

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3028/Chny/2019
निर्धारण वर्ष /Assessment Year: 2017-18

Mr.A. Johnkumar,
No.28, Savari Padayatchi Street,
Nellithope,
Pondicherry-605 005.
[PAN: AFNPJ 4673 G]
(अपीलार्थी/Appellant)

v. The Dy. Commissioner-
of Income Tax,
Central Circle-1(4),
Chennai.
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.3092/Chny/2019
निर्धारण वर्ष /Assessment Year: 2017-18

The Dy. Commissioner-
of Income Tax,
Central Circle-1(4),
Chennai.
(अपीलार्थी/Appellant)

v. M/s.Johnkumar Trust,
No.28, Savari Padayatchi
Street,
Nellithope,
Pondicherry-605 005.
[PAN: AABTJ 5987 A]
(प्रत्यर्थी/Respondent)

Assessee by : Mr. S. Xavier Felix, Adv.
Department by : Mr. M.Rajan, CIT
सुनवाई की तारीख/Date of Hearing : 12.04.2022
घोषणा की तारीख /Date of Pronouncement : 13.05.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee and the appeal filed by the Revenue are directed against, separate but identical orders of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 30.08.2019 and pertains to

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assessment year 2017-18. Since, facts are identical and issues are common, for the sake of convenience, appeals filed by the assessee as well as the Revenue were heard together and are being disposed off, by this consolidated order.

ITA No.3028/Chny/2019:

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

1. The order of the learned Commissioner of Income (Appeals)-18, is wrong, illegal and is opposed to law.

2. The learned CIT(A)-18 erred in upholding an addition of Rs.2,49,00,000/- as income under the head other sources despite the fact that both the AO and CIT(A) have admitted that the said amounts were received by the appellant from the sale of agricultural land.

3. The learned CIT(A) erred in upholding the addition of Rs.2,49,00,000/- as income under the head other sources despite the fact that the materials found at the time of search and seized at the premises of both the purchaser and seller point out to the fact that the said amounts were paid only towards sale of agricultural land and that the same was exempt under section 2(14)(iii) of the income tax act in the hands of the appellant.

4. The learned CIT(A) ought to have seen that it was only at the instance of the purchaser, who bears the stamp duty and registration fee, that the agricultural land was registered at the guideline value and that that the appellant would not have been at any disadvantage even if the entire consideration was recorded in the sale deed since even in the eyes of the department the land was only an agricultural land and that the entire receipt is exempt under 2(14)(iii) of the income tax act.

5. The learned CIT(A) while not disputing that the decision of the Hon'ble Tribunal in ITO Vs Abraham Varghese is in favour of the assessee erred in not applying the ratio of the said decision in favour of the assessee.

6. The learned CIT(A)-18 erred in sustaining an addition of Rs.2,26,89,820/- as unaccounted income of the appellant from unregistered chit and finance business.

7. The learned CIT(A) erred in sustaining the addition of Rs.2,26,89,820/- only on the basis of statement obtained from the appellant during the course of search which was not backed by any corroborative material. The learned CIT(A) further ought to have seen that the scope of provision of section 69 cannot be extended to loose sheet of papers found during the course of search.

8. The learned CIT(A) erred in sustaining an addition of Rs.15 lacs as gift/ assistance given to the voters. The learned CIT(A) ought to have seen that the appellant had made substantial disclosure post-search from finance business and that the learned CIT(A) ought to have telescoped the said source to the application of Rs.15 lacs.

9. The learned CIT(A) erred in sustaining high pitched addition of Rs.17,00,00,000/- under section 69C under the pretext of cash to voters on the basis of loose sheet of papers and

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telephone messages. The learned CIT(A) while upholding the aforesaid addition failed to see that additions made merely on the basis of loose notes without any corroborative findings or evidence is not valid in law.

10. The learned CIT(A) ought to have seen that the AO has neither examined the source of funds which is alleged to have been distributed by the appellant nor has deciphered the destiny of distribution of funds to justify and sustain the high pitched addition of Rs.17,00,00,000/- under section 69C under the pretext of cash to voters.

11. Assuming without conceding that the AO's addition to "cash to voters" is justifiable on the basis of documents alleged to have been seized, than the learned CIT(A) should have relied on Common law maxim of approbate and reprobate and should have restricted the addition only to the extent the bundles have been endorsed as paid. The learned CIT(A) ought to have seen that if the loose notes were to be relied upon for the said additions then the same must have been relied upon in entirety and that the addition should have been restricted to 10 bundles with endorsement paid.

For these and other grounds that may be rendered at the time of hearing it is most humbly prayed that the Hon'ble Tribunal may be pleased to allow the appellants appeal and thus render justice.

3. The brief facts of the case are that the assessee Mr.A.Johnkumar, is a Proprietor of M/s.A.Johnkumar Cost Price Shop and M/s.Johnkumar Real Agency, and is engaged in the business of running a Departmental Store and real estate business respectively. A search and seizure operation was conducted u/s.132 of the Act, on 17.09.2016. During the course of search, a sum of Rs.1,70,65,190/- cash and some incriminating documents with regard to sale of land involving on money and also conduct of unregistered and unaccounted chits and moneylending business, was found. Another search operation was conducted in the assessee's premises on 17.11.2016, which also resulted in further seizure of unexplained cash to the tune of Rs.14,29,610/-. Further, certain incriminating material with regard to distribution of gift articles was also found and emanated during the course of search, which contains identity cards issued by M/s.Johnkumar Trust to general public of Nellithope Constituency in Pondicherry Union Territory. During the course of search, a statement was recorded from the assessee

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u/s.132(4) of the Act, and in response to Q.No.12, he had claimed that cash found during the course of search, was explained out of sale consideration received by him in cash towards 12 acres of land sold to Mr.Alagesan, Smt.Saroja and Smt.Santhi of Aathur. He further claimed that he had sold 12 acres of land for a consideration of Rs.3,04,68,000/-, out of which, Rs.55,68,000/- received in cheque and the balance of Rs.2,49,00,000/- was received in cash. During the course of search, the assessee was also confronted with certain incriminating material found during the course of search, relates to unregistered chit and unaccounted finance business, for which, he had admitted that he was carried out unregistered chit and finance business and further, agreed to disclose a sum of Rs.6 Crs. as undisclosed income for the current year from chit and finance business. The assessee could also not explain, cash found during the course of search, amounting to Rs.14,29,610/- and offered the same for tax u/s.69A of the Act. The assessee was also questioned about photo identity cards issued to general public by M/s.Johnkumar Trust, kept in four grey and black bags, for which, the assessee stated that he had issued identity cards to general public to distribute welfare materials to the people during various occasions including festivals and also to get benefit from Chief Minister Relief Fund. The Department had also questioned Mr.K.Vengadesan, Accounts Manager of Mr.A.Johnkumar Group concerns, for which, he had stated that photo identity cards issued to general public

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by the Trust is for distribution of gift/assistance on various occasions and said identity cards are issued for a period of five years.

4. Consequent to search, notice u/s.153A of the Act, was issued and served on the assessee. In response to the notice, the assessee had filed his return of income on 25.10.2018 admitting a total income of Rs.43,39,030/-. The case was taken up for scrutiny and during the course of assessment proceedings, the AO noticed that although, the assessee had admitted undisclosed income on account of on money received from sale of land, but the assessee did not declare undisclosed income in the return of income filed in response to notice issued u/s.153A of the Act. Similarly, the AO further noticed that the assessee did not disclose additional income offered from chit and finance business. Therefore, taken into account various incriminating material found and sized during the course of search, coupled with statement recorded from the assessee and his associates, opined that the assessee did not declare true and correct income for the impugned assessment year and thus, completed the assessment u/s.143(3) r.w.s.153B(1)(b) of the Act, on 30.12.2018 and determine total income at Rs.23,41,68,640/- by making various additions including additions towards on money received from sale of land amounting to Rs.2.49 Crs. unexplained investment in chits and moneylending business u/s.69 of the Act, for Rs.3.20 Crs. unexplained cash found during the course of search u/s.69A of the Act, amounting to Rs.14,29,610/- and unexplained expenditure towards gifts to beneficiaries' u/s.69C of the Act, amounting to

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Rs.15 lakhs and unexplained expenditure incurred for election u/s.69C of the Act, amounting to Rs.17 Crs.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee challenged various additions made by the AO, including additions made towards on money received from sale of land and additions towards unexplained expenditure u/s.69C of the Act, towards election expenses. The assessee had also challenged additions made towards unexplained investment in chit and finance business and unexplained cash found during the course of search. The Ld.CIT(A), for the simple reason stated in his appellate order dated 30.08.2019 partly allowed the appeal filed by the assessee, where he has sustained additions made by the AO towards on money received from sale of land and also additions made towards unexplained expenditure towards election expenses. However, allowed partial relief in respect of additions made towards unexplained investment in chit and finance business by directing the AO to telescopic income already admitted by the assessee amounting to Rs.93,10,180/- and assess the difference of Rs.2,26,89,820/- as additional income from finance business. Similarly, the Ld.CIT(A) has deleted the additions made towards unaccounted cash seized during the course of search on 17.11.2016 by allowing telescopic benefit out of undisclosed income offered by the assessee from chit and finance business. Likewise, the Ld.CIT(A) has confirmed the additions made by the AO towards gift/assistance paid to beneficiaries amounting to

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Rs.15 lakhs by upholding that the assessee could not explain source for expenditure incurred for gifts given to beneficiaries of his Trust. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

6. The first issue that came up for our consideration from Ground Nos.2-5 of the assessee's appeal is additions towards on money received from sale of land. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in upholding the addition of 2.49 Crs. towards on money received from sale of land without appreciating the fact that the land sold by the assessee is an agricultural land, which is exempt u/s.2(14)(iii) of the Act, and thus, on money, if any, received from sale of agricultural land, is also exempt from tax. The Ld.AR for the assessee further submitted that the Ld.CIT(A) is erred in not applying the ratio of the Tribunal in the case of ITO v. Abraham Varghese Charuvil, which is exactly on identical issue, even though, the Ld.CIT(A) agreed that said judgment is in favour of the assessee, but went on to distinguish judgment merely for the reason that said judgment is not considered the decision of ITAT Chandigarh Benches in the case of ACIT Circle, Patiala v. Mohinder Singh, even though, facts stated in the said case are altogether different from the facts of the assessee's case.

6.1 The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee had categorically admitted receiving on money from sale of land and further, agreed to disclose additional income and

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thus, the AO as well as the Ld.CIT(A) rightly apprised the facts and has made addition and their orders should be upheld.

6.2 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee has received on money from sale of 12 acres of land near Nallur. In fact, the assessee had candidly admitted the fact that he had received on money from sale of property. This fact is further fortified by an incriminating material found during the course of search in the form of loose sheets, which strengthened the case of the Department, where consideration received for sale of property, has been clearly mentioned in cash as well as cheque. It was further noted that in an enquiry conducted with Mr.Alagesan, buyer of the property on 18.09.2016, a similar loose sheet with identical entries was found in his possession. Further, the assessee during the course of search and post search, enquiries had admitted to have received on money from sale of property. The assessee had also explained cash found during the course of search amounting to Rs.1,70,65,190/- out of on money received from sale of property. These facts are not disputed by the assessee. However, assessee has not admitted additional income on account of on money for the reason that land sold by him is an agricultural land, which is exempt from tax and consequently, on money, if any, received is also exempt from tax and same cannot be treated as income.

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6.3 We have given our thoughtful consideration to the reasons given by the AO to make additions towards on money received from sale of land and we ourselves do not subscribe to the reasons given by the assessee for simple reason that consideration received for sale of agricultural land, is outside the scope of taxation as per the provisions of Sec.2(14) of the Act, because, agricultural land is not an asset. But, the question needs to be answered in the given facts and circumstances of the case, is cash found during the course of search and explanation offered by the assessee to explain source for cash found at the time of search. Although, the assessee had admitted on money received from sale of land and further, explained cash found during the course of search, out of on money received from sale of property, but the assessee never disclosed consideration received for sale of property in his return of income filed for the relevant assessment year. Further, additional consideration, if any, including on money also partakes the nature of consideration received from sale of property, but such conclusion can be withdrawn only in a case, if assessee disclose on money received from sale of property in his return of income filed for the relevant assessment year. In this case, the assessee never disclosed consideration received for sale of property in his return of income. Further, the assessee had admitted undisclosed income on account of sale of property. Further, although buyer of the property denied having paid on money, but the documents found during the course of search indicate receipt of on money. Therefore, we are of the considered view that

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explanation of the assessee is that on money received from sale of property partakes the nature of capital receipt which is exempt u/s.2(14)(iii) of the Act, cannot be accepted. Hence, we are inclined to uphold the findings recorded by the AO as well as the Ld.CIT(A) and sustain the additions made towards on money received from sale of property.

7. The next issue that came up for our consideration from Ground Nos.6 & 7 of the assessee's appeal is additions towards unaccounted income from unregistered chit and finance business. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in sustaining the addition without appreciating the fact that except statement obtained from the assessee, no other evidence was brought on record to substantiate the findings of the AO that the assessee had earned unaccounted income from chit and finance business. The Ld.AR further submitted that the assessee had made substantial disclosure in his return of income towards income from finance business and thus, the Ld.CIT(A) ought to have seen that scope of provisions of Sec.69 of the Act, cannot be extended to loose sheet of papers found during the course of search.

7.1 The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that during the course of search certain loose sheets were found. As per which, the assessee had carried out unaccounted chit and finance business and further, he had admitted undisclosed income from the said business. Although, he has admitted undisclosed income, the assessee did

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not disclose true and correct income from chit and finance business. The AO after considering relevant facts, has rightly made additions and the Ld.CIT(A) has rightly confirmed additions made by the AO.

7.2 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. During the course of search and seizure operation conducted on 17.11.2016, certain loose sheets were seized vide ANN/KGA/AJK/LSS/1-153. The assessee was asked to explain the seized materials and contents, for which, in his answer to Q.No.16 of the sworn statement dated 17.09.2016, he had clarified that he had been doing chit business and noting from 2-14 of the loose sheets pertain to some of the chits group run by him. Further, during second search operation conducted on 17.11.2016, more loose sheets were found and seized vide ANN KGA/AJK/LS/S. When the assessee was asked to explain the same, the assessee in his answer to Q.No.9 has stated that loose sheets pertains to his money lending business in cash and chit business and further, those entries are made by his Cashier Mr.Muthuveerapandian. The assessee had also agreed to disclose additional income of Rs.6 Crs. from his chit and finance business. Further, during the course of post search investigation, he could able to explain certain papers and also filed details of loans and advances outstanding as on date of the search at Rs.3.14 Crs. and also agreed to disclose additional income of Rs.3.2 Crs. for the AY 2017-18. However, in the return of income filed for the AY 2017-18, the assessee has offered income from chit and

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commission interest, income from money lending business at Rs.93,10,180/- and claimed that balance amount has been reconciled with books of accounts maintained for chit and finance business. The Ld.CIT(A) has allowed relief to the assessee to the extent of Rs.93,10,180/- out of total addition made by the AO at Rs.3.2 Crs. The balance amount of Rs.2,26,89,820/- remains unexplained. Even before us, the assessee neither explained the loose sheet found during the course of search, which contain chit and finance business transactions nor reconcile total loans and advances outstanding as on date, even though, he himself quantified outstanding loans and advances at Rs.3.14 Crs. Therefore, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to sustain additions made by the AO towards undisclosed income from chit and finance business amounting to Rs.2,26,89,820/-. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

8. The next issue that came up for our consideration from Ground No.8 of the assessee's appeal is additions towards unexplained expenditure u/s.69C of the Act, on account of gifts to beneficiaries amounting to Rs.15 lakhs. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in sustaining addition of Rs.15 lakhs as unexplained expenditure without appreciating the fact that the assessee had made substantial disclosure from chit and finance business and that the Ld.CIT(A) ought to have telescoped the said source to gifts given to beneficiaries.

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8.1 The Ld.DR, on the other hand, supported the order of the Ld.CIT(A).

8.2 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. During the course of search on 17.11.2016, 194 white paper covered bundles of photo identity cards of general public issued by M/s.Johnkumar Trust, was kept in four grey and black bags were found and seized. During the course of search, in the statement recorded from Mr.K.Vengadesan, Accounts Manager of the assessee, had stated that the identity cards are issued to registered voters of Nellithope Constituency and wherever a gift/assistance is given, a punch is made in the respective year. The assessee was confronted with those photo identity cards and asked to explain the nature of the gifts given to beneficiaries and source of income, for which, the assessee had admitted to offer a sum of Rs.15 lakhs as additional income. The AO has made addition of Rs.15 lakhs as 'unexplained expenditure' u/s.69C of the Act, on the basis of admission of the assessee. Except this, no other evidence was brought on record to substantiate the findings of the AO to make addition of Rs.15 lakhs u/s.69C of the Act. Therefore, on this count itself, the additions made by the AO towards 'unexplained expenditure' on account of gift/assistance given to beneficiaries, cannot be sustained. Be that as it may. The assessee had admitted undisclosed income of Rs.3.2 Crs. from chit and finance business and out of said business income, the assessee can easily explain so called Rs.15 lakhs gift/assistance given to beneficiaries. Therefore, even if addition is made on account of

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gift/assistance given to beneficiaries, the AO as well as the Ld.CIT(A) ought to have telescoped said expenditure out of additional income offered by the assessee from chit and finance business. Hence, we direct the AO to telescope 'unexplained expenditure' incurred towards gift/assistance given to beneficiaries out of undisclosed income offered from chit and finance business and delete additions made u/s.69C of the Act.

9. The next issue that came up for our consideration from Ground Nos.9-11 of the assessee's appeal is that addition of Rs.17 Crs. as unexplained expenditure u/s.69C of the Act, towards expenditure claimed to have incurred for election. The facts with regard to impugned dispute are that the assessee was elected from Nellithope Constituency of Pondicherry Union Territory in the General Election held on 15.05.2016. Subsequently, the assessee had resigned from his membership and bye-election was announced for Nellithope Constituency for voting on 19.11.2016. The assessee did not contest for election. Mr.Narayana Swamy had contested for Nellithope Assembly Constituency and the assessee was overseen the election process. When the election process was going on, which is two days prior to voting, a search and seizure operation was conducted on 17.11.2016 in the premises of the assessee. During the course of search, unexplained cash of Rs.14,29,610/- was seized. Besides, 194 bundles of photo identity cards of general public issued by M/s.Johnkumar Trust, was found and seized. On each of the bundle cover, the amount in 'Rs.' being written (Rs.4,000/-). However, only in

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bundle Nos.184-194, apart from rupees being written the word "Paid" is also written. Vide Sworn statement dated 24.04.2017 from Mr.K.Vengadesan, Accounts Manager of Mr.A.Johnkumar Group concerns, was recorded, for which, he had stated that photo identity cards were given to all registered voters of Nellithope Constituency and that it has marked for 5 years from 2014-2018. He further stated that whenever a gift/assistance is given, a punch is made in the respective year. He further stated that Mr.Hidayat Ali, an employee with Mr.A.Johnkumar is looking after the work of punching the cards. He had also further stated that he does not have any knowledge of distribution of cash to voters of Nellithope Constituency, but he had accepted that it was widely known that cash was given to the voters in general. The seized photo identity cards were confronted to Mr.A.Johnkumar, for which, in response to a question in the sworn statement recorded on 23.06.2017 & 30.06.2017, he had stated that M/s.Johnkumar Trust issued photo identity cards to general public to facilitate distribution of gift/assistance on various occasions, including festivals. He further stated that those photo identity cards were also used to get benefit from Pondicherry State Government. However, he never admitted the fact that photo identity cards were used to distribute cash to the voters.

9.1 During the course of assessment proceedings, the AO on the basis of seized photo identity cards, statement recorded from the assessee and his associates and also someone SMS message collected from cell phone of

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Mr.A.Johnkumar sent to Somu alias Somasundaram (S/o Narayana Swamy, Chief Minister of Pondicherry) came to conclusion that the assessee had distributed cash to voters amounting to Rs.17 Crs. and accordingly, made additions u/s.69C of the Act. The AO had discussed the issue at length in light of alleged SMS communication taken from cell phone of Mr.A.Johnkumar and also linked to election events and held that the assessee might have distributed cash to voters and accordingly, made addition of Rs.17 Crs.

9.2 The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in sustaining additions made by the AO u/s.69C of the Act, under the pretext of cash to voters on the basis of WhatsApp message which does not indicate distribution of cash to voters during election time. The Ld.AR further submitted that the AO has neither examined the source of funds which is alleged to have been distributed by the assessee, nor has linked the destiny of the distribution of funds to justify and sustain high pitched additions. The Ld.AR further referring to various dates and events submitted that the search was conducted on 17.11.2016, which is two days prior to the bye-election for Nellithope Constituency. The election was conducted under the supervision of Election Commission of India, which deploys various observers for election. Neither the Election Commission of India found any irregularities in election process, nor the Police has found any complaint of distribution of cash for votes. The AO himself has taken the job of Investigation Officer and made a false allegation of distribution of cash for

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votes without any evidence to justify his claim. The sole basis for the AO to arrive at such conclusion is photo identity cards of general public issued by M/s.Johnkumar Trust. Those photo identity cards never indicate distribution of cash for votes and further, the assessee never admitted to have distributed cash for votes. It is also an admitted fact that the employees of the assessee have also denied to have distributed cash for votes. The AO only on suspicion and surmises basis arrived at a huge amount of cash distribution for votes and made addition u/s.69C of the Act, without any iota of evidence with him to prove his allegation that assessee has distributed cash for votes. Although, the AO has taken support from a WhatsApp message sent from assessee's mobile to Mr.Somasundaram, but said message is general in nature, which does not throw a light on distribution of cash for votes. The AO without understanding the veracity of estimation made by him, concluded that the assessee had distributed cash and thus, made addition u/s.69C of the Act. The Ld.CIT(A) without appreciating the above facts, simply sustained the additions made by the AO.

9.3 The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the dates and events coupled with incriminating material found in the form of photo identity cards clearly throw a light on modes of operandi the assessee in distribution of cash for votes. Although, the assessee never admitted to have distributed cash for votes, but WhatsApp message sent from assessee's mobile phone to Mr.Somu clearly indicate

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the amount to be distributed to voters and the timing of distribution of cash. The AO on the basis of WhatsApp message coupled with incriminating material found during the course of search, came to a right conclusion that the assessee has distributed cash for votes and thus, made addition u/s.69C of the Act. The Ld.CIT(A) after considering relevant facts has rightly sustained the additions made by the AO and their orders should be upheld.

9.4 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The sole basis for the AO to make addition u/s.69C of the Act, was election held for Nellithope Constituency of Pondicherry Union Territory. The search was conducted on 17.11.2016. the AO had linked photo identity cards issued by M/s.Johnkumar Trust, to general public of Nellithope Constituency, which was found in the premise of the assessee during the course of search, and election held for the constituency and concluded that the assessee had distributed cash of various denominations to voters and thus, made addition of Rs.17 Crs. u/s.69C of the Act, as unexplained expenditure. The AO had also taken support from a WhatsApp message sent from the assessee's mobile phone to Mr.Somu and analyzed those SMS messages on his own understanding and inferred that the assessee had used some code words to distribute cash to voters. Except photo identity cards issued by M/s.Johnkumar Trust, found in the premises of the assessee and WhatsApp message sent from assessee's mobile phone, no other evidence

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was with the AO to draw a conclusion that the assessee had distributed cash to voters amounting to rs.17 Crs. First of all, WhatsApp messages cannot be considered as a conclusive evidence to draw an adverse inference against the assessee, unless those WhatsApp messages are supported by corroborative evidences to indicate that those messages and contents represents undisclosed income of the assessee. Further, what is written in WhatsApp message is not readable in terms of any income or expenditure. We have gone through those WhatsApp messages, which is available in the assessment order and we find that nothing could be made out from those messages. In some messages, it was written inward on various dates and some tonnes. In some messages, it was written in outward in tonnes. From those messages, the AO given his own meaning and inferred with tonne means lakhs, inward means cash received for distribution and outward means cash distributed. The AO had also in his own meaning for some other contents recorded in WhatsApp messages and inferred cash distribution timings, shift change timings, etc., and concluded that the assessee has received so much cash and distributed so much of cash to various persons in the process. The AO neither bring on record from which person, the assessee has received cash and to whom the assessee has distributed cash. The AO neither made out a case of source for cash and destiny of cash distributed by the assessee. In other words, the AO has abruptly concluded in his own understanding of the messages, the assessee has received so much of cash and distributed so much of cash and which is

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nothing but cash for votes and hence, concluded that the assessee has incurred a sum of Rs.17 Crs. for distribution of cash to voters and which is nothing but unexplained expenditure taxable u/s.69C of the Act.

9.5 We have given out thoughtful consideration to the reasons given by the AO and we ourselves do not subscribe to the reasons given by the AO for the simple reason that first of all, the assessee was not contested for election held at Nellithope Constituency. Therefore, the question of assessee spending such huge money to distribute to voters does not arise. Secondly, the AO has solely relied upon the photo identity cards issued by M/s.Johnkumar Trust and inferred that each photo identity cards, the assessee has paid a sum of Rs.4,000/-. We find that neither the AO has found any physical cash distribution to voters nor examined any of the photo identity card holding to ascertain the fact that cash was distributed to them. Further, the AO had relied upon the WhatsApp messages sent from assessee's mobile phone to Mr.Somu and had given his own meaning to those messages. In the process, the AO neither tested the admissibility of WhatsApp messages as evidence u/s.69B of Evidence Act, nor examined Mr.Somu the recipient of messages sent by the assessee. The AO without carrying out necessary enquiries and also examining those persons, simply concluded that those messages are meant for distribution of cash and the assessee has spent such a huge amount for election expenses. In our considered view, the findings recorded by the AO is purely on suspicion and surmises manner without any evidences to justify his findings. Further,

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election to Nellithope constituency was held under strict monitoring agencies, including the Election Commission of India. The Election Commission of India deploys various agencies for monitoring election process. In this case, neither any of the agencies deployed for monitoring election process, was filed a case against the assessee for doing any malpractices in election, nor the Election Commission of India, had taken any action as pointed out by the Counsel for the assessee. The Election Commission of India has not initiated any enquiry and further, accepted election expenditure statement filed by the assessee. As regards, WhatsApp messages, the assessee had offered an explanation before the AO and contended that those messages are exchanged between the assessee and the other counterpart about the business carried on by them. The AO rejected explanation offered by the assessee on the ground that the assessee could not substantiate its claim. In our considered view, the AO is grossly erred in denying the explanation offered by the assessee, because whether or not any explanation offered by the assessee on the messages, but the fact remains that the AO could bring some positive evidence to link the WhatsApp messages to allege that the contents of WhatsApp messages depicts the undisclosed income or expenses of the assessee. In this case, on perusal of those WhatsApp messages what we could understand is that those messages are a dumb document without any corroborative evidence on record and therefore, no addition can be made on the basis of said documents.

9.6 The assessee has relied upon the plethora of judicial precedents in support of his arguments and contended that no additions could be made on the basis of loose papers without any corroborative evidence. The relevant case laws cited by the assessee are reproduced as under:

1. *The Following Judgments shall be taken into consideration for the above appeal:-*

Hon'ble Supreme Court has held in State of Kerala Vs. M.M.Mathew-18.08.1978, courts of law have to judge evidence before them applying the well-recognized test of basic human probabilities. Further held that, strong suspicion, strange coincidences and grave doubts cannot take place of legal proof and further held how to establish the handwriting for which the Hon'ble Supreme Court has given guidelines which are illustrative.

2. *The Hon'ble Supreme Court has held in Commissioner of Income Tax salem Vs. P.V.Kalayanasundaram - 14.09.2007 in para 5, the ratio laid down in this case squarely applicable to the case of appellant/assesse, that the notings on the use pieces of paper on the basis of which the initial suspicion with regard to the undervaluation had been raised were vague and could not be relied upon, when the assesse did not give any explanation. The Hon'ble CIT Appeal had merely plagiarized the substantial portions from the order of the Deputy Commissioner of Income Tax (AO) in arriving at its conclusion and no independent assessment on the question of law.*

3. *The Law is well settled, a non-speaking document referred to as a "Dumb Document" without any corroborative material evidence on record, and finding that, such document has materialized into transactions giving rise to income of the assessee which had not been disposed in regular books of accounts by such assessee has to be disregarded for the purpose of the assessment to be framed u/s.153(A) and 153(c) of the Act as held in CBI Vs. V.C.Shukia SC (FB) - 2.3.1998 (Popularly known as Jain Hawala case), clearly held that any presumption of transaction on some vague tenuous and dubious entries in a sheet of paper is not rational and hence legal, unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction. Loose sheets of papers are "not book" and hence entries therein not admissible u/s.34 of Evidence Act.*

4. *The Hon'ble CIT(A) erred in confirming the addition of Rs.2,26,89,820/- and Rs.17,00,00,000/- not appreciating that the writing on the loose papers found and seized during the course of search action as invalid and cannot be treated as document under Evidence Act, relevant and admissible in evidence as held in Raj Homes SV Group Vs. DCIT circle ITAT "B" Bench Mumbai, dt.7.3.2019, holding that the additions based upon selective scribbling in rough note is de-hors any corroborative finding is not justified. Moreover, in this scribbling in the note is examined on the touch tone on the common law maxim of approbate and reprobate, the addition is further not justified. Relying on the decision of the Hon'ble Apex Court in the case of CIT Vs. P.V.Kalayanasundaram 2007 (294) ITR 49 SC.*

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5. The Hon'ble CIT(A), erred in confirming the addition, made by the Learned Assessing Officer, while the Show Cause Notice dated 11.12.2018 referred to only one issue i.e., Distribution of Cash to Voters of Nellithope Constituency but the Final Assessment Order passed by A.O. dated 30.12.2018 is on 4 issues and thus the Appellant was denying an opportunity which is against the well-established principles of Natural Justice which vitiates the entire proceedings u/s.263 of IT Act, 1961. The admitted position is that, with regard to the other two issues no opportunity was allowed to the Appellant to submit suitable reply to the SCN before passing the Order of Assessment. On these 3 issues, there v.as complete denial of natural justice, for the reason that, the assessee was not allowed any opportunity whatsoever to present his case on these issues threshold. It is an established legal position that, there must be a complete nexus between the reasons or grounds indicated in the Show Cause Notice. The opportunity to be granted reply to the show cause notice must be effective and not an empty formality. A person who is required to show cause must know the basis on which action is proposed as held in *Colorcraft Vs. ITO - 303 ITR (AT) 7*.

6. The Hon'ble High Court in *Rajam Industries (P) Ltd., Vs. The Deputy Commissioner Commercial Tax officer-MANU/TN/0629/2010-07.06.2010*, (Para 6, 28, 46, 54 and 59) the Show Cause Notice itself is opposed to the principles of natural justice. The Show Cause Notice was issued as a mere formality. The notice has predetermined the issue against the Assessee/Appellant. The Notice has been issued on assumption and presumption. The statements of Hithayath Ali, K.Venkadesan and S.Muthuveerapandian were not examined in the presence of the Appellant/Assessee and no opportunity was given to cross examine the witness. When the Show Cause Notice quantifies and fixes the liability and responsibility of the Appellant there is nothing more adjudication. Non-furnishing of documents along with the Show Cause Notice is violation of principles of natural justice.

7. The quantum of tax payable has to be decided only at the time of adjudication while so fixation of the said amount is ascertained even at the time of issuing Show Cause Notice would amount to prejudicing the entire issue. It is also well settled that the concept of natural justice relating to Show Cause Notice includes the production of various documents and materials relied on by the authorities in the show cause notice that unless copies of those documents are furnished the other party cannot be expected to give an effective reply which forms part of the principles of natural justice. As held in

(a) *Siemens Ltd., Vs. State of Maharashtra, MANU/SC/8259/2008*,

(b) *Sahi Ram Vs. Avtar Singh Manu/SC/0378/1999*

(c) *Government of A.P. Vs. A. Venkata Raidu MANU/SC/8591/2006*

(d) *Kumaon Mandal Vikas Nigam Ltd., Vs. Girja Shankar Pan] Manu/SC/0639/2000*

8. The Hon'ble CIT (A) erred in appreciating that there is lack of cross examination and violation of principles of natural justice as held in *Rima Maheswari, New Delhi Vs. ITO - 01.03.2019*.

9. The Hon'ble CIT(A) erred in appreciating that, addition is merely based on suspicion and non-furnishing of opportunity to cross examine. Without recording statement from the author of the information and the ultimate beneficiary namely Mr.Somasundaram and his father the candidate of Nellithope Constituency and who became the Chief Minister of Puducherry namely Mr.Narayanasamy, and affording any opportunity for cross examine them is violative of the Principles of Natural

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Justice. The above view further gathers reinforcement from the judgement of the Hon'ble Supreme Court in case of Common Cause (A registered society) and others Vs. UOI, [2017] 77 taxmann.com 245-11.01.2017 popularly known Sahara dairies and Aditya Birla dairies case. In this case, the Hon'ble Supreme Court, following the judgment rendered in case of V.C. Shukla (supra), laid down the following principles: -

(i) Entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act. It is only where the entries are in the books of account regularly kept, depending on the nature of occupation, that those are admissible;

(ii) As to the value of entries in the books of account, such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. Even then independent evidence is necessary as to

trustworthiness of those entries which is a requirement to fasten the liability;

(iii) The meaning of account book would be spiral note book/pad but not loose sheets;

(iv) Entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another;

(v) Even if books of account are regularly kept in the ordinary course of business, the entries therein shall not alone be sufficient evidence to charge any person with liability. It is not enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts;

(vi) The Court has to be on guard while ordering investigation against any important Constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence it is not admissible in evidence.

10. The Hon'ble Supreme Court has held in Ramji Dayawala & Sons(P) Ltd. Vs. Invert Import AIR 1981 SC 2085: It was held by Supreme Court that the "mere proof of handwriting of a document not tantamount to a proof of all the contents or the facts stated in the documents, if the truth of the stated in a document is in issue, mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the fact or contents of the document. The truth or otherwise of the fact or contents so stated would have to be proved by admissible evidence i.e., by the evidence of those persons who can vouchsafe for the truth of the fact in issue."

11. The Hon'ble Apex court held in Mohd. Yusuf (Sir) Vs. D FAIR 1968 Bom 1121, "the contents contained in document is hearsay evidence unless the writer is

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examined before the court. The Hon'ble Court, thereof held that the attempt to prove the contents of the document by proving the signatures of the handwriting of the author thereof is to set at nought, the well-recognized rule that hearsay evidence cannot be admitted. If we consider the said piece of paper seized during the search in light of definition of the word "Document" as given in the Indian Evidence Act and General Clauses Act and truthfulness of the contents thereof in the light of the aforesaid decision of the Hon'ble SC, we find that said paper contains jottings of certain figures by the same dose not describe or express the substance of any transaction and even if the said paper has been seized from the possession of the assessee the contents thereof are not capable of describing the transactions the way AO has deciphered them without support of corroborative evidence of the parties attributed to alleged transaction. The said paper, therefor does not come within the compass of definition of "Document", to be used as an evidence. The papers seized have no evidently value and hence same cannot be a basis to tax undisclosed income."

12. *It is held in Patel (DJU Vs. DCIT (200(n 72 ITD 340(Mum), "it was concluded with reference to sheet of paper found during the search by AO that the word "Rs." figuring with the sheet of belongs to the appellant, because he belonged to "Radhaswamy", cult and hence it belongs to him, but such an inference was not found sustainable on the basis of such slender evidence, so that the addition based on the sheet of paper was deleted".*

13. *It is held in PCIT Vs. Deico (India) Pvt. Ltd. (2016) 67 Taxmann.Com 357 (Del), "no addition could be made under Section 68 on the basis of loose papers found during search in this case indicating assessee's transaction with a company, when assessee not only denied having any dealing with the said company but also produced all necessary details for AO to make necessary inquiries and a letter from director of that company confirming that the said company did not have any transaction with assessee".*

14. *It is pertinent to mention that the aforementioned judgments of the apex court have been rendered not in direct context and interpretation of the Income Tax Act'1961 but still holds good for fastening the liability under the Income Tax Act also as far as the dumb documents are concerned. Relying on the judgment of the apex court in case of Common Cause v. UOI(supra), the Hon'ble Bench of ITAT, Ahmedabad in case of Nishant Construction Pvt. Ltd. VACIT in ITA No.1502/AHD/2015, held that in the absence of any corroborative evidence, "loose sheet" can at the most be termed as "dumb document" which did not contain full details about the dates, and its contents were not corroborated by any material and could not relied upon and made the basis of addition. Reliance can be also placed on the judgment of the Panaji Bench of ITAT in case of Abhay Kumar Bharamgouda Patil V ACIT [2018] 96 taxmann.com 377 (Panaji -Trib.) wherein the judgement of the Apex Court was relied upon.*

15. *Unless and until the contents of a document and its character and nature per se falls u/s.68, 69, 69B & 69C, the mere deemed presumption u/s.132(4A) r/w.sec.292C shall be of no help for the department to make addition.*

16. *K.P.Vargheese Vs. ITO - 1981 (24) CTR held that the fictional receipt cannot be deemed to be a receipt in the absence of any cogent material receipt.*

17. *Commissioner of Income Tax (Central-II) Vs. D.K.Gupta [2008] 174 TAXMAN 476 (DELHI): Dumb Document without any corroborating evidence or documents have materialized into transactions cannot be deemed to be held income of the assessee.*

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18. *Ashwani Kumar Vs. ITO - 1999 (39) ITD 183 Delhi - ITAT-08.08.1999*

In the case of dumb documents, the revenue should collect necessary evidence to prove that the figures represent incomes earned by the Assesse.

19. *S.P.Goel Vs. Deputy CIP - 2002 (85) Mumbai*

The loose paper in itself has got no intrinsic value. When it is a mere entry on a rule sheet of a paper. Then there has to be circumstantial evidences to support that the entry relates to income.

20. *D.A.Patel Vs. Dy. CIT 2000 72 ITD 340 Mumbai held that simply because a sheet of paper was found during the search at the premises of an assessee, he could not be saddled with a tax liability unless it could conceivably be related to the assessee in some reasonable manner.*

21. *Amarjith Singh Bakshi Vs. Asst, CIT 2003 (86) ITD 13 Delhi, held that any noting in the loose sheet is no evidence itself. Notings on loose sheets of paper are required to be supported/corroborated by other evidence which may include the statement of a person who admittedly is a party to the notings.*

22. *Nagarjuna Construction Co. Ltd., Vs. Dy. CIT 2012 (23) Taxmann.com 239. The basis for addition is only loose slips. These note books, loose slips are unsigned documents not established nexus between the loose slips with actual receipt of interest. The loose slips seized during the course of search is a dump document having no evidentiary value, no addition can be made as material.*

23. *The Hon'ble MP High Court in case of CIT v. C.L Khatri [2005] 147 Taxman 652 held that on the basis of loose slip not bearing any date and also not stating as to which period they related, no estimate of household expenses could be made for a particular year. In the absence of any other evidence, the estimate of household expenses in a particular year with reference to income of later year or future year was arbitrary and illogical. The Tribunal was held to be justified in deleting the additions.*

24. *The Calcutta Bench of ITAT in case of T.S. Venkatesan vs. Asstt. CIT [2000] 74 ITD 298 (Cal.) held that in the absence of corroborative evidence, addition of undisclosed income could not be made simply on the basis of entries on loose papers recovered from the residence of a third party and certain general statements of said party.*

25. *In case of T. Mudduveerappa Sons [1993] 45 ITD 12 (Bang.), the Bangalore Bench of ITAT held that in absence of any external evidence, addition cannot be resorted to only on the basis of loose papers. The department had not brought on record any evidence to prove conclusively that the seized documents contained details of secreted profits which were chargeable to tax. No doubt, the seized papers contained statement in figures of what appeared to be the financial results of certain unnamed transactions but there was nothing either in law or in logic to warrant the conclusion that the figures denoted secreted profits which were chargeable to tax. The details of distribution contained in the seized papers did not by themselves present a preponderance of probabilities so as to support department's case that what was distributed was taxable income.*

26. *In Dy. CIT v. Kroral Aggarwal [1994] 50 TTJ (Jab.) 3935 diary seized during search contained certain jottings. The Tribunal held that the jottings in diary neither represented books of account nor any document and, therefore, presumption under*

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section 132(4A) was not available and the addition made on the basis of the said jottings was deleted.

27. In the case of *M.V. Mathew v. ITO* [1993] 46 TTJ 353 (Coch.) unaccounted sum found noted in a diary and the assessee claimed that the same represented deposits from certain parties. The parties denied having deposited the amount. The Assessing Officer treated the amount as advance made by the assessee and addition on that account was made. In the absence of clinching evidence to show that the impugned sum was advanced the amount was treated as deposited and the addition made was deleted.

28. The Mumbai ITAT in case of *ITO Vs Kranti Impex Pvt. Ltd.* in ITA No. 1229/Mum/2013 vide order dated 28/02/2018 held that since the impugned seized papers are undated, have no acceptable narration and do not bear the signature of the assessee or any other party, they are in the nature of dumb documents having no evidentiary value and cannot be taken as a sole basis for determination of undisclosed income of the assessee. When dumb documents like the present loose sheets of papers are recovered and the Revenue wants to make use of it, the onus rests on the Revenue to collect cogent evidence to corroborate the noting therein. The Revenue has failed to corroborate the noting by bringing some cogent material on record to prove conclusively that the noting in the seized papers reveal the unaccounted on-money receipts of the assessee. Further, no circumstantial evidence in the form of any unaccounted cash, jewellery or investments outside the books of account was found in course of search in the case of assessee. Thus, the impugned addition was made by the AO on grossly inadequate material or rather no material at all and as such, deserves to be deleted, that an assessment carried out in pursuance of search, no addition can be made simply on the basis of uncorroborated noting in loose papers found during search because the addition on account of alleged on-money receipts made simply on the basis of uncorroborated noting and scribbling on loose of papers made by some unidentified person and having no evidentiary value, is unsustainable and bad-in-law.

29. In the case of *PCIT V. Umesh Ishrani* [2019] 108 taxmann.com 437 (Bombay) held that since the tribunal concluded that entries reflected in loose papers were not corroborated with any other evidence on record, therefore the Tribunal was justified in deleting impugned additions made by Revenue.

30. The Learned Assessing Officer and the Commissioner Appeal failed to appreciate the circular of Central Board of Direct Taxes in Circular No.F.No.286/2/2003-IT(Inv.)/ dt.10.03.2003 pointing out to the circular re Jurisdictional High Court in *Commissioner of Income Tax Vs. S.Khader Khan Son-SC-2012 (25) taxmann.com 413* laid down the principles, Sec.133A does not empower any ITO to examine any person on : = ". So statement recorded U/S.133A, has no evidentiary value and any remission made during such statement cannot be made basis of addition. Decision of Madras High Court *CIT Vs. S.Khader Khan Son - 2008 (300) ITR 157 Madras* affirmed). In para 6, the circular of the Central Board of Direct "exes, dt.10.03.2003 is not complied with.

31. The Hon'ble High Court of Judicature at Madras in *M/s.M.Narayanan & Bros Vs. Assistant Commissioner of Income Tax MHC, DB, dt, 13.07.2011 (Para 11)* followed *CTO Vs. Khadher Khan (supra), Paul Mathews and Sons Vs. Commissioner of Income Tax 2003 (263) ITR 101* clearly held the admission of the Assesse.

32. The Hon'ble ITAT Cochin had rightly held the sale of agricultural land in *Income Tax officer Vs. Shri. P.V. Abraham, dt.06.02.2019* and *Income Tax Officer Vs.*

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Abraham Varghese Charuvil 26.04.2017 rely upon ITO Vs. Dr.Koshi George 2009 (317) ITR, AT 116 Kochin - Para 16.

33. The Hon'ble Supreme Court in P.R.Metrani Vs. Commissioner of Income Tax, reported in 2006 (287) ITR, dealing with the scope of Sec. 132, 132(4A), 132(5) & 132(B), held "while the statement rendered at the time of search u/s. 132(4) may be used in evidence in any proceedings, yet that by itself does not become sole material to rest the assessment when the assessee seeks to withdraw the same by producing material evidence in support of such retraction.

34. The law declared by the Hon'ble Apex Court decision reported in 1973 (91) ITR 18 Pullankode Rubber Produce Co. Ltd., Vs. State of Keraia and another it is held it is always open to a person, who made the admission, to show that the statement to offer income is incorrect and had material to substantiate so, the tribunal is not justified in placing undue emphasis on the statement made by the assessee. The Hon'ble Supreme Court has laid down the Principles for Admission by the Appellant/Assessee.

35. The Learned Commissioner Appeal had merely plagiarized substantial portions from the order of the Assessing Officer in arriving its conclusion and no independent assessment on the question of fact and law that arose for consideration.

36. The Learned Commissioner Appeal borrowed extensively almost in toto from the Assessment Order of the Assessing Officer and the Commissioner Appeal and passed them off as if they were he himself the author, as held in Commissioner of Income Tax Salem vs. P.V.Kalayanandaram.

37. The Hon'ble High Court of Judicature at Madras in Commissioner of Income Tax Salem Vs. M/s.S. Khader Khan Son - DB, dt.04.07.2007 -Para 5.1, followed the decision in Pullankode Rubber Produce Co. Ltd., Vs. State of Keraia 1973 (91) ITR 18 the Apex court held that an admission is extreme to an important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect.

38. The provision u/s. 132(4) the power to examine a person on oath whereas u/s.133(A) does not empower any income tax officer to examine on oath. Whatever statement recorded u/s.133(A) is not given an evidentiary value as held in Paul Mathews & Sons Vs. Commissioner of Income Tax 2003 ITR (263) 101. The scope of Sec.132(4) and 133(A) was considered.

39. Similar view was taken by the Hon'ble High Court Judicature at Madras " Commissioner of Income Tax Vs. G.K. Senniappan 2006 (284) ITR 220 -DB-17.06.2006.

9.7 In this view of the matter and by respectfully following various case laws relied upon by the assessee, we are of the considered view that the AO is erred in making additions towards unexplained expenditure u/s.69C of the Act, towards alleged distribution of cash for votes. The Ld.CIT(A)

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without appreciating the fact simply sustained additions made by the AO and hence, we reverse the findings of the Ld.CIT(A) and direct the AO to delete the additions made towards unexplained expenditure u/s.69C of the Act, amounting to Rs.17 Crs. towards alleged distribution of cash for votes.

10. In the result, the appeal filed by the assessee in ITA No.3028/Chny/2019 is partly allowed.

ITA No.3092/Chny/2019:

11. The Revenue has raised the 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. The Id. CIT(A) erred in directing the Assessing Officer to delete the protective addition of Rs.17,00,00,000/- made on account of unexplained expenditure u/s.69C of the Act.

3. It is submitted that the protective addition of Rs.17,00,00,000/- made u/s 69C of the Act in the hands of the assessee i.e. M/s.Johnkumar Trust has been deleted by the Id.CIT(A) and substantive addition of Rs.17,00,00,000/- made u/s.69C of the Act in the hands of Shri A. Johnkumar has been upheld by the Id.CIT(A)-18, Chennai (in ITA No. 384/18-19 dated 30.08.2019). Shri A. Johnkumar has filed an appeal before the Hon'ble ITAT against the order of Id.CIT(A) in ITA No.384/18-19 dated 30.08.2019. As the issue of cash payment to voters to be assessed in whose hands will depend on further judicial pronouncement, therefore, by way of abundant caution the present appeal is filed to protect the interest of revenue.

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.

RELIEF CLAIMED IN APPEAL

The order of the learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

12. The AO has made addition of Rs.17 Crs. u/s.69C of the Act, towards alleged distribution of cash for votes in the hands of Mr.A.Johnkumar on substantive basis. The AO had also made addition of Rs.17 Crs. u/s.69C of the Act, in the hands of the assessee on protective basis to protect the interest of the Revenue. We find that additions made by the AO towards

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unexplained expenditure u/s.69C of the Act, in the hands of Mr.A.Johnkumar has been deleted by the Tribunal for the reasons stated in its order in ITA No.3028/Chny/2019 in Para Nos.9.4 to 9.7. Since, substantive additions made by the AO towards alleged distribution of cash for votes, has been deleted by the Tribunal in the hands of Mr.A.Johnkumar, protective additions made by the AO in the hands of the assessee on similar reason, cannot be sustained. Hence, we direct the AO to delete addition made in the hands of the assessee on protective basis towards alleged cash distribution for election amounting to Rs.17 Crs.

13. In the result, appeal filed by the Revenue in ITA No.3092/Chny/2019 is dismissed.

14. In the result, the appeal filed by the assessee in ITA No.3028/Chny/2019 is partly allowed and appeal filed by the Revenue in ITA No.3092/Chny/2019 is dismissed.

Order pronounced on the 13th day of May, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 13th May, 2022.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF