

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

श्री महावीर सिंह, उपाध्यक् एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA Nos.: **663, 664 & 667/Chny/2023**
& CO Nos.: **30, 31 & 32/Chny/2023**

निर्धारणवर्ष / Assessment Years: 2017-18, 2018-19 & 2019-20

Deputy Commissioner of Income
Tax,
Central Circle 2(1),
Room No. B3, Ground Floor,
Investigation Building,
Chennai – 34.

M/s. Appu Food Products,
v. K-1, SIDCO Industrial Estates,
Vadalur, Cuddalore – 607 303.
[PAN: AABFA-1499-G]

(अपीलार्थी/Appellant)

(Respondent/Cross Objector)

अपीलार्थीकीओरसे/Appellant by : Shri. Nilay Baran Som, CIT
Respondent/Cross Objector by : Shri. M. V. Prasad, CA

सुनवाई की तारीख/Date of Hearing : 21.12.2023
घोषणा की तारीख/Date of Pronouncement : 24.01.2024

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

These three appeals filed by the revenue and three cross objections filed by the assessee are directed against common order passed by the learned Commissioner of Income Tax (Appeals)-19, Chennai, dated 30.03.2023 and pertains to assessment years 2017-18, 2018-19 & 2019-20. Since, facts are identical and issues are common, for the sake of

convenience, the appeals filed by the revenue and cross objections filed by the assessee are being heard together and disposed off, by this consolidated order.

2. The revenue has more or less raised common grounds of appeal for all three assessment years. Therefore, for the sake of brevity, grounds of appeal filed for assessment year 2017-18 in ITA No. 663/Chny/2023 are reproduced as under:

"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2 The Ld.CIT(A) erred in deleting the addition of Rs.3,18,39,413/- made towards undisclosed cash transaction from undisclosed sources made on the basis of entries pertaining to the assessee firm based on the excel sheets found in the electronic devices seized during the course of search in the case of Christy group of companies.

2.1 The Ld.CIT(A) erred in observing that there were no corroborative evidences to substantiate the entries in the seized materials. It is to be noted that the assessee itself demonstrated during the appellate proceedings that the entries mentioned in the excel sheet as bank transactions were exactly matching with the bank statements. Relying on the assessee's contention, the Ld.CIT(A) directed to quantify the cash receipts and payments, without adding two zeros. In contrary to his stand, the CIT(A) erred in holding that there were no corroborative evidences to substantiate the entries in the excel sheet.

2.2 The Ld.CIT(A) failed to appreciate that matching of bank entries with the entries of excel sheets clearly proved beyond doubt that the seized excel sheets have evidentiary value and transaction narrated therein had

actually happened regardless of bank or cash transactions. Hence the assessing officer rightly relied on excel sheets for making additions in respect of cash transactions found in the excel sheets.

2.3 The Id.CIT(A) erred in observing that there was no acknowledgement in the excel sheets seized, the same were not in the handwriting of the assessee and nature of transaction was not mentioned, without appreciating that the material seized from third party is in the form of excel sheet, clearly referring name of assessee as "Appu" both in the name of excel sheets and in its contents. Further the assessee is also in the similar line of business carried out by Christy group.

2.4 The Ld.CIT(A) failed to appreciate that the AO clearly mentioned in the assessment order that assessee group was maintaining two set of accounts "Tally 1 and Tally 2" and also in the practice of replacing the invoices not checked by any Government authorities in the accounted Tally. This proved that the assessee is in the practice of indulging in unaccounted cash transactions.

2.5 The Ld.CIT(A) erred in holding that while considering the aggregate cash receipts as undisclosed income, the cash payments should be taken into consideration for computing the undisclosed income only when they are made in excess of cash balance available out of the cash receipts, without appreciating that the assessee was disputing the cash receipts itself and did not provide reconciliation of receipts and payments, supported by invoices/other evidences.

For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored."

3. The brief facts as detailed in the assessment orders for the relevant assessment years are that a search u/s. 132 of the Income-tax Act, 1961 (hereinafter referred to as "the Act")

was conducted in the cases of Shri. T.S. Kumarasamy, Proprietary of M/s. Christy Fried Gram Industry and Smt. K. NalinaSundari on 05.07.2018. As a result, the office premises of the appellant firm at Vandalur were also searched as a part of Christy group of cases. During the course of search in the case of M/s. Christy group of cases, certain loose sheets and electronic devices were found and seized from the residential premises of Shri. P. Karthikeyan, an employee of M/s. Christy Fried Gram Industry. The said electronic device contains three excel sheets with notings of transactions between the assessee and M/s Christy group of concerns for the assessment years 2017-18 to 2019-20. The Assessing Officer of the searched person and the Assessing Officer of the assessee are one and the same and therefore, based on seized material, the Assessing Officer recorded satisfaction u/s. 153C of the Act for assessment years 2017-18 & 2018-19, in respect of material pertains to the appellant on 07.01.2021 for the purpose of assuming jurisdiction u/s. 153C of the Act. As per satisfaction note recorded by the Assessing Officer of the searched person u/s. 153C of the Act, on the basis of electronic device seized at the residence of Shri. P. Karthikeyan vide Annexure ANN/GV/PK/ED/S, the Assessing Officer recorded his

satisfaction that the relevant seized material containing details of cash transactions for the appellant has a bearing on the determination of total income of the appellant for the assessment years 2017-18 & 2018-19 and accordingly, notice u/s. 153C of the Act was issued. In response to notice u/s. 153C of the Act, the assessee has filed its return of income for assessment years 2017-18 & 2018-19 on 16.02.2021.

4. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the incriminating material found during the course of search in the form of excel sheets "appufood.xls" subsheet "running" contains cash given/taken from the assessee from 21.03.2018 to 13.5.2018. The total cash given to and received from the assessee works out to Rs. 33 crores for assessment year 2018-19 and Rs. 72 crores for assessment year 2019-20. Excel sheet titled "Annex-3-Appu-CGE-Running account" contains transactions for the period 22.03.2017 to 23.06.2017 relevant to assessment year 2018-19 and said cash transactions works out to Rs. 97 lakhs. Excel sheet titled "Appu revised format.xls" subsheet "cash recd & paid" contains transfers and receipts with M/s. Appu Direct Pvt. Ltd for the

period 03.01.2017 to 01.03.2017 and the entries marked as "Appu" towards cash transactions works out to Rs. 3,18,39,413/- for assessment year 2017-18. During the course of assessment proceedings, the Assessing Officer issued show-cause notice dated 03.02.2021 and called upon the assessee to explain the transactions contained in excel sheets. The assessee vide letter dated 16.02.2021 sought a copy of satisfaction note and seized materials relied upon. In the letter dated 16.02.2021, the assessee has denied any transactions outside the books of accounts. The assessee also stated that Shri. Palanisamy was an engineer working with M/s. Neyveli Lignite Corporation Limited and cannot be a partner in the concern as alleged by the Assessing Officer. The assessee further submitted that the statement of oath was taken by coercion and further denied having any knowledge of Shri. P. Karthikeyan of M/s. Christy group. The copies of the satisfaction note/seized material and other documents relied upon by the Assessing Officer were supplied to the assessee on 08.03.2021. The Assessing Officer once again called upon the assessee to explain and furnish details called for along with response on the proposed additions towards cash transactions. Since, there was no reply from the assessee, the

Assessing Officer on the basis of cash transactions recorded in excel sheets, worked out total cash given/received from the appellant for three assessment years and made additions u/s. 69A of the Act as unexplained money. The Assessing Officer, while computing total amount of cash transactions has appended two zeros into cash transactions appearing in seized material, i.e. excel sheet for two assessment years and worked out unaccounted cash transactions for three assessment years and made additions u/s. 69A of the Act. The relevant findings of the Assessing Officer are as under:

"4. Cash transactions with M/s.Christy Friedgram Industry group:

References are made to the following xi sheets found in the electronic devices maintained by Shri.P.Karthikeyan and the inferences thereon:

*(a) xl sheet '**appufood.xls**' subsheet '**running**' contains **cash given/taken** from **M/s.Appu Food products** from 21.03.2018 to 13.05.2018. The **total cash** given to and received from Appu Food Products comes to **Rs.33,00,00,000/- for AY:2018-19** and the given to and received from Appu Food Products comes to **Rs.72,00,00,000/for AY:2019-20.***

*(b) xl sheet titled '**Annex-3-Appu-CFI-Running account**' contains transaction for the period 22.03.2017 to 23.06.2017. It contained both cash and account transfer transactions with M/s.Appu Direct Pvt Ltd & M/s.Meenambika Foods (group concerns of Appu Foods). As per this sheet, the total **cash given** to **M/s.Appu Foods** comes to **Rs.38,50,770/-** and the **total cash received** from **M/s.Appu Foods** comes to **Rs.97,00,000/- for AY:2018-19.***

(c) xl sheet titled '**Appu revised format.xls'** subsheet '**cash redc & paid'** contains transfers & receipts with **M/s.Appu Direct Pvt Ltd** for the period 03.01.2017 to 01.03.2017. In this sheet there are certain entries are marked as "Appu". The **cash given** to Appu comes to Rs.3,44,413/- and **cash received** from Appu comes to Rs.3,14,95,000/- (**Total: Rs.3,18,39,413/-**) for **AY:2017-18**.

