

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

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

आयकर अपील सं./ITA Nos.: **1493, 1494, 1495, 1496, 1497, 1498 &
1499/Chny/2018**

निर्धारण वर्ष / Assessment Years: 2009-10, 2010-11, 2011-12, 2012-13,
2013-14, 2014-15 & 2015-16

Shri. S. Arputharaj,
No.5, Krishna Nagar,
Sowripalayam,
Near ESI Dispensary,
Coimbatore - 641 028.
[PAN: ADJPA-9492-L]

The Deputy Commissioner of
v. Income Tax,
Central Circle -1,
Coimbatore.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. R. Anish Kumar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri. R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing : 25.07.2023

घोषणा की तारीख/Date of Pronouncement : 27.09.2023

आदेश / O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

These bunch of 7 appeals filed by the assessee are directed against separate, but identical orders passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, all dated 19.02.2018 and pertains to assessment years 2009-10 to 2015-16. Since facts are identical and issues are common and inter-linked, for the sake of convenience, these

appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for all assessment years. From the grounds of appeal filed by the assessee, six issues has been identified by the Ld. Counsel for the assessee for our adjudication, which are as follows:

(i) Loans to M/s. Kangaroo Impex and consequent interest for assessment year 2009-10 & 2010-11.

(ii) Investment in M/s. Mars Export for assessment year 2010-11 & 2011-12.

(iii) Unaccounted cash loans for assessment year 2009-10 & 2010-11

(iv) Money swindled for Mrs. Dhanalakshmi, employee of the assessee for assessment years 2011-12 to 2015-16.

(v) Difference between income returned originally and income returned in response to notice u/s. 153A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for assessment year 2009-10 to 2011-12.

(vi) Additions towards unaccounted sales for assessment year 2014-15.

3. Since, the issues have been identified from the grounds of appeals filed by the assessee for all assessment years, we deem it not thought fit to reproduce grounds of appeal filed by the assessee for all assessment years.

4. The brief facts of the case are that, the appellant Shri. S. Arputharaj, is engaged in the business of real estate, money lending etc. A search u/s. 132 of the Act, was conducted in the case of the assessee on 26.02.2015. As a result of the search and post-search investigation and evidences found during the course of search, revealed undisclosed income and investment in various assets etc. In pursuant to search, notice u/s. 153A of the Act, was issued on 22.07.2015 for assessment years 2009-10 to 2014-15, requiring the assessee to file the return of income. The assessee did not file his return of income in response to notice u/s 153A of the Act, within the due date prescribed under said notice. The Assessing Officer, has initiated penalty proceedings u/s. 271F r.w.s. 274 of the Act, for non-filing of return of income, and a show cause notice u/s. 276CC of the Act was issued for proposed prosecution. Finally, the assessee has filed return of income for assessment years 2009-10 to 2015-16 on different

dates and the details of date of filing of original return of income and dates of filing of return of income in response to 153A notice is tabulated below:

AY	Date of filing original R/I	Income originally returned	Date of filing R/I u/s. 153A/142(1)	Income returned u/s. 153A	Date of Notice u/s. 143(2)
2009-10	28/08/2010 (Revised return)	3424530	29/06/2016	1400740	15/07/2016
2010-11	14/10/2010	19933740	10/08/2016	1026110	11/08/2016
2011-12	30/09/2011	141230	13/08/2016	-9778276	08/09/2016
2012-13	30/09/2012	0	18/08/2016	106050	08/09/2016
2013-14	25/10/2013	-56,11,600	19/08/2016	-1,05,62,962	08/09/2016
2014-15	29/11/2014	1159470	14/09/2016	-1,76,16,113	19/09/2016
2015-16	-	-	18/09/2016	-92,45,237	19/09/2016

5. The assessment has been completed u/s. 143(3) r.w.s. 153A of the Act, on 30.12.2016 and made various additions including additions towards unaccounted rental income, investment in M/s. Miracle Cars India Pvt Ltd., property in Kerala, investment in M/s. Mars Exports and loans to M/s. Kangaroo Impex and interest thereon, unaccounted cash loans, money swindled by Smt. Dhanalakshmi, unaccounted sales and difference between income returned in original return of income and income returned in the return of income filed in response to 153A notice. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The Ld. CIT(A), for the reasons stated in their appellate order dated 19.02.2018, sustained additions made

by the Assessing Officer towards various undisclosed income and dismissed appeal filed by the assessee. The assessee carried the matter in further appeal before the Tribunal and the ITAT, Chennai Benches vide their order dated 13.06.2018 for assessment years 2009-10 to 2015-16, partly allowed appeals filed by the assessee, where the Tribunal has remitted certain issues to the file of the Assessing Officer. The Tribunal had also deleted additions made towards money swindled by Smt. Dhanalakshmi and unaccounted sales for assessment years 2011-12 to 2015-16. However, confirmed additions towards investment in M/s. Mars Exports, loan to M/s. Kangaroo Impex and interest thereon, unaccounted cash loans and difference between admitted and returned income. Aggrieved by the tribunal order, the assessee as well as the revenue has filed appeal before the Hon'ble High Court of Madras. The assessee has filed appeal for assessment years 2009-10, 2010-11 & 2011-12 for the issues where additions was confirmed by the ITAT. The revenue has filed appeal for assessment years 2011-12 to 2015-16, for the issues where additions were deleted by the ITAT. The Hon'ble High Court of Madras, vide their order dated 10.12.2018, remitted the

matter back to the ITAT for the issues contested before them by both the parties.

6. The assessee has also filed another appeal before Hon'ble High Court of Madras in TCA No. 1061/2019, against order dated 13.06.2016 of the Tribunal in ITA No. 1494/Chny/2018 for assessment year 2010-11, only with regard to the question regarding discharge liabilities with regard to the property purchased by the assessee from M/s. Mars Export and added a sum of Rs. 16.5 crores as additional income, though, the assessee filed assessment and discharged its liabilities. The Hon'ble High Court of Madras, vide its order dated 06.01.2020, remitted the issue to the Tribunal to consider the matter afresh after hearing both the parties. Therefore, the present appeals have been posted for hearing in pursuant to directions of the Hon'ble High Court of Madras in their order dated 10.12.2018 and 06.01.2020.

7. The first issue that came up for our consideration from grounds of appeal filed by the assessee for assessment years 2009-10 & 2010-11 is addition towards loans to M/s. Kangaroo Impex and interest thereon. The facts with regard to the

impugned dispute are that, during the course of earlier survey conducted in the case of assessee on 10.12.2013, while answering the question no. 25 of the statement recorded during the course of survey, the assessee has stated that he had advanced loan amounting to Rs. 16.28 crores to M/s. Kangaroo Impex and received back Rs. 7.68 crores as on 19.05.2009. During post-survey enquiry, a specific question was asked to the assessee to explain ledger account of M/s. Kangaroo Impex in the books of the assessee, which shows cash transactions. The statement of the partners of M/s. Kangaroo Impex was taken, wherein they have claimed to have repaid total amount of Rs. 17.98 crores towards principal and interest component of the loan taken from the assessee during the period 08.12.2018 to 20.12.2019. Further, during the course of search u/s. 132 of the Act on 27.02.2015, in the premises of the assessee, incriminating documents such as signed blank stamp papers, signed promissory notes, signed blank cheque leafs, signed blank green sheets and signed blank letter heads of M/s. Kangaroo Impex were found and seized vide annexure SA/14, dated 27.02.2015. During the course of assessment proceedings, the Assessing Officer called upon the assessee to explain the source for the loans given to

M/s. Kangaroo Impex. In response, the assessee submitted that he had given loans to M/s. Kangaroo Impex through bank transactions and final amount outstanding was at Rs. 10.51 crores. The party is unable to repay the loan and thus, he has taken a legal action against M/s. A. Pannerselvam for recovery of loan. The Assessing Officer, however was not satisfied with the explanation furnished by the assessee and according to the Assessing Officer, M/s. Kangaroo Impex and its partners has confirmed receipt of loan of Rs. 6,34,60,000/- for assessment year 2009-10 and Rs. 6,14,50,000/- for assessment year 2010-11. Since, the assessee could not explain source for loans given to M/s. Kangaroo Impex, the Assessing Officer has treated said loans as unexplained investment of the assessee and brought to tax u/s. 69 of the Act.

8. The Ld. Counsel for the assessee, Shri. R. Anish Kumar, Advocate, submitted that the Assessing Officer has made additions towards unexplained investment in the form of loans to M/s. Kangaroo Impex, only on the basis of statement of Shri. A. Paneerselvam recorded on 25.04.2014 is incorrect. The assessee had advanced loans to M/s. Kangaroo Impex through bank and also furnished necessary bank statements to

the Assessing Officer for verification. However, the Assessing Officer has not verified the bank statements of the assessee to ascertain the source of loans given to above party. The details given by the assessee are matching with the bank statement. Even though the assessee has filed necessary evidence to prove the payment of loan through bank which is having sufficient source of income, the Assessing Officer, ignored evidences filed by the assessee and made additions on the basis of statement of Shri. A. Paneerselvam. In this regard, he relied upon the decision of ITAT, Delhi Benches in the case of B.R. Associates Pvt Ltd vs ACIT, in ITA No. 4964/Del/2012 dated 10.01.2019. The Ld. Counsel for the assessee, had also relied upon the decision of Hon'ble Madras High Court in the case of CIT vs S. Khader Khan Son [2008] SCC Online Mad 1198.

9. The Id. CIT-DR, Shri. R. Clement Ramesh Kumar, supporting the order of the CIT(A) submitted that, sworn statement recorded from the parties revealed that the assessee had advanced huge loans by way of cheque and cash to M/s. Kangaroo Impex for assessment year 2009-10 & 2010-11. The assessee did not explain source for the loans. In

absence of any documentary evidence, the Assessing Officer has rightly treated the loans given to M/s. Kangaroo Impex as unexplained investment taxable u/s. 69 of the Act.

10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the appellant has advanced huge loans through bank and in cash to M/s. Kangaroo Impex. In fact the appellant had admitted loan given to M/s. Kangaroo Impex and further the partners of M/s. Kangaroo Impex, Shri. A. Paneerslevam had also admitted acceptance of loan. But, fact remains that the assessee claims to have paid loan only through bank account and claimed that it has filed necessary evidences including source thereof. The loan given to the party in the books of accounts of the assessee shows different figure when compared to loan given and repayment thereof confirmed by M/s. Kangaroo Impex. If at all, loan is given only through bank account as claimed by the assessee, then the source thereof needs to be examined, in light of relevant bank statements pertains to the period of loan. Even if you go by the assessment order, there is no clear observation with

regard to the mode of payment, whether it is cash loan or payment through bank. In fact, the loan details tabulated by the Assessing Officer for both assessment years shows loan by way of cheque and by way of cash also. Since, facts are contradictory from both the sides, we are of the considered view that the issue needs to be re-examined by the Assessing Officer, in light of averments of the assessee that loans given to M/s. Kangaroo Impex is through bank account only and source for said loan is explained. Thus, we set aside the issue of addition made towards loans given to M/s. Kangaroo Impex for assessment years 2009-10 and 2010-11 and direct the Assessing Officer to verify the claim of the assessee with reference to seized material, if any. The Assessing Officer, is also directed to ascertain correct facts from M/s. Kangaroo Impex and its partners, before making any addition towards loans given to said parties.

11. In so far as additions towards interest income from loans given to M/s. Kangaroo Impex, the Assessing Officer has made additions only on the basis of statement recorded from Shri. A. Paneerselvam recorded during the course of survey proceedings, where M/s. Kangaroo Impex claims to have paid

interest of Rs. 1,20,00,000/- for assessment year 2009-10 and Rs. 4,28,55,000/- for assessment year 2010-11. Except statement from the creditor, there is no evidence with the Assessing Officer to substantiate its claim that the assessee has received interest from the above party. More particularly, in light of averments of the assessee that loan has been given only through bank account. Since, we set aside the issue of addition towards unexplained loan given to M/s. Kangaroo Impex, consequent addition towards interest on said loan also needs to go back to the file of the Assessing Officer. Thus, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to re-verify the additions made towards interest on loan from M/s. Kangaroo Impex, in light of evidence found during the course of search and statement recorded from the parties.

12. The next issue that came up for our consideration for assessment year 2010-11 & 2011-12 is addition towards investment in M/s. Mars Exports. The fact with regard to the impugned dispute are that the assessee had entered into sale agreement with R. Manickavasagam, proprietor of M/s. Mars Export on 12.11.2009, for purchase of property for a

consideration of Rs. 3 crores, wherein, the assessee has also undertaken to settle the liabilities of M/s. Mars Exports towards its creditors amounting to Rs. 11 crores, in addition to Karur Vysya Bank loan liability of Rs. 5.5 crores. The Assessing Officer, further stated that the appellant had purchased a property from M/s. Mars Exports for a consideration of Rs. 3 crores, after settling liabilities to the extent of Rs. 16.5 crores, paid towards creditors and discharge of bank loan. Therefore, called upon the assessee to explain as to why addition of Rs. 16.5 crores should not be made as unexplained investment u/s. 69 of the Act. In response, the assessee submitted that he had purchased a property from M/s. Mars Export for a consideration of Rs. 3 crores, vide registered document dated 12.11.2019. He had also settled liabilities of M/s. Mars Exports to the tune of Rs. 1,93,50,250/- and the same has been settled through bank account. He further, stated that he had sold the above property to M/s. Martin Fabrics P Ltd, for a consideration of Rs. 4 crores and offered the capital gains to tax for assessment year 2011-12.

13. The Assessing Officer, however was not satisfied with the explanation furnished by the assessee and according to the

Assessing Officer, there are clear evidence to suggest that the assessee has discharged liabilities of M/s. Mars Exports to the tune of Rs. 16.5 crores. The Assessing Officer, further observed that Shri. Vijayakumar, PoA holder of Shri. Manikavasagam, entered into mortgage deed on 30.10.2009 with five representatives of creditors pledging the property of M/s. Mars Export for an amount of Rs. 11 crores, wherein it is stated that the only other liability of the concern is towards bank loan. In the mortgage deed, the total value of land and building owned by M/s. Mars Exports is fixed at Rs. 20 crores, as per registered mortgage deed dated 30.10.2009. Further, the original cash receipts issued by the representatives to Shri. S. Arputharaj for receiving cash of Rs. 11 crores is seized vide pages 66 & 67 of annexure SA/32 dated 27.02.2015. Although, the assessee claims to have settled liability to the tune of Rs. 1,93,50,250/-, but said payment is only through bank to settle the creditors. However, the seized document clearly shows settlement of 11 crores in cash. The settlement of dues to M/s. karur Vysya Bank is also not mentioned in the documents and the assessee has not explained, as to when and how payment is made to M/s. Karur Vysya Bank. Therefore, the Assessing Officer opined that the assessee has

paid a sum of Rs. 16.5 crores to settle outstanding creditors and bank loan of M/s. Mars Exports, before purchasing the property and thus, made additions of Rs. 16.5 crores as unexplained investment u/s. 69 of the Act. Similarly, the Assessing Officer has assessed a sum of Rs. 16 crores being difference between consideration received for sale of property to M/s. Maartin Fabrics Pvt Ltd., vide sale deed dated 12.11.2019, on the ground that the market value of the property sold by the appellant was at Rs. 20 crores as evident from mortgage deed dated 30.10.2019 and further the said property has been mortgaged for an outstanding loan of Rs. 11 crores. Therefore, the Assessing Officer assessed difference of Rs. 16 crores, as unaccounted income for assessment year 2011-12.

14. The Ld. Counsel for the assessee, submitted that the Id. Assessing Officer is erred in making additions of Rs. 16.5 crores towards settlement of creditors and re-payment of outstanding loan to the Karur Vysya Bank, without there being any evidence to suggest that the assessee has settled outstanding liability of M/s. Mars Exports, before purchase of property. The Ld. Counsel for the assessee, further submitted

that although the Assessing Officer refers to receipts executed dated 15.04.2010, in favour of the appellant Shri. Arputharaj and others. But on perusal of said cash receipts, it was also stated that the mortgage deed has been registered for the loan amount of Rs. 11 crores, out of which Rs. 1 crore has given as advance. The Assessing Officer, without verifying relevant facts simply made additions only on the basis of suppression and summers. The Ld. Counsel for the assessee, further submitted that in so far as repayment of loan to Karur Vysya Bank is concerned, even the Assessing Officer himself in assessment order accepted that the settlement of dues to M/s. Karur Vysya Bank is also not mentioned in the documents and further the assessee has not clarified as to when and how payment has been made to bank. From the above, it is very clear that there is no basis for the Assessing Officer to make additions towards settlement of loan to Karur Vysya Bank. He further submitted that the Assessing Officer had also made additions of Rs. 16 crores being difference between estimated value of the property as per mortgage deed and sale consideration received by the appellant for sale of property, as unaccounted income for assessment year 2011-12 and said addition is not based on any evidence. The Assessing Officer,

has made additions only on the basis of suspicion, even though the evidence clearly shows that the property has been sold for Rs. 4 crores. Further, the Assessing Officer referred the valuation of the property to DVO, for determination of fair market value of the property and said reference was still pending. The Assessing Officer without considering reference to DVO has made additions of Rs. 16 crores, which is incorrect.

15. The Id. CIT-DR, Shri. R. Clement Ramesh Kumar, supporting the order of the Id. CIT(A), submitted that as per the documents seized during the course of search, the assessee has purchased a property from M/s. Mars Exports for a registered value of Rs. 3 crores, but evidence collected clearly shows that the assessee has settled creditors of M/s. Mars Exports, to the tune of Rs. 11 crores and loan liability of Rs. 5.5 crores due to Karur Vysya Bank. The details for payment of Rs. 3 crores by RTGS were available in the deed. Cash payments to the creditors to the tune of Rs. 11 crores were evidenced by signed cash receipts by the creditors and settlement of dues to Karur Vysya Bank was mentioned in the deed. Source for investment of Rs. 16.5 crores is not explained. Therefore, the Assessing Officer has rightly made

additions of Rs. 16.5 crores as unexplained investment. In so far as addition of Rs. 16 crores for assessment year 2011-12, it is evident from the mortgage deed that the value of the property was estimated at Rs. 20 crores. However, the assessee has registered sale deed for Rs. 4 crores. Therefore, the Assessing Officer has rightly assessed difference as unexplained income for assessment year 2011-12.

16. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the appellant has purchased a property from M/s. Mars Export for a consideration of Rs. 3 crores as per sale deed dated 12.11.2009. It is also not in dispute that, during the course of search certain signed cash receipts were seized from the premises of the assessee which shows settlement of Rs. 11 crores to creditors. As per the mortgage deed one Mr. J. Vijaya Kumar, Power of Attorney of Shri. R. Manickavasagam, proprietor of M/s. Mars Exports executed a mortgage deed in favour of the creditors for repayment of outstanding loan of Rs. 11 crores, but said receipt is in the language of Tamil. Since, the assessee has filed a translated cash receipts as per

which the property has been mortgaged for outstanding loan of Rs. 11 crores and out of which a sum of Rs. 1 crore has been paid on the date of mortgage deed and the balance amount shall be repaid within 15 days from the date of the deed. From the above, it is very difficult to ascertain whether the appellant has discharged Rs. 11 crores to creditors of M/s. Mars Exports or not. The Assessing Officer, refers to three cash receipts dated 08.06.2010, 12.06.2010 & 18.06.2010, given by the creditors through five representatives as per mortgage deed and claimed that the appellant has settled Rs. 11 crores to creditors. The facts are contradictory. The assessee claims that he has settled outstanding creditors of Rs. 1,93,50,250/- and said payment has been cleared through bank, whereas, the Assessing Officer claims that the appellant has settled Rs. 11 crores to creditors by cash payments. Therefore, we are of the considered view that, this fact needs to be verified by the Assessing Officer with reference to seized documents.

17. Coming back to the repayment of outstanding dues to karur Vysya Bank of Rs. 5.5 crores. There is no evidence either in the assessment order regarding repayment of Rs. 5.5

crores in cash to Karur Vysya Bank Limited, against outstanding loan liability. In fact, the Assessing Officer himself admitted in his assessment order in page 22 that the settlement of dues to Karur Vysya Bank is not mentioned in the documents and the assessee has not clarified as to when and how the payment has been made to bank. From the above, it is abundantly clear that there is no evidence with the Assessing Officer to allege that the assessee has repaid a sum of Rs. 5.5 crores to Karur Vysya Bank. Further, the Assessing Officer has not made any attempt to gather information from the bank regarding settlement of loan to M/s. Mars Exports and how said loan has been repaid either in cash or through bank. Therefore, we are of the considered view that this issue also needs to be verified by the Assessing Officer in light of above discussion. Thus, we set aside the issue of addition of Rs. 16.5 crores u/s. 69 of the Act, towards unexplained investment in M/s. Mars Exports to the file of the Assessing Officer and direct the Assessing Officer to re-examine the issue in light of various averments made by the assessee and also by taking into account relevant seized material. The Assessing Officer has also directed to obtain necessary information from

the Karur Vysya Bank Limited to ascertain repayment of loan and the mode of repayment.

18. Coming back to the addition of Rs. 16 crores as unaccounted income for assessment year 2011-12, being difference between estimated value of the property of Rs. 20 crores and sale consideration of Rs. 4 crores received by the assessee for sale of property to M/s. Martin Fabrics Pvt Ltd., the Assessing Officer has made additions of Rs. 16 crores on the basis of mortgage deed and as per said mortgage deed, the property value has been estimated at Rs. 20 crores, including land and building and other assets. The said property has been purchased by the assessee for Rs. 3 crores and the same has been sold for Rs. 4 crores in immediate next year to M/s. Martin Fabrics P Ltd. As per registered deed, the fair market value of the property has been fixed at Rs. 4 crores for the purpose of assessment and stamp duty and this fact has been confirmed by the office of Sub-Registrar. Except mortgage deed, there is no evidence with the Assessing Officer to allege that the assessee has received a sum of Rs. 20 crores for sale of property. In absence of any evidence to suggest sale consideration at Rs. 20 crores, it is difficult to accept the

version of the Assessing Officer that the assessee has understated consideration to the extent of Rs. 16 crores being on-money payment. But fact remains that the Assessing Officer himself has referred the value of the property to the valuation cell to determine fair market value of the property sold to M/s. Martin Fabrics P Ltd., and said reference is still pending as claimed by the Ld. Counsel for the assessee. In our considered view, when the Assessing Officer himself has referred the valuation of the property to DVO to ascertain fair market value of the property, then he ought to have obtained said valuation report and ascertain the correct fair market value of the property. The Assessing Officer, failed to obtain necessary valuation report before conclusion of assessment. From the above, it is very clear that the additions made by the Assessing Officer towards unaccounted income of Rs. 16 crores being difference between estimated value of the property as per mortgage deed and consideration received for sale of property at Rs. 4 crores is not with necessary evidence. In any event, assuming for a moment, the value of the property is Rs. 20 crores and assessee has received a sum of Rs. 20 crores for sale of property, but fact remains that the Assessing Officer has made addition of Rs. 16.5 crores towards

settlement of dues of M/s. Mars Exports, and this fact is correct then, additions partakes the character of cost of acquisition to the assessee. In case, the Assessing Officer sustained the additions towards settlement of outstanding dues of M/s. Mars Exports, then the same needs to be considered as cost of acquisition for the purpose of computation of cost of acquisition for sale of property. Therefore, for all these reasons, the issue needs to go back to the file of the Assessing Officer for fresh consideration. Thus, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to re-examine the issue of additions of Rs. 16 crores for assessment year 2011-12, in light of our discussion given herein above and decide the issue in accordance with law.

19. The next issue that came up for our consideration from assessee appeal for assessment year 2009-10 & 2010-11 is additions towards unaccounted cash loans. During the course of search u/s. 132 of the Act, at the premises of the assessee original signed cash receipts, cheque leafs and promissory notes were found. On verification of seized material reveals that, the assessee had given cash loans to various persons

during the financial year relevant to assessment year 2009-10 & 2010-11. The details of party wise cash loans given for the assessment year 2009-10 & 2010-11 are as under:

2009-10:

Sl. No.	Asst. Year	Name of Party	Loan Amount (Rs.)
1.	2009-10	C. Giridharan	3,96,00,000
2.	2009-10	Hariharan	26,00,000
3.	2009-10	CR Narayansamy	3,95,00,000
4.	2009-10	N Venkataraman	40,00,000
5.	2009-10	Ponnappan	3,00,000
6.	2009-10	Dr. S. Ramesh Kumar	15,00,000
7.	2009-10	Thangavel	34,50,000

2010-11:

Sl. No.	Asst. Year	Name of Party	Loan Amount (Rs.)
1.	2010-11	Paulraj	20,00,000
2.	2010-11	Ponnappan	25,00,000
3.	2010-11	P. Selvakumar	40,00,000
4.	2010-11	S. Muruganathan	25,00,000

19.1 The Assessing Officer has discussed loans given to each party in light of relevant materials found and seized during the course of search and concluded that unaccounted cash loans represents undisclosed income of the assessee. Therefore, we find it appropriate to discuss cash loans to various persons separately.

19.2 The Assessing Officer has made additions of Rs. 3.96 crores towards unaccounted cash loans to Shri. C. Giridharan, on the ground that as per the evidence found

during the course of search, the appellant has advanced a sum of Rs. 5.06 crores to Shri. C. Giridharan, out of which Rs. 3.96 crores is paid in cash. The Assessing Officer has reproduced details of loans given to Shri. C. Giridharan, and mode of payment in para 4.2.1.2 of his assessment order. According to the Assessing Officer, although the assessee claims to have paid amount to Shri. C. Giridharan, for purchase of property, but said transaction is only a loan and further the assessee could not explain source for cash loans given to Shri. C. Giridharan. Therefore, rejected arguments of the assessee and made additions of Rs. 3.96 crores.

19.3. The Ld. Counsel for the assessee, submitted that the Id. Assessing Officer has made additions only on the basis of allegation that, the assessee has not accounted cash loans, but fact remains that the assessee has accounted all the payments made to Shri. C. Giridharan and also proved source for loan given to Shri. C. Giridharan. Further, except one or two documents seized in the name of Shri. C. Giridharan, rest of the documents does not reveal any reference to the mode of payment. No statement has been obtained from the buyer to verify the mode of payment. Therefore, he submitted that

the Assessing Officer is completely erred in making additions towards unaccounted cash loans given to Shri. C. Giridharan. He further submitted that the appellant has purchased two properties from Shri. C. Giridharan and C. Hariharan, and the Assessing Officer has considered payment made for purchase of property as also loans, ignoring all evidences filed by the assessee.

19.4. The Id. CIT-DR, Shri. R. Clement Ramesh Kumar, supporting the order of the Id. CIT(A) submitted that, there is no dispute on loans given through proper bank account. In fact, the Assessing Officer has not made any additions towards loan given to Shri. C. Giridharan through bank transfer or cheque payment. But, seized materials found during the course of search clearly shows that the assessee has paid cash loans to Shri. C. Giridharan on various dates, for which no satisfactory explanation has been furnished. Therefore, the Assessing Officer has rightly made additions towards cash loans and their order should be upheld.

19.5. We have heard both the parties, perused materials available on record and gone through orders of the authorities

below. During the course of search u/s. 132 of the Act, various incriminating materials was found and seized vide annexure SA/12, which contains details of cash loans given to Shri. C. Giridharan. As per seized documents, the appellant had given Rs. 5.06 crores loans to above party which consists of cash loan and loan through cheque and bank transfer. The Assessing Officer, has not made addition towards loans given through bank because source for said loans has been explained. However, addition has been made towards cash loans for Rs. 3.96 crores, because the assessee could not explain source for cash loans. Although, the assessee claims to have made payment for purchase of property, but it is evident from the receipts seized during the course of search, which clearly shows that these are loan transactions, but not for purchase of property. Further, the payments made for purchase of property are altogether different from reference to in seized material found during the course of search. From the above, it is abundantly clear that, the assessee could not explain source for cash loans given to Shri. C. Giridharan. Therefore, we are of the considered view that there is no error in the reasons given by the Id. CIT(A) to sustain additions made towards cash loans of Rs. 3.96 crores given to Shri. C.

Giridharan and thus, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the assessee.

19.6. The next item of addition of Rs. 26 lakhs towards unaccounted cash loans to Shri C. Hariharan. Incriminating material found during the course of search reveals that the appellant had given cash loans of Rs. 26 lakhs to Shri C. Hariharan, but the assessee could not explain source for cash loans. Therefore, the Assessing Officer has made additions as undisclosed income of the assessee.

19.7. The Ld. Counsel for the assessee, submitted that the Id. CIT(A) erred in confirming additions made towards unaccounted cash loans to Shri C. Hariharan without appreciating fact that the assessee has filed evidence to prove source for said loans and further, the loans has been accounted in the books of accounts of the assessee. Therefore, he submitted that the additions made by the Assessing Officer should be deleted.

19.8. The Id. CIT-DR, Shri. R. Clement Ramesh Kumar, supporting the order of the Id. CIT(A) submitted that,

documents found during the course of search clearly shows unaccounted cash loans to above party. The assessee could not explain source. Therefore, the Assessing Officer has made additions and their order should be upheld.

19.9. We have heard both the parties and considered relevant reasons given by the Assessing Officer to make addition towards unaccounted cash loans to Shri C. Hariharan. We find that during the course of search, cash receipts cum affidavit of Shri C. Hariharan has been found which shows that the appellant had given Rs. 25 lakhs in cash on 03.03.2009 and another Rs. 1 lakh in cash on 25.06.2009, through Shri. C. Giridharan brother of Shri C. Hariharan. The assessee could not file any evidence to prove source for said loans. Even before us, except oral statement no evidence has been filed to justify source for cash loans to above party. Therefore, we are of the considered view that, there is no error in the reasons given by the Id. CIT(A) to sustain additions made towards unaccounted cash loans to Shri C. Hariharan. Thus, we reject arguments of the assessee and uphold addition made towards unaccounted cash loan of Rs. 26 lakhs given to Shri C. Hariharan.

19.10. The next item of addition is unaccounted cash loan to Shri. C. R. Narayanasamy, amounting to Rs. 3.95 crores. The Ld. Counsel for the assessee, submitted that payment made to Shri. C. R. Narayanasamy is towards purchase of two properties, but not as loan. The appellant has purchased a residential property at Peelamedu (Bharathi Colony) and paid Rs. 2 crores through IDBI Bank vide pay order and source for said payment is loan taken from IDBI Bank, for which necessary evidences including loan sanction letter has been filed before the Assessing Officer. The appellant had also purchased office building at Singanallur, Ramanuja Nagar, for a consideration of Rs.1.60 crores and paid advance of Rs. 1.50 crores through RTGS. The balance amount of Rs. 10 lakhs is due and payable, for which evidences are found during the course of search. But, the Assessing Officer has made additions towards payment made to Shri. C. R. Narayanasamy as unaccounted loans. Further, the Assessing Officer himself in Para 4.2.3.3 of assessment order stated that the appellant had purchased two properties from Shri. C. R. Narayanasamy and paid cash payments over and above the registered value as on-money. The Assessing Officer, had also recorded statement from Shri. C. R. Narayanasamy u/s. 131(1A) of the

Act, where he has denied receipt of cash payment. Although, the Assessing Officer noticed that payment made to above party is for purchase of properties, but made addition as unaccounted cash loans. Therefore, he submitted that additions made by the Assessing Officer should be deleted.

19.11. The Id. CIT-DR, Shri. R. Clement Ramesh Kumar, supporting the order of the Id. CIT(A) submitted that, the Assessing Officer has discussed the issue in light of sale agreement between the assessee and Shri. C. R. Narayanasamy and also sale deed executed for purchase of property and ascertained the fact that the appellant has paid on-money for purchase of property over and above agreed consideration. The payment made in cash to above parties is supported by incriminating material found during the course of search. The appellant could not explain source for cash payments. Therefore, the Assessing Officer has rightly made additions and their order should be upheld.

19.12. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Assessing Officer has made addition of Rs. 3.95

crores towards cash payments to Shri. C. R. Narayanasamy as unaccounted income, on the ground that the appellant could not explain source for cash payment for purchase of property. According to the Assessing Officer, as per registered sale agreement between the appellant and Shri. C. R. Narayanasamy, receipt of cash by the seller is very clear. It was the explanation of the assessee that the property at Peelamedu was purchased for a consideration of Rs. 2 crores and payment is made through IDBI Bank and also, the source for said payment is loan taken from IDBI bank. The assessee further contended that the office building at Singanallur was purchased for Rs. 1.50 crores and payment has been made through RTGS. The appellant has filed copies of sale deeds and sale agreements. From the above documents, the mode of payment is not clear. Further the Assessing Officer claims that the appellant has paid cash as per registered sale agreement for purchase of residential building at Peelamedu. Even for purchase of office building at Singanallur, the Assessing Officer claims that the appellant has paid a sum of Rs. 1.50 crores in cash on 18.11.2008 and also a sum of Rs. 1.50 crores through RTGS on 18.11.2008. However, the documents furnished by the assessee shows that payment by

cheque only. The facts are not clear which needs further verification from the Assessing Officer to ascertain, is there any cash payment for purchase of property or not. Therefore, we are of the considered view that, this issue needs to go back to the file of the Assessing Officer for further verification. Thus, we set aside the addition made towards cash payment for purchase of property from Shri. C. R. Narayanasamy, to the file of the Assessing Officer and direct the Assessing Officer to reexamine the claim of the assessee in light of various evidences filed to justify source for payment for purchase of property, in light of incriminating material found during the course of search. The Assessing Officer is directed to reconsider the issue in accordance with law.

19.13. The next item of addition is unaccounted cash loans of Rs. 40 lakhs to Shri. N. Venkataraman. The Assessing Officer noticed that the assessee has paid unaccounted cash loan of Rs. 40 lakhs against surety of immovable property, but could not explain source for said loan. It was the argument of the assessee before the Assessing Officer that, he had entered into unregistered sale agreement with Shri. N. Venkataraman for purchase of property for a sum of Rs. 50 lakhs and paid

advance of Rs. 40 lakhs through Kotak Mahindra Bank Ltd and the balance amount of Rs. 10 lakhs is due.

19.14. We have heard both the parties and considered relevant material available on record. The argument of the assessee is that, he has paid Rs. 40 lakhs through Kotak Mahindra Bank Ltd for purchase of property from Shri. N. Venakataraman is an afterthought, which is clearly evident from facts brought on record by the Assessing Officer in his assessment order in Para 4.2.4.3, where it has been clearly negated arguments of the assessee that he has paid through bank. The Assessing Officer, observed that the RTGS number referred to by the assessee against payment of Rs. 40 lakhs to Shri. N. Venakataraman is incorrect, because said RTGS reference number is the payment made to Shri. T. Dhamodaran, but not to Shri. N. Venkataraman. Further, the documents found during the course of search clearly shows that, the assessee has paid loan against bank cheque, signed white blank sheets and surety of immovable property documents. The assessee could not explain source for said loan. Therefore, we are of the considered view that there is no error in the reasons given by the AO to make additions of Rs.

40 lakhs towards unaccounted cash loans to Shri. N. Venkataraman. The Id. CIT(A), after considering relevant facts has rightly made additions and thus, we are inclined to uphold the findings of the Id. CIT(A) and reject grounds taken by the assessee.

19.15. The next item of addition is unaccounted cash loan to Shri. Ponnappan proprietor of M/s. Sakthivel Casting Private Ltd. The Id. Counsel for the assessee submitted that, in the seized documents there is no reference to the mode of payment to Shri. Ponnappan, except Rs. 1,75,000/- in cash. Further, the appellant has paid Rs. 12 lakhs through bank transfer. No statement has been obtained from Shri. Ponnappan and verified to confirm its genuineness. The AO, simply made additions on the basis of seized material.

19.16. The Id. CIT-DR, Shri. R. Clement Ramesh Kumar, on the other hand supporting the order of the Id. CIT(A) submitted that, the assessee could not explain source for cash loans. Therefore, the AO has rightly made additions and their order should be upheld.

19.17. We have heard both the parties and considered relevant material available on record. During the course of search u/s. 132 of the Act, original signed receipts cum undertaking in the official letter head of M/s. Sakthivel Casting Private Ltd, Coimbatore jointly signed by Shri. Ponnappan and Shri. K. Durairaj, Director of the company, have been seized which clearly shows that the assessee has advanced loan of Rs. 40 lakhs on various dates and out of which Rs. 31.75 lakhs has been paid in cash. From the above details, it is noticed that the assessee has paid a sum of Rs. 15 lakhs in cash for the assessment year 2009-10, but could not explain source for said loan. Even before us, except making a general statement no evidence has been filed to explain source for said loans. Therefore, we are of the considered view that there is no error in the reasons given by the AO to make additions towards unaccounted cash loans to Shri. Ponnappan for Rs. 15 lakhs and thus, we uphold the findings of the Id. CIT(A) and reject grounds taken by the assessee.

19.18. The next item of addition is unaccounted cash loan to Dr. S. Ramesh Kumar for Rs. 15 lakhs. The AO has made additions of Rs. 15 lakhs towards unaccounted cash loan Dr.

Dr. S. Ramesh Kumar, on the ground that incriminating material found during the course of search like original signed receipts, signed blank green sheets, signed blank promissory notes and cheque leafs shows that the assessee has paid loan of Rs. 50 lakhs to Dr. S. Ramesh Krishna. During the course of post-search inquiries statement u/s. 131(1A) of the Act has been recorded from Dr. S. Ramesh Krishna on 15.05.2015, where he has admitted that out of Rs. 61 lakhs a sum of Rs. 15 lakhs has been received in cash. The assessee could not explain source. Therefore, the AO made additions of Rs. 15 lakhs as undisclosed income of the assessee.

19.19. The Id. Counsel for the assessee submitted that the documents seized does not refer to cash payment to Dr. S. Ramesh Kumar. Though, the statement obtained from the party claims that the appellant has paid cash loan, but no proof has been referred or produced to confirm the cash payments. The assessee has paid loans in cheque and the same has been accounted, but the AO ignored all evidences filed by the assessee and made additions.

19.20. The Id. CIT-DR, Shri. R. Clement Ramesh Kumar, on the other hand submitted that, the AO has not made addition towards loans given through bank and received back through cheques. The document found during the course of search clearly shows payment of loan in cash, for which there is no explanation from the assessee. Therefore, the arguments of the assessee that no evidence to prove payment in cash is incorrect.

19.21. We have heard both the parties and considered relevant material available on record. There is no dispute with regard to the fact that the appellant has paid loan to Dr. S. Ramesh Kumar, on various dates which includes payment by cheque and cash. In fact, the Assessing Officer did not make any addition on loan payment through bank account. It is also an admitted fact that, the appellant has paid a sum of Rs. 15 lakhs loans in cash and this fact has been confirmed by Dr. S. Ramesh Kumar in his statement recorded u/s. 131(1A) of the Act on 15.05.2015. The assessee could not file any evidence to negate the documents found during the course of search coupled with statement from Dr. S. Ramesh Kumar, except making an oral statement that loan given to Dr. S. Ramesh

Kumar has been accounted in the books of accounts. Therefore, we are of the considered view that there is no error in the reasons given by the Id. CIT(A) to sustain addition towards unaccounted cash loan at Rs. 15 lakhs given to Dr. S. Ramesh Kumar and thus, we are inclined to uphold the findings of the Id. CIT(A) and reject arguments of the assessee.

19.22. The next item of addition is unaccounted cash loan of Rs. 55 lakhs to Shri. Thangavel. The Id. Counsel for the assessee submitted that, the appellant has paid a sum of Rs. 55 lakhs loan to Shri. Thangavel, through bank account and same has been accounted in the books of accounts. One Shri. Thangavel on behalf of Amala Jothi & Co., accepted payment of loan and the same has been reflected in the balance sheet. The Assessing Officer, has made addition without considering the balance sheet filed by the assessee and attested by CA. Further, no confirmation has been obtained from Amala Jothi & Co., to confirm the mode of payment. Therefore, he submitted that addition made by the AO should be deleted.

19.23. The Id. CIT-DR, Shri. R. Clement Ramesh Kumar, on the other hand supporting order of the Id. CIT(A) submitted that, incriminating documents found during the course of search shows unaccounted cash loan of Rs. 55 lakhs given to Shri. Thangavel. The assessee could not explain source for said loans. Further, the document found during the course of search clearly shows that the appellant has taken surety of immovable property owned by Shri. Thangavel. Since, the assessee could not explain source, the AO has rightly made additions towards unaccounted cash loans and their order should be upheld.

19.24. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The appellant claims to have paid total loan of Rs. 27,43,500/- through Kotak Mahindra Bank by cheque and RTGS. All loan transactions with Shri. Thangavel has been accounted in the books of accounts. But, fact remains that the additions made by the AO is towards unaccounted cash loans of Rs. 55 lakhs paid to Shri. Thangavel, which is supported by incriminating material found during the course of search. During the course of search, a copy of signed cash receipts

found, which shows that Shri. Thangavel borrowed cash loan of Rs. 55 lakhs against surety of immovable property. Further, the assessee could not explain source for cash loans. Although, the assessee claims that loans given to Shri. Thangavel has been accounted in the books of accounts, but the details filed by the assessee did not refute the evidence in the form of seized material found during the course of search which clearly shows unaccounted cash loan of Rs. 55 lakhs to Shri. Thangavel on behalf of Amala Jothi & Co., Coimbatore. Therefore, we are of the considered view that the assessee could not explain source of unaccounted cash loan given to Shri. Thangavel and thus, we uphold the addition made by the AO towards unaccounted cash loan of Rs. 55 lakhs to Shri. Thangavel.

19.25. In so far as additions made towards unaccounted cash loan for assessment year 2010-11, we find that the AO has made additions of Rs. 20 lakhs towards unaccounted cash loans given to Shri. Paulraj of APR Industries. The assessee claims that he has paid a sum of Rs. 20 lakhs loan to Shri. Paulraj, out of which only Rs. 5 lakhs was given in cash and balance of Rs. 15 lakhs has been paid through cheque. It was

the argument of the assessee that, loan given to Shri. Paulraj is out of known source of income and the assessee has paid a sum of Rs. 15 lakhs through Kotak Mahindra Bank account. The balance amount of Rs. 5 lakhs has been paid in cash, and source for said loan has been explained. The Assessing Officer, ignored all evidence and made additions only on the basis of documents found during the course of search.

19.26. We have heard both the parties and considered relevant material available on record. There is no dispute with regard to the payment made to Shri. Paulraj. In fact, the assessee himself admitted that he has paid a sum of Rs. 20 lakhs to Shri. Paulraj and he did not refund the loan amount. Further, he has entered into sale agreement with Shri. Paulraj for purchase of property and same is still pending. The addition made by the AO is towards loan, on the ground that the assessee could not explain source for cash loans. The fact remains that, as admitted by the AO himself, out of Rs. 20 lakhs a sum of Rs. 15 lakhs has been paid through Kotak Mahindra Bank for which the AO did not verify the source. In respect of balance of Rs. 5 lakhs, said loan has been paid in cash and there is no dispute. The assessee could not explain

source. Since, there is no clear finding with regard to the mode of payment of Rs. 15 lakhs and also the assessee claims that a sum of Rs. 15 lakhs is paid through bank account, in our considered view, the matter needs further examination. Therefore, we direct the AO to re-examine additions made towards unaccounted cash loan of Rs. 20 lakhs given to Shri. Paulraj, in light of various evidences filed by the assessee and decide the issue in accordance with law.

19.27. The next item of addition is unaccounted cash loan to Shri. Ponnappan, proprietor of M/s. Sakthivel Casting Private Ltd. The Assessing Officer, has made addition of Rs. 25 lakhs towards unaccounted cash loan on the basis of incriminating material found during the course of search like original signed receipt cum undertaking in the official letter head of M/s. Sakthivel Casting Private Ltd. The assessee claims that, he has paid a sum of Rs. 39,25,000/- loans on various dates through Kotak Mahindra Bank and have received a letter from Shri. Ponnappan for Rs. 15 lakhs for security purpose only.

19.28. We have heard both the parties and considered relevant material available on record. The documents found during the course of search like original signed receipt cum undertaking from M/s. Sakthivel Casting Private Ltd, clearly shows that the appellant has paid Rs. 40 lakhs on various dates in cash and RTGS. Further, out of Rs. 40 lakhs a sum of Rs. 31,75,000/- is paid in cash. Although the assessee claims to have paid loan through RTGS, but could not reconcile payment through bank to incriminating material found during the course of search. Therefore, we are of the considered view that there is no error in the reasons given by the AO to make additions towards unaccounted cash loan of Rs. 25 lakhs given to Shri. Ponnappan and thus, we uphold additions made by the AO and reject arguments of the assessee.

19.29. The next item of addition is unaccounted cash loan of Rs. 40 lakhs to Shri. P. Selva Kumar. During the course of hearing, the Id Counsel for the assessee submitted that addition of Rs. 40 lakhs towards unaccounted cash loan to Shri. P. Selva Kumar is duplicate addition, because Shri. P. Selva Kumar is PoA holder of Shr. K. Palaniappan of Maruvor Arasi Textiles India (P) Ltd., and the AO has already made

addition of Rs. 40 lakhs for assessment year 2009-10 towards loans given to Maruvor Arasi Textiles India (P) Ltd. We find that Shri. P. Selva Kumar is PoA holder of Shr. K. Palaniappan of Maruvor Arasi Textiles India (P) Ltd., which is evident from necessary documents filed by the assessee. Since, additions has already been made for assessment year 2009-10, further addition of Rs. 40 lakhs for assessment year 2010-11 in the name of Shri. P. Selva Kumar amounts to double addition on very same loan amount. After going through relevant materials considered by the Assessing Officer, it is very clear that there is no separate loan to Shri. P. Selva Kumar. Therefore, we are of the considered view that the addition made by the AO towards unaccounted cash loan to Shri. P. Selva Kumar, deserves to be deleted and thus, we direct the AO to delete the addition.

19.30. The next item of addition is unaccounted cash loan of Rs. 25 lakhs to Shri. S. Muruganathan. The Id. Counsel for the assessee submitted that, the payment to the said party was towards the purchase of property, but not loan. The assessee has entered into a sale agreement with Shri. S. Muruganathan for a purchase of property for a consideration at

Rs. 27 lakhs and paid advance of Rs. 25 lakhs and the balance amount of Rs. 2 lakhs is due and payable to the seller. But the AO has treated said transaction as loan and made addition.

19.31. The Id. CIT-DR, Shri. R. Clement Ramesh Kumar, on the other hand submitted that, the document found during the course of search including copy of signed sale agreement clearly shows cash payment of Rs. 25 lakhs to Shri. S. Muruganathan, for which no explanation was filed. Although, the assessee claims to have paid advance for purchase of property, but fact remains that source for said payment was not explained. Therefore, the AO has rightly made addition and therefore, their order should be upheld.

19.32. We have heard both the parties and considered relevant materials available on record. We find that the assessee has paid a sum of Rs. 25 lakhs in cash to Shri. S. Muruganathan in pursuant to sale agreement dated 18.11.2009. Further, Shri. S. Muruganathan in the statement of oath recorded on 01.05.2015 has admitted to have received an amount of Rs. 25 lakhs in cash from the assessee by pledging his property in the form of sale agreement. From the

above details it is abundantly clear that the assessee has given Rs. 25 lakhs cash loan to Shri. S. Muruganathan. Since, the assessee could not explain source for cash loan, in our considered view the AO has rightly made additions of Rs. 25 lakhs as undisclosed income of the assessee. The Id. CIT(A), after considering relevant facts has rightly sustained additions made by the AO and thus, we are inclined to uphold the findings of the Id. CIT(A) and reject arguments of the assessee.

20. The next issue that came up for our consideration from assessee appeal for assessment year 2011-12 to 2015-16 is addition towards undisclosed business income, being money swindled by Smt. Dhanalakshmi, ex-employee of Mrs. Millenium Motors to the extent of Rs. 8,30,67,068/-. During the course of search u/s. 132 of the Act, one bunch of sheets containing certain transactions of M/s. Millennium Motors and Smt. Dhanalakshmi were found and seized in Annexure SA/HVR/LS/2/S dated 26.02.2015 in page nos. 1 to 48. The said seized material contains details of alleged swindling of money by Smt. Dhanalakshmi erstwhile staff of M/s. Millennium Motors, to the extent of Rs. 8,04,08,648/- by

forging 'zero bill, spares and fictitious bills outstanding'. The assessee stated in his reply to show cause notice that the amount cheated is about Rs. 4 crores only, but not Rs. 8,04,08,648/-. The assessee further contended that the criminal case has been filed against Smt. Dhanalakshmi, which is pending for adjudication in the court of law. Further, said transaction is pertains to M/s. Millennium Motors, a unit of Miracle Cars India Pvt Ltd, a private company and thus, same cannot be considered in is assessment. The Assessing Officer, after considering relevant submissions has made protective addition in the hands of the assessee for assessment year 2011-12 to 2015-16 for an amount of Rs. 8,30,67,068/-, on the ground that since, the case filed against swindling of money by Smt. Dhanalakshmi is pending, to protect the interest of the revenue, addition is required to be made in the hands of the assessee.

21. The Ld. Counsel for the assessee, submitted that the Assessing Officer and CIT(A) are erred in making additions towards money swindled by erstwhile employee of M/s. Millennium Motors, in the hands of the assessee on protective basis, even though the documents found during the course of

search clearly shows that said transaction does not belong to assessee and his business. The Ld. Counsel for the assessee, further submitted that Smt. Dhanalakshmi joined a company in the year 2004 and she has swindled company money by forging service invoice and other documents to the tune of Rs. about 4 crores. The company has lodged a police complaint with Crime Branch and an FIR no. 26/2014 was registered against her and the case is pending before the Judicial Magistrate Court, Coimbatore. The assessee nowhere acted as an individual and whatever money swindled by her is belongs to M/s. Millennium Motors, a unit of Miracle Cars India Pvt Ltd. Further, the company has accounted said transactions in the books and shown as amount receivable from Smt. Dhanalakshmi. The Assessing Officer, had also made assessment of the company M/s. Miracle Cars India Pvt Ltd and made substantive addition towards very same amount. Therefore, addition in the hands of the assessee on protective basis cannot be made. He further submitted that the police have investigated the case and filed a charge sheet and quantified total amount swindled by her at Rs. 4,00,82,752/-, but not as alleged by Assessing Officer of Rs. 8,30,67,068/-. Further, the company has entered into agreement to sale with

the accused employee and taken her property as collateral security and as and when she returns money, the company will offer it as income. Therefore, said transaction cannot be assessed in the hands of the assessee.

22. The Id. CIT-DR, Shri. R. Clement Ramesh Kumar, supporting the order of the Id. CIT(A) submitted that, there is no dispute with regard to the fact that the money swindled by Smt. Dhanalakshmi is belongs to M/s. Millennium Motors , but the Assessing Officer has made protective addition in the hands of the assessee, because the assessee has acted in his individual capacity and filed various complaints and also taken immoveable property of accused employee as security in his name. Since, the case is pending, the Assessing Officer has rightly made protective addition in the hands of the assessee to protect the interest of the revenue and thus, the additions made by the Assessing Officer should be upheld.

23 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, Smt. Dhanalakshmi worked for M/s. Millennium Motors, which is a unit of Miracle Cars India Pvt

Ltd. It is also an admitted fact that documents found during the course of search clearly shows swindling of money is from business income of M/s. Millennium Motors only. In fact, the Assessing Officer never disputed the fact that money swindled by Smt. Dhanalakshmi is from M/s. Millennium Motors and transaction is between M/s. Millennium Motors and Smt. Dhanalakshmi. Even the criminal complaint lodged before the police is also in the name of the company. The investigation carried out by the police and charge sheet filed in this respect is also on the basis of complaint filed by M/s. Millennium Motors. Even the case is pending before the Judicial Magistrate Court, Coimbatore is on the basis of complaint filed by managing director of M/s. Millennium Motors. Thus, all evidences found during the course of search clearly shows that transaction does not relates/pertains to the assessee. Further, the company M/s. Miracle Cars India Pvt Ltd (earlier knows as M/s. Millennium Motors) accounted the money swindled by Smt. Dhanalakshmi in their books of accounts and shown as amount receivable from her. The amount swindled by Smt. Dhanalakshmi has already been assessed in the hands of M/s. Miracle Cars India Pvt Ltd., on substantiate basis. Therefore, in our considered view additions made in the hands of the

assessee towards money swindled by Smt. Dhanalakshmi on protective basis cannot be upheld, because addition, if any, then same has to be in the hands of the M/s. Millennium Motors but not in the hands of the assessee. Therefore, the addition if any to be made, then it should be made in the hands of M/s. Millennium Motors itself. Since, the Assessing Officer already made additions towards money swindled by Smt. Dhanalakshmi in the hands of the company on substantive basis, protective addition made in the hands of the assessee has no legs to stand. Thus, we direct the Assessing Officer to delete protective addition made in the hands of the assessee towards money swindled by Smt. Dhanalakshmi for assessment year 2011-12 to 2015-16.

24. The next issue that came up for our consideration from assessee appeal for assessment year 2009-10 to 2011-12 is addition towards difference between income returned originally and income returned in response to 153A notice. During the course of assessment proceedings, the Assessing Officer noticed that income declared in the return of income filed in response to notice u/s. 153A of the Act, was much lesser than the income returned in the original return of income filed u/s.

139 of the Act. Therefore, the Assessing Officer has made additions towards difference between income admitted in the return of income filed u/s. 153A and income originally returned in the return of income filed u/s. 139 of the Act as income of the assessee.

25. We have heard both the parties and considered relevant material available on record. The assessee could not satisfactorily explain reduction in income declared in the return of income filed u/s. 153A of the Act, when compared to income admitted in the return of income filed u/s. 139 of the Act. Therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer to make additions towards difference in income returned and admitted for assessment year 2009-10 to 2011-12 and thus, we uphold the additions made by the Assessing Officer.

26. The next issue that came up for our consideration from assessee appeal for assessment year 2014-15 is addition towards unaccounted sales. During the course of search, a sales abstract which was maintained in computer was seized vide page no. 63 of annexure ANN/SA/HVR/LS/S dated

26.02.2015, in which the sales of material, land, land with building and labour charges etc., were maintained by M/s. Arputharaj Associates. As per said sales abstract, sales for the period from 01.04.2013 to 31.03.2014 shows net sales of Rs. 12,12,92,100/-, whereas sales as per profit and loss filed for the above period shows net sales of Rs. 1,00,30,100/-. The assessee was called upon to explain the difference, for which the assessee submitted that said documents is only estimated sales abstract provided for the purpose of bank loan only. However, the regular return filed with VAT authorities clearly shows sales as per profit and loss account. The Assessing Officer, however was not satisfied with the explanation of the assessee and according to the Assessing Officer, the assessee could not substantiate difference in sales as per seized documents and sales admitted in his books of accounts. Therefore, made additions of Rs. 11,12,62,000/- as unaccounted sales of the assessee for assessment year 2014-15.

27. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Assessing Officer has made additions towards

unaccounted sales on the basis of one seized documents, which shows sales abstract for the financial year 2013-14. Except sales abstract, there is no evidence with the Assessing Officer to make addition of Rs. 11,12,62,000/- towards unaccounted sales. On the other hand, documents like VAT return and books of accounts maintained by the assessee clearly shows sales for the year at Rs. 1,00,30,100/-. Further, it was the claim of the assessee that said documents belongs to M/s. Arputharaj Associates, a partnership firm. If at all said document pertains to a partnership firm, then addition cannot be made in the hands of the assessee. Since, there is no clear finding from the Assessing Officer with regard to the said addition, except so called sales abstract found in the computer of the assessee and also it was the claim of the assessee that said transaction pertains to M/s. Arputharaj Associates, a partnership firm, we are of the considered view, that the issue needs to go back to the file of the Assessing Officer for further verification. Thus, we set aside the orders of the lower authorities on this issue and restore the issue to the file of the Assessing Officer for further verification. The Assessing Officer is directed to examine the issue in light of relevant material and ascertain the real beneficiary of said transactions. If at

all, said transaction pertains to M/s. Arputharaj Associates, a partnership firm, then addition made in the hands of the assessee should be deleted.

28. In the result, appeals filed by the assessee for assessment years 2009-10 to 2015-16 are partly allowed for statistical purposes.

Order pronounced in the court on 27th September, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 27th September, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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