

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

श्री महावीर सिंह, उपाध्यक्ष एवं डॉ एम एल मीना, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
Dr. M.L. MEENA, ACCOUNTANT MEMBER

ITA Nos.	Assessment Years	(अपीलार्थी/Appellant)	(प्रत्यर्थी/Respondent)
2357/CHNY/2019	2007-08	Shri Shanthilal D Jain, No.37, Second Floor, Arumuga Achari Street, Triplicane, Chennai – 600 005. PAN: BUMPS 9032F	The DCIT, Central Circle – 2(1), Chennai.
2358/CHNY/2019	2008-09		
2359/CHNY/2019	2009-10		
2360/CHNY/2019	2010-11		
2361/CHNY/2019	2011-12		
2362/CHNY/2019	2012-13		
2363/CHNY/2019	2013-14		
2389/CHNY/2019	2007-08		
2390/CHNY/2019	2008-09		
2391/CHNY/2019	2009-10		
2392/CHNY/2019	2010-11		
2393/CHNY/2019	2011-12		
2394/CHNY/2019	2012-13		
2395/CHNY/2019	2013-14		
2396/CHNY/2019	2007-08		
2397/CHNY/2019	2008-09		
2398/CHNY/2019	2009-10		
2399/CHNY/2019	2010-11		
2400/CHNY/2019	2011-12		
2401/CHNY/2019	2012-13		
2402/CHNY/2019	2013-14		
2587/CHNY/2019	2010-11	M/s. Shree Battery House, No.37, Second Floor, Arumuga Achari Street, Triplicane, Chennai – 600 005. PAN: ABQFS 6492K	The DCIT, Central Circle – 2(1), Chennai.
2588/CHNY/2019	2011-12		
2589/CHNY/2019	2012-13		
2590/CHNY/2019	2013-14		
2591/CHNY/2019	2010-11		
2592/CHNY/2019	2011-12		
2593/CHNY/2019	2012-13		
2594/CHNY/2019	2013-14		
2595/CHNY/2019	2010-11		
2596/CHNY/2019	2011-12		
2597/CHNY/2019	2012-13		
2598/CHNY/2019	2013-14		

ITA Nos.	Assessment Years	(अपीलार्थी/Appellant)	(प्रत्यर्थी/Respondent)
429/CHNY/2020	2008-09	Smt. Sharmila S. Jain, No.37, Second Floor, Arumuga Achari Street, Triplicane, Chennai – 600 005. PAN: AOZPS 4799F	The DCIT, Central Circle – 2(1), Chennai.
430/CHNY/2020	2009-10		
431/CHNY/2020	2010-11		
432/CHNY/2020	2011-12		
433/CHNY/2020	2012-13		
434/CHNY/2020	2013-14		
435/CHNY/2020	2008-09		
436/CHNY/2020	2009-10		
437/CHNY/2020	2010-11		
438/CHNY/2020	2011-12		
439/CHNY/2020	2012-13		
440/CHNY/2020	2013-14		
441/CHNY/2020	2008-09		
442/CHNY/2020	2009-10		
443/CHNY/2020	2010-11		
444/CHNY/2020	2011-12		
445/CHNY/2020	2012-13		
446/CHNY/2020	2013-14		

अपीलार्थी की ओर से/Appellants by : Shri D. Anand, Advocate
 प्रत्यर्थी की ओर से/Respondent by : Shri M. Rajan, CIT

सुनवाई की तारीख/Date of Hearing : 16.03.2022

घोषणा की तारीख/Date of Pronouncement : 20.05.2022

आदेश /O R D E R

PER BENCH:

These appeals filed by three different assesseees are arising out of different orders of Learned Commissioner of Income Tax (Appeals)-18, Chennai in ITA Nos.1025 to 1031/15-16 dated 21.05.2019, 856 to 862/15-16 dated 20.05.2019, 849 to 855/15-16 dated 20.05.2019, 997, 999 to 1001/15-16, 841 to 844/15-16, 845 to 848/15-16 all dated 24.06.2019, 1002 to 1007/15-16 dated

30.07.2019, 895,897,913,915,917,919/15-16 & 920,918,916,914, 912/15-16 dated 22.07.2019 . The assessments were framed by the DCIT, Central Circle – 2(1), Chennai for the relevant assessment years 2007-08 to 2013-14 u/s. 153A / 153C of the Income Tax Act, 1961 (hereinafter 'the Act') vide orders of even date 31.03.2015 / 30.03.2015 and for the same assessment orders, penalty under dispute was levied u/s.271A / 271B of the Act vide orders of even date 31.08.2015 / 10.09.2015 / 30.09.2015.

2. At the outset, it is noticed that all the appeals of assessees Shri Shanthilal D Jain and Smt. Sharmila S Jain are delayed by 7 days to 138 days. The assessees have filed condonation petitions supported by affidavits for condoning the delay and admitting the appeals. The Id.counsel for the assessee drew our attention to the affidavit filed in one of the appeal in ITA No.429/CHNY/2020 for assessment year 2008-09, wherein one of the assessee Smt. Sharmila S Jain filed affidavit and delay was to the extent of 138 days. In the affidavit, the facts stated is that the order of CIT(A) - 18, Chennai dated 30.07.2009 was received on 06.08.2019. The Id.counsel stated that the appeal should have been filed before the Tribunal within 60 days i.e., on or before 05.10.2019, but appeal

was filed only on 20.02.2020 with a delay of 138 days. These are admitted facts and there is no dispute. The Id.counsel for the assessee stated the reasons submitted in para 3 & 4 of the affidavit. It was stated that the assessee's husband was handling the tax matters and there was frequent change in authorized representative when assessee's case travelled from assessment level to the first appellate level. It was stated that when the first appellate authority passed the order again there was change in counsel and now, the present counsel advised us to collect the CIT(A) orders from the earlier counsel and they could gather those papers with great difficulty as the earlier counsel wanted to settle the fee bills. Accordingly, the appeal papers were gathered and due to frequent change of counsels, these appeals were filed belatedly by 138 days as argued by Id.counsel.

2.1 When these facts were confronted to Id. Senior DR, he only opposed the condonation of delay but could not controvert the above fact situation. In this group of appeals, he stated that in all the appeals, there is a delay ranging from 7 days to 138 days and it is not possible that all the appeals were filed with a delay without

reasonable cause. In term of that, the Id. Senior DR opposed the condonation of delay.

2.2 We have heard rival contentions and gone through the condonation petition along with affidavit. We have gone through the reasons cited by Id. counsel and noted that the reasons seems sufficient in view of the length of the delay i.e., 7 days to 138 days in all these appeals. As the assessee is able to explain the delay, hence we condone the delay and admit these appeals for adjudication. This decision will apply in all the appeals for condonation of delay.

3. First, let us take the following 8 appeals regarding quantum addition and where the assessees have raised the jurisdictional issue that these assessments are unabated and assumption of jurisdiction by the AO u/s.153A / 153C of the Act is without jurisdiction, as no search material was found or seized during the course of search.

S.NO	ITA Nos.	ASST YEAR	NAME OF ASSESSEE
1.	2357/CHNY/2019	2007-08	SHANTHILAL D JAIN
2.	2358/CHNY/2019	2008-09	
3.	2359/CHNY/2019	2009-10	
4.	2360/CHNY/2019	2010-11	

5.	429/CHNY/2020	2008-09	SHARMILA S JAIN
6.	430/CHNY/2020	2009-10	
7.	431/CHNY/2020	2010-11	
8.	2587/CHNY/2019	2010-11	SHREE BATTERY HOUSE

3.1 The first jurisdictional issue raised in these appeals by the assesseees is that, the assesseees in all these appeals, filed return of income prior to the search and there is no proceedings pending and the assessments are unabated and there is no incriminating material found during the course of search conducted by the Department on 22.05.2012 on the residential and business premises of the assesseees group of cases. This common issue is raised by assesseees in all these 8 appeals and stated that the assessments are unabated and as on the date of search no action or assessment proceedings or any other proceedings were pending before the Income Tax Authorities.

3.2 The Id.counsel for the assesseees for this taken up one of the case in ITA No.2357/CHNY/2019 for the assessment year 2007-08 in the case of Shri Shanthilal D Jain and stated that facts are identical in all these 8 appeals of the group. The Id.counsel for the assesseees as well as Id. CIT-DR agreed that facts and circumstances

are identical in all these 8 appeals and hence, will take up this appeal in the case of Shri Shanthilal D Jain.

3.3 The Id.counsel for the assessee first of all drew our attention to Ground Nos.6 & 7 which reads as under:-

6. For that without prejudice to the above, Commissioner of Income Tax (Appeals) failed to appreciate that additions made under section 153A of the Income Tax Act, 1961 is bad in law as the same were not made on the basis of incriminating material found during the course of search and seizure operation and the case of relevant assessment year has already been assessed u/s.143(1) which could not abate on the date of search.

7. For that the Commissioner of Income Tax (Appeals) erred in considering the hard disk seized by the Revenue as incriminating material, wherein the hard disk contains purchase and sales details recorded through Tally Software. The Commissioner of Income Tax (Appeals) erred in not recognizing the fact that all the information in that hard disk was already available with the Revenue in the form of Audited Financial Statements of the appellant.

3.4 Brief facts are that Shri Shanthilal D Jain is a dealer in various batteries, inverters and UPS of different brands and he is proprietor of M/s. Shri Dharma Battery House and M/s. Shree Battery House (which is one of the group companies under adjudication) and assessee's wife Smt. Sharmila D Jain is also engaged in the same business. On 22.05.2012, a search took place on the residential and business premises of the assessee. During the course of

search, the search party found one hard disk containing Tally details of purchases and sales which were seized. Accordingly, in all these cases notices u/s.153A was issued and accordingly, search assessments u/s.153A r.w.s. 143(3) of the Act, were completed for the assessment years 2007-08 to 2012-13. The AO in each of the assessment years has made additions, which are tabulated by the AO, which reads as under:-

A.Y.	NATURE OF ADDITIONS MADE IN THE ASSESSMENT ORDER FOR THE IMPUGNED AYs							
2007-08	Indirect expenditure	Incentives	Peak cash credit	Claim for LIC Premium paid	Transfer from Personal Books	Sundry Loan Creditors Treated as unexplained Cash Credit u/s 68		
2008-09	-do-	-do-	-do-	-do-	-do-	--	Trading in Scrap	
2009-10	-do-	-do-	-do-	-do-		--	Trading in Scrap	Unexplained Inv. in property
2010-11	-do-	-do-	-do-	-do-		--	Trading in Scrap	
2011-12	-do-		-do-	-do-		-do-		
2012-13	-do-		-do-	-do-		-do-		
2013-14	-do-			-do-		-do-		

3.5 The Id.counsel for the assessee has filed a chart giving the status of the assessment framed u/s.153A / 153C r.w.s 143(3) of the Act, in regard to unabated assessments which is as under:-

S.NO	NAME OF ASSESSEE	SECTION	ITA .NO	ASST YEAR	STATUS
1.	SHANTHILAL D JAIN	153A	2357/2019	2007-08	ROI filed on 19.08.2008-No proceedings pending as on date of search. Hence Unabated
2.	SHANTHILAL D JAIN	153A	2358/2019	2008-09	ROI U/s.139(1) filed on 19.08.2008- No proceedings pending as on date of search. Hence Unabated
3.	SHANTHILAL D JAIN	153A	2359/2019	2009-10	ROI U/s.139(1) filed on 02.09.2009-No proceedings pending as on date of search. Hence Unabated
4.	SHANTHILAL D JAIN	153A	2360/2019	2010-11	ROI U/s.139(1) filed on 08.10.2010-No proceedings pending as on date of search. Hence Unabated
5.	SHARMILA S JAIN	153C	431/2020	2010-11	ROI U/s.139(1) filed on 04.10.2010-No proceedings pending as on date of search. Hence Unabated
6.	SHARMILA S JAIN	153C	429/2020	2008-09	ROI U/s.139(1) filed on 09.09.2008-No proceedings pending as on date of search. Hence Unabated
7.	SHARMILA S JAIN	153C	430/2020	2009-10	ROI U/s.139(1) filed on 29.09.2009-No proceedings pending as on date of search. Hence Unabated
8.	SHREE BATTERY HOUSE	153C	2587/2019	2010-11	ROI U/s.139(1) filed on 08.10.2010-No proceedings pending as on date of search. Unabated

3.6 The Id.counsel for the assessee before us stated that the AO as well as CIT(A)has referred to a hard disk which was seized vide Annexure ANN/SR/RJ/Hard Disc/S and according to authorities

below, this hard disk contains incomplete tally package which was recovered during the course of search throws light on the subject matter of additions and according to CIT(A), this is incriminating material having bearing on the determination of income even on unabated assessments. The CIT(A) for the assessment year 2007-08 in the case of Shri Shanthilal D Jain adjudicated this issue vide para 7.30 & 7.31 as under:-

7.30 Without prejudice to the above, it is pertinent to note that the AO has referred to hard disk which was seized vide Annexure AA/SR/RJ/Hard Disk/S representing inconsistency in the pattern of expenditure claimed by all the business concerns viz., (i) Shree Dharma Battery (ii) Shree Battery House (iii) M/s. Shree & (iv) M/s. Shreyans Power and these concerns are controlled and managed by the appellant Mr. Shanthilal. The hard disk containing incomplete tally package which was recovered during the course of search throws light on the subject matter of additions and are thus incriminating materials having bearing on the determination of income.

7.31 The appellant has contended that the assessment is untenable as the AO has concluded that books of account were not maintained and thus could not have resorted to assessment u/s 153A of the Act. The AO has referred to the averments made by the appellant to the effect that he had not maintained regular, contemporaneous and completed books of account; that he maintains only purchase and sales account that would be given by the appellant to auditor who would file return of income. The AO has brought adequate material on record that the appellant had not maintained books of account in terms of S 44AA and had not got them audited u/s 44AB and filed with the AO. Nevertheless digital evidence have been recovered during the search which fact has not been maintained and such materials have been factored by the AO while making assessment u/s 153A. The appellant's objections and grounds are thus untenable and are liable to the dismissed.”

Aggrieved assessee came in appeal before the Tribunal.

3.7 Before us, the Id.counsel for the assessee stated that as per details given in chart, returns of income were filed for the respective assessment years on due dates and search was conducted on the residential and business premises of the assessee on 22.05.2012. The Id.counsel stated that there is no incriminating material found during the course of search relating to these assessment years, where assessment is unabated, means no action is pending against a valid return of income filed u/s.139(1) of the Act. The Id.counsel stated that once there is no incriminating material, there is no scope for the AO to assume jurisdiction u/s.153A / 153C of the Act and reopen the assessment in view of the decision of Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (Nhavasheva) Ltd., (2015) 374 ITR 645. The Id.counsel for the assessee also relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, (2015) 380 ITR 573. Apart from this, Id.counsel for the assessee has not argued anything else.

3.8 On the other hand, Id.CIT-DR relied on the order of CIT(A) and stated that the assessee has not maintained any books of account and the alleged books of account as referred by assessee before AO as well as before CIT(A) is only a hard disk which was seized vide Annexure ANN/SR/RJ/Hard Disc/S, but this hard disk, according to Id.CIT-DR, contains incomplete tally package which was recovered during the course of search throwing light on incriminating material in the shape of cash credits, sundry loans and bogus purchases made from various parties. The Id.CIT-DR stated that the Id.counsel for the assessee himself admitted the fact while arguing the appeals relating to penalty u/s.271A & 271B of the Act in regard to various appeals of group cases regarding these two penalties agitated by assessee, the Id.counsel admitted that in these two penalties, the assessee has not maintained the books of account and hence, penalty u/s.271A can be uphold in relation to abated assessments but Id.counsel requested that in regard to unabated assessments, the issue is as regards to assumption of jurisdiction in view of the decision of Hon'ble Bombay High Court in the case of Continental Warehousing Corporation, supra. The Id.CIT-DR contented that the assessee before CIT(A) could not explain the nature of additions made in the relevant assessment years in regard to addition of cash

credits, sundry loans and creditors added u/s.68 of the Act and bogus purchases. The Id.counsel for the assessee in reply further reiterated the same arguments.

3.9 We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee before AO as well as before CIT(A) could not explain how the transactions recorded in the hard disk which was seized vide Annexure ANN/SR/RJ/Hard Disc/S representing inconsistency in the pattern of expenditure, additions of cash credit, sundry loan creditors u/s.68 of the Act and bogus purchases. The hard disk containing incomplete tally package and recording of the above mentioned entries was recovered during the course of search throws light on the above additions and these are not rebutted by the assessee before either of the authorities and even now before us. We noted that the AO has brought on record adequate material that the assessee has not maintained books of account in term of section 44AA of the Act and has not got them audited u/s.44AB of the Act and filed with the AO. We noted that this is uncontroverted claim that the hard disk contains incriminating material having bearing on the determination of income on account of unaccounted indirect expenditure, peak

cash credits, sundry loan creditors added u/s.68 of the Act, bogus purchases and unexplained investment in property. We find that this is a common feature in all the assessee's cases and once this is the fact, we noted that the AO has rightly assumed jurisdiction u/s.153A or 153C of the Act in the above mentioned cases for the above 8 appeals. Hence, this common issue in all these appeals of assessee is dismissed.

4. Now, let us take the following 17 appeals :-

Sl. No.	ITA Nos.	Assessment Years	Assessee
1	2357/CHNY/2019	2007-08	Shri Shanthilal D. Jain
2	2358/CHNY/2019	2008-09	
3	2359/CHNY/2019	2009-10	
4	2360/CHNY/2019	2010-11	
5	2361/CHNY/2019	2011-12	
6	2362/CHNY/2019	2012-13	
7	2363/CHNY/2019	2013-14	
8	2587/CHNY/2019	2010-11	M/s. Shree Battery House
9	2588/CHNY/2019	2011-12	
10	2589/CHNY/2019	2012-13	
11	2590/CHNY/2019	2013-14	
12	429/CHNY/2020	2008-09	Smt. Sharmila S Jain
13	430/CHNY/2020	2009-10	
14	431/CHNY/2020	2010-11	
15	432/CHNY/2020	2011-12	
16	433/CHNY/2020	2012-13	
17	434/CHNY/2020	2013-14	

In the above, 7 appeals of Shri Shanthilal D. Jain (S.Nos.1 to 7), the assessee have raised various issues on merits in regard to additions made as given in the following chart:-

A.Y.	NATURE OF ADDITIONS MADE IN THE ASSESSMENT ORDER FOR THE IMPUGNED AYs							
2007-08	Indirect expenditure	Incentives	Peak cash credit	Claim for LIC Premium paid	Transfer from Personal Books	Sundry Loan Creditors Treated as unexplained Cash Credit u/s 68		
2008-09	-do-	-do-	-do-	-do-	-do-	--	Trading in Scrap	
2009-10	-do-	-do-	-do-	-do-		--	Trading in Scrap	Unexplained Inv. in property
2010-11	-do-	-do-	-do-	-do-		--	Trading in Scrap	
2011-12	-do-		-do-	-do-		-do-		
2012-13	-do-		-do-	-do-		-do-		
2013-14	-do-			-do-		-do-		

The Id.counsel for the assessee as well as the Id.CIT-DR agreed that facts and circumstances in all the cases are exactly identical and addition is based on only one seized document i.e., one hard disk containing tally details of purchases and sales, indirect expenditure, incentives, peak cash credits, transfer from personal books, sundry loan creditors added u/s.68 of the Act, bogus purchases and unexplained investment in property. The Id.counsel for the assessee stated that the facts can be taken from the case of Shri

Shanthilal D Jain for the assessment year 2007-08 in ITA No.2357/Chny/2019 and issue can be decided.

5. The first issue in these appeals of ITA Nos.2357 to 2363/Chny/2019 is as regards to addition made by the AO of indirect expenditure and confirmed by the CIT(A). For this, assessee has raised following Ground Nos.8 & 9:-

“8. For that without prejudice to the above, the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer ought to have accepted the indirect expenditure claimed by the appellant.

9. For that the Commissioner of Income Tax (Appeals) erred in disallowing 10% of the indirect expenditure, that too on an arbitrary basis, disregarding the fact that the accounts of the appellant are duly audited u/s.44AB of the Income Tax Act, 1961”

5.1 Brief facts are that the assessee is a proprietor of M/s. Shree Dharma Battery and Shree Battery House and also partner in the partnership firm M/s. Shree and M/s. Shreyans Power with the proprietorship of Smt. Sharmila, assessee's wife and Smt. Prema Devi, assessee's mother. The assessee admitted in the statements recorded and noticed from the entire affairs of the entities controlled and managed by the assessee, it seems that these concerns did not maintain any separate books of account for each entity but only maintains sales and purchase registers in tally. The AO during the

course of assessment proceedings required the assessee to produce books of account but assessee was able to produce only incomplete books of account and that also there was inconsistency in the pattern of expenditure claimed and the expenditure is not supported with any bills or vouchers. Accordingly, the AO estimated the expenditure and disallowed 25% of the expenditure in these assessment years as under:-

A.Y. 2007-08	Rs.2,12,053/-
A.Y. 2008-09	Rs.4,33,951/-
A.Y. 2009-10	Rs.34,57,003/-
A.Y. 2010-11	Rs.38,819/-
A.Y. 2011-12	Rs.2,18,658/-
A.Y. 2012-13	Rs.2,38,902/-
A.Y. 2013-14	Rs.4,84,180/-

Aggrieved assessee preferred appeal before CIT(A).

5.2 The CIT(A) restricted the disallowance at 10% by considering the various facts vide para 10.3 & 10.4 as under:-

10.3 I have gone through the facts of the case and analysed the records. The Act provides that any revenue expenditure (not being personal in nature) and that is wholly and exclusively incurred for the purposes of the Act. The Act has certain in-built deeming provisions relating to allowability of expenses incurred in certain items including quantum expenditure said to be incurred while computing income from business. The main provision dealing with deduction of business expenditure is section 37 of the Act. Certain important and relevant deeming sections include Section 40A(3), 40a(ia) and 43B etc. The assessee is under an obligation to adhere to these provisions by way of maintain the requisite documents, books of account and are required to substantiate that the expenditures claimed by them by way of demonstrating that they had incurred expenditure; incurred

expenditure to the extent they claim that was laid out; and that they were incurred wholly and exclusively for the purposes of their business.

10.3.1 The duty is cast on the appellant in discharging his burden of proof by furnishing reasonably full details/particulars that are verifiable by the AO in terms of these main provisions and other deeming provisions. It is relevant to note that the expenditure claimed by the appellant would be receipts in the hands of third parties concerned i.e. service providers and the trail of payments would help the Revenue in tracking those cases to examine whether they offer income from out of the receipts in their hands emanated from out the impugned expenditure stated to have been incurred by the appellant. This is facilitated by various mechanisms such as TDS, disallowance of expenditures incurred in cash in excess of the prescribed threshold. In this case, as observed earlier, the appellant had not maintained regular and contemporaneous books of account supported by documents, vouchers that are capable of being verified.

10.3.2 In the appellant's case, he did not produce any bills or vouchers for verification nor maintained any books of account to verify the said expenditure in order to substantiate his claim of expenditure. In the circumstances, the AO necessarily will have to make a reasonable and intelligent estimate by way of disallowance of expenditure in order to determine the true and correct income of the appellant. The only caveat is that, it is not open to the AO to make unreasonable and excessive disallowance without basis on material and without having nexus to trade practices.

10.3.3 Viewed from the provisions of law, defence advanced by the appellant, the prevalent trade practice and the nature of trade, the disallowance of 25% of expenditure claimed cannot be considered as reasonable and is not found to be justified, especially when no concrete adverse material to justify disallowance of this magnitude has been brought on record by the AO.

10.4 On appraisal of the facts of the case, materials on record and the basis of the observations made supra on the impugned addition, I am of the view that the restriction of disallowance to 10% towards indirect expenses debited/claimed for the respective AYs under consideration would meet the

ends of justice. Thus, the AO is directed to restrict the disallowance accordingly. Therefore, the appellant gets partial relief and the appellant's grounds on this issue are partly allowed.

Aggrieved, assessee came in appeal before the Tribunal.

5.3 Before us, the Id.counsel for the assessee has not all argued the issue on merits and he simply stated that the addition is made just on estimate basis and there is no incriminating material and he stated that the issue is covered by the decision of Hon'ble Bombay High Court in the case of Continental Ware Housing, *supra*. On the other hand, the Id.CIT-DR, relied on the assessment order and the order of CIT(A).

5.4 After hearing rival contentions and going through the facts and circumstances of the case, we noted that the assessee has made a claim before the AO and before CIT(A) that the accounts of the group concern is statutorily audited and the respective business owners i.e., the assessee, his wife and his mother have duly filed Form No.3CB & 3CD, as audited by the auditor. It was claimed that the books of account of the assessee is statutorily audited and duly filed by the assessee. The assessee before CIT(A) claimed that the

AO never questioned the statutory audit and disallowance made in regard to indirect expenditure on estimate basis. We noted that the CIT(A) simply estimated the disallowance at 10% as against estimated by AO at 25%. But, now the question arises that the assessee is unable to produce the books of account and even now before us, despite specific opportunities given, no books of account or audited accounts were produced. Even, the assessee on merits has not made any argument or has not made any claim. In such circumstances, we have no hesitation in confirming the action of the AO and that of the CIT(A). Hence, the order of CIT(A) is confirmed and this issue of assessee's appeals is dismissed. Similar are the facts in other 6 appeals and hence, this decision will apply in all these 7 appeals i.e., ITA Nos.2357 to 2363/Chny/2019 for assessment years 2007-08 to 2013-14.

6. The next issue in these appeals is as regards to addition made by AO and confirmed by CIT(A) in regard to incentives received by assessee in assessment years 2007-08 to 2010-11 in ITA Nos.2357 to 2360/Chny/2019. The facts and circumstances in all these appeals are exactly identical and the grounds raised are identical and hence, we will adjudicate this issue in ITA No.2357/Chny/2019

for the assessment year 2007-08 in the case of Shri Shanthilal D. Jain. For this, assessee has raised following Ground No.10:-

10. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the incentives received by the appellant ought not to have been added by the Assessing Officer. Incentives received were always duly accounted by the appellant in his books of accounts.

6.1 The AO noted that the assessee is the proprietor of M/s. Shree Battery House engaged in the trade of batteries and inverters. The assessee was purchasing batteries from M/s. Exide Industries but assessee was not maintaining any books of accounts. Accordingly, the AO called for the ledger account of the assessee in the books of M/s. Exide Industries. After verification of ledger account of the assessee in the books of M/s. Exide Industries, the AO noted that the assessee has received incentives apart from cash discounts on purchases made from M/s. Exide Industries. According to AO, the assessee has not accounted for the same in his books of accounts and hence, the AO disallowed the following incentives and made addition:-

A.Y. 2007-08	Rs.28,545/-
A.Y. 2008-09	Rs.1,25,397/-
A.Y. 2009-10	Rs.13,98,093/-
A.Y. 2010-11	Rs.53,886/-

Aggrieved assessee preferred appeal before CIT(A). The CIT(A) confirmed the addition by observing in para 11.3 as under:-

11.3 I have given careful consideration to the issue on hand. The assessee was engaged in the trade of batteries and Inverters. The appellant was purchasing batteries from M/s Exide Industries for his proprietary concern. Since the assessee was not maintaining any books of accounts, the AO called for the ledger account of the assessee entered in the books of M/s Exide Industries. On verification of the ledger account of the assessee in the books of M/s Exide Industries, it was noticed that, the appellant has received incentives apart from the cash discount while purchasing the batteries from M/s Exide Industries. But these incentives were not accounted for in his books. Instead, M/s Exide Industries adjusted these incentives against the scrap sold by the appellant. Further, the Exide Industries have received payments from the assessee only after adjusting the incentives and scrap values. Therefore, as the assessee did not account these incentives as his income, the same was calculated from the ledger account submitted by M/s Exide Industries and brought to tax. Therefore, in the absence of books of accounts, the AO did not find any alternate except to add the incentives. The appellant could not demonstrate that he had offered the incentives correctly to tax by adducing evidence even before the undersigned. In view of the appellant's failure, I hold that the AO's action on this issue is in order. The appellant's ground is dismissed.

Aggrieved assessee is in appeal before the Tribunal.

6.2 We noted that the assessee is not maintaining any books of account and the information received is from seized hard disk containing tally details of purchases and sales seized from the business premises of the assessee pursuant to the search u/s.132 of the Act on 22.05.2012. Now, before us the Id.counsel for the

assessee has not made any argument in regard to the merits of the case, whereas the Id.CIT-DR relied on the order of CIT(A). Once the assessee has not maintained any books of account nor any bills and vouchers and despite number of opportunities given to him to produce the accounts, he could not do so and hence, we have no alternative except to confirm the findings of the CIT(A). The issue in this appeal of assessee in regard to addition of incentive is confirmed. This common issue in all these appeals of assessee in ITA Nos.2357 to 2360/Chny/2019 for assessment years 2007-08 to 2010-11 is dismissed.

7. The next common issue in these appeals of assessee is as regards to addition made by the AO and confirmed by CIT(A) to peak cash credit of bank statement as unexplained cash credits for assessment years 2007-08 to 2012-13 in ITA Nos.2357 to 2362/Chny/2019. The facts and circumstances in all these appeals are exactly identical and the grounds raised are identical and hence, we will adjudicate this issue in ITA No.2357/Chny/2019 for the assessment year 2007-08 in the case of Shri Shanthilal D. Jain. For this assessee has raised following Ground Nos.13 & 14:-

13. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer ought not to have added Rs.19,76,020/- being peak cash credit of bank statement as unexplained cash credit.

14. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the deposits made in the bank account represent the amounts received in the course of appellant's business and there was no unaccounted deposit in the bank account.

7.1 Brief facts are that the AO on perusal of bank statements noted that the assessee made cash deposit in South Indian Bank during financial years 2006-07 to 2011-12 relevant to assessment years 2007-08 to 2012-13. The assessee was asked to explain the source, he stated that these deposits are already accounted for in the sale proceeds. The assessee stated that the turnover of the assessee is amounting to Rs.99,00,000/-, Rs.259.72 lakhs, Rs.499 lakhs, Rs.258 lakhs, Rs.99.78 lakhs, Rs.135.62 lakhs for financial years 2006-07 to 2011-12 relevant to assessment years 2007-08 to 2012-13 respectively. It was explained that the sale proceeds accounted for in the books of accounts and payment received in cash is in lieu of the same which was deposited in the bank account and withdrawal is made for expenses and other business requirements. The AO in the absence of books of account has not accepted the explanation of the assessee and peak cash credit addition was made in the respective assessment years as under:-

A.Y. 2007-08	Rs.19,76,020/-
A.Y. 2008-09	Rs.44,53,926/-
A.Y. 2009-10	Rs.21,86,790/-
A.Y. 2010-11	Rs.15,690/-
A.Y. 2011-12	Rs.2,46,650/-
A.Y. 2012-13	Rs.17,81,603/-
Total	Rs.1,06,60,679/-

Aggrieved assessee preferred appeal before CIT(A).

7.2 Before CIT(A), the assessee contented the same argument that the assessee is a wholesale dealer dealing in batteries and agency of Exide Industries. He explained that these amounts deposited in the bank account i.e., South Indian Bank during the above stated period is out of sale proceeds. The CIT(A) after going through the submissions confirmed the action of the AO vide para 12.3 & 12.4 as under:-

12.3. The appellant, during the course of appeal proceedings, has stated that the deposits are part of sales turn over; that all the impugned deposits are not by way of cash. The appellant has further sought to plead that the deposits are much less than the turn over. The appellant further went on to say that the appellant is a wholesale dealer and hence there is negligible scope to deal in cash. The appellant has made only grand and ideal statements without adducing any evidence in respect of the material issues and arguments. The appellant could not demonstrate that all deposits were not in cash. The AO's inference and conclusion on this point has not been repudiated even before the undersigned. In the light of his failure, that the sales turnover is more than the impugned deposits does not hold water. The appellant is under an obligation to explain the credits- regardless of cash and cheque transactions. The onus is on the appellant and is more stringent when the impugned credits are by way of cash.

12.3.1. The appellant's shelter that bank statement cannot be treated as books of accounts does not absolve him of the responsibility to discharge his onus as he has stated to have maintained purchase and sales accounts; and if the appellant's argument that the impugned deposits are part of turnover were to be true, it is all the more incumbent on him to explain the entries to the satisfaction of the AO. The appellant has failed to do so even during the course of appeal proceedings.

12.3.2. The issue is to be decided is whether the addition under Section 68 had rightly been made or not. As per section 68, when a cash credit entry appears in the appellant's accounts, the appellant is under legal obligation to explain the same that too to the satisfaction of the A.O. In case the appellant did not offer any explanation or fails to tender evidence or burkes an enquiry then the A.O. can hold that income as income from undisclosed sources. It is thus, imperative for the appellant to prove prima facie the transactions, which resulted in cash credit in his account. Such proof includes proof of identity, capacity of creditors to advance and genuineness of the transaction. In case these three basic ingredients have been proved then only the onus would have been treated as discharged whereas in the present case the cumulative satisfaction of all three limbs has not established. Thus, the onus which lies on the appellant to prove the cash found deposited in the bank accounts was not discharged either before the A.O. or before the undersigned. The appellant has not demonstrated that the cash deposits have been included in the sale receipts by reconciling the entries in the bank account. The appellant has not brought any explanation with reference to the accounts which in any case he had not maintained completely except saying that he has included the cash deposits in his accounts.

12.4. In view of the failure on the part of the appellant and keeping in view the facts narrated above and hi absence of any supporting corroborative evidences, the A.O. was justified in making addition of peak cash credit of. Rs.19,76,020/-, Rs.44,53,926/-Rs.21,86,790/- Rs.15,690/- Rs.2,46,650/- & Rs.17,81,603/- for AYs. 2007-08 to 2012-13. Accordingly, the order of the A.O. is confirmed on this ground. The appellant's ground is **dismissed**.

Aggrieved now assessee is in appeal before the Tribunal.

7.3 We have heard rival contentions and gone through the facts and circumstances of the case. Before us, the Id.counsel for the

assessee has not made any argument except that the cash deposit in South Indian Bank is on account of sale proceeds. But on query from the Bench, could not produce any books of account or evidences or source of cash deposit in the bank. Once there is no books of account, how the assessee can make a claim that the cash deposits are arising out of sale proceeds or he could not link the same with the sales made by producing any evidence. In such circumstances, we have no alternative except to confirm the addition. This issue of assessee's appeal is dismissed. Similar are the facts in other appeals for assessment years 2008-09 to 2012-13 and hence, this decision will apply in all those appeals.

8. The next issue i.e., addition on account of transfer from personal books amounting to Rs.1,50,000/- from M/s. Shantilal D. Jain HUF and loan of Rs.6,00,000/- from Late Shri Dharmichand Jain invested in M/s. Shree Battery House for assessment year 2007-08 in ITA Nos. 2357/Chny/2019 and the relevant ground raised reads as under:-

11. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the source of investment in M/s. Shree Battery House to the extent of Rs.1,50,000/- is the borrowing made by the appellant from M/s. Shantilal D Jain HUF. The Commissioner of Income Tax (Appeals) erred in

confirming the order of the Assessing Officer in treating the said sum as unaccounted income.

8.1 Brief facts are that the assessee has transferred a sum of Rs.7.50 lakhs and invested in M/s. Shree Battery House, a firm of the assessee and explained the source that Rs.1,50,000/- is loan from M/s.Shanthilal D Jain HUF and Rs.6,00,000/- from his late father Shri Dharmichand Jain. As the assessee could not explain before AO, he made addition. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) confirmed the addition of Rs.6,00,000/- received from Late Shri Dharmichand Jain but deleted the addition of Rs.1,50,000/- as unaccounted income by observing in para 15.3 as under:-

15.3. I have held that the loan said to have been received from Sh.Dharmichand is not a genuine one vide discussions infra in para 16.3. In view of the finding, the credit to the extent of Rs.6,00,000 needs to be given in the AY.2007-08 with regard to the impugned investment of Rs.7,50,000 in M/s Shree Battery House as there is source to that extent. Consequently, the balance of Rs. 1,50,000 is to be treated as investment from unaccounted income. Accordingly, the appellant's ground on this issue is **partly allowed**.

Aggrieved assessee came in appeal before the Tribunal.

8.2 We noted that the CIT(A) has already deleted the addition made on account of loan from Shri Dharmichand Jain to the extent

of Rs.6 lakhs while dealing with the issue of sundry creditors as unexplained cash credit u/s.68 of the Act. The CIT(A) observed in para 16.3 that this Rs.6 lakhs loan has already been confirmed as addition as sundry loan creditor in assessment year 2007-08 and now this was deleted for giving credit to the extent of Rs.6 lakhs as impugned investment of Rs.7.5 lakhs in M/s. Shree Battery House, as there is source to that extent is available with the assessee. The CIT(A) in the absence of same confirmed the balance Rs.1.5 lakhs as unexplained investment from unaccounted income. Hence, we find no infirmity in the order of CIT(A) and hence, this issue of assessee's appeal is dismissed.

9. The next issue in assessee's appeal in ITA No.2357/Chny/2019 for the assessment year 2007-08 is as regards to the order of CIT(A) confirming the action of AO in making addition of unexplained credit u/s.68 of the Act received from Shri Dharmichand Jain to the extent of Rs.6 lakhs. For this, assessee has raised following Ground No.12:-

12. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer ought to have added the borrowing made by the appellant from his father Late Shri Dharmichand Jain to the extent of Rs.6,00,000/- as unexplained cash credit u/s.68. The provisions of section 68 cannot be invoked in the facts and circumstances of the case.

9.1 Brief facts are that the AO during the course of assessment proceedings noted that the assessee has borrowed a sum of Rs.6 lakhs from Shri Dharmichand Jain but could not produce the details and could not explain the source, creditworthiness and identity of the party and therefore, made addition. Even the CIT(A) confirmed the action of AO by observing in para 16.3 as under:-

“16.3 I have perused the materials and noticed that the appellant has not discharged his onus as to the cumulative satisfaction of identity, creditworthiness and genuineness of the impugned credit. Even in the records of Dharmichand, details as to the identity of the debtors are not available. In view of the appellant’s failure to discharge initial burden of proof, the AO’s action is upheld. The appellant’s ground is dismissed.”

9.2 We noted that this amount of Rs.6 lakhs from Shri Dharmichand Jain claimed by assessee but no details were filed to prove the identity, creditworthiness and genuineness of transaction. Even now before us the assessee could not discharge his onus to prove the transaction and therefore, we uphold the order of CIT(A) confirming the addition of Rs.6 lakhs. It is to be noted that this Rs.6 lakhs is doubly added by AO and we have already considered this issue in para 8 where this addition was deleted by CIT(A) and this deletion was confirmed but we sustain this addition here only. Hence, this is a single addition and not double addition.

10. The next issue in these 7 appeals of assessee in ITA Nos. 2357 to 2363/Chny/2019 is as regards to disallowance of claim of deduction on the claim of LIC premium paid. The facts and circumstances in all these appeals are exactly identical and the grounds raised are identical and hence, we will adjudicate this issue in ITA No.2357/Chny/2019 for the assessment year 2007-08. For this, assessee in assessment year 2007—08 has raised following Ground No.15:-

15. For that the Commissioner of Income Tax (appeals) failed to appreciate that the Assessing Officer ought not to have disallowed the deduction claimed under Chapter VIA, in respect of the Life Insurance Premium paid.

10.1 We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO disallowed the claim of deduction u/s.80C on account of LIC premium paid in the absence of any evidence. The AO disallowed the following amounts in the following years:-

A.Y. 2007-08	Rs.18,869/-
A.Y. 2008-09	Rs.38,869/-
A.Y. 2009-10	Rs.38,869/-
A.Y. 2010-11	Rs.66,456/-
A.Y. 2011-12	Rs.1,13,034/-
A.Y. 2012-13	Rs.51,903/-
A.Y. 2013-14	Rs.51,903/-

Even now before us, the assessee could not produce any evidence or no argument was made in this regard and hence, the same is dismissed. This issue of assessee's appeals is dismissed. Similar are the facts in other appeals for assessment years 2008-09 to 2013-14 and hence, this decision will apply in all those appeals.

11. The next common issue in ITA Nos. 2358 to 2360/Chny/2019 for assessment years 2008-09 to 2010-11 is as regards to the order of CIT(A) confirming the action of AO in estimation of profit@ 10% on sale of old batteries i.e., trading in scrap. The facts and circumstances in all these three assessment years are identical and hence, we will take the facts from the assessment year 2008-09 and will decide the issue. For this, assessee has raised following Ground Nos. 11 & 12 in assessment year 2008-09 in ITA No.2358/Chny/2019.

11. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the profit margin on sale of old batteries were always in the range of 0.5% to 1%.

12. For that the Commissioner of Income Tax (Appeals) erred in holding that the appellant earned 10% profit on sale of old batteries, that too on an arbitrary basis.

11.1 Brief facts are that the AO noted from the hard disk seized during the course of search that there are unverifiable purchases of scrap of batteries by the assessee and accordingly, the AO worked out the profit margin @ 30% in assessment year 2008-09, 37% in assessment year 2009-10 and 27 % in assessment year 2010-11 and made addition of trading in scrap as under:-

A.Y. 2008-09	Rs.1,59,923/-
A.Y. 2009-10	Rs.3,95,885/-
A.Y. 2010-11	Rs.18,47,211/-

The assessee before AO contended that the profit margin on sale of old batteries is in the range of 0.5% to 1% and accordingly the estimate should have been made. Apart from this, the assessee has not produced any evidence or has not contested the addition. The CIT(A) reduced the estimation of profit and estimated the profit rate for all the years at 10% by observing in para 14.3 as under:-

14.3. I have perused the findings of the AO and the submissions made before me by the appellant. The appellant has not discharged his onus of demonstrating that he had earned certain profits from sale of scrap by maintaining proper, regular and complete books of account and he further needs to substantiate such claims/ results by advancing necessary primary documents. In this case the appellant has clearly failed to substantiate the outcome of scrap sales and as to the quantum of profit/loss. In the circumstances, the AO is permissible to make estimate profits as held in a catena of judicial decisions of course subject to a caveat that his estimate should be a reasonable one and should not be arbitrary. In this case, the AO has adopted the profit on studying business model that has not been

elaborated or brought on record by the AO. The AO has adopted different profit ratio for three different AYs. The working has not been given. The rate adopted is high and is not reasonable. It is imperative to keep in view the business model of the appellant and that majority of its sale of old batteries [treated as scrap] is to M/s Exide. Yet, the profit element could not be brushed aside. After considering the totality of the facts and circumstances of the case, I am of the view that adoption of 10% of profits would meet the ends of justice. The appellant's ground is partly allowed.

Aggrieved assessee came in appeal before the Tribunal

11.2 We have heard rival contentions and gone through the facts and circumstances of the case. Before us, the Id.counsel for the assessee has not argued on merits or plea was made as regards to reduction in profit rate, hence we find no infirmity in the order of CIT(A) and the same is confirmed. The order of CIT(A) is confirmed on this issue. Accordingly, this issue of assessee's appeals for assessment years 2008-09 to 2010-11 is dismissed.

12. The next issue in assessment year 2009-10 in ITA No.2359/Chny/2019 is as regards to unexplained investment in property. For this, assessee has raised following Ground Nos.13 & 14:-

13. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer ought not to have considered the gifts received by the appellant from his relatives as unexplained investment / unexplained credit.

14. For that the Commissioner of Income Tax (Appeals) failed to appreciate that gifts received from relatives is exempt from taxation. The Commissioner of Income Tax (Appeals) erred in disregarding the gift deeds produced by the appellant.

12.1 Brief facts are that the assessee purchased two properties for a total consideration of Rs.11.35 lakhs. The AO noted that the investment made in these properties is out of alleged gift receipt of Rs.8.50 lakhs from Shri Nemichand Jain and Rs.2.85 lakhs from Smt. Kanta Devi being the relatives of the assessee. The AO required the assessee to explain the sources of persons who gifted the amount and also evidences to prove the creditworthiness of the donor, genuineness of transaction and the identity of the donors. The assessee failed to explain and hence, the AO treated the entire unexplained investment or gift received from relatives as unexplained credit and added to the returned income of the assessee. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) confirmed the addition by observing in para 17.3 as under:-

“17.3 I have perused the assessment order and written submissions submitted by the AR. The gist of the submissions of the assessee is that, the investment in property was out of cash gifts received from his relatives. The donors are close relatives of the assessee and the gifts have been fully supported with documents such as gift deeds. Hence under such circumstances, it cannot be treated as unexplained investment.

17.3.1 The appellant has just relied on the deed. It is noticed that the gifts have been received in cash. The appellant has not discharged his onus of

proving the identity, creditworthiness and genuineness of the impugned transaction. At the most, the appellant has attempted to identify the donor. He has clearly failed to establish the creditworthiness and genuineness of the gift purported to have been given by such close relatives. The appellant has not mentioned the occasion on which gifts were said to be received. Mere filing of a deed, that is self-serving would not rescue the appellant from his legal obligations. The appellant has not brought any material on record to the effect that the transaction could be considered as genuine. The capacity of the donors, their source of immediate funds gifted to him and the donors have not confirmed on oath that the gifts are genuine and were given to the assessee out of natural love and affection for him.

Aggrieved, now assessee is in second appeal before the Tribunal.

12.2 We have heard rival contentions and gone through facts and circumstances of the case. We noted that even now before us, the ld.counsel for the assessee has not made any argument on merits and has not tried to file any evidences to prove the genuineness of gift or cash credit. Hence, we find no infirmity in the order of CIT(A) and the same is confirmed. This issue of assessee's appeal is dismissed.

13. The next common issue in these 4 appeals in ITA Nos. 2357, 2361, 2362 & 2363/Chny/2019 for assessment years 2007-08, 2011-12, 2012-13 & 2013-14 is as regards to the order of CIT(A) confirming the action of AO making addition of unexplained cash

credits u/s.68 of the Act. The facts and circumstances in all these assessment years are identical and hence, we will take the facts from the assessment year 2011-12 in ITA No.2361/Chny/2019 and will decide the issue. The ground raised by assessee reads as under:-

10. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer ought not to have added Rs.15,78,600/- as unexplained cash credit u/s.68. The provisions of section 68 cannot be invoked in the facts and circumstances of the case.

13.1 The AO in assessment year 2007-08 added a sum of Rs.6,00,000/-, in 2011-12 added a sum of Rs.15,78,600/-, in assessment year 2012-13 added Rs.13,50,000/- and in assessment year 2013-14 added Rs.37,00,000/- as unexplained cash credit. The assessee explained before the AO that the assessee claimed to have borrowed total amount of Rs.25.50 lakhs from Shri Dharmichand and others and the AO has accepted the loan from Shri Dharmichand amounting to Rs.10.50 lakhs and balance Rs.15,50 lakhs was added in the absence of any evidence in regard to identity of the party, creditworthiness and genuineness of transaction in term of section 68 of the Act. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) restricted the addition at Rs.13 lakhs by observing in para 16.6 as under:-

16.6. I have gone through the facts of the case. It is settled position of law that the onus is on the person who makes claim. In the instant case, the appellant has shown to have owed Rs.13,00,000 as sundry credits from "Other parties". The identity, creditworthiness and genuineness of the transactions with those unidentified "Other parties" have not been established by the appellant. He did not produce an iota of evidence on this score. The issue is to be decided is whether the addition under Section 68 had rightly been made or not. As per section 68, when a cash credit entry appears in the appellant's accounts, the appellant is under legal obligation to explain the same that too to the satisfaction of the A.O. In case the appellant did not offer any explanation or fails to tender evidence or burkes an enquiry then the A.O. can hold that income as income from undisclosed sources.

13.2 Similar are the facts for assessment year 2012-13 and deleted the addition of Rs.13 lakhs. In regard to assessment year 2013-14, the assessee received cash credit of Rs.50 lakhs out of which, the CIT(A) noted that he has already brought in tax Rs.13 lakhs for assessment year 2011-12 and hence, balance Rs.37 lakhs was added and for this CIT(A) recorded his finding in para 16.12 as under:-

16.12. I have gone through the facts of the case. It is settled position of law that the onus is on the person who makes claim. In the instant case, the identity, creditworthiness and genuineness of the transactions with those unidentified "Other parties" have not been established by the appellant. He did not produce an iota of evidence on the sum of Rs.37,00,000/- (over and above Rs. 13,00,000/- that has been held as non-genuine in A.Y.2011-12 by the undersigned). The issue is to be decided is whether the addition under Section 68 had rightly been made or not. As per section 68, when a cash credit entry appears in the appellant's accounts, the appellant is under legal obligation to explain the same that too to the satisfaction of the A.O. In case the appellant did not offer any explanation or fails to tender evidence or burkes an enquiry then the A.O. can hold that income as income from

undisclosed sources. It is thus, imperative for the appellant to prove prima facie the transactions, which resulted in sundry credit. Such proof includes proof of identity, capacity of creditors to advance and genuineness of the transaction. In case these three basic ingredients have been proved then only the onus would have been treated as discharged whereas in the present case, the cumulative satisfaction of all three limbs has not established. The AO is right in bringing Rs.37,00,000/- to tax.

16.12.1. Similarly, in the case of credit purported to have been received during the year from Shantilal (HUF) amounting to Rs. 12,00,000/-, the appellant has not produced any evidence as to the genuineness and creditworthiness of the impugned transaction. Hence, The AO's action is tenable and is hence upheld.

16.12.2. In view of this finding, it is only corollary that the interest on such credits that have been upheld as -non-genuine is to be disallowed and added to the total income, which the AO has done.

16.12.3. In view of the foregoing discussion, the appellant's ground is **dismissed.**

Aggrieved in all the three years, assessee came in appeal before the Tribunal.

13.3 We have heard rival contentions and gone through facts and circumstances of the case. Before us, Id.counsel for the assessee has not argued anything on merits. We noted that the Id.CIT(A) has very reasonably allowed set off of the carry forward addition of 2011-12 to 2012-13 and retained addition in 2011-12 at Rs.13.50 lakhs but deleted addition in AY 2012-13 and the CIT(A) has rightly allowed set off of Rs.13 lakhs in AY 2013-14 and balance addition of

Rs.37 lakhs was sustained. As the assessee could not produce any evidence or could not prove the sources of credit, in the absence of the same, we also confirm the action of CIT(A). This issue of assessee's appeals for assessment years 2011-12 to 2013-14 is dismissed.

14. In above para No.4, in all there are 17 appeals, and now, we will take up 4 appeals of M/s. Shree Battery House in ITA Nos.2587 to 2590/Chny/2019 (Sl.Nos. 8 to 11), the assessee has raised various issues on merits in regard to additions made as given in the following chart:-

A.Y.	Indirect expenditure	Incentives	Peak cash credit	Trading in Scrap
2010-11	2,19,936	2,89,908	7,34,400	2,30,517
2011-12	54,927	6,61,566	3,73,800	7,89,661
2012-13	20,54,594	33,957	10,00,000	4,36,330
2013-14	10,40,013	-	39,43,450	17,32,810

The Id.counsel for the assessee as well as the Id.CIT-DR agreed that facts and circumstances in all the cases are exactly identical and addition is based on only one seized document i.e., one hard disk containing tally details of indirect expenditure, incentives, peak cash credits and trading in scrap. The Id.counsel for the assessee stated that the facts can be taken from the case of Shree Battery House for

the assessment year 2010-11 in ITA No.2587/Chny/2019 and issue can be decided.

15. The first common issue in these appeals of assessee in ITA Nos.2587 to 2590/CHNY/2019 for assessment years 2010-11 to 2013-14 is as regards to the order of CIT(A) confirming the action of AO in making addition of indirect expenditure. For this, assessee has raised following Ground Nos.7 & 8:-

“7. For that without prejudice to the above, the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer ought to have accepted the indirect expenditure claimed by the appellant.

8. For that the Commissioner of Income Tax (Appeals) erred in disallowing 50% of the disallowance made by the Assessing Officer towards indirect expenditure, that too on an arbitrary basis, disregarding the fact that the accounts of the appellant are duly audited u/s.44AB of the Income Tax Act, 1961”

15.1 At the outset, it is noticed that this issue also arose in the 7 appeals of Shri Shanthilal D Jain and the same was dealt by the Bench and the order of CIT(A) restricting the disallowance at 50% of the amount disallowed by AO. The AO made disallowance at 25% of expenditure in all the assessment years and the CIT(A) restricted further 50% of the amount disallowed by the AO by observing in para 10.4 as under:-

10.4 On appraisal of the facts of the case, materials on record and the basis of the observations made supra on the impugned addition, I am of the view that the restriction of disallowance to 50% of the amount disallowed by the AO for the respective AYs under consideration would meet the ends of justice. Thus, the AO is directed to restrict the disallowance accordingly. Therefore, the appellant gets partial relief and the appellant's grounds on this issue are partly allowed.

We noted that we have already dealt with this issue in para 5.4 of this order and taking a consistent view, we confirm the order of CIT(A) restricting the disallowance to 50% of the amount disallowed by the AO in the respective assessment years. This issue of assessee's appeals is dismissed.

16. The next common issue in these 3 appeals of assessee in ITA Nos.2587 to 2589/CHNY/2019 for assessment years 2010-11 to 2012-13 is as regards to the order of CIT(A) confirming the action of AO in disallowing incentives and adding the same to returned income of the assessee. For this, assessee has raised following Ground No.9:-

9. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the incentives received by the appellant ought not to have been added by the Assessing Officer. Incentives received were always duly accounted by the appellant in his books of accounts.

16.1 The Id.counsel for the assessee as well as Id.CIT-DR agreed that the facts and circumstances in the case of present assessee i.e., Shree Battery House is exactly identical to the facts of Shri Shanthilal D Jain, wherein the Tribunal has already heard the matter. We noted that the assessee M/s. Shree Battery House is engaged in trade of batteries and inverters. The AO during scrutiny assessment called for ledger account of the assessee in the books of Exide Industries and noted that the assessee has received incentives apart from cash discounts while purchasing the batteries from M/s. Exide Industries. But these incentives were not accounted for in its books of account. Further, it was noted that M/s. Exide Industries adjusted these incentives against the scrap sold by the assessee and Exide Industries have received payments from the assessee only after adjusting the incentives and scrap values. The assessee before AO or before CIT(A) could not produce any evidence to contradict the findings of AO that the ledger account provided by M/s. Exide Industries is not correct or could not controvert the same. Hence, the CIT(A) confirmed the action of AO in making addition of incentive by observing in para 11.3 as under:-

11.3 I have given careful consideration to the issue on hand. The assessee was engaged in the trade of batteries and Inverters. Since the assessee was not maintaining any books of accounts, the AO called for the ledger account of the assessee entered in the books of M/s Exide Industries. On verification of the ledger account of the assessee in the books of M/s Exide Industries, it was noticed that, the appellant has received incentives apart from the cash discount while purchasing the batteries from M/s Exide Industries. But these incentives were not accounted for in his books. Instead, M/s Exide Industries adjusted these incentives against the scrap sold by the appellant. Further, the Exide Industries have received payments from the assessee only after adjusting the incentives and scrap values. Therefore, as the assessee did not account these incentives as his income, the same was calculated from the ledger account submitted by M/s Exide Industries and brought to tax. Therefore, in the absence of books of accounts, the AO did not find any alternate except to add the incentives. The appellant could not demonstrate that he had offered the incentives correctly to tax by adducing evidence even before the undersigned. In view of the appellant's failure, I hold that the AO's action on this issue is in order. The appellant's ground is dismissed.

Even now before us, the Id.counsel for the assessee has not made any argument or not produced any evidences for deletion of addition of incentives received by assessee. We noted that this very issue, we have adjudicated vide para 6.2 above and taking a consistent view, we dismiss this issue in assessee's appeals also for all these 3 assessment years i.e., 2010-11, 2011-12 & 2012-13. This common issue of assessee's appeals is dismissed.

17. The next common issue in these 4 appeals of assessee in ITA Nos.2587 to 2590/CHNY/2019 for assessment years 2010-11 to

2013-14 is as regards to profit margin on sale of old batteries, i.e., trading in scrap and for this, assessee has raised following Ground Nos.10 & 11:-

10. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the profit margin on sale of old batteries were always in the range of 0.5% to 1%.

11. For that the Commissioner of Income Tax (Appeals) erred in holding that the appellant earned 15% profit on sale of old batteries, that too on an arbitrary basis.

17.1 At the outset, the Id.counsel for the assessee as well as Id. CIT-DR agreed that this issue of trading in scrap i.e., profit margin on sale of old batteries is a recurring issue in all 3 assessee's cases and the issue has been dealt with in the case of Shri Shanthilal D Jain at para 10.1 & 10.2, wherein the order of CIT(A) estimating profit rate at the 10% is confirmed. In the present case, the AO has worked out the profit rate @ 30% in assessment year 2008-09, 37% in assessment year 2009-10 and 27% in assessment year 2010-11 but the CIT(A) restricted the profit rate @ 50% of the estimate made by the AO by observing in para 14.3 as under:-

14.3. I have perused the findings of the AO and the submissions made before me by the appellant. The appellant has not discharged his onus of demonstrating that he had earned certain profits from sale of scrap by maintaining proper, regular and complete books of account and he further needs to substantiate such claims/ results by advancing necessary primary documents. In this case the appellant has clearly failed to substantiate the outcome of scrap sales and as to the quantum of profit/loss. In the

circumstances, the AO is permissible to make estimate profits as held in a catena of judicial decisions of course subject to a caveat that his estimate should be a reasonable one and should not be arbitrary. In this case, the AO has adopted the profit on studying business model that has not been elaborated or brought on record by the AO. The AO has adopted different profit ratio for three different AYS. The working has not been given. The rate adopted is high and is not reasonable. It is imperative to keep in view the business model of the appellant and that majority of its sale of old batteries [treated as scrap] is to M/s Exide. Yet, the profit element could not be brushed aside. After considering the totality of the facts and circumstances of the case, I am of the view that restriction of profit margin to the extent of 50% of the addition effected by the AO for the respective impugned years would meet the ends of justice. The appellant's ground is partly allowed.

We noted that the Tribunal has estimated the profit rate for all the years at 10% in the case of Shri Shanthilal D Jain at para 10.1 & 10.2 *supra*, and hence taking a consistent view, we restrict the profit rate @ 10% for all the years and direct the AO accordingly. Hence, this common issue in these 4 appeals of assessee is partly allowed as indicated above.

18. The next issue in these 4 appeals of assessee in ITA Nos.2587 to 2590/CHNY/2019 for assessment years 2010-11 to 2013-14 is against the order of CIT(A) confirming the action of AO in making addition of peak credit balance for all these years. For this, assessee has raised the following Ground Nos.12 & 13:-

13. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer ought not to have added Rs.7,34,400/- being peak cash credit of bank statement as unexplained cash credit.

14. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the deposits made in the bank account represent the amounts received in the course of appellant's business and there was no unaccounted deposit in the bank account.

18.1 The facts and circumstances in all the 4 years are exactly identical and the assessee claimed that the cash deposit made in South Indian Bank during financial year 2009-10 to 2012-13 relevant to assessment years 2010-11 to 2013-14 is out of sale proceeds accounted for, but the assessee neither before AO nor before CIT(A) has not filed any evidence or produced the books of account. In the absence of books of account, the AO made addition and CIT(A) confirmed the addition vide para 12.3.2 to 12.4 as under:-

12.3.2. The issue is to be decided is whether the addition under Section 68 had rightly been made or not. As per section 68, when a cash credit entry appears in the appellant's accounts, the appellant is under legal obligation to explain the same that too to the satisfaction of the A.O. In case the appellant did not offer any explanation or fails to tender evidence or burkes an enquiry then the A.O. can hold that income as income from undisclosed sources. It is thus, imperative for the appellant to prove prima facie the transactions, which resulted in cash credit in his account. Such proof includes proof of identity, capacity of creditors to advance and genuineness of the transaction. In case these three basic ingredients have been proved then only the onus would have been treated as discharged whereas in the present case the cumulative satisfaction of all three limbs has not established. Thus, the onus which lies on the appellant to prove the cash found deposited in the bank accounts was not discharged either before the A.O. or before the undersigned. The appellant has not demonstrated that the cash deposits have been included in the sale receipts by reconciling the

entries in the bank account. The appellant has not brought any explanation with reference to the accounts which in any case he had not maintained completely except saying that he has included the cash deposits in his accounts.

12.4. In view of the failure on the part of the appellant and keeping in view the facts narrated above and his absence of any supporting corroborative evidences, the A.O. was justified in making addition of peak cash credit of Rs.7,34,400/-, Rs.3,73,800/-, Rs.10,00,000/- and Rs.39,43,450/- for AYs. 2010 to 2013-14. Accordingly, the order of the A.O. is confirmed on this ground. The appellant's ground is **dismissed**.

18.2 Even now before us, the assessee could not make any submission or could not produce any evidence to explain that these cash deposit in South Indian Bank during these 4 years is out of sale proceeds of battery. The addition made in each of the year is as under:-

A.Y.2010-11	Rs.7,34,400
A.Y.2011-12	Rs.3,73,800
A.Y.2012-13	Rs.10,00,000
A.Y.2013-14	Rs.39,43,450

As the assessee could not produce anything before us, we find no infirmity in the order of CIT(A) and hence, this common issue for all the 4 assessment years of assessee's appeals is dismissed.

19. In above para No.4, in all there are 17 appeals, and now, we will take up 6 appeals of Smt. Sharmila S. Jain in ITA Nos.429 to 434/Chny/2020 (Sl.Nos. 12-17), the assessee has raised various

issues on merits in regard to additions made as given in the following chart:-

A.Y.	Indirect expenditure	Incentives	Peak cash credit	Trading in Scrap	Sources for investment in M/s. Shree	Sundry loan credits and interest	Extra debit to purchase	Bad debts
2008-09	9,70,809	-	43,66,700	-	10,00,000	45,52,182		
2009-10	8,72,256	1,68,422	8,50,321		54,02,472	49,40,850		
2010-11	5,59,483	22,861		69,022	-	-	27,72,435	
2011-12	19,99,941	4,94,861	12,02,130	25,68,661				
2012-13	23,00,476	2,45,549		34,66,684				
2013-14	11,15,102	5,25,961	54,86,640	50,49,505	-	-	-	26,09,836

The Id.counsel for the assessee as well as the Id.CIT-DR agreed that facts and circumstances in all the cases are exactly identical and addition is based on only one seized document i.e., one hard disk containing tally details of indirect expenditure, incentives, peak cash credit, trading in scrap, unexplained investment, sundry loan creditors added u/s.68 of the Act, bogus purchases and bad debts. The Id.counsel for the assessee stated that the facts can be taken from the case of Smt. Sharmila S. Jain for the assessment year 2008-09 in ITA No.429/Chny/2020 and issue can be decided.

20. The first common issue in all these appeals of assessee in ITA Nos.429 to 434/CHNY/2020 for assessment year 2008-09 to 2013-14 is as regards to the order of CIT(A) confirming the action of AO

in making addition of indirect expenditure. For this, assessee has raised following Ground No.3:-

“3. The Learned CIT erred in disallowing 50% of the indirect expenditure claimed, without any valid reasoning or evidence to the contrary and only on estimate basis without concrete material, while failing to realize the fact that the Appellant had only filed her return after her books were duly audited.”

20.1 At the outset, it is noticed that this issue also arose in the 7 appeals of Shri Shanthilal D Jain and the same was dealt by the Bench and the order of CIT(A) restricting the disallowance at 50% of the amount disallowed by AO. The AO made disallowance at 25% of expenditure in all the assessment years and the CIT(A) restricted further 50% of the amount disallowed by the AO by observing in para 10.4 as under:-

10.4 On appraisal of the facts of the case, materials on record and the basis of the observations made supra on the impugned addition, I am of the view that the restriction of disallowance to 50% of the amount disallowed by the AO for the respective AYs under consideration would meet the ends of justice. Thus, the AO is directed to restrict the disallowance accordingly. Therefore, the appellant gets partial relief and the appellant's grounds on this issue are partly allowed.

We noted that we have already dealt with this issue in para 5.4 of this order and taking a consistent view, we confirm the order of CIT(A) restricting the disallowance to 50% of the amount disallowed

by the AO in the respective assessment years. This issue of assessee's appeals in ITA Nos.429 to 434/Chny/2020 is dismissed.

21. The next common issue in these appeals of assessee in ITA Nos.430 to 434/CHNY/2020 for assessment years 2009-10 to 2013-14 is as regards to the order of CIT(A) confirming the action of AO in disallowing incentives and adding the same to returned income of the assessee. The facts and circumstances in all these appeals are exactly identical and the grounds raised are identical and hence, we will adjudicate this issue in ITA No. 430/Chny/2020 for the assessment year 2009-10. For this, assessee has raised following Ground No.9:-

9. The Learned Assessing Officer and the Learned CIT erred in adding a sum Rs.1,68,422/- as incentives without the right consideration of facts.

21.1 The Id.counsel for the assessee as well as Id.CIT-DR agreed that the facts and circumstances in the case of present assessee i.e., Smt. Sharmila S. Jain is exactly identical to the facts of Shri Shanthilal D Jain, wherein the Tribunal has already heard the matter. We noted that the assessee Smt. Sharmila S. Jain is engaged in trade of batteries and inverters. The AO during scrutiny assessment called for ledger account of the assessee in the books of

Exide Industries and noted that the assessee has received incentives apart from cash discounts while purchasing the batteries from M/s. Exide Industries. But these incentives were not accounted for in its books of account. Further, it was noted that M/s. Exide Industries adjusted these incentives against the scrap sold by the assessee and Exide Industries have received payments from the assessee only after adjusting the incentives and scrap values. The assessee before AO or before CIT(A) could not produce any evidence to contradict the findings of AO that the ledger account provided by M/s. Exide Industries is not correct or could not controvert the same. Hence, the CIT(A) confirmed the action of AO in making addition of incentive by observing in para 11.3 as under:-

11.3 I have given careful consideration to the issue on hand. The assessee was engaged in the trade of batteries and Inverters. Since the assessee was not maintaining any books of accounts, the AO called for the ledger account of the assessee entered in the books of M/s Exide Industries. On verification of the ledger account of the assessee in the books of M/s Exide Industries, it was noticed that, the appellant has received incentives apart from the cash discount while purchasing the batteries from M/s Exide Industries. But these incentives were not accounted for in his books. Instead, M/s Exide Industries adjusted these incentives against the scrap sold by the appellant. Further, the Exide Industries have received payments from the assessee only after adjusting the incentives and scrap values. Therefore, as the assessee did not account these incentives as his income, the same was calculated from the ledger account submitted by M/s Exide Industries and brought to tax. Therefore, in the absence of books of accounts, the AO did not find any alternate except to add the incentives. The appellant could not demonstrate that he had offered the incentives

correctly to tax by adducing evidence even before the undersigned. In view of the appellant's failure, I hold that the AO's action on this issue is in order. The appellant's ground is dismissed.

Even now before us, the Id.counsel for the assessee has not made any argument or not produced any evidences for deletion of addition of incentives received by assessee. We noted that this very issue, we have adjudicated vide para 6.2 above and taking a consistent view, we dismiss this issue in assessee's appeals also for all these 5 assessment years i.e., 2009-10 to 2013-14. This common issue of assessee's appeals is dismissed.

22. The next common issue in these 4 appeals of assessee in ITA Nos.429, 430, 432 & 434/Chny/2020 for assessment years 2008-09, 2009-10, 2011-12 & 2013-14 is against the order of CIT(A) confirming the action of AO in making addition of peak credit balance for all these 4 years. For this, assessee has raised the following Ground Nos.5 & 6:-

5. The Learned Assessing Officer and Learned CIT failed to realize the fact that the Appellant had both cash and cheque deposits into her bank account and hence erred in treating the peak credit of the Appellant as unexplained cash credit.

6. Without prejudice to the above the Learned Assessing Officer and Learned CIT erred in treating the peak credit as unexplained cash credits while having already treated the sum of Rs.45,52,182/- of the loan and

interest as unexplained credit which would have been part of the peak credit and hence tantamounting to double addition of the sum of money.

22.1 The facts and circumstances in all the 4 years are exactly identical and the assessee claim that the cash deposit made in South Indian Bank during financial years 2007-08, 2008-09, 2010-11 & 2012-13 relevant to assessment years 2008-09, 2009-10, 2011-12 & 2013-14 is out of sale proceeds accounted for, but the assessee neither before AO nor before CIT(A) has not filed any evidence or produced the books of accounts. In the absence of books of accounts, the AO made addition and CIT(A) confirmed the addition vide para 12.3.2 to 12.4 as under:-

12.3.2. The issue is to be decided is whether the addition under Section 68 had rightly been made or not. As per section 68, when a cash credit entry appears in the appellant's accounts, the appellant is under legal obligation to explain the same that too to the satisfaction of the A.O. In case the appellant did not offer any explanation or fails to tender evidence or burkes an enquiry then the A.O. can hold that income as income from undisclosed sources. It is thus, imperative for the appellant to prove prima facie the transactions, which resulted in cash credit in his account. Such proof includes proof of identity, capacity of creditors to advance and genuineness of the transaction. In case these three basic ingredients have been proved then only the onus would have been treated as discharged whereas in the present case the cumulative satisfaction of all three limbs has not established. Thus, the onus which lies on the appellant to prove the cash found deposited in the bank accounts was not discharged either before the A.O. or before the undersigned. The appellant has not demonstrated that the cash deposits have been included in the sale receipts by reconciling the entries in the bank account. The appellant has not brought any explanation with reference to the accounts which in any case she had not maintained completely except saying that he has included the cash deposits in her accounts.

12.4. In view of the foregoing discussions, the A.O. was justified in making addition of peak cash credit of. Rs.743,66,700/- for A.Y.2008-09, Rs.12,02,130 for A.Y. 2011-12 and Rs.54,86,640 for A.Y. 2013-14. Accordingly, the order of the A.O. is confirmed on this ground. The appellant's ground is **dismissed**.

22.2 Even now before us, the assessee could not make any submission or could not produce any evidence to explain that these cash deposit in South Indian Bank during these 4 years is out of sale proceeds of battery. The addition made in each of the year is as under:-

A.Y.2008-09	43,66,700
A.Y.2009-10	8,50,321
A.Y.2011-12	12,02,130
A.Y.2013-14	54,86,640

As the assessee could not produce anything before us, we find no infirmity in the order of CIT(A) and hence, this common issue assessee's appeals in ITA Nos. 429, 430, 432 & 434/Chny/2020 is dismissed.

23. The next common issue in these 4 appeals of assessee in ITA Nos.431 to 434/CHNY/2020 for assessment years 2010-11 to 2013-14 is as regards to profit margin on sale of old batteries, i.e., trading in scrap. The facts and circumstances in all these appeals

are exactly identical and the grounds raised are identical and hence, we will adjudicate this issue in ITA No. 431/Chny/2020 for the assessment year 2010-11. The assessee has raised the following

Ground No.6:-

6. The Learned CIT erred in treating the profits from the scrap business at an enormous 15% only on an estimate basis and without the right consideration for a conclusive finding on the product, its modes of purchase and sale or its market.

23.1 At the outset, the Id.counsel for the assessee as well as Id. CIT-DR agreed that this issue of trading in scrap i.e., profit margin on sale of old batteries is a recurring issue in all 3 assessee's cases and the issue has been dealt with in the case of Shri Shanthilal D Jain at para 10.1 & 10.2, wherein the order of CIT(A) estimating profit rate at the 10% is confirmed. In the present case, the AO has worked out the profit rate @ 30% for all the 4 assessment years 2010-11 to 2013-14 but the CIT(A) restricted the profit rate @ 50% of the estimate made by the AO by observing in para 14.3 as under:-

14.3. I have perused the findings of the AO and the submissions made before me by the appellant. The appellant has not discharged his onus of demonstrating that he had earned certain profits from sale of scrap by maintaining proper, regular and complete books of account and he further needs to substantiate such claims/ results by advancing necessary primary documents. In this case the appellant has clearly failed to substantiate the outcome of scrap sales and as to the quantum of profit/loss. In the

circumstances, the AO is permissible to make estimate profits as held in a catena of judicial decisions of course subject to a caveat that his estimate should be a reasonable one and should not be arbitrary. In this case, the AO has adopted the profit by observing that the appellant had offered higher percentage of margin in respect of scrap sale for AY 2009-10 and 2010-11 and has chosen to adopt 30% margin. The AO, however, has not substantiated any material reasons for adopting this uniform rate of 30%. It is imperative to keep in view the business model of the appellant and that majority of its sale of old batteries [treated as scrap] is to M/s Exide. Yet, the profit element could not be brushed aside. After considering the totality of the facts and circumstances of the case, I am of the view that restriction of addition to 50% of the addition made by the AO towards profit from trading and scrap would meet the ends of justice. The appellant's ground is partly allowed.

We noted that the Tribunal has estimated the profit rate for all the years at 10% in the case of Shri Shanthilal D Jain at para 10.1 & 10.2 *supra*, and hence taking a consistent view, we restrict the profit rate @ 10% and direct the AO accordingly. Hence, this common issue in these 4 appeals of assessee in ITA Nos.431 to 434/Chny/2020 is partly allowed as indicated above.

24. The next common issue in these two appeals of assessee in ITA Nos. 429 & 430/Chny/2019 for assessment years 2008-09 & 2009-10 is as regards to the order of CIT(A) confirming the action of AO in making addition of sources of investment in M/s.Shree Battery House as unexplained credit amounting to Rs.10 lakhs and

Rs.54,02,472/- respectively. The relevant ground raised in assessment year 2009-09 reads as under:-

7. The Learned Assessing Officer and the Learned CIT failed to realize that the Appellant had sufficient balance to transfer the said sum of Rs.10,00,000/- to her proprietorship and hence erred in treating the sum as unexplained credit.

8. Without prejudice to the above, the Learned Assessing Officer and the Learned CIT erred in treating the transfer of the sum of Rs.10,00,000/- to her proprietorship as unexplained credit while already having added the sum of loan and peak credit also as unexplained credit tantamounting to double addition of the same sum of money.

24.1 Brief facts are that the AO during the course of assessment proceedings found from the seized material that the assessee has transferred Rs.10 lakhs to M/s. Shree Batteries, the assessee asked the assessee to explain the sources. Since, the assessee did not produce any explanation or evidence for the source of this amount of Rs.10 lakhs, he treated the same as unexplained cash credit u/s.68 of the Act. Aggrieved assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of AO vide para 19.3 as under:-

19.3 I have gone through the facts of the case and material available on record. The appellant did not produce any explanation supported by documentary evidence relating to the source for the impugned transfer during the course of assessment proceedings. It is relevant to mention that the appellant could not and did not produce any evidence on the subject matter even before the undersigned. In view of the appellant's failure, I am of the view that the addition deserves to be upheld. The appellant's ground is dismissed.”

Aggrieved, now assessee is in appeal before the Tribunal.

24.2 We have heard rival contentions and gone through the facts and circumstances of the case. The assessee before CIT(A) and even now before us contended that there was no transfer as such, as stated by the AO but this Rs.10 lakhs was borrowed from Shri Dharmichand, individual has reflected in her accounts and the said amount along with other capital, the assessee has advanced to M/s. Shree Batteries. The assessee made this statement but could not produce any evidences that the amount received from Shri Dharmichand, individual amounting to Rs.10 lakhs is explained. As the assessee could not provide the details and even now on a special query, the assessee could not explain sources of this Rs.10 lakhs and even no evidences qua, was produced before us and no argument was made by Id.counsel for the assessee. Therefore, we have no alternative except to confirm the action of lower authorities. This issue of assessee's appeal in ITA No.429/Chny/2020 is dismissed.

24.3 As regard to the addition of transfer of Rs.54,02,472/- in assessment year 2009-10, the facts are identical as in assessment

year 2008-09, the CIT(A) has already allowed this ground by observing in para 22.3 as under:-

“22.3 The appellant has transferred Rs.54,02,472/- from her personal books to M/s. Shree, the appellant’s proprietary concern. The appellant had credited Rs.12 lakhs and Rs.40 lakhs during F.Y. 2008-09 and Rs.8 lakhs during F.Y. 2009-10 in her personal books. In view of her failure to prove the credit, the sum of Rs.10 lakhs [represented by cash credits], Rs.40 lakhs [represented by sundry credits] for A.Y. 2008-09 and a further sum of Rs. 8 lakhs [represented by accretion of cash credits] for A.Y. 2009-10 have been treated by the undersigned as unproved credits and the additions have been upheld as discussed supra. In effect, the source amounting to Rs.10 lakhs and Rs.48 lakhs has already been brought to tax and has been confirmed as such by the undersigned both for AY 2008-09 and 2009-10. That being the case, the transfer of Rs.54,02,472/- stands explained by the source that has been brought to tax. In view thereof, the AO’s action in again bringing the application part i.e. the transfer of funds is not justifiable. Hence, the appellant succeeds on this issue. The appellant’s ground is allowed.

Since, the CIT(A) allowed this ground in assessment year 2009-10, the assessee should not have been aggrieved by the order of CIT(A) and Revenue has not challenged this ground. Hence, the ground raised by the assessee i.e., Ground Nos. 7 & 8 in assessment year 2009-10 in ITA No.430/Chny/2020 is treated as infructuous.

25. The next common issue in these two appeals of assessee in ITA Nos. 429 & 430/Chny/2019 for assessment years 2008-09 & 2009-10 is as regards to the order of CIT(A) confirming the action of AO in making addition of sundry loan creditors of Rs.45,52,182/- in

assessment year 2008-09 and Rs.49,40,850/- in assessment year 2009-10. For this, assessee has raised following Ground No.6 in AY 2008-09, similarly the assessee has raised following Ground No.4 in AY 2009-10:-

AY 2008-09:

6. Without prejudice to the above the Learned Assessing Officer and the Learned CIT erred in treating the peak credit as unexplained cash credits while having already treated the sum of Rs.45,52,182/- of the loan and interest as unexplained credit which would have been part of the peak credit hence tantamounting to double addition of the sum of money.

AY 2009-10

4. The Learned CIT erred in treating the loan of Rs.48,00,000/- and its interest quotient of Rs.1,40,850/- as unexplained credit in the hands of the Appellant.

25.1 Brief facts are that the AO noted from the seized material that there is a sundry loan credit of Rs.40 lakhs for assessment year 2008-09 and consequential interest of Rs.5,52,182/-. When the AO asked the assessee to explain / produce the details of loan creditors, the assessee did not furnish any detail. Accordingly the AO added the sum of Rs.45,52,182/- as unexplained cash credit u/s.68 of the Act. Aggrieved assessee preferred appeal before CIT(A). The CIT(A) noted that the assessee has not given any details and hence, he confirmed the action of AO by observing in para 20.3 as under:-

“20.3 I have gone through the facts of the case and material available on record. The appellant did not produce any evidence relating to the identity,

credit worthiness of the impugned loan creditor before the AO. It is relevant to mention that the appellant could not and did not produce any evidence on the subject matter even before the undersigned. In view of the appellant's failure, I am of the view that the addition representing the credit of Rs.40,00,000 and consequently, the disallowance of interest claimed on such bogus credit of Rs.5,52,182/- deserve to be upheld. The appellant's ground is dismissed."

25.2 Similarly in assessment year 2009-10, the assessee introduced a further sundry creditor loan of Rs.8 lakhs apart from earlier Rs.40 lakhs and also claimed consequential interest of Rs.1,40,850/-. The CIT(A) deleted the addition of Rs.40 lakhs already made in assessment year 2008-09 but confirmed the addition of Rs.8 lakhs and consequential interest of Rs.1,40,850/- by observing in para 21.3 as under:-

"21.3 It is noticed that the total loan credit [Principal only] as at 31.3.2009 is Rs.48 lakhs. A sum of Rs.40 lakhs [relating to AY 2008-09] was held as unproved by the undersigned and the addition of Rs.48 lakhs was confirmed by the undersigned in the appeal for the A.Y. 2008-09. Thus the infusion during the current year is only Rs.8 lakh, for which there is a failure on the part of the appellant to substantiate the impugned loan credit. Hence, the AO is directed to add Rs.8 lakh [representing unproved sundry loan credit] to the total income of the appellant for the AY 2009-10. The entire interest of Rs.1,40,850/- is to be disallowed for the credits are held as bogus. The appellant's grounds are partly allowed."

25.3 We have heard rival contentions and gone through the facts and circumstances of the case. Before us, the Id.counsel for the assessee could not argue anything and did not produce any

evidence either in regard to sundry creditor loan of Rs.40 lakhs in assessment year 2008-09 or fresh credit of Rs.8 lakhs in assessment year 2009-10, the interest of Rs.5,52,182/- for assessment year 2008-09 and Rs.1,40,850/- in assessment year 2009-10 which is consequential. In the absence of any details, we have no alternative except to confirm the order of CIT(A). This common issue of assessee's appeals in both the years is dismissed.

26. The next issue in ITA No.431/Chny/2020 for assessment year 2010-11 is as regards to the order of CIT(A) confirming the action of AO in regard to extra debit to purchase of Rs.27,72,435/-. For this assessee has raised following Ground No.7:-

“7. The Learned Assessing Officer and the Learned CIT erred in disallowing the sum of Rs.27,72,435/- under the head inflation of expenditure.”

26.1 Brief facts are that the AO on verification of profit and loss account as per seized material noted that the assessee has debited a sum of Rs.27,72,435/- as purchase of scrap over and above the purchase of Rs.21,23,984/- which includes in the total purchases of Rs.1,78,03,291/-. The assessee before AO explained that the purchase of scrap was apart from purchases included in the

purchase account and the scrap sold at a loss. It was contended that the sale consideration cannot be taken as basis for determining the purchase value and hence, the assessee has made actual purchases as claimed. The AO in the absence of any detail, was not convinced and disallowed a sum of Rs.27,72,435/-as inflation of purchases. Aggrieved assessee preferred appeal before CIT(A). Before CIT(A), the assessee did not furnish any evidence and hence, he confirmed the action of AO by observing in para 23.3 as under:-

“23.3 The appellant has not furnished any evidence in support of her claim during the course of appeal proceedings. Hence, I am of the view that there is no infirmity in the action of the AO. The appellant’s ground is dismissed.”

Aggrieved now assessee is in appeal before the Tribunal.

26.2 We have heard rival contentions and gone through the facts and circumstances of the case. Even now before us despite a specific query to explain the inflation of purchases of Rs.27,72,435/- the assessee could not file any explanation or evidences. Even the Id.counsel for the assessee could not make any argument. Hence, we confirm the action of the CIT(A). This issue of assessee’s appeal is dismissed.

27. Now, we will deal with the following 17 appeals:-

S.NO	ITA Nos.	ASST YEAR	NAME OF ASSESSEE
1.	2389/CHNY/2019	2007-08	SHANTHILAL D JAIN
2.	2390/CHNY/2019	2008-09	
3.	2391/CHNY/2019	2009-10	
4.	2392/CHNY/2019	2010-11	
5.	2393/CHNY/2019	2011-12	
6.	2394/CHNY/2019	2012-13	
7.	2395/CHNY/2019	2013-14	
8.	435/CHNY/2020	2008-09	SHARMILA S JAIN
9.	436/CHNY/2020	2009-10	
10.	437/CHNY/2020	2010-11	
11.	438/CHNY/2020	2011-12	
12.	439/CHNY/2020	2012-13	
13.	440/CHNY/2020	2013-14	
14.	2591/CHNY/2019	2010-11	SHREE BATTERY HOUSE
15.	2592/CHNY/2019	2011-12	
16.	2593/CHNY/2019	2012-13	
17.	2594/CHNY/2019	2013-14	

27.1 The only issue in the above mentioned 17 appeals is as regards to the order of CIT(A) confirming the action of AO in levying penalty u/s.271A of the Act for non-maintenance of books of account. The facts and circumstances are identical in all the appeals and the AO in all the appeals for all assessment years in appeals levied penalty u/s.271A of the Act of Rs.25,000/- in each of the

years. The AO levied penalty despite the fact that the assessee contended that the assessee has maintained books of accounts and got them audited u/s.44AB of the Act. The AO did not accept the contention as the assessee in sworn statement during the course of search admitted that the assessee did not maintain books of account in all the years and all the assessee made identical statement and one of the statement in the case of Shri Shanthilal D. Jain for assessment year 2007-08 in ITA No.2389/Chny/2019 reads as under:-

“The assessee’s above contention is not accepted as it is evident from the sworn statement dated 26.7.2012 recorded from the assessee and submission during assessment that the assessee did not maintain books of account.

The AO levied penalty and the CIT(A) also confirmed the action of AO, as the assessee failed to show any reasonable cause u/s.273B of the Act for non-maintenance of books of account. The CIT(A) findings are common in all the appeals and the relevant finding given in the case of Shanthilal D. Jain for assessment year 2007-08 in ITA No.2389/Chny/2019 reads as under:-

7.2. According to section 271A of the Act, if the assessee fails to keep and maintain any such books of account and other documents as required by section 44AA and the Rules in any previous year, penalty is leviable. Section 44AA(2)(i) and (ii) provides that every person carrying on business having turnover in excess of threshold shall keep and maintain such books of

account and other documents as may enable the AO to compute his total income in accordance with the provisions of this Act. It is hi undisputed fact that the appellant's turnover in the AYs under consideration is in excess of the prescribed threshold. It is not in dispute that search was conducted in the appellant's and during course of search proceedings it has been admitted by the appellant that he had not maintained regular books of account and he had maintained only purchase and sales ledgers. The AO has brought on record the averments made by the appellant to this effect. It is further pertinent to note that that the AO has stated that the appellant could not produce any accounts in support of various claims including that of indirect expenditure. It is further relevant to observe that the fact that the appellant was not maintaining the books of account and that statement was not denied and retracted. On perusal of records, it is clear that the AO could not fully deduce the true and correct income of the appellant except by resorting to disallowance on the basis of certain heuristics with reference to the expenditure booked and claimed to have incurred in respect of indirect expenditure and by resorting to estimation of profit on scrap sales. Similar is the case with certain other claims that he appellant could not substantiate his claims in the assessment proceedings. It becomes an admitted case that books of account were not maintained and even in present proceedings where the issue was with respect to maintaining of the books of account by the assessee.

7.3. The appellant's contention that the AO had not properly appreciated the averments given by the appellant is misconceived as it has been categorically deposed that no books of account were maintained except purchase and sales ledgers. No accounts to substantiate the indirect expenditure have been maintained. The AO could not keep track of the correctness of the expenditures said to have been incurred by the appellant as the accounts were incorrect and incomplete as recorded by the AO in the assessment order as well as in the penalty order. The appellant's defence that he did not personally maintain the books and that they were given to the auditor for maintenance does not absolve the appellant's liability in conforming to the statutory requirements of the Act. The appellant's submission that the accounts were audited and audit reports were filed alongwith the return of income is not acceptable as the appellant has clearly failed to furnish proof that the audit report was filed alongwith the return. The appellant has not produced any documentary proof (i)to the effect that the books claimed to have been maintained were subjected to audit ;and(ii) documentary proof to the effect that the purported audit report was filed along with the return of income before the undersigned. The appellant's further argument that no rules have been prescribed for his business does not hold good as the AO had difficulties in deducing true and correct income as mentioned above; and has given a finding that the details of accounts recovered and produced are

incomplete. It is further pertinent to not that the appellant has not furnished any cogent explanation for non-maintenance of books of account from which the income as per the Act could be easily derived by the appellant. The appellant's reference to the notice wherein the AO had mentioned the real estate business is not on strong footing as the AO has initiated penalty proceedings for failure to maintain books of account of the appellant's business. Inadvertent mistake of the AO is a curable defect as the appellant very well knows that the turnover of his business is well above the threshold limit and is under clear obligation to maintain books of account. The appellant's hyper technical argument deserves to be rejected and hence the same is rejected.

7.4. It is settled position of law that the onus to prove that there is reasonable cause in terms of S273B of the Act is on the appellant. The appellant has failed to discharge his onus. As discussed above, there is default on the part of the appellant in complying with the provisions of Sec. 271A to be read in an integrated manner with Sec. 44 AA of the Act.

7.5 In view of the above remarks, I am of the opinion that the appellant has defaulted in terms of S271A of the Act and consequently no interference in the AO's action of levy of penalty of Rs 25000 u/s 271A of the Act for each of the AYs under consideration is called for. The view of the undersigned is fortified by the decision of the Hon'ble High Court of Jharkhand in the case of A One Batteries (P) Ltd Vs Deputy Commissioner of Income-tax, Special Range, Ranchi [2011] 11 taxmann.com 90 (Jharkhand). The appellant's grounds are accordingly dismissed.

27.2 Now before us, the Id.counsel for the assessee contended that the assessee has not maintained any books of account and hence, he agreed that penalty levied u/s.271A of the Act by the AO can be confirmed. The Id.Senior DR relied on the order of AO and that of the CIT(A).

27.3 After hearing rival contentions and going through the case records, we noted that only seized material found during the course of search is a hard disk i.e., document in the form of incomplete tally package inventories as ANN/SR/RJ/hard disc/S dated 22.5.2012 having bearing on the determination of the total income were recovered. This is incomplete tally package of documents i.e., sales, purchase but no books of account are maintained. Even now before us, the Id.counsel admitted that there is no books of account and assessee could not produce any books of account before us despite specific opportunity given. Hence, we are of the view that the lower authorities have rightly levied penalty for non-maintenance of books of account u/s.271A of the Act. Similar are the facts in other 16 appeals, taking a consistent view we dismiss all these 17 appeals of the assessees.

28. Now, we will deal with the following 17 appeals:-

S.NO	ITA Nos.	ASST YEAR	NAME OF ASSESSEE
1.	2396/CHNY/2019	2007-08	SHANTHILAL D JAIN
2.	2397/CHNY/2019	2008-09	
3.	2398/CHNY/2019	2009-10	
4.	2399/CHNY/2019	2010-11	
5.	2400/CHNY/2019	2011-12	
6.	2401/CHNY/2019	2012-13	
7.	2402/CHNY/2019	2013-14	

8.	441/CHNY/2020	2008-09	SHARMILA S JAIN
9.	442/CHNY/2020	2009-10	
10.	443/CHNY/2020	2010-11	
11.	444/CHNY/2020	2011-12	
12.	445/CHNY/2020	2012-13	
13.	446/CHNY/2020	2013-14	
14.	2595/CHNY/2019	2010-11	SHREE BATTERY HOUSE
15.	2596/CHNY/2019	2011-12	
16.	2597/CHNY/2019	2012-13	
17.	2598/CHNY/2019	2013-14	

28.1 Coming to penalties levied u/s.271B of the Act, in the above 17 appeals in regard to not filing audit report u/s.44AB of the Act. The AO levied penalty u/s.271B of the Act for not producing audit report or not filing audit report u/s.44AB of the Act. The AO levied penalty u/s.271B of the Act and the CIT(A) confirmed the same. Aggrieved, now assessees are in appeal before the Tribunal.

28.2 Before us, Id.counsel for the assessee made only one statement that the Hon'ble Allahabad High Court in the case of CIT vs. S.K. Gupta & Co., (2010) 322 ITR 86, Hon'ble Madhya Pradesh High Court in the case of Bharat Construction Co. vs. ITO, (1999) 153 CTR 414 and Hon'ble Gauhati High Court in the case of Surajmal Parsuram Todi vs. CIT, (1996) 222 ITR 691 has

categorically held that once books of account are not maintained and consequently penalty u/s.271A of the Act is levied and confirmed, no penalty u/s.271B of the Act for failure to get the accounts audited u/s.44AB of the Act be levied. The Hon'ble Gauhati High Court in the case of Surajmal Parsuram Todi, *supra*, held as under:-

We have gone through the provisions of ss. 44AA, 44AB, 271A and 271B of the Act. Maintenance of accounts is envisaged under s. 44AA and on failure to do so the assessee shall be guilty and liable to be penalised under s. 271A. Even after maintenance of books of account the obligation of the assessee does not come to an end. He is required to do something more, i.e., by getting the books of account audited by an accountant. But when a person commits an offence by not maintaining the books of account as contemplated by s. 44AA the offence is complete. After that there can be no possibility of any offence as contemplated by s. 44AB and, therefore, in our opinion, the imposition of penalty under s. 271B is erroneous. The Tribunal has overlooked this aspect of the matter. Of course, it is apparent from the records that the assessee failed to maintain the books of account as required under s. 44AA and for that penalty is prescribed under s. 271A. It is for the Tribunal to take action in accordance with law.

Similarly, the Hon'ble Allahabad High Court in the case of S.K. Gupta & Co, *supra*, held as under:-

“The submission of Sri Mahajan is misconceived for the reason that the requirement of getting the books of account audited could arise only where the books of accounts are maintained. If for some reason the assessee has not maintained the books of account the appropriate provision under which penalty proceedings can be initiated is under section 271A of the Act which recourse has also been taken by the assessee as would appear from the order of the Tribunal.

The Tribunal was, therefore, justified in upholding the order of the Commissioner of Income-tax (Appeals) cancelling the penalty imposed under section 271B of the Act.”

28.3 As the issue is squarely covered in favour of assessee and no contrary decision pointed out by Revenue, respectfully following the decision of these High Courts, we delete the penalty and reverse the orders of lower authorities. Similar are the facts in all these 16 appeals, hence taking a consistent view, all these 17 appeals relating to levy of penalty u/s.271B of the Act are allowed in favour of the assessee.

29. To sum up the result:-

ITA No.	Assessment Year	Result
2357/CHNY/2019	2007-08	Dismissed
2358/CHNY/2019	2008-09	Dismissed
2359/CHNY/2019	2009-10	Dismissed
2360/CHNY/2019	2010-11	Dismissed
2361/CHNY/2019	2011-12	Dismissed
2362/CHNY/2019	2012-13	Dismissed
2363/CHNY/2019	2013-14	Dismissed
2389/CHNY/2019	2007-08	Dismissed
2390/CHNY/2019	2008-09	Dismissed
2391/CHNY/2019	2009-10	Dismissed
2392/CHNY/2019	2010-11	Dismissed
2393/CHNY/2019	2011-12	Dismissed
2394/CHNY/2019	2012-13	Dismissed
2395/CHNY/2019	2013-14	Dismissed
2396/CHNY/2019	2007-08	Allowed
2397/CHNY/2019	2008-09	Allowed
2398/CHNY/2019	2009-10	Allowed
2399/CHNY/2019	2010-11	Allowed

ITA No.	Assessment Year	Result
2400/CHNY/2019	2011-12	Allowed
2401/CHNY/2019	2012-13	Allowed
2402/CHNY/2019	2013-14	Allowed
2587/CHNY/2019	2010-11	Partly Allowed
2588/CHNY/2019	2011-12	Partly Allowed
2589/CHNY/2019	2012-13	Partly Allowed
2590/CHNY/2019	2013-14	Partly Allowed
2591/CHNY/2019	2010-11	Dismissed
2592/CHNY/2019	2011-12	Dismissed
2593/CHNY/2019	2012-13	Dismissed
2594/CHNY/2019	2013-14	Dismissed
2595/CHNY/2019	2010-11	Allowed
2596/CHNY/2019	2011-12	Allowed
2597/CHNY/2019	2012-13	Allowed
2598/CHNY/2019	2013-14	Allowed
429/CHNY/2020	2008-09	Dismissed
430/CHNY/2020	2009-10	Dismissed
431/CHNY/2020	2010-11	Partly Allowed
432/CHNY/2020	2011-12	Partly Allowed
433/CHNY/2020	2012-13	Partly Allowed
434/CHNY/2020	2013-14	Partly Allowed
435/CHNY/2020	2008-09	Dismissed
436/CHNY/2020	2009-10	Dismissed
437/CHNY/2020	2010-11	Dismissed
438/CHNY/2020	2011-12	Dismissed
439/CHNY/2020	2012-13	Dismissed
440/CHNY/2020	2013-14	Dismissed
441/CHNY/2020	2008-09	Allowed
442/CHNY/2020	2009-10	Allowed
443/CHNY/2020	2010-11	Allowed
444/CHNY/2020	2011-12	Allowed
445/CHNY/2020	2012-13	Allowed
446/CHNY/2020	2013-14	Allowed

Order pronounced in the court on 20th May, 2022 at Chennai.

Sd/-

(डॉ एम एल मीना)

(Dr. M.L. MEENA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 20th May, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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