5. As there was no response, a showcause was issued on 03.02.2021, on the issues involved. The assessee vide letter dated 16.02.2021, sought the copy of satisfaction and seized materials relied upon. In the letter dated 16.02.2021, the assessee had denied any transactions outside the books of accounts. The assessee also stated that Shri.Palanisamy was an Engineer working with M/s.Neyveli Lignite Corporation and cannot be a partner in the concern while he is service. It was also stated that the statement was taken on coercion. The assessee also denied any knowledge of Shri.P.Karthikeyan of M/s.Christy group. The assessee stated that, until AY:2019-20 the turnover of the firm had not exceeded Rs.40 Cr at any point of time. Taking into the latest machinery capacity as on 31.03.2019, even if the plant has been put into operation for the entire 24 hours in a calendar year of 365/366 days the turnover alleged in the showcause could not be achieved.

6. The copies of the satisfaction note, seized materials and other documents relied upon by this office sought by the assessee were duly furnished on 08.03.2021. While providing the copies of the satisfaction note and seized materials etc., the assessee's representative was asked to furnish the details called for along with the assessee's response on the proposed additions. As there was no reply another reminder was issued on 17.06.2021. In response, the assessee furnished copies of balance sheets, profit and loss account and cash flow statements for all the years. Based on the details furnished the assessment is completed as below:

7. As stated in the previous paragraph, the cash transactions found in xl sheet '**appufood.xls'** subsheet '**running'** contains **cash given/taken** from **M/s.Appu Food products** from 21.03.2018 to 13.05.2018. The **total cash** given to and received from Appu Food Products comes to **Rs.33,00,00,000/- for AY:2018-19** and the given to and received from Appu Food Products comes to **Rs.72,00,00,000/- for AY:2019-20**.

7 .1 The cash transactions found in xi sheet titled '**Annex-3-Appu-CFI-Running account**' contains transaction for the period 22.03.2017 to 23.06.2017. It contained both cash and account transfer transactions with M/s.Appu Direct Pvt Ltd & M/s .Meenambika Foods (group concerns of Appu Foods). As per this sheet, the total **cash given to M/s.Appu Foods** comes to **Rs.38,50,770/-** and the **total cash received from M/s.Appu Foods** comes to **Rs.97,00,000/- for AY:2018-19.**

7 .2 The cash transactions found in xi sheet titled '**Appu revised 1ormat.xls'subsheet 'cash redc &paid**' contains transfers & receipts with **M/s.Appu Direct Pvt Ltd** for the period 03.01.2017 to O 1 .03.2017. Inthis sheet there are certain entries are marked as "Appu". The cash given to Appu comes to Rs.3,44,413/- and **cash received** from Appu comes to Rs.3,14,95,000/- (**Total:Rs.3,18,39,413/-**) for **AY:2017-18.**

The assessment year wise quantum involved in respect of the cash transactions found in these excel sheets is:

A.Y	Amount (in Rs)
2017-18	3,18,39,413
2018-19	34,35,50,770
2019-20	72,00,00,000

7.3 The cash transactions have been assessed in the hands of M/s.Christy Friedgram Industry as unexplained expenditure u/s 69C of the Act. In view of this, as the assessee has not established beyond doubt that it did not carry out any cash transactions, going by the nature and maintenance of the entries pertaining to the cash transactions, it is inferred that these are cash transactions outside the books of accounts out of undisclosed sources. Accordingly, they are added to the total income of the assessee in the respective assessment years."

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee has challenged additions made by the

Assessing Officer towards alleged cash transactions not recorded in the books of accounts of the assessee, on the basis of seized excel sheets u/s. 69A of the Act. The assessee has also filed certain additional evidences including the alleged cash transactions considered by the Assessing Officer for working out unexplained money u/s. 69A of the Act for all three assessment years. During the course of appellant proceedings, the Id. CIT(A) called for remand report from the Assessing Officer as regards the manner of working out of aggregate cash transactions of the appellant as per the seized excel sheet for all three assessment years. The Assessing Officer, furnished the details of working of cash transactions in the remand report dated 07.03.2023 and explained how cash transactions has been worked out by appending two zeros to the value recorded in said excel sheets. The Assessing Officer had also filed a supplementary remand report dated 27.03.2023 by considering additional evidences filed by the assessee in order to rebut the said workings and reiterated his findings in the assessment order and also the first remand report dated 07.03.2023. During the course of appellant proceedings, the assessee has furnished detailed written submissions on the issue along with certain judicial precedents

including the decision of Hon'ble Supreme Court in the case of CBI vs V.C. Shukla [1998] 3 SCC 410 and in Common Cause (A Registered Society) vs Union of India and argued that, additions made by the Assessing Officer u/s. 69A of the Act, on the basis of loose sheets found in the possession of third party without confronting those loose sheets to the appellant is not sustainable. The appellant had also furnished details with regard to the alleged cash transactions recorded in excel sheets and submitted that, all transactions recorded in cash are pertains to cash sales which was recorded in books of accounts of the assessee and thus, same cannot be considered as unaccounted transactions outside the books of accounts. The assessee had also objected for appending two zeros to the value recorded in excel sheets in respect of cash transactions and argued that, there is no basis for the Assessing Officer or supporting evidence to allege such cash transactions are taken place and the same can be considered as unexplained money u/s. 69A of the Act.

6. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of certain judicial precedents, deleted additions made u/s. 69A of the Act by

holding that, the excel sheets found in the possession of third party did not have evidentiary value, since they were not found in the premises of the assessee. The Id. CIT(A) further observed that, no corroborative evidence like cash receipts, unaccounted purchase bills or sale bills etc., were found which is matching the alleged cash transactions recorded in the excel sheets found in the possession of Shri. P. Karthikeyan. Further, no evidences were found during the course of search in the premises of the assessee that corroborate transactions noted in the excel sheets seized in the premises of Shri. P. Karthikeyan. Further, the Assessing Officer, did not make any reference in the assessment order to the statement recorded u/s. 132(4) of the Act, in the search proceedings of M/s. Christ group of cases to corroborate evidences contained in excel sheets. Further, neither the person from whose possession said documents were found was examined, nor the excel sheets were confronted to the assessee and its partners to verify the veracity of such documents. The Id. CIT(A), further held that there is no iota of any evidences in the seized material regarding the nature and purpose of alleged cash receipts and payments. Therefore, the CIT(A) opined that in absence of any corroborative evidence to strengthen the

alleged cash transactions recorded in excel sheets, the additions cannot be made u/s. 69A of the Act. Thus, directed the Assessing Officer to delete additions made u/s 69A of the Act, towards cash transactions as per seized excel sheets. Aggrieved by the CIT(A) order, the revenue is in appeal before us.

7. The Ld. DR, Shri. Nilay Baran Som, CIT, supporting the order of the Assessing Officer submitted that, the Id. CIT(A) erred in deleting the additions made towards undisclosed cash transactions from undisclosed sources made on the basis of entries pertaining to the assessee firm based on excel sheets found in the electronic devices seized during the course of search in the case of M/s. Christ group of companies. The Id. DR further submitted that, the Id. CIT(A) erred in observing that there were no corroborative evidence to substantiate the entries in the seized material, even though the Assessing Officer demonstrated with evidences that the said excel sheets contains bank transactions which were exactly matching with regular books of accounts of the assessee. The Id. DR further submitted that, the Id. CIT(A) failed to appreciate that matching of bank entries with the entries of excel sheet clearly

proved beyond doubt that seized excel sheets have evidentiary value and transactions narrated therein had actually happened regardless of bank or cash transactions. The Id. DR further submitted that, the Id. CIT(A) erred in observing that the excel sheets found during the course of search were not in the hand writing of the assessee and nature of transactions were not mentioned, without appreciating that the material seized from third party is in the form of excel sheets, clearly referring name of assessee as "Appu" and further the assessee is also in the similar line of business carried out by Christy group. The Id. DR further submitted that, the Id. CIT(A) failed to appreciate fact that during the course of search in the case of Christy group, it was noticed that the appellant group was maintaining two set of accounts "tally 1 and tally 2" and also in the practice of replacing the invoices not checked by any Government authorities in the accounted tally. The Id. DR further submitted that, the Id. CIT(A) failed to appreciate that the Assessing Officer based on statement of Shri. HariHara Krishnan, AGM, Finance of Christy group of industries stated that author of Pendrive is Shri. P. Karthikeyan and entries made as unaccounted cash book relates to cash transactions at Rs. 4 crores and the entries are made by appending two

zeros in the value. The Assessing Officer on the basis of statement recorded from employees of Christy group coupled with evidences collected during the course of search clearly makes out a case of unaccounted cash transactions outside the books of accounts which needs to be assessed u/s. 69A of the Act, but the Id. CIT(A) without appreciating relevant facts simply deleted additions made by the Assessing Officer.

8. The Ld. Counsel for the assessee, Shri. M.V. Prasad, CA supporting the order of the CIT(A) submitted that, there is no basis for the Assessing Officer to make additions u/s. 69A of the Act, on the basis of excel sheet found in the possession of Shri. P. Karthikeyan, who is an employee of Christy group. The Ld. Counsel for the assessee, further submitted that there is no evidentiary value to excel sheets seized from the third party which are not corroborated by independent evidences like sale bills, cash receipts etc either found in the possession of third party or in the search proceedings of the assessee, so as to make addition u/s. 69A of the Act. The Ld. Counsel for the assessee further submitted that, the so called excel sheets were found in the premises of third party, but the Assessing Officer neither verified the evidences nor confronted those

evidences to the appellant for its examination. Further, the Assessing Officer not tested those evidences by recording any statement from the person from whose possession said evidences were found. Further, the evidence found during the course of search in the third party premises does not indicate any unaccounted transactions of the assessee. The Assessing Officer did not confront those evidences to the assessee and verified the veracity of said documents. In absence of any corroborative evidences to support the alleged transactions recorded in excel sheets found in the possession of third party, no addition can be made u/s. 69A of the Act. The Ld. Counsel for the assessee further submitted that as per provisions of section 132(4) and 292C of the Act, presumption comes into place only when the documents were found in the possession of the assessee. In case the documents were found in the possession of third party, the presumption that said documents belongs to the assessee and contents recorded therein are true and correct does not apply. In this case, the documents were found in the possession of the third party and further said documents does not show any transactions of the assessee except stating that cash given/received from Appu. The assessee has explained said transactions and proved that

the bank transactions recorded in excel sheets are matched with regular books of accounts of the assessee. Further, few cash transactions are pertains to cash sales made to the assessee. The remaining entries are not identifiable to any account or transactions whether it pertains to payment for purchases, receipt of loan, repayment of loan etc. In absence of any corroborative evidences, to support the transactions recorded in excel sheet, it cannot be presumed that said transactions are cash transactions made outside the books of accounts.

9. The Ld. Counsel for the assessee, further submitted that the Assessing Officer has appended two zeros to value recorded in excel sheets on the basis of statement of one Shri. Harihara Krishnan, AGM, Finance of M/s. Christy group of cases. But, fact remains that his statement is with reference to cash book called 'ErandumThall' found during the course of search in the case of M/s. Christy group of cases. In response to specific question, he has admitted that value has been recorded removing two zeros in the 'ErandumThall'. Based on such admission, the Assessing Officer inferred that the assessee has removed two zeros to value of the cash

transactions recorded in excel sheets, without understanding the fact that the statement of Shri. HariHara Krishnan and the cash book found therein is nothing to do with the business of the assessee. The Id. CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and their order should be upheld.

10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We have also carefully considered reasons given by the AO to make additions towards alleged cash transactions as per seized excel sheets found in the possession of Shri. P. Karthikeyan, an employee of Christy group of companies. The three excel sheets based on which undisclosed income of the assessee has been worked out by the AO was found in the electronic devices seized from Shri. P. Karthikeyan, an employee of M/s. Christy Fried Gram Industry, during the course of search conducted in Christy group of cases. The seized material is therefore in the nature of materials seized in case of third party. Further, said material being a typed excel sheets in electronic form, the same is not in the handwriting of any partners or other employees of the assessee firm and the

seized material does not contain any acknowledgement of the assessee with regard to the entries found therein, in respect of transactions allegedly made by the Christy group of concerns with assessee firm. Further, no other evidences including sale bills, cash receipts, unaccounted purchase bills etc, were found neither during the course of search of Christy group of concerns or during the course of search in the business premises of the assessee to corroborate the entries found in the excel sheets. Besides the same, it is noticed that no evidences of undisclosed asset, undisclosed expenditure including undisclosed investment etc were found in the course of search in the business premises of the appellant. It is therefore evident that, no documentary or other evidences to corroborate the entries of cash receipts and payments in the excel sheets were found to support the findings of the AO that said transactions are unaccounted transactions and are outside the books of accounts of the assessee. We further noted that, the AO neither during the assessment proceedings has made any reference to statements recorded u/s. 132(4) of the Act during the course of search in Christy group of cases or in the case of the assessee with reference to excel sheets found during the course of search to verify the contents recorded

therein. Neither the person from whom said documents was found was examined nor the appellant or its partners was confronted with those evidences to verify the contents therein. From the above, it is clear that the AO has made additions towards cash transactions u/s. 69A of the Act, without there being any corroborative evidence to strengthen the entries recorded in excel sheet found during the course of search on third party. Therefore, we are of the considered view that no additions can be made u/s. 69A of the Act, on the basis of evidences found in the possession of third party, without examining contents of said documents from the person from whom said documents was found and also from the assessee and its partners. The evidences relied upon by the AO in the form of excel sheets does not constitute adequate evidence to draw adverse inference against the assessee, in the absence of any other corroborative evidence. This proposition has been laid down by the Hon'ble Delhi High Court in the case of CIT vs Sant Lal [2020] 118Taxman.com 432, where it has been clearly held that the assessee cannot be put to any liability on the action of a third person where the material was not found from the premises of the assessee nor was in the handwriting of the assessee, since, the third person may write the name of

any person at his sweet will and the revenue did not make any effort to gather or corroborate evidence in this relation.

11. The revenue contended that since, bank entries in seized excel sheets are matched with books of accounts, cash transactions recorded in excel sheets should be considered as belongs to the assessee. In our considered view, the contention of the department that merely because the notings of bank transactions in the excel sheet have matched with the bank statements it does not mean that the notings of cash transactions are also genuine. The reason is that though bank statements serves as corroborative evidence for proving transfer entries, but there are no corroborative evidence like sale bills, cash receipts and invoices etc in the cash entries in excel sheets. Notings by way of cash transactions are highly suspicious in nature because they are susceptible for embezzlement and also prone to create prejudice to the concerned parties. Therefore, in our considered view, the reasons given by the AO to make additions u/s. 69A of the Act on the basis of entries in excel sheets without any corroborative evidence is incorrect. Further, had the department proved at least some of the entries of cash

transactions noted in the excel sheet with proper corroborative evidence, one can extrapolate the same to all other entries of cash transactions in the seized excel sheets. But in the present case, the AO has failed to link any cash transactions recorded in excel sheet with any other corroborative evidence which means the cash transactions alleged to be recorded in excel sheet cannot be considered as transactions of the assessee. In this connection, it is necessary to refer to the decision of Hon'ble Supreme Court in the case of State of Kerala vs KT Shadulli and Nalla Kandy Yusuf 1977 UPTC 363, where it has been observed that, it is quite possible that the author of the seized documents may have mentioned certain transactions in their books of accounts either to embarrass the assessee or due to animus or business rivalry or such other reasons which could only be established when the department examines such author of the document. In our considered view, the AO without examining the author of the document with reference to contents of said documents and also without confronting those documents to the assessee and its partners, simply reached to the conclusion that transactions recorded in excel sheets are undisclosed income of the assessee. It is also pertinent to observe that seized material relied upon by the AO

to draw adverse inference against the assessee towards cash payments and receipts did not contain complete information with regard to date, amount of cash payment/receipt and the name of recipient and payer. There is absolutely no reference in the seized material regarding the nature of the said transactions of cash payments/receipts and the purpose of said payments/receipts. Therefore, in our considered view unless the AO makes out a case that alleged cash receipts and payment pertains to transactions of assessee which constitute income or expenditure, no addition can be made on the basis of said documents. In this connection, it would be relevant to refer to the decision of ITAT Jabalpur in the case of ACIT vs Satyapal Wassan [2008] 5 DTR 0202, wherein it was held that importance of gathering corroborative evidence in support of the contents of a document, particularly when the document is bereft of necessary details and is not complete in all respects. The proposition that addition cannot be made merely on the basis of entries in loose sheets found in the premises of a third party without bringing on record independent evidence to corroborate such entries has been reiterated in several decision, like MM Financiers (P) Ltd vs DCIT [2007] 107 TTJ (Chennai) 200, Regency Mahavir Properties vs ACIT [2018]

169 ITD 35 (ITAT Mumbai), DCIT vs Vipin Aggarwal [2017] 83 Taxmann.com 6 (ITAT Chandigarh), S.P Goyal vs DCIT [2002] 82 ITD 85 TM ITAT, T.S. Venkatesan vs ACIT [2000] 74 ITD 298 (Cal) and Monga Metals (P) Ltd vs ACIT [2000] 67 TTJ 247 (All).

12. The Id. DR, has strongly argued in light of ground no. 2.3 of revenue that contents of excel sheets refers the name of "Appu" which clearly shows unaccounted cash transactions of the assessee with Christy group of companies. In this regard, it is pertinent to note that material seized in the form of excel sheets were found in the premises of third party. Hence, to draw presumption that the transactions were related to the assessee is not legally permissible in view of non-applicability of the provisions of section 132(4A)/292C of the Act to other than the searched person. The presumption contains in section 132(4A)/292C of the Act is applicable in a situation where documents were found in the possession of the assessee and in that case, said documents and contents recorded therein can be considered as true and correct and it is the duty of the assessee to rebut the presumption. But, in the present case, since the documents are found in the premises of third party,

the presumption as contended in section 132(4A)/292C of the Act is not applicable. In this connection, it is necessary to refer to the decision of Hon'ble Gujarat High Court in the case of PCIT vs Gaurangbhai Promodchandra Upadhyay in Tax Appeal No. 98, 100, 103 & 104 of 2020, where it has been clearly held that since the documents were not found or recovered from the possession of the assessee, no presumption u/s. 132(4A)/292C of the Act could be drawn against the assessee in such circumstances. The Hon'ble Court of Patna in the case of Dharmaraj Prasad Bibhuti vs ITAT, Patna [2019] 109 Taxman.com 388, held that presumption u/s. 292C of the Act can be drawn only on such person whose possession or control any books of accounts, other documents, money, bullion, jewellery or other valuable articles or thing are found during the search. Further, in order to impart life and evidentiary value to the alleged excel sheets there must be statement recorded pertaining to those transactions from the person who is having control over the electronic devices and also from the searched person and these statements should be confronted to the appellant firm for getting sanctity that these transactions had actually being taken place. However, no such exercise has been carried out by the AO before making

additions u/s. 69A of the Act. Further, the appellant firm has denied that there are any transactions outside the books of accounts. Therefore, once the appellant firm has denied the transaction outside the books of accounts, the AO has to prove with evidence that alleged cash transactions recorded in excel sheets were belongs to the assessee. However, no such effort was made by the investigation department and the AO. In this regard, it is necessary to refer to the decision of Hon'ble Allahabad High Court in the case of CIT vs Shadi Ram Ganga Prasad, SP Kanodia and Smt. Premlatha Kanodia [2011] 9 Taxmann.com 193 (Allahabad), where it has been held that the loose papers found from the possession of a person during the search can be used to raise a presumption against the said person only. The Hon'ble High Court further held that, contents of the said loose sheets cannot be held against the parties whose names appear therein, unless the person from whose possession it was recovered admits in his statement that the entries in the loose sheet relate to the transaction made by such parties. A similar view has been taken by Hon'ble High Court of Delhi in the case of CIT vs Vivek Aggarwal [2015] 56 Taxmann.com 7, where it has been held that, no efforts were made by the department to establish the

nexus of the assessee with the undated and unsigned printout found during the search and to corroborate the contents of the said printout to arrive at a definite conclusion that the assessee derives such alleged income. The Hon'ble High Court of Bombay in the case of PCIT vs Umesh Israni [2019] 108 Taxmann.com 437 held that, the entries of the loose papers which were seized were not corroborated with any other evidence on record and no enquiry or verification was made and thus, no additions can be made u/s. 69A of the Act.

13. Coming back to ground no. 2.4 and 2.5 of revenue appeal. The revenue has taken a ground in light of alleged two set of accounts maintained "Tally1 and Tally2 by the assessee group and argued that, the appellant is in the practice of replacing the invoices not checked by any Government authorities in the accounted Tally. In our considered view the ground taken by the revenue is devoid of merits, because the AO neither considered so called Tally1 and Tally 2, nor made any additions based on said evidences in the assessment order in respect of additions made u/s. 69A of the Act. Therefore, in our considered view the ground of appeal taken by the revenue fails. As regards ground no. 2.5 with

regard to appending two zeros to value recorded in alleged excel sheets, the AO has added two zeros to values recorded to excel sheets for assessment year 2018-19 & 2019-20 only. For assessment year 2017-18, the AO has taken value recorded in alleged excel sheets without appending two zeros. The AO has added two zeros to value on the basis of statement of Shri. HariHara Krishnan, AGM, Finance of Christy group of concern, where in a statement recorded u/s. 132(4) of the Act, during the course of search on 06.07.2018 he had admitted that, an entry "to cash boss thru RRM-400000" refers to cash to boss and entry denotes the unaccounted cash of Rs. 4,00,00,000/. Based on the admission of Shri Harihara Krishnan, the AO appended two zeros to value and arrived at aggregated cash payments/receipts as per excel sheets and made additions u/s. 69A of the Act. First of all, the AO has not assigned any valid reasons to add two zeros to value recorded in excel sheets. Further, Shri. Harihara Krishnan, AGM Finance of Christy group is nothing to do with the business activity of the assessee and his admission with reference to certain documents found during the search in the case of Christy group of cases is nowhere relates to assessee and assessee business. Further, the statement of Shri. Harihara Krishnan,

cannot be relied upon to take adverse inference against the assessee, unless said statement is confronted to the assessee. Further, on careful examination of statement of Shri. Harihara Krishnan and more particularly question no. 21, it is noted that apart from explaining specific transaction of cash payment through RRM found noted at page no. 107 of loose sheet bunch, he had also furnished a general explanation with regard to the entire unaccounted cash book maintained by Christy group. But fact remains that, the excel sheet relied upon by the AO to make additions did not form part of unaccounted cash book referred to by Shri. Harihara Krishnan in his statement. The seized excel sheets are in the nature of ledger account in the name of the appellant, which are different from the unaccounted cash book. Therefore, in our considered view it is not appropriate to arrive at a conclusion that the amounts noted in the excel sheets have to be understood by adding two zeros at the end without having further evidence apart from the statement of Shri. Harihara Krishnan. We further noted that, the AO himself has not added two zeros to the amounts found noted in two excel sheets namely "Appu revised formar.xls" sub sheet "cash received & paid" relevant to assessment year 2017-18 and Annex-3-Appu-CFL.xls" sub

sheet "running account" relevant to assessment year 2018-19. Further, the Id. CIT(A) has recorded categorical findings that in the remand report the AO did not furnish any explanation regarding selective treatment only to the figures found in one excel sheet out of three excel sheets. In the rejoinder, the appellant explained that the relevant excel sheets contains an entries of payment made to appellant in cash as well as through bank. The appellant pointed out that when the payment through bank shows therein are compared with the corresponding entries found in the relevant bank account statement, it can be seen that the same are matching without the need of adding two zeros. When the bank entries is matching with the books of accounts of the assessee without appending two zeros, the question of appending two zeros to cash entries alone is totally incorrect. Since, the payment through bank noted in seized excel sheets are matching with the corresponding entries found in the bank statement without need to append two zeros, it is considered that the payments through cash found noted in the same excel sheet cannot be construed by adding two zeros to the said amounts. If the payments through cash alone are considered by adding two zeros and the payment through bank are considered in the

manner in which they appear in the excel sheets, the totals of the payments column and the receipts column will be grossly different from the total mentioned in the excel sheet. It is therefore clearly evident that, all the amounts mentioned in the excel sheets, regardless of whether they are cash transactions or bank transactions are the actual amounts without suppression of two zeros at the end. Therefore, we are of the considered view that the AO is erred in appending two zeros to the cash transactions appearing in the seized excel sheets and same is untenable.

14. In so far as ground no. 2.5 of revenue appeal with regard to undisclosed cash transactions, we find that when there are undisclosed cash receipts and cash payments in the seized material, it is not appropriate to aggregate said receipts as well as payments for the purpose of determining the undisclosed income. Since, the cash payments are made out of cash receipts to the extent of the available cash receipts, aggregating the cash receipts as well as cash payments for determining the undisclosed income results in exaggerated amount of such income. It is further noted that, when the AO is not able to identify the nature of cash receipts or payments

then the best is to net off the cash receipts against the cash payments to arrive at undisclosed income. Therefore, in our considered view, findings of the facts recorded by the Id. CIT(A) in Para 66 & 67 of their order with regard to the manner of computing undisclosed income appears to be reasonable and acceptable. The above findings with regard to the quantification of the undisclosed income is without prejudice to the finding rendered earlier in this order that the addition made in respect of alleged undisclosed income towards cash transactions as per seized material is unsustainable in absence of any corroborative evidence.

15. In this view of the matter and considering facts and circumstances of this case, we are of the considered view that additions made by the AO u/s. 69A of the Act towards alleged cash transactions recorded in excel sheets found during the course of search proceedings of Christy Group in the premises of Shri. P. Karthikeyan, without there being any corroborative evidence is unsustainable in law. The Id. CIT(A), after considering relevant facts has rightly deleted additions made by the AO. Thus, we are inclined to uphold the findings of the

Id. CIT(A) and dismiss appeal filed by the revenue for assessment years 2017-18, 2018-19 & 2019-20.

16. The assessee has filed cross objections in support of order of the Id. CIT(A) for all three assessment years. Since, we have upheld the findings of the Id. CIT(A) in deleting additions made u/s. 69A of the Act towards alleged cash transactions as per seized excel sheets and dismissed appeals filed by the revenue, the cross objections filed by the assessee for three assessment years become infructuous and thus, cross objections filed by the assessee for assessment years 2017-18, 2018-19 & 2019-20 are dismissed as infructuous.

Order pronounced in the court on 24th January, 2024 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/Vice President

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

चेन्नई/Chennai,

दिनांक/Dated: 24th January, 2024

JPV

आदेश की प्रति लिपि अग्रेषित/Copy to:

1. Assessee
2. Department
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF