

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE S/SHRI CHANDRA POOJARI, AM &amp; GEORGE GEORGE K., JM</b>

I.T.A. Nos. 45 to 51/Coch/2014
Assessment Years : 2002-03-2008-09

Shri O.G. Sunil, 13-B, Link Horizon, Marine Drive, Kochi-11. [PAN:AJOPS 4921L]	<b>Vs.</b>	The Deputy Commissioner of Income-tax, Central Circle-2, Ernakulam.
<b>(Assessee-Appellant)</b>		<b>(Revenue-Respondent)</b>

I.T.A. Nos. 594 to 596/Coch/2018
Assessment Years : 2006-07 to 2008-09

Asha Menon (Asha Sunil) 13B, Link Horizon, Marine Drive, Kochi-11. [PAN:AIRPM 9437E]	<b>Vs.</b>	The Assistant Commissioner of Income-tax, Central Circle-2, Ernakulam.
<b>(Revenue-Appellant)</b>		<b>(Assessee-Respondent)</b>

S.P. Nos. 51 to 53/Coch/2018 (Arising out of I.T.A. Nos. 594 to 596/Coch/2018)
Assessment Years : 2006-07 to 2008-09

Asha Menon (Asha Sunil) 13B, Link Horizon, Marine Drive, Kochi-11. [PAN:AIRPM 9437E]	<b>Vs.</b>	The Assistant Commissioner of Income-tax, Central Circle-2, Ernakulam.
<b>(Revenue-Appellant)</b>		<b>(Assessee-Respondent)</b>

<b>Assessee by</b>	Shri Mathew Joseph, CA
<b>Revenue by</b>	Shri Sudhanshu Shekhar Jha, CIT(DR) & Smt. A.S. Bindhu, Sr. DR

<b>Date of hearing</b>	11/04/2019
<b>Date of pronouncement</b>	30/04/2019

### **ORDER**

Per CHANDRA POOJARI, AM:

These appeals filed by different assesses are directed against the different orders of the CIT(A)-III, Kochi in the case of the above assesses for the assessment years 2002-03-2008-09..

ITA Nos. 45 to 51/Coch/2014: (Shri O.G. Sunil)

2. The assessee has raised the following grounds in its appeal in ITA No. 45/Coch/2014:

- 1) The CIT(A) has gone wrong in confirming the addition made by the Assessing Officer to the income returned.

i) Unexplained bank deposits	Rs.15,04,891
ii)Unexplained credit (Suspense Account)	Rs.10,77,219
iii) Unexplained expenditure (suspense account): Rs.487786 or	
iv) Cash deficiency Rs.1169800	Rs.11,69,800
v) Withdrawals from bank as per cash flow	<u>Rs. 2,91,600</u>
Total	<u>Rs.40,43,510</u>
Less: Deposit into bank account as per cash flow	<u>Rs. 8,76,500</u>
	Rs.31,67,010
Add: Foreign Travel	<u>Rs. 5,00,000</u>
Total unexplained investment	<u>Rs.36,67,010</u>

2. The CIT(A) has gone wrong in omitting to consider the statement of cash flow prepared from the bank accounts, the details of bank transaction, net wealth statement, statement of peak debit in the statement of cash flow and the explanations filed by the assessee to the CIT(A) and to the Assessing Officer as per the Remand Order.

3. The CIT(A) has gone wrong in disposing off the appeal without granting sufficient opportunity to the assessee to make submissions and to cross examine the evidences seized at the time of search.

4. For the above reasons and other arguments that may be put forward at the time of hearing the assessee may submit that the assessment is liable to be cancelled.

Similarly, the assessee challenged the additions towards unexplained investments in other appeals in ITA Nos. 46 to 51/Coch/2014 wherein there is only change in figures.

2. These appeals came up for consideration before this Tribunal and disposed of by this Tribunal vide order dated 08/08/2014 wherein it was held as under:

*"23. According to the Id. representative, Shri CBM Warriar, the assessing officer has taken Rs 15,04,891 as unexplained bank deposit. According to the Id. representative, the total deposit was Rs.19,54,243. The assessing officer has failed to take cheque deposit to the extent of Rs 4,48,828/-. The Id. representative very fairly submitted that the assessee could not explain the source for making these deposits. However, it is from real estate business. Therefore, according to the Id. representative, only the net amount should be taken and not the gross amount. According to the Id. representative, the assessee has incurred expenditure after withdrawing the same from the bank account. Therefore, the expenditure should be deducted from the total deposits. Referring to the unexplained credits to the extent of Rs.10,77,219 the Id. representative submitted that this unexplained credit might have been used for making deposit in the bank account Therefore, it should not be taken as income of the assessee. Cash withdrawal from the bank to the extent of Rs.2,91,600 was also taken as income of the assessee. According to the Id. representative, once the deposit was taken as income, the withdrawal should not be taken as income once again.*

*24. Referring to the foreign travel expenses, the Id. representative submitted that the assessing officer made addition of Rs 5 lakhs towards foreign travel expenses. According to the Id. representative, the foreign travel expenses were made from the withdrawals made from the bank account.*

*25 On the contrary, the Id. DR, Shri M Anil Kumar submitted that during the course of search operation several materials were found with regard to deposit of money in the bank and investments. The assessee has also filed a cash flow statement before the assessing officer during the course of assessment proceedings For the assessment year 2002-03, the assessee has disclosed only a deposit of Rs. 8,76,500 in the cash flow statement. However, the material found by the assessing officer disclosed deposit of Rs. 15,04,891. The assessee has also shown credit to the extent of Rs. 10,77,219. However, the details were not furnished. The assessee has shown it as suspense in the cash flow statement. In the absence of any details regarding the creditors, the nature of transaction, according to the Id. DR. the assessing officer has taken the unexplained credit which is disclosed as suspense account in the cash flow statement as income of the assessee The assessee has shown a deficiency of Rs.11,69,800 in the cash flow statement filed before the assessing officer. In the absence of any material, the deficiency, i.e. the difference between the receipts and expenditure was taken as income of the assessee The expenses incurred by the assessee to the extent of Rs.5 lakhs for foreign travel was not disclosed in the cash flow statement since the assessee was not maintaining any books of account with regard to the expenditure incurred of Rs.5 lakhs which*

*was not disclosed in the cash flow statement was taken as income of the assessee.*

