

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.1466/Chny/2018

(निर्धारणवर्ष / Assessment Year: 1996-97)

Mr.R.Srinivasan 103, Ashok Nagar Main Road Kodambakkam, Chennai-600 024.	Vs	The Deputy Commissioner of Income Tax, Corporate Circle-I(2) Chennai.
PAN : AAIPS 8386H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

CORRIGENDUM

In the Tribunal's order dated 25th February, 2021, in ITA No. 1466/Chny/2018, Respondent's name mentioned in the cause title is to be read as "**Deputy Commissioner of Income Tax, Corporate Circle-I(2), Chennai**", instead of Deputy Commissioner of Income Tax, Central Circle-1, Coimbatore.

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member
चेन्नई/Chennai,
दिनांक/Dated 19th April, 2021
DS

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

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/G

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Mr. R.Srinivasan, 103, Ashok Nagar Main Road, Kodambakkam, Chennai-24.	Vs	The Deputy Commissioner of Income Tax, Central Circle-1, Coimbatore.
PAN: AAIPS 8386H		
(अपीलार्थी/Appellant)		प्रत्यर्थी/Respondent/

अपीलार्थीकीओरसे/ Appellant by	:	Mr. B.Ramakrishnan, FCA & Mrs.K.Hemalatha, ACA
प्रत्यर्थीकीओरसे/Respondent by	:	Mr.G.Srinivasa Rao, CIT

सुनवाईकीतारीख/Date of hearing	:	21.01.2021
घोषणाकीतारीख /Date of Pronouncement	:	25.02.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the learned Commissioner of Income Tax (Appeals)-1, Chennai dated 29.03.2018 and pertains to assessment year 1996-97.

2. The assessee has raised the following grounds of appeal:-

"1. The Order of the Learned Commissioner of Income Tax (Appeals) ("CITA" in short) is without jurisdiction, is contrary to law, facts and circumstances of the Case.

2. The Learned CIT(A) erred in making the addition of Rs 7,16,79,408/- on substantive basis without considering the fact that the additions were already taxed in the hands of AOP.

3. The Learned CITA erred in making the addition of Rs 7,16,79,408/- as unexplained investments being credits in various benami accounts seized on a protective basis.

4. The Learned CITA erred in not considering the remand report called for from the Assessing Officer wherein the AO had considered the additional evidences filed and given the report.”

3. The assessee has also filed a petition for admission of additional grounds of appeal vide its letter dated 07.01.2021. The learned AR for the assessee submitted that assessee has by inadvertent error omitted to raise certain grounds of appeal with regard to various additions made by the Assessing Officer, including additions towards bank deposits with Indian Overseas Bank , Pantheon Road, Chennai, addition on account of interest income in respect of above deposits and addition towards salary and interest income . The facts of which are already on record and hence, additional grounds of appeal may be admitted to decide the issues on merits.

4. The learned DR, on the other hand, submitted that assessee has failed to make out a case for filing additional grounds of appeal with necessary facts was already on record to establish the nexus with evidence which are required to be examined on the issue of additional grounds and hence, additional grounds of appeal filed by assessee may be rejected.

5. Having heard both sides and considered petition filed for admission of additional grounds, we find that additional grounds of appeal filed with regard to various additions made by the Assessing Officer are emanating from the assessment order passed by Assessing Officer dated 30.03.1999 and further no new facts are brought on record which are required to be examined and hence, additional grounds of appeals are admitted to decide issues on merits.

6. The brief facts of the case as culled out from assessment order are that the assessee is an individual filed his return of income for assessment year 1996-97 declaring total income of ₹7,49,270/-. The assessee was employed with ONGC at

Chennai till 1995. Thereafter, assessee began carrying on business under the name of various entities such as M/s. S.R. Associates, M/s. Ramadoss Finance Pvt. Ltd and M/s. Ramadoss Exports. A search and seizure u/s.132 of the Act was conducted in the residential and business premises of the assessee on 13.02.1996 and during the course of search, various incriminating materials showing undisclosed income was found and seized. Consequent to search, proceedings u/s 158BC of the Act was initiated and assessment has been completed under section 143(3) r.w.s 158BC on 28.02.1997 for the block period from 01.04.1986 to 13.02.1996.

7. During the course of search action u/s 132 of the Act, it was noticed by the investigation wing of Income Tax Department that, M/s. Tamil Nadu Textile Corporation which was implementing free clothing distribution scheme of Tamil Nadu Government was siphoning substantial amount of money through some influential persons, such as assessee's brother Mr.R.Venkatakrishnan, who was P.A. to the Social Welfare Minister, in-charge of free distribution scheme of sarees and

dhoties of Tamil Nadu Government. During the course of search, statement u/s.132(4) of the Act was recorded from the assessee and also asked to explain various seized materials found during the course of search in connection with supply of sarees and dhoties of Government of Tamil Nadu. In the statement recorded, assessee stated that he is not aware of how these papers came to his possession and also explained he does not have any connection with the persons who are involved in supply of sarees and dhoties under the scheme through TNTC. Subsequent to search, on the basis of investigation carried out by the investigation wing, it was ascertained that assessee is beneficiary of substantial money earned by various suppliers of sarees and dhoties of TNTC which was siphoned off to the assessee. On the basis of materials found subsequent to search, assessment for the assessment year 1996-97 was completed u/s. 143(3) of the Act on 30.03.1999 and additions were made towards unexplained investments in bank deposits amounting to ₹ 13,25,642/- , estimated interest income on said unexplained deposit of ₹ 10,00,000/- and salary income not disclosed in the return of

income amounting to ₹ 1,00,000/-. Besides the above, a sum of ₹ 7,16,79,408/- was also added on protective basis as undisclosed income of the assessee on the basis of various bank accounts held in various benami accounts on the ground that amount transferred to various bank accounts represents proceeds of textile scam passed on to the assessee. Further, the Assessing Officer had recorded clear finding regarding nexus between material found during the course of search coupled with enquiry conducted during post-search investigation and amount transferred to various bank accounts of the assessee. However, no addition was made in block assessment on the ground that additions were already made to the amounts credited in various bank accounts of individuals in the hands of M.Devaraj & Others, AOP. But, at later stage, it was ascertained that amounts transferred to certain individual accounts represent money transferred out of textile scam and such money was assessable in the hands of assessee, the AO was of the opinion that said amount is undisclosed income of the assessee for block period. However no addition has been made in block assessment because block assessment was

already completed. Therefore, to protect the interest of revenue the Assessing Officer made a protective addition for the impugned assessment year on the ground that block assessment has been already revised u/s.263 of the Act, so as to include impugned undisclosed income for the block period.

8. Being aggrieved by the assessment order, the assessee preferred an appeal before learned CIT(A). Before learned CIT(A), the assessee has challenged various additions made by the Assessing Officer including additions towards unexplained investments being credits in bank accounts of 5 persons related to textile scam, additions towards unexplained investments in deposits with Indian Overseas Bank, Chennai, addition on account of estimated income with respect of deposits in bank account and additions towards salary and interest. During the course of appellate proceedings, assessee has filed various additional evidences to prove that he do not have any relationship with 5 persons, who were part of Shri M.Devaraj & Others as an AOP and hence, amounts transferred from 5 persons account cannot be considered as

his unexplained investments. During the course of appellate proceedings, learned CIT(A) has forwarded various evidences filed by assessee to the Assessing Officer for his comments. During the course of remand proceedings, assessee has explained amounts transferred from 5 persons account and argued that amount credited into accounts of Shri V.Kannan, Shri K.Mohan, Shri S.Gopal, Shri V.Senthamarai and Shri S.Raja were transferred from members of AOP (Shri M.Devaraj & Others) and further amounts credited in these bank accounts have been assessed in the hands of AOP. During the course of remand proceedings, the Assessing Officer has examined claim of the assessee and has also accepted the fact that amount credited in the bank accounts of above 5 persons are transferred from members of AOP and said amount has been already subjected to tax in the name of M/s. M.Devaraj & Others, AOP and accordingly, accepted source of income wherever assessee was able to link transfer of funds. However, wherever assessee could not explain credits to the AOP accounts, the same has been treated as unexplained

investments of the assessee. The relevant findings of the Assessing Officer in the remand report are as under:-

"8.1 As submitted earlier assessee has preferred present appeal for regular scrutiny assessment for assessment year 1996-97 . it is the contention of assessee that credits in five bank accounts found in premises of assessee are transfers from bank account of members of AOP as given as under:-

8.2 Credits in the name of V.Kannan:

<i>Transferee @ Chennai</i>	<i>AOP members</i>	<i>A/c No.</i>	<i>Bank account</i>	<i>Amount ₹</i>
<i>V.Kannan</i>	<i>2%</i>	<i>1208</i>	<i>IB Kotturpuram, Chennai</i>	<i>84,00,000</i>

8.2 .1 The above amounts are said to be transfers from accounts of the following persons:-

<i>Transferee @ Coimbatore</i>	<i>Transferor s bank a/c</i>	<i>Bank</i>	<i>Amt ₹</i>	<i>AOP Membership</i>
<i>V.Ponnambalam (V.Ponnambalam &CO.)</i>	<i>41337</i>	<i>BOM Coimbatore</i>	<i>25,00,000</i>	<i>24%</i>
<i>Sakthivel (Lakshmi Traders)</i>	<i>193291</i>	<i>BOM Coimbatore</i>	<i>33,00,000</i>	<i>2%</i>
<i>Credit</i>			<i>26,00,000</i>	

8.2.2 Submission:

The assessee's contention appears to be true regarding the two amounts at Rs. 25,00,000/- and Rs. 33,00,000/- which have been assessed in the status of M/s. Devaraj and others. However the assessee has not given any explanation regarding the credit of

Rs. 26,00,000/- . It is pertinent to point out that pay-in-slips evidencing payment of Rs. 26,00,000/- were found in the premises of the assesses for which the assessee has not given any satisfactory explanation. Hence Rs. 5800,000/- may be treated as having flown from funds of the AOP (Devaraj and others) and the balance Rs. 2600,000/- may be treated as the income of the assessee Shri, R. Srinivasan.

8.3 Credits in the name of K.Mohan

<i>Transferee @ Chennai</i>	<i>AOP members</i>	<i>A/c No.</i>	<i>Bank account</i>	<i>Amount ₹</i>
<i>K.Mohan</i>	<i>2%</i>	<i>1209</i>	<i>IB Kotturpuram, Chennai</i>	<i>1,01,00,000</i>

8.3.1 The above amounts are said to be transfers from accounts of following persons:

<i>Transferee @ Coimbatore</i>	<i>Transferor's bank a/c</i>	<i>Bank</i>	<i>Amt ₹</i>	<i>AOP Membership</i>
<i>V.Ponnambalam (Chakra Traders)</i>	<i>40896</i>	<i>BOM Coimbatore</i>	<i>25,00,000</i>	<i>24%</i>
<i>S.R.Kannan (Rajaganapathy Traders & Sakthi Printers)</i>	<i>193453</i>	<i>BOM Coimbatore</i>	<i>36,00,000</i>	<i>2%</i>
<i>S.R.Kannan (Rajaganapathy Traders & Sakthi Printers)</i>	<i>193453</i>	<i>BOM Coimbatore</i>	<i>40,00,000</i>	<i>2%</i>
<i>Total</i>			<i>1,01,00,000</i>	

8.3.2. submission:

The assessee contention appears to be true regarding above amounts totaling to ₹ 1,01,00,000/- which have been assessed in the status of M/s. Devaraj & others. Hence, ₹ 1,01,00,000/- may be treated as having flown from funds of AOP.

8.4 Credits in the name of S.Gopal

Transferee @ Chennai	AOP members	A/c No.	Bank account	Amount ₹
S Gopal	2%	3980	KVB T Nagar Chennai	75,00,000

8.4.1 The above amounts are said to be transfers from accounts of the following:

Transferee @ Coimbatore	Transferor s bank a/c	Bank	Amt ₹	AOP Membership
S.Prabhakaran (Sabari Traders)	41183	BOM Coimbatore	75,00,000	2%

8.4.2 Submission

The assessee contention appears to be true regarding above amounts totaling to ₹ 75,00,000/- which have been assessed in the status of M/s. Devaraj & others. Hence, ₹ 75,00,000/- may be treated as having flown from funds of AOP.

8.5 Credits in the name of Senthamarai

Transferee @ Chennai	AOP members	A/c No.	Bank account	Amount ₹
R.Senthamarai	2%	6026	IB Kotturpuram, Chennai	1,97,22,054
		1215	IB Kotturpuram, Chennai	54,30,248
			IB Mannady , Chennai	1,04,27,106

8.5.1 The above amounts are said to be transfer from accounts of the following persons.

<i>Transferee @ Coimbatore</i>	<i>Transferor s bank a/c</i>	<i>Bank</i>	<i>Amt ₹</i>	<i>AOP Membership</i>
<i>Thirumala Traders (S.Baskar)</i>	<i>41051</i>	<i>BOM Coimbatore</i>	<i>75,00,000</i>	<i>24%</i>
<i>Thirumala Traders (S.Baskar)</i>	<i>41051</i>	<i>BOM Coimbatore</i>	<i>1,02,00,000</i>	<i>24%</i>
<i>Credit</i>			<i>5,06,931</i>	
<i>STD closed transfer</i>			<i>15,15,123</i>	
<i>Credit</i>			<i>20,30,248</i>	
<i>S.R.Kannan (Rajaganapathy Traders & Sakthi Printers)</i>	<i>193453</i>	<i>BOM Coimbatore</i>	<i>34,00,000</i>	<i>2%</i>
<i>Thirumala Traders (S.Baskar)</i>	<i>41051</i>	<i>BOM Coimbatore</i>	<i>30,00,000</i>	<i>2%</i>
<i>Cash</i>			<i>3,00,000</i>	
<i>Cash</i>			<i>2,00,000</i>	
<i>S.R.Kannan (Rajaganapathy Traders & Sakthi Printers)</i>	<i>193453</i>	<i>BOM Coimbatore</i>	<i>30,00,000</i>	<i>2%</i>
<i>S.R.Kannan (Rajaganapathy Traders & Sakthi Printers)</i>	<i>193453</i>	<i>BOM Coimbatore</i>	<i>30,00,000</i>	<i>2%</i>
<i>FD closed</i>			<i>9,27,106</i>	

8.5.2 submission

The assessee contention appears to be true regarding above amounts except credits and cash payments as under:

Credit	₹	5,06,931
Credit	₹	20,30,248
Cash	₹	3,00,000
Cash	₹	<u>2,00,000</u>
Total	₹	<u>30,37,179</u>

Hence, ₹ 30,37,179 may be treated as income of assessee since the assessee has not given any satisfactory explanation.

8.5 Credits in the name of S.Raja

Transferee @ Chennai	AOP members	A/c No.	Bank account	Amount ₹
S Raja	2%	1152	IB Mannady Chennai	1,01,00,000

8.6.1 The above amounts are said to be transfer from accounts of the following persons

Transferee @ Coimbatore	Transferor s bank a/c	Bank	Amt ₹	AOP Membership
Thirumala Traders (S.Baskar)	41051	BOM Coimbatore	20,00,000	24%
S.R.Kannan (Rajaganapathy Traders & Sakthi Printers)	193453	BOM Coimbatore	30,00,000	2%
S.Selvaraj		BOM Coimbatore	51,00,000	2%
Total			1,01,00,000	

8.6.2. Submission:

The assessee's contention appears to be true regarding the above amounts totaling to Rs. 1,01,00,000/- which have been assessed in the status of

Mls. Devaraj and others. Hence Rs. 1,01 00,000/- may be treated as having flown from the funds of the AOP.

8.7. CONCLUSION:

(A) The assessee has no satisfactory explanation about the source regarding the amount of Rs. 26,00,000/- (Para 8.2.3), Rs. 30,37,179/- (Para 8.5.2) which may be treated as the income of the assessee.

(B) In the original assessment for the AOP the expenses were not allowed. In the reassessment subsequent to ITAT order the expenses were allowed at 33.33% (Para 7.6.1). The deductions towards expenses were later enhanced to 50% on the Hon'ble ITAT order on miscellaneous petition (Para 7.64). Since expenses have been allowed the claim of assessee that the credits in the bank account have flown from the funds of the AOP, needs to be examined in a different perspective.

(C) The reasons for the transfers of funds from AOP have not been substantiated by the assessee. On account of expenses having been allowed, these transfers could be considered as the expenses of the AOP. In that case those transfers partake the character of income in the hands of transferees / ultimate receivers.

9. OTHER ADDITIONS:

9.1 Addition of ₹.13,25,642 towards deposits in IOB Pantheon Road:

9.1.1. The break up for additions are as under:-

Name	A/C No.	Amt ₹	Date of Deposit
S.Gopal	11944	305917	17.02.1996
N Murali	11945	305917	17.02.1996
S Mohan	11946	203945	17.02.1996
R Srinivasan	11947	203945	17.02.1996
V Satyakumar	11948	203945	17.02.1996
V.Manjula	11949	<u>101973</u>	17.02.1996
		<u>1325642</u>	

9.1.2 Out of the above persons only Smt. Manjula is related to Shri R.Srinivasan. Smt. Manjula is wife of Shri R.Venkatakishnan and is sister-in-law . hence it is humbly submitted that in absence of many material evidencing direct involvement of R.Srinivasan or establishment any connection with R.Srinivasan, these investments cannot be assessed in the hands of Shri R.Srinivasan.

9.1.3 Shri R.Srinivasan has not given any satisfactory explanation regarding deposit of ₹2,03,945/-. Hence, this may be treated as unaccounted invested of Shri R.Srinivasan and it is prayed that addition may be sustained.”

9. The learned CIT(A) after considering relevant submissions of assessee and also by taking note of remand report issued by the Assessing Officer has allowed partial relief to the assessee in respect of additions made towards estimated interest income on bank deposits and additions towards salary and interest income. However, in respect of protective addition towards credits found in bank accounts, learned CIT(A) was of the opinion that only reason given by the Assessing Officer to treat the impugned addition as protective was that block assessment was already completed and same has been

reopened u/s.263 and a fresh assessment was being made to include these amounts in the block assessments. But, fact remains that revision proceedings initiated by learned CIT u/s.263 was challenged by assessee before appellate authority and the matter travelled up to Madras High Court which was ultimately decided issue in favour of the assessee vide its order dated 11.09.2012. In arriving at this conclusion, the Hon'ble High Court relied on the decision of Karnataka High Court judgement in the case of CIT vs. Smt. Annapoornamma Chandrashekar (2012) 204 Taxmann 158, which was subsequently upheld by the Hon'ble Supreme Court. As a result of this, addition made in block assessment stands deleted. Therefore, addition made for assessment year under consideration u/s.143(3) is now a substantive addition. However, in respect of additions towards unexplained investments being credits in bank accounts of 5 persons, learned CIT(A) was of the opinion that amounts found credited to the bank accounts is benami account of assessee and argument of assessee that the same has already been taken into account in the assessment of AOP is misplaced. He further

observed that since no individual assessment has been made in the hands of members of AOP in respect of supplies, as it has been contentions of all members of AOP that transactions were not done in their personal capacity, but in the capacity of AOP, but on the other hand, deposits in bank accounts treated as benami accounts of the assessee are not on behalf of AOP. He further observed that AOP has been assessed not on the basis of total deposits in the account, but on the basis of total value of supplies made and further 50% of total amount has been allowed as deduction and only net income has been assessed to tax. On the other hand, amounts that have been transferred into benami account of the assessee is ultimate transfer of profits from this scam and therefore, the fact that net profit on supply of school uniform and sarees of TNTC has been assessed to tax in the hands of AOP does not in any way take away liability to tax amount transferred to the benefit of the assessee. Accordingly, rejected explanation furnished by assessee and also findings of the Assessing Officer in remand report and sustained additions made by the Assessing Officer towards unexplained investments being credit in bank accounts.

10. As regards additions towards unexplained investments in deposits with Indian Overseas Bank, Pantheon Road, Chennai, learned CIT(A) observed that although assessee claims that there was no connection between these persons and the assessee, at the time of search and seizure account opening forms in respect of 15 persons were found at the premises of the assessee. Further, out of these 15 persons, there are four family members, remaining ten persons are other third parties and there is no reason why account opening forms in respect of these persons should be available in the assessee premises. Further, during the course of assessment proceedings, the Assessing Officer has gathered various evidences which proves that amounts credited into above account is not for the disposal of accountholders. Therefore, from the above facts, it is very clearly established that assessee is having control and ownership over funds held in bank account and accordingly, assessee cannot claim that there is no relationship with these persons from whom various amounts has been credited and therefore, rejected arguments of the assessee and made

additions towards amounts standing in the name of various persons in the bank accounts of Indian Overseas Bank, Pantheon Road, Chennai. Insofar as estimated addition of Rs.10,00,000/- interest on the above bank deposits, learned CIT(A), after taking into consideration of various facts, held that if we consider quantum of unexplained bank deposits in Indian Overseas Bank addition made by the Assessing Officer towards possible interest earned on such deposits amounting to Rs 10,00,000/- appears to be excessive and accordingly directed the Assessing Officer to estimate interest of Rs.5,00,000/- on said bank deposits. The relevant findings of learned CIT(A) are as under:-

“6. Ground No.2 relates to a sum of Rs.13,25,642/- treated as unexplained investments in deposits with Indian Overseas bank. This issue is dealt with at para 27 of the assessment order, The Assessing Officer in the course of assessment proceedings has ascertained that the following accounts in Indian Overseas Bank, Pantheon Road, Chennai were operated by the appellant:

SNo	Name	A/c No.	Amount	Date of deposit	Date of withdrawal
1	S. Gopal	11944	3,05,917	17.02.1996	29.02.1996
2	N. Murali	11945	3,05,917	17.02.1996	29.02.1996
3	S. Mohan	11946	2,03,945	17.02.1996	29.02.1996
4	R. Srinivasan	11947	2,03,945	17.02.1996	29.02.1996
5	V. Sathyakumar	11948	2,03,945	17.02.1996	29.02.1996
6	V. Manuja	11949	1,01,973	17.02.1996	29.02.1996
	Total		13,25,642		

7. The Assessing Officer found that the amounts held in these accounts were in the name of family members of the appellant and all the deposits have been encashed immediately after the date of search, The Assessing Officer further noted that all the deposit accounts were opened through cheques issued by TNTC Ltd. to the suppliers who in turn gave this money to these persons. The Assessing Officer held that all the amounts have been encashed by opening fixed deposits in the name of the appellant's family members and the amounts transferred to savings bank accounts which were also withdrawn immediately after the search, Accordingly, the Assessing Officer has brought to tax the total value of credits in these accounts amounting to Rs.13,25,642/- as unexplained investment of the appellant by trading the appellant as the beneficial owner of the amounts credited in these accounts.

8. In the course of appeal, the appellant submitted that there was no relationship between the appellant and the other five persons forming part of the list of six persons reproduced above. It is stated that except for Smt. V. Manjula, who is the wife of his brother Shri R Venkatakrisnan, none of the other 5 persons are related to the appellant. The appellant has therefore, admitted that while the deposit standing in his name to the extent of Rs.2,03,945/- may be considered as his income for the A.Y. 1996-97, the remaining additions may be deleted.

9. The appellants contentions are considered. Though the appellant stated that there was no connection between these persons and the appellant, that statement is not entirely true. At the time of search and seizure operations, account opening forms in respect of 15 persons were found at the appellant's premises. The details of these persons are found at page 8 of the assessment, order. The same is reproduced below for ready reference:

S/Shri/Smt,

1 G. Mohan

2 S. Gopal

3 G. Shanthi

4 G. Raheswari

5 R. Srinivasan, assessee

6 V. Srinivasan, brother in-law of assessee

7. S Alamelu, sister

8 R. Sakunthala, mother

9 V. Manjula, sister-in-law

10 M. Murali

11 Thirugnanam, employee of assessee

12 V. Arunachalam

13 A. Kasturi

14 G. Thiagarajan

15 A. Sathishkunar

10. Out of these 15 persons, other than the appellant, there are four family members. The remaining 10 persons are other third parties and there is no reason why the account opening forms in respect of these persons should be available in the appellant's premises. In this connection, at Sl.No.1 of the list is the account opening form in the case of Thirugnanam. A letter addressed by Shri Thirugnanam to the Assessing Officer dated 20.12.1996 is enclosed as Annexure 2 to the assessment order- In the said letter it has been confirmed that the amounts in the account were not for the personal disposal of Shri Thirugnanam. Similarly, in respect of three other persons at Sl.Nos.2, 10 and 11 the address in the account opening form is same as the appellants residential premises. Similarly, in respect of Sl.Nos. 3, 12, 13 and 14 the appellant has admitted the deposits in their account as his undisclosed income to the extent of pay in slips found at his premises. Further, in respect of persons at Sl. Nos.12, 13 and 15 the address in the account opening form is e appellants address in respect of agricultural land owned by him.

11. All these factors establish the appellant's control and ownership over the funds held in the bank accounts of the 15 persons listed at page 8 of the assessment order- On the basis of the same, the appellant's control over the accounts of Mr. S. Gopal, Mr. N. Murali, Mr. S. Mohan, Ms. V. Manjula besides the deposit in his own name that has been disputed by the appellant, is established. Therefore, addition to the extent of Rs. 11,21,697/- as unexplained investment is confirmed- This ground of appeal is partly allowed.

12. Ground No.3 relates to the estimated addition of interest on the fixed deposits. This issue is dealt with by the Assessing

Officer at para 30 of the assessment order. In the course of assessment proceedings, the Assessing Officer came across evidence of fixed deposits in the name of the appellant and his family members and associates. These fixed deposits were made out of the amounts withdrawn from the bank accounts in the name of various persons, involved in the textile scan, which was actually the benami account of the appellant. The Assessing Officer has estimated such interest at Rs.10 lakhs consisting of Rs.9 lakhs being the interest on such bank accounts of suppliers to TNTC and Rs. 1 lakh being the interest in respect of accounts of the depositors in Shri Ramdoss Finance P. Ltd. which has been admitted by the appellant as his own income.

13. In the course of appeal) the appellant submitted that even assuming all the deposits in the Indian Overseas Bank, Pantheon Road branch belongs to the appellant since they were held in the bank only for a period of 13 days) it is contended that the estimation of Rs. 10 lakhs as interest is excessive.

14. The appellant's contentions are considered. As the Assessing Officer has determined the amount on estimate basis, in my opinion, the ends of justice would be met if the estimate is made at Rs.5 lakhs.

15. Ground Nos.4, 5 & 6 relates to the addition of Rs.7,16,79,408/- on account of unexplained investment being the credits appearing in various benami accounts assessed in the hands of the appellant for the relevant previous year on protective basis. As explained earlier, TNIC was the agency through which the Tamilnadu Government was implementing a

welfare scheme for free distribution of sarees, dothis and school uniform to the poor and needy. The appellant is the brother of Shri R. Venkatakrishnan who was the PA to the Social Welfare Minister in charge of the free distribution scheme of the Tamilnadu Government at that time. It was found during the search operations that for the purpose of procuring the dothis and sarees. a number of bogus entities were floated through the connivance of the appellant and Shri R. Venkatakrishnan. The appellant and his brother procured materials from other persons in the name of their bogus concerns and supplied the same to TNTC. TNTC directly paid the amounts into the bank account of these concerns for the alleged supplies. As per the search documents) since some of the supplies were also bogus, substantial funds have been transferred by these concerns (which supplied sarees and dothis to the TNTC) to the account of Shri R.Venkatakrishnan and his family members. It has been concluded by the Assessing Officer that the appellant was one of the beneficiaries of the textile scam on account of bogus purchases and other malpractices resulting in substantial amounts being amassed by the suppliers of sarees and dothis which in turn has been passed on to the appellant.

16. In the course of assessment proceedings, based on documents seized during search and subsequent investigation, the following bank accounts in the name of other persons has been treated as the benami accounts of the appellant and the credits n the accounts are treated as the appellant's income. After ignoring the cross entries in these accounts, the Assessing Officer found that that total credits in these accounts

were to the following extent.

Transferee @ Chennai/ Bank Account	Transferor @ Coimbatore	Bank	Amount
V. Kannan			
Indian Bank, Kotturpuram, Chennai	V. Ponnambalam (Ponnambalam & Co.)	Bank of Madura, Coimbatore	25,00,000
	Sakthivel	Bank of Madura, Coimbatore	33,00,000
	Other Credits		26,00,000
		Total	84,00,000
K. Mohan			
Indian Bank, Kotturpuram, Chennai	V.Ponnambalam (Chakra Traders)	Bank of Madura, Coimbatore	25,00,000
	S R Kannan	Bank of Madura, Coimbatore	36,00,000
	S R Kannan	Bank of Madura, Coimbatore	40,00,000
		Total	1,01,00,000
S. Gopal			
Karur Vysa Bank, T.Nagar, Chennai	S. Prabhakaran (Sabari Traders)	Bank of Madura, Coimbatore	75,00,000
		Total	75,00,000
Indian Bank, Kotturpuram, Chennai	Thirumala Traders	Bank of Madura, Coimbatore	75,00,000
	Thirumala Traders	Bank of Madura, Coimbatore	10,20,00,000
	Credit		5,06,931
	STD Closed Transfer		15,15,123
		Total	1,97,22,054
R. Senthamarai			
Indian Bank, Kotturpuram, Chennai	Credit		20,30,248
	S R Kannan	Bank of Madura, Coimbatore	34,00,000
		Total	54,30,248

Indian Bank, Mannady, Chennai	Thirumala Traders	Bank of Madura, Coimbatore	30,00,000
	Cash		3,00,000
	Cash		2,00,000
	S R Kannan	Bank of Madura, Coimbatore	30,00,000
	S R Kannan	Bank of Madura, Coimbatore	30,00,000
	FD closed		9,27,106
		Total	1,04,27,106
S. Raja			
Indian Bank, Mannady, Chennai	Thirumala Traders	Bank of Madura, Coimbatore	20,00,000
	S R Kannan	Bank of Madura, Coimbatore	30,00,000
	A Selvaraj	Bank of Madura, Coimbatore	51,00,000
		Total	1,01,00,000

17. The reasons for treating these accounts as the benami account of the appellant were as follows:

i) The passbooks of 4 out of these 5 accounts were found at the appellants premises at the time of search and seizure operations. No plausible reason could be given by the appellant for the presence of these passbooks in his premises,

ii. A pay in slip evidencing a deposit Rs.26 lakhs into the account of Shri V. Kannan was also found at the appellant's premises. At the time of search, the appellant did not disown this transaction and merely stated that he would explain it later. However, the appellant could not explain the reasons for the existence of pay in slip at his office.

iii. Mr. K. Mohan and V. Kannan two of the above parties were not available at the address as Shown in the bank account details.

iv, All the credits in these accounts were on account of transfer from certain accounts maintained in Bank of Madura Coimbatore from persons who were suppliers to TNTC.

v. Shri Ponnambalam (from whom substantial transfers were made to these accounts) has given a statement on 09.10.1998 that he was only acting under the instructions of the appellant when he transferred amounts into the account of Shri V. Kannan. It may be noted that a sum of Rs.25 lakhs has been transferred by Ponnambalam to the account of Shri V. Kanann on 25.02.1991. It was further found that another pay in slip for a telegraphic transfer of Rs.75 lakhs by Shri V. Ponnambalam from the account of Sabari Traders to the account of Mr. S. Gopal was also found at the premises of the appellant. If the appellant had no connection wllth Shri Ponnambalam or Shri S. Gopal, there was no reason why the pay in slip for telegraphic transfer of amounts by Ponnambalam to Gopal should be found at the appellants premises.

vi It was also found that SR Associates, a concern owned by the appellant and his family members had issued bills to TNEB for supply of energy generated and pumped to TNEB grid and the bills were signed on behalf of SR Associates by Shri Ponnambalam. In this connection, the Assessing Officer has pinpointed the specific search material which is also enclosed as Annexure 1 to the assessment order.

vii. All the deposits in these accounts were converted into fixed deposits of smaller denominations in the names of the appellant

and his family members. Subsequently, these deposits have been encashed and the amounts have been withdrawn by the parties supporting the conclusion that these accounts are the benami accounts of the appellant.

viii. In the case of S. Raja, though the bank account passbook was not found at the appellant's premises, other evidences gathered after the search shows that the amounts in this account were also the appellant's benami investment only. In this connection, the Assessing Officer has found that the appellant operated a locker in Indian Bank, Mannadi Branch and the rent in respect of the said locker has been charged to the account of Mr. S. Raja and K. Senthamarai. The bank in this regard has confirmed that the locker facility at the banks Mannadi Branch was availed by the appellant on 28.10.1995 and the locker rent was debited in the account of Shri S. Raja.

18. The first issue to be decided is whether the addition made on protective basis is to be treated as a substantive addition or not. In this connection, it is found that the only reason cited by Assessing Officer for making the addition on a protective basis is that the same addition was proposed to be made in the block assessment of the appellant. It is stated that the block assessment was being reopened under section 263 and a fresh assessment was being made including these amounts in the block assessment. Subsequently, in fact, the block assessment was reopened and the amounts were added in the same. However the appellant challenged the Commissioner's power to reopen an assessment made under section 158 BD in terms of section 263, as the Commissioner had granted administrative approval for the order passed under section 158 BD. The issue travelled up to the Madras High Court in the appellant's own case which

ultimately decided the Issue in favour of the appellant in its order dated 11.09.2012. In arriving at this conclusion, the Madras High Court relied upon the Karnataka High Court decision in the case of CIT vs. Smt. – Annapoornamma chandra Shakar(2012) 204 Taxman 58, which was subsequently upheld by the Hon'ble Supreme Court. As a result as on date, the addition made in the block assessment stands deleted. Therefore the addition mad for the assessment year under section 143(3) is now substantive addition.

19. In the course of original assessment proceedings, the primary reason given by the appellant against the additions was that as the same was also being made in the block assessment the same was not warranted again In regular assessment. Subsequently, the appellant wde the submission dated 13.12.2012 has, for the first time, submitted that an assessment in respect of the various suppliers to TNTC has been completed in the status of an Association of Persons (AOP). It is further stated that the deposits into the account of these 5 persons are from other 5-6 accounts which are in the name of persons who are also members of the AOP. It is stated that once the income of the AOP is assessed, the amounts standing in the accounts of the members of AOP cannot be taxed as income of the appellant. In this connection, the appellant has placed on record the assessment order passed in the hands of the AOP.

20. Reference to the assessment order passed in the hands of the AOP indicates that the addition in the hands of the AOP has been made on the basis of total value of goods supplied by the AOP to TNTC. This amount has been determined by estimating the gross profits earned by the suppliers in respect of different items such as School Uniform, Sarees, Dhotis supplied by them

after taking into account the supply price to TNTC as well as their cost price. On the profit arrived in this manner, further deductions have been given by the Assessing Officer to the extent of 1/3 of the total profit. The relevant part of the order passed in the case of the AOP is extracted below:

"8. The total income was computed as under on the basis of the details collected from the TNTC records:

<u>1. Shri M. Devaraj:</u>		
(a) Profit from supply of sarees and dhoties to TNTC.	4,75,000	(1995-96)
(b) Profit from supply of uniform cloth to TNTC.	2,26,08,346	
(c) Profit from supply of sarees and dhoties to Society.	1,52,64,750	(1996-97)
(d) Interest on fixed deposits earned.	<u>1,48,000</u>	
	3,84,96,096	
<u>2. Shri V. Ponnambalam</u>		
(a) Profit from supply of uniform cloth to TNTC.	1,82,19,872	
(b) Profit from supply of sarees & dhoties to TNTC.	9,50,000	(1996-97)
(c) Profit from supply of silk sarees & polyester dhoties to TNTC.	10,79,894	
(d) Profit from supply of cotton sarees & dhoties to Society.	45,22,500	
(e) Profit from other sales of Srivens Enterprises.	<u>10,58,776</u>	
	2,58,31,042	2,58,31,042
<u>3. Shri S. Bhaskar</u>		
(a) Profit from supply of uniform cloth to TNTC.	1,95,44,082	
(b) Profit from supply of sarees & dhoties to TNTC.	4,75,000	
(c) Profit from supply of silk sarees & dhoties (Polyester).	12,06,949	
(d) Profit from supply of sarees & dhoties to Society.	<u>69,98,120</u>	
	2,82,24,151	2,82,24,151
Total Income		9,25,51,289
Say		<u>9,25,51,290</u>
.....		

15 Taking into account all the facts and circumstances of the case especially the fact that the assessee could not have

earned 120% profit on the sale of uniform cloth, further allow a sum equal to 1/3d of the total income computed in the original assessment order towards probable expenses as stated above. This LVIII be deducted from the total income and the balance is assessed to tax as under:

<i>Total Income as per original order.</i>	<i>9,25,51,290</i>
<i>Less: Expenses allowed as discussed.</i>	<i>3,08,50,430</i>
<i>Total Income</i>	<i>6,17,00,860”</i>

22. This matter has been further agitated by the AOP before the Hon'ble ITAT who have finally held that out of the total income estimated to have been earned by the AOP on account of supply of saris, Dhotis and Uniform to TNTC, 50% of the same should be allowed as deduction. Thus, finally a sum of Rs. 4,62,75,645/- has been assessed as the total income of the AOP on account of supply of saris, Dhotis and uniform to TNTC.

22. The appellants contention that the amounts found credited to the bank account held to be his benami account has already been taken into account in the assessment of the AOP, is misplaced. It is found that no individual assessment, has been made in the hands of the members of the AOP in respect of these supplies, as it has been the contention of all the members of the AOP that the transactions were done not in their personal capacity, but in the capacity of the AOP. On the other hand the deposits in the accounts treated as the benami account of the appellant are not on behalf of the AOP.

Further, the AOP has been assessed, not on the basis of the total deposits in the account but on the basis of the total value of supplies made and further 50% of the total amount has been allowed as deduction and only the net income has been

assessed to tax in their hands. the other hand, the amounts that have been transferred into the benami account of the appellant, is the ultimate transfer of the profits from this scam into the accounts of the beneficiary, being the appellant, Therefore, the fact that the net profit on supply of school uniform and sans to TWIG has been assessed to tax in the hands of the AOP does not in any way, take away the liability to tax of the appellant on receipt of these profits into the bank account treated as his benami account. Therefore, the main contention of the appellant that amounts treated as appellant's benami income, have been already assessed to tax in the hands of AOP is rejected. In the light of these findings, the actual deposits into the accounts are being examined.

23. In the case of V. Kannan, the total deposits are as under:

- a. Transfer from Mr. V. Ponnambalam — Sri Ghakra Traders — Rs. 25,00,000/*
- b. Transfer from Mr. S. Sakthivel — R.. 33,00,000/-*
- c. Other credits — Rs.26,00,000/-.*

24. As pointed out by the Assessing Officer, Mr. V. Kannan is treated to be the benami of the appellant for various reasons such as the passbooks and pay in slip for deposit into the account being avaijable at his premises, Mr. V. Kannan not being available at thc address as per the bank account and the appellant failing to establish the identity of the person. In the course of appeal, the appellant could not controvert these findings of the Assessing Officer and their bald assertion that they have nothing to do with Mr.V. Kannan is rejected for want of any evidence.

25. The deposits into the account of Mr.V. Kannan are made to the extent of Rs.25 lakhs by Mr.V. Ponnambalam. As explained earlier, Mr. V. Ponnambalam is an employee of the appellant as evidenced by Annexure 1 to the assessment order. Further, Mr. Ponnambalam has also admitted in a statement recorded before the Assessing Officer on 09.10.1998 that he was acting under the instructions of the appellant and did not do the business of supplying clothes to TNTC on his own. The pay in slip signed by Mr. V. Ponnambalam on behalf of Sabari Traders, Coimbatore was also found at the premises of the appellant. All these shows that the amounts transferred to the account of Mr. V. Kannan is the appellant's income and the transfer made by Mr. V. Ponnambalam was under the instruction of the appellant. In view of the same, this amount of Rs. 25 lakhs transferred to the account of Mr. V. Kannan by Mr. V. Ponnambalam is confirmed.

26. As regards the sum of Rs. 33 lakhs credited in this account, the same has been withdrawn immediately in cash. As the appellant was in control of this bank account, the amount withdrawn as cash is correctly held as appellant's income.

27. Besides the same, a sum of Rs.26 lakhs was also found credited to the account of Mr. V. Kannan. No explanation has been given by the appellant regarding the source of this amount. The general explanation of the appellant that all amounts have been taken into account in the assesment of the AOP will not cover this credit into the account of Mr. V. Kannan. In view of the same the addition made to the extent of Ks. 26 lakhs into his account is also confirmed.

28. In the course of the appeal, the appellant was asked to furnish the particulars of address and PAN of Mr. V. Kannan but the appellant stated that Mr. V. Kannan was not a tax payer at that time and therefore did not furnish any details. The bank account under the control of the appellant shows how the surplus generated in the scam has been appropriated by the appellant. Hence, the addition of Rs 84 lakhs in the hands of the appellant is confirmed.

29. The total deposits into the account of Mr. K. Mohan are as under:

- a. Transfer from V. Ponnambalam — Chakra Traders — Rs.25 lakhs
- b. Transfer from SR. Kannan Coimbatore — Rs.36 lakhs
- c. Transfer from SR. Kannan Coimbatore — Rs.40 lakhs

30. As in the case of Mr. V. Kannan, the account of Mr. K. Mohan is also a benami account of the appellant. This conclusion is supported by the fact that the bank passbook were found at the appellants premises and the appellant failed to give any explanation for the presence at his premises. Further, the sum of Rs. 25 lakhs into this account is by Mr. V. Ponnambalam who is an employee with SR Associates a concern owned by the appellant. Therefore, the sum of Rs.25 lakhs transferred into this account is correctly treated as the appellants income.

31. Similarly, the sum of Rs 36 lakhs and Rs. 40 lakhs is also assessable in the hands of the appellant as these amounts have been withdrawn in cash immediately after deposit. The appellant could not provide PAN or any other details of Mr. K.

Mohan. Coupled with the fact that the pass book and pay-in slip were found in the appellant's possession, the addition of Rs 1,01,00,000/- in the hands of the appellant is confirmed.

32. The deposit into the account of S. Gopal is to the extent of Rs. 75 lakhs transferred from Sabari traders. The conclusion that S. Gopal is the benami of the appellant and the transfer to this account is the income of the appellant is supported by the following facts;

a. The hank passbook of this person was found at the premises of the appellant.

b. Further, at page 8 of the assessment order the Assessing Officer has explained that the account opening form for the bank account of this person was found at the appellant's premises and the address as per the account opening form is the same as the appellants residential address.

c. The sum of Rs.75 lakhs transferred into this account is through a telegraphic transfer. The relevant pay in slip in respect of the said transfer is also found from the appellant's premises. (Refer paragraph 14 page 6 of the assessment order). The pay in slip is signed by Shri V. Ponnambalam who is an employee of the appellant.

d. The sum of Rs.75 lakhs has been converted into FDs in the name of the appellant and his family members which have ultimately been encashed by them.

All this adequately supports the conclusion of treating the deposit as the appellants income. Hence the addition of Rs. 75 lakhs is upheld.

33. In the case of R Senthamarai, the total deposits are as under:

<u>Account No.6026 Indian Bank Kotturpuram</u>		Rs.
08.09.1995	By transfer from Tirumala Traders	75,00,000
29.09.1995	By transfer from Tirumala Traders	1,02,00,000
16.05.1995	Credit	5,06,931
08.09.1995	By transfer STDs closed	15,15,123
	Total	1,97,22,054
<u>Account No.1215 Indian Bank Kotturpuram</u>		Rs.
06.01.1996	By Credit	20,30,248
04.02.1996	By transfers S.R. Kannan	34,00,000
	Total	54,30,248
<u>Account No.1150 Indian Bank Mannady(wrongly writted as Kotturpuram)</u>		Rs.
27.10.1995	By transfer from Tirumala Trader Coimbatore	30,00,000
21.11.1995	By Cash	3,00,000
23.11.1995	By Cash	2,00,000
10.01.1996	By transfer from S.R. Kannan, CBE	30,00,000
13.01.1996	By transfer from S.R. Kannan, CBE	30,00,000
14.02.1996	F.D. Rs closed	9,27,106
	Total	1,07,27,106

34. From the above details, it is noted that substantial sums have been transferred from Tirumala Traders aggregating to Rs. 2.07 crores to two bank accounts of Mr. Senthamarai. The Assessing Officer has explained at paragraph 5 page 3 of the assessment order that Mr. A. Selvaraj, who operates under the trade name of Tirumala Traders, has transferred substantial funds from his Savings Bank Account from Bank of Madura, Main Branch, Coimbatore into Fixed Deposits in the name of the appellant and his family members. These Fixed Deposits have subsequently been used by the appellant through his firm, SR. Associates, to take a loan from the bank for his windmill project. The amounts have been subsequently transferred to a loan account in the name of various parties including Mr. A-

Selvaraj and remain outstanding in the books of account of SR Associates. This clearly shows that Mr. A. Selvaraj as well his firm Tirumala Traders are benami of the appellant. Therefore, the amounts transferred into the account of R Senthamarai from Tirumala Traders have been correctly treated as the appellant's income. This conclusion is further supported by the fact that the entire sum of Rs. 1.02 crores in the account of Mr. R. Senthamarai was converted into short term deposits in the name of 20 persons @ Rs.5 laths each and withdrawn immediately after the search on 15.02.1996.

35. In all Rs. 94 lakhs has been transferred by Mr. SR Kannan to Mr. Senthamarai's Kotturpuram and Mannady Account, A reference to the Mannady account shows that as soon as amounts are credited in this account, the same have been withdrawn in cash immediately. The appellant was found to possess the pass bk of this account. The appellant could not give the PAN or the address or any other particulars of Mr. Senthamarai. Therefore, these amounts are correctly treated as the appellant's income as all the three accounts arc benami account of the appellant.

36, Besides the deposits from the suppliers to TNTC, there are other deposits in the account of Mr R. Senthamarai on account of credits as well as deposit of cash. These are also withdrawn in cash immediately. No explanation has been given by the appellant in respect of these deposits which aggregate to Rs 5479,408/-

37. Therefore, addition to the extent of Rs. 3,58.79,408/-is upheld as the account of Mr. R. Senthamarai is treated as the benami account of the appellant.

38. In the case of S. Raja the total deposits are as under:

a. Tirumala Traders - Rs. 20 lakhs

- b. S.R. Kannan — Rs. 30 lakhs
c. A. Selvaraj — Rs.51 lakhs

39. *The conclusion of the Assessing Officer that the account of Mr. S. Raja is the benami account of the appellant is supported by the fact that the Senior Manager of Indian Bank Vigilance Department has admitted before the Assessing Officer that serious violation of procedures in respect of account opening and transaction of business were found in respect of the accounts of S. Raja the appellant and R. Senthamarai. It was explained that the appellant also used the name of R.S. Vasana and operated a locker in the Indian Bank Mannadi Branch and the locker rent for the same was debited to the accounts of R. Senthamarai and S. Raja. This supports the conclusion that S. Raja is the benami of the appellant- The conclusion is further supported by the fact that the out of the sum of Rs. 1.01 crore, Rs. 58 lakhs was withdrawn as cash and Rs 10 lakhs was transferred to the account of Mr. V. Kannan. The balance Rs. 33 lakhs was converted into short term Fixed deposits and encashed subsequently. Thus the entire amount standing in the account was withdrawn mainly as cash and partly by converting into short term fixed deposits within two-three days after the search before the Modus Operandi could be understood. For the detailed reasons in para 34 Thirumala Traders and Mr. A. Selvaraj are the benami of the appellant. Accordingly addition of Rs. 101 lakhs is upheld as the account in the name of S. Raja is held to be benami account of the appellant.”*

11. The first issue that came up for our consideration from ground no. 2 to 4 of assessee appeal is addition towards unexplained investments being credit in bank account. The Assessing Officer had made protective addition of ₹ 7,16,79,408/- on account of unexplained investments being credits appearing in various bank accounts for relevant assessment year. The facts with regard to impugned dispute are that the assessee was brother of Mr.R.Venkataraman, who was P.A. to Social Welfare Minister, in-charge of free distribution scheme of sarees and dhoties of Tamil Nadu Government. The Govt. of Tamilnadu implemented the scheme through M/s. TNTC Ltd. It was found during the course of search that sarees and dhoties were procured through bogus entities in connivance with assessee and Mr. R.Venkatakrisnan. Further, materials found during the course of search indicate that amount paid by TNTC was ultimately routed through various bank accounts which were ultimately beneficially held by assessee and accordingly, Assessing Officer has made additions on protective basis for the impugned

assessment year on the ground that same needs to be brought to tax in the block assessment .

12. The learned AR for the assessee during course of hearing has explained issue with a help of chart that out of total additions made by the Assessing Officer in the name of 5 individuals, during the course of remand proceedings, the Assessing Officer himself has accepted the fact that all these amounts were already considered for taxation in the block assessment of M/s. M.Devaraj & Others, AOP and further amounts transferred to bank accounts of five individuals is transferred from various accounts of members of AOP and consequently, source of income is explained in the hands of assessee and hence, no addition could be made towards unexplained investments credited in bank account. The AR further submitted that issue has been considered in the hands of M/s. M.Devaraj & Others, AOP, where credits found in various bank accounts including bank accounts held in the names of Shri V.Kannan, Shri K.Mohan, Shri S.Gopal, Shri R.Senthamarai and Shri S.Raja were already considered and

included in gross receipts for the purpose of estimation of income. Once said receipts have already considered in the hands of AOP, same credits cannot be considered as income of the assessee. In this regard, he has filed copies of assessment order, of M/s. M.Devaraj & Others AOP, order of learned CIT(A) and ITAT, where issue has been examined and found that credits found in various bank accounts including bank accounts of above five persons are part of proceeds of AOP and the same is taxable in the hands of AOP. Therefore, when credits are already taxed in the hands of AOP, further addition on credits in various bank accounts as unexplained investments of the assessee amounts to double addition which is not permissible under law.

13. The learned DR, on the other hand, strongly supporting the order of learned CIT(A) submitted that learned CIT(A) has brought out various facts and reasons why claim of assessee cannot be accepted hence, there is no merit in the arguments of assessee that credits found in bank account of five persons were already assessed in the hands of M/s. M.Devaraj&

Others AOP. The DR further submitted that in the hands of AOP only gross receipts has been considered for the purpose of estimation of income and after allowing expenses only profit has been taxed. Further, profit has been ultimately transferred to accounts of individuals, which are held to be benami accounts of the assessee and hence, ultimate beneficiary of funds transferred from other accounts and credited in the accounts of five persons is unexplained investments of assessee and same needs to be taxed in the hands of assessee. The learned CIT(A), after considering relevant facts has rightly assessed credits in the hands of assessee and his order should be upheld.

14. We have heard both parties, perused materials available on record and gone through orders of the authorities below. The facts borne out from records clearly indicate that block assessment has been completed in the case of assessee u/s. 158BC of the Act, where, no addition has been made in respect of amounts found credited in the bank account of various individuals. The facts further indicate that all the amounts

credited in individual bank account of various persons has been considered as receipts of M/s. M.Devaraj & Others, AOP and accordingly, credits found in various bank accounts has been treated as gross receipts of AOP for the purpose of taxation. Further, in the hands of AOP, assessment has been completed after allowing necessary deduction for expenses, to arrive at profits from business. This fact has been further confirmed from orders of Tribunal, where the Tribunal has accepted arguments of AOP and assessed total credits found in bank accounts of various individuals as receipts of AOP. In fact, the Assessing Officer has accepted this fact, but he has proposed to make additions towards credits found in bank account of five individuals on the sole ground that certain papers relating to opening of bank account forms of the above persons were found in the residential premises of assessee. The Assessing Officer has also taken support from the fact that post-search enquiries conducted during the course of assessment proceedings revealed further facts with regard to association of assessee with various individuals connected with textile scam. Therefore, he came to the conclusion that amounts found

credited in bank accounts of five persons are benami of the assessee and total amount found in those bank accounts is unexplained investments of the assessee. But, because credits found in bank account pertain to the period covered under block period, and block assessment has been already completed he could not make addition on substantive basis for the impugned assessment year. However, he has chosen to make protective addition on the ground that block assessments were proposed to reopen by invoking the provisions of section 263 of the Act to include unexplained credits found in the bank account.

15. The Assessing Officer has made additions towards unexplained credits on protective basis, because the same cannot be added on substantive basis for impugned assessment year. Therefore, issue first needs to be addressed is whether protective addition made by Assessing Officer for impugned assessment year is based on certain evidences and Assessing Officer is right in making additions towards said bank deposits for impugned assessment year. Admittedly, all credits found in bank account of five persons pertain to block

period covering from 01.04.1986 to 13.02.1996. Further, block assessment was completed in the case of THE assessee without making any addition. Further, block assessments were subjected to revision proceedings u/s. 263 of the Act by learned CIT and such revision proceedings was challenged before THE appellate authority. Finally, the matter went upto Hon'ble Madras High Court and the issue has been decided in favour of assessee on the ground that block assessments cannot be subjected to 263 proceedings. The learned CIT(A), taking clue from above facts, has converted protective additions on substantive basis only on the ground that once additions made in block assessments stand deleted in appellate proceedings, then protective addition made in subsequent financial year would become substantive addition. We have gone through reasons given by learned CIT(A) to treat additions made in the hands of assessee on substantive basis and find that reasons given by the Id. CIT(A) is not in accordance with law. In order to bring any addition on substantive basis, evidence gathered during the course of proceedings should clearly indicate that addition is related to that assessment year and more

particularly to the concerned assessee. Unless the Assessing Officer or learned CIT(A) brought clear evidence to prove that additions pertain to impugned assessment year, the same cannot be brought to tax by converting protective addition into substantive addition. In this case, the Assessing Officer as well as learned CIT(A) has categorically accepted the fact that additions made towards unexplained investment being credit in bank account does not pertain to impugned assessment year. In fact, the Assessing Officer as well as learned CIT(A) has categorically admitted that cash credits found in bank account pertain to block period. Moreover, Department has revised the assessment order to include above credits, but finally could not succeed in attempt, because assessee has succeeded in appeals. Therefore, we are of the considered view that merely for the reason that addition proposed in block assessment could not be sustained, because of some reasons, same cannot be treated as substantive in the hands of assessee, more particularly, when credits does not pertain to impugned assessment year. Therefore, we are of the considered view that findings recorded by learned CIT(A) to

consider protective addition made by Assessing Officer into substantive addition is not in accordance with law and does not supported by any evidences.

16. Be that as it may, coming to the issues on hand. The Assessing Officer has made protective addition towards unexplained investments credited in bank account on the ground that assessee is final beneficiary of amounts found credited in bank account of five individuals . However, during remand proceedings, the same Assessing Officer himself had admitted that credits in the name of five individuals has been already assessed in the hands of M/s.M.Devaraj & Others, AOP for block assessment and amount transferred to the accounts of five individuals is transferred out of the accounts of members of AOP. Therefore, once the Assessing Officer himself has admitted fact that assessee has explained source of income towards credits found in bank account, then learned CIT(A) cannot disregard findings recorded by Assessing Officer to make or sustain addition, unless he brought on record clear evidence to prove that findings recorded by Assessing Officer are incorrect or facts on record indicate that credits found in

bank account represents unexplained income of assessee. In this case, in remand report the Assessing Officer has clearly accepted that credits found in bank account of Mr.V.Kannan maintained with Indian Bank, Kotturpuram Branch, Chennai, is transferred from other bank accounts are members of AOP. He further noted that even in name of Mr.V.Kannan a sum of ₹ 25,00,000/- was transferred from Mr.V.Ponnambalam of M/s. Ponnambalam & Co. from Bank of Madura, Coimbatore, where M/s. Ponnambalam & Co. is member of AOP with 24% profit share. He further noted that a sum of ₹ 33,00,000/- was transferred from Mr. Sakthivel, proprietor of Lakshmi Traders through Bank of Madura, Coimbatore branch. Therefore, from remand report of Assessing Officer, it is very clear that out of ₹ 84.00 lakhs found credited in the name of Mr.V.Kannan, a sum of ₹ 58.00 lakhs has been transferred from members of AOP. The Assessing Officer further recorded a categorical finding that assessee has explained two credits found in his bank account with necessary explanation. Therefore, we are of the considered view that that learned CIT(A) has erred in ignoring findings recorded by Assessing Officer in the remand

report to explain source of income, while confirming additions made towards credits found in the name of Mr.V.Kannan hence, we reverse findings of learned CIT(A) and direct the Assessing Officer to delete additions to the extent of ₹ 58.00 lakhs out of total credits found amounting to ₹ 84.00 lakhs in the name of Mr.V.Kannan bank account held with Indian Bank, Kotturpuram branch, Chennai. As regards a sum of ₹ 26.00 lakhs, even at this stage, the assessee is unable to furnish any explanation with regard to source of income. Hence, addition made by Assessing Officer and confirmed by learned CIT(A) to the extent of unexplained credit of ₹ 26.00 lakhs in the bank account of Mr.V.Kannan is hereby confirmed.

17. As regards addition in bank account in the name of Mr. K.Mohan, for a sum of ₹ 1,01,00,000/- , the Assessing Officer in the remand report has recorded a categorical finding that a sum of ₹ 25.00 lakhs transferred from Mr.V.Ponnambalam of Chakra Traders from Bank of Madura, Coimbatore branch, where he was member of AOP with 24% profit. Similarly, a sum of ₹ 36.00 lakhs and ₹ 40.00 lakhs was transferred from Mr.S.R. Kannan of M/s. Rajaganapathy Traders & Sakthi

Printers from Bank of Madura, Coimbatore branch, where Mr. S.R.Kannan was also a member of AOP with 2% profit. Thus, all credits found in the name of Mr. K.Mohan in the bank account held with Indian Bank, Kotturpuram branch, Chennai were explained and found transferred from the account of member of AOP. Therefore, once source of funds for credits found in bank account of Mr. K.Mohan was explained out of known source of income, then there is no reason for learned CIT(A) to reject explanation offered by assessee only on the basis of certain evidences found during the course of search and issue in connection with supplies to TNTC, even though assessee has denied having any relationship with those parties and such explanation was accepted to be genuine in block assessment proceedings. Hence, we direct the Assessing Officer to delete additions made towards credits found in bank account of Mr. K.Mohan held in Indian Bank, Kotturpuram branch, Chennai.

18. Similarly, credits found in bank account of Mr. S.Gopal held in Karur Vysya Bank, T.Nagar, Chennai amounting to

₹ 75.00 lakhs, it is the findings of Assessing Officer in remand report that a sum of ₹ 75.00 lakhs was transferred from Mr.S. Prabhakaran of M/s. Sabari Traders from Bank of Madura, Coimbatore branch and said Mr.Prabhakaran was member of AOP with 2% profit. Further, when source of credit found in bank account was out of known source of income, such source was subjected to tax in block assessment proceedings, then no additions could be made towards credit in the case of assessee on the basis of same evidences which were once rejected during the course of block assessment proceedings. Likewise, credits found in the name of Mr. R.Senthamarai at Indian Bank, Kotturpuram branch, Chennai amounting to ₹ 3,55,79,408/-, the Assessing Officer has recorded categorical finding that out of a sum of ₹ 3,55,79,408/-, four credits amounting to ₹ 30,37,179/- was not explained with known source of income. Except this, remaining credits were transferred from Mr. S.Baskar of Thirumala Traders, who was member of AOP with 24% and such transfer has been made from Bank of Madura, Coimbatore Branch. Similarly, few transfers have come from Mr.S.R.Kannan of M/s.

Rajaganapathy Traders and Sakthi Printers which were out of receipts of M/s.Devaraj & Others, AOP. From the above, it is clear that assessee has explained source towards credits found in bank account of Mr. R.Senthamarai except to the extent of 4 credits amounting to ₹ 30,37,179/- which were remained unexplained even before us. Therefore, we are of the considered view that learned CIT(A) has erred in confirming additions made towards credits found in the name of Mr. R.Senthamarai held in Indian Bank, Kotturpuram branch, Chennai, even though the Assessing Officer has accepted explanation furnished by assessee with necessary evidences. Hence, we direct the Assessing Officer to delete additions made towards credits found in bank account of Mr. R.Senthamarai held in Indian Bank, Kotturpuram branch, Chennai to the extent of ₹ 3,25,42,229/-. The remaining credits of ₹ 30,37,179/- are unexplained and treated as unexplained investments of the assessee, hence Assessing Officer is directed to restrict additions to the extent of ₹ 30,37,179/-.

19. As regards credits found in bank account of Mr.S.Raja held in Indian Bank, Kotturpuram branch to sum of ₹ 1,01,00,000/-, the findings of Assessing Officer in the remand report was that total credits found in the name of Mr. S.Raja was transferred from Mr.S.Baskar of M/s. Thirumala Traders, Mr. S.R.Kannan, of M/s. Rajaganapathy Traders & Sakthivel Printers and Mr. A.Selvaraj and all were members of AOP and further, credits found in bank accounts of these persons were already considered in the assessment of M/s. Devaraj & Others, AOP. Therefore, once source of income is explained towards credits found in bank account, then no addition could be made on such credits in the hands of assessee on same reasons which were once rejected during the course of block assessment proceedings. Hence, we direct the Assessing Officer to delete addition made towards credits found in bank account of Mr. S.Raja held with Indian Bank, Chennai amounting to Rs. 1,01,00,000/-.

20. The next issue that came up for consideration from ground no.5 of assessee's appeal is addition towards

unexplained investment of deposits with Indian Bank, Pantheon Road, Chennai amounting to ₹ 13,25,642/-. The learned AR for the assessee submitted that out of total deposits of ₹ 13,25,642/- in the name of six persons, except Smt.V.Manjula, all others are not related to assessee and hence, credits found in the name of those persons cannot be assessed in the hands of assessee as unexplained income .

21. Having heard both sides and considering material on record, we find that Assessing Officer in the remand report had recorded categorical finding that except deposits found in the name of Mr. R.Srinivasan in account No.11947 amounting to ₹ 2,03,945/-, the remaining credits found in others names has been satisfactorily explained. The Assessing Officer further recorded that except Smt.Manjula, all other persons are unrelated to assessee. Therefore, once there is categorical finding from Assessing Officer that bank account maintained in the name of persons to whom assessee has no relation, the same cannot be considered as benami accounts of assessee and credits found in said bank account cannot be considered as

unexplained investment, more particularly, when assessee has disowned such deposits during the course of search & seizure and further the said explanation was accepted during assessment proceedings. The learned CIT(A) without considering explanation furnished by the assessee has simply confirmed additions made towards credits found in the name of various persons with Indian Overseas Bank, Pantheon Road, Chennai. Hence, we direct the Assessing Officer to delete additions made in the name of various persons as unexplained investments of the assessee to the extent of ₹ 11,21,697/-. In respect of credits in the name of Mr. R. Srinivasan for ₹ 2,03,945/-, no explanation has been filed in including any kind of evidences to justify credits in bank account. Hence, we direct the Assessing Officer to confirm addition of ₹ 2,03,945/- found in the name of Mr. R.Srinivasan with Indian Overseas Bank, Pantheon Road, Chennai.

22. The next issue that came up for our consideration from ground no.6 of assessee's appeal is estimated addition of interest income in respect of deposits with bank account. The

Assessing Officer has made estimated addition of ₹ 10.00 lakhs towards interest income in relation to various deposits found in bank account of various persons. The learned CIT(A) has restricted estimated addition to a sum of ₹ 5.00 lakhs on the ground that considering quantum of deposit found in bank and period of deposit held in bank account income estimated by Assessing Officer appears to be on higher side.

23. We find that additions sustained by learned CIT(A) towards estimated income appears to be reasonable, when compared to amount of deposits held in bank account of various persons and period for such bank deposits, and hence, we are inclined to uphold findings of learned CIT(A) and reject the ground taken by assessee.

24. The next issue that came up for consideration from ground no.7 of assessee appeal is addition towards salary and interest. The Assessing Officer has made addition towards salary income of ₹ 65,000/-. The addition made towards salary in subsequent assessment year was deleted by Tribunal on the ground that said addition made was not based on any material

or evidence. Similarly, additions made towards interest of ₹ 44,254/-, it was the finding of the Assessing Officer that interest on fixed deposits in Bank of Madura and interest on savings bank account with Karur Vysya Bank are not considered for taxation. But, during the course of remand proceedings, the Assessing Officer has accepted the fact that interest addition of ₹ 44,254/- was already considered in block assessment and hence, further addition in regular assessment amounts to double addition. As regards, addition of salary, the Assessing Officer noted that since Tribunal has deleted additions towards block assessment on the ground that said addition was not based on any material, the same may be sustained in regular assessment.

25. We have heard both parties, perused material available on record and gone through orders of the authorities below. As regards salary from M/s.Ramdoss Finance Pvt. Ltd., it was an admitted fact that assessee has failed to disclose salary received from the said company in the return of income filed for relevant assessment year. Therefore, there is no error in the

findings recorded by lower authorities to sustain addition towards salary. Hence, addition made towards salary is confirmed. As regard addition towards interest income, it was a finding of Assessing Officer in remand report that said interest income was already assessed in block assessment and assessee has not challenged the addition. Thus, further addition towards said income in regular assessment amounts to double addition. Hence, we direct the Assessing Officer to delete addition made towards interest on fixed deposits and interest on savings bank account amounting to ₹ 44,254/- .

26. In the result, appeal filed by assessee is partly allowed.

Order pronounced in the open court on 25th February, 2021

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

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

चेन्नई/Chennai,
दिनांक/Dated 25th 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.