

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. Nos.1417, 1418 & 1419/Mds/2008.

निर्धारण वर्ष /Assessment year : 2001-02, 2004-05 & 2005-06

The Deputy Commissioner of Income Tax,
Central Circle II(1)
Chennai 600 034. **Vs.** Shri. Jacob George,
154, Rangarajapuram Main Road,
Kodambakkam,
Chennai 600 024.

आयकर अपील सं./I.T.A. Nos.505 & 506/Mds/2015.

निर्धारण वर्ष /Assessment year : 2006-07 & 2007-2008

Shri. Jacob George,
154, Rangarajapuram Main Road,
Kodambakkam,
Chennai 600 024 **Vs.** The Deputy Commissioner of
Income Tax,
Central Circle II(1)
Chennai 600 034.

[PAN ADRPJ 8104C]

आयकर अपील सं./I.T.A. No.2076/Mds/2007

निर्धारण वर्ष /Assessment year : 2005-06

The Deputy Commissioner of
Income Tax,
Central Circle II(1)
Chennai 600 034. **Vs.** M/s. Greenfield Timber and
Plywoods Private Limited,
4, Rangarajapuram Main Road,
Kodambakkam,
Chennai 600 024.

[PAN AAACG 1187A]

आयकर अपील सं./I.T.A. No.1418/Mds/2010
निर्धारण वर्ष /Assessment year : 2001-02

Smt. Elizabeth Jacob,
154, Rangarajapuram Main Road,
Kodambakkam,
Chennai 600 024.

Vs. The Deputy Commissioner of
Income Tax,
Central Circle II(1)
Chennai 600 034.

[PAN AADPE 2919D]

आयकर अपील सं./I.T.A. No.2077/Mds/2007.
निर्धारण वर्ष /Assessment year : 2005-06

The Deputy Commissioner of
Income Tax,
Central Circle II(1)
Chennai 600 034.

Vs. M/s. Wood Stock Private Limited,
154, Rangarajapuram Main Road,
Kodambakkam,
Chennai 600 024.

आयकर अपील सं./I.T.A. No.503/Mds/2015
निर्धारण वर्ष /Assessment year : 2003-04

M/s. Wood Stock Private Limited,
154, Rangarajapuram Main Road,
Kodambakkam,
Chennai 600 024.

Vs. The Assistant Commissioner of
Income Tax,
Central Circle II(1) (i/c.)
Chennai 600 034.

[PAN AAACW 0652P]

आयकर अपील सं./I.T.A. No.502/Mds/2015
निर्धारण वर्ष /Assessment year : 2003-04

M/s. Vana Pana Pencil Industries,
154, Rangarajapuram Main Road,
Kodambakkam,
Chennai 600 024.

Vs. The Assistant Commissioner of
Income Tax,
Central Circle II(1) (i/c.)
Chennai 600 034.

[PAN AADFV 2917C]

आयकर अपील सं./I.T.A. No.504/Mds/2015
निर्धारण वर्ष /Assessment year : 2003-04

M/s. Arasan Cottage & Match
Industries,
154, Rangarajapuram Main Road,
Kodambakkam,
Chennai 600 024.

Vs. The Assistant Commissioner of
Income Tax,
Central Circle II(1) (i/c.)
Chennai 600 034.

[PAN AACFT5820N]

(Appellant)

(Respondent)

Assessee by
Department by

: Shri. G. Baskar, Advocate
: Shri. Arun C. Bharath, CIT.

Department for Vana Pana Pencil
Industries

: Shri. Asish Tripathi, JCIT.

सुनवाई की तारीख/Date of Hearing

: 11-07-2017

घोषणा की तारीख /Date of Pronouncement

: 31-07-2017

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

All the above appeals relate to certain assesseees falling within a group. Assesseees involved are Shri. Jacob George, Smt. Elizabeth Jacob, M/s. Greenfield Timber and Plywoods Private Limited, M/s. Wood Stock Private Limited, M/s. Vana Pana Pencil Industries and M/s. Arasan Cottage & Match Industries. Out of these ITA Nos.1417, 1418 & 1419/Mds/2008 are appeals of the Revenue directed against orders

of Id. CIT(A)-II, Chennai dated 28.03.2008 for assessment years 2001-02, 2004-05 and 2005-06, relating to the assessee Shri. Jacob George. ITA Nos. 505 & 506/15 are appeals filed by Shri. Jacob George for assessment years 2006-07 and 2007-08. Appeal No.1418/2010 is filed by the assessee Smt. Elizabeth Jacob and is directed against an order passed u/s. 263 of the Income Tax Act, 1961 (in short the "Act") for assessment year 2001-02. Appeal Nos.502/15, 503/15 and 504/15 are appeals of M/s. Vana Pana Pencil Industries, M/s. Wood Stock P. Ltd and M/s. Arasan Cottage & Match Industries respectively directed against orders levying penalty u/s.271(1) (c) of the Act for assessment year 2003-04 which was confirmed by the Id. Commissioner of Income Tax (Appeals). Apart from this, there are appeals filed by the Department in the case of the case of M/s. Greenfield Timber and Plywoods Pvt Ltd numbered as 2076/Mds/2007 and M/s. Wood Stock P. Ltd numbered as 2077/Mds/2007 both for assessment year 2005-06.

2. Ld. Counsel for the assesseees at the outset submitted that Department appeals in the case of Shri. Jacob George, for assessment years 2001-02 and 2004-05, as also appeal of the Revenue in the case of M/s. Wood Stock P. Ltd for assessment year 2005-06 were not

maintainable since tax effect was below Rs. 10,00,000/- in each of these cases.

3. Ld. Departmental Representative fairly agreed that the tax effect in respect of these assesseees for assessment years 2001-02, was below the limits laid down in CBDT Circular No.21/2015, Dated 10th December, 2015.

4. Accordingly, appeals of the Revenue in ITA Nos.1417/Mds/2008, 1418/Mds/2008 and 2077/Mds/2007 are dismissed.

5. Now, we take up Department appeal in ITA No.1419/Mds/2008 of Shri. Jacob George for assessment year 2005-06 for adjudication.

6. Facts captured in the assessment order of Shri. Jacob Gerge for the impugned assessment year, are relevant in the appeal filed by the Department in the case of M/s. Green Field Timber and Plywoods Pvt. Ltd also. Assessee who is the director of M/s. Green Field Timber and Plywoods Pvt. Ltd and M/s. Wood Stock P. Ltd had filed his return of income for the impugned assessment year disclosing income of Rs.2,22,567/-. There was a search in the premises of the assessee on 15.07.2004. During the course of search material

No.ANN/RK/LS/S was found from the residential premises of the assessee which gave information about the sale of 215 cents of land at various survey numbers. Assessee was questioned on this. He confirmed that the seized sheet was written in his own handwriting. According to him, the notings in the said sheet represented payments received and to be received from one Shri. Shanmugadurai for sale of 215 cents property at Madhavaram. As per the assessee the agreed price was Rs.2.10 crores, out of which Rs.91,00,000/- was received upto date of the search. Assessee confirmed Rs.40,00,000/- was received in cheque and Rs.51,00,000/- was received in cash. The balance Rs.1,19,00,000/- as per the assessee was still to be received from Shri. Shanmugadurai. Cheques were issued by Shri. Shanmugadurai in the name of M/s. Green Field Timber and Ply Woods Pvt. Ltd and M/s. Wood Stock P. Ltd. Assessee was power of attorney holder of M/s. Green Field Timber and Ply Woods Pvt. Ltd and also represented one Shri. C. Stanley who was his manager and whose name was also mentioned in the seized document.

7. The Department for having a better clarity on the transactions involved examined Shri. Shanmugadurai on 15.07.2004. Shri. Shanmugadurai confirmed having entered into an agreement with assessee. According to him, he was still to take possession of the land and had in addition to the amount mentioned in the agreement,

spent a sum of Rs.2,00,000/- for earth filling in the subject land. He also confirmed that total amount paid by him came to Rs.91,00,000/- of which Rs.40,00,000/- was paid in cheque and Rs.51,00,000/- in cash. Shri. Shanmugadurai also stated that the cash payment of Rs.51,00,000/- was not reflected in his books of accounts. Ld. Assessing Officer was of the opinion that assessee had received Rs.51,00,000/- which was not reflected in his books nor in the books of the two companies, viz M/s. Greenfield Timber and Plywoods Pvt Ltd and M/s. Wood Stock Private Limited. According to Id. Assessing Officer, not only the sum of Rs.51,00,000/- but also the earth filling expenditure incurred by Shri. Shanmugadurai was also not recorded in the books of accounts. He held that assessee had enjoyed the receipt of Rs.53,00,000/-, though the conveyance of the property was yet to be given in the name of Shri. Shanmugadurai.

8. Out of the 2.15 acres of land involved in the dispute, 19 cents of the land was held by assessee's manager Shri. C. Stanley, 119 cents was in the name of M/s. Green Field Timber and Ply Woods Pvt. Ltd and 77 cents of land in the name of M/s. Wood Stock P. Ltd. The 19 cents held by Shri. C. Stanley was considered by the Id. Assessing Officer as owned by the assessee himself. Since assessee had received the sum of Rs.51,00,000/- and had also benefited from the earth filling expenditure of Rs.2,00,000/- incurred for development

of the property, Id. Assessing Officer considered the sum of Rs..53,00,000/- as unaccounted income in the hands of the assessee. He also made protective additions in the hands M/s. Green Field Timber and Ply Woods Pvt. Ltd and M/s. Wood Stock P. Ltd, in the ratio of their respective holdings

9. Apart from the above, an addition of Rs.1,87,493/- claimed as expenditure incurred towards earth filling, was also made. As per the Id. Assessing Officer the total expenditure incurred for earth filling came to Rs.3,87,493/-. Ld. AO rejected the explanation given by the assessee that such expenditure was met by him using the advance received from Shri. Shanmugadurai.

10. Ld. Assessing Officer also made an addition of Rs.45,992/- for a credit in assessee's bank account which was not explained and Rs.6,30,000/- disbelieving the loan repayment to one Shri. M.V. Abraham. He also made an addition for the value of 1347 grams of jewellery found at the time of search, rejecting assessee's contention that these were out of marriage gifts and partly belonged to his mother, daughters and wife.

11. Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). The Id. Commissioner of

Income Tax (Appeals), with regard to the addition made for advance received on sale of property gave a finding that the property for which sum of advance was received was held by M/s. Green Field Timber and Plywoods P. Ltd and M/s. Wood Stock Pvt. Ltd. According to him, since transactions related to the property held by two companies, no addition could have made in the hands of the assessee. Similarly with regard to the addition for land filling expenditure also the Id. Commissioner of Income Tax (Appeals) was of the view that the property being in the name of M/s. Wood Stock Pvt. Ltd, could not be considered as assessee's income. In so far as addition of Rs.6,30,000/- disbelieving loan repayment claimed to have been made to Shri. M.V. Abraham, Id. Commissioner of Income Tax (Appeals) held that cash flow statement filed by the assessee evidenced availability of adequate funds for repaying Shri. M.V. Abraham. For the addition made against jewellery found during the time of search, Id. Commissioner of Income Tax (Appeals) was of the opinion that assessee's household had two male members and four lady members. According to him, holding of 2347 grams of jewellery could not be deemed as unreasonable. He thus, deleted the additions made on all the items mentioned above.

12. Against this, the Revenue is in appeal before us and has raised the following grounds:-

'1. The order of the Commissioner of Income Tax (Appeals) is opposed to the facts and circumstances of the case.

2. The learned CIT(A) erred in deleting the addition of Rs.45,992/- made towards cash deposit in Bank A/c on the ground that it is only interest from FDR a/c already offered and assessed.

2.1 The learned CIT(A) ought to have appreciated that in the case of credit of interest on fixed deposits, there cannot be any deposit by cash.

2.2 The learned CIT(A) failed to observe that the assessee's daughter had no independent source of income and hence the same was rightly assessed in the hands of the assessee.

3. The learned CIT(A) erred in deleting the addition of Rs.53 lakhs made towards on money received from SrLShanmugadurai on the ground that the property is owned by M/s.Wood Stock Pvt Ltd and M/s.Green Field Timber & Plywoods (P) Ltd.,

3.1 The CIT(A) ought to have appreciated that the assessee is the main person controlling the affairs of the companies M/s.Green Field Timber and Plywoods Pvt Ltd and M/s.Woodstock Pvt Ltd and that since the registration of the property has not been made, the Assessing Officer considered the unaccounted receipt in the hands of the assessee.

3.2 The learned CIT(A) has failed to note that the Assessing Officer has only assessed the unaccounted on money payment in this transaction received by the assessee through his negotiations with Sri.S.Shanmugadurai who also confirmed these facts.

4. The learned CIT(A) erred in deleting the addition of Rs.6,30,000/- made on the repayment of loan received from Sri.M.V. Abraham on the ground that the cash flow chart submitted showed adequate funds to explain the repayment.

4.1 The CIT(A) ought to have noted that the assessee himself has submitted in the statement recorded on 10.8.2004 that the repayment is not recorded in the books of accounts.

4.2 The learned CIT(A) ought to have noted that the Cash flow statement prepared and filed after the search has not sanctity especially when no evidence for the accounting of the repayment found during the search.

5. The learned CIT(A) erred in deleting the addition of Rs 8,79,860/- made towards the unexplained investment in jewellery of 1347 grams.

5.1 The learned CIT(A) while working out the reasonable quantum of possession of jewellery based on the socio economic status of the assessee's family, has failed to note that the CBDT circular in this regard is meant for effecting seizure of jewellery and not for assessing the unaccounted jewellery.

6. The CIT(A) erred in deleting the addition of Rs.1,87,493/- being unexplained expenditure towards earth filling of the property at Madhavaram on the ground that the property belonged to M/s.Woodstock Pvt Ltd and M/s.Green field Timber and Plywood pvt ltd.

6.1 The CIT(A) ought to have appreciated that the addition was made for want of explanation and relevant materials and the assessee being the main person controlling the affairs of the said company.

7. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Commissioner of Income Tax (Appeals) may be set aside and that of Assessing Officer restored".

13. Ld. Counsel for the Revenue submitted that the sum of Rs.45,992/- deposited in the bank account of the assessee was erroneously considered by the Id. Commissioner of Income Tax (Appeals) as fixed deposit interest. According to him, the amount was cash deposit, for which assessee could not give any explanation.

14. Viz-a-viz the addition made for money received from Shri. Shanmugadurai, Id. Counsel submitted that assessee had received unaccounted consideration in excess of what was eventually mentioned in the conveyance deed. According to him, the addition was based on a seized material found from the office premises of the assessee and in answer to question No.5, assessee had mentioned that the loose sheets were in his own handwriting. According to him had There was accounted Rs.86,00,000/- only out of the total agreed consideration of Rs.2,10,00,000/-. As per the Id. DR balance of Rs.1,24,00,000/- was unaccounted. Further as per Id. Departmental Representative, assessee had accepted receipt of unaccounted consideration of Rs.51,00,000/-. Id. Departmental Representative submitted that the Id. Commissioner of Income Tax (Appeals) had while adjudicating the appeals of the two companies in whose hands, protective assessments were made, deleted such additions considering the receipt as capital in nature. As per Id. Departmental Representative once it was accepted that there was unaccounted receipt of Rs.51,00,000/-, it had to be assessed as unaccounted income, either in the hands of the assessee or in the hands of two companies which held the land. As per the Id. DR, the assessee also enjoyed the benefit of land filling expenses of Rs.2,00,000/- done by Shri. Shanmugadurai which the latter had confirmed. According to

him, Id. Commissioner of Income Tax (Appeals) fell in error in deleting the addition of Rs.53,00,000/- both in the hands of the assessee as well as in the hands of two companies. Ld. Departmental Representative pointed out that assessee was the person who was controlling the affairs of two companies. To a question from the Bench whether he was seeking lifting of the corporate veil of the two companies, Id. Departmental Representative submitted that he was not arguing on those lines. According to him, unaccounted receipts had to be considered as income either in the hands of the assessee or in the hands of two companies.

15. Viz-a-viz the addition of Rs.6,30,000/- being repayment of a loan claimed to have earlier taken from one Shri. M.V. Abraham, which was deleted by the Id. CIT(A), submission of the Id. Departmental Representative was that there was no source for the assessee to make such payment. As per Id. Departmental Representative such repayment was not reflected in the books also. According to him, Id. Commissioner of Income Tax (Appeals) had erroneously mentioned that a cash flow statement was filed by the assessee before the Id. Assessing Officer. As pr the Id. DR, the addition was unjustly deleted by the Id. Commissioner of Income Tax (Appeals).

16. Coming to the addition of Rs.8,79,860/- for jewellery of 1347 grams, deleted by the Id. Commissioner of Income Tax (Appeals), submission of the Id. Departmental Representative was that CBDT Instruction no.1916, dated 11th May, 1994 only prescribed maximum quantum of gold jewellery that was exempt from seizure in a search. According to him, this circular could not be cited as a reason for deleting an addition made for want of explanation for the source of the jewellery. As per Id. Departmental Representative assessee had not given any explanation for the jewellery found at the time of search.

17. Coming to the last addition of Rs.1,87,493/- incurred for earth filling which was also deleted by the Id. Commissioner of Income Tax (Appeals), Id. Departmental Representative submitted that there was no source for such expenditure in the hands of the assessee.

18. In reply, the Id. Authorised Representative fairly admitted that assessee had no source for Rs.45,992/- deposited in his bank account. As per Id. Authorised Representative though the Id. Commissioner of Income Tax (Appeals) had considered it as interest, received by the assessee, he had no evidence to produce in this regard.

19. Viz-a-viz addition made for advance received from Shri. Shanmugadurai, Id. Authorised Representative relying on paper book page No.1 submitted that 19 cents of land which was sold by Shri. C. Stanley was acquired by him on 04.04.1996. As per Id. Authorised Representative this was sold to Shri. Shanmugadurai, through a sale deed executed on 23rd June, 2005. Again, as per Id. Authorised Representative, the land held by M/s. Wood Stock Private Limited was sold by Shri. Shanmugadurai, as the power agent of the said company on 27th day of July, 2005. According to him, the sale was effected by Shri. Shanmugadurai in his capacity as the power of attorney holder of M/s. Wood Stock Private Limited and such power of attorney was executed only on 29.06.2005. Further, as per Id. Authorised Representative the sale of the land held by M/s. Green Field Timber and Ply woods P. Ltd, was also effected on 27.07.2005 based on a power of attorney executed by the said company in favour of Shri. Shanmugadurai on 29.06.2005. Thus, according to him, in the previous year relevant to the impugned assessment year there was no sale effected by the two companies or Shri. C. Stanley or the assessee. Even the Power of Attorneys were executed after the relevant previous year. Thus, according to him, the amounts received as advances, irrespective of who received it, was not income. As per the Id. Authorised Representative, possession of the property

remained with the companies and Shri. C. Stanley all through the relevant previous year. Assessee, as per Id. Authorised Representative, could not be saddled with a tax on advances received by him on behalf of two companies.

20. In so far as repayment of Rs.6,30,000/- was concerned, Id. Authorised Representative submitted that assessee had earlier received loan from Shri. M.V. Abraham on behalf of two companies in which he was the director. According to the Id. Authorised Representative, assessee had used the money with him for effecting the repayment of loans. Therefore as per Id. Authorised Representative it could not be considered as paid out of any unexplained income.

21. As for the addition of Rs.1,87,493/- for earth filing expenditure, contention of the Id. Authorised Representative was that this was met out of advance received from Shri. Shanmugadurai.

22. Coming to the addition made for jewellery, Id. Authorised Representative relying on CBDT Instruction No.1916(supra), submitted that the Id. Commissioner of Income Tax (Appeals) had considered the socio- economic background of the assessee and his family while giving relief and there was no reason for disturbing it.

23. We have considered the rival contentions and perused the orders of the authorities below. In so far as addition of Rs.45,992/- made for unexplained cash deposit in bank account is concerned, Id. Authorised Representative fairly agreed that it was cash deposit and not credit of any fixed deposit interest. We are therefore of the opinion that the Id. Commissioner of Income Tax (Appeals) fell in error in deleting such addition. The addition is reinstated . Ground No.2 of the Revenue is allowed.

24. Coming to the issue of money received from Shri. Shanmugadurai which was considered as unexplained income in the hands of the assessee, the source of the sum was not disbelieved by the Revenue. Assessee had also accepted that the money had come from Shri. Shanmugadurai. Shri. Shanmugadurai had confirmed the payment of such money. It is also an admitted position that the land against which the advance was received by the assessee were held not in assessee's name but in the name of M/s. Green Field Timber and Plywoods P. Ltd and M/s. Wood Stock P. Ltd, apart from a small holding of 19 cents in the name of Shri. C. Stanley who was the manager of the assessee. Id. Departmental Representative did not seek lifting of the corporate veil of these companies. When consideration is received for sale of land held by two companies,

irrespective of the fact whether it was on-money or not, in our opinion the addition, if at all was to be made, could only be in the hands of the concerned companies. Assessee might have held the money with him, in his capacity of Director of these companies, since companies were juristic persons which could act only through its directors. In the statement recorded from the assessee during the course of search, he had specifically mentioned that the land was in the name of two companies. That apart, during the relevant previous year there was no transaction relating to the land. The two companies had executed Power of Attorney, giving the power to Shri. Shanmugadurai to sell the land only on 29.06.2005. The sale effected by Shri. C. Stanley was on 23rd June, 2005. Therefore, the amounts received prior to the date of sale/ execution of PAO remained advance in the hands of the recipients and could not be considered as income. There is no case for the Revenue that possession of the land was handed over to Shri. Shanmugadurai during the course of the relevant previous year. Thus not only the land did not belong to the assessee, but execution of the Power of Attorney as well as the sale of the land happened after the relevant previous year. The amount received during the relevant previous year as advance from the prospective buyer could not be considered as income in the hands of the assessee or the companies during the impugned assessment year. The addition was in our

opinion rightly deleted by the Id. Commissioner of Income Tax (Appeals). Ground No.3 of the Revenue is dismissed.

25. Coming to the repayment of loan of Rs.6,30,000/- considered as unexplained by the Id. Assessing Officer, Id. Commissioner of Income Tax (Appeals) has given a finding that assessee had sufficient cash, based on a cash flow statement furnished by the assessee. However, Id. Departmental Representative has vehemently argued that the cash flow statement was never before Id. Assessing Officer. Considering the facts and circumstances, we are of the opinion that matter can be considered afresh by the Id. Assessing Officer. If the assessee is able to provide cash flow statement and prove that he had sufficient cash for effecting the repayment of loan to Shri. M.V. Abraham, the addition cannot be made. We therefore, set aside the orders of the lower authorities on this issue and remit it back to the file of the Id. Assessing Officer for consideration afresh in accordance with law. Ground No.4 of the Revenue is allowed for statistical purposes.

26. Coming to the deletion of an addition of Rs.8,79,860/- made against 1347 grams jewellery held by the assessee, what we find is that Id. Commissioner of Income Tax (Appeals) had considered the

holding of assessee's family as under while giving relief to the assessee.

<i>Shri. Jacob George</i>	<i>100 gms</i>
<i>Shri. George Jacob</i>	<i>100 gms</i>
<i>Smt. Elizabeth Jacob</i>	<i>500 gms</i>
<i>Smt. Thangamma George</i>	<i>500 gms</i>
<i>Smt. Reshma Jacob</i>	<i>500 gms</i>
<i>Ms. Leema Jacob</i>	<i>250 gms.</i>

	<i>1950 gms"</i>

There is no case for the Revenue that any of the above persons were not family members of the assessee. Considering CBDT instruction No.1916 (supra), we are of the opinion that relief given by the Id. Commissioner of Income Tax (Appeals) was fair. We do not find any reason to interfere with the directions given by the Id. Commissioner of Income Tax (Appeals). Ground No. 5 of the Revenue is dismissed.

27. Coming to the addition of Rs.1,87,493/- made by the Id. Assessing Officer, considering the expenditure incurred for earth filling of the property as unexplained, we find that the Id. Assessing Officer himself had accepted the land as belonging to M/s. Wood Stock Pvt.Ltd. Hence, expenditure incurred for filling up the said property even if it was unexplained, could have been considered only in the hands of the said company and not in the hands of the assessee. We are therefore of the opinion that the said addition was

rightly deleted by the Id. Commissioner of Income Tax (Appeals).
Ground No.6 of the Revenue is dismissed.

28. As a result of our discussion, we allow ground No.2 of the Revenue, dismiss its grounds 3, 5 & 6 and allow its ground No.4 for statistical purpose. Ground Nos. 1 & 7 are general in nature needing no specific adjudication. Appeal of the Revenue is partly allowed for statistical purposes.

29. Now we take up the appeal of the assessee Shri. Jacob George for assessment year 2006-007 numbered as ITA No.505/Mds/2015. The only addition on which assessee is aggrieved is on a sum of Rs.1,80,000/- considered as perquisite value of furnished accommodation.

30. Assessee being the director of M/s. Wood Stock Pvt. Ltd was provided with furnished residential accommodation. Ld. Assessing Officer had considered its perquisite value at Rs.1,80,000/-. The addition made in this regard by the Id. Assessing Officer was confirmed by the Id. Commissioner of Income Tax (Appeals).

31. Now before us, Id. Authorised Representative assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that the valuation of perquisite in the nature of a furnished accommodation should have been done as per Rule 3 of Income Tax

Rules, 1962. According to him, addition of Rs.1,80,000/- exceeded the amount prescribed as per the said rules.

32. Per contra, Id. Departmental Representative submitted that the Id. Commissioner of Income Tax (Appeals) had followed his own order for the earlier year which was never challenged by the assessee. According to him, assessee could not now say that the perquisite was overvalued.

33. Ad libitum reply of the Id. Authorised Representative was that Rule itself had come into effect from 01.04.2005. According to him, the Id. Commissioner of Income Tax (Appeals) should not have followed his own order for an earlier year disregarding such rule.

34. We have considered the rival contentions and perused the orders of the authorities below. Value of residential accommodation provided by the employer has to be determined as per Rule 3 (1) of Income Tax Rules. The said Rule as it stood on 01.04.2005 gave there under a table which is reproduced hereunder:-

<i>Sl. No</i>	<i>Circumstances</i>	<i>Where accommodation is unfurnished</i>	<i>Where accommodation is furnished</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>(1)</i>	Where the accommodation is provided by the Central Government or any State Government to the employees	License fee determined by the Central Government or any State Government in	The value of perquisite as determined under column (3) and increased by 10% per annum of the

	<p>either holding office or post in connection with the affairs of the Union or of such State or serving with any body or undertaking under the control of such Govt. on deputation</p>	<p>respect of accommodation in accordance with the rules framed by such Government as reduced by the rent actually paid by the employee</p>	<p>cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment) or if such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.</p>
(2)	<p>Where the accommodation is provided by any other employer and—</p>		
	<p>a) where the accommodation is owned by the employer, or</p>	<p>(i) 15% of salary in cities having population exceeding 25 lakhs as per 2001 census;</p> <p>(ii) 10% of salary in cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census;</p> <p>iii) 7.5% of salary in other areas, in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee.</p>	<p>The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.</p>
	<p>b) where the accommodation is taken on lease or rent by the</p>	<p>Actual amount of lease rental paid or payable</p>	<p>The value of perquisite as determined under</p>

	employer	by the employer or 15% of salary whichever is lower as reduced by the rent, if any, actually paid by the employee.	column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.
(3)	Where the accommodation is provided by the employer specified in serial number (1) or (2) in a hotel (except where the employee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another).	Not applicable	24% of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, which is lower, for the period during which such accommodation is provided as reduced by the rent, if any, actually paid or payable by the employee:

The lower authorities had not applied the above Rule while valuing the residential accommodation granted to the assessee by its employer. We are therefore of the opinion that issue requires a fresh look by the Id. Assessing Officer. We set aside the order of the lower authorities and remit the issue back to the file of the Id. Assessing Officer for consideration afresh. We may hasten to add that Id.

Assessing Officer is free to consider whether assessee could be deemed as an employee, in his status as director of the company.

35. In the result, the appeal of the assessee is allowed for statistical purposes.

36. Now, we take up appeal of the assessee of Shri. Jacob George for assessment year 2007-2008 in ITA No.506/Mds/2015.

37. Ld. Counsel for the assessee submitted that the Id. Commissioner of Income Tax (Appeals) had not adjudicated the grounds raised by him challenging the jurisdiction to make an assessment u/s. 144 of the Act nor the grounds challenging the addition of Rs.2,50,000/- as directors remuneration and Rs.46,000/- as interest on capital. According to him, Id. Commissioner of Income Tax (Appeals) had adjudicated only the ground raised on valuation of free residential accommodation given by M/s. Wood Stock P. Ltd. Even this, as per the Id. AR was incorrectly done, ignoring Rule 3 of the Income Tax Rules.

38. Per contra, Id. Departmental Representative submitted that the issues may be remitted back to the file of the Id. Commissioner of Income Tax (Appeals) for adjudication.

39. We have considered the rival contentions and perused the orders of the authorities below. We find that the assessee had raised grounds challenging the assessment done u/s. 144 of the Act, apart from grounds on estimation of remuneration from M/s. Green Field Timber and Plywoods P. Ltd and M/s. Wood Stock P. Ltd, addition for valuation of perquisites in the nature of rent free accommodation and addition for interest on capital from the firms of M/s. Arasan Cottage Match Industries and M/s. Vana Pana Pencil Wood Industries. Except for the issue relating to valuation of perquisites in the nature of furnished accommodation, other issues were not adjudicated by the Id. Assessing Officer. We are therefore of the opinion that issues including valuation of the perquisites in the nature of furnished accommodation can be considered by the Id. Commissioner of Income Tax (Appeals) afresh. In so far as valuation of perquisites in the nature of furnished accommodation is concerned, Id. Commissioner of Income Tax (Appeals) is directed to keep in mind our directions on the issue in assessee's appeal for assessment year 2006-2007.

40. In the result, appeal of the assessee for assessment year 2007-2008 is allowed for statistical purposes.

41. Now, we take up appeals filed by the assessee M/s. Vana Pana Pencil Industries, M/s. Wood Stock Private Limited and M/s. Arasan Cottage and Match Industries for assessment year 2003-04 in

ITA Nos.502/2015, 503/2015 and 504/2015, which are against levy of penalty under section 271(1) (c) of the Act, which was confirmed by the Id. Commissioner of Income Tax (Appeals).

42. Ld Counsel for the assessee submitted that Id. Commissioner of Income Tax (Appeals) had not adjudicated on the merits of the penalty levied but on dismissed the appeals of the assesseees for want of appearance.

43. Per contra, Id. Departmental Representative submitted the penalties were rightly levied by the Id. Assessing Officer and confirmed by the Id. Commissioner of Income Tax (Appeals). According to him, a number of opportunities were given by the Id. Commissioner of Income Tax (Appeals) to the assesseees but these were not availed by the assesseees.

44. We have considered the rival contentions and perused the orders of the authorities below. The orders of the Id. Commissioner of Income Tax (Appeals) in all these three appeals were similarly worded. What was held by him in his order is reproduced hereunder:-

“4. The case was posted for hearing on 31.10.2014. .Orr 11.11.2014 Ms.Sriniranjani, Advocate sought adjournment on behalf of the Authorised Representative Ms. Anita .Sumanth who was stated to be busy in the High Court. The hearing of the appeal was adjourned to

13.11.2014. On 13.11.2014, Ms. Radhika Vasudevan, Advocate from the Office of Ms. Anita Sumanth, Authorised Representative was present seeking further adjournment on behalf of the Authorised Representative as no power in her favour was available on record. In the interest of justice last and final opportunity was given to file all the submissions and material or evidence on which the appellant sought to rely to support its grounds of appeal. Accordingly, the case was adjourned to 20.11.2014 and it was also informed that no further opportunity shall be allowed. In the meantime another adjournment was sought by the AR for hearing on 26.11.2014. The case was adjourned to 26.11.2014 as per the oral request of the Authorised Representative Ms. Anita Sumanth, Advocate. On 26.11.2014 Ms. Radhika Vasudevan, Advocate attended and explained the issue in appeal.

5, I have considered the facts of the case vis-a-vis the grounds of appeal and the reasoning of the AO in levying penalty under section 271(1)(c). As is evident from the penalty order, in response to the show cause notice issued by the AO no reply was furnished before the AO. Even before me apart from having agitated the issue of levy of penalty, no submissions, whatsoever, have been furnished on behalf of the appellant to submit or to show as to why the provisions of section 271(1)(c) were not applicable to the facts of the appellant's case. In the absence of any material or evidence brought on record by the appellant to offer any explanation with regard to undervaluation of appellant's stock, the repayment in cash of onshore loan and sundry creditors, which, during the course of statement, had been admitted to be out of the undisclosed/unaccounted income of the appellant, I find any infirmity in the action of the AO in levying penalty on such undisclosed/unaccounted incomes admitted by the appellant. The grounds of appeal, therefore, are dismissed as unsubstantiated and the penalty levied by the AO is upheld".

It is clear from the above that Id. Commissioner of Income Tax (Appeals) had not applied his mind to the merits of the issues raised by the assesseees. Considering the facts and circumstances of the cases, we are of the opinion that assesseees have to be given one more opportunity for supporting the grounds taken by it before the Id. Commissioner of Income Tax (Appeals). We therefore set aside the orders of the Id. Commissioner of Income Tax (Appeals) in these three cases and remit the appeals back to the file of the Id. Commissioner of Income Tax (Appeals) for consideration afresh in accordance with law. Assesseees are directed to co-operate and appear before Id. Commissioner of Income Tax (Appeals).

45. In the result, the appeals of the assesseees in ITA 502/Mds/2015 to 504/Mds/2015 are allowed for statistical purposes.

46. Now, we take up the appeal of Smt. Elizabeth Jacob for assessment year 2001-02 in ITA No.1418/Mds/2010.

47. Assessee in this appeal assails an order dated 25th March, 2009 of Id. Commissioner of Income Tax -II, Chennai passed u/s. 263 of the Act.

48. Id. Counsel for the assessee submitted that assessment for the impugned assessment year was originally completed on 29.12.2006. As per Id. Authorised Representative such assessment was

pursuant to a search and was done u/s. 143(3) r.w.s. 153A & 153C of the Act. Contention of the Id. Authorised Representative was that assessee had in her return of income filed originally, shown a sum of Rs.3,72,781/- as capital subsidy in her capital account with M/s. Rajkumari Saw Mill, which was her proprietary concern. As per the Id. Authorised Representative the return was filed by the assessee on 30.10.2001 and the search was conducted on 15.07.2004. Further, as per Id. Authorised Representative no incriminating documents were found during the course of search which would show that the capital subsidy was erroneously or incorrectly shown by the assessee. According to him, Id. Assessing Officer while doing an assessment u/s. 153C of the Act could make an addition only for income arising or coming out of search. There was no material with the Id. Assessing Officer which could show that the amount shown by the assessee was not a capital subsidy. As per Id. Authorised Representative no addition was made against the capital subsidy by the Id. Assessing Officer in his order dated 29.12.2006, since it was an assessment u/s. 143(3) r.w.s. 153C of the Act. According to him, Id. Commissioner of Income Tax could not take a view that the claim of exemption u/s. 10(31) of the Act, for the sum of Rs.3,72,781/- was incorrectly allowed.

49. Continuing his arguments, Id. Authorised Representative, submitted that Id.CIT had attempted a revision citing a reason that

assessee was only running a saw mill and not a plantation grower. According to him, assessment done u/s. 153C of the Act did not carry any mistake or error which could warrant invocation of Sec. 263 of the Act.

50. Per contra, Id. Departmental Representative submitted that assessee was running a saw mill and not a plantation grower. According to him, capital subsidy received by the assessee could be considered as exempt u/s. 10(31) of the Act, only if it was received by a plantation grower. Contention of the Id. Departmental Representative there was a clear error in the assessment order which was prejudicial to the interest of the Revenue. Thus, according to him, Id. Commissioner of Income Tax was justified in exercising her revisionary powers u/s. 263 of the Act.

51. We have considered the rival contentions and perused the orders of the authorities below. Reason why Id. Commissioner of Income Tax invoked Sec. 263 of the Act appears at para 1 of his order and this is reproduced hereunder:-

"The Income-tax assessment in this case of the assessee for the Asst. Year 2001-02 was completed by the ACIT., Central Circle-II(1), Chennai on 29.12.2006 determining the total income of RS.2,50,2201- u/s.143(3) r.w.S. 153A & 153C. On examination of records, it is seen

that during the course of assessment proceedings, the assessee has filed a revised statement of income and shown capital subsidy of Rs.3,72,781/-, which was claimed as exempt u/s.10(31) of the I.,T Act and was accordingly allowed. However, the provisions of Sec.10(31) apply only to plantation grower and not to the assessee, who is running the business of saw mill. Therefore, the claim has been wrongly allowed by the Assessing Officer. This has resulted in not only the assessment being erroneous but also prejudicial to the interest of revenue”.

No doubt u/s. 10(31) of the Act exemption for subsidy is available only to an assessee which carry on a business of growing and manufacturing rubber, coffee, cardamom or such other commodities. However, what we find is that assessee had in her return filed on 30.10.2001 clearly mentioned the sum of Rs.3,72,781/- as capital subsidy in her capital account with M/s. Rajkumari Saw Mill. Ld. CIT was of the opinion that Assessing Officer had erred in giving the exemption under section 10(31) of the Act to such amount in the order passed by the Id. Assessing Officer u/s. 143(3) r.w.s. 153A and 153C of the Act. It is trite law that an addition made in a search assessment should necessary emanate from the material found during the course of search. Ld. Departmental Representative could not place before us any record, which was found during the course of

search, that could show that capital subsidy of Rs.3,72,781/- was incorrectly claimed by the assessee or was in relation to its business of saw mill. There is much strength in the argument of the Id. Authorised Representative that Id. Assessing Officer could not have made an addition for such subsidy in the search assessment, when there was no incriminating material found during the course of search. In fact there was no addition whatsoever may be made by the Id. Assessing Officer to the returned income. In the circumstances, we cannot say that order of the Id. Assessing Officer had any error in it, which could justify application of the revisionary powers under Sec.263 of the Act. For invoking Sec 263 of the Act, twin conditions had to be satisfied; one is that there is an error in the order and second is that such error is prejudicial to the interest of the Revenue. Even absence of one limb is fatal. We are of the opinion that the order of the Id. Assessing Officer did not have any error which could warrant interference u/s. 263 of the Act. We set aside the order of the Id. CIT. Appeal of the assessee is allowed.

52. This leaves us with the appeal of the Department in the case of the assessee M/s. Greenfield Timber and Plywoods Private Ltd for assessment year 2005-06 numbered as ITA No.2076/Mds/2007.

53. Only effective ground raised by the Revenue which appears as ground 2, is on the deletion of an addition of Rs.29,33,488/- made by the Id. Assessing Officer protectively in the hands of the assessee.

54. Facts relating to the above ground has been captured by us in the appeal of the assessee in Jacob George in ITA No.1419/Mds/2008, at para 6 above. A protective addition was made by the Id. Assessing Officer for the prorata amount of advance received from Shri. Shanmugadurai, considering the area of land held by the assessee sold to Shri. Shanmugadurai. Such addition came to Rs.29,33,488/-. Ld. Commissioner of Income Tax (Appeals) had deleted the addition considering the sum as capital receipt. We have at para 14 above held that the amount received from Shri. Shanmugadurai remained as an advance and could never be considered as income in the relevant previous year, either in the hands of Shri. Jacob George or in the hands of companies. We are therefore of the opinion that the addition was rightly deleted by the Id. Commissioner of Income Tax (Appeals), though for different reasons. We do not find any reason to interfere.

55. Appeal of the Revenue in ITA No.2076/Mds/2007 is dismissed.

56. To summarize the result, appeals of the Revenue in respect of Shri. Jacob George in ITA Nos.1417/Mds/2008, 1418/Mds/2008 for assessment years 2001-02 & 2004-05 are dismissed whereas ITA No.1419/Mds/2008 for assessment year 2005-06 is partly allowed for statistical purpose. Assessee appeals in ITA Nos.505 & 506/Mds/2015 for assessment years 2006-07 and 2007-08 are allowed for statistical purpose. Department appeal in respect of M/s.Wood Stock Private Limited in ITA No. 2077/Mds/2007 for assessment year 2005-06 is dismissed whereas this assessee's appeal in ITA No.503/Mds/2015 for assessment year 2003-04 is allowed for statistical purpose. Appeal No.502/Mds/2015 of the assessee M/s. Vana Pana Pencil Industries and ITA No.504/Mds/2015 of the assessee M/s. Arasan Cottage & Match Industries, both for assessment year 2003-04 are allowed for statistical purpose. Appeal of the assessee Smt. Elizabeth Jacob for assessment year 2001-02 in ITA No.1418/Mds/2010 is allowed. Appeal of the Department in the case of the assessee M/s. Green Field Timber

Plywood P. Ltd is dismissed.

Order pronounced on Monday, the 31st day of July, 2017, at Chennai.

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

Sd/-
(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai.

दिनांक/Dated: 31st July, 2017

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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