.38 acres.

According to the Ld. D.R., Shri Basheer Ahmed was also examined. He admitted the correctness of receipts found during the course of survey operation. The assessee admitted a sum of ₹1 Crore during the course of survey operation. Therefore, according to the Ld. D.R., there was a difference of ₹1.38 Crores.

7. The Ld. Departmental Representative further submitted that in the statement given by the assessee, he admitted that ₹50 lakhs was paid as per agreement dated 27.04.2005 and another ₹25 lakhs was paid as per agreement dated 11.06.2005. The assessee has also agreed that a sum of ₹25 lakhs was paid during the financial year 2005-06. According to the Ld. D.R., since the assessee is no more, the assessee's one Shri R. Ramanan appeared before the Assessing Officer on 16.12.2011. Shri Basheer Ahmed filed an affidavit stating that he has not received any money as per the original agreement impounded by the Revenue authorities during the course of survey conducted on 17.11.2009. According to the Ld. D.R., since this affidavit was filed at the end of the assessment proceeding, the Assessing Officer rejected the affidavit and assessed ₹2.38 Crores as income of the

assessee, therefore, the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

8. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, there was survey operation under Section 133A of the Act in the business premises of the assessee. The assessee Shri A. Ramalingam was no more even during the assessment proceeding. Therefore, the proceeding was continued against the legal representative of the assessee. It is not in dispute that there was an agreement between Shri A. Ramalingam, the deceased assessee and Shri S.I. Basheer Ahmed for purchase of land at Senkulam Village, K. Abisekapuram, Trichy. Even though the agreement was for purchase of 2.57 acres, the dispute is with regard to purchase of 57.38 acres. The agreement discloses the payment of all the money in cash apart from balance of ₹10.62 Crores for the land of 57.38 acres. During the examination, the assessee claimed before the Revenue authorities that he paid only ₹1 Crore. Shri S.I. Basheer Ahmed was also examined. Initially he accepted the receipt. Subsequently, he filed an affidavit during the course of assessment

proceeding that he has not received any money as found in the agreement from the assessee.

9. From the orders of the lower authorities it appears that there was civil dispute pending before Principal Sub-Judge, Trichy. Shri Basheer Ahmed appears to have agreed to sell the property after disposal of civil dispute pending before Principal Sub-Judge. Shri Basheer Ahmed agreed during the course of examination that he received ₹22,50,000/- directly from the assessee Shri A. Ramalingam. He also explained before the Assessing Officer that the balance of ₹31,50,000/- was spent in court cases. The CIT(Appeals) also found that Shri Basheer Ahmed was only power agent of Smt. Ooranbibi. From the order of the CIT(Appeals) it appears that Shri Basheer Ahmed was interrogated by the Assistant Director of Investigation. He stated that he has not received any money as per original agreement impounded during survey operation on 17.11.2009. In fact, the CIT(Appeals) has observed as follows:-

“As seen from the receipt impounded as No.3, there is no date mentioned regarding the amounts received by Shri S.I. Basheer Ahmed. The receipt is nil dated. Even during the

course of interrogation by the Assistant Director of Investigation, Trichy, Shri S.I. Basheer Ahmed stated that he has not received any money as per the original agreement impounded during the survey conducted on 17.11.2009.”

10. In view of above observation of the CIT(Appeals), it cannot be said that the assessee has paid ₹2.38 Crores to Shri Basheer Ahmed. When Shri Basheer Ahmed denied the fact of receipt of money, it cannot be concluded that the assessee has paid ₹2.38 Crores to Shri Basheer Ahmed. As per the observation made by the lower authorities, agreement for sale was for sale of property after disposal of cases pending before Principal Sub-Judge at Trichy. When the matter was pending before the Principal Sub-Judge for adjudication and the power of attorney, who entered into the agreement, claimed that he has not received any money, this Tribunal is of the considered opinion that there cannot be any presumption that the assessee has paid ₹2.38 Crores to Shri Basheer Ahmed. The assessment proceeding being a judicial proceeding, this Tribunal is of the considered opinion that addition has to be made only on the basis of concrete evidence. Presumption and surmise have no role to play in judicial proceeding. Therefore, the addition of ₹2.38 Crores made by the

Assessing Officer as confirmed by the CIT(Appeals) cannot stand for the scrutiny of law. Accordingly, the orders of both the authorities below are set aside and the addition of ₹2.38 Crores is deleted.

11. Now coming to assessee's appeal in I.T.A. No.217/Mds/2013.

12. The main objection of the Ld.counsel for the assessee is that there was search operation in the premises of the assessee on 18.11.2011. The assessment proceeding was pending for the assessment year 2009-10. Referring to the second proviso to Section 153A of the Act, the Ld.counsel submitted that the pending assessment proceeding on the date of initiation of search under Section 132A of the Act shall abate and the Assessing Officer has to pass an order under Section 153A or under Section 153C of the Act. Therefore, according to the Ld. counsel, the order passed by the Assessing Officer on 29.12.2011 in a proceeding which stands abated cannot stand in the eye of law.

13. We have heard Smt. Ruby George, the Ld. Departmental Representative also. We have also carefully gone through the provisions of Section 153A of the Act. Second proviso to Section 153A of the Act clearly says that the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years, is pending on the date of initiation of search under Section 132A of the Act, the same shall stand abated. In this case, the search proceeding, admittedly, took place on 18.11.2011. Therefore, the assessment proceeding pending as on 18.11.2011 shall stand abated in view of second proviso to Section 153A of the Act. Therefore, the assessment order passed by the Assessing Officer under Section 143(3) of the Act cannot stand in the eye of law. In other words, the Assessing Officer has to pass an order under Section 153A or 153C of the Act as the case may be. Hence, the regular assessment passed by the Assessing Officer has to be quashed. Accordingly, the orders of both the authorities below are quashed and the appeal of the assessee in I.T.A. No.217/Mds/2013 stands allowed.

14. Now coming to I.T.A. No.1315/Mds/2016. This appeal relates to assessment year 2006-07.

15. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that admittedly there was search operation in the case of M/s Bharani Pipes & Tubes (P) Ltd. on 18.11.2011. A simultaneous search was also conducted in the premises of the Managing Director of the company Shri R. Ramanan and other Directors. According to the Ld. counsel, on the date of search, i.e. on 18.11.2011, the assessment proceeding on the basis of notice issued by the Assessing Officer under Section 148 of the Act was pending, therefore, the pending assessment proceeding after reopening would abate and the Assessing Officer has to complete the assessment under Section 153C of the Act. Referring to the allegation made by the Assessing Officer, the Ld.counsel submitted that the power of attorney agent of the purchaser Shri Basheer Ahmed admitted that he has not received any money as stated in the agreement. According to the Ld. counsel, the assessee himself disclosed a sum of ₹1 Crore, therefore, in the absence of any material evidence for payment of ₹2.38 Crores, there cannot be any

addition on presumption basis. According to the Ld. counsel, Shri Basheer Ahmed has also filed an affidavit stating that he has not received any money as per the original agreement impounded by the Revenue authorities during the course of survey operation on 17.11.2009. Therefore, according to the Ld. counsel, the addition made by the Assessing Officer cannot stand in the eye of law.

16. On the contrary, Smt. Ruby George, the Ld. Departmental Representative, submitted that a search and seizure operation was conducted under Section 132A of the Act on 18.11.2011 in the case of M/s Bharani Pipes & Tubes Pvt. Ltd., Erode. A simultaneous search was also conducted in the residential premises of the Managing Director and other Directors. During the course of search operation, according to the Ld. D.R., incriminating materials were found with regard to purchase of landed properties. The original agreement was found during the survey operation and it was impounded. Since the search operation was carried on, according to the Ld. D.R., the assessment year under consideration falls in the block period, therefore, the Assessing Officer made addition of

₹2.38 Crores in respect of payment made by the assessee as per the original agreement with Shri Basheer Ahmed.

17. We have considered the rival submissions on either side and perused the relevant material available on record. In respect of the same addition, the issue came before this Tribunal in I.T.A. No.216/Mds/2013. In the earlier part of this order, this Tribunal after considering the submissions of the Ld.counsel for the assessee and the Ld. Departmental Representative, has observed as follows at para 10 (supra):-

“When Shri Basheer Ahmed denied the fact of receipt of money, it cannot be concluded that the assessee has paid ₹2.38 Crores to Shri Basheer Ahmed. As per the observation made by the lower authorities, agreement for sale was for sale of property after disposal of cases pending before Principal Sub-Judge at Trichy. When the matter was pending before the Principal Sub-Judge for adjudication and the power of attorney, who entered into the agreement, claimed that he has not received any money, this Tribunal is of the considered opinion that there cannot be any presumption that the assessee has paid ₹2.38 Crores to Shri Basheer Ahmed. The assessment proceeding being a judicial proceeding, this Tribunal is of the considered opinion that addition has to be made only on the basis of concrete evidence. Presumption and surmise have no role to play in judicial proceeding. Therefore, the addition of ₹2.38 Crores made by the Assessing Officer as confirmed by the CIT(Appeals) cannot stand before the scrutiny of law.

Accordingly, the orders of both the authorities below are set aside and the addition of ₹2.38 Crores is deleted.”

18. In view of the above, there cannot be any addition on the basis of surmise and presumption. In the absence of concrete evidence for payment of ₹2.38 Crores, the addition made by the Assessing Officer as confirmed by the CIT(Appeals) cannot stand in the eye of law. Accordingly, the orders of both the authorities below are set aside and the addition of ₹2.38 Crores is deleted.

19. Now coming to I.T.A. No.1316/Mds/2016, the first issue arises for consideration is addition of ₹27,40,939/- in respect of sundry creditors balances.

20. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee claimed trade creditors to the extent of ₹2,08,76,976/- on the date of survey operation on 17.11.2009. The assessee also claimed that a sum of ₹1,25,71,162/- was settled earlier and outstanding credit was shown as ₹1,25,71,162/-. In respect of the assessee, the proportionate amount of ₹27,40,039/- was added. According to the Ld. counsel, there is no basis for

making this addition, hence, the CIT(Appeals) is not justified in confirming the addition made by the Assessing Officer.

21. On the contrary, Smt. Ruby George, the Ld. Departmental Representative, submitted that during the course of survey operation, it was found that the trade creditors were to the extent of ₹2,08,76,976/-. The assessee claimed that a sum of ₹1,25,71,162/- was settled before hand. But, these trade creditors were shown as ₹1,25,71,162/- which was outstanding. Before the Assessing Officer, the assessee admitted the sum of ₹1,25,71,162/- relates to him and he offered the same for taxation. Similarly, the balance amount of ₹78,05,000/- reflected in the loan credits was also agreed by the three sons of the assessee. Therefore, according to the Ld. D.R., the assessee cannot dispute at this stage.

22. We have considered the rival submissions on either side and perused the relevant material available on record. During the course of survey operation on 17.11.2009, there were trade creditors to the extent of ₹2,08,76,976/-. The assessee claimed that a sum of ₹1,25,71,162/- was settled before hand. However, the

same was not reflected in the accounts of the assessee. The assessee claimed that loans were obtained from relatives. Since the relationship among the relatives from whom the assessee said to have received loan was estranged, he admitted the same for taxation. Even the details of credits were not explained before the Assessing Officer and the CIT(Appeals). Since the assessee admitted the credit balance, which was proportionately added in the hands of the assessee and other three children of the assessee, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

23. The next issue arises for consideration is addition of ₹11,89,000/- in respect of loan creditors.

24. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the Assessing Officer made addition of ₹11,89,000/- towards loan creditors without any basis, therefore, it cannot be sustained. According to the Ld. counsel, the assessee claimed before the Assessing Officer that the loans were borrowed from close relatives. Since the relationship was not good, they could not furnish the

details before the Assessing Officer. Therefore, according to the Ld. counsel, the addition made by the Assessing Officer cannot stand in the eye of law.

25. On the contrary, Smt. Ruby George, the Ld. Departmental Representative, submitted that the assessee disclosed ₹11,89,000/- as loan creditors in the statement of accounts. However, the assessee could not prove the loan creditors. Even the details of loan creditors were not furnished before the Assessing Officer and the CIT(Appeals). Even before this Tribunal, according to the Ld. D.R., no materials were produced to indicate that the loans were borrowed from close relatives.

26. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the statement reflected loan creditors to the extent of ₹11,89,000/-. The details of creditors were not furnished before the Assessing Officer and the CIT(Appeals). Moreover, such details were also not furnished before this Tribunal. When the assessee claims that the loan was borrowed from close relatives, it is for the

assessee to establish the identity of creditors, creditworthiness of creditors and genuineness of the transaction. In the absence of such details to substantiate the claim of loans, this Tribunal is of the considered opinion that the Assessing Officer has rightly made addition of ₹11,89,000/-. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

27. The next issue arises for consideration is addition of ₹3,00,000/- towards drawings.

28. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the Assessing Officer made an addition of ₹3 lakhs towards personal expenses on the ground that the addition was made on the basis of original return. After reopening of assessment, a similar addition was made which was confirmed by the CIT(Appeals). According to the Ld. counsel, since the assessment proceeding was not pending before the Assessing Officer on the date of search, there cannot be any assessment under Section 153C since, as per second proviso to Section 153A of the Act, the assessment

proceeding would not stand abated. Therefore, according to the Ld. counsel, the Assessing Officer can pass only one assessment order. In the absence of any material found during the course of search operation, according to the Ld. counsel, there cannot be any assessment under Section 153C of the Act.

29. We have heard Smt. Ruby George, the Ld. Departmental Representative also. The provisions of Section 153C of the Act very clearly says that the assessment has to be made on the basis of material found during search operation, only the person other than the searched person. In the case before us, no material was found during the search operation with regard to personal expenses. The Assessing Officer appears to have estimated the expenditure without any material. The Assessing Officer on the basis of presumption found that the assessee was living in a joint family and not made any drawings, therefore, he added a sum of ₹3 lakhs towards personal expenses. This being an assessment proceeding under Section 153C of the Act, in the absence of any material found during the search operation with regard to personal expenses, this Tribunal is of the considered opinion that there

cannot be any addition. Moreover, when the assessee is found to be in joint family, the drawing of the other members of the family is also to be taken into consideration. In the absence of any material found during search, the addition of ₹3 lakhs cannot stand in the eye of law.

30. Now coming to assessee's appeal in I.T.A. No.591/Mds/2016.

31. The first issue arises for consideration is with regard to unexplained payment of ₹90 lakhs.

32. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the Assessing Officer found that the assessee has paid a sum of ₹30 lakhs to each of his three sisters, namely, Smt. Tamilarasi, Smt. Tamilselvi and Smt. Tamilkodi, for relinquishment of their right over the common family property. According to the Ld. counsel, in fact, only ₹10,50,000/- was paid to three sisters and the assessee's mother, which was reflected in the cash flow statement for the assessment year 2011-12. The seized receipt is undated and unsigned. Therefore, according to the Ld. counsel, it cannot be

relied upon for the payment said to be made to the assessee's sisters. In fact, the payment was made as per the release deed dated 31.05.2010. This also forms part of seized records. When the registered release deed discloses the payment of ₹10 lakhs and another amount of ₹50,000/-, according to the Ld. counsel, the Assessing Officer cannot presume that the assessee has paid ₹30 lakhs to each of his sisters on the basis of the undated and unsigned receipt. According to the Ld. counsel, when the registered release deed discloses payment of ₹10,50,000/-, the same has to be taken into consideration and not the unsigned so-called receipt. According to the Ld. counsel, when the release deed discloses the payment of ₹10 lakhs and another sum of ₹ 50,000/-, the Assessing Officer cannot make any addition on the basis of unsigned so-called receipt and the statement said to be recorded from the sisters of the assessee under Section 131 of the Act.