*26. We have considered the rival submissions on either side and also perused the material available on record. Admittedly, the assessee is not maintaining any books of account. The assessee has received huge receipt from various persons. However, the details of such persons were not disclosed to the department. There may be various reasons for the assessee for not disclosing the details of the persons from whom money was received. The fact remains is that the assessee has deposited cash and cheque to the extent of Rs.19,54,243/- as admitted by the Id. representative for the assessee, in the bank. However, the assessing officer has taken only Rs.15,04,893. The cheque payment to the extent of Rs.5,68,316 was not considered by the assessing officer. Therefore, this Tribunal is of the considered opinion that in the absence of any details with regard to earning of income and the details of the persons from whom the money was received, the assessing officer has rightly treated the entire amount as income. In fact, the assessing officer omitted to consider Rs.5,68,316. This Tribunal has no power of enhancement under the scheme of the Income-tax Act. Therefore, the addition to the extent of Rs.15,04,891 is confirmed.*

*27. Now coming to the unexplained credit to the extent of Rs.10,77,219 the assessee has shown the same as loan from others in the cash flow statement. If the assessee has taken loan from others it is for the assessee to explain the identity of the persons, who gave the money on loan, the creditworthiness of the creditors and the genuineness of the transactions. In the absence of any details and the assessee has disclosed the same as suspense account, this Tribunal is of the considered opinion that the assessing officer has rightly taken the same as income of the assessee. It is unfortunate that even the repayment of housing loan to HDFC bank could not be explained by the assessee before the lower authorities Therefore, the repayment of loan to HDFC bank has to be taken as income of the assessee.*

*28. The assessee has withdrawn an amount of Rs.2,91,600 from the bank. Since the amount was withdrawn from bank out of the deposit made in the bank, this Tribunal is of the considered opinion that Rs 2,91,600 which was withdrawn from bank cannot be treated as income of the assessee. In other words, the amount of Rs.2,91,600 was part of Rs.15,04,891 which was already added by the assessing officer and addition of Rs.2,91.600 once again would amount to double addition Therefore, this Tribunal is unable to uphold the addition made by the assessing officer to the extent of Rs.2,91,600 on the basis of the cash withdrawals made by the assessee from the bank account.*

Accordingly, the order of the lower authority is set aside and the assessing officer is directed to delete the addition of Rs.2,91,600 with regard to cash withdrawal from the bank as shown in the cash flow statement.

29. The assessing officer made addition of another sum of Rs 5 lakhs with regard to foreign travel expenses. It is an admitted fact that the assessee undertook foreign travel during the year under consideration. The source for the expenditure was not disclosed before the assessing officer. It is also not disclosed in the cash flow statement. The assessee is also not maintaining any books. In those circumstances, the CIT(A) has rightly made addition to the extent of Rs.5 lakhs. In total the unexplained investment and expenditure to the tune of Rs. 33, 75, 410 is confirmed out of the addition of Rs. 36,67,010. The assessing officer is directed to delete the addition of Rs. 2,91,600/-.

30. The only issue involved in the remaining appeals in ITA Nos 46 to 51/Coch/2014 in the case of Shri O.G. Sunil is addition on account of unexplained investments. The issue is identical to the issues discussed in ITA No.45/Coch/2014 for the assessment year 2002-03. While dealing with the appeal for assessment year 2002-03 we have found that out of the total addition made on account of unexplained investments of Rs.36,67,010 an amount of Rs.2,91,600 has to be deleted as the same represents withdrawal from bank out of the deposits in the bank account and the addition of the withdrawal would amount to double addition. The facts and circumstances are identical for the assessment years 2003-04 to 2008-09 also. Admittedly, there are deposits in bank account of the assessee. The assessee could not file any explanation regarding the source of receipt of money except saying that it is from real estate business. In the absence of any details / material this Tribunal is of the considered opinion that the entire deposits in bank account shall be treated as income of the assessee. The assessee himself has shown the cash credit as suspense or cash deficit in the cash flow statement as in the case for the assessment as in the case for the assessment year 2002-03.

Therefore, the reasons given by the Tribunal for the assessment year 2002-03 are equally applicable for other years under considerations. Accordingly, we follow the decision already arrived at for the assessment year 2002-03 in these years also. Thus, the addition contested and the addition to be deleted year-wise for the assessment years 2003-04 to 2008-09 on account of withdrawal from the bank account out of the deposits made is illustrated below:

<u>Assessment Year</u>	<u>Addition</u>	<u>Withdrawal from bank</u>
2003-04	84,51,269	12,71,120

I.T.A. Nos. 45-51/Coch/2014 &  
ITA Nos. 594 to 596/Coch/2018

S.P. Nos. 51-53/Coch/2018

2004-05	96,95,034	11,99,600
2005-06	2,31,88,161	17,57,196
2006-07	76,07,693	27,24,607
2007-08	1,02,65,429	12,87,488
2008-09	4,55,14,549	47,04,660

*31. For the detailed reasons given for the assessment year 2002-03 above, the assessing officer is directed to delete the addition of Rs.12,71,120 for the assessment year 2003-04; Rs.11,99,600 for the assessment year 2004-05; Rs.17,57,196 for the assessment year 2005-06; Rs.27,24,607 for the assessment year 2006-07; Rs.12,87,488 for the assessment year 2007-08; and Rs.47,04,660 for the assessment year 2008-09. Other than these amounts, the remaining additions in every assessment year are confirmed.*

*32. With the above remarks the orders of the CIT(A) for the assessment years 2003-04 to 2008-09 are confirmed partly."*

3. Consequently, the assessee carried the matter in appeal before the High Court. The High Court disposed of the appeal in ITA No. 6 to 10, 12 & 24/2015 dated 15/02/2016 for the assessment years 2002-03 to 2008-09 by observing as follows:

*"10. Insofar as I.T.A. Nos.6 to 10,12 and 24 of 2015 are concerned, those appeals pertain to the assessment years 2002-03 to 2008-09 and are filed by the assessee Shri O.G.Sunil, the husband of the appellant in the earlier three appeals. Insofar as assessment year 2002-03 is concerned, the challenge was against the addition of Rs. 36,67,010/-. According to the assessee, the Assessing Officer has taken Rs. 15,04,891/-as unexplained bank deposit. It was pointed out that the total deposit was Rs. 19,54,2437- and that the Assessing Officer has failed to take cheque deposit to the extent of Rs. 4,48,828/-. The Tribunal has recorded a finding that "the Id. representative very fairly submitted that the assessee could not explain the source for making these deposits". Despite that, it is seen argued before the Tribunal that the income was from real estate business and, therefore, only the net amount should be taken and not the gross amount.*

11. Insofar as the unexplained credits to the extent of Rs. 10,77,219/- is concerned, the evasive contention raised was that the unexplained credit "might have" been used for making deposit in the bank account and, therefore, it should not have been taken as income of the assessee. Similarly, with reference to the cash withdrawal from the bank to the extent of Rs.2,91,600/-, the contention raised was that once the deposit was taken as income, withdrawal should not be taken as income once again. With reference to the foreign travel expenses, the Assessing Officer has made addition of Rs. 5,00,000/- and the contention raised was that this expense was incurred from the withdrawals made from the bank.

12. These factual contentions were considered by the Tribunal, and the Tribunal has made reference to the admitted fact that the assessee was not maintaining any books of account and that though the assessee had received huge amounts from various persons, details of such persons were not disclosed to the department. Insofar as the deposit of Rs. 19,54,243/-, which was admitted by the assessee is concerned, the Tribunal has noted that the Assessing Officer has taken only Rs. 15,04,893/- and that the cheque payment to the extent of Rs. 5,68,316/- was not considered by him. Insofar as the amount that has been taken by the Assessing Officer is concerned, the Tribunal has noted that in the absence of any details with regard to earning of income and the persons from whom the money was received, the Assessing Officer has rightly treated the entire amount as income. Insofar as the unexplained credit to the extent of Rs. 10,77,219/- is concerned, the Tribunal has taken note of the fact that the assessee has shown the same as loan from others in the cash flow statement. However, having regard to the fact that the assessee had not explained the identity of the persons from whom the loan was allegedly availed of, the creditworthiness of his creditors and the genuineness of the transaction, the Tribunal confirmed the order of the Assessing Officer, taking the aforesaid amount as income of the assessee.

13. The Tribunal has also confirmed the repayment made to the HDFC Bank, as income of the assessee, for the reason that even such payment could not be explained by the assessee before the lower authorities. Insofar as Rs. 2,91,600/- is concerned, the Tribunal agreed with the assessee that the same cannot be added to his income. With respect to Rs. 5,00,000/- incurred by the assessee towards foreign travel expenses is concerned, the Tribunal has held that the source of such expenditure was neither disclosed before the Assessing Officer nor disclosed in his cash flow statement. It was for that reason the Tribunal confirmed the addition to the extent of Rs. 5,00,000/-,

14. The only other common issue in respect of the assessment years 2003-04 to 2008-09 was with respect to addition on account of unexplained investment. The Tribunal has held that the said issue had already been contested in the appeal in relation to the assessment year 2002-03, where the Tribunal has ordered deletion of amounts withdrawn from the bank. Since facts were identical, similar view was taken with respect to these assessment years also and accordingly the Tribunal has ordered deletion of addition to the extent of amounts withdrawn from the bank. These issues were dealt with in paragraphs 30 and 31, which read as under:

"30. The only issue involved in the remaining appeals in 1TA Nos 46 to 51/Coch/2014 in the case of Shri O.G.Sunil is addition on account of unexplained investments. The issue is identical to the issues discussed in ITA No.45/Coch/2014 for the assessment year 2002-03. While dealing with the appeal for assessment year 2002-03 we have found that out of the total addition made on account of unexplained investments of Rs. 36,67,010/- an amount of Rs. 2,91,600/- has to be deleted as the same represents withdrawal from bank out of the deposits in the bank account and the addition of the withdrawal would amount to double addition. The facts and circumstances are identical for the assessment years 2003-04 to 2008-09 also. Admittedly, there are deposits in bank account of the assessee. The assessee could not file any explanation regarding the source of receipt of money except saying that it is from real estate business. In the absence of any details/material this Tribunal is of the considered opinion that the entire deposits in bank account shall be treated as income of the assessee. The assessee himself has shown the cash credit as suspense or cash deficit in the cash flow statement as in the case for the assessment year 2002-03. Therefore, the reasons given by the Tribunal for the assessment year 2002-03 are equally applicable for other years under considerations. Accordingly, we follow the decision already arrived at for the assessment year 2002-03 in these years also. Thus, the addition contested and the addition to be deleted year-wise for the assessment years 2003-04 to 2008-09 on account of withdrawal from the bank account out of the deposits made is illustrated below:

2003-04	84,51,269	12,71,120
2004-05	96,95,034	11,99,600
2005-06	2,31,88,161	17,57,196
2007-08	76,07,693	27,24,607
2007-08	1,02,65,429	12,87,488
2008-09	4,55,14,549	47,04,660

*31. For the detailed reasons given for the assessment year 2002-03 above, the assessing officer is directed to delete the addition of Rs. 12,71,120/- for the assessment year 2003-04; Rs. 11,99,600/- for the assessment year 2004-05; Rs. 17,57,196/- for the assessment year 2005-06; Rs. 27,24,607/- for the assessment year 2006-07; Rs. 12,87,488/- for the assessment year 2007-08; and Rs. 47,04,660/- for the assessment year 2008-09. Other than these amounts, the remaining additions in every assessment year are confirmed."*

*Having heard the counsel on both sides, we are satisfied that the aforesaid being the factual background, the findings in Tribunal's order are entirely factual and these appeals do not give rise to any question of law. In the light of the language of Section 260A of the Act, an appeal would lie to this Court only on a substantial question of law. Therefore, in these appeals there is nothing to be considered by this Court in exercise of jurisdiction under Section 260A of the Act. That apart, the appellants also do not have a case that any contention, which was urged by them before the Tribunal, was not considered by the Tribunal or that the findings of fact arrived at by the Tribunal are perverse to give rise to a question of law for consideration under Section 260A of the Act. In such circumstances, we are not inclined to entertain these appeals.*

*Accordingly these appeals are dismissed."*

4. Against this, the assessee filed SLP(C) No. 6512-6518/2016 dated 18.03.2016.

The Supreme Court remitted the issue to the file of the Tribunal by observing as follows:

*"After arguing the case for some time, the learned Counsel for the petitioner seeks permission to withdraw the special leave petitions with liberty to go back to the Tribunal since some of the contentions taken by the petitioner have not been addressed or considered by the Tribunal.*

*Permission is granted with the liberty to the petitioner as above.*

*We make it clear that the judgment of the High Court shall not stand in the way of the Tribunal considering these issues, as pointed out by the petitioner, afresh. Incase, such a petition is filed within thirty days from today, the same will be considered by the Tribunal on merits.*

*The special leave petitions are dismissed as withdrawn."*

4.1 Hence, these cases were listed for fresh hearing before this Tribunal on 11/03/2019. The hearing of these appeals was adjourned to 10/04/2019. Finally, the appeals were heard on 11/04/2019.

5. Before the Supreme Court, the assessee challenged the judgment of the High Court by raising the following grounds of appeal:

"Leave to appeal is sought for on the following amongst other grounds:

a) Because the order of the Hon'ble High Court ignored the fact that the learned Tribunal disposed off the appeal in a haste manner without any application of mind upon the voluminous documents, legal submissions and evidence produced before it.

b) Because the Hon'ble High Court was not justified in ignoring that all the entries in the bank account of the Petitioner was explained in the statement of cash flow filed by the Assessee/Petitioner herein, however despite forwarding the explanations pertaining to all the transactions, the assessing authorities during the course of remand, have failed to consider the same and have made huge additions to the unexplained investment of the Petitioner.

c) Because the Hon'ble High Court ought to have considered the fact that for the assessment year 2002-03, an amount of Rs. 5,00,000/- was returned by the assessee despite that, an amount of Rs 5,00,000/- was added to the income of Petitioner on account of Foreign travels without any evidence in the assessment report. That the unexplained credits of Rs 10,77,219 and the unexplained bank deposit of Rs 15,04,891 are explained in the statement of cash flow. That there is no deficiency of Rs 11,69,800/- as given in the assessment order and that the statement of Net wealth was also filed.

d) Because the Hon'ble High Court ought to have considered the fact that for the assessment year 2003-04, an amount of Rs. 10,00,000/- was returned by the Petitioner pursuant to return under Section 153A of the IT Act

as against the peak of Rs. 13,91,655.52/-. The confirmation of the assessment of an income of Rs. 84,51,270/- is bad as the entire transactions on the basis of the bank statements have been explained during the course of remand, before the learned Tribunal and also before the Hon'ble High Court, however the same was not taken judicial note of.

e) Because the Hon'ble High Court ought to have considered the fact that for the assessment year 2004-05, an amount of Rs. 13,00,000/- was returned by the assessee.

The confirmation of the assessment of an income of Rs.96,95,030/- is bad as the entire transactions on the basis of the bank statements have been explained during the course of remand, before the learned Tribunal and also before the Hon'ble High Court, however the same was not taken judicial note of.

f) Because the Hon'ble High Court ought to have considered the fact that for the assessment year 2005-06, an amount of Rs. 15,00,000/- was returned by the Petitioner pursuant to return under Section 153A of the IT Act as against the peak of Rs. 14,38,714/-. The confirmation of the assessment of an income of Rs. 2,31,88,160/- is bad as the entire transactions on the basis of the bank statements have been explained during the course of remand, before the learned Tribunal and also before the Hon'ble High Court, however the same was not taken judicial note of.

g) Because the Hon'ble High Court ought to have considered the fact that for the assessment year 2006-07, an amount of Rs. 16,00,000/- was returned by the Petitioner pursuant to return under Section 153A of the IT Act as against the peak of Rs. 5,10,502.27/-.

The confirmation of the assessment of an income during the course of remand, before the learned Tribunal and also before the Hon'ble High Court, however the same was not taken judicial note of.

h) Because the Hon'ble High Court ought to have considered the fact that for the assessment year 2007-08, an amount of Rs. 24,00,000/- was returned by the Petitioner pursuant to return under Section 153A of the IT Act as against the peak of Rs. 33,49,425.75/-. The confirmation of the assessment of an income of Rs. 1,02,66,990/- is bad as the entire transactions on the basis of the bank statements have been explained during the course of

remand, before the learned Tribunal and also before the Hon'ble High Court, however the same was not taken judicial note of.

i) Because the Hon'ble High Court ought to have considered the fact that for the assessment year 2008-09, an amount of Rs. 1,20,59,220/- was returned by the Petitioner pursuant to return under Section 153A of the IT Act as against the peak of Rs. 5,36,195.99/-. The confirmation of the assessment of an income of Rs. 5,80,87,680/- is bad as the entire transactions on the basis of the bank statements have been explained

j) Because the Hon'ble High Court erred in confirming the addition of Rs. 2,04,90,039/- despite the fact that this amount is received from Asha Sunil (wife) from City Bank A/c consisting of Rs. 1,99,90,039/- and Rs. 5,00,000/- on various dates and is confirmed as income even though the amounts are transferred from the bank A/c of Asha Sunil (wife) which is directly verifiable by entries from bank to bank and is liable to be exempted.

k) That the Hon'ble High Court ought to have considered the fact that the Commissioner of Income Tax-(Appeals) and the learned Appellate Tribunal has gone wrong in omitting to consider the statement of cash flow prepared from the bank accounts, the details of bank transaction, net wealth statement, statement of peak debit in the statement of cash flow and the explanations in its entirety filed by the appellant and restricting it only to cash withdrawals.

## **6. GROUNDS FOR INTERIM RELIEF**

That the Petitioner is gravely and seriously prejudiced by the final judgment and order dated 15.02.2016 passed by the Hon'ble High Court of Kerala at Ernakulam in Income Tax Appeals filed by the Petitioner herein thereby upholding the order dated 08.08.2014 passed by the Income Tax Appellate Tribunal. It is submitted that the order of the High Court ignored the fact that the learned Tribunal disposed off the appeal in a haste manner without any application of mind upon the voluminous documents, legal submissions and evidence produced before it. It is submitted that if the consequential proceedings arising out of the notice of demand under Section 156 of the Income Tax Act, and the assessment orders dated 31.12.2009 for the assessment years 2002-03 to 2008-09 are not stayed, the petitioner will be put to irreparable injury and loss. It is submitted that the Petitioner has a very good *prima facie* case. Balance of convenience is in favour of the Petitioner and no prejudice whatsoever would be caused to the Respondent in case interim relief as prayed for is granted.

**7. MAIN PRAYER: -**

It is most respectfully prayed that this Hon'ble Court may be pleased to:

a) grant special leave to appeal against the final judgment and order dated 15.02.2016 passed by the Hon'ble High Court at Ernakulam in Income Tax Appeal No. 6 of 2015.

b) grant special leave to appeal against the final judgment and order dated 15.02.2016 passed by the Hon'ble High Court of Kerala at Ernakulam in Income Tax Appeal No.7 of 2015; and

c) grant special leave to appeal against the final judgment and order dated 15.02.2016 passed by the Hon'ble High Court of Kerala at Ernakulam in Income Tax Appeal No.8 of 2015; and

d) grant special leave to appeal against the final judgment and order dated 15.02.2016 passed by the Hon'ble High Court of Kerala at Ernakulam in Income Tax Appeal No.9 of 2015; and

e) grant special leave to appeal against the final judgment and order dated 15.02.2016 passed by the Hon'ble High Court of Kerala at Ernakulam in Income Tax Appeal No. 10 of 2015; and

f) grant special leave to appeal against the final judgment and order dated 15.02.2016 passed by the Hon'ble High Court of Kerala at Ernakulam in Income Tax Appeal No. 12 of 2015; and

g) grant special leave to appeal against the final judgment and order dated 15.02.2016 passed by the Hon'ble High Court of Kerala at Ernakulam in Income Tax Appeal No. 13 of 2015.

pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

**8. PRAYER FOR INTERIM RELIEF: -**

It is most respectfully prayed that this Hon'ble Court may be pleased to: -

a) grant ad interim ex-parte stay of the collection of tax due pursuant to the assessment order dated 31.12.2009 for the assessment years 2002-03 to 2008-09 issued by Respondent to Petitioner and consequential proceedings arising therefrom; and

b) pass any other order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case. -

**AND FOR THIS ACT OF KINDNESS YOUR HUMBLE PETITIONER  
AS IN DUTY BOUND SHALL EVER PRAY."**

6. Before us, the Ld. AR submitted that the issue raised by the assessee before the Supreme Court by way of SLP was considered by the Apex Court and allowed the assessee to come back to the Tribunal to consider certain issues. Accordingly, it was submitted that it may be appropriate if it is remitted to the file of the Assessing Officer for fresh consideration of the above issues.

7. The Ld. DR supported the contention of the Ld. AR by submitting that the various points noted by the Tribunal and High Court regarding the creditworthiness capacity and genuineness of the transactions may be best verified by the Assessing Officer by examining the respective parties or seeking additional information from the assessee to prove the various ingredients of section 68 of the I.T. Act.

8. We have heard the rival submissions and perused the record. We find merit in the arguments of both the Counsels. Hence, in the interest of justice, this issue is

remitted to the file of the Assessing Officer instead of deciding ourselves as it involves examination of the parties concerned and appraisal of genuineness of the transactions. Hence, we remit the entire issue disputed before the Supreme Court by way of SLP to the file of the Assessing Officer for fresh consideration. The Assessing Officer has to decide the same in accordance with law after giving adequate opportunity of hearing to the assessee. Thus, the appeals of the assessee are partly allowed for statistical purposes.

ITA Nos. 594 to 596/Coch/2018 : Asha Menon (Asha Sunil)

9. These appeals filed by the assessee are directed against the common order of the CIT(A)-III, Kochi dated 16/10/2018 with regard to sustaining of penalty u/s. 271(1)(c) of the Act for the assessment years 2006-07 to 2008-09. The assessee has also filed Stay Petitions seeking stay of penalty in respect of the above cases.

10. The facts of the case are that a search under section 132 of the Act was conducted at the residence of Smt Asha Sunil and her husband Shri O G Sunil on 13-03-2008. On the basis of documents found and seized during the course of search, assessment proceedings under section 153A of the Act were initiated and completed on 31-12-2009 on Smt Asha Sunil, the assessee. During the course of assessment proceedings the assessee was found to have maintained three bank accounts a) City Bank Cochin in which total deposits amounted to Rs.7,08,65,447/-,

b) SB account with Punjab National Bank Ernakulam with total deposits amounting to Rs. 2,89,600/- and c) Karnataka Bank Ltd Ernakulam in which deposits mounted to Rs.93.500/-. With respect to deposits found in Punjab National Bank and Karnataka Bank, the assessee explained the source as amounts received from trading activities. However, net income from trading activity declared was only Rs.61,000/- The balance of credits was treated as unexplained. With respect to credits of Rs.1,99.90,039/- made on 06-08-2007. Rs.2,00,95.000/- made on 25-08-2007, Rs. 1,49,00,000/- made on 14-09-2007 and Rs. 1,33.99.908/- made on 10-10-2007 in the Citi Bank account were explained as received from the assessee's father Shri George Philip account with Citi Bank, Singapore. When the assessee was asked to prove the credit worthiness of Shri George Philip on the dates on which he had transferred the amount, the only evidence produced was the bank statement of Shri George Philip with Citi Bank. On examination of the credits in his bank account, it was observed that the transfer of funds from this account to his daughter was preceded by equal amount credited by fund transfer from sources not explained. On account of this the whole of amount received from father amounting to Rs.6,63,84,947/- along with the deposits as shown in bank accounts with Punjab National Bank and Karnataka Bank were treated as the assessee's income for which sources were not explained. The total amount brought to tax on account of source not explained was Rs.6,67,08,475/-.

10.1 Simultaneously, penalty proceedings under section 271(1)(c) of the Act was initiated whereby the assessee was directed to explain as to why penalty for concealing the source of income should not be levied. In response to reminder dated 21-06-2010, the assessee requested to keep the penalty proceedings in abeyance till her appeal against the assessment order is disposed of by the CIT (appeals). The CIT(A) remanded the matter for examining Sri George Philip to the file of the assessing officer. On a specific query to produce the documents to support his source for funds given to his daughter on the mentioned dates, the only explanation given was as under:

*"I cannot produce any certificate because I come off from my profession 4 years ago because of my wife's sudden cerebral stroke. I have resigned from my company 4 years ago because of the sudden illness of my wife. The amount of money that I collected over a period of 36 years through my salary as well as through private consultation for which I do not have any salary certificate, any such documentary proof now with me in hand. All transactions have taken through banks"*

10.2. On disposal of the appeal by the CIT(A) upholding the additions made, the assessee preferred an appeal before the Tribunal. The Tribunal also disposed of the assessee's appeal vide ITA Nos. 42 to 44/Coch/2014 dated 08/08/2014 upholding the additions made. The penalty proceedings kept in abeyance was accordingly revived.

10.3 The assessee was given one more opportunity to substantiate the sources of the bank deposits and the credit worthiness of Shri George Philip to give a gift of

Rs.6,63,84,947/- and sources for the other credits in the bank accounts. In response, her husband Shri O.G. Sunil stated orally that they were preferring appeal against the Tribunal's order before the High Court of Kerala. Thus, the Assessing Officer found that the assessee failed to substantiate in whatsoever manner the source for the amounts deposited into the bank account as well as the credit worthiness of Shri George Philip for gifting of money to the daughter. It was found that the assessee had also not furnished the net-wealth statement nor had filed the fund-flow statements which were sought under section 142(1) of the Act. According to the Assessing Officer, the explanation of her father being a non-resident engineer working in Bahrain was no explanation for his actual sources. It was found that the money was merely routed through her father's account to her account and immediately on transfer of funds into father's account from sources not proved, the same amount was transferred to the assessee's account. Therefore, the assessee is the beneficiary of the receipt for which the source was not explained truly as the income of her father Shri George Philip. Accordingly, the Assessing Officer held that this is a fit case for levy of penalty for concealing the true income and the sources thereof. Therefore, a moderate penalty of two times the tax sought to be evaded was levied. The quantum of tax sought to be evaded on the bank deposits amounted to Rs.2,26,33,197/- (tax on assessed income including concealed income = Rs.2,26,33,197 less tax on returned income excluding concealed income = 0). The quantum of penalty thus payable was Rs.2,26,33,197 x

2 = Rs.4,52,66,394/- for the assessment year 2006-07. Similarly, penalty was also levied at Rs.14,24,442/- and Rs.4,52,66,394/- for assessment years 2007-08 and 2008-09.

11. On appeal, the CIT(A) observed that the assessee claimed to have received a gift of Rs.6,63,84,947/- from her father Shri George Philip. The money was received in the bank account of the assessee. The assessee was asked to prove the creditworthiness of the donor. The assessee could not prove the creditworthiness of the donor and hence, this amount was treated as income of the assessee. The conclusion drawn by the Assessing Officer was upheld by the CIT(A), ITAT, High Court and Supreme Court. It was observed that the assessee had failed to furnish the net wealth statement and fund flow statements which were sought u/s. 142(1) of the Act. According to the CIT(A), the explanation that her father was a non-resident engineer working in Bahrain is no explanation since the money has merely been routed through her father's account to her account and immediately on transfer of funds into her father's account from sources not proved, the same amount was transferred to the assessee's account. The CIT(A) observed that an explanation which is not supported by cogent evidence cannot be said to be an explanation at all. Therefore, it was observed that the instant case is a case of colourable device to bring in one's own unaccounted money in the form of gift with

an intention to evade the payment of taxes. In view of this, the CIT(A) confirmed the levy of penalty u/s. 271(1)(c) of the Act.

12. Regarding the quantum of penalty, the CIT(A) observed that the Assessing Officer has not been able to make a case for levy of penalty @200% of the tax sought to have been evaded. The rate of penalty may vary from 100% to 300% and it is the discretion of the Assessing Officer to decide as to what rate he applies. According to the CIT(A), such discretion is not absolute and discretion is to be used cautiously and judiciously which is to be supported by facts and circumstances of the case. In the instant case, the CIT(A) observed that the Assessing Officer has not made a case where penalty was required to be levied at 200%. Hence, the CIT(A) directed the Assessing Officer to restrict the penalty at 100% of the tax sought to be evaded for all the assessment years .

13. Against this, the assessee is in appeal before us. The Ld. AR submitted that the Assessing Officer levied penalty u/s. 271(1)(c) of the Act at 200% on the tax sought to be evaded. The CIT(A) has reduced the penalty to 100%. It was submitted that the major addition during the year on which penalty was levied was in respect of gift of Rs. 6,63,84,947/ received by the assessee by transfer from the NRE account of the assessee's father (Citi Bank, Cochin-A/c No. 5-017019-467) to the account of the assessee with Citi Bank, Ernakulam (A/C No. 5-008401-464). It

was submitted that the assessee's father Shri George Philip was working for the past 36 years out of which the last 27 years was with the Ministry of Defence, Kingdom of Bahrain and he is a certified Aircraft Maintenance Engineer who also does global consultancy in the various related fields. He had started his career with Indian Air force and later migrated to Bahrain for better prospects. The Ld. AR submitted that the view taken by the department that the assessee had routed her money through her father's account was wrong as only Non Residents are allowed to deposit into an NRE account. As a proof of creditworthiness, capacity and genuineness of the transaction, the Ld. AR has filed a confirmation letter dated 20/11/2009 from Shri George Philip, father of the assessee addressed to DCIT, Ernakulam stating that he had transferred amounts on various dates to the account of his daughter, Asha Sunil with Citi Bank, Cochin from his account with Citi Bank, Singapore. He has also enclosed Bank Statement of Citi Bank, Cochin, letter of recommendation of Shri George Philip from Alsalam Aircraft Company, Bahrain dated 22/10/2006, letter dated 21/08/2010 from Shri P. George Phillip stating that he is lecturer – Aircraft Maintenance Engineering in CIAL Aviation Academy, Kochi, bio data of Shri P. George Philip and Letter of Appreciation from dated 31<sup>st</sup> July, 2002 from Royal Bahraini Air Force and passport of Shri George Philip. Hence, it was submitted that it is not a fit case for levy of penalty and it may be deleted.

14. The Ld. DR submitted that the quantum addition was confirmed by all the authorities, CIT(A), Tribunal, High Court and Supreme Court. Hence, the penalty is to be confirmed.

15. We have heard the rival submissions and perused the record. On the quantum additions for the assessment years 2006-07 to 2008-09, the Tribunal has confirmed the additions as follows:

*"5. The only issue arises for our consideration is addition of Rs.10,43,815/-. Shri CBM Warriar, the Id. Representative for the assessee submitted that the assessee filed an additional ground with regard to the validity of the assessment order passed u/s. 153A of the act in the absence of search proceedings/search warrant in the case of the present assessee. According to the Id. Representative, the search was conducted in the case of Shri O.G. Sunil, the husband of the assessee and no search was conducted in the case of the assessee. Therefore, the assessment proceedings at the best may be framed u/s. 153C on the basis of the material found during the course of search operation. In this case, the assessment was framed under section 153A of the Act. Therefore, the assessment framed u/s. 153A is invalid. Immediately, the Id. DR Shri M. Anil Kumar produced the assessment folder for verification of the Id. Representative for the assessee and submitted that search was conducted in the case of Smt. Asha Sunil and search warrant was also issued in her name. After verifying the files of the department, the Id. Representative for the assessee very fairly concede that he satisfied that there was search in the case of Smt. Asha Sunil also. Therefore, he withdrew the additional ground filed before this Tribunal with regard to the validity of the assessment framed u/s. 153A of the Act. In view of the above factual position that the assessment was framed u/s. 153A of the Act on the basis of the search conducted in the premises of the assessee on 13/03/2008, the additional ground raised by the assessee has no merit at all. Moreover, the Id. Representative also submitted that he is withdrawing the additional ground of appeal. Accordingly, the additional ground of appeal filed by the assessee is dismissed.*

6. Now coming to the merit of the addition, the first addition is Rs.3,33,815 as unexplained credits in the bank account.

7. The Id. representative for the assessee submitted that the deposits were made out of the trading receipts from garment business. The assessing officer, without considering the explanation of the assessee has made the addition.

8. On the contrary, Shri M. Anil Kumar, the Id. DR submitted that though the assessee engage in the garment business, the net income returned from the business is only Rs.58,250/-. No withdrawal was shown for meeting the personal expenses. At the best this Rs.58,250 can only be considered to be from the business of garment. Even after allowing sufficient opportunity, the assessee could not explain the source for making investment in the bank account to the extent of Rs.3,33,815. Therefore, the entire deposit was taken as income of the assessee.

9. We have considered the rival submissions on either side and also perused the material available on record. It is not in dispute that the assessee deposited Rs.3,33,815 in the bank account. Though the assessee claims this was a trading receipt from garment business, the income from trading of garment is only Rs.58,250. The assessee could not explain the source and means for deposit of Rs.3,33,815. In the absence of any material and explanation from the assessee, this Tribunal is of the considered opinion that the assessing officer has rightly treated the deposit in the bank as unexplained investment. Therefore, the order of the lower authority on this issue is confirmed.

10. The next addition is with regard to investment in property. Shri CBM Warriar, the Id. representative for the assessee submitted that the assessee has purchased a property to the extent of Rs.6,30,000. The stamp duty and other expenses comes to Rs.7,10,000. The assessee has no explanation to offer. We heard Shri M. Anil Kumar, the Id. DR also.

11. The fact that the assessee purchased property by investing an amount of Rs.7,10,000/- is not disputed. Therefore, it is for the assessee to explain from where the assessee got the funds for making investment and why the same should not be treated as income of the assessee. The assessee has no explanation to offer. Therefore, this Tribunal is of the considered opinion that the assessing officer has rightly taken the entire amount as income of the assessee. This Tribunal do not find any infirmity in the order of the lower authority. Accordingly, the same is confirmed."

12. *In the result, the appeal in ITA No.42/Coch/2014 is dismissed."*

(a) While levying penalty for the assessment year 2006-07, the Assessing Officer considered the deposit in Punjab National Bank at Rs.3,33,815/-. He considered the purchase of immovable property in Maradu at Rs. 7,10,000/-. Therefore, the Assessing Officer levied penalty at Rs.2,91,448/- x 2 = Rs.5,82896/-. The CIT(A) sustained the penalty at 100% at Rs. 2,91,448/-.

(b) While levying penalty for the assessment year 2007-08, the Assessing Officer considered the deposit in Punjab National Bank at Rs.32,48,163/-. He considered the profit on sale of immovable property in Maradu at Rs.5,93,100/- and computed the tax sought to be evaded at Rs.7,12,221/-. Therefore, the Assessing Officer levied penalty at Rs.14,24,442/- The CIT(A) sustained the penalty at 100% at Rs. 7,12,221/-. On the quantum additions, the Tribunal held as under:

*"13. Now coming to appeal in ITA No 43/Coch/2014 in the case of Smt. Asha Sunil for the assessment year 2007-08. Shri CBM Warriar, the Id. representative for the assessee submitted that the assessing officer made addition of Rs.38,39,969/- towards unexplained investment in the bank account and profit from sale of land. According to the Id. representative, the assessee explained that the deposits were made in the bank from sale proceeds of the land. However, the assessing officer found that the land itself was purchased on 07-04-2006 and the investment in the landed property was not explained. The assessing officer has also treated the profit on sale of the land to the extent of Rs.5,93,100/- as business profit According to the Id. representative, these deposits were made from trading*

*receipts and from the sale proceeds of the land. We heard Shri M Anil Kumar, the Ld. DR also.*

*14. Though the assessee explains that the deposits were made from sale proceeds of the land, the details of transactions and sale of the land were not filed before the assessing officer. The assessing officer found that the property sold by the assessee itself was purchased on 07-04-2006 during the assessment year under consideration. Therefore, the assessee has to explain the source for making investment in the landed property. The assessee is engaged in the real estate business, therefore, the profit arising out of purchase and sale of real estate has to be treated as unexplained income. In the absence of any details, this Tribunal is of the considered opinion that the CIT(A) has rightly confirmed the addition. It is for the assessee to explain the source for making the deposit in the bank and the source for making the investment in the landed property. It is also the responsibility of the assessee why such investment should not be treated as income of the assessee. In the absence of any explanation from the assessee, this Tribunal is of the considered opinion that the CIT(A) has rightly confirmed the addition. Accordingly, the order of the CIT(A) on this issue is confirmed."*

The High Court as well as the Supreme Court confirmed the additions.

(c) While levying penalty for the assessment year 2008-09, the Assessing Officer considered the deposit in Citi Bank at Rs.7,08,65,447/- and computed tax sought to be evaded at Rs,2,26,33,197/-. Therefore, the Assessing Officer levied penalty at 200% at Rs.4,52,66,394/-. The CIT(A) sustained the penalty at 100% at Rs. 2,26,33,197/-. On the issue of additions, the Tribunal held as under:

*"19 We have considered the rival submissions on either side and also perused the material available on record. The assessee's account was credited by T.T. transfer from City Bank. The assessee claims that the assessee's father was having an account in City Bank and the money belongs to assessee's father was gifted to the assessee The assessee's father said to be employed as aircraft*

*maintenance engineer at Bahrain and his salary and savings were used for transfer of funds to the assessee's account. On examination of the assessee's father's bank account, it appears, the funds were received by the bank on T. T. transfer. After third or fourth day, the same amount was transferred to the assessee's account. Therefore, this cannot be from savings of the assessee's father. If it is out of savings, there should be recurring credits and it cannot be a one time transfer to the bank account of the assessee's father. In fact, the assessing officer has observed as follows with regard to the nature of transaction on page 7 of the assessment order:*

*"The examination of the account of Shri George Philip with the City Bank (A/c No.5-0170190467) reveals that the amounts transferred to Smt. Asha Sunil were credited in his accounts only a few days prior to the transfer of those funds to her. Those amounts were credited to his accounts on TT transfer/ Funds Transfer. The first three transfers to the account of Smt. Asha Sunil are of the same amounts received by him in his account. The further transfer to Smt. Asha Sunil's account on 10.10.2007 (sic) is Rs.1,13,99,908/- where as the amount credited to Shri George Philip's account is Rs. 1,23,37,993.42. Apparently, the whole of the money received by Shri George Philip has been transferred to the account of Smt. Asha Sunil. Shri George Philip has acted as an agent of transfer of funds from an unknown person to Smt. Asha Sunil. Shri George Philip's bank account is only a conduit for transfer of funds from undisclosed / unidentified person to Smt. Asha Sunil. The fact that the credit of the above amounts to the account of Shri George Philip is a suspicious transaction reported by the Bank to the Financial Intelligence Unit. Ministry of Finance points out the doubtful nature of the receipts."*

20. *From this it is obvious that the funds were transferred to the assessee's father's account by T.T. transfer and again it was retransferred to assessee's account. Therefore, it is for the assessee to explain how the assessee's father got the funds. The assessing officer has taken pain in examining assessee's father. However, he could not give any satisfactory explanation except by saying that it was his savings and salary In the absence of any material to show that the assessee's father has saved so much of money, this Tribunal is of the considered opinion that the claim of the assessee / her father that the transfer was from savings of her father cannot be accepted. To accept the gift, the assessee has to definitely establish the creditworthiness of her father. The contention of the Id. counsel for the assessee is that if the assessee could not explain the creditworthiness, the addition could be made only in the hands of the assessee's father. The case of the department as it appears from the assessment order clearly shows that Shri George Philip acted as an agent for*

*transfer of funds from unknown person to Smt. Asha Sunil. The assessing officer has also found that the assessee's father's bank account is only a conduit for transfer of funds from unidentified person in the absence of any material to suggest that the assessee's father has sufficient creditworthiness to credit such a huge money to the assessee, this Tribunal is of the considered opinion that the CIT(A) has rightly confirmed the addition. The onus is on the assessee to prove the creditworthiness of her father, genuineness of the transaction and identity of the parties. In this case, though the assessee claims that the funds were transferred from her father's account, the creditworthiness is not proved. Merely because the funds were transferred from banking channel, it will not prove the genuineness of the transaction as held by the Apex Court in the case of P Mohanakala (supra), in view of the above, we do find any infirmity in the order of the lower authority, Accordingly, the same is confirmed."*

The High Court as well as the Supreme Court confirmed the additions.

16. Now the contention of the assessee is whether the findings of the Tribunal, High Court as well as the Supreme Court would lead to confirmation of penalty also. In our opinion, the appeal against the quantum additions and the appeal against the penalty are standing on different footing. In the present case, the assessee had deposited money into the Bank account and explained the sources by filing the confirmation letter from the lender and the Bank account statements. The Department did not believe it. In our opinion, the details supplied by the assessee were not found to be incorrect, erroneous or false. Such not being the case, there would be no question of inviting penalty u/s. 271(1)(c) of the Act. A mere non acceptance of the confirmation letter filed by the assessee by itself will not amount to furnishing incorrect particulars of income or concealing the particulars of income of the assessee. There is qualitative difference between sustaining of addition and

sustaining of penalty. The approach adopted in sustaining the addition cannot be applied while considering the levy of penalty. Penalty can be imposed only when there is some element of deliberate default and not a mere mistake. This being the position, findings have been recorded on facts that furnishing of incorrect particulars of income was simply a mistake and not a deliberate attempt to evade tax. In our opinion, merely because the assessee made a claim of receiving money from the assessee's father which was not acceptable to the Department ipso facto, the assessee cannot be said to have made a wrong claim by furnishing incorrect particulars of income so as to attract penalty u/s. 271(1)(c) of the Act.

16.1 Reading the words "inaccurate" and "particulars" in conjunction, they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. In this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty u/s. 271(1)(c). A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars. The assessee had furnished confirmation letters, which details, in themselves, were found to be unsatisfactory that could not be viewed as the concealment of income on its part. It was upto the authorities to accept its

claim in the return or not. Merely because the assessee's claim was not accepted or was not acceptable to the Revenue, that by itself, would not attract the penalty u/s. 271(1)(c). If the contention of the Revenue is accepted than in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty u/s. 271(1)(c). That is clearly not the intendment of the legislature. For this purpose, we place reliance on the judgment of the Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd. (322 ITR 158) (SC).

16.2 In the present case, the assessee tendered explanation by way of furnishing the confirmation letter from the creditor which was not accepted by the Assessing Officer, it remains unproved. It cannot be considered as a case of concealment, if, however, the explanation given by the assessee is specifically disproved by the Assessing Officer, then it leads to the imposition of penalty. In our opinion, levy of penalty for addition u/s. 68, the explanation tendered by the assessee must be disproved. There is a difference in "facts not proved and "facts disproved". Penalty can be levied only for the latter. For this proposition, we rely on the following judgments:

- i) National Textils vs. CIT (249 ITR 125) (Guj.)
- ii) Durga Kamal Rice Mills vs. CIT (265 ITR 25) (Cal.)
- iii) CIT vs. Vidya Gowri Natwarlal & Ors. (153 CTR 546) (Guj.)

I.T.A. Nos. 45-51/Coch/2014 &  
ITA Nos. 594 to 596/Coch/2018

S.P. Nos. 51-53/Coch/2018

16.3 Thus, the addition u/s. 68 of the Act is properly made, and confirmed by the Tribunal and higher forum because of unsatisfactory explanation given by the assessee in support of receipt of amounts but, it is not a good case for imposition of penalty because it relates to lack of tendering explanation to the satisfaction of the Assessing Officer and not disproving the contention of the assessee about the genuineness of the receipts. In view of this, we are of the opinion that it is not a fit case for levy of penalty u/s. 271(1)(c) of the Act. Accordingly, we delete the penalty u/s. 271(1)(c) of the Act for all the assessment years. Hence, the appeals of the assessee in ITA Nos.594 to 596/Coch/2018 are allowed.

17. Since we have disposed of the appeals of the assessee, the Stay Petitions filed in the case of Asha Sunil in S.P. Nos. 51 to 53/Coch/2018 have become infructuous and are dismissed as infructuous.

18. In the result, the appeals of the assessee in ITA Nos. 45 to 51/Coch/2014 are allowed for statistical purposes and the appeals of the assessee in ITA Nos. 594 to 596/Coch/2018 are allowed and the Stay Petitions filed by the assessee in S.P. Nos. 51 to 53/Coch/2018 are dismissed.

Order pronounced in the open Court on this 30<sup>th</sup> April, 2019

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

I.T.A. Nos. 45-51/Coch/2014 &  
ITA Nos. 594 to 596/Coch/2018

S.P. Nos. 51-53/Coch/2018

Place: Kochi

Dated: 30<sup>th</sup> April, 2019

GJ

Copy to:

1. Shri O.G. Sunil, 13-B, Link Horizon, Marine Drive, Kochi-11.
2. Smt. Asha Sunil, 13-B, Link Horizon, Marine Drive, Kochi-11.
3. The Deputy Commissioner of Income-tax, Circle-1(1)
4. The Commissioner of Income-tax(Appeals)-III, Kochi.
5. The Commissioner of Income-tax Central, Kochi.
6. D.R., I.T.A.T., Cochin Bench, Cochin.
7. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin