आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./**I.T.A. No.297/Chny/2019**
निर्धारण वर्ष/Assessment Year: 2013-14

Shri Kalyanasundaram Suresh, Old No. 12-A, New No. 24, Swarnamangalam East Road, West CIT Nagar, Nandanam, Chennai 600 035.	Vs.	The Assistant Commissioner of Income Tax, Non Corporate Circle 2, Chennai.

[PAN: AOBPS4696F]

(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri K. Ravi Kannan, Advocate & Shri Varun Ranganathan, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri R.V. Aroon Prasad, Addl. CIT
सुनवाई की तारीख/ Date of hearing	:	23.07.2024
घोषणा की तारीख /Date of Pronouncement	:	28.08.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 28.12.2018 passed by the ld. Commissioner of Income Tax (Appeals)-2, Chennai for the assessment year 2013-14.

2. The ld. AR Shri K. Ravi Kannan, Advocate drew our attention to the additional grounds of appeal filed on 10.12.2023 and submits that the said 3 grounds of appeal may be taken up first The ld. DR Shri R.V.

Aroon Prasad, Addl. CIT did not report any objection. Therefore, with the consent of both parties, we proceed to hear and adjudicate the additional grounds of appeal raised by the assessee.

3. The first additional ground raised by the ld. AR on behalf of the assessee is that the entire proceeding is illegal in the eyes of law for not informing about the transfer of case from one jurisdiction to another jurisdiction as per section 127 of the Income Tax Act, 1961 ["Act" in short]. The ld. AR drew our attention to the written submissions in this regard. The written submissions filed by the ld. AR are reproduced herein below for ready reference:

> *I. The Transfer of case of the appellant was not in accordance with section 127 of the Income Tax Act, 1961:*
>
> *1. The first notice u/s. 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 03/09/2015 (Page 1 of Additional Paper book) is issued by the Income Tax Officer, Business Range II(4) Thereafter, a subsequent notice u/s. 143(2) r.w.s 129 of the Act dated 07/10/2015 (Page 2 of Additional Paper book) and all further communications thereafter have been issued by Deputy Commissioner of Income Tax, Non Corporate Circle - 2. Therefore, the inference is that the case has been transferred from the Jurisdiction of Income Tax Office Business Range II(4) to the Jurisdiction of Deputy Commissioner Income Tax, Non Corporate Circle -2.*
>
> *2. As per section 127 of the Income Tax Act, 1961 when a case is transferred from one jurisdiction to another, the transfer must be made by passing an order u/s. 127 of the Act and communicate the same to the assessee along with the reasons recorded in writing for the transfer of the case. Unless, there is an order of transfer passed u/s. 127 of the act along with the reasons recorded in writing for such transfer, the authority to whom the case is to be transferred cannot assume jurisdiction. However, in the instant case, no order of transfer u/s. 127 of the Act was passed nor the appellant was communicated about the reasons recorded for the transfer of the case. Therefore, in the absence of the order of transfer u/s. 127 of the Act*

and communication of the reasons for transferring the case of the appellant form the Jurisdiction of Income Tax Officer, Business Range II (4) to the Jurisdiction of Deputy Commissioner of Income Tax, Non Corporate Circle - 2, the Deputy Commissioner of Income Tax, Non Corporate Circle -2 has no jurisdiction over the appellant. Therefore, the entire proceedings conducted by the Deputy Commissioner of Income Tax, Non Corporate Circle -2 is illegal and without Jurisdiction and is in violation of principles of Natural Justice.

3. Further, non communication of the reasons recorded for the transfer of the case cannot be saved at a later stage by showing that the reasons for transfer of the case existed in the file, although not communicated. This ground is supported by the decision of the Hon'ble Supreme Court in the case of Ajantha Industries [1976] 102 ITR 281 (SC) (Page 16 of Additional Paper book) wherein the Hon'ble Court held that communication of the order u/s. 127 of the Act is an essential requirement. The relevant portion of the decision is extracted hereunder:

> *"9. This judgment was rendered by this Court on 21-12-1956, and we find that in the 1961 Act Section 127 replaced Section 5(7-A) where the legislature has introduced, inter alia, the requirement of recording reasons in making the order of transfer. It is manifest that once an order is passed transferring the case file of an assessee to another area the order has to be communicated. Communication of the order is an absolutely essential requirement since the assessee is then immediately made aware of the reasons which impelled the authorities to pass the order of transfer. It is apparent that if a case file is transferred from the usual place of residence or office where ordinarily assessments are made to a distant area, a great deal of inconvenience and even monetary loss is involved. That is the reason why before making an order of transfer the legislature has ordinarily imposed the requirement of a show-cause notice and also recording of reasons. The question then arises whether the reasons are at all required to be communicated to the assessee. It is submitted, on behalf of the Revenue, that the very fact that reasons are recorded in the file, although these are not communicated to the assessee, fully meets the requirement of Section 127 (1). We are unable to accept this submission.*
>
> *11. We are clearly of opinion that the requirement of recording reasons under Section 127(1) is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee."*

Therefore, since no order u/s. 127 of the Act was passed and since the reasons recorded in writing for the transfer of the case was not

communicated to the appellant, the entire proceedings are in violation of section 127 as well as against the principles of natural justice.

4. The ld. DR Shri R.V. Aroon Prasad, Addl. CIT submits that the decision of the Hon'ble Supreme Court in the case of Ajantha Industries (supra) is not applicable to the facts of the present case as there was transfer of the case from Nellore to Hyderabad. He argued that in the present case, the transfer was within the Range. He placed on record proceedings dated 13.10.2014 and submits that the ITO Business Ward II(4) Chennai forwarded the IT scrutiny folders for the A.Ys. 2008-09 to 2010-2011, 2012-13 & 2013-14 in respect of the assessee to the Deputy Commissioner of Income Tax, Business Circle II, Chennai on the basis revised return of income. The ld. DR argued that the provisions under section 127 of the Act are not applicable.

5. After hearing both the parties, we note that the year under consideration is AY 2013-14, wherein, the assessee filed original return of income declaring a total income of ₹.7,70,900/- and the same is revised as ₹.18,69,969/- in terms of revised return of income. Having taken into account the revised return of income, wherein, the monetary limit for the assessment is changed from ₹.7,70,900/- to ₹.18,69,969/-, the argument of the ld. DR is that it cannot be assessed by the ITO as it should be assessed by the DCIT. Therefore, considering the same, the ITO, by

proceedings dated 13.10.2014 forwarded the IT scrutiny folders for AY 2013-14 also to the DCIT by stating as jurisdiction in terms of change in the monetary limit in the revised return vest with the DCIT. Therefore, we find force in the argument of the ld. DR, that the provisions of section 127 of the Act are not applicable to the facts on hand. Thus, the first additional ground raised by the ld. AR on behalf of the assessee fails and dismissed.

6. The second additional ground raised by the ld. AR on behalf of the assessee is that the notice under section 143(2) r.w.s. 129 of the Act dated 07.10.2015 is barred by limitation. Against this ground, the ld. AR filed following written submissions:

> *II. The Notice u/s. 143(2) r.w.s 129 of the Act is barred by limitation and therefore invalid*
>
> *4. The notice u/s. 143(2) r.w.s 129 of the Act dated 07/10/2015 issued by the Deputy Commissioner of Income Tax, Non Corporate Circle -2 is barred by limitation because the according to the proviso to section 143(2), no notice u/s. 143(2) shall be served on the assessee after the expiry of "six months" from the end of the financial year in which the return is furnished. The appellant filed his return of income on 23/07/2013. The time limit to serve a notice u/s. 143(2) is within "six months" from the end of the financial year 2013-14.i.e on or before 30/09/2014. However, the notice u/s. 143(2) r.w.s.129 of the Act was issued on 07/10/2015. Therefore, the notice u/s. 143(2) r.w.s 129 is time barred and Deputy Commissioner of Income Tax, Non Corporate Circle -2 does not have jurisdiction over the appellant.*

7. The ld. DR vehemently opposed the submissions of the ld. AR and submits that the notice issued by the Assessing Officer is not barred by limitation, is within limitation.

8. We note that the assessee filed revised return of income on 05.03.2014 and the time limit available for the Assessing Officer to issue notice under section 143(2) of the Act is within 6 months from the end of the financial year 2013-14 i.e., 30.09.2014. On perusal of the assessment order, we note that the notice under section 143(2) of the Act dated 03.09.2014, at page No. 1 of paper book, was issued and served on the assessee which, clearly shows that the notice under section 143(2) of the Act was issued within the time limit as prescribed under the law. Therefore, the argument of the ld. AR that the notice under section 143(2) r.w.s. 129 dated 07.10.2015 is barred by limitation is not acceptable as it is only in continuation of original notice under section 143(2) of the Act dated 03.09.2014, which is under limitation. Thus, we do not find force in the arguments of the ld. AR that the notice issued under section 143(2) r.w.s. 129 of the Act is barred by limitation. Thus, the second additional ground raised by the ld. AR on behalf of the assessee is dismissed.