33. On the contrary, Smt. Ruby George, the Ld. Departmental Representative, submitted that a receipt dated 10.06.2010 was found during the course of search operation. The said receipt discloses a payment of ₹30 lakhs each to three sisters of the

assessee. In fact, the assessee was examined under Section 132(4) of the Act. According to the Ld. D.R., the assessee admitted that he has paid ₹30 lakhs to each of his sisters towards partition of family property. The sisters of the assessee were also examined under Section 131 of the Act. They also, in fact, admitted the receipt of ₹30 lakhs and the same were spent on the marriage of their daughters, purchase of plot and repayment of small loans. According to the Ld. D.R., when the recipients of the amount have accepted that they have received ₹30 lakhs for partition of family property, the Assessing Officer has rightly rejected the affidavit of the above said sisters and since the same was filed after a long gap of 24 months. According to the Ld. D.R., the CIT(Appeals) has rightly confirmed the addition of ₹90 lakhs.

34. We have considered the rival submissions on either side and perused the relevant material available on record. During the course of search operation, a receipt dated 10.06.2010 was found. The assessee claims that the said receipt is not signed and not dated. The fact remains that the receipt was dated 10.06.2010 but it is not signed. A release deed was also executed and registered

on 31.05.2010. When the registered release deed discloses a payment of ₹10 lakhs and another payment of ₹50,000/- totalling to ₹10,50,000/-, this Tribunal is of the considered opinion that there cannot be any dispute about the receipt of money. The execution of release deed is also not in dispute. Therefore, it is not permissible for the parties to lead evidence, disputing the contents of the registered release deed. In other words, the contents of the release deed cannot be controverted on any oral evidence.

35. The question now arises for consideration is when there is oral evidence for payment of ₹30 lakhs to each of the sisters and the registered release deed discloses payment of ₹10,50,000/-, which one would prevail? This Tribunal is of the considered opinion that the oral statement or evidence cannot override the registered release deed. The registered release deed would prevail over all the oral evidence available on record. Moreover, the sisters, who were said to be examined under Section 131 of the Act, have also filed affidavit denying they have not received ₹30 lakhs. This affidavit is in conformity with the registered release deed. Therefore, this Tribunal is of the considered opinion that the oral

statement said to be recorded from the assessee or from sisters of the assessee cannot override the statement contained in the registered release deed and affidavit. Hence, the addition made by the Assessing Officer to the extent of ₹90 lakhs under Section 69C of the Act cannot stand in the eye of law. Accordingly, the orders of both the authorities below are set aside and the addition of ₹90 lakhs is deleted.

36. The next issue arises for consideration is with regard to ₹1 lakh in respect of payment said to be made to Shri S.A. Kandasamy.

37. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that during the search operation, the Revenue authorities found a receipt of ₹1 lakh for the payment made to Shri S.A. Kandasamy. According to the Ld. counsel, the assessee claimed before the Assessing Officer that the payment was part of payment made for Karur land purchase. The Assessing Officer, however, rejected the explanation of the assessee on the ground that the details of the payment do not contain the payment received by Shri S.A.

Kandasamy, therefore, the CIT(Appeals) confirmed the addition. According to the Ld. counsel, this payment of ₹1 lakh is part of payment made for land purchase at Karur, therefore, a separate addition is not called for.

38. We have heard Smt. Ruby George, the Ld. Departmental Representative also. The Ld. D.R. submitted that in the seized material at page 21, details of the payment made for Karur land purchase are available. This payment of ₹1 lakh does not reflect in the details available at page 21 of seized material. Therefore, according to the Ld. D.R., this payment of ₹1 lakh made to Shri S.A. Kandasamy is over and above the payment made for Karur land purchase.

39. We have considered the rival submissions on either side and perused the relevant material available on record. The details of payment made for Karur land purchase are available at page 21 of seized material. It is not in dispute that these details do not reflect the payment made to Shri S.A. Kandasamy. When the details contained in the seized material with regard to payment made for

Karur land purchase do not reflect the payment made to Shri S.A. Kandasamy, this Tribunal is of the considered opinion that the payment was made over and above the details contained in the seized material for the purchase of Karur land, hence, the same cannot be allowed in the absence of any evidence. Therefore, the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

40. Now coming to assessee's appeal in I.T.A. No.590/Mds/2016, the only issue arises for consideration is addition of ₹13,67,995/-.

41. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that during the course of search operation, gold jewellery weighing about 1710.370 gms was found. The value of the gold jewellery was estimated by the valuer at ₹45,99,185/-. According to the Ld. counsel, the assessee explained before the Assessing Officer that about 100 sovereigns of gold jewellery belonging to his wife which

was received by her as Sridhan property at the time of marriage. The assessee further explained that the value of gold jewellery for the assessment year 2011-12 was ₹70,900/- and for assessment year 2012-13, it was ₹94,480/-. According to the Ld. counsel, the Assessing Officer, however, estimated the unexplained gold jewellery at ₹28,38,965/-. After taking into consideration the declaration made by the assessee at ₹14,70,970/-, the balance amount of ₹13,67,995/- was assessed as unexplained jewellery under Section 69A of the Act. According to the Ld. counsel, the Assessing Officer ought to have taken into consideration the instruction of CBDT in Instruction No.1916 dated 11.05.1994 and ought to have given relief to the assessee. According to the Ld. counsel, as per CBDT's instruction, 500 gms for each married lady is allowed and 100 gms is allowed for each male member, which works out to 1150 gms. Since the assessee himself declared the value at ₹14,70,970/-, according to the Ld. counsel, there is no need for any further addition.

42. On the contrary, Smt. Ruby George, the Ld. Departmental Representative, submitted that during the course of search

operation, 1710.370 gms of gold jewellery was found and the same was valued at ₹45,99,185/-. The assessee accepted unexplained investment to the extent of ₹14,70,970/-. According to the Ld. D.R., the Assessing Officer, however, found that the CBDT circular relied on by the assessee is only for seizure of gold jewellery found during the course of search operation. It does not absolve the assessee from explaining the source for acquisition of such gold jewellery. The Assessing Officer, according to the Ld. D.R., after taking into consideration of the claim of the assessee found that the assessee's wife received 100 sovereigns of gold jewellery during her marriage, has taken 1055.77 gms as unexplained and the same was estimated at ₹2689/- per gram and the total investment in gold jewellery was arrived at ₹28,38,965/-. After reducing the value of the jewellery declared by the assessee to the extent of ₹14,70,970/-, the balance of ₹13,67,995/- was taken as income of the assessee. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer.

43. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in

dispute that Revenue authorities found 1710.370 gms of jewellery and it was valued at ₹45,99,185/-. After considering the claim of the assessee that the assessee's wife received 100 sovereigns of jewellery at the time of marriage, the Assessing Officer found that the balance jewellery was unexplained. From the order of the Assessing Officer, it appears that the assessee admitted before the Assessing Officer during examination under Section 134 of the Act that his undisclosed income for purchase of gold jewellery was to the extent of ₹28,38,965/-.

44. The exemption claimed by the assessee under CBDT circular is only for seizure of gold jewellery during the course of search operation. As rightly submitted by the Ld. Departmental Representative, it does not absolve the assessee from explaining the source for acquisition of such jewellery. Therefore, the CBDT circular would not come to the rescue of the assessee. The assessee is expected to explain the source for acquisition of jewellery found during the course of search operation. Since proper explanation was not offered, this Tribunal is of the considered opinion that the Assessing Officer has rightly treated ₹13,67,995/-

as unexplained investment of the assessee in gold jewellery, under Section 69A of the Act. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

45. Now coming to Revenue's appeal in I.T.A. No.568/Mds/2016.

46. The only issue arises for consideration is addition of ₹35,15,071/- towards unexplained expenditure under Section 69C of the Act.

47. Smt. Ruby George, the Ld. Departmental Representative, submitted that during the course of search, the Profit & Loss account and balance sheet of M/s Pandiyan Traders were found and seized. As per this Profit & Loss account, it was found that the assessee has suppressed the purchase to the extent of ₹35,15,071/-. On examination, according to the Ld. D.R., the assessee admitted that he paid sundry creditors to the extent of ₹35,15,041/- in cash outside the books of account. M/s Pandian Traders is the proprietary concern of the assessee. The Ld. D.R. further submitted that the assessee made unaccounted purchase to

the extent of ₹35,15,041/- outside the books of account. The unaccounted purchase was not included in the sales shown in the return of income filed by the assessee. In the absence of any evidence to show that the unaccounted purchase has been included in the unaccounted sales of ₹69,42,895/-, according to the Ld. D.R., the Assessing Officer has rightly made the addition of entire unaccounted purchases. The CIT(Appeals) found that the addition made by the Assessing Officer amounted to double addition, therefore, he deleted the same. According to the Ld. D.R., since the unaccounted purchase was not formed part of unaccounted sale, a separate addition needs to be made.

48. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee submitted that the Assessing Officer, after examining the Profit & Loss account and balance sheet of M/s Pandian Traders for the assessment year 2008-09, found that the assessee has suppressed the purchase to the extent of ₹35,15,071/- and settled the dues to sundry creditors to the extent of ₹35,15,041/- outside the books of account. The Ld.counsel further submitted that the amount of ₹35,15,041/- was reduced from the purchase account

and from the closing stock account in the Profit & Loss account filed along with return of income for the assessment year 2008-09. The Ld.counsel further submitted that the assessee estimated the unaccounted sales at ₹69,42,895/- and also estimated the income and disclosed the same in the cash flow statement for the year ending 31.03.2008. Even though the purchases were not fully disclosed, according to the Ld. counsel, the assessee admitted unaccounted sales in respect of unaccounted purchases, therefore, the income has to be estimated. According to the Ld. counsel, the assessee is doing business on credit basis and the payments for purchases were made on realising the sale consideration, therefore, the profit on unaccounted sale of ₹35,15,071/- has to be estimated at 10%.

49. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer claimed that there were unaccounted purchases to the extent of ₹35,15,071/- made outside the books. This fact is also admitted by the assessee. The assessee claims that unaccounted sales to the extent of ₹69,42,895/- was disclosed in the balance

sheet. The CIT(Appeals) found that even though the assessee has not fully disclosed the purchases in the books of account, the addition of an amount equivalent to 10% representing the gross profit has to be made and addition of ₹35,15,071/- tantamount to double addition. The CIT(Appeals) has also found that the assessee himself has taken into account the profit on unaccounted sales while calculating the gross profit, therefore, even the 10% need not be added. This factual aspect is not in dispute. In other words, the assessee has taken himself the profit of unaccounted sales while calculating the gross profit. When the profit on unaccounted sales were taken into account for the purpose of calculating the gross profit, this Tribunal is of the considered opinion that there is no need for any further addition. Hence, the order of the CIT(Appeals) is confirmed and the appeal of the Revenue stands dismissed.

50. Now coming to assessee's appeal in I.T.A. No.592/Mds/2016.

51. The only issue arises for consideration is addition of ₹1,84,175/- towards unexplained jewellery under Section 69A of the Act.

52. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that during the course of search operation, 744.28 gms of jewellery was found and the same was valued at ₹20,26,868/-. According to the Ld. counsel, in the cash flow statement, the assessee has declared the purchase of gold jewellery to the extent of ₹18,42,693/- The assessee has placed reliance on the CBDT circular and claimed that exemption for the married lady shall be given due credit. According to the Ld. counsel, in view of the CBDT circular, there cannot be any further addition.

53. We have heard Smt. Ruby George, the Ld. Departmental Representative also. It is not in dispute that 744.28 gms of jewellery was found and the same was valued at ₹20,26,868/-. The assessee has disclosed unaccounted jewellery to the extent of ₹18,42,693/- in the cash flow statement. The balance of ₹1,84,175/- was added under Section 69A of the Act. The assessee claimed before the

Assessing Officer that a married lady is entitled for 500 gms of gold jewellery. This Tribunal is of the considered opinion that 500 gms of gold jewellery for a married lady as per CBDT circular relates to seizure. It does not absolve the responsibility of the assessee from explaining the source of acquisition. In fact, the Assessing Officer has given relief in respect of gift / Sridhan jewellery received by the assessee's wife during marriage and also most of the gifts said to be received. The relief given by the Assessing Officer was to the extent of ₹18,42,693/-. The assessee could not explain the source of acquisition of jewellery to the extent of ₹1,84,175/-. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the order of the Assessing Officer. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

54. Now coming to Revenue's appeal in I.T.A. No.1443/Mds/2016.

55. In this appeal, the Revenue challenges the order of the CIT(Appeals) wherein relief was given to the extent of ₹32,40,977/-.

56. Smt. Ruby George, the Ld. Departmental Representative, submitted that the Assessing Officer made addition of ₹32,40,977/- under the head "Income from business". However, the CIT(Appeals) directed the Assessing Officer to give telescoping to the extent of ₹32,40,977/- towards addition made under the head "Business income" in respect of income under the head "Other Sources". According to the Ld. D.R., the income under the head "Profits and Gains of Business or Profession" admitted by the assessee, including the income from KAS Nagar project, is different and distinct from the income under the head "Income from Other Sources" admitted separately by the assessee in the return of income. Therefore, according to the Ld. D.R., it cannot be set off or telescoped against the income from business. In the cash flow statement filed by the assessee for the period from 01.04.2008 to 31.03.2009, the assessee disclosed income from KAS Nagar site at sales at 10% and from other income shown under the head "Income from Other Sources" in the return filed for the assessment year 2009-10. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the telescoping.

57. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee claimed telescoping in respect of other income admitted by the assessee in cash flow statement. In fact, the assessee adopted average sale price, therefore, availability of additional income has to be taken into consideration. According to the Ld. counsel, the assessee, in fact, declared income from KAS Nagar project at 10% of the sale value. The assessee declared income of ₹11,87,649/- for the assessment year 2008-09 and another income of ₹56,59,073/- for the assessment year 2009-10. The Assessing Officer, according to the Ld. counsel, after taking into consideration of the average rate per sq.ft. of the land, found that the total sale value works out to ₹8,33,00,500/-. In fact, the assessee admitted only ₹6,84,67,226/-. According to the Ld. counsel, the assessee claims that the expenditure was incurred for development like levelling, filling up the plots, construction of overhead tanks, etc. Rejecting the explanation of the assessee, the Assessing Officer estimated the income of KAS Nagar project at 15% of sale value. The Assessing Officer has also rejected the claim of the assessee for telescoping.

According to the Ld. counsel, when the higher income was estimated, the CIT(Appeals) found that additional income is very much available for telescoping, therefore, the CIT(Appeals) has rightly directed the Assessing Officer to telescope the income.

58. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the Assessing Officer made addition of ₹30,40,939/- from the profit from KAS Nagar project. The assessee claims that the income to the extent of estimation made by the Assessing Officer, is very much available for making investment or the income from other sources. Therefore, an amount of ₹32,40,977/- estimated from the business of real estate has to be telescoped in respect of income under the head "Other Sources". The contention of the Revenue appears to be that the assessee himself disclosed income from KAS Nagar project at 10% of sale value separately. This Tribunal is of the considered opinion that when the additional income was available due to estimation made by the Assessing Officer on KAS Nagar project, the same should be telescoped towards addition made under the head "Income from Other

Sources". Therefore, the CIT(Appeals) has rightly directed the Assessing Officer to telescope. Hence, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

59. In the result, assessee's appeals in I.T.A. No.216/Mds/2013, I.T.A. No.217/Mds/2013 and I.T.A. No.1315/Mds/2016 are allowed, I.T.A. No.1316/Mds/2016 and I.T.A. No.591/Mds/2016 are partly allowed, I.T.A. No.590/Mds/2016 and I.T.A. No.592/Mds/2016 are dismissed. Whereas, both the appeals of the Revenue in I.T.A. No.1443/Mds/2016 and I.T.A. No.568/Mds/2016 are dismissed.

Order pronounced on 27th September, 2017 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 27th September, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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