आयकर अपीलीय अधिकरण,'बी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA Nos.	Assessment year	Appellant	Respondent
1582/CHNY/2010	2003-04	**The ACIT,** Central Circle -1, Coimbatore	**Shri M. Palanisamy,** 107-A, Sengupta Road, Ramnagar, Coimbatore - 641 009. **PAN: AFRPP 5948J**
1583/CHNY/2010	2004-05		
1185/CHNY/2011	2005-06	**The DCIT,** Central Circle -1, Coimbatore	
1186/CHNY/2011	2006-07		
1187/CHNY/2011	2007-08		
141/CHNY/2013	2008-09		
142/CHNY/2013	2009-10		
1044/CHNY/2011	2006-07	**Shri M. Palanisamy,** 107-A, Sengupta Road, Ramnagar, Coimbatore - 641 009. **PAN: AFRPP 5948J**	**The DCIT,** Central Circle -1, Coimbatore
1449/CHNY/2010	2004-05	**The ACIT,** Central Circle -1, Coimbatore	**Shri A. Senthilkumar,** 107-A, Sengupta Road, Ramnagar, Coimbatore - 641 009. **PAN: ATRPS 9670A**
1450/CHNY/2010	2005-06		
1451/CHNY/2010	2006-07		
1452/CHNY/2010	2007-08		
139/CHNY/2013	2008-09	**The DCIT**, Central Circle -1, Coimbatore	
140/CHNY/2013	2009-10		
1010/CHNY/2015	2010-11	**The DCIT**, Corporate Circle -2, Coimbatore	
2707/CHNY/2016	2011-12		
2570/CHNY/2016	2011-12	**Shri A. Senthilkumar,** 107-A, Sengupta Road, Ramnagar, Coimbatore - 641 009. **PAN: ATRPS 9670A**	**The DCIT**, Central Circle -1, Coimbatore

ITA Nos.	Assessment year	Appellant	Respondent
709/CHNY/2014	2010-11	**The DCIT**, Central Circle -1, Coimbatore	**M/s. Senthil Enterprises,** No.107-A, Senguptha Street, Ram Nagar, Coimbatore - 641 009. **PAN: AALFS 7257A**
150/CHNY/2013	2005-06	**The DCIT**, Central Circle -1, Coimbatore	**Shri T.M. Muthukumar,** 107-A, Sengupta Road, Ramnagar, Coimbatore - 641 009. **PAN: ADWPM 2497E**
1715/CHNY/2012	2005-06	**The DCIT**, Central Circle -1, Coimbatore	**Senthil Building Material Manufacturing Co. (P) Ltd.,** 107-A, Sengupta Road, Ramnagar, Coimbatore - 641 009. **PAN: AAECS 3244B**
1716/CHNY/2012	2006-07		
462/CHNY/2012	2002-03	**The DCIT**, Central Circle -1, Coimbatore	**Senthil Papain & Food Products Pvt. Ltd.,** 107-A, Sengupta Road, Ramnagar, Coimbatore - 641 009. **PAN: AACCS 7187B**
464/CHNY/2012	2003-04		
465/CHNY/2012	2004-05		
466/CHNY/2012	2005-06		
467/CHNY/2012	2006-07		
468/CHNY/2012	2007-08		
771/CHNY/2012	2003-04	**Shri O. Arumugasamy,** 107-A, Sengupta Road, Ramnagar, Coimbatore - 641 009. **PAN: ACYPA 3156B**	**The DCIT,** Central Circle -1, Coimbatore
772/CHNY/2012	2006-07		

ITA Nos.	Assessment year	Appellant	Respondent
853/CHNY/2012	2000-01	**The DCIT,** Central Circle -1, Coimbatore	**Shri O. Arumugasamy,** 107-A, Sengupta Road, Ramnagar, Coimbatore - 641 009. **PAN: ACYPA 3156B**
854/CHNY/2012	2001-02		
855/CHNY/2012	2002-03		
856/CHNY/2012	2003-04		
857/CHNY/2012	2004-05		
858/CHNY/2012	2005-06		
859/CHNY/2012	2006-07		
860/CHNY/2012	2007-08		
143/CHNY/2013	2008-09		
144/CHNY/2013	2009-10		
1398/CHNY/2015	2008-09	**The DCIT**, Corporate Circle -2, Coimbatore	
1011/CHNY/2015	2010-11		
1833/CHNY/2015	2011-12		
777/CHNY/2017	2012-13		
763/CHNY/2017	2012-13	**Shri O. Arumugasamy,** 107-A, Sengupta Road, Ramnagar, Coimbatore - 641 009. **PAN: ACYPA 3156B**	**The DCIT**, Corporate Circle -2, Coimbatore

निर्धारितीकी ओर से/Assessees by : Shri S. Sridhar, Advocate
Shri N. Arjunaraj, CA

राजस्वकीओरसे /Revenue by : Shri Karthick Ranganathan,
Sr. Standing Counsel

सुनवाई की तारीख/Date of Hearing : 14.09.2022

घोषणा की तारीख/Date of Pronouncement : 28.09.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These 44 appeals (39 appeals by the Revenue and 5 appeals by the assessee) are arising out of different orders of Commissioner

of Income-Tax (Appeals)-II / Commissioner of Income-Tax (Appeals)-I, Coimbatore. The assessments were framed by the ACIT / DCIT, Central Circle-I / DCIT, Corporate Circle 2, Coimbatore.

2. These 44 appeals are grouped together for the reason that these are arising out of the common search conducted on Shri O.Arumugasamy group of cases u/s.132 of the Act on 10.05.2006 and the assessments were framed in consequence of this search u/s.153A / 153C of the Act. Hence, all these appeals were consolidated, heard together and disposed off by this common order.

3. At the outset it is noticed that the appeals filed by Revenue in ITA Nos. 1449 to 1452/Chny/2010, 141 to 144, 150/Chny/2013, 853 to 860/CHNY/2012, 1833/Chny/2015 & 777/Chny/2017 (19 appeals) is time barred by limitation by 3 days to 13 days. The appeal filed by the assessee in ITA No.763/Chny/2017 is time barred by limitation by 3 days. Both the ld.Sr. Standing Counsel for the Revenue and the ld.Counsel for the assessee have not objected for condonation of delay, as the delay is of short period. The

Revenue and assessee in the relevant appeals have filed condonation petitions. Having heard both the parties, we condone the short delay in filing of these appeals by the Revenue and assessee and admit the appeals for adjudication.

4. Out of these 44 appeals mentioned in cause title, first we will deal with the following 12 appeals i.e. 11 appeals by Revenue & 1 appeal by assessee (at Sl.No.7):-

Sl.No.	ITA Nos.	Assessment year	Assessee
1	1582/CHNY/2010	2003-04	Shri M. Palanisamy
2	1583/CHNY/2010	2004-05	
3	1449/CHNY/2010	2004-05	
4	462/CHNY/2012	2002-03	Senthil Papain & Food Products Pvt. Ltd.,
5	464/CHNY/2012	2003-04	
6	465/CHNY/2012	2004-05	
7	771/CHNY/2012	2003-04	Shri O. Arumugasamy
8	853/CHNY/2012	2000-01	
9	854/CHNY/2012	2001-02	
10	855/CHNY/2012	2002-03	
11	856/CHNY/2012	2003-04	
12	857/CHNY/2012	2004-05	

5. The first common issue raised by assessees in these 12 appeals (11 appeals by Revenue and 1 appeal by assessee) is as regards to the orders of CIT(A) in all these appeals, confirming the action of AO in assuming jurisdiction for framing of search assessment in making disputed additions in the absence of any seized / incriminating material despite the fact that assessments

were unabated and there is no pending assessment or time limit available for issuance of notice u/s.143(2) of the Act, by a petition under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963.

6. The ld.counsel for the assessee in his petition dated 15.07.2019 stated that the above jurisdictional issue was raised by assessees in all these appeals before CIT(A) and the CIT(A) in all these years has recorded the ground in the respective appellate orders passed by him. For this, the ld.counsel for the assessee stated that the bench can take up the lead case as the case of ACIT vs. Shri M.Palanisamy in **ITA No.1582/CHNY/2010** for the assessment year 2003-04. The ld.counsel for the assessee took us through the grounds raised by assessee before CIT(A) i.e., Ground nos.1 a) & b), which read as under:-

> 1 a) The Learned Deputy Commissioner of Income Tax erred in passing the order U/s 153C read with Section 153A and Section 143(3) of the Income Tax 1961 in view of the Second proviso to Section 153A. As per the second proviso to Section 153A only the assessments/reassessments pending on the date of search U/s.132 within the period of six assessment years shall abate.
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> b) The assessment order issued U/s 153C read with Section 153A and 143(3) is null and void in view of the decision of the Honourable Income Tax Appellate Tribunal, Ahmedabad 'B' Bench in ACIT vs. Rupesh Bholidas Patel – ITA Nos.2390 to 2391/AHD/2007 dt. 25-01-2008, reported in 115 ITD/Breaking news-page vii item no 18.

6.1 The ld.counsel for the assessee in view of the above grounds stated that the assessee's petition may be admitted in view of the now settled position by Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society, 397 ITR 344 and PCIT vs. Meeta Gutgutia, 96 Taxmann.com 468, wherein it is held that search assessment completed in making the addition in the absence of any seized/incriminating material is bad in law. The ld.counsel for the assessee stated that in all these assessment years, in above appeals, search assessments as completed by the AO are bad in law for the reason that there is no seized material / incriminating material available and the assessments have not abated and there is no time limit available with the AO for issuance of notice u/s.143(2) of the Act and are actually expired and there is no pending assessment proceedings on the date of search, there cannot be valid assumption of jurisdiction to complete the search assessment in view of the above decisions of Hon'ble Supreme Court in the cases of Singad Technical Education Society*, supra* and Meeta Gutgutia, *supra.* The ld.counsel for the assessee drew our attention to the decision of Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd., (2015) 374 ITR 645 (Bom). The ld.counsel for the assessee in view of the

above stated that the petition under Rule 27 be allowed on the ground raised on assumption of jurisdiction on the below mentioned question be admitted and adjudicated upon. The relevant ground reads as under:-

> "Whether search assessment can be made in making disputed additions in the absence of any seized / incriminating material found during the course of search where there is no pending assessment proceedings on the date of search and the time limit for issuance of notice u/s.143(2) of the Act has expired and in such circumstances can the AO assume jurisdiction u/s.153A / 153C of the Act, as the case may be for framing a valid assessment or not?"

7. When this petition along with the above question was referred to ld. Senior Standing Counsel, Shri Karthik Ranganathan, he objected to the admissibility of application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 and argued that present petition filed by the assessee invoking Rule 27 of the Tribunal rules are not maintainable first for the reason that the respondent is not entitled to support the orders appealed against (which are 26 appeals) and raise the defence against the appeals filed by the Department on any of the grounds which have been decided against him but cannot invoke the said rule to claim any fresh relief which was denied by CIT(A) and which is not the part of the grounds so raised. The ld. DR argued that even otherwise once

search is conducted on the assessee there is no requirement of any search / seized / incriminating material for framing of assessment u/s.153A / 153C of the Act as the provisions of section 153A clearly gives power to issue notice for six assessment years to assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years. According to ld.Senior Standing Counsel once the search is conducted on the assessee u/s.132 of the Act, books of accounts or other documents or any asset or requisition u/s.132A of the Act after 31.05.2003, the AO is bound to issue notice u/s.153A to such person requiring him to furnish, within specified period, a notice calling for return of income in respect of each of assessment years falling within six assessment years. He stated that law clearly permits the AO to initiate assessment proceedings. Hence, according to him, the AO has rightly assumed jurisdiction u/s.153A of the Act and now the assessee cannot raise this issue.

8. We have heard rival contentions and gone through facts and circumstances of the case. We have considered the objection of the

ld. Senior Standing Counsel and gone through the order of CIT(A). We noted that the assessee has categorically raised the ground in regard to assumption of jurisdiction by the AO, where assessment is unabated and there is no search or incriminating material in regard to a particular assessee for the particular assessment year the assessee has filed a valid return of income u/s 139(1) or 139(4) of the Act and there is no time limit available for the AO for issuing notice u/s.143(2) of the Act, the assessee can raise a valid ground. We also noted that this particular issue was raised by assessee before CIT(A) and CIT(A) has adjudicated this issue against assessee vide para 7 as under:-

> 7. Relevant portion of Sec. 153B reads as follows
> "153B. Time limit for completion of assessment under section 153A.
> .. (2) The authorisation referred to in clause (a) and clause (b)of sub-section (1) shall be deemed to have been executed, -
> (a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant or authorisation has been issued;"
> per annexure
>
> 7.1. In this case, books of accounts were seized as per annexure MP/B&D/S/Annexure I of panchnama dated 10.5.2006. Assessee has to file the return for 6 Assessment Years, immediately preceding the asst. year relevant to the previous year in which search was conducted. This is notwithstanding anything contained in S. 139, 147, 148, 149, 151 & 153.
>
> 7.2 Assessee filed return of income in response to notice u/s. 153A of the Act on 27.04.2007. Period of 21 months u/s. 153B of the Act should be reckoned from the end of the financial year in which the last of

authorization was executed i.e. 31.3.2007. Hence, Assessing officer's action of completing assessment on 31.12.2008 is, in my view, in order.

7.3. In the following cases, it has been held that authorities could not be faulted for following a less drastic procedure.
"a) VLS Finance Ltd. Vs. CIT (Del) 289 ITR 286
b) Krishna Verma Vs. ACIT (1TAT, SB-Del) 113 ITD 655
Search during 29.6.98 to 5.8.98Last panchanama drawn on 5.8.98 ie within 60 days of initiation of search- Limitation of two year period would come to an end on 30.8.2000 – No ulterior motives could be attributed to the authorities in failing to seize the books of accounts and instead passing a restraint order – The authorities went through the books and seized only those documents that were necessary, rather than seizing all the books and documents".

Hence, assessee's claim that assessment was barred by limitation is not correct.

7.4 Most of the case laws quoted by assessee related to search procedure prior to 1.6.2003. As per the extant procedure Assessing Officer is competent to assess or reassess the total income in respect of each assessment year falling with such six assessment years as per proviso to Sec. 153A of the Act. As per sub-section (2) of Sec.153A, even assessment or reassessment annulled in appeal or any other legal proceeding, shall stand revived with effect from the date receipt of the order of such annulment by the Commissioner. That being the case, Assessing Officer is competent to make assessment or reassessment of total income in respect of each assessment year falling within such six assessment years. Hence, assessee's ground of appeal on the account also fails.

Hence, we admit this ground raised by assessee under Rule 27 of the Tribunal Rules and adjudicate upon.

9. Brief facts of the case are that a search u/s.132 of the Act was conducted on the business and residential premises of the assessee

on 15.03.2006 resulting in the seizure of books of accounts and other documents as per annexure MP/B&D/S annexure-1 of panchanama dated 10.05.2006. In consequence to this search, a notice u/s.153A of the Act was issued to the assessee. The assessee is engaged in the business of sand quarrying and lorry operations. The assessee is declaring income from business and agricultural income. For the earlier years, the assessee was quarrying sand on the basis of lease rights granted by Government of TamilNadu in his own name or on the basis of lease obtained in the name of other family members, relatives and friends. The AO accordingly framed assessment u/s.153A r.w.s. 143(3) of the Act vide order dated 31.12.2018. One more fact that the assessee file original return of income u/s.139(1) of the Act on 28.11.2003 admitting business income of Rs.9,63,760/- and agriculture income of Rs.12,45,950/-. The AO while completing assessment u/s.153A r.w.s. 143(3) of the Act made following additions:-

Add: Excess loss adjusted (AY 02-03)	787303	
Less: Loss assessed	381480	Rs.405823/-
		Rs.1369553/-
Add: Additions as discussed	Rs.68256542	
	Rs. 1009700	Rs.69256542
		Rs.70635795/-

Aggrieved, assessee preferred appeal before CIT(A).

9.1 Before CIT(A), assessee raised the jurisdictional issue as noted above in para 6. The CIT(A) adjudicated this issue against assessee, the relevant para of CIT(A) adjudicating this issue is reproduced in para 8 of this order. Now, Revenue came in appeal before Tribunal against deletion of additions by CIT(A) but assessee filed petition under Rule 27 of the Tribunal rules and the same was admitted and to be adjudicated upon.

10. The ld.counsel for the assessee, Shri S. Sridhar stated that there is no incriminating material / seized material found during the course of search on which assessment was framed by the AO. The ld.counsel further stated that the assessee filed original return of income on 28.11.2003 and no action whatsoever was pending as on the date of search on 15.03.2006 in this case. According to ld.counsel, in view of the second and third proviso to section 153A of the Act, no notice u/s.153A of the Act can be issued where the assessment is unabated and no action is pending as on the date of search in the absence of incriminating material found during the course of search. The ld.counsel referred to second and third proviso to section 153A of the Act. The ld.counsel for the assessee stated that now the Revenue has to prove that there is any search /

seized / incriminating material found during the course of search in the present case for framing of this assessment. The ld.counsel explained from the assessment order that the additions made are based on excess loss adjusted or the cash deposits made in bank account which is accounted for in the books of accounts of the assessee, which were produced before the AO during the course of assessment proceedings u/s.153A r.w.s. 143(3) of the Act or seized by department during the course of search and these cannot be called as incriminating material because these books of accounts are maintained in regular course of business and hence, these are documents declared before the Income-tax authorities. For this, the ld.counsel for the assessee first of all relied on the decision of Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd., *supra* and also on the decision of Hon'ble Supreme Court in the case of Singad Technical Education Society*, supra* and Meeta Gutgutia, *supra.*

11. On the other hand, the ld. Senior Standing Counsel made his submissions that once search u/s.132 of the Act is conducted or requisition is made u/s.132A of the Act, the assessment or reassessment stands open whether the same is abated or not.

Once the above position is clear on initiation of proceedings u/s.153A / 153C of the Act, the assessments / reassessments finalized for assessment years covered u/s.153A / 153C of the Act stand abated and AO has every right to proceed with the assessment even though there is no incriminating material available with the assessee found seized during the course of search. Hence, he argued that the legal position is very clear in view of the provisions of section 153A of the Act and hence, this argument of assessee cannot be accepted.

12. We have heard rival contentions and gone through facts and circumstances of the case. The facts of the case are that no action u/s.143(2) of the Act is pending despite assessee filing return of income and no assessment proceedings pending whatsoever in the present appeal. In such circumstances, we noted from the present appeal i.e., ITA No.1582/CHNY/2019 that from the very assessment order, a search was conducted u/s.132 of the Act and the same resulted in seizure of books of accounts and other documents as per annexure MP/B&D/S annexure-1 of panchanama dated 10.05.2006. But from the assessment order, it is clear that the AO has entirely based his findings only on the regular books of accounts and the

cash deposits made in the bank account of the assessee recorded in the books of accounts. The relevant bank account considered by the assessee reads as under:-

Name of the Bank	Account No.	Address of the Bank
Canara Bank	LECA 000005150	Trichy Road, Coimbatore
Indian Overseas Bank	CA-2553	Park Square, Coimbatore
Indian Bank	706750633	Main Branch, VH Road, Coimbatore
State Bank of India		Tirupur
State Bank of Travancore	57016584779	Ramanathapuram Branch, Coimbatore
Global Trust Bank	CA-1400101720	Coimbatore Branch, Tristar Towers, Avinashi Road, Coimbatore
IndusInd Bank	0021-435932-050	Coimbatore Branch
HSBC Bank	115-013310-006	Srivari Gokul Tower 108, Race Course, Coimbatore
Indian Bank CSX Branch	CA-2296	Trichy Road, Coimbatore

The AO has categorically given a finding that these bank accounts are recorded in the books of accounts and the details of transactions were analyzed and the relevant observation reads as under:-

> "The above Bank accounts as contained in the cash book and copy of the Bank account were scrutinized. The details of cash transactions as under:"

The AO has noted the cash withdrawals and cash deposits in the bank account are unexplained but these are part of the assessee's regular books of accounts and it cannot be said that the same are incriminating material found during the course of search. In such circumstances, we noted that this issue is adjudicated by Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd., *supra,* wherein considering the judgment of the Special Bench of the Mumbai Tribunal in the case of All Cargo Global Logistics 137 ITD 287(SB) (Mum), considered this issue that, whether there is scope of assessment u/s. 153A of the Act in respect to completed assessment which is limited only to undisclosed income and undisclosed assets found during the course of search or not? Hon'ble High Court held that on a plain reading of section 153 of the Act it becomes clear that on initiation of the proceedings u/s. 153A of the Act, it is only the assessment/ reassessment proceedings that are pending on the date of conducting search u/s. 132 of the Act stand abated and not the assessments/reassessments already final for those assessment years covered u/s. 153A of the Act. Hon'ble High Court also discussed the CBDT Circular No. 8 of 2003 dated 18.09.2003 reported in 263 ITR (st.) 61 at page 107 wherein CBDT has clarified

that on initiation of proceedings u/s. 153A of the Act the proceedings pending in appeal, revision or rectification proceedings against final assessment shall not abate. It is only because the final assessments do not abate the appeal, revision or rectification pending against final assessments would not abate. Therefore, Hon'ble High Court rejected the arguments of the Revenue that on initiation of proceedings u/s. 153A of the Act, the reassessment final for assessment years covered u/s. 153A of the Act stands abated. Only the pending assessments get revived u/s. 153A of the Act. Hon'ble High Court further held that once assessment has attained finality, then the AO while passing independent assessment order u/s. 153A/143(3) of the Act could not disturb the assessment order which has attained finality unless the material gathered in the course of search u/s. 132/153A of the Act established that the finality attained in the assessment were contrary to the facts unearthed during the course of search. The relevant portion of the judgment reads as under: -

> "31. We, therefore, hold that the Special Bench's understanding of the legal provision is not perverse nor does it suffer from any error of law apparent on the face of the record. The Special Bench in that regard held as under:-
>
> "The provision under section 153A is applicable where a search or requisition is initiated after 31.5.2003. In such a case the AO is obliged to issue notice u/s 153A in respect of 6 preceding years, preceding the year in

which search etc. has been initiated. Thereafter he has to assess or reassess the total income of these six years. It is obligatory on the part of the AO to assess or reassess total income of the six years as provided in section 153A(1)(b) and reiterated in the 1st proviso to this section. The second proviso states that the assessment or reassessment pending on the date of initiation of the search or requisition shall abate. We find that there is no divergence of views in so far as the provision contained in section 153A till the 1st proviso. The divergence starts from the second proviso which states that pending assessment or reassessment on the date of initiation of search shall abate. This means that an assessment or reassessment pending on the date of initiation of search shall cease to exist and no further action shall be taken thereon. The assessment shall now be made u/s 153A. The case of Ld. Counsel for the assessee is that necessary corollary to this provision is that completed assessment shall not abate. These assessments become final except in so far and to the extent as undisclosed income is found in the course of search. On the other hand, it has been argued by the Ld. Standing Counsel that abatement of pending assessment is only for the purpose of avoiding two assessments for the same year, one being regular assessment and the other being assessment u/s 153A. In other words these two assessments coalesce into one assessment. The second proviso does not contain any word or words to the effect that no reassessment shall be made in respect of a completed assessment. The language is clear in this behalf and therefore literal interpretation should be followed. Such interpretation does not produce manifestly absurd or unjust results as section 153A (i)(b) and the first proviso clearly provide for assessment or reassessment of all six years. It may cause hardship to some assesses where one or more of such assessments has or have been completed before the date of initiation of search. This is hardly of any relevance in view of clear and unambiguous words used by the legislature. This interpretation does not cause any absurd etc. results. There is no casus omissus and supplying any would be against the legislative intent and against the very rule in this behalf that it should be supplied for the purpose of achieving legislative intent. The submissions of the Ld. Counsels are manifold, the foremost being that the provision u/s 153A should be read in conjunction with the provision contained in section 132(1), the reason being that the latter deals with search and seizure and the former deals with assessment in case of search etc, thus, the two are inextricably linked with each other.

Before proceeding further, we may now examine the provision contained in sub-section (2) of section 153, which has been dealt with by Ld. Counsel. It provides that if any assessment made under subsection (1) is annulled in appeal etc., then the abated assessment revives. However, if such annulment is further nullified, the assessment again abates. The case of the Ld. Counsel is that this provision further shows that completed assessments stand on a different footing from the pending assessments because appeals etc. proceedings continue to remain in force in case of completed assessments and their fate depends upon subsequent orders in appeal. On consideration of the provision and the submissions, we find that this provision also makes it clear that the abatement of pending proceedings is not of such permanent nature that they cease to exist for all times to come. The interpretation of the Ld. Counsel, though not specifically stated, would be that on annulment of the assessment made u/s 153(1), the AO gets the jurisdiction to assess the total income which was vested in him earlier independent of the search and which came to an end due to initiation of the search.

The provision contained in section 132 (1) empowers the officer to issue a warrant of search of the premises of a person where any one or more of conditions mentioned therein is or are satisfied, i.e. - a) summons or notice has been issued to produce books of account or other documents but such books of account or documents have not been produced, b) summons or notice has been or might be issued, he will not produce the books of account or other documents mentioned therein, or c) he is in possession of any money or bullion etc. which represents wholly or partly the income or property which has not been and which would not be disclosed for the purpose of assessment, called as undisclosed income or property. We find that the provision in section 132 (1) does not use the word "incriminating document". Clauses (a) and (b) of section 132(1) employ the words "books of account or other documents". For harmonious interpretation of this provision with provision contained in section 153A, all the three conditions on satisfaction of which a warrant of search can be issued will have to be taken into account.

Having held so, an assessment or reassessment u/s 153A arises only when a search has been initiated and conducted. Therefore, such an assessment has a vital link with the initiation and conduct of the search. We have

mentioned that a search can be authorised on satisfaction of one of the three conditions enumerated earlier. Therefore, while interpreting the provision contained in section 153A, all these conditions will have to be taken into account. With this, we proceed to literally interpret to provision in 153A as it exists and read it alongside the provision contained in section 132(1).

The provision comes into operation if a search or requisition is initiated after 31.5.2003. On satisfaction of this condition, the AO is under obligation to issue notice to the person requiring him to furnish the return of income of six years immediately preceding the year of search. The word used is "shall" and, thus, there is no option but to issue such a notice. Thereafter he has to assess or reassess total income of these six years. In this respect also, the word used is "shall" and, therefore, the *AO* has no option but to assess or reassess the total income of these six years. The pending proceedings shall abate. This means that out of six years, if any assessment or reassessment is pending on the date of initiation of the search, it shall abate. In other words pending proceedings will not be proceeded with thereafter. The assessment has now to be made u/s 153A (1)(b) and the first proviso. It also means that only one assessment will be made under the aforesaid provisions as the two proceedings i.e. assessment or reassessment proceedings and proceedings under this provision merge into one. If assessment made under sub-section (1) is annulled in appeal or other legal proceedings, then the abated assessment or reassessment shall revive. This means that the assessment or reassessment, which had abated, shall be made, for which extension of time has been provided under section 153B.

The question now is - what is the scope of assessment or reassessment of total income u/s 153A (1) (b) and the first proviso? We are of the view that for answering this question, guidance will have to be sought from section 132(1). If any books of account or other documents relevant to the assessment had not been produced in the course of original assessment and found in the course of search in our humble opinion such books of account or other documents have to be taken into account while making assessment or reassessment of total income under the aforesaid provision. Similar position will obtain in a case where undisclosed income or undisclosed property has been found as a consequence of search. In other words, harmonious interpretation will produce the following results:

a) In so far as pending assessments are concerned, the jurisdiction to make original assessment and assessment u/s 153A merge into one and only one assessment for each assessment year shall be made separately on the basis of the findings of the search and any other material existing or brought on the record of the AO,

(b) in respect of non-abated assessments, the assessment will be made on the basis of books of account or other documents not produced in the course of original assessment but found in the course of search, and undisclosed income or undisclosed property discovered in the course of search."

12.1 We have examined the case records and noticed that notice u/s 143(2) of the Act became time barred on 30.11.2004 at the time when the search took place much later on 15.03.2006. Therefore, it follows that as on the date of search, there was an assessment completed or processing of return of income of the assessee under section 143(1) of the Act. Subsequently, the A.O. initiated proceedings under s. 153A and in the assessment completed under s. 143(3) r.w.s 153A, the A.O. has brought to tax sumson account of cash deposits made in the bank account declared in the regular books of account without any incriminating material found during the course of search. Once this is the position the issue is clearly covered in favour of assessee and against the Revenue by the decision of Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd.

(Supra). But in the present appeals before us it is not clear what is the seized document found during the course of search from the business and residential premises of Shri O. Arumugasamy, which is seized and annexured as annexure MP/B&D/S annexure-1 of panchanama dated 10.05.2006. When this was questioned, the ld.counsel for the assessee as well as the ld.Senior Standing Counsel fairly conceded that for verification for this, whether any seized material relating to these assessment years which pertains to these appeals is available with the Department or not, matter can be remitted back to the file of the AO. In case there is seized material, the AO will make addition based on seized material. Hence, the orders of CIT(A) and that of the AO qua this additional ground is set aside in these appeals and allowed for statistical purposes.

13. Coming to the appeal of assessee Shri O.Arumugasamy in **ITA Nos.771/CHNY/2012** for assessment year 2003-04, the only issue is in regard to the order of CIT(A) confirming the action of AO in making assessment of deemed dividend by invoking the provisions of section 2(22)(e) of the Act amounting to Rs.30,08,190/-. This transaction was reflected in the books of

accounts and the AO while framing assessment has considered this amount from the very books of accounts and not pertaining to any seized / incriminating material found during the course of search. Since, we have already considered the assumption of jurisdiction by the AO in ITA No.856/CHNY/2012 for assessment year 2003-04 in Revenue's appeal and set aside the order of the AO as well as that of the CIT(A) for deciding the issue of assumption of jurisdiction by the AO u/s.153A of the Act, this issue in consequence will also be set aside and the AO will re-decide this issue as per law. For this preposition, both the ld.counsel for the assessee as well as the ld. Senior Standing Counsel agreed. Hence, we restore this issue back to the file of the AO.

14. Out of the above 44 appeals, the first common issue in the following 36 appeals of Revenue is as regards to the order of CIT(A) deleting the addition made by the AO towards unexplained bank deposits:-

Sl.No.	ITA Nos.	Assessment year	Assessee
1	1582/CHNY/2010	2003-04	Shri M. Palanisamy
2	1583/CHNY/2010	2004-05	
3	1185/CHNY/2011	2005-06	
4	1186/CHNY/2011	2006-07	
5	1187/CHNY/2011	2007-08	
6	141/CHNY/2013	2008-09	
7	142/CHNY/2013	2009-10	

8	1449/CHNY/2010	2004-05	Shri A. Senthilkumar
9	1450/CHNY/2010	2005-06	
10	1451/CHNY/2010	2006-07	
11	1452/CHNY/2010	2007-08	
12	139/CHNY/2013	2008-09	
13	140/CHNY/2013	2009-10	
14	1010/CHNY/2015	2010-11	
15	2707/CHNY/2016	2011-12	
16	150/CHNY/2013	2005-06	Shri T.M. Muthukumar
17	709/CHNY/2014	2010-11	M/s. Senthil Enterprises,
18	1715/CHNY/2012	2005-06	Senthil Building Material Manufacturing Co. (P) Ltd.,
19	462/CHNY/2012	2002-03	Senthil Papain & Food Products Pvt. Ltd.,
20	465/CHNY/2012	2004-05	
21	466/CHNY/2012	2005-06	
22	467/CHNY/2012	2006-07	
23	468/CHNY/2012	2007-08	
24	853/CHNY/2012	2000-01	Shri O. Arumugasamy
25	854/CHNY/2012	2001-02	
26	855/CHNY/2012	2002-03	
27	856/CHNY/2012	2003-04	
28	857/CHNY/2012	2004-05	
29	858/CHNY/2012	2005-06	
30	859/CHNY/2012	2006-07	
31	860/CHNY/2012	2007-08	
32	143/CHNY/2013	2008-09	
33	144/CHNY/2013	2009-10	
34	1011/CHNY/2015	2010-11	
35	1833/CHNY/2015	2011-12	
36	777/CHNY/2017	2012-13	

15. The facts and circumstances are exactly identical in all these appeals and are emanating from search conducted on the business and residential premises of group cases of Shri O. Arumugasamy on 15.03.2006. Hence, we will take the lead case in **ITA No.141/CHNY/2013** for assessment year 2008-09 and will decide

the issue which will be applicable for all the cases. Even the assessment orders and the orders of CIT(A) are exactly identically worded except the quantum of cash deposit.

16. In this appeal, the Revenue has raised the ground as regards to the order of CIT(A) deleting the addition made by the AO towards unexplained bank deposits amounting to Rs.19,44,99,200/- for assessment year 2008-09. For this, the Revenue has raised the following grounds:-

> 1.a On the facts and in the circumstances of the case, the learned CIT(A) has erred in deleting the addition made by the A.O. towards unexplained bank deposits suppressed income at Rs. 19,44,99,200/- by relying on CIT(A) Order in assessee's own case and in group cases without noting that the issue has not become final.
> 1.b The learned CIT(A) has failed to note that the disclosed cash balances as per book were not available with the assessee during the physical verification at the time of search/ survey.
> 1.c The learned CIT(A) has failed to note that the source and destination of cash deposits and withdrawals bear no relationship to the disclosed activity of the assessee.
> 1.d The learned CIT(A) has failed to note that the explanation that cash withdrawals from the banks are sources for the deposit of cash is not a genuine reason and as such the assessee has not discharged its burden regarding the source for deposits.
> 1.e The learned CIT(A) has failed to note that it is not the requirement of law that in every case in which additions are made books are to be rejected.
> 1.f The learned CIT(A) has failed to note that the assessee withdrew huge amounts not commensurate with the expenditure and that even when cash was available with the assessee as per books, huge amount of cash was withdrawn and the reason for such withdrawal was not explained.

1g The learned CIT(A) has failed to note that in the above context of burden of proof, the principle of law that in the income-tax proceedings, facts of life, human probabilities and economic realities cannot be ignored, has to be applied which was settled in CIT Vs Durgaprasad More 82 1TR 540 (SC) and Juggilal Kamlapat Vs CIT 73 ITR 702 (SC).

17. Brief facts are that there was a search in the premises of the assessee group of cases on 15.03.2006 and consequently the assessments were framed for other assessment years and this assessment year also. The AO during the course of assessment proceedings noticed from the books of accounts that there is cash deposit made in the bank account and assessee was asked to explain the source of deposit made in the bank account. The assessee replied and claimed the source of the deposit as out of cash balance available in the cash day book. The AO required the assessee to explain the details of expenses for which the withdrawals are made and reason for withdrawals, failing which it was proposed to make addition of cash deposits of Rs.19,44,99,200/-. The assessee explained that withdrawals were only for the purpose of business and not for any other purposes. The AO has not accepted the explanation of the assessee and made addition of unexplained cash deposit by observing in para 3.3 & 3.4 as under:-

"3.3 The submission is found unacceptable. Scrutiny of the cash book shows that the cash has been withdrawn and lying in the cash book unutilized. If there had been a purpose or business expendiency for withdrawing cash from the bank, there is no need to keep the money in hand as it entails loss of interest as well as poses questions of security. A reasonable conclusion that can be reached is that either the assessee has incurred expenditure outside the books or the deposits have been made out of the source not disclosed to the Department. Otherwise it is not possible to account for the strange action of the assessee in withdrawing the money from the bank, keeping for sometime and re-depositing it.

3.4 Taking a overall view of facts and circumstances of this case, Cash deposit of Rs.19,44,99,200/- is brought to tax as unexplained credit u/s.68 of the Income Tax Act, 1961.

Aggrieved assessee preferred appeal before CIT(A).

17.1 Before CIT(A), the assessee has tried to explain the cash deposits by explaining that the same are withdrawal from the bank account and for that assessee filed extract of cash book which is reproduced in the submissions filed by the assessee before CIT(A) and which is being reproduced for the sake of clarity:-

ABSTRACT OF CASH BOOK

(Cash remittances to Bank, withdrawal from Bank, Cash receipts and payments)

S.No.	Particulars	Amount (₹)	Total Amount (₹)
A	Opening Cash Balance as on 01.04.2007		1,43,07,228
	Add:		
1	Cash withdrawn from Bank	19,74,89,500	
2	Income Received in cash	5,22,23,240	
3	Other Amounts received in cash	4,20,948	25,01,33,688
	Less:		
1	Cash remittances in Bank	19,44,99,200	

2	Cash Expenses	3,62,93,030	
3	Transactions other than cash expenses	17,60,55,371	24,83,97,601
B	Closing Cash Balance as on 31.03.2008		1,60,43,316

The assessee relied on the other appellate orders and CIT(A) in all other 25 cases deleted addition by observing in para 6 as under:-

"6 I have gone through the facts of the case and written submissions of the assessee. This issue has already been decided in favour of the assessee in appellants own case and in group cases for the earlier assessment years. The detailed findings made by me in the said order has been given in the appellant's submission and the same is reproduced in para 5 of page 4 and 5 of this order. The final conclusion given in the said order is reproduced as under:

"In assessee's case, search/survey was conducted. No incriminating material was found on the basis of which addition is made. Also assessee filed return of income before due dates based on the books of accounts maintained by it. Assessing Officer did not find any defect in such books of accounts. He did not reject them also. In the circumstances, I am of the view that assessing officer had not brought anything on record to justify his claim that assessee failed to prove genuineness of credits. It is pertinent to note that the Assessing Officer ignored withdrawals from banks as source for cash balance/deposits.. In the circumstances, addition made by the assessing officer is directed to be deleted."

Since the issue has been decided in favour of assessee in earlier years, this ground of appeal is allowed.

Aggrieved, now Revenue is in appeal before the Tribunal.

18. Before us, the ld.Senior Standing Counsel, took us through the assessment order and explained that assessee has nowhere explained the source of cash deposits. Further, he took us to the order of CIT(A) and stated that the assessee simpliciter combined all the transactions and by one chart only stated that the cash withdrawals are amounting to Rs.19,74,89,500/- and the cash remittances in bank are to the tune of Rs.19,44,99,200/-. The assessee has nowhere explained each of the entry of deposit because there are various deposit entries in the cash book from 1st September, 2007 to 31st March, 2008 during the financial year 2007-08 relevant to assessment year 2008-09. The ld.Senior Standing Counsel stated that this explanation cannot be accepted because the assessee failed to explain the source of cash deposit by any cogent explanation or reasoning.

19. On the other hand, the ld.counsel for the assessee, Shri S. Sridhar stated that the assessee has explained the sources of cash deposit by explaining the same are withdrawals from the cash book. But, when a query was put to him that where are the details of cash withdrawals and cash deposits as enumerated in the cash book, ld.counsel for the assessee could not submit any evidence before us

but claimed that the same were produced before CIT(A). On further query, he only requested that matter can be remitted to the file of the AO for fresh adjudication and for verifying the cash withdrawals viz-a-viz cash deposit made in the bank account that means cash withdrawals from the cash book.

20. In reply, ld.DR fairly stated that the matter can be remitted back to the file of the AO with a direction to the assessee to explain the cash deposits made in the bank account whether out of cash withdrawals from the cash book pertaining to business of the assessee or any other source.

21. We have heard rival contentions and gone through facts and circumstances of the case. We noted that admittedly there are cash deposits in the bank account amounting to Rs.19,44,99,200/- and assessee is unable to explain the source of each of the entry, which comes on account of cash deposit in the bank. The AO is accordingly directed to examine the cash book of the assessee pertaining to business from where the assessee claims to have withdrawn the money and correlate the same with the bank deposits. The assessee will file complete details before AO correlating each of the entry as claimed to have withdrawn from

cash book and bank account with that of the cash deposit in the bank account. The assessee can also rely on any other material to explain the cash deposit made in the bank account to explain the source. The AO will examine that source and then will decide whether the explanation is reasonable or not. In term of the above, we set aside the order of CIT(A) and that of the AO and remand the matter back to the file of the AO for fresh adjudication and to allow opportunity to the assessee to explain the cash deposit made in the bank account amounting to Rs.19,44,99,200/-.

22. The facts are exactly identical in all other 35 appeals and the issue is similar i.e., cash deposit made by assessee and added by CIT(A). Exactly on similar circumstances, both the ld.counsel for the assessee and the ld.DR agreed that in those different assessee's cases, there is no difference in facts and hence, all these cases can also be remitted back to the file of the AO. Taking a consistent view, we set aside the orders of AO as well as CIT(A) in these 36 appeals and remand the matter back to the file of the AO for fresh adjudication of the above. This issue in all these 36 appeals of Revenue is allowed for statistical purposes.

ITA Nos.1185 & 1186/CHNY/2011 & 1715 & 1716/CHNY/2012

23. The next common issue in these appeals of revenue in ITA Nos.1185 & 1186/CHNY/2011 of Shri M.Palanisamy and ITA Nos.1715 & 1716/CHNY/2012 of Senthil Building Material Manufacturing Co. (P) Ltd., for the assessment years 2005-06 & 2006-07 is as regards to the orders of the CIT(A) deleting the addition made by AO towards business income estimated as under:

ITA Nos.	Assessment year	Assessee	Business Income Estimated by AO (Rs.)
1185/CHNY/2011	2005-06	Shri M. Palanisamy	12,12,76,433
1186/CHNY/2011	2006-07		23,18,88,150
1715/CHNY/2012	2005-06	Senthil Building Material Manufacturing Co. (P) Ltd.,	25,96,01,310
1716/CHNY/2012	2006-07		7,01,01,206

24. The facts and circumstances are exactly identical in all these four appeals of Revenue and addition made by AO and deleted by CIT(A) is exactly on same facts and circumstances rather the orders are verbatim same except the amounts or some little difference. Hence, we will take the lead case in ITA No.1185/CHNY/2011 for assessment year 2005-06 in the case of Shri M. Palanisamy. The relevant grounds raised in all these appeals are also exactly identical and hence, the grounds raised in this appeal read as under:-

2.a On the facts and in the circumstances of the case, the learned CIT(A) has erred in deleting the addition made by the A.O. towards business income estimated at Rs.12,12,76,433.

2.b The learned CIT(A) has failed to consider the circumstantial evidence which indicate that the Demand Drafts were purchased by the assessee through agents.

2.c The learned CIT(A) has failed to take into account the practice prevailing in the sand trade.

24.1 Brief facts are that the AO during the course of assessment proceedings u/s.153A of the Act considering the seized evidences and discussed the business operation carried out by the assessee i.e., assessee engaged in sand trading i.e., the entire group. The AO has discussed the entire system of obtaining bank draft through draft agents and he has brought out the names of draft agents in his assessment order from pages 6 to 9 and they are basically either employees of assessee or the drivers. During the course of assessment proceedings, the AO after recording cash transactions from pages 27 to 46 made addition of cash deposits as unexplained amounting to Rs.13,53,55,387/- but AO estimated the business income on the basis of purchase of demand drafts by his employees from such demand draft agents, the details recorded in page 66 & 67 of assessment order estimated the total sale consideration at Rs.73,61,76,705/- and noted the sale admitted by Senthil Building

Material Manufacturing Co. (P) Ltd., at Rs.4,38,79,954/-, Shri M. Palanisamy, the assessee at Rs.2,05,40,195/- and Shri T.M. Muthukumar at Rs.11,65,247/- and thereby estimated the total sale consideration at Rs.67,26,88,709/-. The AO applying profit rate i.e., gross profit on the total sale consideration of Rs.67,26,88,709/- as admitted for two years in the case of Senthil Building Material Manufacturing Co. (P) Ltd., at 72 to 74%. The AO applying the profit ratio of 72 to 74% estimated the income in the hands of the assessee at Rs.12,12,76,433/- by estimating as under:-

> Hence the net income realizable in the hands of the 3 persons (out of trading in sand) is worked out as under:
>
> | | |
> |---|---|
> | Total undisclosed income out Of sand trading | Rs.67,26,88,709/- |
> | Less: Income already brought To tax as mentioned above | Rs.28,52,24,066/- |
> | Balance undisclosed income | Rs.38,74,64,643/- |
>
> The above net undisclosed income is apportioned in the some ratio among the 3 persons who have admitted income from sand trading. The details are as under: -
>
> | | | |
> |---|---|---|
> | M/s SBMMC | 67% | Rs.25,96,01,310/ |
> | M. Palanisamy | 31.3% | Rs.12,12,76,433/- |
> | T.M. Muthukumar | 1.7 % | Rs.65,86,898/- |
>
> Such undisclosed income of Rs.12,12,76,433/- arising out of sand trading in the hands of this assessee for this assessment year is brought to tax.

Aggrieved, assessee preferred appeal before CIT(A).

24.2 The CIT(A) deleted the addition by observing in paras 11.3 to 11.6 as under:-

11.3 have perused the submissions made by the appellant and also the Remand report and assessment order of the Assessing Officer. At page 6 to 9, the details collected during the course of search were discussed by the Assessing Officer in the assessment order. The Assessing Officer has not brought on record any evidence to show that the DDs amounting to Rs.44.17 crores were purchased by the appellant group. At page 67 of the assessment order, the Assessing Officer states that the DDs amounting to Rs.44.17 crores have been purchased by people closely connected with the appellant group to whom the cell phones have been given for facilitating instantaneous communication. There is every reason to believe that sand was procured by the appellant group and such purchases resulted in undisclosed profits also. The Assessing Officer arrived that the value of the DDs purchased for this year at Rs.25,86,56,680/-. No independent enquiries seem to have been made by the Assessing Officer to come to a conclusion that all the DDs from the DD agents were purchased by the appellant and his group concern. As seen from facts on record, no enquiries have been made with regard to the amount of sand lifted from the quarry and also the DDs remitted to the PWD for taking the sand for sale on retail basis. As seen from the assessment order at page 20, the Assessing Officer elaborately discussed the various observations made in the Appraisal Report and brought the facts to the notice of the appellant vide his letter dated 25.11.2008 addressed to Shri O.Arumugaswamy. Shri O.Arumugaswamy in his letter dated 13.12.2008 stated

(i) I have not done any business in sand from the day one. Sand business is carried on by M/s Senthil Building Material Manufacturing Company Pvt. Limited, wherein I am the Managing Director. Therefore the question of purchase and sale of sand does not arise in my case.

(ii) The DD selling agents have stated that they have deposited DDs in block with PWD authorities. Whoever purchased sand it recess their names have been marked in the drafts and sale bills. My company M/s Senthil Building Material Manufacturing Company Pvt. Limited has also purchased sand and the company name was marked on the DDs. These facts have been confirmed by one of the DD agents namely G.M.Subramanian in his statement recorded on 18.7.2006. The statement clearly indicates that he has sold DDs to many parties. Therefore it cannot be stated that the DD agents

have sold all DDs to M/s Senthil Building Material Manufacturing Company Pvt. Limited and my relatives and friends. This can be verified from the copy of the sworn statement given by you to him on 26.11.2008 from 30 persons. Shri O.Arumugaswamy has given clarification regarding D.Sivakumar and Shri M.Palanisamy."

11.4 The income generated out of the business is shown in the books of accounts and was assessed to Income-tax and Wealth-tax. After considering the submissions of the assessee 0.Arumugaswamy, the Assessing Officer at page 24 of the order stated "the cash received on a day to day basis represented his own income from sand business carried on regularly and the accounts presented to the department were not reflecting reality of the conduct of the affairs of the assessee's business, but rather they were tailor made to suit the convenience of the assessee group to explain away their acquiring assets, repaying the debts on account of such acquisitions." However, the Assessing Officer all throughout the assessment order has not brought any substantial evidence to prove that the appellant was suppressing the income or showing only a part of his normal profits. As seen from the details, the State Government has fixed Rs.300 per 100 cubic feet of sand which is called one unit. The appellant was into retail business of sand at

1. Bhoodur
2. Padalam
3. Kamatchinagar
4. Karur
5. Trichy
6. Panchamadevi
7. Namakkal
8. Sevilmedu
9. Yanampakam
10. Raman Kovil
11. Thakkolam
12. Sindhalavadi

11.5 The appellant was also a contractor appointed by the State Government for lifting/ excavation of sand in the sand beds ear marked by State Government. For the retail purchase of sand, DDs are to be purchased in the name of PWD. As per the procedure in the river bed, PWD Officer

has to be given the DD and on the receipt of the DD, the PWD Officer will give the receipt indicating the Lorry name and the driver name. After showing the receipt of allotment of units of sand, the contractor having jurisdiction for the river bed will lift the sand and loads into the lorry of the person showing the receipt of PWD. The learned A.R. stated that Shri M.Palanisamy had more than 100 lorries and was a lifting contractor throughout Tamilnadu except Madurai and Pollachi. Shri M.Palanisamy was into retail sale of sand in Coimbatore and Chennai. It was submitted by the A.R. that the DD agents are mostly political functionaries and belong to the local political cadre of the parties and to avoid any confrontation and hassles in business, the appellant group was purchasing some DDs from some of them.

11.6 The statement recorded from Shri K.Chandrasekar and K.Sivanandam have not established any connection to the suppressed sale of sand except, they were selling DDs o all the lorry owners for procuring sand from river beds. The appellant was lifting contractor on behalf of the Government of Tamilandu. All the amounts through lifting charges were received from the Government after deduction of TDS. The sale of sand effected by the appellant were out of purchases through DDs presented at the Government sites. The addition was not made on the basis of any material gathered during the course of search & seizure operations. There were no independent enquiries conducted by the Assessing Officer to establish that the DD agents have sold all their DDs only to the appellant and his group concerns. The Assessing Officer did not observe any defect or irregularity in the books of account of the appellant nor were they rejected to estimate the business income. It is also a fact that the Assessing Officer could not bring on record any assets which were outside the books of accounts. The application of the estimated income could not linked to any undisclosed assets. The appellant was not given any opportunity of being heard with regard to the issue of estimation of business income. The mere assumption and estimation of business income without any valid proof is against the principles of natural justice and hence the Assessing Officer is directed to delete the addition of Rs.12,12, 76,433/-. This ground of appeal is allowed.

Aggrieved, now Revenue is in appeal before the Tribunal.

25. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the CIT(A) has not gone into the details of seized material in regard to demand drafts purchased by assessee through demand draft agents and his employees and just deleted the addition on the basis that the amounts received by assessee from Government on sand mining after deduction of TDS and this is within the disclosure in the books of accounts and the estimation made by AO is without any defect or irregularities in the books of accounts of the assessee. We noted that assessee before us could not establish that the assessee's books of accounts reflects these demand drafts or business transaction. On this, when a query was raised, the ld.counsel for the assessee fairly agreed that on merits, the matter can go back to the file of the AO for considering the seized material and correlating the same with that of the books of accounts seized by Department. According to ld.counsel, the entire evidences are available with the Department and he is ready to correlate these with the books of accounts and can explain with the AO. On this, the ld. Senior Standing Counsel has not raised any serious objections. We, in view of the above, direct the AO to re-decide the issue after considering the seized material viz-a-viz books of accounts and if

any estimation is to be carried out that should be based on some seized material and that also reasonable. In term of the above, we set aside the orders of lower authorities i.e., the AO and that of the CIT(A) and remand this matter in all these four appeals back to the file of the AO. This issue of Revenue is allowed for statistical purposes.

ITA Nos.462, 464, 465, 466, 467 & 468/CHNY/2012

26. The next issue in these six appeals of Revenue in ITA Nos.462, 464, 465, 466, 467 & 468/CHNY/2022 for assessment years 2002-03 to 2007-08 in the case of Senthil Papain & Food Products Pvt. Ltd., is as regards to the order of CIT(A) deleting the disallowance made by AO in regard to expenditure incurred on purchase made from related parties by invoking the provisions of section 40A(2) of the Act. For this, Revenue has raised identical grounds in all the three appeals, which are argumentative, exhaustive, and factual, hence need not be reproduced. The facts and circumstances are exactly identical except the quantum and grounds raised are also identical in all the three appeals. Hence, we will take the facts from assessment year 2005-06 in ITA No.466/CHNY/2012 and will decide the issue.

27. Brief facts are that the AO noticed that the assessee has incurred expenditure on purchase of raw material from related parties and according to AO, the purchase made or expenditure incurred is excessive or unreasonable and hence, he noted that the expenditure claimed under this head to the tune of Rs.2,49,70,828 and thereby he disallowed a sum of Rs.1,67,75,372/-, which is excessive and unreasonable, as listed in the table below:-

Interested Farmers Name	Raw material expenditure claimed to have been paid (in Rs.) (A)	Actual expenses incurred by the interested farmers towards agricultural operations as per their books (in Rs.) (B)	Estimated Agriculture Income in the hands of the interested farmers in their respective assessment orders (in Rs.) (C)	Excessive or unreasonable expenditure (in Rs.) (A-(B+C))
Shri O Arumugasamy	4799996	1473900	712500	2613596
Shri A Senthilkumar	3183332	697350	385000	2100982
Smt. A. Kavitha	2316664	959240	748150	609274
Shri T.M. Muthukumar	5633335	943390	135000	4554945
Shri V. Deenadayalan	4799998	537200	320000	3942798
Shri M. Palanisamy	4287502	690600	643125	2953777
			Total	16775372

Aggrieved, assessee preferred appeal before CIT(A).

27.1 The CIT(A) noted that the AO has not carried out any investigation or gathered material so as to warrant disallowance u/s.40A(2) of the Act or held that the expenses incurred by the assessee for making payment to related parties is excessive or unreasonable. He noted that the AO has not disputed that the

payments have been made by the assessee by cheque to the interested parties or related parties but there is no specific finding that the payments are unreasonable or excessive, which is mandate of section 40A(2) of the Act. The CIT(A) following the Tribunal decision in the case of Shri T.M. Muthukumar i.e., one of the interested party from whom the assessee has purchased raw material and claimed expenditure was deleted by the Tribunal and the CIT(A) noted this fact in para 16 (d) as under:-

> 16……
> d) Thus from the above example, it is clear that there could be no disallowance if the agricultural income claimed by the assessee is taken as 'C'. The agricultural income claimed by the interested parties was fully allowed by the Hon'ble Tribunal, which is the last fact finding authority and the relevant potion of the order of the ITAT in the case of Shri. T.M. Muthukumar, one of the interested parties in ITA Nos.1018 to 1024/Mds/2009dated 19th march 2010 wherein the extract of the order of ITAT in the case of Deenadayalan, another interested party in ITA No.s1025 to 10287/Mds/2009 dated 18.12.2009 iis relied upon is reproduced below
>
> *"Neither the yield shown by assessee nor the expenses incurred by it against its papaya agricultural activity could be termed as excessive or suppressed in the light of this certificate. Neither A.O nor CIT(Aoppeals) has picked any holes in such certificate which was issued by a third paty. When compared with the project report taken as the basis by A.O., no doubt, the certificate issued by the Expert in the field is having more credibility. Ld.CIT(Appeals) went by the project report of M/s.National Horticulture Board wherein the irrigation cost was estimated to Rs.25,000/- per acre as against which the assessee was paying only Rs.2000/- to Rs.3000/- vide his agreements with the land owners. But, nevertheless, as already mentioned by us, lease*

deeds had not been disbelieved and this being the case, without considering the geographical practicalities, no estimate could have been made on the irrigation cost. In our view, nothing has been brought on record by the lower authorities either to disbelieve the receipts on sale of usufruct from M/s.SPI nor the claim of expenditure made by the assessee in its agricultural operations.

15 In the result, while we allow grounds 5 to 7 for the assessment year 2003-04..."

6. Following the above decision for all these years, we dismiss the grounds taken by the Revenue, whereas the grounds taken by the assessee with regard to claim of agricultural income is allowed."

and finally deleted the disallowance by observing by para 17 as under:-

"17. In view of the fact that the disallowance of agricultural income has been fully allowed in the hands of directors by the Hon'ble ITAT, if the agricultural income as claimed by the assessee is substituted in the place of item 'C' in the computation of disallowance u/s.40A(2) in the assessment order while computing A-(B+C), disallowance u/s.40A(2) will not stand the test of appeal. Therefore the addition u/s.40A(2) is fully allowed in the hands of the assessee company. Accordingly, this ground is allowed."

28 We have heard rival contentions and gone through facts and circumstances of the case. We noted that even now before us, the ld. Senior Standing Counsel could not cite any instance that how the payments made to related parties on account of procurement of raw material by assessee is excessive or unreasonable. In the absence of the same, we have no option but to uphold the order of CIT(A). Hence, this issue of Revenue's appeal is dismissed.

28.1 As regards to other five years i.e., assessment years 2002-03, 2003-04, 2004-05, 2006-07 & 2007-08 in ITA No.462, 464, 465, 467 & 468/CHNY/2012, facts being exactly identical, taking a consistent view, we dismiss this issue on these five appeals also.

ITA Nos.853 to 860/CHNY/2012

29. The next common issue in these appeals ITA Nos.853 to 860/CHNY/2012 for assessment years 2000-01 to 2007-08 in the case of Shri O.Arumugasamy is as regards to the unexplained credits found in the Books of account added by AO and deleted by CIT(A).

30. The facts and circumstances in all the three appeals are identical and even the additions made on account of unexplained credits although the credit parties are in different names, the AO noted that this being a time barred assessment and the assessee could not give complete details in regard to these creditors, these additions were made. Even the AO noted that the confirmation letters of the creditors did not refer to salient features such as date of transactions, amount involved, proof of advancing of loan or

whether by cheque or cash, in that eventuality, the AO in all these three years made addition of cash credits i.e., unexplained cash credits. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) deleted the addition simply taking PAN card, ration card, photo identity card, driving license and bank passbook but we noted that the CIT(A) deleted the addition despite the AO given the finding in his remand report that these creditors could not prove the source of funds and hence, the cash credits are unsatisfactorily explained. The CIT(A) in para 23.3, as in assessment year 2005-06, deleted the addition by observing as under:-

> 23.3 The assessment order, the remand report and the submissions of the assessee were perused. The relevant portion of the assessment order for disallowing the unexplained credits is as under:
>
> > "*Even though the assessee was asked to give the address of creditors by this office letter dated 03.11.2008, the assessee decided to give such details in a summary manner only by 19.12.2008 making the task of this office conducting any enquiry practically impossible in short time. Hence it is inevitable to bring to tax all the loan credits borrowed from the individual creditors as the source of the funds involved in the claim credits are not satisfactorily explained."*
>
> A perusal of the above notings in the assessment order indicates that the assessing officer has asked for conformation only on 03.11.2008 and the same was furnished on 19.12.2008. The Assessing Officer concludes that since he was unable to verify the credits owing to shortage of time that it is inevitable to bring to tax all the loan credits. Such additions made due to lack of time for verification can not be confirmed for the following reasons:

(i) The department while preparing the appraisal report as well as before completion of assessment proceedings could have asked the assessee to furnish confirmation of these credits and need not have waited till November 2008 for calling for confirmation from the assessee. Therefore lack of time for verification of credits is not a ground for making the addition of all the credits in the books of accounts of the assessee.

(ii) A perusal of the submissions made by the assessee would indicate that all the credits introduced in the books of accounts are by way of account payee cheques/demand drafts. This fact has not been properly brought to light in the assessment order. The fact that the credits are introduced by way of cheques/demand drafts is reasonable ground to establish the identity of the loan creditors. The banking "KYC" norms, if pursued, would have led to the identity of the creditors. The assessing officer has not done the same and simply made additions stating that the identity of the creditors was not proved.

(iii) The Investigation Wing or the Assessing officer has not summoned the creditors for verification. In the absence of any evidence to the contrary from the loan creditors, the addition of the various credits as unexplained credits, can not be justified.

(iv) My predecessor CIT(Appeals) II had called for remand report on this issue from the assessing officer to be submitted to this office after verifying the sundry creditors. The assessing officer had issued summons and verified some of the creditors. In the remand report submitted by the A.O, the A.O stated that some of the creditors may be allowed while some may be disallowed. However, on perusal of the statement recorded on oath would indicate that all the persons summoned have stood by the assessee and stated that they had advanced the sum mentioned. The Assessing Officer was of the view that some of these creditors do not have adequate means or they are closely related to the assessee. Mere suspicion alone is not sufficient to disbelieve the creditor. The lack of creditworthiness by the creditors has not been proved to my satisfaction in the Remand Report.

(v) The case laws mentioned in the assessment order can not be relied upon in the absence of proper investigation by the assessing officer before disallowing all the sundry creditors especially in view of the

> fact that the credits has been introduced by way of Account Payee Cheques/demand drafts and the creditors have responded to the summons and confirmed the credit during the course of filing the remand report.
>
> In view of the reasons cited above, the assessing officer is directed to delete the addition of Rs.2,53,55, 000/- towards unexplained credits made in the Assessment order.

Aggrieved, now Revenue is in appeal before the Tribunal.

30.1 Before us, the ld.counsel for the assessee as well as the ld. Senior Standing Counsel for the Revenue both agreed that addition in regard to cash credits were not properly examined neither by the AO nor by the CIT(A). Hence, they requested that once the issue of cash deposit treated as unexplained by the AO and deleted by the CIT(A), is already going back to the file of the AO, this issue can also go back to the file of the AO for fresh adjudication.

31. After hearing both the sides and going through the fact that the orders of both the authorities below i.e., the AO as well as the CIT(A) is cryptic and non-speaking. Even, both the authorities below have not examined this issue in proper perspective in term of provisions of section 68 of the Act. Hence, we set aside the orders of lower authorities, in all these three years and remand the matter

back to the file of the AO for fresh adjudication. This common issue in all these eight appeals of Revenue is allowed for statistical purposes.

ITA No.1044/CHNY/2011

32. As regards to assessee's appeal in the case of Shri M. Palanisamy in **ITA No.1044/Chny/2011** for assessment year 2006-07, the issue raised by assessee in his appeal is as regards to the order of CIT(A) confirming the action of AO in disallowing the expenses for an amount of Rs.8,49,754/- by invoking the provisions of section 40A(3) of the Act @ 20% on the total payment of Rs.42,48,770/- which is in excess of Rs.20,000/- as prescribed u/s.40A(3) of the Act.

32.1 We have heard rival contentions and gone through facts and circumstances of the case. We noted that the CIT(A) has given a categorical finding that expenditure incurred by assessee on purchase of diesel bill / petrol bill in excess of Rs.20,000/- in one day and hence, he confirmed the addition by observing in para 7.3 & 7.4 as under:-

7.3 In support of the above claim, the assessee gave a working sheet along with the bills. On a perusal of the working sheet it is found that except on 29.04.2002 on all the days the assessee has made payment exceeding Rs.20,000/- to one and the same party. This very working itself indicates that expenses have been incurred in cash exceeding a sum of Rs.20,000/- in each day. The assessee did not furnish details for the other months. As mentioned above cash book has been debited once in a month and not on the respective dates of payment. Hence a sum of Rs.20,000/- is deducted in respect of the payment of each date as found in the cash book and a sum of Rs.2,40,000/- is deducted from the total amount of Rs.40,82,520/-". The total disallowance u/s 40A(3) at 20% came to Rs.8,49,754.

7.4 The appellant produced the bills randomly for the month of June and also September regarding diesel charges. As seen from the details on each day, the bill amounts are less than Rs.20,000/- and the learned A.R. submitted that the payments were made in cash on each day to the petrol bunk for the convenience of the accounting. All the bills were totaled and the total amount was debited in the cash book at the end of the month. However, the appellant could not produce any evidence to show that the bills were paid regularly on all the days whenever they were raised. I agree with the discussion made by the Assessing officer at page 28 of the assessment order and confirm the addition of Rs.8,49,754 made u/s 4OA(3). This ground of appeal is dismissed.

Aggrieved, assessee came in appeal before the Tribunal.

32.2 At the outset, the ld.counsel for the assessee requested the Bench that since this group cases are being set aside, this matter can also go back to the file of the AO. He stated that the cross appeal filed by the Revenue in ITA No.1186/CHNY/2011 in regard to cash deposits is going back to the file of AO, this matter also can go back to the AO for verification of each bill and payment made each

day whether it is in excess of Rs.20,000/- or not. To this, the ld. Senior Standing Counsel for the Revenue has not objected. Hence, we set aside the orders of lower authorities as well as CIT(A) on this issue and remand the matter back to the file of the AO for fresh adjudication. This appeal of the assessee is allowed for statistical purposes.

ITA No.2570/CHNY/2016

33. The next issue in ITA No.2570/CHNY/2016 by the assessee is as regards to the order of CIT(A) confirming the action of AO in disallowing interest expenses paid to partnership firm M/s.Ambal Complex amounting to Rs.12,65,946/- for non-deduction of TDS u/s.40(a)(ia) of the Act. For this, assessee has raised various grounds which are argumentative in nature and hence, need not to be reproduced.

33.1 We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee has paid a sum of Rs.12,65,946/- as interest to M/s. Ambal Complex but has not deducted TDS u/s.194A of the Act, thereby the AO invoked the provisions of section 40(a)(ia) of the Act and made disallowance.

The CIT(A) also confirmed the action of AO. Now, before us the ld.counsel for the assessee as well as the ld.Senior Standing Counsel for the Revenue agreed that the matter can go back to the file of the AO for verification, whether the recipient party i.e., Ambal Complex has included this interest in their computation of income and filed return of income and paid taxes thereon. In case, the recipient party has included this interest in their income and filed return of income and paid taxes, the AO will verify and then in term of second proviso to section 40(a)(ia) of the Act, will decide the claim of assessee. Needless to say, assessee will file complete details before AO and then AO will decide. Hence, we set aside the order of CIT(A) as well as AO and remand the matter back to the file of the AO with above direction. The appeal of the assessee is allowed for statistical purposes.

ITA No.772/CHNY/2012

34. The next issue in ITA No.772/CHNY/2022 for assessment year 2006-07 in the case of Shri O. Arumugasamy is as regards to the order of CIT(A) confirming the action of AO in upholding the addition made in regard to trade advances received by assessee towards supply of raw material and treating the trade advance as deemed

dividend u/s.2(22)(e) of the Act amounting to Rs.37,02,987/-. For this, assessee has raised various grounds, which need not be reproduced.

34.1 We have heard rival contentions and gone through facts and circumstances of the case. As argued by both the sides i.e., ld. Senior Standing Counsel for the Revenue as well as the ld.counsel for the assessee, we have already set aside the issue of cash deposit in ITA No.859/CHNY/2012 for the relevant assessment year 2006-07 in Revenue's appeal, both conceded that this issue can also go back to the file of the AO for fresh adjudication because the lower authorities have not gone into the details of trade advances. Let them verify the trade advances in view of the concession given by both the sides, we remit this issue back to the file of the AO and the orders of the lower authorities are set aside on this issue. Accordingly, this appeal of the assessee is allowed for statistical purposes.

ITA 1398/CHNY/2015

35. The only issue in this appeal of Revenue is against the order of CIT(A) in quashing the reopening by upholding that reopening is

invalid and void ab initio on account of change of opinion. For this, Revenue has raised following grounds:-

> 2. The learned CIT(Appeals) has erred in holding the reopening as invalid and void ab initio.
>
> 3. The learned CIT(Appeals) erred in holding that the assessment on the basis of "change of opinion" cannot be the basis for reopening.
>
> 4. In the assessee's case, the reopening was done after duly following the procedures laid down in the IT Act, 1961.

36. Brief facts are that the original assessment was completed u/s.143(3) of the Act by the AO vide order dated 28.12.2010 and while completing assessment, AO made following additions :-

Sl. No.	Particulars	(₹)	(₹)
	Total income returned		17,47,400
	Additions:		
i	Disallowance of Agricultural Expenses	2,40,400	
ii	Un explained cash deposits	18,64,24,400	18,66,64,800
	Total Income		**18,84,12,200**
	Net Agricultural Income		**62,73,280**

Subsequently, notice u/s.148 of the Act was issued on 07.03.2013 and assessee filed reply on 01.04.2013 requesting the AO to treat the return filed originally on 30.09.2008 as return filed in response to notice u/s.148 of the Act. The AO furnished reasons for reopening of assessment vide letter dated 07.11.2013. The AO

completed the reassessment by making additions in the reopened assessment as under:-

Sl. No	Particulars		(₹)	(₹)
	Revised Total income assessed as per Order dt 26.11.2012			19,87,800
I	**Deemed Dividend u/s 2(22)(e)**			
	(a) Senthil Papain Food Products (P) Ltd	66,68,445		
	(b) Senthel Building Mfg Company (P) Ltd	31,02,216	97,70,661	
II	**Disallowance u/s 14A r.w.Rule 8D**		1,57,304	99,27,965
	Total Income			**1,19,15,765**
	Net Agricultural Income as returned			**62,73,280**

The AO made addition of deemed dividend u/s.2(22)(e) of the Act amounting to Rs.97,70,661/- in respect of advance received by assessee for supply of raw material and transportation charges and declared as trade advances from the following parties:-

(a) Senthil Papain Food Products (P) Ltd - ₹.3,01,64,998/-
(b) Senthel Building Mfg Company (P) Ltd - ₹.2,19,31,944/-
₹.5,20,96,942

Similarly, the AO also made additions by disallowing expenditure by disallowing expenditure by invoking the provisions of section 14A with Rule 8D of the Income Tax Rules amounting to Rs.1,57,304/-. Aggrieved, assessee preferred appeal before CIT(A).

36.1 The CIT(A) after going through the lease agreement on agriculture lands along with sale of agriculture products and the details of advances received from various parties noted that the assessee has filed complete details before the AO during original assessment proceedings vide letter dated 13.11.2010 and accordingly original assessment was completed on 28.12.2010. Similarly, during original assessment proceedings complete details in respect of expenditure incurred for earning of dividend income was available before the AO and accordingly CIT(A) quashed the reopening by observing in para 8 & 9 as under:-

> 8. I have gone through the submissions made by the appellant and also the order of the Assessing Officer. The Assessing Officer while completing the original scrutiny assessment, issued a notice u/s 143(2) and the questionnaire dated 08.10.2010. The details of the lease agreement on agricultural lands along with sales of agricultural products, along with names and addresses of the buyers, quantity, value, nature of products sold were called for. The Assessing Officer also called for the details of books of account, details of expenditure with regard to agricultural income and also other details regarding TDS. The appellant furnished all the details vide his letter dated 13.11.2010. The assessment was completed on 28.12.2010. In respect of the additions made by the Assessing Officer, the appellant filed an appeal before the Commissioner of Income Tax (Appeals) which was allowed by the CIT(A). Subsequently the Assessing Officer re-opened the assessment by issuing notice u/s 148 dated 07.03.2013. As seen from the reasons recorded for re-opening the assessment, it is very clear that the Assessing Officer has relied on the accompanying statements and schedules filed with the Return of Income and came to the conclusion that income has escaped assessment within the purview of Section 147 of the Income Tax Act, 1961. The assessee filed his letter dated 05.06.2013 requesting the Assessing Officer to furnish particulars and material facts omitted to be

submitted along with the Return of Income and also at the time of assessment for invoking the provisions of Section 147. The Assessing Officer did not furnish any information to the assessee as requested. The Hon'ble Apex Court in the case of CIT Vs Kelvinator of India Ltd 320 ITR 561 has held that "one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing officer to reopen assessments on the basis of "mere change of opinion" which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. But reassessment has to be based on fulfilment of certain pre-conditions and if the concept of "change of opinion " is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, the Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a link with the formation of the belief.."

9. In the facts of the case, there was no tangible material with the Assessing Officer to come to the conclusion that there was escapement of income from assessment. Hence it is a clear case of change of opinion which cannot be the reason to come to the conclusion that there was escapement of income from assessment. Considering the facts of the case, the jurisdiction assumed by the Assessing Officer u/s 147 of the Income Tax Act, 1961 is against the law and proceedings u/s 147 are invalid. The assessment is held void ab initio. Considering this ground of appeal, the other grounds of appeal are not adjudicated.

37. Now, before us, the ld.Senior Standing Counsel for the Revenue could not file any detail or make any argument that these details were not available before the AO during the course of original assessment proceedings i.e., details of advances of trade from these two parties namely M/s. Senthil Papain Food Products

(P) Ltd., and M/s. Senthel Building Material Mft Company (P) Ltd. Even the ld. DR could not explain that the details were not available with respect to expenditure claimed for earning of exempt income for which the AO has made disallowance u/s.14A of the Act. Once, this is the fact, the CIT(A) has rightly quashed the reopening of assessment and we uphold the same. The appeal of the Revenue is dismissed.

ITA No.763/CHNY/2017

38. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making disallowance of expenses relatable to exempt income by invoking the provisions of section 14A r.w.rule 8D of the Rules amounting to Rs.2,99,472/-.

38.1 We have heard rival contentions and gone through facts and circumstances of the case. We noted the facts that the assessee has earned dividend income to the extent of Rs.10,573/- and according to us, in view of the decision of Hon'ble High Court of Madras in the case of CIT v. Chettinad Logistics (P) Ltd., (2017) 80 taxmann.com 221 and the Hon'ble Supreme Court in the case of Maxopp Investment Ltd., vs. CIT, (2018) 402 ITR 640 (SC), the

disallowance should be restricted to Rs.10,573/-. We direct the AO accordingly. This appeal of assessee is partly allowed.

39. In the result, the appeals filed by the Revenue are:-

Sl. No.	ITA Nos.	Assessment year	Appellant	Result
1	1582/CHNY/2010	2003-04	Shri M. Palanisamy	Allowed for Statistical Purposes
2	1583/CHNY/2010	2004-05		
3	1185/CHNY/2011	2005-06		
4	1186/CHNY/2011	2006-07		
5	1187/CHNY/2011	2007-08		
6	141/CHNY/2013	2008-09		
7	142/CHNY/2013	2009-10		
8	1449/CHNY/2010	2004-05	Shri A. Senthilkumar	
9	1450/CHNY/2010	2005-06		
10	1451/CHNY/2010	2006-07		
11	1452/CHNY/2010	2007-08		
12	139/CHNY/2013	2008-09		
13	140/CHNY/2013	2009-10		
14	1010/CHNY/2015	2010-11		
15	2707/CHNY/2016	2011-12		
16	150/CHNY/2013	2005-06	Shri T.M. Muthukumar	
17	709/CHNY/2014	2010-11	M/s. Senthil Enterprises,	
18	1715/CHNY/2012	2005-06	Senthil Building Material Manufacturing Co. (P) Ltd.,	
19	1716/CHNY/2012	2006-07		
20	853/CHNY/2012	2000-01	Shri O. Arumugasamy	
21	854/CHNY/2012	2001-02		
22	855/CHNY/2012	2002-03		
23	856/CHNY/2012	2003-04		
24	857/CHNY/2012	2004-05		
25	858/CHNY/2012	2005-06		
26	859/CHNY/2012	2006-07		
27	860/CHNY/2012	2007-08		
28	143/CHNY/2013	2008-09		
29	144/CHNY/2013	2009-10		
30	1011/CHNY/2015	2010-11		
31	1833/CHNY/2015	2011-12		
32	777/CHNY/2017	2012-13		

Sl. No.	ITA Nos.	Assessment year	Appellant	Result
33	1398/CHNY/2015	2008-09	Shri O. Arumugasamy	Dismissed
34	462/CHNY/2012	2002-03	Senthil Papain & Food Products Pvt. Ltd.,	Partly Allowed for Statistical Purposes
35	464/CHNY/2012	2003-04		
36	465/CHNY/2012	2004-05		
37	466/CHNY/2012	2005-06		
38	467/CHNY/2012	2006-07		
39	468/CHNY/2012	2007-08		

The appeals filed by the assessee are:-

Sl. No.	ITA Nos.	Assessment year	Appellant	Result
1	1044/CHNY/2011	2006-07	Shri M. Palanisamy	Allowed for Statistical Purposes
2	2570/CHNY/2016	2011-12	Shri A. Senthilkumar	
3	771/CHNY/2012	2003-04	Shri O. Arumugasamy	
4	772/CHNY/2012	2004-05	Shri O. Arumugasamy	
5	763/CHNY/2017	2012-13	Shri O. Arumugasamy	Partly Allowed

Order pronounced in the open court on 28th September, 2022 at Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 28th September, 2022

RSR
आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. निर्धारिती/Assessee 2. राजस्व/Revenue 3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त /CIT 5. विभागीयप्रतिनिधि/DR 6. गार्डफाईल/GF.