9. The third additional ground raised by the ld. AR on behalf of the assessee is that without prejudice to the additional ground Nos. 1 & 2 above, the notice under section 143(2) r.w.s. 129 of the Act does not contain any information about change of incumbent. Against this ground, the ld. AR filed following written submissions:

III. <u>The Assessing officer failed to inform the change in incumbent of the office to the appellant</u>

5. Assuming without admitting, the transfer from the Jurisdiction of Income Tax Officer, Business Range II (4) to the Jurisdiction of Deputy Commissioner of Income Tax, Non Corporate Circle -2 is only a change in incumbent of an office u/s. 129 of the Act and not a transfer u/s. 127 of the Act, even in such case the assessing officer has not informed the appellant about the change of incumbent of an office. The assessing officer has a legal obligation u/s. 129 to inform the appellant that the previous authority who was so long continuing the proceeding has been succeeded by another officer and that the officer so succeeding wants to continue the proceeding from the stage at which the proceeding was left by his predecessor. Mere mechanical issue of 143(2) r.w.s 129 of the Act will not satisfy the requirement u/s. 129. The Notice issued u/s. 143(2) r.w.s 129 is firstly barred by limitation. Secondly, it does not contain any information about the change in incumbent of office. Unless, the appellant is informed about the change in incumbent of an office, the appellant would not be aware of this fact and it would be impossible for the appellant to exercise his right conferred in the proviso to 129 of the Income Tax Act, 1961. This ground is supported by the decision of the Hon'ble Income Tax Appellate Tribunal, Agra Bench in the case of DCIT v. Ramesh Chand Jain [2007] 108 ITD 446 (Agra)) (Page 21 of Additional Paper book) wherein the Hon'ble tribunal has held that the assessing office is duty bound to inform about the change in incumbent of an office u/s.129. The relevant portion of the decision is extracted hereunder:

> *"12. In the case of Jagdish Prasad Chaudhary (supra), the Hon'ble Patna High Court had an occasion to examine the provisions of section 39 of Wealth-tax Act. Section 39 of the Wealth- tax Act deals with the effect of the transfer of authorities during the pendency of the proceedings. The proviso to section 39 gives a right to assessee to demand that before the proceedings are continued by the succeeding officer, the previous proceedings or part thereof, may be reopened or that before any order is passed against him, he may be re-heard. This condition implies and postulates that before the assessee can demand the right given to him under the said proviso, he must necessarily have a right to be put on notice of two facts, namely, (a) that the previous authority who was so long continuing the proceeding has been succeeded by another officer; and (b) that the officer so succeeding wants to continue the proceeding from the stage at which the proceeding was left by his predecessor. It is upon his being informed of the aforesaid two facts that the assessee can make an effective exercise of his right to demand that the previous proceeding or part thereof may be reopened or that he may be re- heard before a final order is passed in the proceeding. This is an opportunity of hearing at a pre-decisional stage. The obligation of the authority to*

inform the assessee of the facts stated at (a) and (b) above is in-built in section 129 for the reason that transfer of officers while a proceeding is pending is an official act of which the assessee can have no clue unless he is informed. Therefore, in a given case, the valuable safeguard and right given to the assessee will be defeated if he is not informed of the facts pointed out at (a) and (b) above. Such a valuable right given to the assessee under the proviso to section 39 cannot be made to depend on mere chance of his being informed. In that view of the matter, the obligation of revenue to inform the assessee is inherent in the very scheme of section 39 of the Act.

"13. Provisions of section 39 of the Wealth-tax Act are identical to provision of section 129 of Income-tax Act, 1961. If the ratio of the decision of Hon'ble Patna High Court is applied to the facts of the case before us, it is clear that the Assessing Officer has not informed the assessee about the change of Assessing Officer. Therefore, the conditions stipulated in section 129 and guidelines laid down by Hon'ble Patna High Court in the case of Jagdish Prasad Chaudhary (supra) are not fulfilled. To bring a case under the provisions of section 129, the Assessing Officer is duty bound to inform the assessee. Merely because the assessee has expressed his desire to be re-heard and mentioned in the application as filed under section 129 would not discharge the Assessing Officer from his obligation of informing the assessee. In a case if assessee had not filed application under section 129 on 1-3-1994, the Assessing Officer was duty bound to complete the assessment by 31-3-1994."

6. This ground is also supported by the decision of the Commissioner of Income Tax v. M. Sreedharan [1992] 62 taxman 344 (KER.) (Page 27 of Additional Paper book) wherein the hon'ble court held that non intimation of the information that the succeeding authority intends to continue the proceeding from the stage at which it was left by his predecessor is illegal and unreasonable. The relevant portion of the judgement is extracted hereunder:

"9. In this batch of cases, it cannot be denied that the succeeding assessing authority did not intimate to the assessee his intention to continue the proceeding from the stage at which it was left by his predecessor. There is no plea or proof in this case that the assessee was aware that the assessing authority had been succeeded by another and that the successor proposed to pass the penalty order. In these circumstances, we are of the view that the AAC was justified in holding that the successor- assessing authority had acted illegally and unreasonably in imposing the penalties without intimating to the assessee his intention to continue the proceedings from the stage at which it was left by his predecessor. There has been a breach of the valuable rights of the assessee, specified in section 274(1) read with section 129. The

AAC was justified in cancelling the penalties and the Tribunal was justified in confirming the said cancellation orders. We hold that the Tribunal was justified in affirming the decision of the AAC in all the four cases."

Therefore, since the assessing officer did not discharge his legal obligation u/s. 129, the entire proceedings are bad in law.

10. The ld. DR submits that notice under section 143(2) r.w.s. 129 of the Act was served on the assessee and informed to the authorized representative. During the course of assessment proceedings, the assessee changed his auditor, to whom also informed and were appeared in the assessment proceedings.

11. Heard both the parties and perused the materials available on record. The main contention of the ld. AR is that no information about change of incumbent was communicated to the assessee, thereby, the assessee has been deprived from exercising his right to be reheard conferred by the proviso to section 129 of the Act. We find that this ground is raised without prejudice to the additional ground No. 1 & 2. In the aforementioned paragraphs, we held that there is no applicability of section 127 of the Act to the facts of the present case and the assessment proceedings are valid under law. Against the second additional ground, we held that the notice under section 143(2) of the Act is not barred by limitation. In view of our decisions in additional ground No. 1 & 2, we hold that there is nothing remain for the additional ground

No. 3 raised by the ld. AR as there is no significance for the reason that the assessee participated in the assessment proceedings through his authorized representative, which is evident from para 2 of the assessment order. Therefore, the contention of the ld. AR that the notice under section 143(2) r.w.s. 129 of the Act does not contain any information about change of incumbent, is not justified. Thus, the additional ground raised by the ld. AR on behalf of the assessee is dismissed.

12. Ground No.1 forming part of Form 36 is general in nature and requires no adjudication.

13. Ground No. 2 raised by the assessee in challenging the action of the ld. CIT(A) in not deciding the validity of revised return filed on 05.03.2014.

14. The ld. AR contends that the ld. CIT(A) did not adjudicate the issue of challenging validity of revised return filed on 05.03.2014 and prayed to remand the matter to the ld. CIT(A).

15. The ld. DR submits that the Assessing Officer issued notice under section 143(2) of the Act is with reference to the revised return of income and argued that the Assessing Officer conducted the assessment proceedings based on the revised return of income as filed by the

assessee. No ground whatsoever raised before the ld. CIT(A) and drew attention to the ld. CIT(A)'s order. He vehemently argued that the revised return is a valid return.

16. Having heard both the parties, we notice that the Assessing Officer issued notice under section 143(2) of the Act dated 03.09.2014 in response to the revised return which was served on the assessee on 08.09.2014, whereas, another notice under section 143(2) r.w.s. 129 of the Act dated 07.10.2015 is also issued to the assessee, which was received on 12.10.2015. The assessee appeared before the assessment proceedings by filing relevant evidence, which is evident from para 2 of the assessment order. On perusal of the impugned order at page 2, we note that the ld. CIT(A) reproduced grounds of appeal, wherein, we find no mention of challenge to the validity of revised return of income. We find two paper books filed by the assessee before us, one is consisting of 52 pages and another of 78 pages, wherein, we find written submissions filed on 24.12.2018 before the ld. CIT(A) containing gist of arguments "an assessment based on *non-est* return of income", whereas, the impugned order was passed on 28.12.2018. On a careful examination of the same, we find no indication proof of receipt, filed, any sign of Office of the ld. CIT(A), therefore, we hold that there was nothing before the ld. CIT(A) to

decide the issue “an assessment based on *non-est* return of income”. Be that as it may, the assessee contended that the entire assessment proceeding is illegal in the eye of the law for not informing about the transfer of case from one jurisdiction to another jurisdiction as per section 127 of the Act in first additional ground. We discussed the said additional ground in the aforementioned paragraphs, where we held that the provisions of the section 127 of the Act are not applicable and held the entire assessment proceedings are valid under law. Therefore, since, we held that assessment proceedings are valid under law, again remanding the matter to the file of the ld. CIT(A) on the issue of deciding as to whether the assessment proceedings made under revised return of income is valid or not does not arise. Therefore, in view of our decision in additional ground No. 1, we find no force in the argument of the ld. AR in remanding the matter to the file of the ld. CIT(A) Thus, ground No. 2 raised by the assessee fails and it is dismissed.

