

आयकर अपीलीय अधिकरण, कोचीन पीठ, कोचीन में।
IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

माननीय श्री सतबीर सिंह गोदारा, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SATBEER SINGH GODARA, J.M.
AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, A.M.

Sr. No	Appeal Numbers	Assessment Years	Appellant	Respondent
1	ITA No.580/Coch/2022	2012-13	M.K. Rajendran Pillai, Rajvalsam, Panangadu P.O, Kulanada, Pathanamthitta-689 503. [PAN: AGJPR-7612-L]	ACIT Central Circle, Kollam.
2	ITA No.581/Coch/2022	2013-14		
3	ITA No.582/Coch/2022	2014-15		
4.	ITA No.583/Coch/2022	2015-16		
5.	ITA No.584/Coch/2022	2016-17		
6.	ITA No.585/Coch/2022	2017-18		
7.	ITA No.586/Coch/2022	2018-19		

अपीलार्थी की ओरसे/ Appellant by	:	Shri Sajjan Kumar Tulsian (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Smt. J.M Jamuna Devi (Addl. CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	10-11-2022
घोषणा की तारीख / Date of Pronouncement	:	20-01-2022

आदेश / ORDER

Per Bench

1. Aforesaid appeals by assessee for Assessment Years (AYs) 2012-13 to 2018-19 arises out of common appellate order passed by learned Commissioner of Income Tax (Appeals)-3, Kochi [CIT(A)] on 16.03.2022 in the matter of separate assessments framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s. 153A of the Act for AYs 2012-13 to 2017-18 and u/s 144 for AY 2018-19. The facts as well as issues

are admitted to be the same in all the years. The grounds taken by the assessee in AY 2012-13 are as under: -

1. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income-tax (Appeals)-3, Kochi [hereinafter referred to as the CIT(A)], vide order dated 16.03.2022, erred in upholding the jurisdiction assumed and the impugned additions made by the Ld. Assistant Commissioner of Income-tax, Central Circle, Kollam (hereinafter referred to as the AO) u/s 153A of the Income-tax Act, 1961 (hereinafter the Act') in the absence of incriminating material being found in course of the search in the Assessee's case.

2a. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in upholding the order passed by the Ld. A.O in violation of principles of natural justice by circuitously preventing the Appellant from filing an Application u/s 245C(1) before the Hon'ble Income-tax Settlement Commission (hereinafter ITSC') by deliberately and capriciously passing the impugned Assessment Order on 17.03.2020 despite the repeated written and oral updates provided by the Appellant to the Ld. A.O about his intention of filing the settlement application on 20.03.2020 and the payment of majority of taxes thereon in several instalments on 29.11.2019, 18.03.2020 and 19.03.2020.

2b. That the Ld. CIT(A), erred in overlooking the vindictive and malicious approach adopted by the Ld. A.O in waiting for the Appellant to make further payment of taxes towards the settlement application on 18.03.2020 & 19.03.2020 before informing the Appellant about the passing of the impugned assessment order dated 17.03.2020 on 19.03.2020.

2c. That the Ld. CIT(A) failed to appreciate that the assessment proceedings for the impugned A.Y. were kept open by the Ld. A.O on the e-portal until 19.03.2020 and as such. there was no way in which the Appellant could have found out about the impugned assessment order dated 17.03.2020 unless the closure of the proceedings for the impugned A.Y. was informed by the Ld. A.O. to the Appellant, which was clearly not done until 19.03.2020.

2d. That the assessment order so passed by the Ld. AO hurriedly on 17.03.2020, solely with the intention of denying the Appellant his once in a lifetime opportunity of approaching the Hon'ble Settlement Commission provided under the law, although the assessment was getting time barred only on 29.06.2020 (barring the period of 181 days during which stay was granted by the Hon'ble Guwahati High Court), is capricious, mala fide, bereft of basic tenets of justice and fairness - thus rendering the entire assessment proceedings as bad-in-law and a nullity.

3. That the Ld. CIT(A) erred in upholding the vindictive action of the Ld. A.O. in passing of the impugned assessment order u/s. 153A hurriedly on 17.03.2020 so as to circumvent the decision of the Hon'ble Guwahati High Court, Division Bench on the writ petition filed by the Appellant challenging the transfer of Appellant's case from Dimapur to Kollam, although the assessment was getting time barred only on 29.06.2020.

4a. That the Ld. CIT(A) misdirected himself in upholding the impugned order passed by the Ld. A.O in complete violation of principles of natural justice by placing reliance on purported statements of third parties recorded by the Investigation Wing behind the back of the Assessee without –

(i) providing copies of the purported statements to the Appellant,

- (ii) independently examining such third parties in course of the assessment proceedings and,
 - (iii) affording the Appellant an opportunity of cross-examination of such persons before making the impugned additions in the hands of the Appellant
thus, rendering the assessment order so passed as bad-in-law and a nullity.
- 4b. That the Ld. CIT(A) further erred in intentionally glazing over and overlooking the results of cross examination of the persons who appeared before the Ld. A.O. and deposed in favour of the Appellant in course of the remand proceedings at the first appellate stage.
- 4c. That, the Ld. CIT(A) fell in error in holding that cross-examination of the persons whose statements were relied upon by the Ld. A.O for making the impugned additions was not necessary.
5. That the Ld. CIT(A) erred in sustaining the impugned substantive additions to the extent of Rs.35,18,60,144/- made by the Ld. A.O without specifying the relevant sections of the Act invoked by him merely on the basis of surmises, conjectures and borrowed satisfaction, without bringing on record any iota of legally sustainable evidence to dislodge the authenticity of the conclusive documentary evidences and submissions filed by the Appellant in support thereof.
- 6a. That the Ld. CIT(A) erred in upholding the substantive addition of Rs.26,52,70,270/- made by the Ld. A.O on account of alleged credit transfers from Nagaland based entities and persons in the books of the Appellant, his family members, his family concerns/ group entities and also third parties totally overlooking the detailed documentary evidences and submissions filed by the Assessee duly explaining the impugned entries.
- 6b. That the Ld. CIT(A) erred in not appreciating that no substantive addition of impugned credits entries found in the books of family members, group entities and third persons, which were separate legal and taxable entities, could be made in the hands of the Appellant.
- 7a. That the Ld. CIT(A) erred in upholding the addition of Rs. 58,89,874/- made in the hands of the Appellant on account of cash deposits appearing in the bank accounts of the Appellant ignoring the detailed explanations and documentary evidences filed by the Appellant.
- 7b. That the Ld. CIT(A) erred in upholding the substantive addition of Rs.1,62,00,000/- made in the hands of the Appellant on account of cash deposits appearing in the bank accounts of family members maintained in Nagaland ignoring the detailed submissions and documentary evidences filed by the Appellant in support thereof. The Ld. CIT(A) erred in not appreciating that no substantive addition of impugned cash deposits in the bank accounts of family members and group entities, which were separate legal and taxable entities, could be made in the hands of the Appellant.
- 7c. That the Ld. CIT(A), while correctly deleting the substantive addition of Rs.71,03,000/- made in the hands of the Appellant on account of cash deposits appearing in bank accounts of family members and M/s. Vrindavan Builders Pvt. Ltd. maintained outside Nagaland, erred in holding that the same could be considered substantively in the hands of such persons by the A.O, subject to explanations, ignoring the detailed explanations and documentary evidences furnished by the Appellant at the first appellate stage.

8a. That the Ld. CIT(A) erred in directing the Ld. A.O to re-examine and re-compute the income on account of other credit entries of Rs.18,20,000/- appearing in the bank accounts of the Appellant (other than those emanating from 38 bank accounts of persons or entities based in Nagaland) after reconciling the same with the return of income, ignoring the detailed explanations and documentary evidences furnished by the Appellant duly explaining such entries at the first appellate stage.

8b. That the Ld. CIT(A), while correctly deleting the substantive addition of Rs.3,83,02,587/- made by the Ld. A.O on account of other credit entries appearing in the bank accounts of family members (other than those emanating from 38 bank accounts of persons or entities based in Nagaland), erred in directing the Ld. A.O to consider the same on substantive basis in the hands of the family members, subject to explanations offered by each of them, totally ignoring the detailed explanations and documentary evidences furnished by the Appellant duly explaining such entries at the first appellate stage.

9. That the Ld. CIT(A), while sustaining the impugned substantive additions made by the Ld. A.O erred in not giving credit for additional income declared under the Income Disclosure Scheme, 2016 by the Appellant and his family members although the Appellant had furnished detailed explanations and evidences in support of the disclosures made under IDS, 2016.

10. That the Ld. CIT(A) erred in upholding the addition of Rs.6,45,00,000/- made by the Ld. A.O on account of alleged cash payments for acquisition of immovable properties overlooking the submissions and details filed by the Appellant.

11. That, without prejudice to the above, the Ld. A.O and the Ld. CIT(A) erred in not having considered in totality all the evidence placed before them by the Appellant which should have been examined by the Ld. A.O. in the course of the remand proceedings at the first appellate stage and should have been acted upon by the Ld. CIT(A) in his appellate order.

12. That, as the order of Ld. CIT(A) upholding the assessment proceedings u/s 153A and addition made therein suffers from illegality and is devoid of any merit, the same should be quashed and your Appellant be given such relief(s) as prayed for.

In ground Nos.1 to 4c, the assessee has raised various legal grounds assailing the validity of assessment proceedings. In the remaining grounds, the assessee contest confirmation of quantum additions on merits. For AY 2018-19, the assessee has raised additional legal grounds seeking quashing of assessment order for non-issuance of notice u/s 143(2) as well as in terms of the provisions of Sec.144 / 142(1).

2. The Ld. AR advanced arguments assailing the confirmation of additions and placed on record written submissions, case laws and various documents. It has been submitted that the bank credits in third-party accounts have erroneously been added as income of the assessee despite the fact that all these persons were engaged as government contractors since past several years and were having sound financial position as evidenced by their respective financial statements. The Ld. AR further submitted that the income of all the other family members has been considered to be the assessee's income despite the fact that all those entities were separate Income Tax Assesseees having independent sources of income. The Ld. Sr. DR controverted the arguments of Ld. AR and justified the additions so made in the hands of the assessee. The assessee has filed written submissions along with paper books and various computations which have duly been considered while adjudicating the issues. The assessee's documents include additional note filed at the time of hearing, written submissions consisting of 140 pages and paper-books (numbered 1 to 8) in support of various submissions. All these documents and written submissions containing various computations & tables would have material bearing on adjudication of these appeals and the same has been referred to by us at appropriate places in this order. Having considered rival submissions and after going through relevant material on record, our adjudication would be as under.

3. Assessment Proceedings

3.1 The assessee being resident individual earned 'income from other sources'. The assessee group was subjected to search action u/s 132 on 08.06.2017 which include the assessee, his wife Smt. Valsala

Raj and two sons Shri Varun Raj and Shri Arun Raj. The premises of various concerns of M/s Sreevalsam Group (controlled by the assessee's wife and other family members) were also covered in the search. The group runs textile shops, jewellery shops, finance business, hotels, vehicles dealership, fuel outlets, educational institutions etc.

3.2 The assessee group runs various concerns. So far as the assessee is concerned, he is a partner to the extent of 39% in a partnership concern namely M/s Money Muttam Finance and do not have any other business interest in any other concerns of the group except shareholding to the extent of approx. 11% & 15% respectively in M/s Mooneymuttathu Nidhi Ltd. & M/s Allebasi Builders & Developers (P) Ltd.

The assessee's wife Smt. Valsala Raj is partner in various partnership firms i.e., M/s Sreevalsam Jewellers, M/s Sreevalsam Residency, M/s Rajvalsam Media Ads & M/s Lekshmi Industrial Work. She is proprietor in M/s Rajavalsam Fuels. She is also shareholder / director in corporate entities M/s Sreevalsam Hotels & Resorts Pvt. Ltd., M/s Rajavalsam Motors (P) Ltd., M/s Sreevalsam Golds and Diamonds (Pvt.) Ltd., M/s Mooneymuttathu Nidhi Ltd., M/s Smart Residency Hotels India (P.) Ltd., M/s Allebasi Builders & Developers (P) Ltd. & M/s Vrindavan Builders (P) Ltd.

The assessee's son Shri Arun Raj is proprietor of M/s Sreevalsam Residency. He is partner in various partnership firms i.e., M/s Money Muttam Finance, M/s Nenco Gas Service, M/s Sreevalsam Residency, M/s Rajvalsam Media Ads & M/s Sreevalsam Health Care. He is also Shareholder / director in corporate entities M/s Sreevalsam Hotels &

Resorts Pvt. Ltd., M/s Rajavalsam Motors (P) Ltd., M/s Sreevalsam Golds and Diamonds (Pvt.) Ltd., M/s Krishnamoney Chits (P) Ltd., M/s Mooneymuttathu Nidhi Ltd., M/s Smart Residency Hotels India (P.) Ltd. & M/s Allebasi Builders & Developers (P) Ltd.

The assessee's other son Shri Varun Raj is proprietor in M/s Sreevalsam Silks. He is partner in various partnership firms i.e., M/s Money Muttam Finance, M/s Sreevalsam Residency, M/s Rajavalsam Media Ads & M/s Sreevalsam Health Care. He is also Shareholder / director in corporate entities M/s Sreevalsam Hotels & Resorts Pvt. Ltd., M/s Rajavalsam Motors (P) Ltd., M/s Sreevalsam Golds and Diamonds (Pvt.) Ltd., M/s Krishnamoney Chits (P) Ltd., M/s Mooneymuttathu Nidhi Ltd., M/s Smart Residency Hotels India (P.) Ltd. & M/s Vrindavan Builders (P) Ltd.

The assessee's daughter Ms. Pooja Raj Pillai is proprietor of M/s Sreevalsam Pathanjali and partner in M/s Sreevalsam Health Care. She is also a shareholder / director in M/s Mooneymuttathu Nidhi Ltd.

3.3 Undisputedly, the assessee, his family members as well as all the entities of the group are separately assessed to Income Tax under separate Permanent Account Numbers (PAN) and subjected to separate assessments. It could be seen that the present assessee does not hold any position in the management and control of majority of the firms / corporate entities of Sreevalsam Group.

3.4 Post search operations, notices u/s 153A was issued to the assessee on 03.08.2018. The assessee filed return of income on 01.12.2018 declaring income of Rs.6.17 Lacs. Notices u/s 143(2) and 142(1) were issued on various occasions to the assessee requiring it to file requisite documents including cash flow statement and statement

of assets and liabilities. The assessee's case was centralized from Nagaland to Kerala which was challenged without any success before Hon'ble Guwahati High Court vide order dated 25.09.2019. Since the stay was granted by Hon'ble Court against order u/s 127, the time limit for completion of assessment proceedings for AYs 2012-13 to 2017-18 which would have got time barred by 31.12.2019, got extended by 181 days and accordingly, the time limit to pass the assessment orders for these years stood revised to 29.06.2020. The assessee failed to file the requisite documents despite various notices which led Ld. AO to form a belief that the assessee had been non-cooperative. During assessment proceedings, the assessee expressed intention to file settlement applications u/s 245C(1) before Hon'ble Income Tax Settlement Commission (ITSC) and requested for release of properties attached by the revenue which was substantially rejected. The assessee paid partial taxes towards impending settlement applications and requested Ld. AO to grant additional time to prefer such applications. As per the submissions made before us, it has been submitted that the assessee was assured time up-to 23.03.2020 which was disregarded and the assessments were framed in a hurried manner on 17.03.2020 thus thwarting assessee's efforts to seek settlement of the issues or to file requisite details / information as sought by Ld. AO in various show cause notices.

3.5 It was noted by Ld. AO that during his engagement with the Nagaland Police Department, the assessee had been looking after the affairs of Police Vehicles including purchase of vehicles, procurement of their spare parts etc. The major issue emerges from the fact that there was huge inflow of funds in as many as 38 different bank

accounts held in the name of various individuals and entities which were based in Nagaland. The inflow of funds in these accounts was out of government contract receipts. However, these funds were allegedly utilized for the benefit of assessee group which led Ld. AO to believe that such income accrued to the assessee group. Further, there were huge cash deposits in assessee's own bank accounts as well as in various bank accounts held in the name of his family members and various concerns. It was alleged by Ld. AO that the funds so brought in these Nagaland accounts were utilized in purchase of as many as 102 properties during the period of 6 years from AYs 2012-13 to 2017-18. Some of the funds were also transferred to bank account of various concerns in Sreevalsam Group. It was alleged by Ld. AO that none of the loan creditors maintained any books of accounts and claimed their income to be exempt by virtue of Section 10(26) of the Act. Certain discrepancies and mismatch in signatures were noted in the loan confirmation letters obtained from loan creditors. The funds were also allegedly utilized for making payment to contractors, payment for civil work etc. for the group concerns. Some of the funds were transferred to bank accounts of family members, friends and relatives etc. whereas some of the funds were utilized to make miscellaneous payment in the nature of charity, payment for religious institution, payment for foreign tours, purchase of jewellery etc. The extract from various bank statements has been reproduced by Ld. AO in the assessment order to support the aforesaid conclusion.

3.6 In nutshell, it was alleged by Ld. AO that the credits made in 38 Nagaland based bank accounts from Police department as contract payments were utilized for the benefit of assessee's group. The

ultimate sources of all the funds were government payments. All these contractors were Nagaland based residents who merely lent their names and opened bank accounts where the funds from government for contract supply get credited and in turn, these contractors would be paid a commission for name lending. Since these contractors are exempt from paying Income Tax u/s 10(26), no books of accounts would be maintained by them and the bank accounts would be the only proof that a business was being carried out. It was alleged that the assessee had control and coordinated all the matters relating to police vehicles and therefore, all the income would belong to him only.

3.7 The Ld. AO also tried to analyze the credits and debits made in these bank accounts and noted that there were no payments to manufacturer or distributors but majority of the payments were transferred to the group concerns in the aforesaid manner only. Most of these banks carried mobile number of the assessee. However, the assessee, in statement recorded u/s 132(4) on 24.10.2017 maintained that he was getting commission and loans from these parties.

3.8 The Nagaland based 38 bank accounts were held in the name of various entities / individuals based in Nagaland. The credits in these accounts were government contract receipts as well as cash deposits. These accounts were held in various names viz. M/s Excellence Associates, Nagaland Police Petrol Pump (NPPP), Rengma, General Automobiles, P.S. Enterprises and Solo Enterprises etc. All of these contractors would be Nagaland residents since government contracts would be given to Nagaland residents in most of the case. These residents would merely be name lender whereas actual business would be carried on by someone from the mainland whose names

would not appear anywhere. Since these residents are exempt from paying income tax u/s 10(26), they are not required to maintain any books of accounts and the bank account remain the only proof that the business is being carried out by them. Accordingly, these entities would readily issue loan confirmation letters as and when required. The brief description of the activities carried out by such entities was as under.

3.9 Excellence Associates (Prop. Rolly Thenucho Tunyl)

This concern was stated to be in the business of government supply and having contracts for supply of Tyres, Tubes, spares and other Equipments like fabricated security Equipments etc. During financial year 2015-16, total amount credited in SBI account of this entity was government receipts for Rs.24.88 Crores apart from cash deposit of Rs.49.50 Lacs. Out of such credits, funds to the tune of Rs.21.44 Crores were transferred to assessee group besides cash withdrawal of Rs.4.55 Crores. This account had assessee's mobile number which led to suspicion in the mind of Ld. AO that the credit in the account belong to the assessee which was evident from the fact that there was no payment from this account to manufacturer or distributors and there was also no payment for incidental expenses like freight etc. The amount credited from government account was substantially transferred to assessee's accounts. The assessee, in recorded statement, submitted that he would arrange procurement of material for this concern. On the basis of this, Ld. AO concluded that entire credits from government contracts would be transferred to assessee's account and the cost of purchase is met by the assessee. The payment for such purchase is met by unaccounted sources and therefore, entire

credits and not the estimated profits were to be assessed as assessee's income.

3.10 Nagaland Police Petrol Pump (NPPP)

This entity was a retail outlet of Indian Oil Corporation meant exclusively to supply fuels to vehicles of Nagaland Police Department. The license of fuel outlet was in the name of IG of Police, Nagaland and it was given on lease to a private party i.e., M/s Excellence Associates under an agreement dated 12/02/2007. However, from 27/04/2011, office of DGP Nagaland issued a notification that NPPP shall henceforth be operated by M/s Avili Service Station which is run by Mr. Avili Sekhose. However, the actual allottee was Mr. Zhori Kire who made application under the name of M/s Avili Service Station so as to fulfill the experience criteria. The statement of Mr. Zhori Kire was recorded u/s 131 on 27.07.2017 who submitted that he was not involved in day-to-day business of the petrol pump but getting monthly commission of Rs.75,000/- per month for name lending. The assessee initially submitted that the funds received from this entity were loan. However, in statement recorded u/s 131 on 24.10.2017, the assessee admitted that the receipts from Nagaland Police Petrol pump were his income, being his share of profit. The summary of credits into this account and amount transferred to accounts linked to assessee has been tabulated on page-37 of the order. The credits from government were Rs.187.55 Crores, cash deposits were for Rs.68.78 Crores, transfer to accounts linked to assessee group was for Rs.33.80 Crores whereas there were cash withdrawals of Rs.82.67 Crores. However, the confirmation received from Indian Oil Corporation revealed that the

amount received by India Oil Corporation for supply of fuel to this entity was in the range of 2.6 crores to Rs.4.9 crores per annum.

3.11 Funds Transferred through Rengma Account

The real name of this person was stated to be Shri G.K. Rengma who used other names viz. Shri Tep Rengma and Shri G.T. Rengma with different PAN and DINs. He was stated to have worked for Police Department in the past and was a close associate of the assessee. Shri Rengma is stated to be Class-1 government Contractors and maintained several accounts in different names. There was regular funds transfer to assessee group. His statement was recorded u/s 132(4) on 08.06.2017 wherein, he, inter-alia, admitted that he had undertaken contract with the assessee and the profits from contract were divided equally. This person is stated to have given loan of Rs.72 Crores to the assessee group. The analysis of bank accounts revealed that this person had some independent business activity of his own but at a much smaller scale.

3.12 General Automobiles, P.S. Enterprises and Solo Enterprises.

All these concerns were stated to be supplier to government for ration, Tyres, tubes, spare parts, equipment, clothing etc. The proprietors of these entities were Nagaland based residents whose income is exempt u/s 10(26) and therefore, they would not maintain books of accounts. These concerns were also stated to have their own business activities which takes place independent of the assessee. However, few instances were noticed where these accounts were allegedly used by the assessee group for routing loans from these entities which hardly pass the requirement of genuineness as required u/s 68 since creditworthiness of the lenders as well as the genuineness of the loans

were not established by the assessee. In reply to question no.134, the assessee submitted that his commission will be percentage of supply say 25% or 30% and the rest would be loan.

3.13 Credits from other accounts

Similar pattern of cash deposit was found in the bank accounts held in the name of Head Master, Chandmarhi Higher Senior Secondary School, Kohima and Shri Babu Kuraikose etc. which were allegedly used for the benefit of assessee group.

3.14 After analyzing debits and credits in all these bank accounts, Ld. AO alleged that the credits in 38 Nagaland based bank accounts were utilized for (i) Purchase of properties for assessee group; (ii) Transfer of funds to bank accounts of various concerns in the Sreevalsam Group; (iii) Making Payments to contractors for civil work undertaken in the showrooms etc. of assessee group; (iv) Transfers to Bank Accounts of family members, friends, relatives etc.; (v) For misc. purposes like charities, payment for religious institutions, payments for foreign tour, purchase of jewellery and textile for the group etc. Accordingly, the credits received in these accounts were to be treated as assessee's income since the same was earned by the assessee in Nagaland.

3.15 The assessee raised various objections to the proposed additions which have been dealt with by Ld. AO on pages 83 to 96 of the assessment order. We have gone through the same. An important fact that could be borne out of the same is that the assessee and his family members offered certain undisclosed income under Income Declaration Scheme (IDS), 2016. The undisclosed income for AYs 2012-13 to 2017-18 was stated to be quantified mainly based on the

funds transferred from the banks accounts of Nagaland based individuals / entities to the bank accounts of assessee group. However, Ld. AO alleged that the assessee failed to establish the nexus of undisclosed investment declared under IDS 2016 and the funds transferred from the banks accounts of Nagaland based entities and therefore, the credit of the same could not be granted to the assessee.

3.16 Quantification of Undisclosed income

In the said background, Ld. AO proceeded to assess the income of the assessee for all the assessment years. The summary of the additions made in AYs 2012-13 to 2017-18 could conveniently be tabulated as under: -

No.	Particulars	Amount (Rs.)
1.	Credit received from 38 Bank Accounts of Nagaland based entities / concerns	243.19 Crores
2.	Cash Deposits in the bank accounts of assessee and his family members	24.74 Crores
3.	Cash deposits in Vrindavan Builders P Ltd.	2.27 Crores
4.	Cash Component in land transaction	16.10 Crores
5.	Other credits in bank accounts of assessee and his family members	19.28 Crores
	Total	305.59 Crores

The addition made for AY 2018-19 was Rs.3.61 Crores which could be tabulated as under: -

	PARTICULARS	AY 2018-19	GRAND TOTAL FOR ALL THE YEARS
I	Transfer from Nagaland based individuals	.	2,431,965,139
	Sub Total (A)		2,431,965,139
II	Cash Deposit in Self, Family & Group Entities Bank Accounts: - MK Rajendran Pillai, Assessee - Valsala Raj, Wife of Assessee - Varun Raj, Son of Assessee - Arun Raj, Son of Assessee - Pooja Raj, Daughter of Assessee - Vrindavan Builders (P) Ltd, Group Co	2,648,300 233,450 580,000	62,604,909 35,441,975 30,935,900 104,600,905 17,324,000 22,728,000
	Sub Total (B)	3,461,750	273,635,689
III	On money paid during acquisition of landed properties/land in family - Valsala Raj, Wife of Assessee - Varun Raj, Son of Assessee - Arun Raj, Son of Assessee	-	161,000,000
	Sub Total (C)	-	161,000,000
IV	Other Credits in Self & Family Bank Accounts: -MK Rajendran Pillai , Assessee - Valsala Raj, Wife of Assessee - Varun Raj, Son of Assessee - Arun Raj, Son of Assessee - Pooja Raj, Daughter of Assessee	2,347,600 546,800 11,955,963 17,846,071	37,712,080 66,718,946 59,124,335 50,740,531 11,238,000
	Sub Total (D)	32,696,434	225,533,892
	TOTAL	36,158,184	3,092,134,720

The detailed break-up of entity-wise / year-wise additions made for AYs 2012-13 to 2017-18 could further be tabulated as under: -

	PARTICULARS	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16	AY 2016-17	AY 2017-18	SUB TOTAL FOR 6 YEARS
I	Transfer from Nagaland based individuals	265.270,270	287,624,682	273.684.066	489.173.429	590,230.521	525,982,171	2,431,965,139
	Sub Total (A)	265.270.270	287,624,682	273,684,066	489,173,423	590,230,521	525,982,171	2,431,965,139
II	Cash Deposit in Self, Family & Group Entities Bank Accounts:							
	- MK Rajendran Pillai, Assessee	5,889,874	5,670,735	10,108,000	14,620,000	11,251,000	12,417,000	59,956,609
	- Valsala Raj, Wife of Assessee	5,400,000	7,125,000	7,150,000	6,338,000	4,885,525	4,310,000	35,208,525
	- Varun Raj, Son of Assessee	7,228,000	3,975,000	2,100,000	3,395,000	8,897,000	4,760,900	30,355,900
	- Arun Raj, Son of Assessee	5,600,000	22,182,709	35,117,986	18,205,700	12,495,000	10,999,510	104,600,905
	- Pooja Raj, Daughter of Assessee	2,400,000	2,500,000	7,070,000	2,075,000	2,425,000	854,000	17,324,003
	- Vrindavan Builders (P) Ltd, Group Co	2,675,000	5,853,000	4,530,000	3,965,000	4,245,000	1,460,000	22,728,000
	Sub Total (B)	29,192,874	47,306,444	66,075,986	48,598,700	44,198,525	34,801,410	270,173,939
III	On money paid during acquisition of landed properties/land in family							
	- Valsala Raj, Wife of Assessee	64,500,000	16,500,000		50,00,000		30,000,000	161,000,000
	- Varun Raj, Son of Assessee							
	- Arun Raj, Son of Assessee							
	Sub Total (C)	64,500,000	16,500,000		50,00,000		30,000,000	161,000,000
IV	Other Credits in Self & Family Bank Accounts:							
	-MK Rajendran Pillai, Assessee	1,820,000	9,131,200	1,800,000	3,203,280	940,000	18,470,000	35,364,480
	- Valsala Raj, Wife of Assessee	20,346,587	14,678,842	8,226,966	4,100,000	7,750,000	11,069,751	66,172,146
	- Varun Raj, Son of Assessee	17,456,000	12,639,629	4,657,243	4,000,000	8,415,500		47,168,372
	- Arun Raj, Son of Assessee	500,000	--	-	4,950,000	13,900,000	13,544,460	32,894,460
	- Pooja Raj, Daughter of Assessee	--	--	5,638,000	2,000,000	2,600,000	1,000,000	11,238,000
	Sub Total (D)	40,122,587	36,449,671	20,322,209	18,253,280	33,605,500	44,084,211	192,837,458
	TOTAL ADDITIONS FOR THE YEAR	399,085,731	387,880,797	360,082,261	606,025,409	668,034,546	634,867,792	3,055,976,536

3.17 The Summarized addition made in assessee's hand for all the years could further be tabulated as under: -

No.	Particulars	Pertaining to Mr. MKR Pillai	Pertaining to family Members, Group Concerns and / or Third Parties	Total Substantive Additions in the hands of the Appellant
1.	Credit Transfers from 38 Bank Accounts of Nagaland based individuals to the account of Assessee, family members, group concerns and third parties (i.e., total debit entries in these 38 Bank Accounts	23,98,77,068	2,19,20,88,071	243.19.65,139
2.	Cash Deposits in the bank accounts of Appellant, family members and group concerns	6,26,04,909	21,10,30,780	27,36,35,689
3.	Other Credit Entries in Bank accounts of Appellant and his family members	3,77,12,080	18,78,21,812	22,55,33,892
4.	Alleged on-money paid in cash or acquisition of land / properties by family members	----	16,10,00,000	16,10,00,000
	Total Addition	34,01,94,057	2,75,19,40,663	3,09,21,34,720

3.18 Finally, the assessments were framed in similar fashion for all the years u/s 143(3) r.w.s. 153A except for AYs 2018-19 wherein the assessment was framed on best judgment basis u/s 144 of the Act since the assessee failed to make submissions and file requisite details.

3.19 From the above tabulation, it could be seen that the entire credit entries and cash deposits appearing in the bank accounts of the family members and various group concerns, which were separate legal and taxable entities, was also added on substantive basis in the hands of

the assessee. This is despite the fact that all these entities were independently assessed to tax and assessed as such for several years, much before the Income Tax Search took place on the Sreevalsam group.

3.20 The assessments so framed were subjected to further challenge before learned first appellate authority and a common order was passed, the outcome of which is as under.

4. Appellate Proceedings

4.1 The assessee assailed the validity of assessment proceedings as well as jurisdiction of Ld. AO which was dismissed by Ld. CIT(A) in paras 6.6 and 6.7 of the order. The Ld. CIT(A) held that assessee's challenge to jurisdiction was not accepted by Hon'ble Guwahati High Court in order dated 25.09.2019 and Ld. AO was right in assuming jurisdiction in accordance with the order passed u/s 127(2) on 18.07.2018. The extended date of limitation for completion of assessments was 29.06.2020 whereas the assessment was framed on 17.03.2020 and therefore, the assessments were completed within time limits prescribed u/s 153B(3). For AY 2018-19, the assessee filed return of income on 31.01.2020 but the return was not electronically filed and verified ITR-V was also not sent physically within prescribed time as required under the rule. Therefore, the return filed by the assessee was invalid return and accordingly, Ld. AO rightly assumed jurisdiction u/s 144. The Ld. AO was justified in not issuing notice u/s 143(2) and completing the assessment u/s 144.

4.2 The assessee also challenged validity of assessment and approval taken by Ld. AO u/s 153D on the ground that the assessment order was passed in a mechanical manner and on borrowed

satisfaction and there was lack of independent enquiry by Ld. AO. The assessee also alleged that the approval u/s 153D was accorded in a mechanical manner. However, considering the detailed assessments framed by Ld. AO, these grounds were also dismissed.

4.3 Another plea was that there was no incriminating material seized during the course of search operations and therefore, no addition could be made in such a case considering various judicial pronouncements. The said plea was rejected by Ld. CIT(A) on the ground that several incriminating materials were seized including blank letter head of Nagaland based persons / entities, blank cheques, notes / diaries containing details of payments received and transferred. The evidence relating to unexplained investment made in cash towards purchase of immovable properties was also seized. The said plea was also rejected considering the decision of Hon'ble Kerala High Court in **E.N. Gopakumar (75 Taxmann.com 215)**.

4.4 Another legal plea was violation of principle of natural justice since no cross examination of persons whose statement was relied in the assessment order, was not provided by Assessing Officer. The same was rejected by Ld. CIT(A). Further, the additions were based not only on the statements of persons based in Nagaland but after considering various documentary evidences and bank statements. During the course of assessment proceedings, the recorded statements were shown and confronted to the assessee. No specific request for cross-examination was ever made by the assessee. The statement made by Shri G.K. Rengma was retracted after inordinate delay of about 21 months and retraction was not supported by any

evidences. Therefore, the plea of violation of natural justice was also dismissed by Ld. CIT(A).

4.5 During appellate proceedings, remand report was sought by Ld. CIT(A) on various submissions made by the assessee. These submissions include Personal financial statements of family members, Income declared under IDS Scheme, 2016 along with supporting documents, Audited financial statements, Government work order copies and other supporting document of Shri. G.K. Rengma, M/s Excellence Associates, M/s Nagaland Police Petrol Pump and M/s General Automobiles. The assessee submitted that financial statements of the family members were prepared after incorporating the additional income intended to be offered before Hon'ble ITSC but the assessee was prevented by Ld. AO to make such declarations. The complete working of additional income vis-à-vis the settlement applications were furnished before Ld. CIT(A). The assessee also submitted comparison between value of land declared in IDS and Assessment order of the assessee and his family members, detailed break up of debit entries in 38 bank accounts of Nagaland based entities / individuals, details / explanation of other credit break up in bank accounts of the assessee and his family members and cash flow statements incorporating all the entries emerging from seized documents and additional income to be disclosed before Hon'ble ITSC. Considering the same, a remand report was called for by Ld. CIT(A) for AYs 2012-13 to 2017-18 and Ld. AO was directed to allow cross-examination to the assessee of the persons whose statements were relied upon in the assessment order.

4.6 During remand proceedings, summons was issued to 7 persons and the assessee was allowed cross-examination on 06.01.2022. Only three persons appeared and confirmed that they did not make their earlier statements based on which assessments were completed in the case of the assessee. However, Ld. AO chose to reiterate the position taken in the earlier assessment orders disregarding the assessee's additional evidences and submissions. Consequently, the assessee filed detailed rebuttal to remand report and drew attention to the additional evidences submitted in support of its claim. However, Ld. CIT(A) chose to confirm the stand taken by Ld. AO.

4.7 The additions, on merits, was dealt with by Ld. CIT(A) in an elaborate manner in the impugned order. The same could be enumerated as under: -

4.8 Credits Transferred from Nagaland based entities

The assessee contended that the transactions appearing in Nagaland based bank accounts were regular business transactions. The assessee also submitted that the debit transactions in the said bank accounts related to third-parties had no relation to the assessee and his family members. However, Ld. CIT(A) held that Ld. AO had identified 38 bank accounts and analyzed all bank transactions which revealed that the assessee and his family members or their business concerns were beneficiaries. The third parties to whom the payments were made were found to have business relations with the assessee group. Detailed findings were rendered by Ld. AO for each of the group of entities. As against this, the assessee did not offer and specific explanation to the above transactions routed through these bank accounts. The assessee failed to prove the claims regarding the true

nature of each of the transactions of which he or his family members and other business concerns were beneficiaries. The assessee also failed to explain as to why there was no loan agreement and why there was no security against huge loans, no interest was ever paid and there was no repayment of principal amounts and the lenders were not aware of the quantum of alleged loans so advanced. All these facts would negate the claim that the said receipts were loans. The assessee himself admitted receipts from NPPP as his income. Therefore, the additions made by Ld. AO on this count were confirmed. The totality of the circumstances and the evidences gathered would show that the assessee routed his unaccounted money through the said 38 bank accounts to himself and family members and group concerns. Therefore, the substantive assessments of receipts in the bank accounts were upheld.

4.9 Cash deposit in the bank accounts of the assessee

The assessee pleaded that the assessee's family treats the cash as family pool and the cash deposits could be added to income after considering the entire family cash balance after eliminating inter-family cash transfers. The assessee also submitted that the cash deposits were partially out of income disclosed in the IDS 2016. Further, part of cash deposits was disclosed as contract income in the returns of income. However, all these pleas were rejected on the ground that specific explanation for each cash deposit was not furnished by the assessee and the assessee's plea was not supported by the evidences gathered during the search proceedings. The assessee filed Form-1 under IDS 2016 and submitted that the income was utilized for making investment in immovable properties and therefore, the same could not

be accepted as source of cash deposits. The assessee did not furnish evidence in support of receipt of contract income and consultancy income which is claimed as a source for making the cash deposits. The assessee did not furnish the details of the specific contract, details of contractee, nature of work contract agreement etc. Therefore, this addition was also upheld.

4.10 Cash Deposits in the bank accounts in the name of family members and other group concerns

The assessee submitted that his family members had business income and the cash generated out of such activities was deposited in the bank accounts periodically. The assessee submitted that group entity viz. M/s Vrindavan Builder Pvt. Ltd. (VBPL) was engaged in running a hotel and the cash deposits were sourced out of room and restaurant collections as found from the books of accounts. Further, the family members and all other group concerns were separate assessee under Income Tax act and assessed separately and therefore, the cash deposits made in those accounts could not be treated as assessee's income. This plea was negated on the ground that the family members had no independent sources of business income in Nagaland. The assessee's nexus with cash deposits made in bank accounts maintained in Nagaland by his family members was reasonably established. Accordingly, the additions were upheld.

However, Ld. CIT(A) held that Ld. AO made additions of cash deposits in the bank accounts maintained outside Nagaland by assessee's family members. To support the same, Ld. AO did not bring on record any material to show the nexus of such cash deposits in the bank accounts maintained outside Nagaland by family members and group

concerns. The family members and group concerns had independent sources of income outside Nagaland. Therefore, Ld. AO was directed to delete the additions of cash deposits made outside Nagaland in the bank accounts of family members and M/s VBPL and partly allowed the ground raised by the assessee. The Ld. AO was directed to consider the same on substantive basis in assessment framed on family members and M/s VBPL.

4.11 Cash Payments for purchase of immovable properties.

The assessee submitted that cash payments for acquisition of immovable properties were made out of family cash pool and therefore, the same stood explained. The Ld. CIT(A) noted that the assessee did not disprove the facts of cash payments as noted in the assessment order. The cash flow statements of assessee and his family members was not supported by any specific explanation for each of the cash receipts. The assessee thus could not furnish evidence in support of nature of source of cash receipts. No evidence was furnished to explain the availability of cash on the said dates for making the said investments in immovable properties. The explanation regarding existence of cash pool was not supported by the evidences gathered during the search and post search proceedings. Accordingly, the additions so made were confirmed.

4.12 Other Credit entries in bank accounts of the assessee

It was held that credit entries include receipts from LIC of India, UTI Mutual Fund which, prima facie, were not income. Therefore, Ld. AO was directed to examine the nature of credits, reconcile the same and recompute the additions to be made on this account.

4.13 Other Credit entries in the bank accounts of family members and group concerns

The Ld. CIT(A) held that since the family members had independent source of income outside Nagaland and therefore, the addition, to that extent was to be deleted in assessee's hands with the direction that the same could be considered in the assessments of family members.

4.14 Credit for income disclosed under IDS 2016

The Ld. CIT(A) held that the assessee and his family members failed to produce copies of Form No.3 and certificate of declaration in Form No.4 and therefore, the declaration had not reached finality. Accordingly, no credit could be given for such declarations.

Alternatively, it was held by Ld. CIT(A) held that the assessee failed to provide the specific bank accounts of the persons / entities based in Nagaland, in respect of each transaction, through which the assessee received such income. The assessee failed to produce the reconciliation of income declared under IDS 2016 with the help of bank statements of those entities and with the help of bank statements of the assessee. Therefore, this plea was also rejected.

4.15 The adjudication of Ld. CIT(A) reduced the overall impugned additions of Rs.309.21 Crores (on overall basis for all the years) to Rs.271.39 Crores which has been tabulated in Table-1D on page no.18 of written submissions containing 140 pages.

4.16 Finally, the appeal was partly allowed against which the assessee is in further appeal before us.

Our findings and Adjudication: Findings on Legal Grounds

5. Before us, the assessee has raised various legal grounds which are contained in ground nos.1 to 4c. In Ground No.1, the plea of the assessee is that in the absence of any incriminating material found during the course of search proceedings, no such additions could be made u/s 153A. This ground primarily arises in AYs 2012-13 to 2014-15 since these assessments are stated to be unabated assessment years. The Ld. AR submitted that in the absence of any incriminating material on record, no such additions could have been made by Ld. AO. However, this plea could not be accepted since this is not a case wherein no incriminating material has been found. Rather, it is the finding of Ld. CIT(A) that several incriminating materials were seized which include blank letter head of Nagaland based persons / entities, blank cheques, notes / diaries containing details of payments received and transferred. The evidence relating to unexplained investment made in cash towards purchase of immovable properties was also seized. Thus, this is a case where sufficient incriminating material has been found by investigation team which indicates undisclosed income of the assessee. The aforesaid plea is also to be rejected in terms of decision of Hon'ble Kerala High Court in **E.N. Gopakumar (75 Taxmann.com 215)** wherein it has been held that there is no such requirement of incriminating material to assess or reassess the income of the assessee after search proceedings. Therefore, even if the argument of Ld. AR was to be accepted that no incriminating material was found for this year, this plea is to be rejected considering binding judicial precedent of Hon'ble High Court of Kerala. In the result, this ground stand dismissed for all the years.

Validity of Assessment Proceedings for AY 2018-19

6.1 For AY 2018-19, the assessee has raised ground nos. 1a to 1g wherein the assessee has challenged the jurisdiction assumed by Ld. AO while passing the order on best judgement basis u/s 144. It could be seen that Ld. AO issued notice u/s 142(1) on 19.11.2019 calling assessee to file return of income for this year. Pursuant to the same, the assessee has filed return of income for this year on 31.01.2020. The Ld. AO held that the assessee did not e-verify the return of income and therefore, notice u/s 143(2) could not be generated for this year. Since the assessee did not e-verify the return of income, the return was to be treated as invalid return and accordingly, Ld. AO proceeded to frame the assessment. The assessee's plea that no notice u/s 143(2) was issued was rejected by first appellate authority on the ground that e-verification of the return was pending and thus, notice u/s 143(2) could not be generated. Accordingly, the return was held to be invalid return and assessment was framed u/s 144 on 17.03.2020 which was in order. Before us, Ld. AR has submitted that on the date of framing of assessment, the prescribed period of 120 days to e-verify the return of income had not expired and therefore, the return of income could not be held to be invalid prematurely. Accordingly, the jurisdiction as upheld by Ld. CIT(A) was contrary to law.

6.2 From the fact, it emerges that as per extant rules, the assessee could e-verify return of income within 120 days from the date of filing thereof. The return of income was filed by the assessee on 31.01.2020 which could have been verified within 120 days whereas the assessment has been framed as early as on 17.03.2020 i.e., within 45 days from date of filing of return of income, treating the return of

income as invalid return. The action of Ld. AO could not be held to be justified on these facts. This is further supported by the fact that CPC has received the manual ITR-V on 01.06.2020 and the return has eventually been treated as a valid return.

6.3 We also find that as per the provisions of Sec.144, it is incumbent on the part of Ld. AO to give assessee an opportunity of being heard before proceeding with the assessment on best judgment basis. However, no such opportunity is shown to have been given and no notice u/s 143(2) has ever been issued to the assessee. Beside initial notice u/s 142(1) dated 19.11.2019, no further show-cause notice has been issued to the assessee which runs contrary to statutory provisions of Sec.144. Therefore, for this year, no valid jurisdiction could be said to have been assumed by Ld. AO. The Ld. AO has acted in violation of the provisions of Section 144 which obligate Ld. AO to issue show-cause notice before proceeding with the assessment. Secondly, mandatory statutory notice u/s 143(2) has not been issued by Ld. AO which would invalidate assessment proceedings as per settled legal position including the decision of Hon'ble Karnataka High Court in **CIT vs. Gouthamchand (17 Taxmann.com 46)** besides various other decisions of Tribunal. In this decision, Hon'ble Court held that it is pre-condition to issue notice u/s 143(2) irrespective of fact whether the assessment has been framed u/s 143(3) or u/s 144. In the present case, the assessee has filed return of income which has been taken note of by Ld. AO. However, before expiry of limitation period to e-verify the same, Ld. AO proceeded with the framing of assessment by treating the return as invalid return. No notice u/s 143(2) or subsequent notice u/s 142(1) has been issued as mandated by law.

The decision of Hon'ble Punjab & Haryana High Court in **CIT vs Cebon India Ltd. (184 Taxman 290)** has further held that the absence of notice u/s 143(2) could not be held to be curable defect u/s 292BB of the Act and the assessment has to be treated as void. Similar is the decision of Kolkata Tribunal in **Cosmat Traders (P.) Ltd. vs. ITO (128 Taxmann.com 174)** wherein the bench relied on the decision of Hon'ble Apex Court in **CIT vs Laxman Das Khandelwal (108 Taxmann.com 183)** and held as under: -

12. The Hon'ble Calcutta High Court in the case of Pr. CIT v. Oberoi Hotels (P.) Ltd. [2018] 96 taxmann.com 104/409 ITR 132 followed the judgment of the Hon'ble Supreme Court in the case of Hotel Blue Moon (supra) and held as follows:—

"9. In the light of the above discussion, particularly taking into consideration the law laid down by the Supreme Court in Hotel Blue Moon (supra), it is inescapable that the issuance of a notice under section 143(2) of the Act is mandatory if the Assessing Officer seeks not to accept any part of the return as furnished by the assessee or make an assessment order contrary thereto and, even in course of reassessment proceedings, such notice cannot be dispensed with.

10. One of the arguments put forth on behalf of the Revenue is that in course of reassessment proceedings once a notice is issued under section 148 of the Act, the assessee is made aware of what part of the income or on what count the assessee's income is perceived to have escaped attention. It is submitted that in such a scenario, the requirement of a notice under section 143(2) may be somewhat diluted, if not unnecessary. Apart from the fact that such argument cannot be countenanced in the light of the dictum in Hotel Blue Moon (supra), it is evident that an assessment under section 143(3) of the Act is consequent upon a hearing and the production of evidence on such points on which the Assessing Officer may harbour doubts and are indicated in his notice under section 143(2) of the Act. Section 143(3) of the Act contemplates an assessment undertaken by the Assessing Officer upon material being produced by the assessee on grounds which are indicated by the Assessing Officer in his notice under section 143(2) of the Act in respect whereof the Assessing Officer may have misgivings or may disagree with the return filed by the assessee. Implicit in the wording of Section 143(3) of the Act is the indispensability of a notice under section 143(2) thereof.

11. Apropos the second question framed above, it is necessary that Section 292BB of the Act be noticed in its entirety:

"292BB Notice deemed to be valid in certain circumstances —

Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was-

(a) not served upon him; or

- (b) not served upon him in time; or
 (c) served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee had raised such objection before the completion of such assessment or reassessment."

12. Even if the provision does not carry a non-obstante clause, since Section 292BB is a provision of general application, it would be applicable in all situations; but only in so far as it proclaims to operate. Section 292BB of the Act, read in the context of several provisions of the Act which mandatorily require notices to be issued in diverse situations, cannot be said to have dispensed with the issuance of such notices altogether. Section 292BB must be understood to cure any defect in the service of the notice and not authorise the dispensation of a notice when the appropriate interpretation of a provision makes the notice provided for thereunder to be mandatory or indispensable.

13. This is not a case where the assessing officer says that a notice had been issued and there is a contradiction thereof by the assessee. It is evident that the assessee carried the objection before the Commissioner (Appeals) and the Commissioner brushed aside the objection on the ground that it was a technicality without addressing the issue or applying his mind to such aspect of the matter. Further, it is evident from the order impugned passed by the Appellate Tribunal that no notice under section 143(2) of the Act had, in fact, been issued in this case. In such a situation, where a notice that is mandatorily required to be issued is found not to have been issued, section 292BB of the Act has no manner of operation.

The two substantial questions of law are answered accordingly as follows:

(1) If the time for issuance of the notice under section 143(2) of the Act has expired or the time for completing the reassessment proceedings under section 153(2) of the Act has run out, the failure to issue such notice under section 143(2) of the Act would result in the entire proceedings, including any order of assessment, to be quashed.

(2) Section 292BB of the Act does not dispense with the issuance of any notice that is mandated to be issued under the Act, but merely cures the defect of service of such notice if an objection in such regard is not taken before the completion of the assessment or reassessment.

In addition, it is held that in the light of the Supreme Court dictum in *Hotel Blue Moon (supra)*, the view expressed in *Humboldt Wedag India (P.) Ltd. (supra)* is per incuriam and, as such, not good law."

13. Similarly, the Hon'ble Supreme Court in the case of *CIT v. Laxman Das Khandelwal* [2019] 108 taxmann.com 183/266 Taxman 171/417 ITR 325 (SC), held as follows:—

"7. A closer look at Section 292BB shows that if the assessee has participated in the proceedings it shall be deemed that any notice which is required to be served upon was duly served and the assessee would be precluded from taking any objections that the notice was (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner. According to Mr. Mahabir Singh, learned Senior Advocate, since the Respondent had participated in the proceedings, the provisions of Section 292BB would be a complete answer.

On the other hand, Mr. Ankit Vijaywargia, learned Advocate, appearing for the Respondent submitted that the notice under section 143(2) of the Act was never issued which was evident from the orders passed on record as well as the stand

taken by the Appellant in the memo of appeal. It was further submitted that issuance of notice under section 143(2) of the Act being prerequisite, in the absence of such notice, the entire proceedings would be invalid.

8. The law on the point as regards applicability of the requirement of notice under section 143(2) of the Act is quite clear from the decision in Hotel Blue Moon's case (supra). The issue that however needs to be considered is the impact of Section 292BB of the Act."

14. Applying the propositions of law laid down in the above caselaw to the facts of the case on hand, we have to necessarily hold that the passing of assessment order u/s 144 of the Act, without issuing notice u/s 143(2) of the Act, by the Assessing Officer having jurisdiction over this assessee, is bad in law and has to be quashed. As we have quashed the assessment itself on the grounds of jurisdiction, we do not consider the other issues raised by the assessee as it would be an academic exercise."

6.4 Therefore, considering the facts and circumstances of the case, it was to be held that none of the conditions for invoking jurisdiction u/s 144 was satisfied by Ld. AO which would vitiate the assessment proceedings. Further, the assessee has filed valid return of income and no notice u/s 143(2) has ever been issued before making assessment. The non-issuance of notice u/s 143(2), in non-curable defect and therefore, assumption of jurisdiction and subsequent order passed u/s 144 becomes bad-in-law. The case laws as cited above clearly support the legal ground raised by the assessee. Therefore, we hold that the assessment order passed for this year fails on legal grounds and the consequential additions made therein become unsustainable. We order so. This being so, no further adjudication is required in the appeal for AY 2018-19. The assessee's appeal stand allowed on this ground alone.

7. Other legal grounds for AYs 2012-13 to 2017-18

7.1 In one of the legal grounds, the assessee has challenged the impugned order for violation of principles of natural justice. It has been submitted that the assessee and his family members were prevented from approaching Hon'ble ITSC and the assessment orders were

passed in a hurried manner. The Ld. AR has submitted that notices u/s 153A was issued on 03.08.2018 which was complied with by the assessee and the assessee expressed intention before Ld. AO to make settlement before Hon'ble ITSC. The assessee intimated lower authorities from time to time about the progress of the same and paid installment of taxes as per settlement application. To make tax payments, the assessee filed petition before Ld. Pr.CIT on 22.05.2019 for release of the properties which was rejected on 26.07.2019 thus preventing the assessee to settle the issues before Hon'ble ITSC. Nevertheless, the assessee and his family members paid first installment of taxes aggregating to Rs.6.29 Crores towards impending settlement applications. The aforesaid facts were communicated by the assessee in response to statutory notices issued by Ld. AO u/s 143(2) for AYs 2012-13 to 2017-18 as well as subsequent notices issued u/s 142(1) for these years. The assessee was expected to file response to show-cause notices running into more than 140 pages within a short span of time which was against the principle of natural justice. In the meantime, Ld. AO, vide letters dated 25.02.2020, issued orders for conditional release of 3 properties from attachment u/s 281B. The assessee filed partial reply to show-cause notice dated 31.01.2020 and sought further time to file voluminous details as called for in short span of time. In the course of various hearings before Ld. AO and Pr.CIT, the assessee and his family members repeatedly informed them of their intention of filing their settlement applications on 20.03.2020 which was also verbally assured by Ld. AO. However, the assessment was completed abruptly on 17.03.2020 thus thwarting assessee's efforts to make application before Hon'ble ITSC. It is pertinent to note

that the assessment proceedings were kept open on the e-portal up-to 19.03.2020 and the assessment were framed keeping the assessee in dark which is further supported by the fact that the assessee made further payment of taxes of Rs.8.84 Crores and Rs.6.67 Crores on 18.03.2020 and 19.03.2020 respectively under impending settlement applications to be filed on 20.03.2020. The Ld. AR further submitted that the assessments were getting time barred only on 29.06.2020 due to the extension of time limit by 181 days on account of the period of stay granted by the Hon'ble Guwahati High Court. The Ld. AR thus raised issue of violation of principle of natural justice.

7.2 We find that Ld. CIT(A) has rejected this ground by observing that the assessments were framed by Ld. AO in accordance with law after obtaining due approvals.

7.3 Though the chronology of event may lead certain credence to the arguments of Ld. AR that the assessments were framed in a hurried manner, however, it is a fact that the assessments have been framed by Ld. AO in accordance with law after obtaining due approvals. The Ld. AO, in our considered opinion, was not required to wait till the last date as prescribed for framing the assessment particularly in the light of the fact that sufficient opportunities of hearing were granted to the assessee during the course of assessment proceedings but the assessee mostly sought adjournments, though for valid reasons and failed to file requisite details as called for by Ld. AO. Further, nothing prevented assessee to make application before Hon'ble ITSC during the pendency of assessment proceedings. It is further noted that the assessee was subjected to remand proceedings during the course of appellate proceedings to defend its case and therefore, no infirmities

could be found in the impugned orders, on these grounds. The only conclusion that could be culled out of these facts is that due consideration could be given to the computation of voluntary income intended to be disclosed by the assessee and his family members in their settlement applications.

7.4 In yet another legal plea, the assessee has submitted that Ld. AO erred in passing the assessment orders so as to circumvent the decision of Hon'ble Guwahati High Court on the writ petition filed by the assessee challenging the transfer of assessee's case. The assessee challenged transfer of jurisdiction to ACIT, Kollam on 18.07.2018 which was challenged before Kohima Bench of Hon'ble Guwahati High Court. The writ petition was dismissed on 25.09.2019. In response, the assessee filed another petition before division bench of Hon'ble Guwahati High Court on 27.02.2020 which was pending for hearing on the date of framing of the assessments. Since the challenge to transfer of jurisdiction was sub-judice at the time of framing of assessment, the assessments are liable to be quashed.

7.5 This plea of Ld. AR could not be accepted since at the time of framing of assessments, no stay was in operation and Ld. AO was under no obligation to keep the assessments in abeyance. Accordingly, this ground stand dismissed.

7.6 In yet another legal ground, the assessee has assailed impugned addition on the ground that the additions were based solely on third-party statements taken at the back of the assessee and no opportunity of cross-examination was ever provided to the assessee. These statements were pre-existing statements recorded by the investigation wing and could not be the sole basis of assessment. For the same, Ld.

AR has relied on the decision of Hon'ble Delhi High Court in **PCIT vs. Smt. Krishna Devi (126 Taxmann.com 80)** as well as the decision of Hon'ble Apex Court in **Andaman Timber Industries vs. CCE (62 Taxmann.com 3)** wherein it was held that not allowing assessee an opportunity to cross examine the concerned witnesses whose statements have been relied upon, is a serious flaw which would render the order to be nullity since it amounts to violation of principle of natural justice. The Ld. AR also submitted that the subsequent retraction made by Shri G.K. Rengma was ignored by lower authorities. The Ld. AR further submitted that during remand proceedings, summons was issued selectively and the 3 persons who appeared for cross-examination and they also retracted from original statements made by them and therefore, these statements could not be used against the assessee. The Ld. CIT(A), on the other hand, in the impugned order, held that such cross-examination was not necessary since the additions were not completely based on the statements but Ld. AO had analyzed the transaction patterns in Nagaland bank accounts and after due consideration of documentary evidences such as account opening forms, mobile numbers linked to accounts, details of cash withdrawals made from bank accounts etc. before making the impugned additions. Further, the Appellant had been confronted with the statements of Shri Rolly Thenucho Tunyl, Shri Zhori Kire & Shri G.K Rengma on 24.10.2017 in course of recording his statement u/s 132(4) on 24.10.2017 but he did not make any request for cross-examination of the above persons during the course of the search proceedings or during the assessment proceedings. Further, insofar as the retraction of Shri G.K. Rengma was concerned, no evidence has

been filed to show that Ld. AO was informed of such retraction. Shri G.K. Rengma claimed in his retraction statement that the turnover figures in the original statement dated 08.06.2017 were incorrect. However, such retraction was not supported by evidence to prove the sources for the claim of business turnover made by Shri G.K. Rengma. Further, the retraction was made after long delay and stood nullified by the Turnover Certificates produced by him during the course of post search proceedings. So far as the retraction of statements of Shri G.M. Nair, Shri Babu Kuriakose and Shri Sabu Komban Francis were concerned, those persons failed to substantiate and justify the long delay in retraction. Further the additions were not solely based on statements. Having received funds from those accounts, the burden was on assessee to prove the true nature of the receipts which assessee failed to discharge. Accordingly, cross-examination was inconsequential in nature.

7.7 Upon perusal of case records, it could be seen that certain statements were recorded by investigation wing during the course of search operations from various persons viz. Shri G.K. Rengma, Shri Zhori Kire, Shri G.M Nair, Shri Babu Kuriakose, Shri Sabu K. Francis and various land owners/contractors purportedly linked to the Sreevalsam Group who had allegedly received certain payments from various Nagaland based parties. These statements were used to support the impugned additions. However, no independent investigation or verification was done by Ld. AO and no cross-examination was ever provided to the assessee during the course of assessment proceedings since the assessment proceedings were concluded in a hurried manner. The statements of land owners /

contractors were never even confronted to the assessee and the copies of statements were never provided to the assessee at any stage of proceedings. The assessee came to know of all these statement for the first time after receipt of the impugned assessment orders. During remand proceedings, summons was issued selectively and 3 persons i.e., Shri G.M. Nair, Shri Babu Kuriakose & Shri Sabu Francis appeared and subjected to cross-examination by the assessee. All the three persons denied the contents of their alleged earlier statements. Under these circumstances, the case law of Hon'ble Delhi High Court in **PCIT vs. Smt. Krishna Devi (126 taxmann.com 80)** would assume importance wherein it has been held that in terms of provisions of Sec.142(2), it was incumbent on the part of Ld. AO to conduct proper inquiries from independent sources while relying on the statements recorded by investigation wing. The pre-existing statements recorded by the Investigation Wing could not form the sole basis of assessment. It could also be seen that Shri G.K. Rengma retracted the statement vide affidavit dated 01.04.2019 wherein he clarified that the statement was recorded incorrectly. The said retraction was supported by the audited financial statements of Shri G.K. Rengma as placed on record. The total turnover of Shri G.K. Rengma as reflected in these financial statements is much higher than the figures recorded in the statement. Under these circumstances, the third-party statements recorded from Shri G.K. Rengma as well as from other persons would lose evidentiary value. The statements of remaining persons i.e., land owners / various other contractors have never been independently examined by Ld. AO. The copies of statement were never confronted to the assessee and no opportunity of cross-examination was ever provided to the assessee.

Accordingly, the ratio of decision of Hon'ble Apex Court in **Andaman Timber Industries vs. CCE (62 Taxmann.com 3)** would apply to the facts of the case and support the case of the assessee. Considering the same, no much weightage could be given to such statements and the same, on standalone basis, would not be sufficient to support the impugned additions.

7.8 In the last legal ground, the assessee has contested the impugned additions on the ground that the additions have been made merely on the basis of surmises, conjectures and on borrowed satisfaction without specifying the relevant sections under which additions have been made. The Ld. AR has submitted that exorbitant additions have been made on substantive basis in the hands of the assessee without specifying the relevant sections in the body of assessment order. Referring to demand notices for various years, the Ld. AR has further submitted that tax rate as specified u/s 115BBE has been applied which would show that Ld. AO has invoked the provisions of Sec.68 or 69 or 69A to 69D to make impugned additions.

7.9 Referring to table as extracted by us in preceding para-3.17, Ld. AR pointed out that out of total credit transfers of Rs.243.19 crores from the impugned bank accounts of Nagaland based parties, only Rs.23.99 crores pertain to the present assessee. The remaining credit of Rs.219.21 Crores pertain to transfers made to the accounts of other persons viz. family members, group concerns and various third parties not related to the assessee. Further, out of total additions of Rs.27.36 crores made in the hands of the assessee on account of cash deposits in various bank accounts, only Rs. 6.26 crores pertain to the deposits in the bank account of the assessee whereas the remaining cash

deposits pertain to the bank accounts of his family members & group concerns who are all separate and independent legal & taxable entities. Similarly, out of the total additions of Rs.22.55 crores made in the hands of the assessee on account of other credit entries in various bank accounts, only Rs.3.77 crores are relatable to credit entries in the bank accounts of the assessee whereas the remaining credit entries of Rs.18.78 crores relate to the bank accounts belonging to the family members of the assessee. Similar is the case with the addition of Rs.16.10 crores made by the Ld. A.O on account of alleged on-money paid in cash which has completely been paid by the family members of the assessee for acquisition of land / properties in their separate names, having no nexus with the assessee. The Ld. AR urged that nowhere in the impugned assessment order, Ld. AO established with cogent evidences or concrete material that the assessee was de-facto owner of the bank accounts of payers (38 Bank Accounts belonging to 21 Nagaland based entities / individuals) or the bank accounts of the recipients (other than the assessee) viz. assessee's family members, various group concerns of the Sreevalsam Group or various other third persons, such as contractors, land owners and/or other persons having no linkage with the Sreevalsam Group etc. Under these circumstances, the debit entries in the bank accounts of the payers (i.e., loans advances/payments/investments made by Nagaland based parties) or the credit entries in the bank accounts of the recipients (i.e., loans and/or other receipts, whether or not in the nature of income) cannot be treated as unaccounted income of the assessee. In the light of these facts, Ld. AR submitted that the assessee's onus u/s 68 remain confined to explain the credit entries appearing in his own bank

account and the assessee has discharged this onus successfully. The onus u/s 68 to explain the credit entries in the bank accounts of other family members, group concerns, third parties etc. lies on those respective persons / entities who are all separately assessed to tax and have no linkage to the assessee. Similar is the case with the additions made on account of cash deposits and other credit entries in the bank accounts of family members & group concerns and the alleged on-money paid by them. Therefore, these credits could not be added in the hands of the assessee unless the assessee is proved to be the actual owner of all these bank accounts. To summarize, Ld. AR contended that out of total substantive additions of Rs.309.21 crores made in the hands of the present assessee, only Rs.34.02 Crores could be linked to the assessee or his bank accounts, a large part of which already stands disclosed under IDS, 2016. The Ld. AR has further contended that the AO, apart from relying on surmises and conjectures, has brought nothing on record to prove that the sums credited in bank accounts of family members, group entities and third parties represent the undisclosed income of the assessee. Per Contra, the family members and group entities, vide their respective affidavits, have solemnly affirmed that the above entries belong to them only and that the assessee has nothing to do with the entries in their respective bank statements. The Ld. Sr. DR, on the other hand, relied on the findings of lower authorities that the assessee earned income from Nagaland based entities and transferred the same for the benefit of group as a whole and therefore, the credits would represent assessee's undisclosed income and the same has rightly been added in the hands of the assessee.

7.10 From the demand notices issued by Ld. AO, it would emerge that the impugned additions have been made by invoking the provisions of Sec. 68, 69 or 69A to 69D and the assessee would be obligated to discharge the onus as casted under those respective provisions. Upon perusal of assessment order as well as impugned order, we would concur with the submissions of Ld. AR that without establishing that the assessee was de-facto owner of Nagaland based Bank accounts or the bank accounts of recipients, no substantiative additions could be made in the hands of the assessee on aggregate basis. No such nexus of assessee and those bank accounts has been established by lower authorities. Under these facts, the onus of the assessee has to remain confine to the extent of credits received by the assessee in his own books of accounts and not any further. To hold any contrary position, Ld. AO must establish this fact otherwise no such debits / credits appearing in bank accounts of other parties could be deemed to be the income of the assessee. The assessee's onus u/s 68 in respect of entries in books / bank accounts of other persons is only secondary i.e., consequential upon the successful discharge of the primary onus by the A.O of establishing the assessee to be the actual owner of the books of account / bank accounts held in the names of other persons. This position has been held by Hon'ble Supreme Court in the case of **CIT Vs. Daulat Ram Rawatmull (87 ITR 349)**. Therefore, the credits appearing in the other bank accounts could not be held to be income of the assessee. In the above background, we proceed to deal with the quantum additions on merits in succeeding paragraphs.

Adjudication on Merits**Credit Entries Received from Nagaland bases entities / individual**

8.1 The addition made on this account aggregates to Rs.243.19 Crores for all the years. Out of this, the amount of Rs.23.98 Crores has been received by the assessee whereas the remaining amount of Rs.219.20 Crores represent transfer to other family members / group concerns and third parties. These 38 bank accounts are held by 21 Nagaland based individual / entities and the additions made on this count could be tabulated as under (Table-9, Page No.68 of written submissions containing 140 pages): -

No.	Name of Nagaland Party	Amount
1	G.K. Rengma/ Tep Rengma	751,151,040
2	Excellence Associates (Rolly Thenucho Tunyl)	876,159,246
3	Nagaland Police Petrol Pump	332,547,690
4	General Auto	68,431,089
5	Mezhunuo Solo	53,500,000
6	Ken Chishi	160,851,774
7	A Daili	5,000,000
8	Auto Spares	4,000,000
9	Babu Kuriakose	3,550,000
10	Bokali K Chishi	45,000,000
11	Fresh Bakery	3,600,000
12	Impa Longkumar	42,140,000
13	Inalika K Chishi	4,250,000
14	K.B. Traders	16,335,000
15	Kohima Electricals	1,200,000
16	KRS Agency	13,400,000
17	Mukhavi Sema (Hokali Shohe)	35,000,000
18	Paradise Restaurant	1,200,000
19	Popular Fast Food	1,700,000
20	Povezo Puro	3,949,300
21	VKR Associates	9,000,000
	TOTAL	2,431,965,139

8.2 The quantum / year-wise break of the same has been summarized by Ld. AR as under ((Table-9A, Page No.68 of written submissions containing 140 pages): -

QUANTUM WISE BREAKUP OF NAGALAND TRANSFERS AS PER ASSESSMENT ORDER

CATEGORY (TRANSFERS TO)	Asst. Order (A.Y. 2012-13) Pg. Nos. (see pg. 452-672 of PB-1)	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	TOTAL
		AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16	AY 2016-17	AY 2017-18	
A - Family Members	Pgs. 156-157	19,880,000	16,001,950	33,099,143	104,628,249	18,568,009	66,995,594	259,172,945
B - Trusted Employees, Friends & Associates	Pgs. 157-159	5,500,000	2,450,000	2,250,000	2,361,000	3,102,500	5,680,057	21,343,557
C - Group Concerns	Pgs. 159-161	52,420,500	117,286,862	67,179,913	158,346,658	144,195,875	143,562,680	682,992,488
D - Civil Work Payments	Pgs. 161-170	18,055,125	31,417,499	15,599,500	69,780,230	109,543,142	89,536,756	333,932,252
E - Investment in Property	Pgs. 170-185	126,821,661	74,400,500	146,087,637	125,470,336	260,036,025	90,918,441	823,734,600
F - Others	Pgs. 185-191	11,398,186	17,953,136	9,467,873	21,602,760	11,712,856	90,751,682	162,886,493
G - Suspicious Concerns	Pgs. 191-193					29,500,114	27,033,495	56,533,609
No category identified by Dept		31,194,798	27,614,735	500,000	6,984,196	13,572,000	11,503,466	91,369,195
Total		265,270,270	287,124,682	274,184,066	489,173,429	590,230,521	525,982,171	2,431,965,139

8.3 The findings with respect to major entities have been rendered by Ld. AO in the assessment orders and the same has also been dealt with by Ld. CIT(A) in the appellate order. The Ld. AO has alleged that there is huge inflow of funds from these accounts to the accounts of the assessee group and credits so received are to be considered as the income of the assessee. The Ld. AO has alleged that receipts from these accounts have been utilized by the assessee group for (i) Purchase of properties for assessee group; (ii) Transfer of funds to bank accounts of various concerns in the Sreevalsam Group; (iii) Making Payments to contractors for civil work undertaken in the showrooms etc. of assessee group; (iv) Transfers to Bank Accounts of family members, friends, relatives etc.; (v) For misc. purposes like charities, payment for religious institutions, payments for foreign tour, purchase of jewellery and textile for the group etc. However, the assessee has contended that the transactions appearing in these bank accounts were regular business transactions. The assessee also

submitted that the debit transactions in the said bank accounts related to third parties had no relation to the assessee and his family members. However, Ld. CIT(A) upheld the action of Ld. AO on the ground that the assessee and his family members or their business concerns were beneficiaries from these accounts. The third parties to whom the payments were made were found to have business relations with the assessee group. Per contra, the assessee did not offer and specific explanation to the above transactions routed through these bank accounts and the assessee failed to prove the claims regarding the true nature of each of the transactions. The totality of the circumstances and the evidences gathered would show that the assessee routed his unaccounted money through the said 38 bank accounts to himself and his family members and group concerns. Therefore, the substantive assessments of receipts in the bank accounts were upheld. Aggrieved, the assessee is in further appeal before us.

8.4 From the perusal of assessment order, the undisputed position that emerges is that the assessee group has received credit entries from 21 Nagaland based individuals / entities who happen to be the government contractors and suppliers. The substantial credit in all these 38 accounts represents government contract receipts which have been sourced to transfer the funds to the assessee group. All these bank accounts are held by Nagaland based government contractors. The credits so received by the assessee are stated to be in the nature of loan or contractual income which has already been disclosed or intended to be disclosed by the assessee. However, Ld. AO has alleged that it is assessee's own unaccounted income that has

been routed through these bank accounts in contrast to the fact that no addition for income arising in those bank accounts has been made in the hands of the assessee. The Ld. AO has also alleged that the creditworthiness of the lender could not be proved and these lenders were merely name lenders and accordingly, these were added to the income of the assessee.

Assessee's Submissions before us

8.5 The Ld. AR has assailed quantum additions on merits by way of elaborate written submissions which are contained in para 8.1 to 8.40 of the written submissions. We have gone through the same. The Ld. AR has submitted that from assessee's background, it could be seen that the assessee has worked with Nagaland Police Department since past many decades. He had been looking after the affairs of Police Vehicles including purchase of vehicles, procurement of their spare parts etc. During all these years, the assessee was dealing with Nagaland based contractors / tribal and developed good relations with them. During his association with the department, he was responsible for motor transportation wing of the Nagaland Police Department and responsible for general upkeep of all police vehicles and allotment of vehicles to various officers of the departments. All the government contractors who were executing work orders from the Police Department and numerous other government agencies approached him to work along with them for a share of income. The assessee chose to stay back in Nagaland and started assisting such contractors in execution of various contracts awarded to them by numerous government departments and quasi-governmental bodies. He started his liaisons and consultancy work in Nagaland utilizing his wide

contacts and vast experience gathered during his service period. While rendering such services, he was, inter-alia, entrusted with the work of speeding up the processing of the work orders and payments from the Police Department. In course of such activity, he earned a substantial amount by way of his remuneration for providing liaisoning and consultancy services apart from some petty contract jobs. The Ld. AR further submitted that assessee's wife also started assisting various Nagaland contractors in respect of their book keeping, tender documentation, bank payments etc. against remuneration. For smooth discharge of her duties relating to the financial transactions, she was given power of attorney by these Nagaland contractors to operate their bank accounts also. The income thus generated by her was used for investment in her proprietary and partnership business in Kerala and also in acquiring landed properties. She also actively involved herself in the business of various group concerns of the Sreevalsam Group as partner/director/proprietor along with her two sons. Similarly, both the sons were well qualified and they actively involved themselves in establishing and expanding various business concerns/entities of the Sreevalsam Group alongwith their mother. They also actively involved themselves in various contract liaisoning works for various Nagaland tribal contractors in their individual capacities. The liaisoning work generally included negotiating with sub-contractors, procurement of materials etc. The income generated from such work was similarly used for investment in their proprietary and partnership business in Kerala and also in acquiring landed properties. The assessee group made substantial investment in real estate properties out of incomes

earned from rendering of liaisoning services and out of loans advanced by the above Nagaland parties.

8.6 The Ld. AR further submitted that out of 21 Nagaland parties, 3 persons namely Shri G.K. Rengma, Shri Rolly Thenucho (Proprietor of M/s Excellence Associates & M/s Nagaland Police Petrol Pump) and Kehosele Angami (Proprietor of M/s. General Automobiles) were of very high status and had executed a large number of big and medium work orders for the Government even before coming in touch with the assessee and his family members. Shri G.K. Rengma had been executing work orders for the Government since 2002 whereas M/s. Excellence Associates and M/s. General Automobiles were empaneled as suppliers with the Nagaland Police since 2006. On the basis of these facts, the Ld. AR argued that the existence and creditworthiness of such Nagaland contractors, independent of the assessee and his family members, were proved beyond doubt. He further submitted that these Nagaland parties were big government contractors who had received numerous work orders from the Government. Few of them, namely Shri G.K. Rengma & Shri Rolly Thenucho also became directors/partners in few of the concerns of the Sreevalsam Group (controlled by the family members of the assessee). The Ld. AR has summarized the work orders received by them (to the extent available with him) during the past decade as under (Table 9B, Page No.72 of written submissions):

WORK ORDERS

F.Y.	GK Rengma/Tep Rengma/GT Rengma (pgs 95, 127-129, 204 of PB-2B)	Excellence Associates (pgs 80-82 of PB-2C)	Nagaland Police Petrol Pump (pgs 52-54 of PB-2D)	General Automobiles (pgs 186-187 of PB-2D)
2007-08	82,18,011.70			
2008-09	2,79,65,969.00			
2009-10	80,00,000.00		5,48,60,606.00	
2010-11	15,90,54,964.89	10,23,48,300.00		5,09,09,836.59
2011-12	42,79,72,754.67	37,87,21,736.36	16,13,36,156.34	7,05,04,562.65
2012-13	35,57,63,678.22	34,01,82,648.62	21,11,13,813.98	6,78,14,843.65
2013-14	24,12,65,239.45	32,58,56,265.08	15,05,28,555.36	7,03,58,331.86
2014-15	48,87,76,534.00	34,20,48,086.14	11,04,08,182.00	7,07,84,654.00
2015-16	51,40,58,792.34	73,48,34,649.16	37,26,70,975.86	6,86,35,730.00
2016-17	49,78,03,974.40	30,75,07,184.66	12,96,75,720.89	8,05,24,579.64
2017-18	-	-	15,02,54,370.24	
Total	2,72,88,89,918.67	2,53,14,98,870.02	1,34,08,48,380.67	47,95,32,538.39

8.7 In support of above submissions, Ld. AR placed on record several documentary evidences viz. net worth and turnover certificates of the Nagaland parties issued by their respective auditors. These documents are stated to be issued for the purpose of submissions along with Government tenders. The Ld. AR also placed on record copy of certificate issued by the Ld. Addl. CIT, Dimapur in regard to the identity and financial worth of Shri G.K. Rengma, copies of government work orders received by the abovenamed Nagaland parties, certificates in support of ownership of immovable properties by such Nagaland parties, audited financial statements of the Nagaland parties for the years under appeal etc. He argued that from the copies of the government work orders, it was evident that all the work orders were in the names of the Nagaland parties and not in the name of the assessee. Further, the bank statements of the Nagaland parties reflecting contract receipts by the above Nagaland parties from the Government account had been extracted in the impugned assessment

orders. He submitted that the Nagaland contractors were exempted from Income-tax u/s 10(26) of the Act and certificates to the said effect were also enclosed in the paper books. He argued that the Ld. AO had nowhere established that the impugned contract receipts against Government Orders awarded to the Nagaland contractors actually represented the unaccounted income of the Appellant. The Ld. AO had nowhere established that the Appellant was the de-facto awardee of the contracts awarded in the name of the Nagaland parties by the Government agencies. The Ld. AR further submitted that the Ld. A.O had categorically admitted in the assessment order that the impugned transfers/payments/investments were sourced out of such contract receipts from the Government. Thus, the source of the impugned transfer entries and the financial ability / creditworthiness of the Nagaland parties to make such payments/investments were proved beyond doubt. Proceeding further, it is the submission of Ld. AR that all these parties provided substantial interest free funds to the assessee group on the understanding that they would be remunerated at the time of repayment of loans. Further, these parties made investment in various properties belonging to the assessee group with mutual understanding to share future profits. These parties also undertook renovation/ extension/ construction of certain properties including hotels, showrooms etc. belonging to the Appellant group. It was also agreed that the account of such expenses would be submitted on completion of such construction/ renovation/ extension when either the expenses made by them would be reimbursed with reasonable return or the same would be transferred to loan account or capital account. All these facts have been affirmed by Nagaland parties vide their

respective affidavits enclosed in the paper books. It has further been submitted that that part of liaisons and contract incomes remained undisclosed and therefore, the same were declared in IDS, 2016. Post search proceedings, the remaining undisclosed income was worked out which was intended to be settled before Hon'ble ITSC.

8.8 The additional income proposed to be disclosed by the Appellant and his family members vide their respective settlement applications u/s 245C(1) of the Act has been tabulated by the Ld. AR in his written submissions as under (Table 10 of page no.73 of written submissions containing 140 pages) :

SUMMARY OF DECLARATION BEFORE ITSC

FY AY	2011-12 2012-13	2012-13 2013-14	2013-14 2014-15	2014-15 2015-16	2015-16 2016-17	2016-17 2017-18	2017-18 2018-19	TOTAL
MKR PILLAI	5,901,404	32,184,393	756,067	33,307,612	25,009,559	18,512,511	3,556,800	119,228,346
VALSALA RAJ	73,722,390	23,476,376	1,971,124	18,859,710	17,518,975	4,915,195		140,463,771
VARUN RAJ	10,017,206	2,801,463	12,693,978	7,179,271	15,227,166	7,653,796		55,572,880
ARUN RAJ	72,569,348	16,069,879	-	0	6,301,566	1,018,592	4,500,000	100,459,385
TOTAL	162,210,348	74,532,111	15,421,170	59,346,593	64,057,266	32,100,094	8,056,800	415,724,382

The details of taxes paid towards impending settlement applications has been tabulated as under (Table 15 on page no.78 of paper-book containing 140 pages): -

PARTY WISE SUMMARY OF TAX AMOUNT AS PER ITSC APPLICATION AND TAX PAID TILL 19.03.2020

PARTICULARS	MKR PILLAI	VALSALA RAJ	VARUN RAJ	ARUN RAJ	TOTAL	Cumulative taxes paid %
	Amount	Amount	Amount	Amount	Amount	
Tax Amount as per ITSC Application	71,530,250.25	97,765,777.08	42,784,754.93	59,472,857.61	271,553,639.87	
Tax Paid on 29.11.2019	6,710,440.00	32,731,320.00	14,526,000.00	8,892,240.00	62,860,000.00	23%
Tax Paid 18.03.2020	47,700,000.00	-	40,650,000.00		88,350,000.00	56%
Tax Paid 19.03.2020	18,600,000.00	33,500,000.00		15,600,000.00	67,700,000.00	81%
Total Tax paid	73,010,440.00	66,231,320.00	55,176,000.00	24,492,240.00	218,910,000.00	

The Ld. AR thus submitted that the assessee intended to make further disclosure of Rs.11.92 Crores before Hon'ble ITSC, the further breakup of the same has been extracted in Table-11A of written submissions.

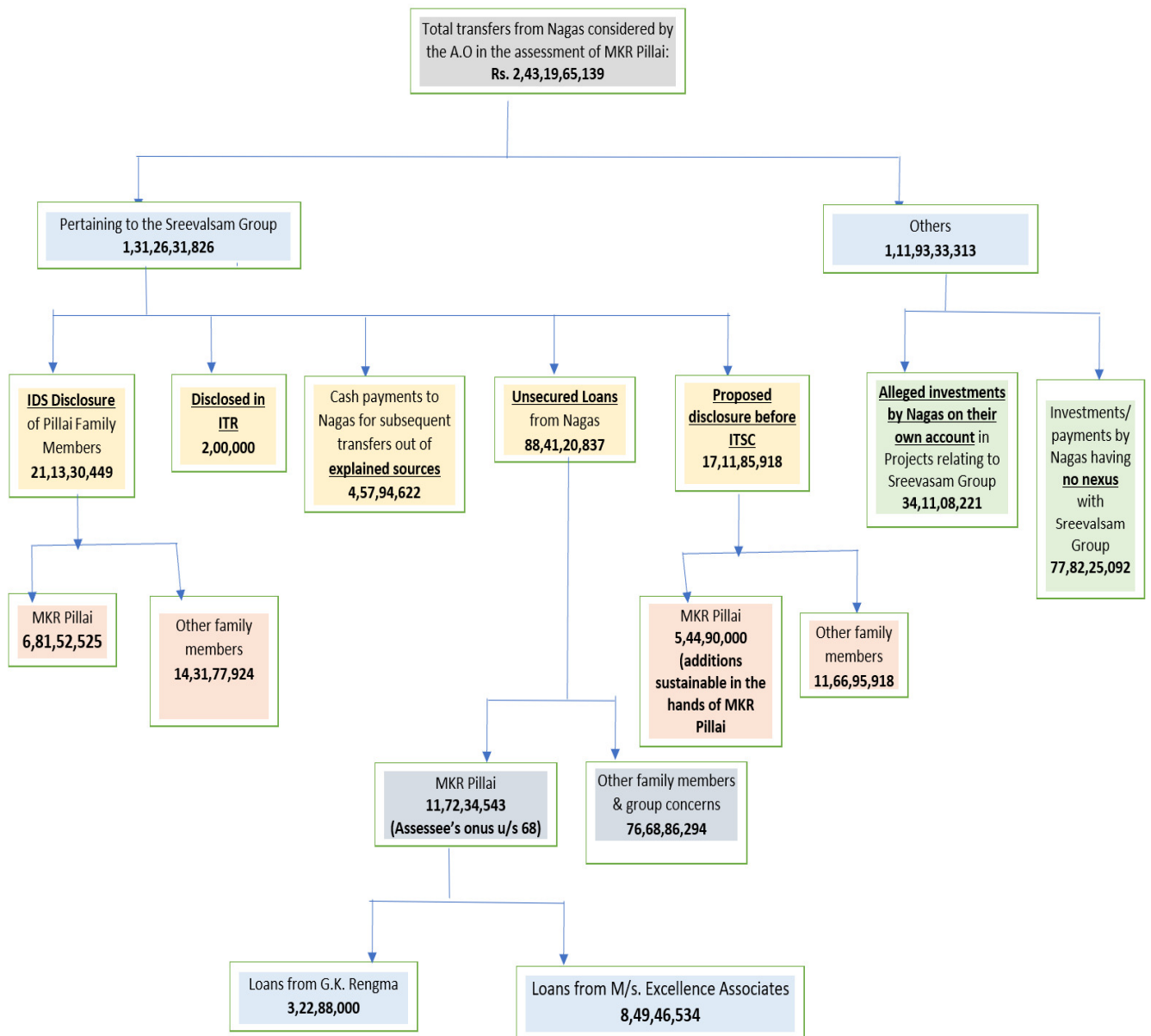
The copies of the proposed settlement applications of the Appellant and his family members have also been filed before us.

8.9 The Ld. AR further submitted that the entire workings of additional income were filed before the Ld. CIT(A) vide submissions dated 15.03.2021 and 16.09.2021 and the same have also been enclosed in the written submissions and paper books filed before us. The Ld. AR submitted that the additional undisclosed income has been prepared after conducting complete analysis of the bank entries which have been tabulated in a detailed manner in Table-17 on page no.80 of written submission containing 140 pages. In this table, the assessee has bifurcated the amount received from each of the 21 Nagaland based entities by the assessee group under the head (i) unsecured loans; (ii) Amount received and declared in Income tax Returns; (iii) Amount received towards Liaisoning fees / misc. contracts fees paid by these parties and declared under IDS, 2016; (iv) Amount paid to them for subsequent transfers out of cash withdrawal from bank / family transfers / drawings from proprietary / business entities; (v) Amount received from them towards Liaisoning fees and intended to be declared before Hon'ble ITSC. The transfers made by them in their own account and not related to assessee group have separately been classified. The credit transfers to family group aggregate to Rs.131.26 Crores whereas the credit transfers made by Nagaland based entities in their own account to third parties account aggregate to Rs.111.93 Crores.

For ease of reference, Table No.17 could be extracted as under: -

Particulars	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	Grand Total	
	G K Rengma	Excellence Associates	Nagaland Police Patrol Pump	General Auto	Mechanuo Solo	Ken Chishi	A Dalli	Auto Spares	Babu Kurakoze	Bokali K Chishi	Fresh Bakery	Impa Longlumer	Inalika K Chishi	K B Traders	Kohima Electricals	KRS Agency	Mukhvari Sema (Hokali Shobe)	Paradize Restaurant	Popular Fast Food	Povezo Puro	VKR Associates		
Bank Transfer from Naga Perics as per Showcause notice issued by the department on 31.01.2020 for the financial year 2011-12 to 2016-17 (AY 2012-13 to 2017-18)	75,11,51,040	87,61,59,246	33,25,47,690	6,84,31,089	5,35,00,000	16,08,51,774	50,00,000	40,00,000	35,50,000	4,50,00,000	36,00,000	4,21,40,000	42,50,000	1,63,35,000	12,00,000	1,34,00,000	3,50,00,000	12,00,000	17,00,000	38,49,300	90,00,000	2,43,19,65,139	
Investment in Sreevaidam Group:																							
- as Unsecured Loan:																							
MIR Pillai	3,22,88,009	8,49,46,534	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	11,72,34,543
Vaizala Raj (Ind of Rajavalam Fuels)	4,16,26,000	2,41,05,930	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6,58,31,930
Varun Raj (Ind of Sreevaidam Sills)	9,33,82,333	5,02,23,146	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	14,36,05,479
Arun Raj (Ind of Sreevaidam Residency)	7,23,01,450	6,89,53,179	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	14,12,54,629
Peepa Raj (Ind of Sreevaidam Patharajala)	47,50,000	10,00,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	57,50,000
Alibhaz Builders & Developers (P) Ltd	1,95,15,800	1,26,09,000	-	1,00,00,024	-	1,66,00,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5,90,05,024
Money/mutual Finance	97,00,000	2,25,00,342	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3,22,00,342
Rajavalam Motors (P) Ltd	94,69,486	50,00,000	49,29,881	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,43,99,367
Sreevaidam Gold & Diamonds (P) Ltd	27,00,000	-	-	25,00,056	1,00,00,000	50,00,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,00,00,000
Sreevaidam Hotels & Resorts (P) Ltd	1,64,65,000	1,81,50,114	-	-	-	44,98,312	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3,96,98,368
Sreevaidam Jewellers	1,08,00,000	49,00,000	43,52,625	25,00,000	-	1,35,00,000	25,00,000	-	-	-	-	75,00,000	-	-	-	10,00,000	3,00,00,000	-	-	-	-	-	5,91,15,114
SMART Residency Hotels India (P) Ltd	4,20,48,130	5,48,35,535	3,39,80,768	88,30,112	50,00,000	1,23,96,671	-	-	-	-	-	83,00,000	-	-	-	-	-	-	-	-	-	-	2,00,52,625
Vindavan Builders (P) Ltd	34,55,79,722	35,68,53,266	4,32,63,274	2,14,30,392	1,50,00,000	5,21,95,183	25,00,000	5,00,000	-	-	-	1,50,00,000	-	-	-	10,00,000	3,00,00,000	-	-	-	-	-	16,59,91,416
Total (A)																							88,41,20,837
- as Income declared in ITR:																							
Peepa Raj	-	2,00,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,00,000
Total (B)																							2,00,000
- towards Liaisoning Fees/Misc Contract fees paid to Family members and declared under Income Disclosure Scheme, 2016																							
MIR Pillai	2,39,98,225	83,40,087	26,14,076	95,00,137	-	-	-	-	-	50,00,000	-	60,00,000	-	30,00,000	-	45,00,000	-	-	-	-	-	-	6,81,52,525
Vaizala Raj	1,30,00,000	2,55,64,182	-	-	-	-	-	-	-	-	-	-	4,00,000	-	-	-	-	-	-	-	-	-	3,89,64,182
Varun Raj	1,86,75,000	2,86,93,629	50,00,057	75,00,056	-	-	-	20,00,000	-	-	36,00,000	25,00,000	-	21,35,000	12,00,000	17,00,000	-	12,00,000	17,00,000	-	-	-	7,80,03,742
Arun Raj	1,32,10,000	83,00,000	-	-	30,00,000	-	-	-	-	-	-	-	6,00,000	-	-	-	-	-	-	-	-	-	2,51,10,000
Peepa Raj	6,88,83,225	7,08,97,898	78,14,133	1,70,00,183	30,00,000	-	-	20,00,000	-	50,00,000	36,00,000	85,00,000	21,00,000	52,35,000	12,00,000	62,00,000	-	12,00,000	17,00,000	-	-	-	11,00,000
Total (C)																							21,13,30,449
- towards cash payment to masses for subsequent transfers out of cash withdrawal from bank/family transfer/drawings from proprietary business entities																							
Varun Raj	-	-	5,50,056	1,00,00,336	1,20,00,000	1,48,33,730	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,84,10,836
Arun Raj	-	-	-	-	-	84,10,500	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,73,63,786
Total (D)																							4,57,94,622
- towards Liaisoning Fees paid to Family members and declared before Income Tax Settlement Commission																							
MIR Pillai	-	5,00,000	1,15,00,000	-	1,75,00,000	1,15,00,000	-	13,00,000	-	-	-	53,40,000	4,00,000	49,50,000	-	5,00,000	-	-	-	-	-	-	5,44,90,000
Vaizala Raj	64,00,000	2,49,03,099	90,05,000	-	-	-	-	2,00,000	-	-	-	25,00,000	-	-	-	5,00,000	-	-	-	-	-	-	4,40,08,099
Varun Raj	-	-	2,23,00,169	50,00,000	-	37,00,000	-	7,50,000	-	-	-	50,00,000	4,00,000	5,00,000	-	-	-	-	-	19,49,300	10,00,000	-	4,05,99,469
Arun Raj	-	-	1,37,38,350	50,00,000	-	13,50,000	25,00,000	-	-	-	-	50,00,000	-	-	-	45,00,000	-	-	-	-	-	-	3,20,88,350
Total (E)																							17,11,85,918
Sreevaidam Group Total (A+B+C+D+E)	42,08,61,947	45,33,54,263	10,81,70,982	5,84,30,321	4,75,00,000	9,19,89,413	50,00,000	40,00,000	7,50,000	50,00,000	36,00,000	4,21,40,000	29,00,000	1,06,85,000	12,00,000	1,27,00,000	3,00,00,000	12,00,000	17,00,000	24,49,300	90,00,000	-	1,31,26,31,826
Transfers on account of transfers by Nagas in their own account and not related to group income	33,02,89,093	42,20,04,983	22,45,76,708	1,00,00,168	60,00,000	6,88,62,361	-	-	28,00,000	4,00,00,000	-	-	13,50,000	56,50,000	-	7,00,000	50,00,000	-	-	15,00,000	-	-	1,11,93,33,313

8.10 The total transfers made by Nagaland based entities / individuals have been bifurcated into various heads as under (Table17A on page no.81 of written submission containing 140 pages): -



8.11 The Ld. AR thus submitted that out of total transfer, transfers relatable to the assessee group was only to the tune of Rs.131.26 Crores which stood explained as under –

No.	Particulars	Amount (Rs.)	Tables in Paper-Book
1.	Declarations made under IDS 2016	21.13 Crores	Table 17 & 17A
2.	Income disclosed in Income Tax Returns	00.02 Crores	---
3.	Cash Payments to Nagaland based parties for subsequent transfers out of explained sources	4.58 Crores	Table 17B
4.	Unsecured Loans received from Nagaland based parties	88.41 Crores	Table 17C
5.	Proposed Disclosure under ITSC	17.12 Crores	Table 38
	Total	131.26 Crores	

The necessary working and explanations for each of the head have been furnished in the written submissions and paper-book at various places which has duly been considered by us. The details of third-party transfers aggregating to Rs.111.93 Crores have also been submitted in paper book no.6 as placed before us. The assessee also filed pointwise rebuttal to the allegations of Ld. AO as made in the assessment orders.

Our findings and Adjudication

9. The subject matter of dispute in the instant case is the debit / transfer entries aggregating to Rs.243.19 Crores from 38 bank accounts of 21 Nagaland based parties to the accounts of the assessee, his family members, concerns/entities belonging to the Sreevalsam group and various other persons allegedly linked to the Sreevalsam Group. As per the Ld. A.O, the entire debit entries of Rs.243.19 Crores as appearing in the impugned bank accounts of the Nagaland parties are in the nature of the assessee's own unaccounted funds which have been brought back in the books of the Appellant, his family members and group concerns in the garb of loan. Relying on statements of various persons (discussed supra), the Ld. AO has

opined that the assessee is the actual owner of the business / bank accounts of the Nagaland based contractors (namely Mr. G.K. Rengma & Mr. Rolly Thenucho Tunyl) who are merely name lenders of the business owned by the assessee. The Ld. AO has opined that the genuineness of loans cannot be equated with 'transfer through bank' and that the bank statements of the Nagaland parties only prove the 'immediate availability of funds' and not the 'creditworthiness' of the account holder. He has thus held that the assessee has failed to prove the identity, creditworthiness and genuineness of the impugned credit entries flowing into the bank accounts of the recipients. Accordingly, Ld. AO has treated the entire amount as the undisclosed income of the assessee. From the demand notices, it would appear that Ld. AO has invoked the provisions of Sec.68 to make this addition in the hands of the assessee.

10. After due consideration of material facts, we find that the debit / transfer entries aggregating to Rs.243.19 Crores have been treated to be the assessee's income on the allegation that assessee's unaccounted income has been routed through these accounts for the benefit of group as a whole. However, in para 7.10, we have already taken a position that the credit transfer received by the other family members and group concerns could not be assumed to be assessee's undisclosed income since it is nowhere been established by the lower authorities that the assessee was de-facto owner of either Nagaland based bank accounts or the owner of bank accounts of various recipients. The other family members and group concerns of the assessee were separate Income Tax assessee and subjected to separate assessment. Therefore, the credit received in those accounts

could not be held to be the assessee's income. Under these circumstances, the assessee's onus would remain confined to explain the credit received by it in his own bank accounts. Further, the assessment proceedings for AY 2018-19 have already been quashed by us on legal grounds. Therefore, at the outset, the addition, to that extent, could not be sustained in the hands of the assessee. We order so.

11. Upon perusal of Chart as extracted in para 8.10 and Table as extracted in para 8.11, it could be seen that credit entries received by assessee group was only to the extent of Rs.131.26 Crores whereas the remaining amount of Rs.111.93 Crores were third party transfers which could not be linked with the present assessee. There is nothing on record to prove that such transfers represent assessee's undisclosed income. These entries represent payments / investments / cash withdrawals etc. made by Nagaland parties on their own account for the purposes of their own businesses which are not relatable to the income of the Sreevalsam group. Pertinently, the said transfers have neither originated nor culminated into the bank accounts of the assessee or any of his family members or any of the concerns / entities of the Sreevalsam Group. Therefore, these entries could not be held to be undisclosed income of the assessee.

12. Out of credit entries aggregating to Rs.131.26 Crores. The assessee group made IDS, 2016 disclosure for Rs.21.13 Crores which include assessee's disclosure of Rs.6.81 Crores and other family members' disclosure of Rs.14.31 Crores. The requisite forms, declarations including Form 3 has been placed in the paper-book which would dispel the concern raised by Ld. CIT(A) in the impugned

order. The other family members made payment of Rs.4.58 Crores for subsequent transfers which have no connection with the present assessee. The unsecured loans received from these parties aggregated to Rs.88.41 Crores out of which loans of Rs.11.72 Crores has been received by the assessee (Rs.3.22 Crores from Shri G.K. Rengma and Rs.8.49 Crores from M/s Excellence Associates). The remaining amount of Rs.17.11 Crores was proposed to be disclosed by the assessee group before Hon'ble ITSC. The assessee proposed settlement for Rs.5.45 Crores on this count. Considering these figures, the additions to the extent of Rs.5,44,90,000/- stand confirmed since the assessee has himself computed this disclosure before us to make up for remaining undisclosed consultancy / liaisoning income. This leave assessee's onus to prove the ingredients of Sec.68 with respect to unsecured loan of Rs.11.72 Crores received from Shri G.K. Rengma and M/s Excellence Associates.

13. As per the requirement of Sec.68, the assessee is required to prove the identity of the payee, their respective creditworthiness and genuineness of the transactions. With respect to both these entities / individuals, the assessee has placed on record (Table 17G of paper-book) copies of PAN and Aadhar, Income Tax exemption certificate issued u/s 10(26), copies of work order issued by the Government, Copies of immovable property ownership certificates etc. The audited financial statements, turnover certificates, affidavits affirming the said transactions as furnished before lower authorities has also been placed on record. Undisputedly, the source of such loans is government contractual receipts as held by Ld. AO himself. Upon perusal of table extracted in para 8.6, it is quite evident that both these parties are

engaged as government contractors since past several years and executing voluminous contract for the government. Undisputedly the transactions have taken place through banking channels. On the basis of all these documentary evidences, it could be said that the requisite onus as required to be discharged u/s 68 was duly discharged by the assessee and it was the onus of the revenue to dislodge the same. However, upon perusal of orders of lower authorities, we find that no cogent material or evidences are on record to dislodge the claim of the assessee rather the additions are based more on allegations, surmises, conjectures and mere suspicion. In such a case, these amounts could not be considered to be the assessee's undisclosed income. We order so. In the result, the addition to the extent of Rs.5,44,90,000/- is sustained under this head and the balance additions stand deleted. The corresponding grounds raised by the assessee in all the years stands partly allowed.

14. The quantum of addition as sustained by us for various years would be as under -

No.	AY	Amount (Rs.)
1.	2012-13	81.40 Lacs
2.	2013-14	69.50 Lacs
3.	2014-15	--
4.	2015-16	180 Lacs
5.	2016-17	149 Lacs
6.	2017-18	65 Lacs
	Total	544.90 Lacs

15. Cash deposit in the bank accounts of the assessee

15.1 The Ld. AO made addition of Rs.27.36 Crores against cash deposits found deposited in the bank accounts of assessee, family members and other group concerns on the allegation that no details

were furnished by the assessee. The Ld. CIT(A) rejected assessee's plea that the assessee family uses the cash as family pool and the cash deposits could be added to income after considering the entire family cash balance after eliminating inter-family cash transfers. The assessee also submitted that the cash deposits were sourced partially out of income disclosed in the IDS 2016. Further, part of cash deposits was disclosed as contract income in the returns of income. However, all these pleas were rejected by lower authorities on the ground that specific explanation for each cash deposit was not furnished by the assessee and the assessee's plea was not supported by the evidences gathered during the search proceedings. The assessee filed Form-1 under IDS 2016 and submitted that the income was utilized for making investment in immovable properties and therefore, the same could not be accepted as source of cash deposits. The assessee did not furnish evidence in support of receipt of contract income and consultancy income which is claimed as a source for making the cash deposits. The assessee did not furnish the details of the specific contract, details of contractee, nature of work contract agreement etc. Therefore, this addition was also upheld to the extent of cash deposited in the bank accounts of the assessee as well as to the extent of cash found deposited in Nagaland based bank accounts of the other family members / group concerns. The cash as well as credit entries deposited outside Nagaland in the account of the family members / group concern has already been deleted by Ld. CIT(A). Aggrieved, the assessee is in further appeal before us. The assessee's submissions, in this regard, are contained in para 9.1 to 9.21 of the written submissions which we have gone through.

15.2 The details of impugned cash deposit as tabulated by the assessee in Table-21 is as under: -

PARTICULARS	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16	AY 2016-17	AY 2017-18	AY 2018-19	TOTAL
Cash Deposit in Self, Family & Group Entities Bank Accounts:								
- M K Rajendran Pillai, Assessee	5,889,874	5,670,735	10,108,000	14,620,000	11,251,000	12,417,000	2,648,300	62,604,909
- Valsala Raj, Wife of Assessee	5,400,000	7,125,000	7,150,000	6,338,000	4,885,525	4,310,000	233,450	35,441,975
- Varun Raj, Son of Assessee	7,228,000	3,975,000	2,100,000	3,395,000	8,897,000	4,760,900	580,000	30,935,900
- Arun Raj, Son of Assessee	5,600,000	22,182,709	35,117,986	18,205,700	12,495,000	10,999,510		104,600,905
- Pooja Raj, Daughter of Assessee	2,400,000	2,500,000	7,070,000	2,075,000	2,425,000	854,000		17,324,000
- Vrindavan Builders (P) Ltd, Group Co	2,675,000	5,853,000	4,530,000	3,965,000	4,245,000	1,460,000		22,728,000
Total	29,192,874	47,306,444	66,075,986	48,598,700	44,198,525	34,801,410	3,461,750	273,635,689

15.3 The adjudication of Ld. CIT(A) has sustained the additions to the extent of Rs.6.26 Crores being cash deposited in the assessee's own bank account and the cash deposit of Rs.5.83 Crores in Nagaland Bank accounts maintained by family members / group concerns. The Ld. AR has submitted that the assessee has filed sufficient proof of declaration under IDS 2016 and the benefit of declaration so made, on this count, ought to have been granted to the assessee. It has been submitted that the assessee group has declared cash income of Rs.11.90 Crores under IDS, 2016 as tabulated in Table 34A of the written submission out of which amount of Rs.3.68 Crores pertain to the assessee. Further, part of cash deposit was sourced out of contact income disclosed in the respective returns of income filed by the assessee group. The balance cash deficit was worked out by the assessee with a view to make settlement before Hon'ble ITSC and therefore, the additions to that extent may be sustained.

15.4 The Ld. AR submitted that such income intended to be declared in the settlement applications aggregate to Rs.20.59 Crores out of which amount of Rs.5.75 Crores was proposed to be declared by the present assessee. The same has been tabulated in Table 38 to 38D in the written submissions. The Ld. AR submitted that complete cash flow statements were submitted before Ld. CIT(A) vide submissions dated 16.09.2021 which were completely overlooked. These cash flow statements provide complete details of the source of impugned cash deposits. The nature of entries on the debit side of the cash flow statements (i.e., receipt side) has been broadly categorized by the Ld. A.R. under the following sub-heads (as evident from the cash flow statements): - (i) Liaisoning and contract income earned in cash and declared under IDS, 2016 – details tabulated in *Table 34A* of the written submissions (Rs.11,90,36,231/- for the family as a whole, declaration by each family member considered in his/her respective cash flow statements); (ii) Liaisoning and contract income earned in cash and disclosed in the ITR of the respective family members (Rs.3,97,68,277/- for the family as per *Table 1C* of the written submissions); (iii) Withdrawals from various bank accounts of the respective family members; (iv) Intra-family transfers of cash (i.e., transfer/receipt of cash from other family members); (v) Capital withdrawal from proprietary entities & partnership firms; (vi) Loans repaid by friends and staff ; (vii) Liaisoning and contract income earned in cash- constituting part of the proposed additional income intended to be disclosed before the Hon'ble ITSC – details tabulated in *Tables 38-38D* (Rs. 20,59,18,792/- for the family as a whole, ITSC offer of each family member has been considered in his/her respective cash flow

statements). Similarly, the credit side of the cash flow statements (i.e., the payment side) include (i) Cash deposited in bank accounts (i.e., the impugned cash deposits) [additions made by the Ld. A.O in the hands of the Appellant on this account is Rs. 27,36,35,689/-]; (ii) Intra-family transfer of cash (i.e., transfer/payment of cash to other family members); (iii) Personal expenses; (iv) Investments in group entities/concerns; (v) Payment of on-money in cash to land owners (additions made by the Ld. A.O in the hands of the Appellant on this account is Rs. 16,10,00,000/-); (vi) Cash paid to petty Nagaland parties for deposit in their bank accounts for subsequent bank transfers from them; (vii) Donation to friends and relatives; (viii) Payment of Chit Fund Installments (ix) Payment of Advance Tax / Self-Assessment Tax (x) Loans to Friends and Staff members.

15.5 The Ld. AR thus submitted that the additions with respect to the assessee could be restricted to the cash gap / deficit of Rs.5.75 Crores as worked out by the assessee in the cash flow statements whereas the cash deposited in the Nagaland based bank accounts belonging to family members / group concerns may be deleted since those entities were separate legal and taxable entities and therefore, the cash thus deposited in their accounts could not be held to be undisclosed income of the assessee. The family members / group concerns had independent source of income and cash generated by them was deposited in their bank accounts periodically.

Our findings and Adjudication

16. After going through the cash flow statement of the assessee group, we find that cash flow statements prepared by the assessee give a complete narration of all the accounted and unaccounted cash

entries of the assessee group for the impugned years. The cash flow statements already form part of the departmental records and the same has been overlooked by lower authorities. The sources of the impugned cash deposits in the bank accounts of the assessee group and the movement of cash (i.e., the intra family transfers) between accounts is clearly visible from the cash flow statements. The unaccounted cash receipts constituting part of the assessee group has duly been incorporated in the cash flow statement which form the basis of proposed declaration before Hon'ble ITSC. Therefore, these workings are to be accepted. We order so.

17. So far as the addition of cash deposit in the Nagaland based bank accounts of family members / entities are concerned, the addition thereof would not be maintainable in the hands of the assessee for the reason that those entities were separate taxable entities having independent sources of income. Therefore, the cash deposit so made in their account would be subject matter of consideration in their respective hands only and the same are beyond the scope of present appeal.

18. So far as the addition of Rs.6.26 Crores as made for cash deposit in assessee's own bank account is concerned, cash of Rs.26.48 Lacs has been deposited during AY 2018-19, the assessment of which we have already quashed. Therefore, the addition to that extent would not be sustainable. The balance amount of Rs.599.56 Lacs stand duly explained in cash flow statement for AYs 2012-13 to 2017-18 as worked out by the assessee and enclosed in Paper Book 3A before us. In these cash flow statements, the assessee has finally worked out unaccounted liaisoning / contract income for Rs.575.15 Lacs which is

also evident from workings given in Tables 38 & 38A. In the cash flow statement, the assessee has made complete compilation of all cash receipts and all cash payments including declaration made in IDS 2016 and ultimately, arrived at cash deficit of Rs.575.15 Lacs. Out of this cash deficit, an amount of Rs.40.00 Lacs pertain to AY 2018-19 and therefore, the addition to that extent would not be sustainable. The balance gap of Rs.535.15 Lacs would be the undisclosed income of the assessee and accordingly, the addition to that extent stand confirmed for various AYs as under: -

Assessment Year	Amount
2012-13	2,60,000
2013-14	1,78,25,000
2014-15	-
2015-16	1,39,00,000
2016-17	87,25,000
2017-18	1,28,05,000
Total	5,35,15,000

19. Since the assessee group has incorporated the alleged cash payment of Rs.16.10 Crores for purchase of immovable properties in these cash flow statements, the separate addition made to that extent would also not be sustainable. Even otherwise, the properties have not been purchased by the assessee rather this addition is subject matter of consideration in other family members / entities which are separate taxable entities and therefore, the addition for those entities would not be sustainable in the hands of the assessee.

20. In the result, the corresponding grounds raised on these issues stand disposed-off accordingly.

21. Other Credit Entries in Bank Account of the assessee and other family members / entities

21.1 The Ld. AO has made addition of Rs.22.55 Crores under this head. However, Ld. CIT(A) held that other credit entries in the bank accounts of family members / group entities for Rs.18.78 Crores would not be sustainable since these entities were separate taxable entities. The balance credit entries of Rs.3.77 Crores as appearing in assessee's bank accounts were restored back to the file of Ld. AO to find out the income component therein.

21.2 The Ld. AR submitted that while working out additional income for the purpose of disclosure before Hon'ble ITSC, the assessee realized that he was not having complete details / supporting evidences in support of credit entries aggregating to Rs.88.50 Lacs as tabulated in Table 22B and therefore the addition to that extent could be confirmed. For ease of reference, the same is tabulated as under: -

Date	Bank Details	Amount Credited	Description as per Assessment Order
30.01.2013	Vijaya Bank A/c No. 810101450000004	40,00,000	TAC Gear 9044125000923, Syndicate Bank, Nehru Place
04.03.2013	Vijaya Bank A/c No. 810101450000004	10,00,000	TAC Gear 9044125000923, Syndicate Bank, Nehru Place
29.10.2014	Federal Bank A/c. No. 19670100002590	4,00,000	Gateway Inn Holidays A/c No. 006705300003142
18.11.2014	Federal Bank A/c. No. 19670100002590	5,00,000	Gateway Inn Holidays A/c No. 006705300003142
12.02.2015	Federal Bank A/c. No. 10820100082683	11,50,000	Eapen P, SBI
11.11.2016	Federal Bank A/c. No. 10820100082683	3,00,000	Indumol R SBT
15.02.2017	Federal Bank A/c. No. 10820100082683	5,00,000	Nagaland Police Transit, SBI
16.03.2017	Vijaya Bank A/c No. 810101450000004	10,00,000	-
	TOTAL	88,50,000	

The Ld. AR submitted that the remaining entries do not represent any income and the same stood fully explained as per details enclosed at

Page Nos. 58-59 of Paper Book No.3A. A part of the credit entries stood covered by declarations made by the assessee under IDS 2016 and therefore, the remaining additions should be deleted.

Our findings and Adjudication

22. The arguments of Ld. AR are found to be convincing. It is the finding of Ld. CIT(A) that prima facie these entries are not in the nature of income. Further, addition of credit entries in bank accounts of family members / group entities could not be held to be the income of the assessee. Also, addition of credit entries for AY 2018-19 would not be sustainable since we have quashed the assessment for that year on legal grounds. The total credit entries in the assessee's account are Rs.377.12 Lacs out of which credit entries for Rs.23.47 Lacs pertain to AY 2018-19. Since the assessment for AY 2018-19 has been quashed by us, the additions to that extent are otherwise not sustainable. The remaining credit entries for Rs.353.64 Lacs pertain to AYs 2012-13 & 2017-18. Out of this amount, the assessee has identified amount of Rs.88.50 Lacs being the entries which are lacking complete details / supporting evidences. The remaining entries are either not in the nature of income and a part of these entries has already been disclosed under IDS 2016. Few of the entries have already been disclosed in the Income Tax Returns of the assessee. The complete details of these entries have been placed by the assessee on page numbers 58 and 59 of Paper Book No.3A. We have perused the same. We find that all the other credit entries are in the nature of maturity proceeds of LIC, Chit money received by the assessee, directors loan withdrawn, mutual funds proceeds from UTI, refunds etc. These entries are not in the nature of assessee's income. Therefore, the additional

amount of Rs.88.50 Lacs as worked out by the assessee is found to be correct and therefore, sustained in the hands of the assessee. The remaining addition stands deleted since the same is not the in nature of income. The additions as sustained by us for various years would be as under: -

Assessment Year	Amount
2013-14	50,00,000
2015-16	20,50,000
2017-18	18,00,000
Total	88,50,000

The corresponding ground thus raised stand partly allowed.

23. In yet another ground, the assessee has challenged the orders of lower authorities on the ground that the credit for income disclosed under IDS 2016 has not been given to the assessee. We find that this credit was not given in the absence of requisite declarations / certificates forthcoming from the assessee. The assessee has now placed all these documents in the paper book which has been detailed in Table 35 of written submissions. Further, the assessee has already considered such declaration while working out additional income which has also been accepted by us. Therefore, the assessee is left with no grievance on this account.

24. In yet another ground, the assessee is aggrieved by non-consideration of additional evidences / documents as filed by the assessee before Ld. CIT(A) on 15.03.2021 and 16.09.2021. Since, we have substantially accepted the working of the assessee which has been considered after incorporating all these evidences, the assessee is left with no grievance on this issue. The remaining grounds are

either general or consequential in nature which does not require any specific adjudication on our part.

25. In the result the appeals for AYs 2012-13 to 2017-18 stand partly allowed whereas the appeal for AY 2018-19 stands allowed on legal grounds in terms of our above order.

Order pronounced on 20th January, 2023.

Sd/-
(SATBEER SINGH GODARA)
न्यायिक सदस्य / JUDICIAL MEMBER

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

दिनांक / Dated : 20-01-2023

EDN/-

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Cochin*
6. *Guard File*