

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.2928, 2929, 2930 & 2931/CHNY/2017  
निर्धारण वर्ष /Assessment years :2006-07, 2006-07, 2006-07, 2012-13

Shri. C. Kishanlal,  
No.41/23, Kutchery Road,  
Mylapore,  
Chennai 600 004.

**Vs.** The Deputy Commissioner of  
Income Tax,  
Central Circle 3(3)  
Chennai 600 034.

**[PAN AAKPK 7263K]**

आयकर अपील सं./I.T.A. No. 2932/CHNY/2017  
निर्धारण वर्ष /Assessment year : 2006-2007.

C. Kishanlal & Sons (HUF)  
No.41/23, Kutchery Road,  
Mylapore,  
Chennai 600 004.

**Vs.** The Assistant Commissioner  
of Income Tax,  
Central Circle 3(3)  
Chennai 600 034.

**[PAN AAAHK 4234L]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. B. Ramakrishnan, FCA  
प्रत्यर्थी की ओर से /Respondent by : Shri. Sailendra Mamidi, PCIT.

सुनवाई की तारीख/Date of Hearing : 13-12-2018  
घोषणा की तारीख /Date of Pronouncement : 20-12-2018

**आदेश / O R D E R****PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

Appeal Nos. 2928/Chny/2017 to 2931/Chny/2017 are of the assessee Shri. C. Kishnanlal in his individual status, whereas appeal No.2932/Chny/2017 is of M/s. C. Kishanlal & Sons (HUF) status wherein Shri. C. Kishanlal is the Karta. Appeal in ITA Nos.2928 to 2931/Chny/2017 are taken up first for disposal.

2. Of these four appeals, ITA 2928/Chny/2017 is directed against an order dated 11.10.2017 of Id. Commissioner of Income Tax (Appeals)-19, Chennai, confirming certain additions/ disallowances made by the Id. Assessing Officer in the assessment done for assessment year 2006-2007. Appeal No.2929/Chny/2017 is against levy of penalty of ₹10,00,000/- u/s.271D of the Income Tax Act, 1961 (in short "the Act") for loans accepted in cash during the previous year relevant to assessment year 2006-2007, which levy was confirmed by Id. Commissioner of Income Tax (Appeals). Appeal No.2930/Chny/2017 is again levy of penalty of ₹3,00,000/- u/s.271E of the Act on repayment of loan in cash for the very same assessment year, which was also confirmed by Id. Commissioner of Income Tax (Appeals). Appeal No.2931/Chny/2017 is an appeal against an order

dated 11.10.2017 of Id. Commissioner of Income Tax (Appeals)-19, Chennai confirming certain additions/disallowances made by the Id. Assessing Officer in the assessment done for assessment year 2012-2013.

**3.** Grounds taken by the assessee in its appeal ITA 2928/Chny/2017 for assessment year 2006-07, count ten of which grounds 1 and 2 are general needing no specific adjudication, whereas grounds 10 and 11 are on levy of interest under Section 234A and 234B of the Act, which are consequential in nature.

**4.** Vide its grounds 3 to 5, assessee assails sustenance of an addition of ₹90,62,161/-. (Actual figure it appears is ₹90,66,072/-)

**5.** Facts apropos are that assessee, a pawn broker, was subjected to a search u/s.132 of the Act on 04.01.2012. Consequent to this, assessee was issued notices u/s.153A of the Act for filing his returns. Assessee in the return filed for the impugned assessment year 2006-07, pursuant to such notices, declared an income of ₹21,85,268/-. It is to be noted that the income declared was very same as shown in the regular return filed on 08.05.2007. During the course of the search, revenue stumbled upon certain records relating to a suit filed by one Shri. Dharmendra Bafna and others before High

Court of Madras. From subsequent enquiries it was learned by the revenue that assessee had paid a sum of ₹4,65,00,000/- to Shri Dharmendra Bafna, who was the Managing Director of a company called M/s. Surana Corporation Ltd, as an investment in the gold trading business conducted by M/s. Surana Corporation Ltd. It seems assessee had requested Shri. Dharmendra Bafna to close the account and return the money, whereupon latter claimed that he was only a sub-agent of M/s. Surana Corporation Ltd and the money was dealt by the directors of M/s. Surana Corporation Ltd. Assessee was questioned by the Revenue on the source for the sum of ₹4,65,00,000/- advanced by him to M/s. Surana Corporation Ltd through Dharmendra Bafna. Assessee thereupon gave the following as the source.

- |  |                |
|--|----------------|
| (a) Amount received from 12 persons by cash/ cheque    | ₹1,50,06,232/- |
| (b) Sale proceeds of jewels belonging to the relatives | ₹3,14,93,768/- |

**6.** Ld. Assessing Officer verified the above claim made by the assessee. Name of the persons from whom assessee had claimed receipt of money were as under:-

Sl.No	Name of the person	Amount
1	C. Kishanlal	₹6,56,232
2	B.K. Vimalchand	₹34,00,000
3	C. Madanlal	₹50,000
4	Sivarajan Nadar	₹60,00,000
5	C. Kishanlal & Sons (HUF)	₹7,00,000
6	V. Suvitha	₹9,00,000
7	Kanchan Bai	₹23,50,000
8	C. Madanlal & Sons	₹50,000
9	Jeevaraji Nadar	₹2,00,000
10	Kalyanmalji Ranka	₹2,00,000
11	C.Kamalchand	₹4,00,000
12	A. Pukhraj Gulecha	₹1,00,000
	Total	₹1,50,06,232

Based on the evidence filed by the assessee, Id. Assessing Officer accepted the following out of the above.

a)	C. Madanlal	₹50,000/-
b)	Sivarajan Nadar	₹49,40,160/-
c)	M/s. C. Madanlal & Sons	₹50,000/-
d)	M. Jeevaraj	₹2,00,000/-
e)	Kalyanmalji Ranka	₹2,00,000/-
f)	C. Kamalchand	₹4,00,000/-
g)	A.Pukhraj Gulecha	₹1,00,000/-
		<u>₹59,40,160/-</u>

It is to be noted that out of the total sum of ₹60,00,000/- claimed by the assessee to have been received from Shri. Sivarajan Nadar, a sum of ₹49,40,160/- was accepted by the Id. Assessing Officer and balance sum of ₹10,59,840/- alone was considered to be unexplained. The claims which were not accepted by the Id. Assessing Officer were as under:-

<i>M/s. C. Kishanlal &amp; Sons and C. Kishanlal</i>	<i>₹6,56,232</i>
<i>M/s. C. Kishanlal (HUF)</i>	<i>₹7,00,000</i>
<i>C. Shri Sivaraja Nadar</i>	<i>₹10,59,840</i>
<i>Shri. B.K. Vimal Chand</i>	<i>₹34,00,000</i>
<i>Smt. V. Suvetha</i>	<i>₹9,00,000</i>
<i>Smt. Kanchan Bai</i>	<i>₹23,50,000</i>
<i>Total</i>	<i>₹90,66,072/-</i>

7. Reasons for disbelieving the above claims of loans/advances, cited by the Id. Assessing Officer were as under:-

- (i) M/s. C. Kishanlal & Sons ₹6,56,232/- - Though it was claimed as cash balance held by the assessee, income returned by the assessee from his business was only ₹2,20,000/- and assessee could not have had cash of ₹6,56,232/- with him.

- (ii) M/s.C. Kishanlal & Sons (HUF) ₹7,00,000/- - Though assessee claimed it as an advance received from HUF on leasing an agricultural land, no details of the land so leased were made available.
- (iii) Shri. Sivaraja Nadar ₹10,59,840/- - Against the claim of the assessee that he had received ₹60,00,000/- from Shri. Sivaraja Nadar, as advance for purchase of land at Mangadu, trial Balance as on 31.03.2006, reflected a sum of ₹49,40,160/- only. Balance ₹10,59,840/- remained unexplained.
- (iv) Shri. B.K. Vimalchand ₹34,00,000/- - Shri. B.K. Vimalchand was the son of the assessee, and had no sufficient funds in his account. Income returned by Shri. B. K. Vimalchand for impugned assessment year was only ₹1,65,818/-. Bank account of Shri. B.K. Vimalchand reflected six deposits of ₹5,00,000/- each on 19.09.2005 and a sum ₹30,00,000/- was transferred on the very same date to assessee's account. There was no source shown for the deposits in the bank account.
- (v) Smt. V. Suvitha ₹9,00,000/- - Smt. V. Suvitha, daughter-in-law of the assessee, though she had confirmed that she had given ₹9,00,000/- to the assessee, she was only a

housewife and her income was very low.

- (vi) Smt. Kanchan Bai, ₹23,50,000/- - Though Smt. Kanchan Bai who was assessee's wife, confirmed the above payment to the assessee, she also was only a housewife with very low income.

8. Assessee's appeal before the Id. Commissioner of Income Tax (Appeals) against the additions aggregating to ₹90,66,072/- disbelieving the claim of receipt of loans/ advances, did not meet with any success. Though the assessee argued that all the above loans were reflected in the returns of the respective parties, Id. CIT(A) was not appreciative of such contention.

9. Now before us, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that cash balance of ₹6,56,232/- with the assessee ought not have been disbelieved. According to him, assessee's capital account balance as on 01.04.2005 was ₹62,83,274/- and assessee had gross total income of ₹10,64,876/- during the previous year relevant to assessment year 2006-2007. Thus, according to him, cash balance of ₹6,56,232/- ought not have been disbelieved.

10. Alluding to the sum of ₹7,00,000/- claimed to have been received from Shri. C. Kishnalal & Sons (HUF), Id. Authorised Representative submitted that the said amount was reflected in the Trial Balance and return of income filed by the said HUF. As per the Id. Authorised Representative, HUF had earlier advanced a sum of ₹10,20,000/- to one Shri. M. Venkatachalam who had repaid it in two installments during the relevant previous year. According to him, HUF had advanced ₹7,00,000/- to the assessee out of the said amount.

11. Viz-a-viz, addition of ₹10,59,840/-, out of ₹60,00,000/- received from Shri. Shivraj Nadar, contention of the Id. Authorised Representative was that the said sum was duly reflected in the ledger of the assessee. According to him, the sum of ₹10,59,840/- was adjusted against agricultural land sold by the assessee as power agent and after such adjustments the balance due to Shri. Shivraj Nadar was ₹49,40,160/-. According to him, this did not deplete the availability of ₹60,00,000/- with the assessee.

12. Coming to the claim of advance of ₹34,00,000/- from Shri. B.K. Vimalchand, Id. Authorised Representative submitted that the amount was duly reflected in the return filed by Shri. B.K. Vimalchand for assessment year 2006-07. According to him, Shri. B.K. Vimalchand in the previous year relevant to assessment year 2005-06, had given

a sum of ₹34,00,000/- to one Shri. Gopal Nayakar and one Shri. Ethiraj which were refunded during the previous year relevant to the impugned assessment year. Source according to the Id. Authorised Representative, stood proved.

13. Viz-a-viz, the sum of ₹9,00,000/- claimed as received from Smt. V. Suvitha, daughter-in-law of the assessee, contention of the Id. Authorised Representative was that the said amount was duly reflected in the Income Tax return filed by her, and also corroborated by a letter of confirmation.

14. Adverting to claim of receipt of ₹23,50,000/- from Smt. Kanchan Bai, who was assessee's wife, contention of the Id. Authorised Representative was that Smt. Kanchan Bai was into pawn broking business since 1972 and was a regular assessee . According to him, in the tax return filed by her, the advance of ₹23,50,000/- given to her husband was clearly reflected.

15. Per contra, Id. Departmental Representative strongly supporting the orders of the lower authorities submitted that assessee could not properly explain the source of even one creditor. According to him, each of the allged creditors were closely related to the assessee and had only very negligible income. As per Id. Departmental Representative, the claim of receipt of such amounts from close

relatives was only a story made up by the assessee for justifying the source of ₹4,65,00,000/- advanced by him to M/s. Surana Corporation Limited.

16. We have considered the rival contentions and perused the orders of the authorities below. It is not disputed that total claim of receipts of loans/ advances made by the assessee came to ₹1,50,06,232/-, out of which Id. Assessing Officer had accepted the evidence for ₹59,40,160 /- and made an addition of ₹90,66,072/-. Breakup of the sum disbelieved by the Id. Assessing Officer is reproduced at para 6 above. First item therein is a claim of the assessee that ₹6,56,232/- had come out of his cash balance. Paper book page No.109, which gives the capital account of the assessee for the period 01.04.2005 to 31.03.2006, reflects opening balance of ₹62,83,274.73 and closing balance of ₹89,11,499.75. Transactions in this capital account do not show any amount to have been utilized for effecting payment to M/s.Surana Corporation. If it had come out of the cash balance, as claimed by the assessee, it would be definitely reflected in his capital account. In the circumstances, we are not inclined to accept the claim of the assessee that the sum of ₹6,56,232/- came out of his capital account. The sum remains unexplained, without source.

17. Coming to the second item which is the claim of the assessee that a sum of Rs.7,00,000/- was received from C.Kishnalal & Son (HUF), Income Tax return of the said HUF for assessment year 2006-07 is placed at paper book page 125. The said Income Tax return has been filed on 23.02.2007 much prior to the date of search. Trial Balance as on 31.03.2006, filed alongwith the said return, copy of which is available at paper book page 127 clearly shows an agricultural land advance of Rs.7,00,000/- paid to C. Kishanlal. In our opinion, return of C.Kishnalal & Son (HUF) having been filed much earlier to the date of search, there can be no reason to disbelieve the advance shown in such return. It may be true that assessee could not produce evidence for the advance paid by C.Kishnalal & Son (HUF) to Shri. M. Venkatachalam in an earlier year, and returned by the latter in the relevant previous year. However, it is clear from the Wealth Tax return filed by C.Kishnalal & Son (HUF), copy of which is placed at paper book pages 121 to 124, that the said HUF was having agricultural land. In the circumstances, we are of the opinion that the claim of receipt of Rs.7,00,000/- from C.Kishnalal & Son (HUF) ought not have been disbelieved.

18. Coming to the third item which is a claim of advance of Rs.60,00,000/- from Shri. Shivraj Nadar, what we find is that Id. Assessing Officer had accepted it, but for a sum of Rs.10,59,840/-.

Ledger page of Shri. Shivraj Nadar in the books of the assessee is placed at paper book page No.155. Sale agreement pursuant to which such the sum was received by the assessee is placed at paper book pages 152 and 153. Shri. Shivraj Nadar had confirmed the payment through a letter dated 31.3.2006 placed at paper book page 154. Said confirmation letter reads as under:-

S.SIVARAJA.

No.159, Arcot Road,  
Porur,  
Chennai 600 116.  
Date: 31.03.2006.

CONFIRMATION

*I hereby confirm having advanced a sum of Rs.20,00,000/- on 28.09.2005, Rs.20,00,000/- on 30.09.2005 and Rs.20,00,000/- on 03.10..2005 in all total Rs.60,00,000/- paid to Shri. C.Kishanlal, residing at No.23, Kutchery Road, Mylapore, Chennai — 600 004 towards the purchase of Agricultural land at Mangadu Village, Sriperurnudur Taluk, After Sale of Rs.10,59,840/- adjusted in the advance. Balance Rs.49,40,160/- is Advance till date.*

Sd/-  
SIVARAJA  
PAN NO. ARNPS4470Q

To  
Shri. C.Kishanlal  
No.2 3, Kutchery Road,  
Mylapore, Chennai —600 004.

Ledger page of Shri. Shivraj Nadar in the books of the assessee clearly reflected all the above transactions. In our opinion, receipt of

Rs.60,00,000/-has been duly shown in assessee's books. Sum of Rs.10,59,840/- was only an adjustment due to sale of land and this did not result in depletion of the funds available with the assessee. We are of the opinion that assessee has substantiated the claim of receipt Rs.60,00,000/- in full.

19. Fourth item is a claim of Rs.30,00,000/- received from Shri. B. K. Vimalchand. What we find is that the Auditor of Shri. B. K. Vimalchand had given a confirmation to the Id. Assessing Officer, copy of which is available at paper book page 149 and it read as under:-

*RICABCHAND&CO., .  
Chartered Accountants  
M.GOUTAMCHAND JAIN,B.COM., F.C.A*

*Phone:25387313  
No.121,N.S.C.BOSE ROAD,  
Sowcarpet,  
Chennai-6000079  
Date :11.03 2014*

*The Assistant Commissioner of Income Tax,  
Central Circle III (3),  
Chennai- 600034.*

*Sir*

*Ref: Shri.C.Kishanlal, PAN : AAKPK 7263 K/2006-2007*

*Sub : Source for money advanced by Shri,B.K.Vimalchand to  
Shri.C.Kishanlal- regarding.*

*With reference to above and we state that Shri.B.K,Vimalchand has deposited a sum of Rs.3000000/- by way of cheque during the ass.year 2006-2007 with Shri C.Kishanlal. The source for above deposited made by Shri.B.K.Vimaichând is out of refund by Agriculture land advance of Rs.3400000/- which was made by him during the asst.year 2005-2006. We are herewith enclosing the financial statement of Shri B.K.Vimalchand relating*

*to asst.year 2005-06. We are also herewith enclosing intimation of 143(1) of the I T.Act of relating to asst.year 2005-2006 and 2006-2007 of Shri.B.K.Vimalchand as well as his Bank statement for year ended 31.03.2006. We hope the above will clarify the matter regarding source of money advanced by Shri.B.K.Vimalchand to Shri.C.Kishanlal during the asst.year 2006-07.*

*Thanking you*

*Yours Faithfully,*

*For RICAB CHAND & CO.,  
Chartered Accountants*

*End:*

- 1. Financial Statement of Shri.B.K.Vimalchand relating to asst.year 2005-06.*
- 2. Xerox copy of intimation B.K.Vimalchand relating to asst,year 2005-06 & 2006-07.*
- 3. Xerox copy of Bank Statement of Shri.B.K.Vimalchand for the period 01.04.2005 to 31.03.2006.*

The confirmation letter clearly indicate that Shri. B. K. Vimalchand was an assessee and filing Income Tax return regularly. The amounts were given through cheques. It is true that there were deposits aggregating to Rs.30,00,000/- in the bank account of Shri. B. K. Vimalchand on 19.09.2005 and the sum of Rs.30,00,000/- was given by Shri. B. K. Vimalchand to the assessee on the very same day. However, nothing has been brought on record by the Revenue to show that credits in the bank account of Shri. B. K. Vimalchand had come out of the funds of the assessee. That apart, the trial Balance as on 31.03.2006 of Shri. B. K. Vimalchand filed alongwith his return for assessment year 2006-07, placed at paper book page 146 clearly show a sum of Rs.31,61,400/- in the credit of Shri. C.Kishanlal.

Shri. B. K. Vimalchand had filed his return for assessment year 2006-07 on 19.10.2006 much earlier to the date of the search and acknowledgment is placed at paper book page 142. In such circumstances, we are of the opinion that there was no reason to disbelieve the loan of Rs.30,00,000/- received from Shri. B. K. Vimalchand.

20. Coming to the fifth item which is a claim loan of Rs.9,00,000/- received from Smt. V. Suvitha, daughter-in-law of the assessee, we find that Smt. V. Suvitha had filed her Income Tax return for assessment year 2006-07 on 19.10.2006. Acknowledgement has been placed at paper book page 156. Trial balance of Smt. V. Suvitha as on 31.03.2006 placed at page book page 158 reflected an agricultural loan advance of Rs.9,00,000/- to Shri. C. Kishnalal. In such circumstances, conclusion of the Revenue that Smt. V. Suvitha had no sufficient income to give an advance of Rs.9,00,000/- to the assessee cannot be accepted. Just because Smt. V. Suvitha had total income of Rs.1,38,088/- only for the impugned assessment year, we cannot say that Smt. V. Suvitha did not have the wherewithal to give a loan of Rs.9,00,000/- to the assessee.

21. Sixth item is a claim of loan of Rs.23,50,000/- received from Smt.Kanchan Bai, wife of the assessee. Here also we find that Smt.Kanchan Bai had given a confirmation which reads as under:-

Kanch Bai

No.23, Kutchery Road,  
Mylapore,  
Chennai —600 004.

Date: 31.03.2006

CONFIRMATION

I hereby confirm having advanced a sum of Rs.25,40,000/- ( Rupees Twentyfive Lakhs Forty Thousand ) (Details as below ) to Shri. C.Kishanlal, residing at No.23, Kutchery Road, Mylapore, Chennai — 600 004 towards lease advance for Agricultural land situated at No.41, Laxmipuram Village, Sri-perumpudur Taluk, Thiruvallur District comprised in Survey no. 23/4A of an extent 0 acre 31 cents, Survey no. 59/1A1 of an 0 acre 02 cents, Survey no. 59/1B2 of an extent 0 acre 07 cents, Survey no. 59/2A1 of an extent 0 acre 26 cents, Survey no. 34/3B of an extent 0 acre 28 cents, Survey no. 34/3A of an extent 0 acre 04 cents, Survey no. 30/2 of an extent 0 acre 02 cents, Survey no. 28/1 of an extent 0 acre 59 cents, and Survey no. 28/2 of an extent 0 acre 58 cents and Agricultural Land situated at No. 49, Veeraragavapuram Village, Tiruttani Taluk, Thiruvallur District comprised in Survey No. 219/2A of an extent 0 acre 91 cents, Survey No. 220/1 of an extent 1 acre 25 cents and Survey No. 170/15 of an extent 0 acre 86 cents.

18.10.2005	23,50,000.00
24.03.2005 Further Advance	<u>1,90,000.00</u>
Total	Rs. <u>25,40,000.00</u>

Sd/-

KANCHAN BAI  
PAN NO. AAIPK6835H

To  
Shri. C.Kishanlal  
No.23, Kutchery Road,  
Mylapore, Chennai — 600 004.

Source for the above amount was given by her through a letter dated 13.11.2013 placed at paper book page No.165. This letter read as under:-

Date: 13.11.2013.

Kanchan Bai,  
No 23, Kutchery Road,  
Mylapore, Chennai—600 004.

To  
The Assistance Commissioner of Income Tax,  
Central Circle —III (3)  
Chennai-600 034.

Sir,

Ref: PAN.No: AAIPK 6835 H / 2006-07

Sub: Income Tax assessment —assessment year 2006-07.Details of  
for Agri.Land / Plot given by me.

With reference to the above, I state that I have given a sum of Rs.2540000/- (Rs. 23,50,000 on 18/10/2005 and Rs 1,90,000 on 24/03/06) as security / margin money to Shri C Kishan Lal by way of cash for leasing out the agriculture land measuring 2.17 acres at Agaraharam Village,Poonamalee Taluk,Thiruvallur District and measuring Acres at Veeraghavapuram, Agri.Land measuring 1.45 acres at Mangadu Village and 2.39 acres at Padamatikhandriga village sullurpet mandal as per entered with him. The Lease was terminated and the amount was received back by me by way of Cheque as follows:

<u>cheque No</u>	<u>Date</u>	<u>Amount</u>
488319	11.05.2010	440000.00
982781	15.09.2010	700000.00
982782	15.09.2010	600000.00
982783	15.09.2010	400000.00
982784	15.09.2010	<u>400000.00</u>
	Total	<u>2540000/-</u>

I hope the above will explain the details of security / margin money.

Thanking you,

Yours faithfully.

Sd/-  
(Kanchan Bai)

Smt.Kanchan Bai was an assessee and had filed her return for  
assessment year 2006-07 on 31.10.2006. Trial Balance of

Smt.Kanchan Bai as on 31.03.2006 clearly reflected an agricultural land advance of Rs.25,40,000/- paid by her to Shri. C. Kishnalal. Hence in our opinion, there was no reason to disbelieve the advance of Rs.23,50,000/- claimed to have received been from Smt.Kanchan Bai.

22. Based on the discussions in para 16 to 21 above, we delete the additions made by the lower authorities with regard to the following loans/advances claimed by the assessee.

M/s. C. Kishnalal & Sons	:	Rs.7,00,000/-
Shivraj Nadar	:	Rs.10,59,840/-
B.K. Vimalchand	:	Rs.30,00,000/-
V.Suvitha	:	Rs.9,00,000/-
Kanchan Bai	:	Rs.23,50,000/-

Balance addition is sustained. Grounds 3 to 5 are treated as partly allowed.

23. Vide it grounds 6 & 7, assessee assails an addition of ₹3,14,93,768/- made disbelieving the claim of sale proceeds of jewellery belonging to his relatives.

24. As already mentioned by us at para 5 above, source for the investment of Rs.4,65,00,000/- made by the assessee with M/s. Surana Corporation was partly explained by the assessee as coming out of sale proceeds of jewels of relatives. Assessee had stated before the Id. Assessing Officer that proof for sale of jewellery aggregating to ₹3,14,93,768/- belonging to his family members, were handed over to Shri. Saravana Prabhu, Inspector of Police, Egmore, when a police complaint was filed by the assessee against M/s. Surana Corporation. However, it seems assessee was unable to furnish any confirmation or acknowledgment for handing over the bills to the police authorities. As per the Id. Assessing Officer, Superintendent of Police, CB-CID, had informed through his letter dated 27.01.2014 that no such bills were handed over by the assessee. Claim of the assessee before Id. Assessing Officer was that his family members had in their respective Wealth Tax returns shown the jewellery owned by them and therefore the sale of such jewellery by him was genuine. However, the Id. Assessing Officer was of the opinion that there was nothing on record to prove the sale of such jewellery. The claim was disbelieved and an addition of ₹3,14,93,768/- was made. The said addition was confirmed by the Id. Commissioner of Income Tax (Appeals) as well.

25. Now before us, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that copies of the bills for sale of the jewellery were given to the Crime Branch Police, in connection with the cheating case filed by the assessee against Shri. Dharmendra Bafna and M/s. Surana Corporation Ltd. According to him, ownership of the jewellery by the relatives of the assessee was not disputed by the lower authorities. Submission of the Id. Authorised Representative was that confirmations were available from each of the relatives who had given the jewellery as deposit with the assessee. According to him, lower authorities fell in error in disbelieving the sale of jewellery claimed by the assessee.

26. Per contra, Id. Departmental Representative strongly supporting the orders of the lower authorities submitted that letter from Superintendent of Police went against the assessee. According to him, the Superintendent of Police had clearly stated that assessee had not handed over any bills for sale of jewellery to Shri. Saravana Prabhu, Inspector of Police.

27. We have considered the rival contentions and perused the orders of the authorities below. Declarations filed by the assessee from his relatives with regard to the jewellery deposited by them with the assessee are placed at paper book pages 174 to 189. Residential

address given by all such persons as are Kutcheri Road, Mylapore. Residentce numbers given are New No.43 (Old No.24) and New No.41 (Old No.23) except for the declarations of Shri. C. Kamal Chand and Smt. K. Susila. In other words almost all such persons were residing at Old No.23 or Old No. 24 of Kutcheri Road, Mylapore. Panchanama prepared at the time of search placed at paper book page No.28 indicate the place of search as Old No.23, Kutcheri Road. It is not disputed by the Revenue that the persons from whom assessee had claimed receipt of gold ornaments as deposits were all his close relatives. In the Crl. M.P. No.7934/15 filed by the Inspector of Police before Hon'ble Principal District and Sessions Judge, Chennai placed at paper book pages 207 to 214 in connection with the case filed by the assessee, it is stated by the said officer as under at para 8:-

*8. I submit that investigation done by the CS CID discloses the following facts:*

*I. Lakshmi Chand Bafna who is the Paterhal uncle of the accused Pinku @ Bafna. The De facto Complainant Kishanlal was introduced to the accused during the month of October 2005 at R.B. Jewelry, situated in No.1411 8, Veerappan St., Sowcarpet, Chennai by Lakshmi Chand Bafna.*

*ii. The petitioner /accused conspired together with intent to cheat the De facto Complainant with dishonest intention represented and induced the De facto Complainant during October 2005 at Chennai to enter into the Gold Trade business to earn more profit through them for the use of the Trust created by the De facto Complainant.*

iii. *The De-facto Complainant collected funds in the form of cash and jewels from the relatives for investing the amount in Gold Trade business and decided to use the profit for the compound wall erection at the Trust at Sulurpet.*

iv. *The De-facto Complainant collected Rs. 39,37,910/- by way of cash and jewels from one Vimal Chand, Rs. 53,51,930/- by mortgaging the land and jewels from Tmt. Kanchan Bai, Rs. 70 lakhs worth of jewels from Tmt.Prema Bai, Rs. 40 lakhs by cash and jewels from Tr. Kamalchand, Rs. 36 lakhs by way of jewels from Tmt. Tr. Abayakumar, Rs. 17 lakhs by cash and jewels from Susila Bai, Rs. 40 lakhs by mortgaging the land and jewels from Tmt, Suvitha, Rs. 31 lakhs by way of jewels from Tmt.Sasikala, Rs. 2 lakhs by cash from Ti. Jeevaraj, Rs. 2 lakhs by cash from Tr. Kalyanmal, Rs. One lakh by cash from Tr. Pukkiraj, Rs. 7 lakhs worth of jewels from Selvi Priyanka and his own funds. Thus in all he has collected Rs. 4.65 crores. The documents collected during investigation all are vouched the source for the by the de-facto complainant.*

v. *The De-facto Complainant entrusted the above said Rs. 4.65 crores to the petitioner I accused in between 06-10-2005 and 17-11-2005 in several occasions at R.B. Jewellery, Sowcarpet, Chennai, believing the version of the accused. Further on 05-10-2005 as genuine that more profits would be returned if invested in gold trade. The De-facto Complainant would nothave parted the above sum but for the dishonest inducement made by the petitioner / accused. The De-facto Complainant was also made to believethat the business will be done by following the norms in practice such as obtaining trade order agreement from the investors, execution of trade order, furnishing, execution order, execution time and dated, Gold Price etc. But they did not entertain the gold business and not even return the principal and profit amount. Thus the Petitioner I accused dishonestly induced the De-facto Complainant to part with Rs. 4.65 crores to them and then cheated the de-facto complainant.*

In our opinion, the above clearly indicates that documents collected during investigation were vouched for the source for invested amount. There is no case for the Revenue that during the course of search, any of the jewellery deposited by the close relatives with the

assessee, were found or were available. If it was still with the assessee or such relatives, who were all living with the assessee or in the very next door, it would have been found by the Inspecting Officials. Admittedly, nothing of the sort was found. As mentioned by us, declarations of the relatives placed at paper book pages 174 to 204 has not been doubted by the lower authorities. Their doubt is on claim of the assessee that such jewellery was sold by the assessee. In our opinion, report filed by the Investigating Officer before Principal District and Sessions Judge when seen along with the failure of the Revenue to find any such jewellery at the time of search, clearly indicate that the jewellery deposited by the close relatives with the assessee were sold by the latter. Preponderance of probability, in our opinion, is on the side of the assessee. We are of the opinion that the claim of the assessee that a sum of ₹3,14,93,768/- had come out of sale proceeds of jewellery deposited by his relatives with him, ought not have been disbelieved. Addition of ₹.3,14,93,768/- stands deleted. Grounds 6 & 7 of the assessee stand allowed.

28. Vide its grounds 8 & 9, grievance of the assessee is on an addition of ₹14,98,780/- made under the head long term capital gains.

29. Ld. Counsel for the assessee submitted that assessee had sold two plots at Mangadu for a sale consideration of ₹3,59,680/- and

paid capital gains thereof. According to him, Id. Assessing Officer had applied Section 50C of the Act and substituted the guideline value and made an addition of ₹14,98,780/-. According to him, Section 50C of the Act ought not have been applied on the sale of the land.

**30.** Per contra, Id. Departmental Representative strongly supported the orders of the lower authorities.

31. We have considered the rival contentions and perused the orders of the authorities below. Id. Assessing Officer has given a clear finding that actual sale effected by the assessee was ten plots and its guideline value came to ₹16,71,475/-. After giving allowance for indexed cost of land of ₹1,72,695/-, Id. Assessing Officer had computed the capital gains at ₹14,98,780/-. Assessee had through his letter dated 14.03.2014 agreed for adoption of the guideline value u/s.50C of the Act. Having agreed for adopting guideline value, we are of the opinion that assessee cannot now take a grievance that such Section was wrongly applied. Thus, we do not find any merits in grounds 8 & 9 of the assessee. These grounds are dismissed.

32. Now, we take up the appeal of the assessee in ITA No.2931/CHNY/2017, which is directed against an order dated 11.10.2017 of Id. Commissioner of Income Tax (Appeals)-19, Chennai for assessment year 2012-2013.

33. Assessee has altogether raised ten grounds of which grounds 1 & 2 are general needing no specific adjudication and grounds 9 & 10 are on levy of interest under Section 234A & 234B of the Act which are consequential in nature.

34. Vide its grounds 3 & 4, assessee is aggrieved on an addition of ₹3,22,948/- considered as unexplained cash.

35. Ld. Counsel for the assessee submitted that cash of ₹4,50,000/- was found at the time of search on 04.01.2012. However, according to him, this was properly explained through cash books maintained by the assessee. According to him, the main cash book as on 31.12.2011 reflected cash balance of ₹3,11,722/-, but this was not considered. According to him, if this was considered, the deficit would come down to ₹11,226/- only.

36. Per contra, Id. Departmental Representative submitted that main cash book claimed by the assessee was never found at the time of search. According to him, it cannot be relied upon.

37. We have considered the rival contentions and perused the orders of the authorities below. It is not disputed that cash of ₹4,50,000/- was found at the time of search. Pawn register found at the time of search reflected cash balance of ₹1,27,052/- only. In the circumstances, we are of the opinion that lower authorities were

justified in ignoring any other books produced by the assessee at a later stage. The addition of ₹3,22,948/-, in our opinion was rightly made. Grounds 3 and 4 of the assessee stand dismissed.

38. Vide its grounds 5 & 6, assessee is aggrieved on an addition of ₹1,26,76,768/- considered as unexplained investment in silver bars.

39. Ld. Counsel for the assessee submitted that at the time of search 325.334 kgs of silver in the form of silver bars were found and seized by the Department. According to him, out of the above 325.334 kgs, 243.784 kgs belonged to assessee's mother. Contention of the Id. Authorised Representative was that assessee's mother, Smt. Saya Bai had declared such silver under VDIS scheme in 1997. However, according to him, this was disbelieved by the lower authorities for non availability of evidence for conversation of silver-ware to silver bars. According to him, assessee ought have been given credit for the silver already declared by his mother.

40. Per contra, Id. Departmental Representative submitted that bars found at the time of search were imported and assessee could not show that silver utensils were converted into imported bars.

41. We have considered the rival contentions and perused the orders of the authorities below. It is not disputed that silver weighing 243.784 kg were declared by assessee's mother under VDIS scheme

in 1997. It may be true that the silver-ware was declared in the VDIS return as house hold articles. However, it is not disputed that Smt. Saya Bai mother of the assessee lived with the assessee till her demise. Claim of the assessee is that his father had converted the silver articles to silver bars which were found at the time of search. In our opinion, if assessee had with him any silver-ware other than the silver bars, it would have definitely come to the notice of the search officials at the time of the search. It is not disputed that assessee's mother and father lived with the assessee. Hence preponderance of probability is that the bars found at the time of search was represented by conversion of silver-ware of assessee's mother. We are of the opinion that out of 325.334 kgs of silver bars found at the time of search, assessee should be given credit for 243.784 kgs owned by his mother. We therefore set aside the orders of the lower authorities and remit the issue back to the Id. Assessing Officer for giving relief to the assessee proportionate to the value of 243.784 kg of silver out of total 325.334 kgs found at the time of search. Grounds 5 & 6 of the assessee are treated as partly allowed.

42. Vide its grounds 7 & 8, grievance of the assessee is that agricultural income of ₹89,174/- was not accepted by the lower authorities.

43. Ld. Counsel for the assessee submitted that agricultural income of ₹89,174/- was earned from 3.26 acres of land owned by the assessee. According to him, proof of ownership of the land was filed before lower authorities. As per the Id. Authorised Representative, assessee had shown agricultural land in his Wealth Tax returns filed prior to the date of search. According to him, the claim of agricultural income was unjustly disallowed.

44. Per contra, Id. Departmental Representative submitted that there was no details or evidence given by the assessee for earning any agricultural income.

45. We have considered the rival contentions and perused the orders of the authorities below. It is not disputed by the Revenue that assessee owned 3.26 acres of land. It might be true that assessee was unable to produce evidence for agricultural cultivation and earning of agricultural income. Nevertheless, we cannot say that assessee could have earned no agricultural income from a holding of 3.26 acres of land. We are of the opinion that assessee ought have been given credit of agricultural income at the rate of ₹5,000/- per acre. Accordingly, we restrict the addition to ₹72,874/-. Grounds 7 & 8 of the assessee are partly allowed.

46. Now, we take up appeals of the assessee in ITA Nos.2929 & 2930/CHNY/2017 which are against levy of penalty u/s.271D and 271E of the Act respectively.

47. Ld. Assessing Officer had levied the penalty since assessee has accepted loans in excess of ₹20,000/- in cash, aggregating to ₹10,00,000/- from six persons and repaid ₹3,00,000/- in cash to two persons. Ld. Assessing Officer took a view that assessee having violated Section 269SS and Section 269T of the Act levy of penalty u/s.271D and 271E of the Act was called for . Penalty of ₹10,00,000/- was levied u/s.271D of the Act and ₹3,00,000/- was levied u/s.271E of the Act, which were confirmed by Id. Commissioner of Income Tax (Appeals) on the appeals of the assessee.

48. We have heard the rival counsel. We find that assessee could not give any reasonable ground for accepting loans in cash and repaying loans in cash. Though assessee argued before lower authorities that amounts were received as advance against sale of agricultural land, no evidence to substantiate such claim was produced. In the absence of any reasonable cause for accepting loans in cash and repaying loans in cash, we are of the opinion that there was clear violation of Section 269SS and Section 269T of the Act. Levy

of penalty u/s.271D and 271E in our opinion was justified. We do not find any reason to interfere with the orders of the lower authorities.

49. This leaves us with the appeal of the assessee M/s. Kishanlal & Sons (HUF) in ITA No.2932/CHNY/2017 for assessment year 2006-2007.

50. Nine grounds are taken by the assessee of which grounds 1 & 2 are general needing no specific adjudication. Grounds 8 & 9 are on levy of interest u/s.234A and 234B of the Act, which are consequential in nature.

51. Grounds 3 to 7, assail an addition made for capital gains on sale of jewellery, and what is claimed as erroneous computation of cost of acquisition of the jewellery.

52. Ld. Authorised Representative submitted that assessee -HUF had given jewellery weighing 604.800 gms to Shri. C. Kishanlal as deposit. According to him, HUF had never required Shri. C. Kishanlal to sell such jewellery. As per the Ld. Authorised Representative, Shri. C. Kishanlal had sold the jewellery without the knowledge of HUF. Thus, according to him, capital gains arising on such sale could not have been taxed in the hands of the HUF. In any case according to him, while computing the long term capital gains, cost of acquisition was taken at 50% which was incorrect. According to him, the HUF had

declared such jewellery in its Wealth Tax returns from assessment years 2001-02 onwards. As per the Id. Authorised Representative, cost of jewellery had to be reckoned considering the value as on date of acquisition of such jewellery by the HUF.

**53.** Per contra, Id. Departmental Representative strongly supported the orders of the lower authorities

54. We have considered the rival contentions and perused the orders of the authorities below. Contention of the Id. Authorised Representative is that Shri. C. Kishanlal had sold the jewellery given to him by the HUF without the permission of the HUF. We are afraid, we cannot accept the claim of the assessee. This is due to the reason that Shri. C. Kishanlal to whom the jewellery was given was the Kartha of the assessee (HUF). Hence, he cannot say that he was unaware of the sale of jewellery. Hence, ground of the assessee assailing the addition made long term capital gains is dismissed. However viz-a-viz, cost of acquisition, it is an admitted position that Id. Assessing Officer had considered such cost at 50% of the sale value. Contention of the assessee is that the jewellery which was sold was reflected in the Wealth Tax return of the HUF from assessment year 2001-02. We direct the Id. Assessing Officer to verify this claim of the assessee and consider the cost shown by the assessee in the Wealth Tax return for assessment year 2001-02, for the purpose of computing the long

term capital gains. Grounds 3 to 6 are dismissed whereas ground No. 7 is allowed for statistical purpose.

55. To summarize the results, appeals of the assessee in ITA Nos.2928, 2931 and 2932/CHNY/2017 are partly allowed, whereas its appeals in ITA Nos.2929 and 2930/CHNY/2017 are dismissed.

Order pronounced on Thursday, the 20th day of December, 2018, 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:20th December, 2018

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        |