

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI
श्री धुव्वुरुआर.एलरेड्डी, न्यायिक सदस्य एवं श्रीजी.मंजुनाथ, लेखासदस्यके समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A Nos. 168 to 173/Chny/2020

(निर्धारणवर्ष / Assessment Years: 1999-2000, 2001-02, 2002-03, 2003-04,
2004-05 & 2005-06)

Mr. Raju P.Mehta, 40, Barnaby Road, Kilpauk, Chennai-600 010.	Vs	The Deputy Commissioner of Income Tax, Central Circle II(1), Chennai-600 034.
PAN : AAFPM 1912N		
(अपीलार्थी/Appellant)		प्रत्यर्थी/Respondent/

अपीलार्थीकीओरसे/ Appellant by	:	Mr. D.Anand, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Abani Kanta Nayak, CIT

सुनवाईकीतारीख/Date of hearing	:	23.12.2020
घोषणाकीतारीख /Date of Pronouncement	:	02.02.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This bunch of six appeals filed by assessee are directed against separate, but identical orders of learned Commissioner of Income Tax (Appeals)-19, Chennai, all dated 29.11.2019 and pertain to assessment years 1999-2000, 2001-02, 2002-03, 2003-04, 2004-05 & 2005-06. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and disposed off by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for all assessment years, therefore, for the sake of brevity, grounds of appeal filed for assessment year 2001-02 in ITA No.169/Chny/2020 are reproduced as under:-

"1. The order of the learned Commissioner Of Income Tax (Appeals)-19, is wrong, illegal and opposed to facts of the instant case.

2. The Ld. CIT(A)-19 ought to have seen that the AO while exercising the powers conferred within him has failed to appreciate the legal position that the addition in the case of search assessments and especially proceedings under section 153C has to be made only on the basis of incriminating material. The learned CIT(A)-19 ought to have seen proceedings u/s 153C to reopen the assessment is restricted only to the extent of incriminating documents if any only. Therefore in the absence of incriminating material the same assessment is vitiated in law.

3. The learned CIT(A) ought not to have relied on the assessment orders passed in the case of Dinesh M Mehta to assess the closing stock and receivable in the hands of the appellant in so far as the said order is against well established canons of judicial discipline.

4. The Learned CIT(A)-19 erred in assessing the closing stock of Rs.464602/- and receivable of Rs.28,96,647/- of M/s. Vikas Bearings and Wires, ostensible owned by Shri Dinesh R,Mehta, in the hands of the appellant by drawing adverse inference from the orders passed by the assessing officer in the case of Dinesh R,Mehta,

5. *The learned CIT(A)-19 ought to have seen that although the Hon'ble ITAT vide its order dated 30.06.2017 had set aside the appeal in the case of Dinesh R Mehta, the issue of ownership of Vikas Bearing and Wires which stands determined in the hands of Dinesh R.Mehta by the first appellate authorities was not the subject matter of appeal before the Hon'ble ITAT,*

6. *The learned CIT(A)-9 ought to have seen that the orders passed by the first appellate authorities in the case of Dinesh R Mehta dated 20,05,2010 and 24,06.2014 point out to the fact that the ostensible ownership of M/s. Vikas Bearings and Wires is with Dinesh R Mehta which fact remains undisturbed by the orders of the liAr despite the assessment orders being set aside.*

7. *The learned CIT(A)-19 ought to have seen that the said assessing officer of Dinesh R Mehta ought not to have entertained the issue of ownership of M/s. Vikas Bearings and Wires when the Hon'ble ITAT has given an opportunity to the said appellant only for the purpose of producing evidences and as observed by Hon'ble ITAT in para 5 of the said order dated 30.06.2017 in ITA 2418 to 2424/Mds/2014.*

8. *The learned CIT(A) erred in sustaining the cash credit of Rs.65,000/- as unexplained income of the appellant despite the fact that the appellant explained the source of deposit as monthly remuneration received by the appellant as a employee of Bombay Hardwares Syndicate.*

9. The learned CIT(A) erred in adding a sum of Rs.1,10,000/- as unexplained credit of capital of the appellant in the books of M/s. Vikas Bearings and Wires.”

3. Brief facts of the case extracted from ITA No.169/Chny/2020 for assessment year 2001-02 are that assessee is a proprietor of M/s.Vikas Bearing & Wires assessed to tax and filed returns regularly u/s. 139(1) of the Act. A search and seizure operation u/s.132 of the Act was conducted on 23.02.2005 in the case of Mr. Dinesh R Mehta. The assessee being part of Dinesh R Mehta group was also subjected to search operation in the business premises as well as residential premises. During the course of search various incriminating documents were found and seized which indicates unaccounted business transactions of Mr. Dinesh R Mehta carried out in the name & style of M/s. A&N Engineering company. Further, incriminating material found in the form of computer data relating to financial year 2000-01 to 2004-05 was retrieved from software called 'Busy Software', which revealed huge transactions in a file named M/s. A&N Engineering company. During the course of search, statements

were recorded from computer operator Mrs.Chitra and Manager of DRM group Mr.Babu, which established the fact that entity M/s. A&N Engineering Company is only a paper concern and that all transactions of sales, purchases, stocks and receivables contained in the computer data belonged to proprietary and partnership concerns controlled by Mr. Dinesh R Mehta. The seized documents also revealed modus operandi of Mr. Dinesh R Mehta in transacting outside books such as purchase of goods, payments against purchase and sales outside books of account. During the course of search, Mr. Dinesh R Mehta admitted an amount of Rs 7.00 crores as his undisclosed income for all assessment years covered under search and accepted ownership of M/s. A&N Engineering Company. Mr. Dinesh R Mehta has also filed application before Settlement Commission, Chennai and such application was rejected due to non-payment of taxes. During the course of search a statement u/s. 132(4) was recorded from Mr. Dinesh R Mehta on 23.02.2005, where he has stated that his employees are persons who actually received goods and sell them and value given by them represent correct amount of

transactions carried out in the name of various concerns managed by him. Accordingly, value of stock of three entities namely M/s. Vikas Bearing Corporation, Chennai, M/s. Vikas Submersible Pumps and Spares, Chennai and M/s. Vikas Bearing and Wires, Coimbatore, was taken on the date of survey. Further Mr. Dinesh R Mehta while giving his own statement during the course of search has accepted closing stock found in the premises of M/s. Vikas Bearing and Wires belongs to him and not to Mr.Raju P Mehta, proprietor of M/s.Vikas Bearing and Wires.

4. Consequent to search, case of the assessee was taken up for assessment and accordingly notices u/s.153C dated 06.10.2006 was issued . The assessee has challenged notice issued u/s. 153C by filing Writ Petition before Hon'ble High Court of Madras and Hon'ble High Court vide order dated 11.12.2006 had directed the Assessing Officer to provide copies of certain statements recorded from Mr. Dinesh R Mehta, which was relevant and basis of issuance of notice u/s,. 153C of the Act. Thereafter, assessee has filed his return of

income in response to notice issued u/s.153C on 30.03.2007 admitting total income of ₹ 1,15,833/-. The case was taken up for scrutiny and during the course of assessment proceedings, the Assessing Officer on the basis of information gathered during the course of search and post-search investigation came to the conclusion that data contained in computer found and seized during the course of search in the name of M/s. A&N Engineering Company belongs to Mr.Dinesh R Mehta and accordingly, unaccounted income in the form of closing stock found during the course of search and survey and receivables are required to be assessed in the hands of Mr. Dinesh R Mehta. The Assessing Officer has also taken support from statement recorded from Mr. Dinesh R Mehta during the course of search and post-search investigation, where he had categorically admitted that closing stock and receivables found in the name of M/s. Vikas Bearing and Wires, Coimbatore, is in fact, belongs to him and total business carried out in the name of said firm is in fact belongs to him and total business carried out in the name of firm is in fact carried out by his employees. The Assessing Officer has also taken support from

statement recorded from Mr.Babu, an employee of DRM group on 23.02.2005, where he has categorically admitted that documents found in the name of M/s. Vikas Bearing and Wires, Coimbatore is carried out under instructions of Mr. Dinesh R Mehta. The Assessing Officer had also taken support from statement of assessee recorded on 25.02.2005, where he has admitted that he has lent his name to Mr. Dinesh R Mehta to carryout business in the name& style of M/s. Vikas Bearing and Wires, and all transactions carried out in the name of said firm was done as per instructions of Mr. Dinesh R Mehta. Accordingly, Assessing Officer was of opinion that unaccounted income determined in the form of closing stock and receivables is assessable in the hands of Mr. Dinesh R Mehta and accordingly, made additions on substantive basis in the hands of Mr. Dinesh R Mehta. However, since assessee is owner of M/s.Vikas Bearing and Wires, the same unaccounted income being stock in trade and receivables has been added in the hands of assessee on protective basis. The relevant findings of Assessing Officer are as under:-

"3. Unaccounted closing Stock: As per sales tax registration the assessee had business activities at the following premises in addition to Shop No- 2-, 814 Bharathiar Road, PN Palayam Coimbatore-3?.

Shop No 1,814 Bharathiar Road PN Palayam, Coimbatore-37

No 705 Idayar Street, Coimbatore.-I

However it is noticed that he assessee was having operations at the following addresses also

First Floor, No 24 Dhandapani Street

PN Palayam Coimbatore-37

811 Saravana Complex. Rharathiar Road! Coimbatore-37

In course of search inventory of stock was taken and the stock was also valued- Sri ORM was asked to provide the value of stock to derive value of closing stock. As there was a discrepancy in the value provided by Shri DRM for the purpose of valuation, the stock was valued based on price quoted in the sales quotation. The quotations are nothing but sale bill as admitted by Shri DRM and his employees. Therefore, rejecting the price adopted by Shri DRM the value derived from quotations is adopted to determine the stock value. Shri Babu, employee stated that (question no.32 and 33 dated 23.022005) the gross profit is around 5 to 10%. Therefore from the price determined as above 5% of gross profit is reduced and the balance is considered as closing stock value lying at various premises belonging to Vikas Bearing & Wires.

As already discussed Shri DRM is the owner of VBW for all purpose. Therefore the stock lying at various premises of M/s Vikas Bering & Wires, Coimbatore is to be held in the hands of Sri DRM The entire stock cannot be held to have been accumulated in the year ending 31.03-2005- Therefore, in the absence of proper stock accounts for various years in respect of unaccounted transactions, the value of unaccounted stock is derived as under and the same is apportioned to various assessment years based on the purchase value captured from the books of A&NEC where M/s VBW is a debtor- However, for the F'Y 2004-05 in respect of the fictitious entity "Searing 2004-05 there is no purchase detail is available. Therefore the

unaccounted sales value has been captured from the accounts maintained in computer for "Bearing 2004-05 - From that 5% of GP margin is reduced to derive the purchase value with respect to Bearing 2004-05 account. Based on the above purchase values related to various Ft's the total value of unaccounted dosing stock already determined at Rs 184,02,331,- is apportioned and worked out as under:

Closing stock of MIs Vikas Bearing & Wires, Coimbatore upto the date of search

Closing stock based on quotation (sale price) -	2,24,76,420
Less: GP at the rate of 5% as stated - -	11,23,821
Closing stock including accounted stock	2,13,52,599
Opening stock as per accounts	37,22,888
Add: Purchase accounted	<u>16,39,659</u>
	53,62,541
Less: cost of goods sold :	
Sales as per book: 24,08,964	
Less: GP 15.899%	3,83,001
	20,25,963
Accounted closing stock as on date of search	33,36,578
Ass: Closing stock as on date of search	464,856,168
Unaccounted dosing stock	2,46,89,177

Unaccounted closing stock is apportioned to various financial years:

Source of datea	Unaccounted purchase	Unaccounted closing
F.Y.2000-01	9,10,86,72	464,602
F.Y.2001-02	81,35,38,75	41,49,541
F.Y.2002-03	10,86,37,501	5,54,11,72
F.Y.2003-04	11,34,51,851	5,78,67,33
F.Y.2004-05	8,75,51,711	4,46,56,69
Bearings 2004-05 accts Sales -GP @ 5%	83,94,02,04	4,28,14,60
	48,40,43,904	24,68,91,77

Shri RPM on the issue of closing stock at VSW, coimbatore stated vide letter dated 27.03.2007 as under:

Closing Stock found at Coimbatore : In response to you query regarding the closing stock found at the office of MIs Vikas Searing & Wires Coimbatore I wish to clarify that since i have nothing to do with the Firm namely MIs Vikas Searing & Wires Coimbatore, except having lent my name, out of trust, the dosing stock found at the said firm also does not belong to me. This fact has been accepted by my uncle Mr. Dinesh R Mehta while giving his own statement during the search proceedings and also his active involvement and undue interest and haste In having the prohibitory order lifted from the said closing stock. The value of the closing stock at Coimbatore was also arrived at by the Department in active consultation with him and only after getting his approval and confirmation Mr Dinesh R Mehta the actual owner of the said closing stock will be the most appropriate person to accept the accountability of the said closing stock'.

As the ownership is held to be with Shri DRM it is taxed in the hands of RPM as a legal owner on protective basis. Protective ₹ 4,6460/-

4. Unaccounted Receivables: During FY 2004-05 unaccounted transactions of VBW were carried out under fictitious entity Bearing 2004-05. Sri DRM himself committed that from 14.2004 he has taken over MIs Vikas Bearing & Wires. Coimbatore. The account of Bearing 2004-05 maintained in the computer (A&NEC) has details of receivable amounting to Rs 15,39291671-. The sum includes an amount of Rs 1387.23.9041- due from MIs Vikas, Chennai. It is verified that the receivables found in the account of Bearing 2004-05 is not reflected in the account of MIs A&NEC, an alleged entity. Thus it is dear that the receivables in the account of A&NEC is entirely different from the receivables found in the account Bearing 2004-05. Thus Sri DRM has to explain on this. In the case of the assessee he has been the legal owner of the concern MIs VSW. Therefore the above sum is taxed in the hands of the assessee on a protective basis.

However, the entire receivable amount of Rs 15,3929,167/- cannot be treated as income accumulated by the assessee in the FY. 2004-05. It has already been discussed that Sri DRM has been operating undisclosed bank account with City Union Bank, Coimbatore from December 2000 for the purpose of his trading activities under the entity MIs Vikas Bearing & Wires. The data under Bearing 2004-05' does not have the purchase detail. Therefore to apportion the receivables among the F.Ys 2000-01 to 2004-05, the purchase data gathered from ledger account of MIs Vikas Bearing & Wires found in the books of MIS A&NEO. and purchase in proportion to the sale, on an estimated basis, found in the account of Bearing 2004-05' are considered to apportion the receivable among various FYs. The working of receivables are as under:

Unaccounted receivable as per 'Bearing 2004-05"
as on 16.2.2005 (includes Vikas Chennai of
₹13,87,23,904/-) Rs 15,39,29,167

F.Y	Source of purchase	Unaccounted Purchase	Unaccounted receivables
2000-01	VBW in A&N Eng accts	9,108,762	2,896,647
2001-02	do-	81353,875	25,871,070
2002-03	-do	108,637,501	34,547,445
2003-04	-do	113,451,851	36,078,440
2004-05	-do	87,551,711	27,642,024
2004-05	Bearings 2004-05 accts Sales-GP@ 5%	83,940,204	26,693,541
		484,043,904	153,929,167

The amount receivable is determined at Rs 28,96,647/- against the unaccounted purchase of Rs 91,08,762/- found in MIs Vikas Bearing & Wires as per the working given above. The above addition based on the discussion on ownership of VBW, is to be taxed in the hands of Shri DRM. It is taxed in the hands of RPM as a legal owner on a protective basis.

