IN THE INCOME TAX APPELLATE TRIBUNAL
"A"BENCH: BANGALORE

BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos.947 & 948/Bang/2013
Assessment Years : 2007-08 & 2008-09

Smt. G. Vijaya, No.8, Ashok Nagar Havambhavi Siruguppa Road Bellary 583 103 **PAN NO :AIHPG0523H**	**Vs.**	Deputy Commissioner of Income-tax Central Circle 1(3) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Shri H. Siva Prasad Reddy, ITP, A.R.
Respondent by	:	Shri Sameer Kumar Singh, D.R.

Date of Hearing	:	26.04.2022
Date of Pronouncement	:	28.04.2022

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

Both the appeals filed by the assessee are directed against the orders passed by Ld. CIT(A), Mysuru and they relate to the assessment years 2007-08 & 2008-09. Both the appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The facts relating to the case are stated in brief. Both these appeals were earlier disposed of by the Tribunal on 28.8.2014. The assessee challenged the decision rendered by the Tribunal in both

the yeas by filing appeals before Hon'ble High Court of Karnataka. The Hon'ble High Court restored all the issues to the file of the ITAT with the following observations:-

> *"5. Having heard learned Senior Counsel for the appellant and learned Senior Standing Counsel for the respondents, we find that the following substantial questions of law would now arise:*
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> 1. *Whether the Tribunal was correct in holding that reasons recorded by the Assessing Officer of an assessee u/s. 153C of the It Act, was sufficient and that of transferring Assessing Officer u/s. 153A of the IT Act was not required to record satisfaction?*
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> 2. *Whether the Tribunal was correct in holding that the words " I am satisfied that the books of accounts belonging to the assessee has been seized" is a note showing satisfaction about documents/ assets found in the course of search showing undisclosed income to acquire jurisdiction?*
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> 3. *Whether the Tribunal was correct in holding that the documents discovered in the course of search i.e., jewellery bills was brought to tax in the hands of Sri Soma Shekar Reddy, is sufficient material to acquire jurisdiction u/s 153 of the IT Act even though no material relating to the assessee was seized?*
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> *6. In the circumstances, the aforesaid substantial questions of law substitute the earlier substantial questions of law which were raised by this Court while admitting the appeals on 07.07.2015.*
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> *7. Having regard to the aforesaid dictum and particularly the judgment of this Court passed in* ***IN/s HarihantAluminium Corporation and M/s Evergladers****referred to above, we find that at this stage it would be unnecessary to answer the substantial questions of law which have been raised in these appeals as the appeals are being and are remitted to the Tribunal to examine on the jurisdictional aspects of the matter as well as on merits of the matter.*

8. The Tribunal shall examine the aspect regarding satisfaction note recorded in the case and whether same can be termed sufficient compliance or not for assessment to be initiated and to be finalized under Section 153C of the Act insofar as assessee herein is concerned.

9. The Tribunal could then also examine the case on merits for the purpose of determining additions, if any, or for the purpose of liability to pay interest, if any, afresh in accordance with law.

10. In the circumstances, the impugned order dated 28.08.2014 passed in ITA Nos.947 and 948 (Bang) 2013 for the assessment years 200708 and 2008-09 impugned in these appeals is set aside. The matters are remanded to the Tribunalfor reconsideration in accordance with law, in light of the aforesaid decisions of this Court as well as of the Hon'ble Supreme Court.

11. All contentions on both sides are left open. Appeals are disposed off in the aforesaid terms.

12. In view of the disposal of the appeals, I.A. No.1/2018 in both the appeals stand disposed off."

Accordingly, these appeals were posted for hearing before us. We notice that the Hon'ble High Court has directed to decide the appeals afresh on all issues.

3. The assessee herein is a wife of Shri Soma Sekhar Reddy. The above said Shri Soma Sekhar Reddy was subjected to search u/s 132 of the Income-tax Act,1961 ['the Act' for short] on 26.10.2007. According to the A.O., certain documents marked expenditure A1-page 43-84 relating to the assessee was seized during the course of search. Accordingly, the A.O. reopened the assessment u/s 153C of the Act in the hands of the assessee (though erroneously mentioned as section 153A in the assessment order). The A.O. completed the assessment of assessment year 2007-08 u/s 153C r.w.s. 143(3) of the Act. It is pertinent to note that the AO did not make any addition on the basis of above said

seized materials. The reason for the same is discussed in the subsequent paragraph. The assessment for assessment year 2008-09 was completed by the A.O. u/s 143(3) of the Act.

4. We shall first take up the appeal filed for assessment year 2007-08. The Ld. A.R. submitted that the A.O. has initiated the assessment proceedings u/s 153C of the Act on the reasoning that certain documents belonging to the assessee were seized during the course of search conducted in the hands of Shri Somashekar Reddy and they have been transferred to him. He submitted that the A.O. has not referred to the nature of documents in the assessment order, but the Ld. CIT(A) has referred the same as under:-

> *"Documents:*
>
> *i) A1-page 43-84 of seized from residence of Somashekhar Reddy*
>
> *ii)*
>
> *iii)*
>
> *In view of the above, I am satisfied that books of accounts belonging to the assessee has been seized."*

The Ld. A.R. submitted that these documents are in the nature of 'bills and estimates' for purchase of jewellery. The above bills are in the name of Smt. G. Vijaya, the assessee herein. He submitted that, as per the provisions of sec.153C of the Act, the assessing officer of searched person should record satisfaction that the documents seized during the course of search belong to/pertain to a person other than the searched person and then transfer the documents to the assessing officer of that other person. In the instant case, the A.O. of Shri Somashekhar Reddy (searched person) has treated the above said documents as belonging to Shri Somashekar Reddy only and has assessed the entire value of investments found in the above said documents in the hands of

Shri Somashekhar Reddy only. He further submitted that the above said Shri Somasekara Reddy has challenged the above said addition by filing before Ld. CIT(A) and got partial relief and he has settled the demand under Vivad se Visvas Act, meaning thereby, Shri Somasekara Reddy has also accepted those documents as belonging to him only. The Ld. A.R. submitted that the action of the assessing officer of Shri Somashekara Reddy is in accordance with the presumption enshrined in 132(4A) & 292C of the Act, which states that the documents seized in the course of search belong to the person who was subjected to search. Accordingly, the Ld A.R submitted that, once the A.O. has considered above said documents as belonging to Shri Somashekhar Reddy only and further assessed the amount mentioned in those documents in his hands. Accordingly, he contended that these documents cannot be considered as belonging to 'some other person' as contemplated u/s 153C of the Act. He submitted that, if the AO of Shri Somashekara Reddy was satisfied that these documents do not belong to Shri Somashekara Reddy, he would not have made any addition on the basis of these documents in his hands. If has considered these documents as belonging to Smt Vijaya, the assessee herein, then he should have recorded satisfaction in that regard and accordingly he should have transferred to the AO of Smt Vijaya. Accordingly, the Ld A.R submitted that, in the facts and circumstances of the case, these documents cannot be considered as belonging to the assessee herein and hence the AO of Shri Somashekara Reddy cannot be considered to have arrived at an objective satisfaction that these documents belong to the assessee herein. Accordingly the Ld A.R submitted that, in the absence of objective satisfaction as contemplated u/s 153C of the Act, the A.O. could not have initiated proceedings in the hands of the assessee u/s 153C of the Act. Accordingly, he submitted that the impugned proceedings initiated

u/s 153C of the Act is illegal and are liable to be quashed. In this regard, he placed reliance on the decision rendered by coordinate bench in the case of Shri T.H. Suresh Babu (ITA No.1890/Bang/2018 dated 6.4.2022).

5. On the contrary, the Ld. D.R. submitted that the documents referred to above were found from the residence of Shri Somashekhar Reddy, who was the searched person. In those documents, the name of the assessee was mentioned and hence the A.O. of the searched person has treated these documents as belonging to the assessee herein and accordingly transferred them to the AO of the assessee herein. Accordingly, he submitted that the A.O. was justified in initiating proceedings u/s 153C of the Act.

6. We heard the rival contentions on this legal issue and perused the record. The parties submitted that the documents referred to in "A1-page 43-84" are in the nature of bills/estimate for purchase of jewellery. Admittedly those documents are in the name of the assessee herein. It was further admitted by both the parties that the investment found in the above said document has been assessed in the hands of Shri Somashekhar Reddy, from whose hands these documents were seized. As rightly pointed out by Ld. A.R., the presumption enshrined in section 132(4A) & section 292C of the Act is that the document seized during the course of search belong to the person from whom it was seized. Admittedly, the A.O. of the searched person, viz., Shri Somashekhar Reddy, has considered these documents as belonging to Shri Somashekhar Reddy only, even though the documents stood in the name of Smt. G. Vijaya. Further, the A.O. of Shri Somashekhar Reddy has assessed the value of investments found in these documents in his hands only.

7. Section 153C of the Act shall come into play only, when the A.O. of the searched person comes to an objective "satisfaction" that the documents found during the course of search do not belong to the searched person. In that case, he would not be considering those documents for making any addition in the hands of the searched person. The AO of the searched person has to record his satisfaction that the documents do not belong to the searched person and then transfer those documents to the A.O. having jurisdiction over the 'other person' to whom the said document belong/pertain to. The legal position in this regard has been discussed by the co-ordinate bench in the case of Shri T H Suresh Babu (supra) as under:-

> *"30. Again, the Hon'ble Delhi High Court in the case of Pepsico India Holdings (P.) Ltd. v. Asstt. CIT [2015] 370 ITR 295/228 Taxman 116 (Mag.)/[2014] 50 taxmann.com 299 following its earlier decision in the case of Pepsi Foods (P.) Ltd (supra) held that unless it is established that the documents in question do not belong to the searched person, the question of invoking the provisions of sec.153C of the Act does not arise. It was also held that unless searched person disclaims the documents as belonging to him, provisions of sec.153C do not get attracted. It is also further laid down that in the satisfaction note there should be something to indicate that the seized document do not belong to the searched person. The Hon'ble Delhi High Court held as follows:—*
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> > *'Having set out the position in law in the decision of this Court in the case of Pepsi Foods Pvt. Ltd. (supra), it must be seen as to whether the Assessing Officer of the searched person (the Jaipuria Group) could be said to have arrived at a satisfaction that the documents mentioned above belonged to the petitioners.*
> >
> > *First of all we may point out, once again, that it is nobody's case that the Jaipuria Group had disclaimed these documents as belonging to them. Unless and until it is established that the documents do not belong to the searched person, the provisions of Section 153C of the said Act do not get attracted because the very expression used in Section 153C of the said Act is that "where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A*

...." In view of this phrase, it is necessary that before the provisions of Section 153C of the said Act can be invoked, the Assessing Officer of the searched person must be satisfied that the seized material (which includes documents) does not belong to the person referred to in Section 153A (i.e., the searched person). In the Satisfaction Note, which is the subject matter of these writ petitions, there is nothing therein to indicate that the seized documents do not belong to the Jaipuria Group. This is even apart from the fact that, as we have noted above, there is no disclaimer on the part of the Jaipuria Group insofar as these documents are concerned.

Secondly, we may also observe that the finding of photocopies in the possession of a searched person does not necessarily mean and imply that they 'belong' to the person who holds the originals. Possession of documents and possession of photocopies of documents are two separate things. While the Jaipuria Group may be the owner of the photocopies of the documents it is quite possible that the originals may be owned by some other person. Unless it is established that the documents in question, whether they be photocopies or originals, do not belong to the searched person, the question of invoking Section 153C of the said Act does not arise.

Thirdly, we would also like to make it clear that the assessing officers should not confuse the expression "belongs to" with the expressions "relates to" or "refers to". A registered sale deed, for example, "belongs to" the purchaser of the property although it obviously "relates to" or "refers to" the vendor. In this example if the purchasers premises are searched and the registered sale deed is seized, it cannot be said that it "belongs to" the vendor just because his name is mentioned in the document. In the converse case if the vendor's premises are searched and a copy of the sale deed is seized, it cannot be said that the said copy "belongs to" the purchaser just because it refers to him and he (the purchaser) holds the original sale deed. In this light, it is obvious that none of the three sets of documents - copies of preference shares, unsigned leaves of cheque books and the copy of the supply and loan agreement - can be said to "belong to" the petitioner.

In view of the foregoing discussion, we do not find that the ingredients of Section 153C of the said Act have been satisfied in this case. Consequently the notices dated 02.08.2013 issued under Section 153C of the said Act are quashed. Accordingly all proceedings pursuant thereto stand quashed.'

31. Similarly, the Hon'ble Gujarat High Court in the case of VijaybhaiN.Chandrani v. Asstt. CIT [2011] 333 ITR 436 held that even if there is a reference to the assessee in the seized documents, it does not mean that the assessee is the owner of those documents unless the revenue proves conclusively that the assessee is the owner of those documents. The Hon'ble Gujarat High Court held as follows:—

> *"Thus a condition precedent for issuing notice under s. 153C and assessing or reassessing income of such other person, is that the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned should belong to such person. If the said requirement is not satisfied, resort cannot be had to the provisions of s. 153C of the Act.*
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> *Examining the facts of the present case in the light of the aforesaid statutory scheme, it is an admitted position as emerging from the record of the case, that the documents in question, namely the three loose papers recovered during the search proceedings do not belong to the petitioner. It may be that there is a reference to the petitioner in as much as his name is reflected in the list under the heading 'Samutkarsh Members Details' and certain details are given under different columns against the name of the petitioner along with other members, however, it is nobody's case that the said documents belong to the petitioner. It is not even the case of Revenue that the said three documents are in the handwriting of the petitioner. In the circumstances, when the condition precedent for issuance of notice is not fulfilled any action taken under s. 153C of the Act stands vitiated. "*

32. The ratio that can be culled out from the above decisions is that unless revenue establishes that the assessee is the owner of the seized documents, provisions of sec.153C cannot be invoked. Even the Hon'ble Delhi High Court as well as the Hon'ble Gujarat High Courts held that merely because there is a reference to the name of the assessee in the seized documents, it does not mean that the assessee is the owner of those documents. In the satisfactory note recorded by the AO there should be something to indicate that the searched person had disclaimed those documents and therefore, AO of the searched person reached a conclusion or satisfaction that the documents do not belong to the searched person but other third person. The High Courts, even went to the extent of holding that possession of documents and possession of photo copies of documents are two separate things. It may be quite possible that photo copies may be belonging to the searched person and whereas the original may be owned by some other person.

33. Further, the Hon'ble Supreme Court in M/s Calcutta Knitwears :2014] 43 taxmann.com 446 (SC) held that existence of cogent and

demonstrating material is germane to the assessing officers' satisfaction in concluding that the seized documents "belong to" a person other than the searched person is necessary for initiation of action u/s 158BD. The ratio decidendi of this decision applies to the proceedings u/s 153C also, since sections 158BD & 153C are substantially parimateria`.

34. The Hon'ble High Court of Delhi in Canyon Financial Services Ltd (2017) 84 taxman.com 71 (Delhi) held that the AO of the searched person had not proved that the seized document belonged to the assessee and not to the searched person.

35. The ITAT, Bangalore, Bench 'B' in Senate [2016] 68 taxmann.com 223 (Bangalore-Trib.) held that there should be something in the satisfaction recorded by the AO of the searched person to indicate that the searched person had disclaimed the seized documents before reaching a conclusion/satisfaction that the documents do not belong to the searched person but to the other third person.

36. In CIT V. Sinhgad Technical Education Society, 397 ITR 344 (SC), where loose papers found and seized from residence of President of assessee, an educational institution, indicating capitation fees received by various institutions run by assessee did not establish co-relation document-wise with assessment years in question notice issued under section 153C had rightly been quashed and set aside by the Hon'ble Supreme Court."

8. In the instant case, we noticed that there is merit in the contention of Ld A.R that the A.O. of the searched person Shri Somashekhar Reddy has not come to an objective satisfaction that the impugned documents belong to the assessee herein. This is evident from the fact that the AO of Shri Somashekara Reddy has assessed the investments found in those documents in the hands of Shri Somashekara Reddy. The Ld A.R submitted that the searched person, Shri Somashekara Reddy has settled the additions under VSV Act. We also noticed that the action of the AO of the searched person is in accordance with the presumption enshrined in sec.132(4A) and sec. 292C of the Act. If the AO of searched person had arrived an objective satisfaction that these documents belong to the searched person, then he would not have relied upon the very same document for making addition in the hands of the searched

person. The addition should be made in the hands of other person to whom the documents belong/pertain to and this is the whole concept of sec.153C of the Act. Once these documents have been accepted to belong to the searched person and further the AO has assessed the investments found in the said documents in the hands of the searched person, the question of considering the same as belonging/pertaining to some other person will not arise. Hence the so called satisfaction recorded by the AO of the searched person can only said to be a mechanical satisfaction and not objective satisfaction as contemplated in sec.153C of the Act. It is a case of mechanical transfer of the impugned documents to the assessing officer of the assessee herein. We also noticed earlier that the AO of the assessee herein has not made any addition on the basis of the above said documents, 'which are said to belong to the assessee herein'. This factfurther reinforces our view that, in the facts and circumstances of the case discussed above, there was no objective satisfaction as contemplated u/s 153C of the Act. Accordingly, we find merit in the contentions of the assessee that the very initiation of proceedings u/s 153C of the Act in the hands of the assessee for assessment year 2007-08 is not in accordance with the law and hence the assessment order is liable to be quashed. Accordingly, we quash the orders passed by Ld. CIT(A) and assessing officer for AY 2007-08 for the detailed reasons discussed above.

9. Since we have quashed the assessment order passed by the A.O. for AY 2007-08, the additions made by the AO on merits would fall in the ground and they do not require adjudication.

10. Now we shall take up the appeal filed by the assessee for assessment year 2008-09. In this year, the assessee raised following grounds:-

1. *The order of the Commissioner of Income Tax Appeals (CIT (A)) is opposed to the facts of the case and law and it is prejudicial to the interest of the appellant assessee.*
2. *The CIT (A) ought to have appreciated that there was no incriminating materials seized belonging to the assessee and therefore, the proceeding initiated u/s 153C R.W.S 143(3) are bad in law and liable to be quashed.*
3. *The CIT(A) ought to have appreciated that in order to assume jurisdiction u/s 153C under the law it is condition precedent that there must be seized material indicating undisclosed income and not any material which was not incriminating.*
4. *The CIT(A) ought to have appreciated that the purported seized material marked document A 1 pages 43-84 is not even referred or used for the purpose of assessment in case of the appellant assessee and therefore, no valid assessment under the law could have been made u/s153C of the Act.*
5. *The CIT(A) ought to have appreciated that trade liability of Rs 6,26,74,760 could not have been disallowed as they are genuine and made in the normal course of the business.*
6. *The CIT(A) also failed to appreciate that the provisions of section 40A(3) and 40(a)(ia) do not apply to the payment made to sundry creditors.*
7. *The CIT(A) ought to have appreciated that it is not permissible to disallow the trade liability on estimate basis without recording a finding with respect to each credit, in the facts and circumstances of the case.*

11. The ground Nos.1 to 4 relates to validity of proceedings-initiated u/s 153C of the Act. However, a perusal of the assessment order would show that the A.O. has passed the assessment order u/s 143(3) of the Act only and he has not invoked the provisions of section 153C of the Act. Hence, the grounds relating to validity or otherwise of proceedings-initiated u/s 153C of the Act are not applicable to the year under consideration. Hence, the ground Nos.1 to 4 urged by the assessee are dismissed.

12. The only surviving issue relates to the addition of Rs.6,26,74,760/- made by the A.O. as unproved trade liability. The facts relating to the same are discussed in brief. During the year under consideration, the assessee was undertaking Ore crushing contract work by engaging labourers. The assessee had declared

gross receipt of Rs.6.14 crores and declared a net profit of Rs.44,74,367/-. The major expenditure claimed by the assessee was related to transportation and material shifting charges amounting to Rs.5.32 crores. The A.O. noticed from the balance sheet that the assessee has declared sundry creditors of Rs.11,04,45,695/-. He also noticed that the assessed had declared additional income of Rs.1 crore during the course of search conducted in the hands of the assessee's husband and the same was surrendered by the assessee in the revised return filed on 29.5.2009. The A.O, after carrying out certain analysis, took the view that the trading liability declared by the assessee is in excess. Accordingly, he assessed following amount as excess and unproved trading liability in the hands of the assessee:-

i)	Difference in trade liability as quantified above in claiming excess amount as discussed at para 6.5	Rs.1,72,75,247/-
ii)	Brought forward liability for the months of February and March 2007 treated as bogus claim considering the change of business in contract i.e., from ore crushing to transport operation as discussed at para 9	Rs.1,10,40,220/-
iii)	Excess trade liability quantified under current year's expenses after considering the additional income of Rs.1 crore disclosed in the revised return as discussed at para 9.2	Rs.3,43,59,293/-
	Total Trade liabilities considered under various heads as unproved and subjected to tax	**Rs.6,26,74,760/-**

The Ld. CIT(A) also confirmed the same and hence the assessee has filed this appeal before us.

13. The back ground of making above said additions are explained briefly.

(a) Addition of Rs.1,72,75,247/-

Out of the trading liabilities of Rs.11,04,45,695/-, the AO deducted opening balance as on 1.4.2007 of Rs.3,99,39,296/- and the expenditure incurred during the year under consideration of Rs.5,32,31,152/-. The balance amount was Rs.1,72,75,247/-. The AO took the view that the above said amount is an unexplained credit.

(b) Addition of Rs.1,10,40,220/-

This amount forms part of opening balance of Rs.3,99,39,296/-. According to the AO, this amount pertains to the trading liability incurred during February and March, 2007. The AO took the view that this amount represents payments due to rural poor labourers, who could not afforded credit to the assessee. Accordingly, he assessed the same.

(c) Addition of Rs.3,43,59,293/-

This amount forms part of expenditure of Rs.5,32,31,152/- incurred during the year. The AO took the view that the outstanding amount pertaining to January 2008 and earlier months cannot be accepted as outstanding liability. Accordingly, he computed proportionate amount of 10 months, which worked out to Rs.4,43,59,293/-. Since the assessee had surrendered Rs.1.00 crore in her return of income, the AO assessed the difference amount of Rs.3,43,59,293/-.

14. The Ld. A.R. submitted that the A.O. has made the above said addition merely on presumptions, surmises and conjectures. He submitted that the balance sheet of the assessee has disclosed the outstanding balance of trading liability as on 31.3.2008 at Rs.11,04,45,695/-. There is no information/material available with

the A.O. to show that the above said liability has ceased to exist to the tune of Rs.6,26,74,760/-, i.e., the amount assessed by the A.O. as unproved liabilities. He submitted that these liabilities very much exist in the books of accounts. The Ld. A.R. further submitted that the assessee and his family members were subjected to search by various authorities and they have seized books of accounts and other documents. Hence, the assessee could not effectively furnish the details to prove the trading liabilities.

15. He submitted that the A.O. has accepted the trading result declared by the assessee and there is no dispute that the above said liabilities arise out of the above said trading transactions only. Having accepted the trading results relating to transportation charges, quarry charges, material shifting charges, etc., the A.O. could not have come to the conclusion that part of relevant liabilities are not proved. Accordingly, he submitted that the A.O. was not justified in making the addition on surmises and conjectures. The Ld. A.R. further submitted that the assessee has already surrendered a sum of Rs.1 crore on account of deficiencies, if any, in the maintenance of books of accounts. The above said surrender has also been accepted by the A.O. and hence, he was not justified in enhancing the same.

16. The Ld. D.R., on the contrary, submitted that the assessee has failed to prove that the trading liabilities are outstanding as on 31.3.2008. He further submitted that the trading liabilities were related to transportation charges and labour charges who could not give credit to the assessee herein. Hence, the trading liabilities were taken as unproved by the A.O.

17. We heard the parties on this issue and perused the record. The admitted fact is that the outstanding liability of Rs.11.04 crores disclosed by the assessee in the balance sheet as on 31.3.2008 pertains to trading liabilities and they arise out of trading results. The AO has considered the amount of Rs.1,72,75,247/- only, as not arising out of trading results. There is no dispute with regard to the fact that the assessee has maintained books of accounts and the Balance sheet has been prepared out of the book results only. The Ld. A.R. also submitted that the assessee was also handicapped in providing relevant information and explanations, since the books of accounts have been seized by the various statutory authorities. Accordingly, it could be understood that the assessing officer could not examine relevant books of accounts. Accordingly, it can be seen that the AO has considered the amount of Rs.1,72,75,247/- as not arising out of trading transactions on surmises only. In our view, without examining the books of account and the break-up details of trading liabilities, one could not come to the conclusion that the above said amount of Rs.1,72,75,247/- does not represent trading liability.

18. The fact remains that the liability of Rs.11.04 crores is shown in the books of accounts. It has arisen out of trading activities carried on by the assessee. Hence it cannot be treated as unproved liability. The apprehension entertained by the AO is that the liabilities could not have existed as shown by the assessee. However, it is a fact that the AO has not brought any material on record in support of his apprehension. It is well settled proposition of law that the apprehension, howsoever strong, cannot substitute material evidences. In so far as the trading liabilities are concerned, it could be assessed only u/s 41(1) of the Act, when it ceases to exist. In our considered view, the inference drawn by the AO was

that the suppliers of services are not having enough means to provide credit to the assessee. However, the AO himself was not aware of the details about the suppliers of the services. Without those details, we are unable to understand as to how the AO could have entertained such kind of views. We also notice that the A.O. has not established that the liability has ceased to exist, which would warrant invoking of provisions of section 41(1) of the Act. Accordingly, in our view, the A.O. was not justified in treating part of liabilities, i.e. Rs.6,26,74,760/-, as unproved on presumptions, surmises and conjectures.

19. At the same time, there are lacunae on the part of the assessee also, i.e., the assessee also could not furnish books of accounts and other details, since they have been seized by other statutory authorities. Hence, the action of the A.O. making addition could not found fault with altogether. The only point is that the quantum of addition determined by the AO is not supported by any evidence and it has been made on presumptions only. In view of the deficiency on the part of the assessee, in our view, some addition is called for in order to take care of deficiencies, if any. Since the assessee could not furnish information and explanations relating to trading liabilities outstanding as on 31.3.2008 before the A.O., we are of the view that this issue could be resolved by making addition on estimated basis in order to take care of revenue leakage if any.

20. We have earlier noticed that the assessee has surrendered a sum of Rs.1.00 crore in order to take care of deficiencies in the maintenance of books of accounts and the assessee has already offered the same. Accordingly, we are of the view that this issue would meet ends of justice, if the addition made by the A.O. is

restricted to Rs.50 lakhs and the same, in our view, would take care of further deficiencies, revenue leakages, if any, in the maintenance of books of accounts.

21. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue in AY 2008-09 and direct the A.O. to restrict the addition to Rs.50 lakhs.

22. In the result, the appeal filed by the assessee for assessment year 2007-08 is allowed and the appeal of the assessee for assessment year 2008-09 is partly allowed.

Order pronounced in the open court on 28th Apr, 2022

Sd/-	**Sd/-**
(Beena Pillai)	**(B.R. Baskaran)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 28th Apr, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.