17. The assessee raised ground Nos. 3, 4 & 5 under the head “Validity of exercise of re-drawing cash book in challenging the action of the ld. CIT(A) in confirming the order of the Assessing Officer in making the addition on account of computing unexplained investments by way of peak deficit balance.

18. The Assessing Officer found that the assessee had made cash deposits in his Axis Bank account to an extent of ₹.59,50,000/-. It was explained that the assessee received ₹.1.20 crores as on money, which was invested in money lending business. The assessee furnished copy of bank account statement and contended that the repayment of loan by debtors was in cash and the same were deposited in the above said bank account. The Assessing Officer observed that the amount lent to persons by way of cheque and receiving the same in the mode of cash is not acceptable. The Assessing Officer extracted the redrawn the cash bvook at page 3 to 5 of the assessment order and applied the peak deficit balance as on 06.08.2012 at ₹.51,22,635/-. The ld. CIT(A), by placing reliance on the decision of this Tribunal in assessee's own case for AYs 2008-09 to 2012-13 confirmed the order of the Assessing Officer in making the addition.

19. The ld. AR submits that the assessee's mother lent money to various persons through Axis Bank account and some were repaid in cash. The assessee filed return of income by admitting the said transactions from assessment years 2008-09 to 2012-13. The ld. AR drew our attention to the decision of the Hon'ble Supreme Court in the case of DSP, Chennai v. K. Inbasagaran, reported as (2006) 1 SCC 420

and argued that the money found in joint possession cannot be saddled in the hands of one of the joint holders in the absence of any evidence. He argued vehemently that the transaction of monies by assessee's mother cannot be made in the hands of the assessee as he is a joint holder.

20. The ld. DR relied on the order of the ld. CIT(A).

21. Heard both the parties and perused the material available on record. On perusal of the impugned order at page 3, wherein, the ld. CIT(A) reproduced the discussion made by the ITAT in assessee's own case for AY 2008-09 to 2012-13, wherein, it is noted that the assessee made the same submissions i.e., the assessee was joint account holder and the transactions of money of his mother cannot be taken into account while deciding in making addition in the hands of the assessee. The ITAT, considered the issue, discussed in detail and held that there was no infirmity in the method followed by the lower authorities in computing unexplained investment in these assessment years. For better understanding, relevant portions in page 3 to 6 of the impugned order are reproduced herein below:

> *10. The next common ground for all the A.Ys 2008-09 to 2012 -13 is with regard to validity of exercise of re-drawing cash book. Now we consider the facts relating to the asst. years 2008-09.*
>
> *10.1 The facts of the issue are that the assessee's mother had lent monies to various persons through axis bank account. Some of them had made*

repayments in cheque and some of them had made repayments in cash. During the assessment proceedings u/s.143(3) for the asst. year 2011-12, the assessee was asked to explain transactions in the said axis bank account, as the assessee was asked to explain transactions in the said axis bank account, as the assessee was a joint account holder. As per the advice of the ITO, the assessee admitted the transactions in said bank account and filed revised return of income including transactions from the said bank account for asst. years 2008-09 to 2012-13.

10.2 The CIT(Appeals) dismissed this contention of the assessee by holding that the assessee had admitted the said transactions during the assessment proceedings. Neither the AO nor the CIT(Appeals) made any attempts to know the truth from the primary account holder, Mrs. K. Mangalam.

10.3 For the asst. year 2008-09, impugned notice u/s.142(1) of the Act was issued calling for confirmation from parties to whom monies were lent. Neither the assessee's mother nor the assessee is continuing business relationship with most of the persons to whom monies were lent and therefore the assessee is not able to get their co-operation in the assessment proceedings by way of confirmation letters. Further, the reassessment for asst. year 2008-09 was done after a considerable time gap. Moreover, those persons who had repaid in cash may be worried about the provision of sec.269T of the Act, which those persons may have violated by making repayment in cash to the assessee. The AO was not satisfied with the explanation offered by the assessee that repayments in some of the cases are received in cash. The amounts were lent by way of cheque from axis bank account, which clearly establishes the identity of the payee.

10.4 The AO had stated that amount lent to persons by way of cheques were received in modes of cash is not acceptable by citing the example of transactions where amount lent by way of cheques were received back through mode of cheque. This reasoning lacks logic.

10.5 The AO had alleged that receiving back in cash of loans lent by cheques is against the principle of human probabilities, which is wholly baseless. The AO had alleged that most of the debtors are business men which is a presumption and not supported by materials on record. The AO had alleged that repayments were received through banking channel in subsequent year, which is not supported by any material on record.

10.6 Based on the above alleged assumptions, the AO had redrawn the cash book of the assessee by excluding cash repayments received from some of the parties. The peak deficit balance, that appeared on 19.2.2008 at ₹ 52,405/- was added to the taxable income of the assessee.

11.1 The ld. A.R submitted that the assessee submitted before the CIT(Appeals) that the exercise of redrawing cash book on this basis is wholly illegal and without any statutory authority. That the AO had assumed that the debtors had not made repayments. That the AO had redrawn the books of accounts without rejecting the books of accounts, which is based on surmises and conjectures and without proper appreciation of the circumstances of the case.

11.2 It was also submitted before the CIT(A) that the AO had not discussed or disputed the other parts of the transaction which are through account payee cheques and the same cannot be ignored by making presumptions. The outflow in the above cases were totally ignored by the AO. If the inflows are treated as unaccounted income, the corresponding outflows should be treated as unaccounted expenses and consequently the net effect of the above exercise would be null.

11.3 According to the ld. A.R , the AO had made additions on the basis of suspicion, surmises and conjectures. The ld. AR relied on the judgment of the Supreme Court in the case of Dhakeswari Cotton Mills Ltd. vs. CIT (26 ITR 126)(SC), wherein it was held as below :

> *"Though ITO is not fettered by technical rules of evidence and pleadings and he is entitled to act on material which may not be accepted as evidence on account of law, but in making assessment under section 23(3) of 1922 Act he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all".*

11.4 It was submitted before the CIT(A) that redrawing of cash book should be held as illegal and consequently the peak negative balance arrived and closing cash balance arrived by the AO may be cancelled.

11.5 The CIT(A) held that the assessee had not discharged the initial burden placed on him without appreciating why it is not practicable for the assessee to produce confirmation letters in the peculiar facts of the case. In para 7.6 of her order, the CIT(A) has certified that assessment has not been framed on any guess work. Further, in para 5 the CIT(A) held that the addition is based on a scientific and suitable code, without detailing about such a code.

11.6 It was submitted by the ld. A.R that without prejudice to the assessee's stand that the bank account is held by the assessee's mother, assuming for a moment, parties to whom monies were lent had not repaid in cash, then all such loans should be treated as bad debts as the same were not realized till date.

11.7 The exercise of redrawing cash book was carried out to verify source of cash deposits in the Axis bank account held by the assessee's mother. The peak balance in that bank account for each of the asst. years is as below :

2008-09	*₹ 1,20,07,202*
2009-10	*₹ 1,47,45,486*
2010-11	*₹ 92,00,767*
2011-12	*₹ 1,10,11,782*
2012-13	*₹ 1,64,28,318*

11.8 According to ld. A.R, If peak credit is worked out on the basis of that axis bank statement, the maximum addition for all the years taken together would be ₹ 1,64,28,318/- as this is the peak balance across all the years. Whereas, the assessee had offered additional income as below:

2008-09	*₹ 1,27,61,144*
2009-10	*₹ 14,54,486*
2010-11	*₹ 15,49,289*
2011-12	*₹ 16,49,056*
2012-13	*₹ 18,59,653*
Total	*₹ 1,92,73,628*

11.9 Considering the above, he submitted that there cannot be any additions on the basis of peak cash deficit in the cash balance. Therefore, it is prayed that the peak cash deficit additions be deleted.

11.10 For A.Y. 2009-10 The peak deficit balance that appeared on 23.3.2009 at ₹2,34,41,535/- was added to the taxable income of the assessee. The legal challenges are the same as that of asst. year 2008-09. 11.11 For A.Y. 2010-11 The peak deficit balance that appeared on 29.1.2010 at ₹76,96,929/- was added to the taxable income of the assessee. The legal challenges are the same as that of asst. year 2008-09.

11.12 For A.Y. 2011-12 The peak deficit balance that appeared on 6.7.2010 at ₹77,34,068/- was added to the taxable income of the assessee. Originally the AO recorded that there was no peak cash deficit in her assessment order dated 28.3.2014. However, after giving a enhancement proposal, the CIT(A), added the peak deficit to the income of the assessee. Enhancement is challenged separately below. The other legal challenges are the same as that of asst. year 2008-09.

11.13 For A.Y. 2012-13 The peak deficit balance that appeared on 31.3.2012 at ₹74,34,803/- was added to the taxable income of the assessee. The legal challenges are the same as that of asst. year 2008-09.

11.14 Further, the ld. A.R submitted that without prejudice to the above, the AO cannot make an addition of unexplained credit under sec.68 of the Act based on the entries in the bank statement, which do not constitute the books of account of the assessee. The AO cannot treat the bank account statement as books of the assessee, as the same does not constitute books of the assessee. The assessee relied on the judgment of the Bombay High Court in the case of CIT vs. Bhaichand H. Gandhi (141 ITR 67) for the proposition

11.15 The ld. A.R drew our attention to the definition of books of accounts in sec.2(12A) of the Act also supports that bank pass book cannot be treated as books of accounts.

11.16 He has also placed reliance on the order of the Tribunal, Mumbai Bench in the case of Smt. Mansai Mahendra Pitkar vs. ITO (73 taxmann.com 68) (Mumbai Trib). Therefore, it is prayed that addition u/s.68 based on entries in bank pass book cannot be made.

11.17 On the other hand, the ld.D.R relied on the order of ld.CIT(A).

12. We have heard both the parties and perused the material on record. Section 69 makes it clear that the onus is on the assessee as regards furnishing of explanation relating to investment which is not recorded in the books of accounts, if any, maintained by him. Where the assessee offers no explanation or where the explanation offered by him is not satisfactory in the Assessing Officer's opinion, the value of the unexplained investment would be treated as the income of the financial year in question. In the case of Jatindra Nath Sarmah vs. ITO (1978) 113 ITR 898 (Gau), the Gauhati High Court observed that where the explanations furnished by the assessee were not fully relied upon by the Department, it cannot be said that the Department had any further burden to prove that this was an income of the assessee.

12.1 In the case of Raghbir Singh vs. ITAT & Ors. (2007) 209 CTR (P&H) 394 assessee failed to establish the capacity of NRI donor to make gift of huge amount or the source from which gift was made and hence addition of amount as deemed income of assessee was held justified.

12.2 In the case of Rahmat Development & Engg. Corpn. vs. CIT (1981) 130 ITR 602 (Cal), the Calcutta High Court opined that "unless the assessee had given the source of investment of this additional amount, whatever be the amount, that must have come from some source of income of the assessee."

12.3 However, without reference to any supporting evidence or material, the ITO cannot make any addition as unexplained investment notwithstanding seizure of certain documents from the assessee [Ashok Kumar Rastogi vs. CIT (1991) 100 CTR (All) 204.

12.4 In the case of CIT vs. Southern Shipping Co. (P) Ltd. (2000) 241 ITR 464 (Mad), the assessee had advanced a sum of Rs. 5 lakhs on a pronote which stipulated interest at 44 paise per thousand rupees per day. The said pronote was recovered during the search of the business premises by the Revenue authorities. Sustaining addition, the High Court held that even though the assessee's accounts do not reveal any receipt of interest with regard to this amount, the entries found in the books of M & Co. had clealry disclosed the payment of interest to the assessee-company. Those entries which have been made in the normal course of business must be accepted as true. A partner of that company has also indicated periodical payment of interest on five different dates. Those entries were not made on a single date and they were made on five different dates. So, it is well evident that the assessee-company has received interest payment of Rs. 67,790. The mere fact that the correct calculation of interest comes to Rs. 44,616 as stipulated in the pronote would not render that payment of interest of Rs. 67,790 false.

12. 5 In the case of Janardan Prasad Ashok Kumar vs. CIT (1992) 193 ITR 186 (All) , the Allahabad High Court held that where the assessee had failed to prove the source of investment to the satisfaction of the taxing authorities, the authorities would be justified in treating the same as unexplained investment under section 69. Akberally Esufally vs. CIT (1966) 60 ITR 563 (Mad), CIT vs. M.K. Bros. (1986) 52 CTR (Guj) 228 : (1987) 163 ITR 249 (Guj). The Calcutta High Court in Mihir Chatterjee vs. CIT (1994) 118 CTR (Cal) 26 : (1994) 205 ITR 270 (Cal) held that where the facts on record clearly established that the explanations offered by the assessee as regards investment in house property are not based on truth, inclusion of the same in assessee's income would be justified. The Bombay High Court in Bastiram Narayandas Maheswari vs. CIT (1994) 117 CTR (Bom) 198 opined that where the addition on account of suppressed production has been directed by Tribunal after considering material and evidence on record, the same would be justified.

12.6 In the present case, the assessee is not able to explain the deposits made into Axis Bank A/c Adyar branch, Chennai. The assessee was not able to discharge the burden to prove that the sources were disclosed income of the assessee. In the absence of satisfactory explanation, the Assessing Officer was compelled to arrive at the un-explained cash by calculating the peak value of deficit cash balance in the books of the assessee in each assessment year. As a result, the Assessing Officer computed the unexplained income by redrawing the cash book and considered the peak value of the credit which is arrived after due credit for the amount of cash withdrawn from the bank. We do not find any infirmity in the method followed by the lower authorities in computing the unexplained investments in these A.Ys. The same is confirmed. This ground in all these appeals is dismissed.

22. We note that the Tribunal in assessee's own case for AY 2008-09 to 2012-13 held that no explanation was offered by the assessee, failed to discharge the burden to prove the source of income of the assessee and confirmed the order of the Assessing Officer in computing the unexplained income by redrawing the cash book and peak value of the credit, which was arrived after due credit for the amount of cash withdrawn from the bank. On an examination of the assessment order, we find that the Assessing Officer adopted the same method as it was adopted in AYs 2008-09 to 2012-13, which is clear from page 3 to 5 of the assessment order. The ld. AR did not bring on record any view contrary to the view taken by the ITAT in assessee's own case for the AYs. 2008-09 to 2012-13. Thus, we find no infirmity in the order of the ld. CIT(A) in confirming the order of the Assessing Officer and accordingly, ground Nos. 3, 4 & 5 raised by the assessee are dismissed.

23. Ground No.6 raised by the assessee in challenging the action of the ld. CIT(A) in confirming the addition of ₹.7,52,550/- towards credit card payments. The Assessing Officer with AIR information found the assessee made credit card payments to an extent of ₹.7,52,550/-. The Assessing Officer added the same to the total income of the assessee for not producing any evidence in substantiating the payments. The ld.

CIT(A) confirmed the same as the assessee did not produce any evidence.

24. The ld. AR placed on record the decision of the Hon'ble High Court of Delhi in the case of PCIT v. Forum Sales (P.) Ltd. [2024] 160 taxmann.com 93 (Delhi) and submits that the Assessing Officer wields an authority to make additions on the basis of estimation of income upon fulfilment of the conditions mentioned in section 145(3) of the Act. He argued vehemently that the Assessing Officer did not reject the books of accounts and proceed to add the credit card payments in the absence of any evidence is not justified. Further, he placed reliance in the case of Shivam Industries v. ACIT in ITA No. 1612/Del/2021 dated 27.02.2024 and argued that the addition made by the Assessing Officer is not maintainable as there was no rejection of books. Further, he placed on record the order of the Mumbai Bench in the case of ANS Law Associates v. ACIT in ITA No. 5181/M/2012 dated 05.12.2014 and argued that the addition cannot be made solely on the basis of AIR information.

25. The ld. DR argued that the case law as relied on by the ld. AR are on different set of facts and not applicable to assessee's case. He vehemently argued that no evidence was brought on record before the

Tribunal as well as before the authorities below and pleaded to confirm the order of the ld. CIT(A).

26. Heard both the sides and perused the material available on record. The ld. AR vehemently argued taking into account the decision of the Hon'ble High Court of Delhi in the case of PCIT v. Forum Sales (P.) Ltd. (supra) and the order of the Delhi Bench in the case of Shivam Industries (supra) and argued that the addition made by the Assessing Officer is not maintainable as the books of assessee were not rejected. We note that the Assessing Officer can make an assessment in the manner provided under section 144 of the Act if he is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) of section 145 of the Act has not been regularly followed by the assessee, wherein, in the present case, with the information under AIR regarding credit card payments and as there was no evidence furnished to substantiate the said payment, the Assessing Officer proceeded to add the said amount to the total income of the assessee. Therefore, the facts and circumstances of the case before the Hon'ble High Court of Delhi, in the case of Forum Sales (P.) Ltd. (supra), is not similar to the facts on hand and it is not applicable. Further, regarding the order in the case of Shivam Industries of Delhi

Bench of ITAT, it is with regard to cash deposit, wherein, the Tribunal held that the addition made on account of cash deposit to the extent therein, is not maintainable without rejecting the books of account. In the present case, as discussed above, there was no evidence before the authorities below and even before us to substantiate the credit card payments, we find that the facts before the ITAT Delhi Bench are not similar to the facts on hand and thus, the Delhi Bench order in the case of Shivam Industries (supra) is not applicable to the present case. Further, reliance of Mumbai Bench decision in the case of ANS Law Associates, wherein, the Tribunal remanded the matter back to the file of the Assessing Officer for his consideration afresh. We note that the Assessing Officer made the addition solely on the basis of AIR information and the assessee, therein, denied the receipt of income from a particular source. It was contended that it is for the Assessing Officer to prove that the assessee has received the income as the assessee cannot prove with evidence. We find the facts and circumstances in the said case are not similar to the facts of the present case and the finding of the ITAT Mumbai bench is not applicable to the facts on hand. Admittedly, there was no evidence before us to substantiate the credit card payments, except by placing reliance on case law as discussed herein above and thus, we find no infirmity in the order of the ld. CIT(A) and we agree with

the reasons recorded by the ld. CIT(A) vide para 4.2 of the impugned order. Thus, ground No. 6 raised by the assess fails and it is dismissed.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 28th August, 2024 at Chennai.

Sd/-	Sd/-
(S.R. RAGHUNATHA)	(S.S. VISWANETHRA RAVI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 28.08.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.