Protective ₹28,96,647/-“

5. Being aggrieved by assessment order, assessee preferred appeal before learned CIT(A) . Before learned CIT(A) assessee has reiterated his submissions made before Assessing Officer and argued that closing stock found at Coimbatore in the name of M/s. Vikas Bearing and Wires, Coimbatore and receivable as per data found in computer is in fact belongs to Mr. Dinesh R Mehta and hence same cannot be added in his hands on protective basis, more particularly, when the same has been added on substantive basis in the hands of Mr. Dinesh R Mehta. The assessee has further submitted that he has lent his name out of trust to Mr. Dinesh R Mehta to carry out business in the name and style of M/s.Vikas Bearing and Wires, except this, he is nothing to do with transactions carried out by Mr. Dinesh R Mehta and unaccounted transactions in respect of closing stock and

receivables found during the course of search. This fact has been strengthened by Mr. Dinesh R Mehta and his employees where they have categorically admitted that all transactions carried out in the name of M/s.Vikas Bearing and Wires, Coimbatore was under the instructions of Mr. Dinesh R Mehta and Shri Raju P Mehta is nothing to do with transactions found in the computer data in the name of M/s. A&N. Engineering & Bearing. The assessee has also filed certain additional evidences including statement recorded from Mr. Dinesh R Mehta and his employees to deny ownership of M/s. Vikas Bearing and Wires, Coimbatore. During the course of appellate proceedings, learned CIT(A) has forwarded additional evidences filed by assessee to the Assessing Officer for his comments. The Assessing Officer vide remand report dated 10.08.2017 has commented upon evidences filed by assessee and also reiterated his observations made during the course of assessment proceedings on the basis of various incriminating materials found during the course of search coupled with statements recorded from Mr. Dinesh R Mehta regarding ownership of M/s.Vikas Bearing and Wires. The

learned CIT(A) after considering relevant submissions of the assessee and has also taken note of various evidences collected during the course of search coupled with statement recorded from Mr. Dinesh R Mehta and his employees and also by taking note of statement of assessee made during the course of search upheld the additions made by Assessing Officer on protective basis towards unaccounted stock in trade and receivables found during the course of search in the name of M/s.Vikas Bearing and Wires, Coimbatore, in the hands of assessee . The learned CIT(A) has also taken support from order of ITAT in the case of Mr. Dinesh R Mehta and consequent assessment order passed by Assessing Officer u/s.143(3) r.w.s. 254 dated 30.12.2011, where the Assessing Officer has excluded unaccounted stock and receivables in the name of M/s.Vikas Bearing and Wires, Coimbatore, while considering additions in the hands of Mr. Dinesh R Mehta to come to the conclusion that protective addition made in the hands of assessee towards unaccounted stock in trade and receivables. The relevant findings of the learned CIT(A) are as under:-

6. I have gone through the contents of the assessment order, the written submissions filed and also the remand report submitted by the Assessing Officer. The first six grounds of appeal of the appellant are settled by the factual narration that follows:

1. Notice u/s 153C dated 06.10.2006 was served on the assessee on 10.10.2006.

2. Assessee has demanded reasons recorded for initiating proceedings u/s 153A(a) r.w.s 153C. The same has been furnished to the assessee on 05.01.2007 as per the directions of High Court.

3. Vide order in Writ Petition No.47604 of 2006 (copy of which is enclosed) of High Court directed the Assessing Officer to furnish the sworn statement of Shri Dinesh R.Mehta, which is relevant and basis for issue of notice u/s 153C within two weeks from 11.12.2006 (i.e. before 09.01.2007). Statements have been furnished to the assessee on 05.01.2007. The High Court has directed the assessee to file the return of income within four weeks from receipt of the above statements. The assessee has filed return of income on 30.03-2007. He must have filed the return on or before 02.02-2007.

4. The assessment has been completed on 30.03.2007, i.e. within 60 days as per proviso to explanation to sec.153B and hence not time barred.

5. Hence the assessment was made within time and assessee's contention that the assessment is barred by limitation, is not correct.

6,1 As per the merits of the case the main issue is the addition made on account of closing stock and receivable in a concern named Vikas Bearing and Wires, Coimbatore (VBW in short). The addition was made on protective basis and the same was made on substantive basis in the case of SM Dinesh Mehta, a close relate of the appellant (appellant is son of Shri Dinesh Mehta's elder brother). Shri Dinesh Mehta, as per statement on page 10 of the assessment order dated 08.03.2005 stated that

the entire business in the name of VBW belongs to him. However, in the earlier statement dated 23.02.2005, Shri Dinesh Mehta had stated that he does not have any connection with the concern VBW. whereas, the appellant has been throughout denying his connection with the concern VBW and stated that the same belonged to Mr. Dinesh Mehta. Again. in the letter dated 01-11-2006 addressed to the ACIT, Shri Dinesh Mehta (as quoted on page 4 & 5 of order dated 15.03.2018 of Shri Dinesh Mehta) had stated that VBW does not belong to him.

6.2 Meanwhile, the assessment framed in the case of Shri Dinesh Mehta went upto ITAT. Chennai and the Honble TAT Chennai set aside the matter to the Assessing Officer for readjudication as follows:

(Quote]

“.....The Issues n this appeal are restored to the file of the A0 for readjudication after granting the assessee adequate opportunity to substantiate his case”.

The Assessing Officer subsequent to the above restoration of the case, passed an order u/s 254 dated 15.03.2018 stating as order passed to give effect to the order of the Honble TAT for the set aside assessment u/s 143(3) r.w.s 254 passed on 30.12.2011, A perusal of the above order shows that on the submissions made by Shri Dinesh Mehta, the Assessing Officer concluded as follows:

(Quotel

Thus as in the previous years, in respect of arriving unaccounted profit of the assessee. Only the sales of the assessee is considered and the unaccounted sales of ttle assessee Which Is the unaccounted purchase of Raju Mehta and that of M/s. Vikas Submersible Pumps and Spares. is to be excluded as the Mo am not connected with the assessee as advanced by the submissions end documents furnished.

With respect to the sales attributable to Raju Mehta, as the Department has identified the sales to Vikas Bearing and Wires

as Purchase from A&N Engineering' in his protective assessment. and was already assessed in the hands of Raju Mehta Further with the explanations of the appellant, as above, The same is excluded from the sales value of the assessee.

[Unquote]

6.3 The following assertions made in the case of Shri Dinesh Mehta found favour of the assessing officer.

(Quote]

•The business of Vikas Bearing and Wires does not also belong to me and hence the income cannot be taxed In my hands. The business belongs some other person and the principal business is located at Coimbatore. understand that the Department had searched the said premises and seized documents and records.

2. M/s. Vikas Bearing and Wires:

The income, stock end investments of Vikas Bearing and Wires too wrongly attributed the control and income of the appellant. M's Vikas Bearings and Wires is a proprietary concern under the management and control of one Raju P,Mehta at Coimbatore. Further evidence was provided to show that as per Sales Tax records, the Godowns containing the stocks that were seized belongs to Mr. Raju Mehta who are all intent and purposes has controlling power over the business entity. The said Raju Mehta has filed income tax returns too in the name of M's Vikas Bearings and Wires. The evidences to show that the concern is. indeed, in the name of Raju Mehta, earner attached.

However the income of M/s Vikas Bearing and Wires end M's Vikas Submersible Pumps & Spares were deemed as the income of the appellant, the reason being that the ACIT came to the erroneous conclusion that the appellant had controlling power and rights over the business concern.

This is wrong in both fact and law as the business entity is under the control of Mr. Raju P. Mehta. This fact is supported by records which name Mr. Raju P.Mehta as the proprietor of

the business concern of M/s Vikas Bearings and Wires and M/s. Vikas Submersible Pumps & Spares is a partnership firm in which Mr. Rafts Mehta is one of the partners. There is no rational basis on which the income of M/s Vikas Bearings and Wires and M's Vikas Submersible Pumps & Spares can be attributed to the appellant.

Further, the income of the business entity should not have been assessed in the hands of the appellant as It a separate entity. distinct from the appellant. The appellant contested against the clubbing of income in letter dated 25th September 2006 1st November 2006, 22nd December 2011, 28th December 2011, but the same was subsequently rejected by the ACIT citing the previous acceptance of the appellant.

Both Vikas Bearing & Wires and Vikas Submersible Pumps & Spares am not concerns of the assessee as per the records submitted and information pursued.

[unquote]

6.4 *The above decision of the AO was made known to the authorized representative of the appellant at the time of hearing on 29.112019. These facts are not controverted by the appellant. Therefore, the protective additions made in the case of appellant is upheld.”*

6. The first issue that came up for our consideration from ground Nos.4 to 7 of assessee appeals for all assessment years is protective addition made by Assessing Officer towards unaccounted closing stock and unaccounted receivables of M/s. Vikas Bearing and Wires, Coimbatore, proprietary concern of assessee . The learned AR for assessee submitted

that the Assessing Officer as well as learned CIT(A) were erred in making protective additions in the hands of assessee towards unaccounted stock and receivables found during the course of search in the hands of Mr. Dinesh R Mehta, even though incriminating materials found during the course of search coupled with statements recorded from various parties clearly indicate that data retrieved from computer maintained in the name of M/s.A&N Engineering Company is not at all belongs to assessee and the same cannot be added even on protective basis. The AR further submitted that right from date of search ase has made it clear that he is only working for Mr. Dinesh R Mehta and receiving salary and whatever business carried out in the name of M/s.Vikas Bearing and Wires, Coimbatore, is in fact, carried out by Mr. Dinesh R Mehta and unaccounted transactions recorded in computer system found during course of search in the name of M/s.A&N Engineering Company is business carried on by Mr. Dinesh R Mehta. The AR referring to various documents including statements recorded from Mr. Dinesh R Mehta, his employees Mrs. Chitra and Mr.M.Babu submitted that all persons have categorically

admitted that M/s.A&N Engineering Company, is a paper company and transactions of purchase, sales, stock in trade and receivables recorded in computer system are transactions of Mr. Dinesh R Mehta carried out in three different concerns namely M/s. Vikas Bearing Corporation, Chennai, M/s. Vikas Submersible Pumps and Spares, Chennai and M/s. Vikas Bearing and Wires, Coimbatore. He further submitted that all along Mr. Dinesh R Mehta has admitted that he owned up business and business carried out in the name of M/s. Vikas Bearing and Wires, but filed retraction statement after more than 5 ½ years that too without any change in facts and circumstances of case and also in absence of any new evidences. Although, Mr. Dinesh R Mehta has filed retraction statement, Assessing Officer has not accepted retraction statement filed by him and reaffirmed his stand in respect of ownership of business carried out in the name of M/s. Vikas Bearing and Wires, and made additions on substantive basis in the hands of Mr. Dinesh R Mehta. The AR further referring to order of learned CIT(A) for assessment years 2001-02 to 2005-06 in the case of Mr. Dinesh R Mehta submitted that learned

CIT(A) has affirmed findings recorded by the Assessing Officer in respect of ownership of business and unaccounted income found during the course of search in form of stock in trade and receivables and held that said business was in fact carried out by Mr. Dinesh R Mehta and assessee has only lent his name. In fact, the matter reached Tribunal and before Tribunal pleading of assessee was in respect of violation of principles of natural justice by Assessing Officer in not providing adequate opportunity of hearing to assessee , but there is no grounds of appeal or pleading challenging findings recorded by Assessing Officer as well as affirmed by learned CIT(A) in respect of ownership of business and unaccounted income found during the course of search in the name of M/s. Vikas Bearing and Wires. The Tribunal under those facts and after considering plea of assessee regarding inadequate opportunity of hearing has set aside appeals to the file of Assessing Officer. Although, Tribunal has set aside appeals, but there is no directions of whatsoever in respect of ownership of business and unaccounted income in the name of M/s. Vikas Bearing and Wires and added in the hands of Mr. Dinesh R Mehta on

substantive basis. Although, there is no direction from the Tribunal in regard to ownership of business and unaccounted income, the Assessing Officer without assigning any reasons has deleted stock in trade and receivables found during the course of search attributable to proprietary concern M/s.Vikas Bearing and Wires, Coimbatore, while concluding assessment proceedings in consequent to proceedings u/s. 143(3) r.w.s 254 of the Act.

7. The learned DR, on the other hand, strongly supporting order of learned CIT(A) submitted that there is no merit in arguments taken by assessee that addition was made on protective basis in the hands of assessee towards unaccounted stock in trade and receivables, because Assessing Officer has made substantive addition towards stock in trade and receivables after considering fact that assessee is legal owner of M/s. Vikas Bearing and Wires, Coimbatore and all transactions are carried out in his name. The DR further referring to order of Assessing Officer and learned CIT(A) submitted that but for recording fact that additions were made

on protective basis by learned CIT(A), all discussions made by Assessing Officer in assessment order clearly indicate that M/s.Vikas Bearing and Wires, Coimbatore was owned by assessee Mr. Raju P.Mehta. He further submitted that although, Mr. Dinesh R Mehta initially owned up business carried out in the name of M/s.Vikas Bearing and Wires, Coimbatore, but subsequently, he has filed retractive statement and disowned the business carried out in the name of M/s.Vikas Bearing and Wires. No doubt, in first and second round of proceedings, Assessing Officer has concluded that transactions recorded in computer system found during the course of search in the name of M/s. A&N Engineering Company is belonged to Mr. Dinesh R Mehta, but on verification of relevant details filed by Mr. Dinesh R Mehta during third round of litigation came to conclusion that unaccounted stock in trade and receivables pertains to M/s.Vikas Bearing and Wires, cannot be added in the hands of Mr. Dinesh R Mehta. Therefore, it is very clear from records that assessee is owner of business carried out under the name & style of M/s.Vikas Bearing and Wires, Coimbatore and whatever closing stock and receivables found

during the course of search should be assessed in the hands of assessee on substantive basis.

8. We have heard both parties, perused material available on record and gone through the orders of authorities below. The facts borne out from records indicate that there was search in the case of Mr. Dinesh R Mehta on 23.02.2005. During the course of search and survey operations, various business premises including godowns owned in the name of M/s. Vikas Bearing Corporation, Chennai, M/s. Vikas Submersible Pumps and Spares, Chennai and M/s. Vikas Bearing and Wires, Coimbatore was covered. During the course of search various incriminating documents including a computer system was found, where unaccounted transactions of purchase and sales were recorded in the name of M/s. A&N Engineering Company. The said computer system was found in the premises of Mr. Dinesh R Mehta and same has been marked as Annexure SKM/LS/S-1-20. Mr. Dinesh R Mehta in the statement recorded u/s.132(4) of the Act has admitted that transactions recorded in the name of M/s. A&N Engineering Company belongs to him and also has owned up unaccounted stock found during the

course of search. Mr. Dinesh R Mehta has also confirmed the fact vide his letter dated 30.3.2005 and owned up business carried out in the name of M/s.Vikas Bearing and Wires, Coimbatore and also unaccounted stock found during the course of search and receivables as per computer system. The Assessing Officer has made additions towards unaccounted stock and receivables found during the course of search in the name of M/s.Vikas Bearing and Wires, Coimbatore on substantive basis in the hands of Mr. Dinesh R Mehta for the reasons recorded in assessment order, as per which although, business was carried out in the name of assessee Mr.Raju P Mehta, but documents found during the course of search coupled with statement recorded from Mr. Dinesh R Mehta and his employees clearly established the fact that business was carried out by Mr. Dinesh R Mehta and assessee is only working in his firm for salary. This fact has been confirmed by assessee in statement recorded u/s.132(4) of the Act during the course of and post search investigation. The Assessing Officer as well as learned CIT(A) has discussed at length the modus operandi of Mr. Dinesh R Mehta in recording unaccounted

transactions of purchase and sales, stock in trade and receivables in the name of M/s.A&N Engineering Company, a paper company. The Assessing Officer has further brought out various reasons to come to conclusion that transactions recorded in computer system in the name of M/s. Vikas Bearing and Wires, Coimbatore is belonged to Mr. Dinesh R Mehta. Therefore, on the basis of information collected during the course of search and post-search enquiries, a conclusion has been arrived at and accordingly, additions was made on substantive basis in the hands Mr. Dinesh R Mehta, but because assessee was legal owner of the firm M/s. Vikas Bearing and Wires, Coimbatore, protective addition was made in the hands of assessee on stock in trade and receivables.

9. We have given our thoughtful consideration to the facts brought out by Assessing Officer along with various evidences filed by assessee including assessment order passed by Assessing Officer and confirmed by learned CIT(A) in the case of Mr. Dinesh R Mehta. On verification of various details filed by assessee, we find that transactions undertaken in the name of

M/s. Vikas Bearing and Wires, Coimbatore happened through paper company M/s. A&N Engineering Company is fully controlled and operated by Mr. Dinesh R Mehta and assessee had no control on transactions which happened outside books of account, since as per seized documents and corroborative statements, transactions were not undertaken by assessee. Further, all documentary evidences show that transactions happened outside books are maintained separately by Mr. Dinesh R Mehta in the name of fictitious entity M/s. A&N Engineering Company. Mr. Dinesh R Mehta also maintained separate ledger for unaccounted transactions. The entries found in M/s. A&N Engineering & Bearing ledger account maintained by Mr. Dinesh R Mehta were tallied. From the above, it is very clear that unaccounted transactions maintained in the computer system under the name of M/s. A&N Engineering Company is not at all belonged to the assessee. Further, data found in computer was kept in the premises of Mr. Dinesh R Mehta and was seized during course of search from his premises. Once any document or evidence found in possession of a person, then presumption as per section 292C

is on the person from whose possession said documents were found or seized unless the person in whose possession books of account or documents were found explains with proper evidence that said documents were not belonged to him, then presumption is that such books of account or documents belongs to such person. In this case, documents found during the course of search from the premises of Mr. Dinesh R Mehta clearly indicate that unaccounted transactions recorded in the name of M/s. Vikas Bearing and Wires was carried out by Mr. Dinesh R Mehta and assessee has no role on it. This fact is further strengthened by bank account opened by Mr. Dinesh R Mehta at City Union Bank, Coimbatore with account no.3067 which coincides with registration of M/s. Vikas Bearing and Wires, Coimbatore. The said bank account has deposits by way of clearing and withdrawal by cash. Mr. Dinesh R Mehta has been operating said bank accounts with City Union Bank from December, 2000 onwards. This fact is further strengthened by fact that Mr. Dinesh R Mehta himself admitted that from 01.04.2004 he has taken over M/s. Vikas Bearing and Wires, Coimbatore. The assessee has operated separate bank

account in respect of transactions carried out in the name of M/s. Vikas Bearing and Wires, Coimbatore with HDFC Bank, Coimbatore which is being reflected in regular books maintained for the year and also seized during the course of search and marked as annexure MM/B&D/S039 dated 28.02.2005. The transactions recorded in HDFC bank account are part of regular returns filed by assessee. Further, during the course of search, it was found that transactions recorded in M/s. A&N Engineering Company relatable to account No.3530 maintained with City Union Bank, Coimbatore and operated by Mr. Dinesh R Mehta. Thus, it could be seen that all transactions that are routed through M/s. A&N Engineering Company and maintained in computer found during the course of search are transactions not relatable to the assessee.

10. We further noted that while concluding assessment proceedings, Assessing Officer has accepted the fact that unaccounted stock in trade and receivables found in the name of M/s. A&N Engineering Company belongs to Mr. Dinesh R Mehta has changed his stand during third round of litigation, when he has taken up proceedings in consequent to directions

of Tribunal u/s. 254 of the Act, without bringing on record evidence and circumstances prevailing at the time of framing assessment order immediately after the date of search were suddenly changed, when he has framed assessment order in consequent to the directions of Tribunal. In fact, Tribunal has set aside appeals to the file of Assessing Officer without making any comments on merits of the additions made by Assessing Officer. The Tribunal has set aside appeal only on the ground of pleading of assessee that Assessing Officer has not given sufficient opportunity of hearing to explain its case. However, the Assessing Officer during third round of litigation without recording any change in facts and circumstances of the case and also bringing on record any new evidence suggests unaccounted stock in trade was originally added in the hands of Mr. Dinesh R Mehta would belong to the assessee and taxable in the hands of Mr.Raju P Mehta. In our considered view, the Assessing Officer has exceeded his power in going beyond the directions of Tribunal without any findings regarding issue of ownership of business and consequent unaccounted stock in trade and receivables, more particularly, when Mr.

Dinesh R Mehta, himself has owned up and admitted business right from date of search while recording statement u/s. 132(4) and also subsequent confirmation by way of letter to the Assessing Officer. Although, he has filed retraction statement after a gap of more than five years, that too without any evidence on record to prove that unaccounted transactions recorded in computer system is not belonged to him. On the other hand, various seized documents found during the course of search revealed that modus operandi of Mr. Dinesh R Mehta to purchase goods outside books of account from various parties and to make payment to those purchases in cash . This fact is strengthened by evidence collected during the course of search that Mr. Dinesh R Mehta has issued cheques which are encashed in the bank account in the name of S.N.Shah at Union Bank of India, Madras main branch in account No.1/008924. This account was opened and operated by Mr. Dinesh R Mehta giving his own photograph and account was introduced by Mr. R.Babu, his own employee. Therefore, we are of the considered view that Assessing Officer has erred in making additions even on protective basis in the hands of

assessee towards stock in trade and receivables, when various evidences coupled with statement of Mr. Dinesh R Mehta recorded during the course of search clearly established the fact that Mr. Dinesh R Mehta is owner of M/s. Vikas Bearing and Wires, Coimbatore and unaccounted transactions recorded in computer system in the name of M/s. A&N Engineering Company, a fictitious entity is not belonged to assessee. Further, although Mr. Dinesh R Mehta has filed retraction, such retraction was general in nature and there is no specific mention of particular admission which was claimed to be retracted. The said retraction is unsubstantiated. It is well settled principle of law that burden to prove admission as incorrect is on the maker and in case, there is failure of the maker to prove that earlier stated facts were wrong, his earlier statements are sufficient to conclude the matter. However, if retraction is proved sufficiently, the earlier stated facts or admissions loose their effect and relevance as binding evidence and income-tax authorities cannot conclude the matter on the basis of such earlier statement alone. At the same time, general retraction of earlier admissions will not be

enough and even after retraction such earlier admissions cannot automatically become nullity. Further, merely because statement is retracted, it cannot become as involuntary or unlawfully obtained. Therefore, we are of the considered view that the Assessing Officer, while concluding assessment proceedings in the case of Mr. Dinesh R Mehta has excluded unaccounted transactions of stock in trade and receivables pertains to M/s. Vikas Bearing and Wires, Coimbatore without there being any change in facts and circumstances of case prevailing at the time of making substantive additions in the hands of Mr. Dinesh R Mehta and protective addition in the hands of assessee. This view is fortified by decisions of various High Courts, in particularly in the following case laws relied upon by the assessee:-

12. Retraction which is made by DRM is general in nature and there is no specific mention of a particular admission which was claimed to be retracted. The said retraction is unsubstantiated. There was no reference or mention of any evidence. There has been no pressure or torture, if there was such an allegation than DRM would have complained the same to the Commissioner or to any other Authority.

Law in respect of admissibility of a retraction is very well settled. There must be some convincing and effective evidence in the hands DRM through which he could demonstrate that the said statement was factually incorrect. ORM is under strict obligation to demonstrate that the statement recorded earlier was incorrect, therefore, on the basis of those specific evidences later on retracted, Further there should also be some strong evidence to demonstrate that the earlier statement recorded was under coercion. In the present case, the retraction is general in nature and lacking any supportive evidence, Rather URM took a year and half to retract the initial statement, which by itself created a serious doubt. Law in respect of admissibility of a retraction is very well settled.

T.S. Kumarasamy V. Asstt. CIT [1998] 65 LTD 188 (Mad.):

It was held by the Tribunal that though there was a retraction of admission on the part of the assessee, one year later, enough good reasons were not given by him for retracting from his voluntary admissions, Consequently, in the absence of any cogent reason with credible evidence, the Court rejected the plea of the assessee that those admissions were made under coercion or duress and were not voluntary. Drawing support from the decision of the Supreme Court in the

case of Surjeeet Singh Chhabra v. Union of India [1997] 1 SCC 508 the Tribunal disallowed plea of retraction of the assessee on the ground that neither the ground of coercion or duress nor the ground of involuntary statement was proved to have existed at the time of recording of the statement. This decision of the Tribunal goes to indicate that admissions or confessions made in the statements recorded during search or survey, without there being any other evidence to support such admissions, can successfully be made use of to assess the income, unless they are proved to be involuntary or are proved to have been taken under duress, coercion, misconception, etc.

Asstt. CIT.. Ramesh Chandra R. Patel [2004] 89 ITD 203 (Ahd.) (TM):

It was accepted that the assessee had a right to retract but that has to be based on evidence brought on record to the contrary and there must be justifiable reason and material accepting retraction i.e., cogent and sufficient material have to be placed on record for acceptance or retraction. All that has to be done by the assessee if he is to retract the statement which was recorded in the presence of witnesses unless there is evidence of pressure or coercion. The facts of each case have to be considered to reach the conclusion

whether retraction was possible or not as there can be no universal rule.

CIT Vs. Lekh Raj Dhunna: 344 ITR 352 (P & H) In case the statement which was made by the assessee at the time of search and seizure was under pressure or due to coercion, the assessee could have retracted from the same at the earliest, No plausible explanation has been furnished as to why the said statement could not be withdrawn earlier. In such a situation, the authenticity of the statement by Virtue of which surrender had been made at the time of search cannot be held to be bad.

Assistant commissioner of Income tax vs. Hukum Chand Jam & Ors. 337 ITR 0238-Chhattigarh

Deputy Commissioner of Income Tax vs. Bhogilal Mulchand Kando-96 ltd 0344

13. Vikas bearings and wires is a proprietary concern registered in the name of the assessee Raju P Mehta engaged in the business of trading in bearings and wires. The assessee has been receiving monthly i- enumeration for this and the same has been admitted by the appellant originally as drawings and in the revised return under the head salary. For all

transaction undertaken by the appellant which happened through proper books, the appellant has been regularly filing its returns. The appellant had no control on transactions which happens outside the books of account since it is controlled by DRM. The transactions that have happened outside the books are maintained separately by Dinesh R Mehta in the name of fictitious entity called A&N Engineering. Dinesh R Mehta also maintained separate ledger for unaccounted transaction for Vikas Rearing and Wires. The entries in both would tally. These Entries contain materials supplied by Dinesh R Mehta to VBW outside books and also amounts that have been received after selling the materials. Bearings is another fictitious entry. Bearings books are offshoot of A&N engineering and contains only postings of amounts received from VBW after selling of materials supplied by DRM. These have been misconstrued as receivables by VBW. DRM has owned up transactions that has happened outside VBW and the same cannot be assessed in the hands of the appellant.

It would be appropriate to see why Substantive addition have been made in the case of Dinesh R Mehta for the AY 2001-02 to 2005-06, on which protective addition has been made against the appellant which the appellant is presently aggrieved,

why the first appellate authority confirmed the said substantive addition on two occasions vide orders dated 20.05.2010 and 24.06.2014 and the circumstances and the basis in which the Tribunal had restored the assessments to the file of the AY vide its order dated 09.11.2010 and subsequently vide its order dated 30.06.2017. This would give a wholistic perspective on the issue to decide if the first appellate authority was justified in substantively confirming the addition which was protectively made by the assessing officer.”

11. From the above, it is very clear that transactions recorded in computer system in the name of M/s. A&N Engineering Company relating to M/s. Vikas Bearing and Wires, Coimbatore do not belong to assessee, although Assessing Officer has accepted the fact that said transactions are not relating to the assessee and were assessable in the hands of Mr. Dinesh R Mehta and also made additions originally in the hands of Mr. Dinesh R Mehta who erred in making protective additions in the hands of assessee, even though evidences collected during the course of search remotely established the fact that said transactions in fact, belonged to the assessee.

Further, learned CIT(A) without application of mind has simply upheld protective addition only for the reason that Assessing Officer in his order dated 15.03.2018 in the case of Mr. Dinesh R Mehta has held that income of M/s. Vikas Bearing and Wires should not have been assessed in the hands of Mr. Dinesh R Mehta, as they are separate entities distinct from Mr. Dinesh R Mehta. Only on the basis of retraction filed by Mr. Dinesh R Mehta vide his letter dated 25.09.2006, although the said retraction was twice rejected by the Assessing Officer.. We further noted that all evidences gathered during course of search and post-search enquiries were clearly shown that unaccounted transactions of stock in trade and receivables recorded in computer system were carried out by Mr. Dinesh R Mehta, which was affirmed by his trusted employees. Mr. Dinesh R Mehta himself has admitted the fact that he had carried out said business in the name of Raju P Mehta. Therefore, we are of the considered view that learned CIT(A) has completely erred in confirming additions made by Assessing Officer on protective basis towards stock in trade and receivables in the hands of assessee . Hence, we direct

the Assessing Officer to delete additions made towards unaccounted stock in trade and receivables of M/s. Vikas Bearing and Wires, Coimbatore in the hands of assessee for assessment years 2001-02 to 2005-06.

12. The next issue that came up for our consideration for assessment years 2002-03 to 2004-05 towards protective addition made on account of balance with M/s. A&N Engineering Company. The Assessing Officer has made addition of ₹ 20,06,686/- spread over three assessment years starting from assessment year 2002-03 on the basis of incriminating materials found during the course of search in the name of M/s. A&N Engineering Company on the ground that under the account titled 'RPM' outstanding amount lying unpaid to the assessee. It was the contention of assessee before the Assessing Officer as well as learned CIT(A) that Mr. Dinesh R Mehta was examined on this issue during the course of search and post-search investigation, where he had stated that RPM represents to Mr. Rajendra Prasad Modi and amount shown as on 31.03.2004 is payable to him. However, the Assessing Officer was of the opinion that RPM refers to Raju P Mehta

and amount shown in the name of RPM is payable to him and accordingly made additions of ₹20,06,686/- for three assessment years.

13. The learned AR for assessee submitted that assessee has disowned total unaccounted transactions recorded in the computer system in the name of M/s. A&N Engineering Company right from the day one and also Mr. Dinesh R Mehta has owned up business in consequent to unaccounted closing stock and receivable therefore, no addition can be made towards an entry made in the books of account of M/s. A&N Engineering Company.

14. The learned DR, on the other hand, strongly supporting order of learned CIT(A) submitted that documents seized during the course of search clearly indicate unaccounted transactions recorded in the books of M/s. A&N Engineering Company relates to M/s. Vikas Bearing and Wires is assessable in the hands of assessee and hence, learned CIT(A) has rightly confirmed additions made by Assessing Officer and his order should be upheld.

15. We have heard both parties, perused material available on record and gone through the orders of authorities below. The facts borne out from records indicate that incriminating materials found during the course of search in the form of computer hardware maintained in the name of M/s. A&N Engineering Company indicates that a sum of ₹20,06,686/- was shown as debit balance in the name of RPM. The Assessing Officer has inferred that RPM refers to Raju P.Mehta and amount shown in the name of RPM is assessable in the hands of assessee as unaccounted income. We have gone through facts brought out by Assessing Officer along with arguments advanced by learned AR for the assessee. On verification of various details filed by assessee, we find M/s. A&N Engineering Company is a fictitious entity existed in papers, but all transactions of purchase and sales recorded in the name of said entity was belonged to Mr. Dinesh R Mehta. Further, Mr. Dinesh R Mehta has owned up unaccounted business carried out in the name of M/s. Vikas Bearing and Wires and on that basis, substantive addition has been made in the name of Mr. Dinesh R Mehta and which was

upheld by first appellate authority in second round of litigation . However, in third round of litigation, all of a sudden the Assessing Officer has suddenly changed his stand and excluded unaccounted transactions recorded in the name of M/s. A&N Engineering Company relating to the assessee on the ground that Mr. Raju P.Mehta was legal owner of M/s. Vikas Bearing and Wires, without bringing on record any evidence to prove that unaccounted transactions carried out by Mr. Dinesh R Mehta was in fact, belongs to assessee . Further, there is no material evidence which was found at the time of search to demonstrate that assessee was benefited by such entry in the books of account of M/s. A&N Engineering Company. The assessee has no control over entries made in books of account of M/s. A&N Engineering Company. Therefore, we are of the considered view that Assessing Officer has erred in making addition towards balance with M/s. A&N Engineering Company on the basis of single side entry made in the books of M/s. A&N Engineering Company on which assessee does not have any control. It is not the case of Assessing Officer that in the books of assessee corresponding

credit entry to justify debit balance of ₹20,06,686/- under the account titled RPM in the books of M/s. A&N Engineering Company. Therefore, we are of the considered view that additions made by Assessing Officer towards balance with M/s. A&N Engineering Company on the basis of incriminating materials found during the course of search in the hands of assessee on protective basis is incorrect. Hence, we direct the Assessing Officer to delete addition made towards balance with M/s. A&N Engineering Company of ₹20,06,686/- for assessment year 2002-03 to 2004-05.

16. The next issue that came up for our consideration for assessment year 1999-2000 is addition made by Assessing Officer towards cash credit in bank account amounting to ₹3,15,000/-. During the course of assessment proceedings, it was noticed that assessee had SB account with Union Bank of India, Sembudoss Street, Chennai, where cash deposit of ₹3,15,000/- on various dates has been made. It was further noted that immediately after cash deposits, amount had been withdrawn by way of cheques. Since the assessee has not

explained satisfactorily source of income for credits found in bank account, the Assessing Officer has made addition of ₹3,15,000/- as unexplained income of assessee. On appeal, learned CIT(A) has restricted addition of ₹1,54,400/- on the basis of remand report issued by Assessing Officer, where Assessing Officer has accepted source of income for cash deposit of ₹1,60,600/-.

17. The learned AR for assessee submitted that learned CIT(A) has erred in confirming additions towards cash deposit of ₹1,54,400/- without bringing on record fact that assessee has satisfactorily explained source of cash deposits and such source of income is out of liquidation of outstanding debtors in respect of his business activity. The learned DR, on the other hand, strongly supported order of learned CIT(A).

18. Having heard both sides and considered material on record, we find that assessee has failed to explain source of income for remaining cash deposit of ₹1,54,400/- , although assessee claims that source of cash deposits is out of

liquidation of debtors, but failed to file any evidence to prove that cash deposit is out of realization of debtors. Hence, we are of the considered view that there is no error in the findings recorded by learned CIT(A) to sustain additions made by Assessing Officer towards cash deposit of ₹1,54,400/-. Therefore, we are inclined to uphold findings of learned CIT(A) and reject grounds taken by assessee.

19. The next issue that came up for our consideration for assessment year 2001-02 is additions made by Assessing Officer towards cash credit in bank account. During the course of assessment proceedings, Assessing Officer noticed that assessee is maintaining SB account with Union Bank of India, Sembudoss Street, Chennai and on various dates cash deposits were made amounting to ₹ 65,000/-. The Assessing Officer has made additions towards cash deposits on the ground that assessee has not satisfactorily explained source of income for cash credits found in bank account. Similarly, Assessing Officer has made additions towards credits found in capital account of M/s. Vikas Bearing and Wires amounting to

₹ 1,10,000/- on the ground that assessee has not produced any evidence to verify source for credit appearing in capital account. During the course of appellate proceedings, assessee has filed certain additional evidences which has been forwarded to Assessing Officer for his comments. The Assessing Officer during remand proceedings has accepted source of income for cash deposits found in bank account for ₹65,000/-, however, reiterated his arguments insofar as credit found in capital account of M/s. Vikas Bearing and Wires. The learned CIT(A) after considering relevant submissions has deleted additions made by Assessing Officer towards credits found in SB account with Union Bank of India, however, confirmed additions made towards credit in capital account amounting to ₹1,10,000/-.

20. We have heard both parties, perused material available on record and gone through the orders of authorities below. At the time of hearing, learned AR for assessee except making argument that additions made by Assessing Officer towards credit found in capital account is not made out of seized

material has failed to file any evidence to prove source of income for credit amounting to ₹1,10,000/- . Therefore, we are of the considered view that there is no error in the findings recorded by learned CIT(A) to sustain addition made by A.O towards credits found in capital account amounting to ₹1,10,000/- and hence, we are inclined to uphold findings recorded by learned CIT(A) and reject grounds taken by assessee.

21. The next issue that came up for our consideration for assessment year 2002-03 is addition made by the Assessing Officer towards cash credit in bank account amounting to ₹6,50,000/- During the course of assessment proceedings, Assessing Officer noticed that assessee has an SB account with Union Bank of India, Sembudoss Street, Chennai . It was further noted that on various dates cash deposits amounting to ₹6,50,000/- were made, after immediately cheques were issued in favour of various parties. The assessee explained that an amount of ₹5,00,000/- brought by way of transfer has been returned. The Assessing Officer was not convinced with

explanation furnished by assessee and according to him, source of income of cash deposits were unexplained, and accordingly made addition of ₹ 6,50,000/-.

22. The assessee preferred an appeal before learned CIT(A) and filed various additional evidences. During the course of appellate proceedings, learned CIT(A) has forwarded additional evidences filed by assessee to the Assessing Officer for his comments. During the remand proceedings, the Assessing Officer has accepted source of income for cash deposit of ₹1,50,000/- and in respect of remaining cash deposit of ₹5.00 lakhs, Assessing Officer has reiterated his observations made during the course of assessment proceedings. Therefore, learned CIT(A) has allowed relief to the extent of ₹1,50,000/- and balance amount of ₹ 5,00,000/- has been confirmed.

23. We have heard both parties, perused material available on record and gone through the orders of authorities below. On verification of details filed by assessee, we find that except stating that additions made by Assessing Officer towards cash

deposit is not made out of seized material and is on the basis of return of income filed by assessee has not filed any evidence to prove source of income for cash deposit of ₹5,00,000/- made in Union Bank of India. Therefore, we are of the considered view that there is no error in the findings recorded by learned CIT(A) to confirm additions made by Assessing Officer towards cash deposit with Union Bank of India amounting to ₹5,00,000/- . Hence, we are inclined to uphold findings of learned CIT(A) and reject ground taken by assessee.

24. The next issue that came up for our consideration for assessment year 2003-04 is various additions made by the Assessing Officer towards compounding fee, cash credit in bank account , credit in personal trial balance, credit in personal book and remuneration received from M/s. Vikas Bearing and Wires. The Assessing Officer has made addition of ₹1,000/- towards compounding fee on the ground that said expenditure is in penal nature which cannot be allowed as deduction. The Assessing Officer has also made addition towards credit in

capital account of M/s. Vikas Bearing and Wires amounting to ₹4,51,096/- on the ground that no evidence has been produced to verify source of credit appearing in capital account. The Assessing Officer has also made addition of ₹1,00,000/- towards cash credit found in SB account with Union Bank of India, Sembudoss Street, Chennai on the ground that no evidence has been filed to prove source of income for cash deposits. The Assessing Officer has made addition of ₹ 37,500/- in respect of credit in personal trial balance on the ground that assessee has failed to file any evidence to prove credit by identification of creditors. Likewise, the Assessing Officer has made addition of ₹79,392/- towards difference in remuneration admitted by assessee and profit from M/s. Vikas Bearing and Wires. On appeal, learned CIT(A) has affirmed findings recorded by Assessing Officer.

25. We have heard both parties, perused material available on record and gone through the orders of authorities below. During the course of hearing, learned AR for the assessee except stating that Assessing Officer has made various

additions without any incriminating materials found during the course of search has failed to file any evidences to prove source of income for cash credits found in SB account, and also failed to explain credit in personal trial balance, credit in capital account and difference in remuneration received from M/s. Vikas Bearing and Wires. The assessee has also failed to explain how deduction can be allowed towards compounding fee of ₹1,000/-. We are, therefore, of the considered view that there is no error in the findings recorded by learned CIT(A) to confirm additions on various accounts. We are inclined to uphold findings of learned CIT(A) and reject grounds taken by assessee.

26. The next common issue that came up for our consideration for assessment years 2003-04 & 2004-05 is protective additions made towards depreciation on car and finance charges on car loan. The Assessing Officer has disallowed expenses claimed under the head depreciation on car and interest paid on car loan on the ground that assessee is only a name lender in respect of ownership of M/s.Vikas

Bearing and Wires was in fact, carried out by Mr. Dinesh R Mehta and accordingly, substantive addition has been made in the hands of Mr. Dinesh R Mehta and protective addition has been made in the hands of assessee, because assessee was legal owner of M/s.Vikas Bearing and Wires.

27. On appeal, learned CIT(A) has confirmed additions made by Assessing Officer on protective basis.

28. We have heard both parties, perused material available on record and gone through the orders of authorities below along with various arguments advanced by learned counsel for assessee. We find that it was a case of assessee that unaccounted transactions recorded in computer system in the name of M/s.Vikas Bearing and Wires was belonged to Mr. Dinesh R Mehta and the transactions recorded in regular books of account was carried out by him as proprietor of M/s.Vikas Bearing and Wires. We further held that unaccounted transactions recorded in books of account of M/s. A&N Engineering Company is not belonged to assessee and same cannot be added as undisclosed income in the hands of

assessee, because Mr.Dinesh R Mehta has owned up unaccounted business related stock and receivables in the name of M/s.Vikas Bearing and Wires. Once the transactions recorded in books of account of M/s. A&N Engineering Company is held to be not taxable in the hands of assessee, depreciation on car and finance charges cannot be taxed on protective basis in the hands of assessee, when substantive addition was made in the name of Mr.Dinesh R Mehta. The learned CIT(A), without appreciating the facts simply confirmed additions made by Assessing Officer. Hence, we direct the Assessing Officer to delete protective addition made towards depreciation on car and finance charges on car loan in the hands of assessee for both assessment years.

29. The next issue that came up for consideration for assessment year 2004-05 is towards other additions made by Assessing Officer on account of cash credit in Union Bank of India, credit in personal books and difference in remuneration from M/s.Vikas Bearing and Wires, Coimbatore. The Assessing Officer has made additions towards credit in personal book amounting to ₹ 1,86,225/- on the ground that

no explanation has been filed to verify source of credit appearing in capital account. The Assessing Officer has also made additions towards cash deposit of ₹ 2,10,000/- found in SB account maintained at Union Bank of India. The Assessing Officer has also made addition towards difference in remuneration received from M/s.Vikas Bearing and Wires. Likewise, Assessing Officer has made additions towards sundry creditors appearing in books of M/s.Vikas Bearing and Wires on the ground that assessee was only name lender and Mr.Dinesh R Mehta is real owner of proprietary business, therefore, he is not in a position to explain identity of sundry creditors.

30. The assessee has filed an appeal before learned CIT(A) and filed various additional evidences. During the course of appellate proceedings, the learned CIT(A) has forwarded additional evidences filed by assessee to the Assessing Officer for his comments. The Assessing Officer vide his remand report has accepted source of credits in personal book for Rs.15,887/- on the ground that same represents interest

paid on car loan. As regards credits in SB account, Assessing Officer has accepted source for income of ₹1,03,360/- because, the same is out of commission not offered to tax. Insofar as other additions, the Assessing Officer has reiterated his observations made during assessment proceedings. The learned CIT(A) on the basis of remand report allowed partial relief in respect of cash credit found in SB account and additions made towards credit from personal book. However, in respect of balance with M/s. A&N Engineering Company, interest on credits and remuneration upheld additions made by Assessing Officer .

31. We have heard both parties, perused materials available on record and gone through the orders of authorities below. The learned AR for the assessee at the time of hearing except stating that additions made by Assessing Officer are not based on any incriminating material found during the course of search, has failed to file any evidence to prove source of income for credits found in SB account and personal account and also failed to explain difference in remuneration . We are, therefore of the considered view that learned CIT(A) was right

in confirming additions made by Assessing Officer towards cash credit in bank account, credit in personal book and difference in remuneration. Hence, we are inclined to uphold the findings of the learned CIT(A) and reject grounds taken by assessee .

32. The next issue that came up for consideration for assessment year 2005-06 is towards various additions made by Assessing Officer on account of cash found during the course of search, profit from M/s.Vikas Bearing and Wires, new sundry creditors and sundry creditors with transactions. The Assessing Officer has made various additions on the ground that assessee has failed to explain satisfactorily source of income for cash deposits found in bank account and also failed to file identity and genuineness of transactions with regard to sundry creditors. As regards cash found during the course of search, Assessing Officer has made additions on protective basis in the hands of assessee on the ground that cash found during the course of search in the name of

M/s.Vikas Bearing and Wires was belonged to Mr.Dinesh R Mehta.

33. On appeal, learned CIT(A) has affirmed protective addition made by Assessing Officer towards cash found during the course of search, profit from M/s.Vikas Bearing and Wires and new sundry creditors and sundry creditors with transactions. However, enhanced additions made towards cash credit in bank account to ₹2,32,900/- on the basis of reassessment of Assessing Officer, where the Assessing Officer observed that assessee has failed to file source of income for cash deposits of ₹1,35,000/-.

34. We have heard both parties, perused materials available on record and gone through the orders of authorities below. We find that in preceding paragraph in respect of unaccounted receivables and stock in trade pertains to M/s.Vikas Bearing and Wires was held to be not taxable even on protective basis in the hands of assessee because substantive addition has been made in the hands of Mr.Dinesh R Mehta on the basis of various incriminating materials found during the course of

search coupled with statements recorded from Mr.Dinesh R Mehta, the assessee and other employees of group , Once protective addition made towards stock in trade receivables is held to be not taxable in the hands of assessee , the other protective additions made towards cash found during the course of search, profit from M/s.Vikas Bearing and Wires and new sundry creditors and sundry creditors with transactions cannot be sustained in the hands of assessee. Therefore, we are of the considered view that learned CIT(A) has erred in confirming additions made by Assessing Officer on protective basis towards cash found and other additions. We reverse findings of learned CIT(A) and direct Assessing Officer to delete protective addition made towards cash found during the course of search, profit from VBW and new sundry creditors and sundry creditors with transactions. However, in respect of additions made towards cash credit in bank account of Union Bank of India, assessee has failed to explain source of income for cash deposits amounting to ₹3,67,900/- with any evidences. Therefore, we are inclined to uphold findings of learned CIT(A) and reject arguments of assessee . As regards interest received

amounting to ₹26,400, it is admitted that assessee has not admitted interest income in the return filed for relevant assessment year. Therefore, addition made towards interest income is upheld.

35. In the result, appeals filed by assessee for assessment years 1999-2000, 2001-02 to 2005-06 are treated as partly allowed.

Order pronounced in the open court on 2nd February, 2021

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(Duvvuru RL Reddy)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, 2nd February, 2021

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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