**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**

आयकरअपीलसं./**I.T.A.Nos.89 to 91/Chny/2020**

(निर्धारणवर्ष / Assessment Years: 2006-07, 2007-08 & 2008-09)

| | | |
|---|---|---|
| Assistant Commissioner of Income Tax,<br>Central Circle-1(2)<br>Chennai | Vs | Mr. S. Mohan Kumar<br>18, Hunters Road,<br>Choolai, Chennai-600 112. |
| | | PAN: AAGPM 3050N |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

**&**

आयकरअपीलसं./**I.T.A.Nos.464 & 465/Chny/2020**

(निर्धारणवर्ष / Assessment Years: 2007-08 & 2008-09)

| | | |
|---|---|---|
| Mr. S. Mohan Kumar<br>18, Hunters Road,<br>Choolai, Chennai-600 112. | Vs | Assistant Commissioner of Income Tax,<br>Central Circle-1(2)<br>Chennai |
| PAN: AAGPM 3050N | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

| | | |
|---|---|---|
| अपीलार्थीकीओरसे/ Assessee by | : | Mr. D.Anand, Advocate |
| प्रत्यर्थीकीओरसे/ Department by | : | Mr. P.V. Pradeep Kumar, CIT |

| | | |
|---|---|---|
| सुनवाईकीतारीख/Date of hearing | : | 28.02.2022 |
| घोषणाकीतारीख /Date of Pronouncement | : | 21.03.2022 |

## आदेश / O R D E R

**PER G.MANJUNATHA, AM:**

This bunch of five cross appeals filed by the Revenue, as well as the assessee are directed against common order passed by the learned Commissioner of Income Tax (Appeals) 18, Chennai dated 31.10.2019 and pertain to assessment years 2006-07, 2007-08 & 2008-09. Since, facts are identical and issues are common, for the sake of convenience, these appeals

were heard together and are being disposed off, by this consolidated order.

2. At the outset, learned AR for the assessee submitted that there is a delay of 43 days in filing both these appeals by the assessee, for which necessary petition along with affidavit for condemnation of delay explaining the reasons for delay has been filed. The AR further submitted that the assessee could not file appeal within the time allowed under the Act, due to the fact that the assessee was suffering from heart ailments due to diabetics and high blood pressure and was undergoing medical treatment which caused delay of 43 days. The delay in filing both the appeals is neither intentional nor willful, but for the unavoidable reasons, therefore, he prayed that delay may be condoned in the interest of advancement of substantial justice.

3. The learned DR, on the other hand, strongly opposing condonation of delay petition filed by the assessee submitted that the reasons given by the assessee does not come within the ambit of reasonable and bonafide reasons, which can be considered for condonation of delay and hence, appeal filed by the assessee may be dismissed as not maintainable.

4. Having heard both the sides and considered petition filed by the assessee for condonation of delay, we are of the considered view that reasons given by the assessee for not filing the appeals within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of appeals is condoned and appeals filed by the assessee are admitted for adjudication.

**ITA No.89/Chny/2020 (A.Y. 2006-07):**

5. The revenue has raised following grounds of appeal:-

*"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.*

*2. Whether on the facts and in the circumstances of the case, the Id. CIT(A) was correct in deleting the addition of Rs. 9,52,25,000/- made by the Assessing Officer towards bad debts?*

*3. Whether on the facts and in the circumstances of the case, the Id. CIT(A) was correct in deleting the addition of Rs. 53,62,962/- made by the Assessing Officer towards unexplained investment in bank accounts of family members?*

*4. Whether on the facts and in the circumstances of the case, the Id. CIT(A) was correct in not appreciating the fact that the assessee did not maintain regular books of accounts ?"*

6. The brief facts of the case are that the assessee is an individual and engaged in the business of money lending. A search and seizure operation u/s.132 of the Income tax Act, 1961, was conducted in the case of the assessee on 02.01.2008. Consequent to search, the assessee has filed return of income for the assessment year 2006-07 on 30.12.2008 admitting total income of Rs.40,54,960/-. The assessment has been completed u/s.143(3) r.w.s.153A of the Income Tax Act, 1961 on 31.12.2019 and determined total income of Rs.27,90,83,922/- by making following additions :-

| | | |
|---|---|---|
| 1 Unexplained cash credit | : | Rs.9,53,00,000 |
| 2.Payment of Landmark Construction Co.: | | Rs. 30,00,000 |
| 3.Investment in Surana Sales Corpn: | | Rs.7,55,00,000 |
| 4.Bank deposits in the names of family Members & associates of assessee | | Rs. 52,03,962 |
| 5. Bad debts disallowed | | Rs.9,52,25,000 |

Subsequently, an order u/s.154 of the Income Tax Act, 1961 was passed on 18.01.2010, wherein addition of Rs.9,53,00,000/- made under the head ‘unexplained cash credit’ was reduced from total income assessed, as it was found that the assessee has already admitted said sum in the return filed.

7. The assessee has challenged various additions made by the Assessing Officer before the first appellate authority. The learned CIT(A) vide his order dated 27.03.2013 has deleted additions made towards investments in M/s. Surana Sales Corporation amounting to Rs.7,55,00,000/-, bank deposits in the names of family members and associates amounting to Rs.52,03,962/- and additions towards disallowance of bad debts amounting to Rs.9,52,25,000/-, however, did not decided the issue of unexplained investments with regard to payment to M/s. Landmark Construction Company amounting to Rs.30 lakhs. The revenue as well as assessee has filed appeals before the ITAT and challenged order of the learned CIT(A). The Tribunal vide its order in ITA Nos.1323 to 1325/Mds/2014 and 1425 to 1428/Mds/2013 dated 12.02.2016, has set aside appeals filed by the revenue as well as the assessee to the file of the ld. CIT(A) for *de novo* consideration and to pass appropriate orders. The assessee has filed Miscellaneous Petition against the order of the Tribunal and the Tribunal vide its order in M.P No.72 to 78/Mds/2016 dated 16.08.2016 set aside the revenue as well as assessee's appeals to the file of the Assessing Officer for *de novo* consideration and to pass

appropriate orders with respect to limited issues decided by the learned CIT(A) in violation of Rule 46A of the Income Tax Rules, 1962.

8. The Assessing Officer, in pursuant to the order of the Tribunal has posted case for hearing and called upon the assessee to explain its case with supporting evidences. The Assessing Officer, after considering relevant submissions of the assessee and also taken note of direction of the Tribunal has completed assessments u/s.143(3) r.w.s 254 of the Income Tax Act, 1961, on 27.12.2017 and determined total income at Rs.18,37,83,920/- by making very same additions which he had made in the first round of assessment passed u/s.143(3) r.w.s. 153A of the Income Tax Act, 1961, dated 31.12.2009. The Assessing Officer, while completing the assessment has observed that although, the Tribunal has remitted appeals filed by the revenue for de novo consideration of issues as decided by the learned CIT(A) in violation of Rule 46A of the Income Tax Rules, 1962, but the revenue appeal was not on the ground of violation of Rule 46A and thus, issues involved in appeal filed by the revenue cannot be decided in light of the directions of the Tribunal to restrict issues decided by the

learned CIT(A) in violation of Rule 46A of I.T. Rules,1962 and thus, reaffirmed his findings in respect of various additions made in the assessment towards payment to M/s. Landmark Construction Company, investments in M/s. Surana Sales Corporation, bank deposits in the name of family members & associates and additions towards disallowance of bad debts. The relevant findings of the Assessing Officer are as under:-

> *"On examining the orders of the learned Commissioner of Income Tax (Appeals), we find that the learned Commissioner of Income Tax (Appeals,) has admitted fresh evidence without giving an opportunity to the Assessing Officer to examine the fresh evidence has decided the appeals, which is in violation of Rule 46A of Income Tax Rules. Further, considering the prayer of the learned Authorised Representative, in the interest of justice, we hereby remit back all the department appeals and assessee's appeals to the file of the learned Commissioner of Income Tax (Appeals) for de novo consideration and pass appropriate orders in accordance with law and merit by adhering to Rule 46A of the Rules."*
>
> *3.1 The assessee further filed a miscellaneous petition before the Hon'ble I.T.A.T. The Hon'ble I.T.A.T vide order in Miscellaneous Petition No. 72 to78/Mds/2016 (ITA Nos. 1323 to 1325/Mds/2014 & 1425 to 1428/ Mds/2o13) dated 16-08-2016 remitted all Revenue as well as the assessee's appeals to the file of the Assessing Officer for de novo consideration and pass appropriate orders. Relevant part of the order is as under:*

*"…we hereby modify our earlier order dated 12.02.2016 by remitting back all the assessee's appeals and Revenue appeals to the file of the learned Assessing Officer for de novo consideration with respect to the limited issues decide by the learned Commissioner of Income Tax (Appeals) in violation of Rule 46A of the Rules and with direction to pass appropriate orders as per law & merit only with respect to those issues.."*

*3.2 Thus, the Hon'ble I.T.A.T while remitting back the appeals of the Revenue to the file of the Assessing Officer for de novo consideration has directed to consider the issues as decide by the learned Commissioner of Income Tax (Appeals) in violation of Rule 46A. But, the Revenue appeal was not on the ground of violation of Rule 46A. Hence, these issues cannot be decided in the light of the specific directions of the Hon'ble I.T.A.T to restrict to the issues decided by Commissioner of Income Tax (Appeals) in violation of Rule 46A. The order of the Hon'ble I.T.A.T is also not clear on to the issue of violation of Rule 46A and with respect to which additions the violation relates to.*

*4. In obedience to the directions of the Hon'ble I.T.A.T, a letter was addressed to the assesse on 26-05-2017 posting the case for hearing on 06-06-2017 with a request to attend for the hearing with written submissions and supporting material. As there was no response from the assesse, another letter was addressed on 09-06- 2017 posting the case for hearing on 20-06-2017. On assessee's failure to attend for hearing, another letter was addressed on 25-07-2017 posting the case for hearing on 04-08-2017.*

*4.1 Sri Siddharrth Mehta, Chartered Accountant and assessee's Authorised Representative attended and filed vakalat. No information or submissions were filed. The case*

*was again posted for hearing on 24-08-2017 vide this office letter dated i8- 08-2017. Vide letter dated 31-08-2017 the assesse has requested "... state on what lines the assessment is going to be completed and what specific information will be required to be furnished ....".*

*4.2 In response to the request of the assessee a letter was addressed on 12-09-2017 posting the case for hearing on 20-09-2017. Para No.4 of the letter is reproduced as under:*

*Thus, the Hon'ble I.TAT has remitted back all your appeals and Revenue appeals to the file of the Assessing Officer for de novo consideration. However, with respect to the Revenue's appeals the scope was limited to the issues decide by the learned Commissioner of Income Tax (Appeals) in violation of Rule 46A. The Revenue appeal was not on the ground of violation of Rule 46A. Hence, these issues cannot be decided in the light of the specific directions of the Hon'bie I.TA.T to restrict to the issues decided by Commissioner of Income Tax (Appeals) in violation of Rule 46A. However, as per the directions of the Hon'ble I.T.A.T the issues ) pertaining to your appeal have to be decided.*

*4.3 Thus, it was informed to the assessee, that the issues pertaining to the assessee's appeals would be considered while completing this set-aside assessment as well as the issues of Revenue's appeals as the order of the Hon'ble I.T.A.T is not clear on to the issue of violation of Rule 46A and with respect to which additions the violation relates to.*

*4.4 Vide the letter referred to above (para no. 4.2), the case was posted for hearing on 20-09-2017. The assesse has filed a letter on 21-09-2017 wherein certain objections which are mostly not relevant to the proposed assessment. The issues raised in the said letter of the assesse was clarified vide this*

*office letter dated 05-10-2017 and the case was posted for hearing on 16-10-2017.*

*4.5 The assesse has filed a letter on 23-10-2017 requesting for copies of seized hooks of account and documents. The assessee paid copying charges of Rs.1,000/- on 29-11-2017 and copies of seized books of account and documents were provided to the assesse on 30-11-2017. The assesse has filed another letter on 07-12-017 requesting for copies of submissions made during the course of earlier assessment proceedings and copies of the required documents was provided to the assesse on the same day.*

*4.6 Vide this office letter dated 04-12-2017 the case was posted for hearing on 12-12-2017 and this letter was served on the assesse on 06-12-2017. The assesse has attended for hearing on 20-12-2017 and filed a letter wherein general objections to the proposed assessment on Revenue's appeals before the Hon'ble I.T.A.T were filed. The assesse has filed its clarification/ explanation issue wise with respect to its own appeals before the Hon'ble I.T.A.T. These are considered as under:*

*i. Addition on "Payment of Landmark Construction Company of Rs.30,00,000/-":*

*This addition was made in original assessment as the assesse has failed to explain the investment and produce necessary details.*

*4.7 The assesse has taken copies of seized material but, failed to furnish detailed analysis basing on the material and instead field general objections. These are considered and found to be not acceptable. Hence, the addition made on account "Payment of Landmark Construction Company of Rs.30,00,000 in the original assessment is considered for addition.*

*5. The additions for Rs.7,55,00,000/-, Rs. 52,03,962/- and Rs.9,52,25,000/ are Revenue's appeals As was discussed earlier, the Hon'ble I T A T has directed to decide the issues on violation of Rule 46A. But, the Revenue appeal was not on the ground of violation of Rule 46A. Hence, these issues cannot be decided in the light of the specific directions of the Hon'ble I.T.A.T to restrict to the issues decided by Commissioner of Income Tax (Appeals) in violation of Rule 46A. The order of the Hon'ble I.T.A.T is also not clear on to the issue of violation of Rule 46A and with respect to which additions the violation relates to. Hence, these additions are continued in this set-aside assessment.*

6. In view of the above, the set-aside assessment is completed as under. Notice issues u/s.271AAA and 271A subsists.

| | | |
|---|---|---|
| Returned Income | ..... | Rs. 48,54,960 |
| 1.Payment of Landmark Construction Company | ..... | Rs. 30,00,000 |
| 2.Investment in Surana Sales Corporation | ..... | Rs. 7,55,00,000 |
| 3.Bank deposits in the names of family members and associates of the assessee | ..... | Rs. 52,03,962 |
| 4.Bad debts disallowed | ..... | Rs. 9,52,25,000 |
| Assessed Income | ..... | **Rs.18,37,83,920** |
| Tax payable ..... (Tax calculation sheet enclosed) | ..... | Rs. **10,68,19,880/-** |
| Less: Taxes paid | .... | Rs. 1,15,86,126/- |

Balance Tax Payable of Rs. **9,52,,33,760/-** should be paid immediately.

9. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee challenged assessment order passed by the Assessing Officer in light of directions of the

Tribunal and contended that the Assessing Officer had exceeded his jurisdiction in reassessing very same issues, on which the learned CIT(A) has given his findings and deleted additions, even though, the revenue has not agitated those issues in the appeal filed before the Tribunal. Therefore, the assessee submitted that additions made by the Assessing Officer in the order passed u/s.143(3) r.w.s 254 of the Act, is beyond scope of the Assessing Officer and thus, cannot be sustained. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of various facts, including order of the first appellate authority dated 27.03.2013, and order of the Tribunal dated 12.02.2016 deleted additions made by the Assessing Officer towards advance payment to M/s. Landmark Construction Company, investments in M/s. Surana Sales Corporation, bank deposits in the name of family members & associates and disallowance of bad debts, by holding that when the department has not taken a specific ground challenging deletion of addition made by the Assessing Officer on various issues, then the Assessing Officer should have restricted his assessment proceedings in consequent to the direction of the Tribunal only on those

issues, where the learned CIT(A) has decided issues in violation of Rule 46A of the Income Tax Rules, 1962. Therefore, he opined that action of the Assessing Officer in making additions on those issues which are not decided in violation of Rule 46A of Rules, devoid of merits and same is liable to be deleted. Thus, the ld. CIT(A) directed the Assessing Officer to delete additions made towards amount paid to M/s. Landmark Construction Company, disallowance of bad debts, investments in M/s.Surana Sales Corporation and bank deposits in the name of family members and associates. Aggrieved by the learned CIT(A) order, the revenue is in appeal before us.

10. The first issue that came up for our consideration from ground no.2 of the revenue appeal is deletion of addition of Rs.9,52,25,000/- made by the Assessing Officer towards disallowance bad debts. The learned DR submitted that the learned CIT(A) erred in deleting additions made by the Assessing Officer towards disallowance of bad debts without appreciating fact that when the Tribunal has set aside appeal filed by the revenue for de novo consideration of various issues,

including issues on which there is violation of Rule 46A of the Income Tax Rules, 1962, then, the Assessing Officer is bound to consider all the issues and therefore, it is incorrect on the part of the learned CIT(A) to delete additions by holding that the Assessing Officer cannot make additions on those issues which were not challenged before the Tribunal.

11. The learned A.R for the assessee, on the other hand, referring to the order of the Tribunal dated 12.02.2016 submitted that the Tribunal has remitted appeals filed by the revenue on those issues which has been decided by the first appellate authority in violation of Rule 46A of the Income Tax Rules, 1962, otherwise, all other additions made by the Assessing Officer and deleted by the first appellate authority vide his order dated 27.03.2013 was attained finality and thus, the Assessing Officer cannot reconsider those issues and made additions once again, in consequential assessment proceedings. The learned A.R for the assessee referring to the order of the learned CIT(A) dated 27.03.2013 submitted that the learned CIT(A) has deleted additions made by the Assessing Officer in light of facts brought out in the assessment order and

findings of the Assessing Officer in remand report on various additional evidences filed by the assessee. Although, the revenue has filed an appeal before the Tribunal, but the revenue has not challenged various issues considered by the learned CIT(A), however, challenged findings of the learned CIT(A) in light of Rule 46A of the Income Tax Rules, 1962. The Tribunal, after considering relevant facts has set aside appeals filed by the Revenue to the file of the Assessing Officer only on those issues which have been decided by the learned CIT(A) in violation of Rule 46A of the Income Tax Rules, 1962. Therefore, the learned CIT(A) after apprising relevant facts has rightly deleted additions made by the Assessing Officer and his order should be upheld.

12. We have heard both the parties, perused material available on record and gone through orders of the authorities below. There is no dispute with regard to fact that the Tribunal has set aside appeals filed by the revenue as well as assessee to the file of the Assessing Officer for de novo consideration of all those issues, which has been decided by the first appellate authority in contravention of Rule 46A of the Income Tax Rules,

1962. In fact, the Assessing Officer had categorically admitted in his assessment order passed in pursuant to direction of the Tribunal and observed that the Tribunal has restored only those issues which have been decided in violation of Rule 46A of the Income Tax Rules, 1962, however, went ahead to decide the issues by defying directions of the Tribunal by observing that order of the Tribunal is not clear on the issues of violation of Rule 46A and with respect to which additions violation relates to by exceeding his authority. If at all, the Assessing Officer was not clear on the findings of the Tribunal, best course of action would be to file Miscellaneous Petition before the Tribunal and seek clarification on findings given by the Tribunal. In this case, the Assessing Officer without understanding findings of the Tribunal has gone ahead to make additions on those issues which were not at all subject matter of appeal before the Tribunal. Therefore, on this ground itself, the assessment order passed by the Assessing Officer, in pursuant to direction of the Tribunal u/s.143(3) r.w.s. 254 of the Act, cannot be sustained. Further, even in consequential proceedings, in pursuant to direction of the Tribunal, the Assessing Officer has failed to bring on record any evidences to prove that the learned CIT(A)

decided various issues by admitting additional evidences filed by the assessee without confronting those evidences to the Assessing Officer. In fact, the Assessing Officer has not brought out any facts to counter findings of fact recorded by the learned CIT(A), however, repeated his observations with regard to various additions made in the assessment proceedings, in pursuant to search u/s.143(3) r.w.s 153A of the Act. The learned CIT(A), after considering various facts has rightly observed that specific deletion made by the learned CIT(A) in respect of various additions made in the assessment proceedings was not part of grounds before the Tribunal and thus, when the Tribunal has set aside appeals to the file of the Assessing Officer for de novo consideration of those issues which have been decided in violation of Rule 46A of the Income Tax Rules, 1962, then, the Assessing Officer ought not to have travelled beyond the directions of the Tribunal. Hence, we are of the considered view that there is no error in the reasons given by the learned CIT(A) to delete various additions made by the Assessing Officer, including, additions made on account of amount paid to M/s. Landmark Construction Company, investments in the name of M/s.

Surana Sales Corporation, bank deposits in the name of family members & associates and disallowance of bad debts.

13. Coming back to the additions made by the Assessing Officer towards bad debts amounting to Rs.9,52,25,000/-. The Assessing Officer has disallowed claim of bad debts on the ground that the assessee was not financier, but only an agent and hence, he cannot claim bad debts. The learned CIT(A), during first round of litigation observed that respondent was indeed, a financier and payments were booked in the books of account of the assessee and further, these advances became bad and hence, the assessee was eligible to claim deduction towards bad debts written off. The learned CIT (A) had recorded categorical finding in light of various evidences filed by the assessee in the form of police complaint, cases in higher courts for recovery of debt etc., to prove that these debts have indeed became bad. The learned CIT(A), during the present proceedings has observed that the Assessing Officer has not brought any material evidence to the contrary in his assessment proceedings u/s.143(3) r.w.s.254 of the Income Tax Act, 1961, and therefore, deleted additions. Therefore, we are of the

considered view that when the AO himself admitted fact that the assessee had not filed any additional evidences and further, there is no violation of Rule 46A by the ld. CIT(A), he ought not to have made addition on this issue in consequential proceedings. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

14. As regards, deletion of additions on bank deposits of Rs.52,03,692/- in the names of family members of the assessee, we find that the learned CIT(A) in the first round of appellate proceedings held that since, all the family members are independent assessee,s and filing their return of incomes and moreover, alleged bank accounts were duly reflected in the respective returns filed for relevant assessment years, the question of addition of these cash deposits, once again in the hands of the assessee does not arise. The revenue does not challenged the findings of the ld. CIT(A) before the Tribunal, except arguing that the CIT(A) has decided the issue in violation of Rule 46A of Income Tax Rules 1962. We find that the CIT(A) has decided the issue after considering Remand Report of the AO and thus, the question of violation of Rule 46A

does not arise. Further, the AO himself admitted during consequential proceedings that there is no violation of Rule 46A of IT Rules. Therefore, we are of the considered view that when the AO himself admitted fact that the assessee had not filed any additional evidences and further, there is no violation of Rule 46A by the ld. CIT(A), he ought not to have made addition on this issue in consequential proceedings. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

15. In the result, appeal filed by the revenue is dismissed.

**ITA No.90 & 464/Chny/2020 (A.Y. 2007-08)**

16. The revenue has raised following grounds of appeal:-

*"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.*

*2. Whether on the facts and in the circumstances of the case, the ld. CIT(A) was correct in deleting the addition of Rs. 5,88,00,000/- made by the Assessing Officer towards bad debts ?*

*3. Whether on the facts and in the circumstances of the case, the ld. CIT(A) was correct in directing the Assessing Officer to arrive at peak credit in relation to the addition made in respect*

*of balance of debtors when the Assessing Officer had already worked out on the same basis?*

*4. Whether on the facts and in the circumstances of the case, the ld. CIT(A) was correct in not appreciating the fact that the assessee did not maintain regular books of accounts?*

*5. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored."*

17. The assessee has raised following grounds of appeal:-

*1. The order of the learned Commissioner of Income Tax (Appeals)-IO concurring with the order of the learned assessing officer is against the facts of the case and principle of natural justice.*

*2. The learned Commissioner of Income Tax (Appeals) erred in making addition of a sum of Rs.45,35,000/- as unexplained credit in the hands of the appellant.*

*3. The learned Commissioner of Income Tax (Appeals) failed in not appreciating the bank statements and explanation of the bank transaction for the relevant assessment year.*

*4. The learned Commissioner of Income Tax (Appeals) failed in not appreciating that Rs.45,35,000/- was sum received from Bajaj promoters pvt ltd which was reflecting in the bank statement also.*

*5. The learned Commissioner of Income Tax (Appeals) ereed in rejecting the submissions made and arbitrary addition for these and the other grounds that may be adduced during the course of the hearing it is thus prayed to your lordship to kindly delete the arbitrary addition and render justice."*

18. The first issue that came up for our consideration from assessee as well as the revenue appeal is addition towards amount receivable from debtors by adopting peak credit at Rs.4,76,15,000/-. The Assessing Officer has made additions towards amount receivable from borrowers on the basis of peak credit by observing that the assessee does not maintained proper books of account for his money lending business. The Assessing Officer has determined amount receivable from sundry debtors on the basis of incriminating materials found during the course of search, which includes advances not reflected in the regular books of account of the assessee. Both the learned CIT(Appeals) had adopted a stand that amount advanced and those not reflected should be added by adopting peak credit. The learned CIT(A) was of the opinion that amount advanced, repayment received and again reinvested which also included interest earned and hence, peak credit should be

adopted to determine total undisclosed income from money receivable from borrowers.

19. The learned A.R for the assessee submitted that the assessee has maintained proper books of account which is evident from the seized materials found during the course of search, as per which advances made to various borrowers has been found recorded in books of account maintained for the relevant assessment year. The learned A.R further submitted that the assessee has duly provided balance sheets, profit & loss account and other schedules and disclosed all the parties to whom money was advanced. Therefore, he submitted that once regular books of accounts were maintained, addition on the basis of peak credit cannot be made.

20. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that facts gathered during the course of search clearly establish modus operandi of the assessee, as per which the assessee has lent money to various borrowers which were not disclosed in regular books of account maintained for the relevant assessment year. The Assessing Officer has worked out unaccounted advances on

the basis of incriminating materials found during the course of search by adopting peak credit theory, when the assessee is unable to reconcile various incriminating materials to regular books of account. The learned CIT(A), after considering relevant facts has rightly directed the Assessing Officer to adopt peak credit method to determine unaccounted advances receivable from borrowers, and hence, their orders should be upheld.

21. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The Assessing Officer has worked out unaccounted receivable from borrowers on the basis of peak credit and has made additions of Rs.4,76,15,000/- for the assessment year 2007-08. It was explanation of the assessee before the Assessing Officer that he has maintained proper books of account and has accounted various advances given to borrowers and therefore, no addition could be made by adopting peak credit method. We find that the learned CIT(A) in the first round of adjudication, has recorded categorical finding that the assessee had maintained regular books of account for his money lending business. Further, loans and advances given

to various borrowers were part of books of account maintained by the assessee. Even, this fact has been confirmed by the AO during remand proceedings. Therefore, we are of the considered view that once the assessee maintains regular books of account for his business, the question of application of peak credit theory does not arise.

22. The basic idea behind peak credit theory is to avoid double addition and to bring only actual income of the assessee to suffer tax, where there is large number of unexplained credit and debit entries. In a case, where the assessee has various debits & credits, which he would not explain with regular books of account maintained for the year, then peak credit theory may be one of the possible method to determine correct income of the assessee. But, the above proposition cannot be treated as proposition of law. These are only inferences which can be drawn based upon normal probabilities. Further, these inferences can also be displaced by any material or record which may indicate to the contrary. Therefore, application of peak credit theory should be tested in each case based on its facts and circumstances. In this case, there is no dispute with

regard to fact that the assessee has maintained books of account for his finance business. Further, the assessee has reconciled various entries found as per incriminating documents to his regular books of account maintained for the relevant assessment year. In fact, the learned CIT(A) has categorically noted in his order that the assessee has maintained books of account for finance business and further, loans & advances given to various parties is reflected in the books of account maintained for the relevant assessment year. The assessee had also filed financial statement which contains details of amount receivable from borrowers. Based on the books of account maintained by the assessee, the Assessing Officer had allowed deduction towards bad debts written off in respect of various loans & advances receivable from borrowers. From the above, it is very clear that the assessee has maintained regular books of account for the assessment year in question and has also explained each debit & credit entries as per incriminating materials found during the course of search to his books of account maintained for above period. Therefore, we are of the considered view that once the assessee has explained debit & credit entry appearing in his books of account, then the

Assessing Officer cannot adopt peak credit theory for determination of income, because question of application of peak credit theory would come into operation only when large number of debits & credits in the books of account of the assessee are unexplained. Since, the assessee has explained debit & credit entries, as per incriminating materials to his regular books of account, the Assessing Officer ought not to have applied peak credit theory and determined amount receivable from borrowers. The learned CIT(A), without appreciating above facts, has simply sustained reasons given by the Assessing Officer to adopt peak credit theory to make additions on amount receivable from borrowers. Hence, we reverse findings of the learned CIT(A) and direct the Assessing Officer to delete additions made towards amount receivable from borrowers.

23. The next issue that came up for our consideration from ground nos.2 & 4 of revenue appeal is deletion of addition of Rs.5,88,00,000/- made by the Assessing Officer towards bad debts written off. The Assessing Officer has made additions towards bad debts written off on the ground that the assessee

is only an agent, but not carried out finance business on his own and thus, he cannot claim deduction towards bad debts written off.

24. The learned A.R for the assessee strongly supporting orders of the learned CIT(A) submitted that the assessee has maintained books of account and has disclosed all advances given in the course of money lending business. The AR further submitted that the learned CIT(A) has considered various evidences filed by the assessee and after considering relevant facts very categorically held that the assessee has maintained books of account and has disclosed advances given during the relevant period. Therefore, the learned CIT(A) opined that when the assessee has written off bad debts as irrecoverable, same needs to be allowed. Therefore, there is no merit in the ground taken by the revenue challenging findings of the learned CIT(A).

25. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The additions made by the Assessing Officer towards disallowance of bad debts cannot be sustained on basic ground

that the issue was not subject matter of appeal filed by the revenue before the Tribunal. From the findings of the Tribunal vide order dated 12.02.2016, what we noticed is that the Tribunal has set aside the appeals filed by the revenue only on those issues which have been decided by the learned CIT(A) in violation of Rule 46A of I.T. Rules, 1962, otherwise, the revenue has not challenged findings of the learned CIT(A) in deleting additions made by the Assessing Officer towards bad debts. Therefore, on this ground itself, additions made by the Assessing Officer cannot be sustained. Be that as it may, fact remains that the learned CIT(A) has recorded categorical finding that the assessee has maintained books of account in respect of finance business and has accounted all loans & advances given to borrowers. Therefore, once the assessee has included various advances given to borrowers in the books of account and further, when said loan advances became bad and irrecoverable, same needs to be allowed as deduction when the assessee has written off those debts in the books of account for the relevant assessment year. In this case, the Assessing Officer does not bring on record any evidence or fresh materials to make addition towards disallowance of bad

debts. The learned CIT(A), after considering relevant facts has very rightly held that when there is no material change in facts between first assessment, first appellate proceedings and consequential assessment proceedings, that warrants different conclusion, no addition can be made towards those issues which have attained finality. Since, the issue of bad debts written off attained finality, when the appeal filed by the revenue does not challenged the issue before the Tribunal on merits, then, there is no reason for the Assessing Officer to make additions on very same issue without there being any fresh facts in his possession. Hence, we are of the considered view that there is no error in the reasons given by the learned CIT(A) to delete additions made towards disallowance of bad debts. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue .

ITA No.464/Chny/2020 (A.Y.2007-08):

26. The next issue that came up for our consideration from assessee appeal is addition sustained by the learned CIT(A) towards sum received from M/s.Bajaj Promoters Pvt. Ltd. amounting to Rs.45,35,000/-. We find that, the assessee has

failed to file evidences to prove amount received from M/s.Bajaj Promoters Pvt. Ltd. is reflected in books of account for the relevant assessment year. Although, the assessee claims to have recorded credit in books, but facts brought on record by the ld. AO as well as the ld. CIT(A) proves otherwise. Even before us, no evidences has been placed to justify credit in the name of M/s Bajaj Promoters Pvt Ltd.,. Hence, we are inclined to uphold the findings of ld. CIT(A) and reject ground taken by the assessee.

27. The next issue that came up for our consideration from assessee appeal is addition towards investments in land at Mylapore amounting to Rs.15 lakhs. The learned CIT(A), in the first round of litigation, has deleted additions made by the Assessing Officer by holding that the assessee has not made any investments in purchase of land, but has only advanced loan against property and further, same was part of regular books of account maintained for the relevant assessment year. The learned CIT(A), in the second round of litigation, although, accepted fact that the assessee has maintained regular books of account, but sustained additions only on the ground that the

assessee had failed to file any evidences to prove said transaction is loan transaction.

28. Having heard both the parties, we find that first of all, this issue is not emanating from the order of the Tribunal in setting aside the issue to the file of the Assessing Officer for de novo consideration, because the Tribunal had set aside only those issues which have been decided by the learned CIT(A) in violation of Rule 46A of I.T.Rules, 1962. Therefore, once the issue was not subject matter of appeal before the Tribunal, the Assessing Officer cannot question the said issue in the consequential proceedings. Since, the issue was not subject matter of proceedings before the Tribunal, the Assessing Officer ought not to have considered very same issue and made additions. The learned CIT(A), without considering these facts has simply sustained additions made by the Assessing Officer. Hence, we reverse findings of the learned CIT(A) and direct the Assessing Officer to delete additions made towards investment in land at Mylapore amounting to Rs.15 lakhs. Further, the ld. CIT(A) in first round had recorded categorical finding that impugned transaction is not amount paid for purchase of property, but only mortgage of property for loan

transaction. It was further noted that said loan transaction is disclosed in regular books and thus it cannot be added as undisclosed income. The above findings of ld. CIT(A) is uncontroverted with any evidences. Therefore, we are of the considered view that the AO erred in making addition towards property at Mylapore. Hence, we direct the AO to delete addition towards investments in land at Mylapore.

**29. In the result, appeal filed by the revenue for the assessment year 2007-08 is dismissed and appeal filed by the assessee for the assessment year 2007-08 is partly allowed.**

**ITA No.91 & 465/Chny/2020 (A.Y.2008-09):**

30. The revenue has raised following grounds of appeal:-

> " *1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.*
>
> *2. Whether on the facts and in the circumstances of the case, the ld. CIT(A) was correct in directing the Assessing Officer to arrive at peak credit in relation to the addition made in respect of balance of debtors when the Assessing Officer had already worked out on the same basis ?*

*3. Whether on the facts and in the circumstances of the case, the Id. CIT(A) was correct in not appreciating the fact that the assessee did not maintain regular books of accounts?*

*4. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored."*

31. The assessee has raised following grounds of appeal:-

*"1. The order of the learned CIT(A) is wrong, illegal and opposed to facts of the instant case.*
*2.The Learned CIT erred in setting aside the issue of money receivables from borrowers to the Learned AO for the calculation of peak credit.*
*3. The Learned CIT failed to appreciate the fact that various records such as bank passbook account, cash account, note books, and dairies were seized and in possession of the department. These records reflect all the advances made and calculation of peak credit would only tantamount to double additions.*
*4. The Learned CIT and AO failed to understand the fact that the Hon'ble ITAT in it's order dated 16/08/20 16 had directed the Learned AO to conduct a De Novo consideration only for those matters which were in contravention to rule 46A. For the issue of money receivables from borrowers, no additional evidence was collected by the then Learned CIT, hence there is no question of contravention to rule 46A, therefore the Learned AO could not have made the said addition. Although this was observed by the present Learned CIT, he failed to delete the said addition.*
*5. The Learned CIT failed to understand the fact that no additional evidence was provided to the former CIT for the issue of unexplained investment in land and his decision was based*

*on the facts, law and evidence already available to the Learned AO for his consideration. Further a remand report had been sought from the Learned AO wherein he stated no new or concrete evidence was filed by the Assessee. Hence the question of contravention to rule 46A does not arise at all. Therefore the Learned AO could not have conducted a De "nv consideration of the said issue.*

*6. Without prejudice to the above, The Learned CIT and Learned AO erred in treating a sum advanced for purchase of property as unexplained investment in property. This money was only advanced on the basis of a sale agreement which was subsequently canceled.*

*7 The Learned CIT and Learned AO erred in treating cash seized during search as unexplained and held that no proper books of accounts were maintained by the Assessee or no new evidence was submitted to them to substantiate their claim. However, it maybe noted that books of accounts, maintained both manually and electrically, were seized by the department during the search operations on the Assessee. The AO had access to these seized documents ANN/MPB/B&D/S which include cash book that would sufficiently uphold the Assessee's claim*

*8. The Former Learned CIT, only on the basis of the above evidence, which was readily available to the Learned AO's disposal, made the deletion of the addition. No new evidence was submitted, or considered by the Former Learned CIT. Thus De novo consideration of the said issue could not have been done by the Learned AO and thus is in contravention of the ITAT direction.*

*9. The Learned CIT and Learned AO failed to understand that the credits taken from Mr. Sivaraman and K. Murugasan were only through legitimate banking channels and the same have been confirmed by the creditors. The fact that they have not chosen to show these transaction in their returns need to be addressed in their individual assessment. The fact that they have accepted in a sworn affidavit the credits made to the Assessee proves the genuineness of the transaction and the said addition must not be done in the hands of the Assessee.*

*10. The Learned AO has passed an assessment order which is in gross contravention to law, facts of the case and the direction of the Hon'ble ITAT and deserves to be deleted."*

32. The first issue that came up for our consideration from ground Nos.2 & 3 of assessee appeal and ground nos.2 &3 of the revenue appeal is addition on account of money receivable from borrowers amounting to Rs.24,49,98,000/- and money receivable as per pro-notes of Rs.45 lakhs and as per sworn statement on the basis of seized materials at Rs.45,50,000/-. During the course of search, incriminating materials in the form of pro-notes and cheques were found and impounded from the assessee, as per which the assessee has given loans to various individuals. The Assessing Officer has made additions towards money receivable from borrowers by adopting peak credit theory on the ground that the assessee does not maintained regular books of account for his finance business and further, various loans given to certain parties were outside books of account maintained by the assessee for the relevant assessment year. Thus, he had arrived at unaccounted receivable from borrowers at Rs.24,49,98,000/- for the assessment year 2008-09. The learned CIT(A), in the first round of litigation, has upheld findings of the Assessing Officer,

insofar as applying theory of peak credit, however, directed the Assessing Officer to arrive at correct peak credit for the year, on the basis of various arguments made by the assessee, including contention that various advances found in the incriminating materials were part of regular books of account prepared by the assessee. In consequential assessment proceedings, the Assessing Officer had reiterated his findings recorded in the assessment order passed u/s.143(3) r.w.s 153A of the Act, and has made additions of Rs.24,49,98,000/- in respect of amount receivable from borrowers and sum of Rs.45 lakhs on the basis of pro-notes and statement recorded from the assessee.

33. In the second round of litigation, the learned CIT(A) by taking note of findings of the ITAT., Chennai, and also various reasons given by the Assessing Officer to work out amount receivable from borrowers has held that although, the assessee argued that the Assessing Officer should not have considered this addition in the consequential assessment proceedings, but because the first appellate authority in earlier round of litigation has directed the Assessing Officer to work out peak credit, and such finding was challenged by the assessee before the

Tribunal and further, appeal filed by the assessee was set aside for de novo consideration, the Assessing Officer is required to make additions towards amount receivable from borrowers, as per findings recorded in his earlier assessment order, because the assessee has failed to file any additional evidences. Therefore, the learned CIT(A) rejected arguments of the assessee and sustained additions made by the Assessing Officer.

34. The learned AR for the assessee submitted that the learned CIT(A) having accepted fact that the assessee had maintained books of account for finance business, ought to have deleted additions made by the Assessing Officer towards amount receivable from borrowers on the basis of peak credit theory, because question of application of peak credit theory would come into operation only when credits and debit entries in the books of account of the assessee are unexplained. Since, the assessee has explained each and every credit and debit found during the course of search with reference to seized materials and books of account maintained for the relevant assessment year; the Assessing Officer should not have applied peak credit theory and made additions.

35. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that incriminating materials found during the course of search clearly indicate modus operandi of the assessee as per which the assessee has lent money to various persons which is outside books of account maintained by the assessee for the relevant assessment year. The Assessing Officer had worked out amount receivable from borrowers by applying peak credit theory, when the assessee was unable to explain credit and debit entries in the books. The learned CIT(A), after considering relevant facts has rightly sustained additions made by the Assessing Officer. Hence, there is no reason to deviate from the findings recorded by the learned CIT(A).

36. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The Assessing Officer has made additions towards amount receivable from borrowers from the finance business by applying peak credit theory on the ground that the assessee was unable to explain credit and debit entries appeared in the incriminating materials found during the course of search. It was

the explanation of the assessee before the lower authorities that, he had maintained books of account for finance business and further, reconciled each and every loans & advances, as per incriminating materials found during the course of search to books of account maintained for relevant assessment year. The assessee further contended that the learned CIT(A) having accepted fact that the assessee had maintained books of account and also various loans & advances as per seized material is part of regular books of account prepared for the relevant assessment year, ought not to have sustained additions made by the Assessing Officer on the basis of peak credit theory.

37. We have given our thoughtful consideration to the reasons given by the Assessing Officer to make additions towards amount receivable from borrowers on the basis of peak credit theory in light of various averments made by the learned A.R for the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for simple reason that basic idea behind peak credit theory is to avoid double addition and to bring only actual income of the assessee to suffer tax, where there is large number of

unexplained credit and debit entries. In a case, where the assessee has various debits & credits, which he would not explain with regular books of account maintained for the year, then peak credit theory may be one of the possible method to determine correct income of the assessee. But, the above proposition cannot be treated as proposition of law. These are only inferences which can be drawn based upon normal probabilities. Further, these inferences can also be displaced by any material or record which may indicate to the contrary. Therefore, application of peak credit theory should be tested in each case based on its facts and circumstances. In this case, there is no dispute with regard to fact that the assessee has maintained books of account for his finance business. Further, the assessee has reconciled various entries found as per incriminating documents to his regular books of account maintained for the relevant assessment year. In fact, the learned CIT(A) has categorically noted in his order that the assessee has maintained books of account for finance business and further, loans & advances given to various parties is reflected in the books of account maintained for the relevant assessment year. The assessee had also filed financial

statement which contains details of amount receivable from borrowers. Based on the books of account maintained by the assessee, the Assessing Officer had allowed deduction towards bad debts written off in respect of various loans & advances receivable from borrowers. From the above, it is very clear that the assessee has maintained regular books of account for the assessment year in question and has also explained each debit & credit entries as per incriminating materials found during the course of search to his books of account maintained for above period. Therefore, we are of the considered view that once the assessee has explained debit & credit entry appearing in his books of account, then the Assessing Officer cannot adopt peak credit theory for determination of income, because question of application of peak credit theory would come into operation only when large number of debits & credits in the books of account of the assessee are unexplained. Since, the assessee has explained debit & credit entries, as per incriminating materials to his regular books of account, the Assessing Officer ought not to have applied peak credit theory and determined amount receivable from borrowers. The learned CIT(A), without appreciating above facts, has simply sustained reasons given

by the Assessing Officer to adopt peak credit theory to make additions on amount receivable from borrowers. Hence, we reverse findings of the learned CIT(A) and direct the Assessing Officer to delete additions made towards amount receivable from borrowers.

38. The next issue that came up for our consideration from ground no.6 of assessee appeal is additions towards unexplained investments in land. The Assessing Officer had made additions towards unexplained investments in land at Sriperumbudur amounting to Rs.50.00 lakhs on the ground that the assessee has paid amount for purchase of land. It was explanation of the assessee before the Assessing Officer that alleged investment in land did not take place and that agreement was cancelled. The assessee has filed certain additional evidences before the learned CIT(A) during first round of litigation. The learned CIT(A) had called for remand report from the Assessing Officer and after considering relevant facts has deleted additions made by the Assessing Officer towards unexplained investments in land. The Revenue had challenged order of the learned CIT(A) before the Tribunal. The Tribunal had restored the appeal filed by the revenue to the

file of the Assessing Officer for de novo consideration of those issues which have been decided in violation of Rule 46A of Income Tax Rules, 1962. In the consequential proceedings, the Assessing Officer did not follow direction of the Tribunal, but went on to make additions towards unexplained investments in land on the ground that direction of the Tribunal is not clear and on which addition there is violation of Rule 46A of Income Tax Rules, 1962.

39. We have heard both the parties, perused material available on record and gone through orders of the authorities below. At the first instance, additions made by the Assessing Officer towards unexplained investments in land cannot be sustained, because the Tribunal has remanded only those issues which have been decided in violation of Rule 46A by the learned CIT(A) for de novo consideration in light of additional evidences filed by the assessee. In the consequential proceedings, the Assessing Officer did not bring on record what is additional evidence filed by the assessee. In absence of any additional evidences, the issue cannot be reconsidered by the Assessing Officer in the consequential proceedings, because scope of assessment is limited only on those issues which have

been decided by the learned CIT(A) in violation of Rule 46A of Income Tax Rules, 1962. Therefore, on this count itself, additions made by the Assessing Officer cannot be sustained.

40. Be that as it may, fact remains that although, incriminating materials found during the course of search suggested that the assessee made investments for purchase of land at Sriperumbudur, but during the assessment proceedings as well as appellate proceedings, the assessee has filed cancellation of sale agreement, because land purchase transaction could not materialize. The learned CIT(A), in the first round of litigation, after considering relevant facts has rightly deleted additions made by the Assessing Officer. During the second round of litigation, the learned CIT(A) although, accepted fact that the assessee has placed certain evidences to prove that land purchase deal could not be materialized, but made additions only on the ground that the assessee could not furnish necessary evidence, without pointing out what kind of additional evidences the assessee is required to file to explain his case. In our considered view, once it has been accepted that agreement entered into by the assessee for purchase of land has been subsequently cancelled and cancellation

agreement was placed before the authorities, then it is sufficient evidence to explain case of the assessee. The learned CIT(A) without appreciating above facts has simply confirmed additions made by the Assessing Officer. Hence, we reverse findings of the learned CIT(A) and direct the Assessing Officer to delete additions towards unexplained investments in land.

41. The next issue that came up for our consideration from ground no.7 of the assessee appeal is cash found in the premise of the assessee on the date of search. The Department has found cash at Rs.34,50,000/- and the same has been seized. The Assessing Officer has made additions towards cash found and seized during the course of search on the ground that the assessee could not explain source for cash seized. During the first round of litigation, the learned CIT(A) deleted additions on the ground books of account has been maintained and cash balance is available in the books. But, in the second round of appeal, the learned CIT(A) sustained additions on the ground that no evidence was filed before him. We find that the assessee has maintained books of account for his finance business and this fact has been admitted by the department, because books of account maintained by the

assessee have been seized during the course of search. Further, the learned CIT(A) during the first round of proceedings has admitted fact that the assessee has maintained books of account and further, explained cash found during the course of search. Therefore, we are of the considered view that once the ld. AO as well as the Ld. CIT(A) having accepted fact that the assessee has maintained books of account and also explained cash found during the course of search, then the Assessing Officer ought not to have made addition with regard to cash found during the course of search. The learned CIT(A) without appreciating above facts, has simply sustained additions made by the Assessing Officer. Hence, we reverse findings of the learned CIT(A) and direct the Assessing Officer to delete additions made towards cash found during the course of search.

42. The next issue that came up for our consideration from ground no.9 of the assessee appeal is unexplained credits appeared in the name of Mr. Sivaraman & Mr. K.Murugesan amounting to Rs.1,55,12,283/-. The Assessing Officer made additions towards credits on the ground that the assessee could not file any evidence to explain the credits. The Assessing

Officer has considered the issue in light of statement recorded from the assessee, Mr. Sivaraman & Mr. K.Murugesan during the course of search and on the basis of their statements opined that both does not have any means to explain huge amount of advances given to the assessee. Therefore, the Assessing Officer has made additions in the hands of assessee on substantive basis and further, assessed very same credits in the hands of Mr. Sivaraman & Mr. K.Murugesan on protective basis. During the second round of litigation, the Assessing Officer has made additions towards credits on very same basis and observed that except general statement, the assessee could not furnish any specific evidence to justify credits in the name of both the parties.

43. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The assessee claims that Mr. Sivaraman & Mr. K.Murugesan are agents of the assessee in his finance business. The assessee further claimed that he has taken advance from both parties and said advance has been taken through proper banking channels. The assessee claims to have filed all necessary details to justify credits and also explained

genuineness of transaction and creditworthiness of the parties. However, on perusal of various facts brought out by the Assessing Officer during the assessment proceedings, what we could notice is that both parties have categorically agreed in the statement recorded during the course of search that they had worked as agents for the assessee and also received monthly income of Rs.10,000/-. They further stated that they have opened bank accounts as per direction of Mr. S.Mohan Kumar, present assessee. From the above, what is clear is that credits appeared in the name of the above two persons are not satisfactorily explained to the Assessing Officer with necessary evidence to prove genuineness of transaction and creditworthiness of parties, although, the assessee has filed certain evidences to prove identity of the persons. It is well settled principles of law that when a credit appeared in the books of account of the assessee, then it is for the assessee to satisfactorily explain the credit with necessary evidence. Unless the assessee discharges its burden and explain credit, the Assessing Officer may treat the same as unexplained income of the assessee. In this case, the assessee failed to file necessary evidence to establish credits appearing in the names of above

two persons in the books of account of the assessee as genuine transactions. The learned CIT(A) after considering relevant facts has rightly sustained additions made by the Assessing Officer. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the assessee.

**44. In the result, appeal filed by the assessee for the assessment year 2008-09 is partly allowed and appeal filed by the revenue for the assessment year 2008-09 is dismissed.**

Order pronounced in the open court on 21st March, 2022

| | |
|---|---|
| Sd/- | Sd/- |
| **(वी. दुर्गा राव)** | **(जी. मंजुनाथ)** |
| (V.Durga Rao) | (G.Manjunatha) |
| न्यायिक सदस्य /Judicial Member | लेखा सदस्य / Accountant Member |

चेन्नई/Chennai,
दिनांक/Dated 21st March, 2022
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.