

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' 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. Nos.220 and 221/Chny/2022
निर्धारण वर्ष/Assessment Years: 2015-16 & 2017-18
&

C.O. Nos. 7 & 8/Chny/2022 [in ITA Nos. 220 and 221/Chny/2022]

The Deputy Commissioner of
Income Tax, Central Circle -2 (4),
Room No. B6, Investigation Building,
No. 46, Mahatma Gandhi Road,
Chennai 34.

Vs. Shri S. Elambharathi,
Flat No. 5, Ground Floor, 364,
Kurupam Court, Lloyds Road,
Gopalapuram, Chennai 600 086.

[PAN: AACPE3945N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent/Cross Objector)

Department by : Shri V. Nandakumar, CIT
Assessee by : Shri G. Baskar, Advocate &
: Shri P.M. Kathir, Advocate

सुनवाई की तारीख/ Date of hearing : 28.08.2024
घोषणा की तारीख /Date of Pronouncement : 25.09.2024

आदेश /ORDER

PER BENCH:

Both the appeals and the Cross Objections filed by the Revenue and the assessee respectively are directed against the common order dated 28.01.2022 passed by the Id. Commissioner of Income Tax (Appeals) 19, Chennai for the assessment years 2015-16 and 2017-18.

2. Since the issue raised in the appeals are similar based on the same identical facts, with the consent of the both the parties, we proceed to

hear all these appeals together and pass consolidated order for the sake of convenience.

3. We shall take up appeal in I.T.A. No. 220/Chny/2022 for AY 2015-16 for adjudication.

4. The Appellant Revenue raised 6 grounds of appeal amongst which the only issue emanates for our consideration is as to whether the Id. CIT(A) justified in deleting the addition made on account of unexplained cash receipts on the basis of seized materials in the facts and circumstances of the case.

5. The facts as emanating from the record are that the assessee is an individual, practicing Advocate and files return of income regularly. The assessee filed his original return of income on 31.10.2015 declaring a total income of ₹.26,85,200/-, which was processed under section 143(1) of the Income Tax Act, 1961 ["Act" in short]. Thereafter, on 08.12.2016, a search was conducted in the cases of S/Shri M. Premkumar, K. Srinivasalu, J. Sekar Reddy, SRS Mining (SRS Group) and the assessee. A notice under section 153A of the Act was issued and in response to which, the assessee filed return of income declaring the same income which was declared originally on 31.10.2015. Notices under section

143(2) and 142(1) of the Act were issued and the assessee made his submissions denying the contents of the seized materials. The Assessing Officer completed the assessment, inter alia, making addition of ₹.3,66,29,000/- under section 68 of the Act and determined income of the assessee at ₹.3,93,14,200/- vide his order dated 30.12.2018 passed under section 143(3) r.w.s. 153C of the Act.

6. Having aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id. CIT(A) contending that the Assessing Officer grossly erred in making addition under section 68 of the Act without appreciating the sample entries. The Assessing Officer did not provide any opportunity to the assessee to test the veracity of the sample entries in the seized materials. The Id. CIT(A) held the said entries in the seized materials are incomplete establishing no nexus between the payments mentioned therein with the assessee, accordingly, the Id. CIT(A) deleted the addition made under section 68 of the Act. The Revenue is in appeal before the Tribunal by raising grounds forming part of Form 36.

7. Heard both the parties and perused the material on record. We find similar issue on same identical facts arising out of same search in the case of Shri Karuppagounder Palaniswami came up before this Tribunal,

which is not disputed by both the parties, order dated 03.04.2024 is placed on record. On perusal of the relevant portion from para 6, we find that the search in the group cases of M/s. SRS Mining on 08.12.2016 is the same in the present case also. The Coordinate Bench examined the incriminating material as found in search, satisfaction note and decision of the Hon'ble High Court of Madras in W.P. No. 34626 of 2018, held that there is no mention as to the nature of such transaction of cash payment and precise identity of the assessee therein. Further, the statement of Shri K. Srinivasalu could not be relied on as he turned hostile by giving specific retraction. Further, it was observed the entries made in the diary or notebook by a third-person with scant details could not be used to fasten the tax liability on the persons whose abbreviated name appears therein, in the absence of any corroborative evidence. Further, by placing reliance on the decision of the Hon'ble Supreme Court in the case of Common Cause v. UOI reported in 77 taxmann.com 245 and in the case of CIT v. Sant Lal of Hon'ble High Court of Delhi reported in 118 taxmann. Com 432, which held no addition could be made merely on the basis of presumption, conjecture and surmises, the Coordinate Bench dismissed the appeals filed by the Revenue therein. The relevant portion of which is reproduced herein below for better understanding:

6. From the detailed facts and discussions as enumerated by us in the preceding paragraphs, it emerges that the impugned additions have been made in the hands of the assessee pursuant to the search and seizure action by the department u/s 132 in group cases of M/s SRS mining and its partners on 08-12-2016. During the course of search action, certain incriminating material was found which was marked as ANN/MPK/NS/B&D/S-19 and 20 and ANN/KGRA/MPKSSR/B&D/S-1 to 3 from the premises of M/s SRS mining. During the course of search, a sworn statement was recorded u/s 132(4) from Shri K. Srinivasulu who acted as an employee of M/s SRS mining and who is stated to have made entries in the Oswal & other notebooks as found during the course of search. These entries were maintained by him at the instructions of partners of M/s SRS mining. The abbreviations "HW" and "HW(M)" were marked against certain entries and Shri K. Srinivasulu admitted that the same referred to Highway Minister. However, he has not specifically named the assessee in the sworn statement. The name of the assessee also does not specifically figure in the seized material. However, Ld. AO, by deciphering the abbreviations solely on the basis of statement of Shri K. Srinivasulu alleged that such money was paid to the assessee who acted as Highway Minister at the relevant point of time. The conclusions of Ld. AO are solely based on the deposition of Shri K. Srinivasulu. It is pertinent to note that this statement has been retracted by Shri K. Srinivasulu subsequently by way of letters dated 21-03-2017 and 23-03-2017 addressed to DDIT (Inv.) which was submitted by him through the Jail Superintendent when he was lodged in the Jail. In the retraction letters, it was claimed by him that the earlier statement was given under coercion, duress and in a state of mental shock, depression and physical exhaustion at the relevant point of time due to continuance of search action continuously for more than 3 days without a break and he not being allowed to sleep or to take rest. He further stated that he was not allowed to read the typed statement and his signature was obtained by force. He stated that he never paid any money to various persons as recorded in the typed assessment. It could thus be seen that the person whose statement forms the very basis of Ld. AO to conclude that the assessee was in receipt of such sum as noted in the Oswal notebook, turned hostile and non-cooperative. This being the case, whole case of Ld. AO is liable to fall flat since there is no other admission, corroborative material or evidence whatsoever in the possession of Ld. AO to arrive at such a conclusion and to support the allegations.

7. We further find that considering the search action and aforesaid statement, a satisfaction note was drawn against the assessee by AO of searched person i.e., DCIT, Central Circle-2(4), Chennai vide AC-CC2(4)/153C/2021-22 on 15-07-2021 where M/s SRS mining was assessed since the seized material allegedly contained date-wise notings of the amounts paid to various persons in public service. The AO of the assessee drew identical satisfaction note and issued notice u/s 153C to the assessee. The assessee offered same return of income as originally returned u/s 139

and denied having undertaken any such transaction with the said group. The assessee also assailed jurisdiction u/s 153C on the ground that in the absence of any incriminating material, the notices issued u/s 153C would be bad-in-law. In such an eventuality, it was the burden of Ld. AO to prove his allegations. However, except for retracted statement of Shri K. Srinivasulu, there is no other material or evidence which would support the allegations of Ld. AO.

8. *The Ld. AO continued to allege that payments were made to various persons including the assessee, the then Highway Minister (represented by the abbreviation HM). The Ld. AO also concluded that the denial by the assessee was not backed by any logic or evidence. In the present case, the entries were found recorded in a systematic manner and logically explained by the authors of the entries during the course of search. Considering this fact, it was to be concluded that the inference was not on the basis of surmises but on the basis of evidences and the explanations furnished during the course of search proceedings. We find that though the burden was on AO to prove its allegations, a negative burden was casted on the assessee to establish that such transactions had not happened and the assessee had not received the impugned amount from the searched group. The same run contrary to the decision of Hon'ble Supreme Court in the case of K.P. Varghese vs ITO (131 ITR 597) as enumerated by us in preceding paragraph 5.12. The Hon'ble Court held that onus of establishing that the conditions of taxability are fulfilled would be on revenue and throwing this burden on the assessee would be to cast an almost impossible burden upon him to establish the negative.*

9. *We further find that during appellate proceedings, the assessee's legal ground as well as ground on merits stressed the point that the assessee was nowhere named in the seized material and the satisfaction note drawn by AO of searched person as well as jurisdictional AO of assessee could not lead to a conclusion that such a payment, as alleged, was ever received by the assessee. The assessee, all along, denied having undertaken any such transaction with the group. It could also be seen that no incriminating material whatsoever has been found from the possession / premises of the assessee. Except for certain abbreviated entries and the statement of Shri K. Srinivasulu u/s 132(4), there is nothing with Ld. AO to corroborate such an allegation. The presumption of Sec.292C would operate only with reference to the person searched and it could not be extended to the assessee who is not a searched person. Therefore, in our considered opinion, the burden was on Ld. AO to prove that it was actually the assessee who was named in the seized material and such transactions had actually taken place between the parties and lastly, the assessee was in receipt of such money from the group. However, there is nothing on record to corroborate the allegation of Ld. AO. In our opinion, Ld. AO erred in requiring the assessee to discharge a reverse burden of proof that such payments were not received by the assessee. If the*

statement of Shri K. Srinivasulu is ignored, there is nothing with Ld. AO to conclusively establish the aforesaid allegations against the assessee.

10. *So far as the veracity of statement of Shri K. Srinivasulu is concerned, we find that this statement has subsequently been retracted by him. The copies of retraction have been placed on record. As rightly noted by Ld. CIT(A), one of the similarly placed assessee i.e., Shri P. Ramamohan Rao filed writ petition before Hon'ble High Court of Madras and sought cross-examination of Shri K. Srinivasulu vide WP No.34626 of 2018 and WMP No.40141 of 2018. An order was passed by Hon'ble Court in the same on 27-12-2018. Dismissing the petition, Hon'ble Court pertinently observed as under: -*

4. *The fact that the witness had turned hostile would only stand to the benefit of the petitioner as the entire evidence of the witness could be considered and this court is unable to understand as to how it would be adverse to that of the petitioner. Even if the respondent was to rely on that part of the evidence of Shri K. Srinivasulu which is in their favour they have to let in other reliable evidence to corroborate the same. During the course of the arguments, it was informed by the learned Senior Counsel that the copies of the evidence had not been provided to the petitioner and this court directs the respondents to give copies of the evidence to the petitioner.*

5. *I do not find any infirmity in the order of the respondent in refusing the request for cross examination since the witness had turned hostile to the respondent's contentions. Needless to state that in the light of the amendment to Section 154 by insertion of Sub Section (2) by the Act 2 of 2006 w.e.f. 16.04.2006, it is well open to the petitioner to work out his right in accordance with law on receipt of the evidence directed to be given.*

6. *In the result, this writ petition shall stand dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.*

In the said case, that assessee preferred Writ Petition before Hon'ble High Court of Madras praying for issue of directions to the AO to permit the assessee to cross-examine the witness being relied upon by Ld. AO. The Writ Petition has been dismissed by Hon'ble Court vide order dated 27-12-2018. The Hon'ble Court held that there was no infirmity in the order of AO in refusing the request for cross-examination since the witness turned hostile. The Hon'ble Court further observed that if AO was to rely on the statement of Shri K. Srinivasulu which is in favor of the revenue, the AO has to let in on other reliable evidence to corroborate the same. In other words, as per the aforesaid decision, the statement of Shri K. Srinivasulu, on standalone basis, would lose its evidentiary value and AO has to rely on other reliable evidence

to corroborate the same. In the present case before us, there is no other evidence with Ld. AO to support his allegations. The statement of Shri K. Srinivasulu, as held by Hon'ble Court, is to be ignored since that witness turned hostile and in such a case, there was even no requirement to allow his cross-examination. Similarly, the Hon'ble Court in the case of *M/s SRS Mining Vs UOI (141 Taxmann.com 272)*, at para 9, similarly observed that the statement of Shri K Srinivasulu could not be relied upon as he turned hostile by giving specific retraction statement and there was no need to accord permission to cross-examine him in view of the said reason. Considering these observations, it was to be held that the statement of Shri K. Srinivasulu could not be used against the assessee unless some other evidence to corroborate the same was made available on record. We find that no such material has been brought on record by Ld. AO to corroborate the same.

11. Finally, considering the entirety of facts and circumstances of the case, we concur with the adjudication of Ld. CIT(A) that the additions were made merely on the basis of dumb document which would not possess any stand-alone evidentiary value since it did not contain the complete particulars of the relevant transactions and the persons involved in the said transactions. The seized material did not contain complete information to facilitate drawing of such an inference as done by Ld. AO. There was no mention as to the nature of said transaction of cash payment, the purpose of such payment and precise identity of the assessee. Further, there was no mention in the seized material as to whether the payment was made to a particular person in his own right or it was paid to him on behalf of another person. In the absence of such essential and critical information, it could not be inferred with a reasonable degree of certainty that the payments were made to a person whose abbreviated names appeared therein and the said amount represents the income of the said persons including the assessee. An entry made in the diary or notebook by a third-person with scant details could not be used to fasten the tax liability on the persons whose abbreviated name appears therein, in the absence of any corroborative evidence. Such seized material was liable to be treated as dumb document which would not have any evidentiary value in respect of entries found therein in the absence of corroborative evidence which can provide necessary reliable basis for deciphering the nature and character of the said entries. The addition made on the basis of such a dumb document could not be sustained. We concur with these observations of Ld. CIT(A).

12. For the sake of discussion, even if the statement of Shri K. Srinivasulu was to be considered, we find that the statement of Shri K. Srinivasulu do not directly implicate the assessee. He has only maintained the diary on the instructions of partners of M/s SRS Mining and his role is nothing more. The assessee has nowhere been named in the seized material. Therefore, the impugned additions would have no legs to stand.

13. *It is trite law that no addition could be made merely on the basis of presumption, conjectures or surmises. The ratio of decision of Hon'ble Supreme Court in the case of Common Cause vs. UOI (77 Taxmann.com 245) would squarely apply to the facts of the case. The ratio of decision of Hon'ble Delhi High Court in the case of CIT vs. Sant Lal (118 Taxmann.com 432) would also apply wherein, in similar circumstances, it was held that the entries found from the premises of a third-party could not form the basis of addition when the revenue failed to produce any other cogent material to link the assessee to the entries. We find that similar is the situation in the present case. Therefore, the conclusions drawn by Ld. CIT(A), in this regard, could not be faulted with.*

14. *In view of foregoing, the appeal of the revenue, for all the three years, stands dismissed.*

8. On perusal of the above, we find the assessment was made in the hands of the assessee therein basing on the statement made by the said Shri K. Srinivasalu. Further, the Coordinate Bench agreed with the reasons given by the Id. CIT(A) with regard to the alleged entries found in the diary with reference to the assessee therein. We find, in the present case, the Id. CIT(A) examined the statement of Shri K. Srinivasalu with reference to the seized material and held the entries in the seized materials are incomplete showing no nexus between the payments alleged to have been made to the assessee herein. The relevant part concerning the same is reproduced herein below for ready reference:

8.16 *The additions towards unaccounted cash receipts by the appellant were made by the AO by relying on the materials seized by the premises of a third party during the course of search conducted in the case of the said third party. The said materials were neither seized from the premises of the assessee nor the same is found to be in the handwriting of the assessee. Such material seized in the case of a third party which is not in the hand writing of the assessee does not constitute adequate evidence to draw any adverse inference against the assessee, particularly 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] 118 taxmann.com 432 (Del). It was held therein that where a diary was seized in search of premises of a third party allegedly containing entries of hundi transactions on behalf of various parties including the assessee, no addition could be made based on the said entries since the diary was neither found from premises of assessee nor was it in hand writing of assessee arid revenue failed to produce cogent material to link the assessee to dairy.

8.17 *It is also pertinent to observe that the seized materials relied on by the AO to draw the inference that the assessee was in receipt of unaccounted cash from SRS Mining did not contain complete information to facilitate drawing of such inference. The information available in the relevant seized materials merely contained the date, amount and the name of the person. There is no mention in the seized material regarding the nature of transaction and the purpose of the payment made. There is no mention whether the payment was in fact made or proposed to be made There is no mention whether the payment was made to a particular person in his own right or it was made to him on behalf of another person in the absence of such essential and critical information, it cannot be inferred with a reasonable degree of certainty that the payments were made to a person whose name appears therein and that the said amounts represent the income of the said person. An entry made in a dairy or a note book by a third person with such scant details cannot be used to fasten tax liability on the person whose name appears therein*

8.18 *Moreover, on careful perusal of the notings found in the seized materials regarding payments allegedly made to the appellant (which have been reproduced in the assessment order by the AO), it is noticed that the name of the recipient of the relevant payments mentioned therein does not unambiguously reveal that the appellant is the recipient of the said payments. It is noticed that the recipient is shown therein either as Adv Elambharathi or Elambharathi [Trichy office debit) or Adv Elambharathi (Dinamalar Dis) or Adv Elambharathi (T Nagar Flats) or Elambharath Advocate (TSS) or llambharathi + Court clerk or Elambharathi or Elambharathi Sale Account or Elambharathi (Builder) or Elambharathi fees or Elambharathi court or Illambharathy/Chinnavar. With such wide variation in the names mentioned, it is not possible to conclude without a shred of doubt that the recipient of the said payments in the appellant himself. To give an illustration in this regard, it is noticed that out of the payments to Rs.6,97,86,600/- considered to have been made to the appellant for AY 2017-18, a single payment of the magnitude of Rs.5 crores is shown to have been made to Elambharathi (Builder) on 14.11.2016 and the same cannot be considered to be an unaccounted receipt in the hands of the appellant (who is an advocate) by any stretch of imagination. The same deficiency is found in respect of most of the payments considered by the AO to be the payments made to the appellant.*

8.19. Further, the fact that the appellant is an advocate is also not sufficient to attribute even the payments found with the description of the recipient as 'Adv Elambharathi' unless there is some other material on record to corroborate the business/professional relations between third party who was searched and the appellant, which constitute the reason for making the payments. The AO has not referred to any much facts and documentary evidence which point to rendering of some professional services by the appellant to the said party for being entitled to receive such payments. In this connection, it is relevant to point out that the statement of the appellant recorded u/s 132(4) on the day of search also does not bring out anything adverse on this crucial aspect. The appellant clearly stated in his answers to Question Nos. 12 and 13 that he knows Sri. Sekar Reddy through one of his clients and Sri. K Srinivasulu as an employee of Sri Sekar Reddy but has no professional or business relations with them in the circumstances, the notings found in the seized note books even with the description 'Adv Elambharathi' cannot form the basis for making addition in the hands of the appellant. In this connection, it is appropriate to place reliance on the decision of Hon'ble ITAT, Pune in the case of Vinit Ranawat Vs ACIT (2017) 88 Taxmann.com 428 (Pune), wherein it was held that no addition can be made on the basis of papers found with a third party when there was no business connection between the assessee and the third party.

8.20 Another critical aspect which discredits the use of the notings in the seized materials for concluding that the payments noted therein were made to the appellant is the absence of any acknowledgement in the seized material by the appellant of receiving the said payments by way of appending his signature/initial against the said payments. If a third party unilaterally makes entries in a diary/note book showing payments to a person to suit his convenience, the payments cannot be inferred to have been made to the said person unless there is corroborative evidence to establish the actual making of payments to the said person.

8.21 The AO stated in the assessment order that he has randomly selected one entry in the seized material and caused cross-verification of the same for testing the genuineness of the seized materials. The said entry related to payment made to a hotel and the verification revealed that the said payment was shown to have been received by the hotel in its day book. Further, the AO selected two entries found with narration of bank account of the assessee and he found on verification of the bank account statement that the relevant entries actually represented cash deposited in the bank. Based on the outcome of the said verification made in respect of one entry pertaining to an outside party and 2 entries pertaining to bank account transactions, the AO has drawn an inference that all the entries found in the seized materials are genuine. However, the inference so drawn by the AO is too simplistic and not based on adequate sampling. The verification of entries relating to cash

deposited in bank account of the searched party does not throw any light on the genuineness of other entries of payments made to third parties. The bank entries are bound to be correct by their very nature. On excluding the verification of bank entries, the only verification made by the AO pertains to one entry in the seized material showing cash payment made to a hotel. Expenditure incurred towards hotel accommodation is a normal business expenditure which is deductible and the same unlikely to be suppressed by the searched party as well as the recipient. The said verification in a single instance and of a transaction of such nature does not provide any assistance to draw inference of genuineness in respect of payments to other parties noted in the seized material, particularly when the nature and purpose of payment is not ascertainable from the contents of the notings.

8.22 Apart from relying on the seized material, the AO sought to place reliance on the statement of Sri. K. Srinivasulu recorded on the day of search u/s 132(4), in whose possession some of the seized materials were found (ANN/KGAR/MPKSSR/B&D/S-1, S-2, S-4 and S-4). In his answer to Question No.3 of his statement, Sri K. Srinivasulu confirmed that the said seized note books are maintained by him, that the notings in the seized note books are in his own handwriting and that the notings were made by him based on instructions of the partners Sri. S. Ramachandran, Sri J. Sekar and Sri. K. Rathinam. He further stated that the entries represent incidental expenses paid to various persons. The AO sought to use the statement of Sri. K. Srinivasulu as an evidence which corroborated the entries in the seized materials.

8.23 However, I am of the considered opinion that the said statement of Sri K. Srinivasulu does not serve as corroborative evidence in respect of the entries in the seized material which allegedly have shown cash payments made to the appellant. As clearly evident from his answer to Question No.3 of the statement, he gave a general statement that the entries in the seized note books represent incidental expenses paid to various persons. When there are numerous pages and entries in the seized material, such a general statement does not inspire confidence for drawing any conclusions in respect of specific entries appearing therein allegedly with the name of the appellant. There is no specific reference in the statement to the entries in the seized note books appearing allegedly with the name of the appellant. There is nothing in the statement even to remotely suggest that the entries appearing with the name of the appellant actually represent payments made to the appellant, with proper identification of the person named in the relevant entries in order to trace the same to the appellant, the details of services rendered by the appellant for which the impugned payments were made and the identity of the person(s) who actually made the payments to the appellant. The statement of Sri. K. Srinivasulu merely mentions that the entries were made in the seized note books by him on the instructions of the partners. It is clear from the same that he had no firsthand knowledge of the payments noted in the seized

material and had merely noted whatever has been told to him by partners in such an event, the statement of Sri. K. Srinivasulu serves a very limited purpose of ascertaining the identity of the person who made the entries and nothing more. Since the entries were made by him on the instructions of the partners, it is the partners who were required to explain the identity of the recipients, the nature of payments, the purpose of payments and the identity of the person who made the payments. However, the material available on record does not suggest that the partners were examined on oath u/s 132(4) with regard to the entries of cash payments allegedly made to the appellant. There is no reference to any such statement in the assessment order in the said facts and circumstances, the statement of Sri. K. Srinivasulu can barely be considered as corroborative evidence against the assessee with regard to the notings in the seized material.

8.24 Further, it is pertinent to observe that even the said statement u/s 132(4) recorded on the day of search has been retracted by Sri. K. Srinivasulu on 23.03.2017. The said fact of retraction has been mentioned in the assessment order also. In the retraction, it was claimed by him that the statement was given under coercion and duress and that he was under a state of mental shock and physical exhaustion at the relevant point of time. Regardless of the merits of the said retraction, it is pertinent to point out that no fresh examination of the said person or examination of the partners at whose instance the entries were stated to have been made by him has been during the course of the assessment proceedings.

8.25 In the assessment orders for the three assessment years, the AO has relied on the notings available in various seized note books/materials allegedly in the name of the appellant. However, as pointed out by the appellant, the statement of Sri. K. Srinivasulu, which was relied on by the AO to corroborate the entire seized materials, dealt only with part of the seized materials i.e. note books marked ANN/KGAR/MRKSSR/B&D/S-2, S-2, S-4 and S-4. The payments allegedly made to the appellant contained in the said seized materials referred to in the statement of Sri Srinivasulu amounted to Rs. Nil. Rs 65,000/- and Rs.65,25,000/-only in A.Y. 2015-16, 2016-17 and 2017-18 as against the aggregate unaccounted cash receipts quantified at Rs.3,66,29,000/-, Rs.66,00,000/- and Rs.6,97,86,600/- in the assessment orders for the said assessment years respectively. The assessment order does not contain reference to any corroborative statement recorded with regard to the contents of the remaining seized materials marked as ANN/VK/TS/B&D/S-4 and ANN/MPK/NS/B&D/S-19 relied on in the assessment orders for making the addition of unaccounted receipts in verification of material available on record. It is noticed that seized material marked as ANN/VK/TS/B&D/S-4 was found in the possession of another person i.e. Sri T. Shanmuga Sundaram, accountant of SRS Mining and his statement on oath was recorded u/s 132(4) on 09.12.2016. In his statement, Sri. T Shanmuga Sundaram stated in his answer to question No.7 that the

seized material marked as ANN/VE/TS/B&D/S-4 is maintained to his handwriting and contains details of cash collected from Yogambal Street Office or Sri. Ramachandran, partner and handed over to various persons. It is noticed that his statement also suffers from the same deficiencies mentioned earlier with reference to the statement of Sri. K. Srinivasulu which militate against treating the same as corroborative evidence in respect of the notings in the seized material to draw any adverse inference against the assessee. Further, the said person has also retracted his statement for the same reasons as in the case of Sri. K. Srinivasulu.

8.26 Apart from the above, another significant fact which tilts the issue in favour of the appellant is that the residential premises of the appellant was also searched on the same day on the strength of warrant issued in the name of Sri. M. Premkumar, Srinivasalu and J. Sekar Reddy and no incriminating material was found during the search to show that the appellant has received any unaccounted cash either from the said parties or from any other source. Further, no incriminating material was found during the search to show that the appellant has made any unaccounted investments or unaccounted expenditure from undisclosed sources of income. When this crucial fact is taken into consideration along with the discussion made in the preceding paragraphs regarding the incompleteness of the entries in the seized material to establish any nexus between the payments mentioned therein with the appellant and lack of proper corroborative evidence in respect of such seized materials, the conclusion that can reasonably be drawn is that there is no adequate and reliable material to infer that the appellant was in receipt of the unaccounted cash receipts which were sought to be taxed in his hands. I therefore direct that the additions made in the assessment orders for A.Ys 2015-16, 2016-17 and 2017-18 u/s 68 of the Act towards unaccounted cash receipts be deleted.

9. We find the facts and circumstances of the case of the assessee are similar to the facts in the case of Karuppagounder Palaniswami in ITA Nos. 125 to 127/Chny/2023 & 213 to 215/Chny/2023, therefore, we agree with the reasons as recorded by the Id. CIT(A) from para 8.16 to 8.26 and it is justified. Thus, the grounds raised by the Revenue fails and dismissed accordingly for the assessment year 2015-16.

10. The Revenue has raised same grounds in its appeal in ITA No. 221/Chny/2022 for the assessment 2017-18 and the view taken by us herein above in the assessment year 2015-16 is squarely applicable to the assessment year 2017-18 also. Thus, the grounds raised by the Revenue are dismissed.

C.O. Nos. 7 & 8/Chny/2022

11. Issues raised in both the Cross Objections filed by the assessee become academic in view of our decision in confirming the order of the Id. CIT(A) in deleting the addition made by the Assessing Officer under section 68 of the Act. Thus, both the Cross Objections filed by the assessee are dismissed.

12. In the result, both the appeals filed by the Revenue and the Cos filed by the assessee are dismissed.

Order pronounced on 25th September, 2024 at Chennai.

Sd/-
(S.R. RAGHUNATHA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 25.09.2024

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.