

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपीलसं./ITA Nos.973 & 974/Chny/2022
निर्धारणवर्ष/Assessment Years: 2018-19 & 2019-20

Dy. Commissioner of Income Tax, Central Circle-2(2), Chennai.	v.	Natesan Sabesan, No.6/1, Ganapathy Street, Ganesapuram, Chennai – 600 114. [PAN: ARIPS 1643Q]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपीलसं./C.O Nos.16 & 17/Chny/2022
(Arising in ITA Nos.973 & 974/Chny/2022)
निर्धारणवर्ष/Assessment Years: 2018-19 & 2019-20

Natesan Sabesan, No.6/1, Ganapathy Street, Ganesapuram, Chennai – 600 114. [PAN: ARIPS 1643Q]	v.	Dy. Commissioner of Income Tax, Central Circle-2(2), Chennai. (प्रत्यर्थी/Respondent)
(अपीलार्थी/Appellant/Cross Objector)		

अपीलार्थी की ओर से/ Assessee/cross objector by	:	Mr. S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Revenue by	:	Mr. R. Clement Ramesh Kumar, CIT
सुनवाई की तारीख/Date of Hearing	:	25.09.2024
घोषणा की तारीख /Date of Pronouncement	:	11.12.2024



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आदेश / ORDER

PER ABY T. VARKEY, JM:

These appeals preferred by the Revenue and the cross objections raised by the assessee are against the orders of the Ld. CIT(A)-34, Chennai, [in short, the 'Ld. CIT(A)'] dated 27.09.2022 for AYs 2018-19 & 2019-20. Since the issues involved are common, all the appeals have been heard together. Both the parties also raised similar arguments on these issues. Accordingly, we dispose off all these appeals by this consolidated order for the sake of convenience.

2. Ground No. 1 of both the appeals of the Revenue and Ground No. 1 of the cross objections of the assessee are general in nature and therefore does not call for any specific adjudication.

3. Ground No. 2 of the appeals of the Revenue and Ground No. 2 of the cross objections of the assessee for AYs 2018-19 & 2019-20 are against the Ld. CIT(A)'s action of deleting the addition made by the AO treating the noting's found in the seized material as unaccounted cash receipts and instead, holding it to be noting's relating to material supplied by the assessee and estimating his share of profit thereon.



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4. Brief facts of the case as noted are that, the assessee is involved in the business of electrical contract works. A search u/s 132 of the Income Tax Act [herein after the Act] was conducted upon the assessee on 28.03.2019 pursuant to which, his books of accounts, documents and other materials were seized and sworn statements of the assessee and other key persons were recorded. The AO is noted to have issued notice u/s 153A of the Act for AY 2018-19, in response to which the assessee declared the same income as originally returned. For AY 2019-20 i.e. the year of search, the appellant had filed return of income u/s 139 of the Act wherein he is noted to have declared total income of Rs.15,17,22,830/- *inter alia* comprising of income by way of share of profit under the head '*Income from Other Sources*' of Rs.15,13,92,900/-.

5. During the course of search, the Investigation authorities had also searched the premises of Shri Vinod Kumar and Shri P V Saravanan, who assisted in the business affairs of the assessee. From the premises of Shri P V Saravanan, several loose sheets and documents in form of pocket diaries were found and seized which were marked as ANN/DSG/PVS/LS/S-1 & 2 and ANN/DSG/PVS/B&D/S-1 to 11 respectively. It is noted that, Shri P V Saravanan in his statement recorded on oath u/s 132(4) of the Act had admitted that, the noting's in these loose sheets & diaries were made by him on the instructions of Shri Vinod Kumar. And Shri P V Saravanan



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further elaborated that the figures mentioned in these sheets & diaries were in lakhs and that these notings denoted cash monies received and paid to various persons. He stated that, cash receipts were mentioned under the head '*collections*' and cash payments under '*deduction*'. According to the AO therefore, the eleven notebooks found from the premises of Shri P V Saravanan were daybook of cash receipts & payments of the assessee noted by him on the instructions of Shri Vinod Kumar. The AO is noted to have heavily extracted the statement of Shri P V Saravanan in the assessment order, basis which, he concluded that all the notings found in these documents & diaries were cash notings which stood corroborated by the fact that some of the notings found on loose sheets also corroborated with the notings found in the diaries. The AO also cited by way of an example, the notings found mentioned in the loose sheets against the value of contracts in Theni District, the details of the contractor and the cash received in relation to this contract was noted in the diaries. Likewise, payments made towards works undertaken for these contracts were also found by the AO to co-relate between the loose sheets and the diaries. The AO also noted that, Shri P V Saravanan had stated that, cash would ordinarily be collected by Mr. Vinod Kumar and in absence of the latter, the assessee would collect cash from various persons.



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6. It is however noted that, Shri P V Saravanan had subsequently retracted his statement and had stated that neither he nor Mr. Vinod Kumar would collect cash from any persons. He further stated in his retraction that, the amounts mentioned in these loose sheets & pocket diaries related to the details of works performed for the customers and the values were written at instructions of the assessee. As a consequence of this retraction, it is noted that, summons was issued u/s 131 of the Act to Shri P V Saravanan, who is noted to have attended the same on 22.05.2019 and had stood by his retraction statement. He explained that, the notings found in the seized notebooks related to the details of the works performed at various corporations, municipalities etc. and the values in the seized documents were written as per the instructions of Shri Vinod Kumar.

7. It is observed that, to verify the retraction of Shri P V Saravanan, summons was also issued to Shri Vinod Kumar u/s 131 of the Act, who attended the same on 23.05.2019 and backed the retraction statement of Shri P V Saravanan. He also explained that, the notings in the seized documents comprised of the contract amounts awarded by various corporations, municipalities etc. and the figures mentioned on daily basis comprised of the details of works contract completed, pending completion, pending payments etc. for which the assessee followed up for



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payments. He further stated that, since these notings were under the instruction of the assessee, it is the assessee alone who will be able to explain the contents thereof.

8. In light of the above, the assessee was confronted with the seized material and the above statements and his statement is noted to have been recorded across several dates viz., 24.05.2019, 21.06.2019 & 10.07.2019. The AO is noted to have summarized the assessee's explanations rendered in the context of these notings, as follows:-

- "Once the payment is received from the contractors to the material suppliers, he used to receive a share of 4% to 7% on supply value depending on market demands.1. He earns income from trading & contract in electrical lighting under "M/s General Traders (proprietor: N. Sabesan) & M/s Dowell Associates (Proprietor:Smt.Shyamala - his wife).
- He had participated in tenders called for by the Tamilnadu Government. He also earned his share of profits on material supplied like blue metals, m-sand, quarry dust for different corporations, municipal works by the local lorry owners & suppliers.
- Once the payment is received from the contractors to the material suppliers, he used to receive a share of 4% to 7% on supply value depending on market demands.
- Shri. Sabesan had stated that he had occupied a room in the residence of Shri.P.V. Saravanan i.e., at Flat 303,B-Block,Raheja Residency, Karpagam Avenue, R.A.Puram, Chennai-28 for his personal and business activities.
- Shri. Sabesan used to inform the details about the material supply and receipt of payments to Shri. Vinoth Kumar to maintain the accounts and to update him periodically for collection of cash. The details of such supplies were noted by Shri. Vinoth Kumar against various municipalities and corporations depending upon the nature of work.



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- The daily figures and the notings in the materials seized vide ANN/DSG/PVS/B&D/S-1 to S-11 and the loose sheet bundle vide ANN/DSG/PVS/LS/S-1 & S-2 relates to materials supplied and payments received for various projects for Corporation/Municipality, TWAD & other works by suppliers/contractors which enable the assessee to collect his share of profit.
- He has also agreed with the statements given by Shri. P.V. Saravanan & Shri Vinoth Kumar on 22.05.2019. Shri. Sabesan also confirmed that some of the scribbled figures mentioned in the books & documents seized from the residence of Shri. P.V. Saravanan, were written by Shri. Sabesan himself.
- Shri. Sabesan receives his share of profit in cash from the materials suppliers which is around 4% to 7%. No books of accounts were maintained by him and no cash was received by him other than his share of profit for the material supplied. There are no written contracts with any of the contractors.
- The income received by Shri. Sabesan was also confirmed by certain contractors in the sworn statements recorded from them during the course of enquiry conducted by the Department. Some of the contractors have deducted TDS and the same is also reflected in the return of income filed by Shri. Sabesan for the Asst. Year 2019-20. The details of share received by Shri. Sabesan from four contractors and TDS deducted are also tabulated in his replies as reproduced below:

....
- The statement given by Mr. Baskar is correct. The share of profits received in cash will be received by Mr. Bhaskar and will be kept at Lakshmi Flats in Nanganallur."

9. In light of the above explanation, the AO had required the assessee to explain as to the basis of estimating the share of profit of income at 5% to 7% when the scribbled figures in these seized material had figures varying from 7.5% to 16%. To this, the assessee is noted to have explained as follows:-



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"Qn-36: On perusal of the materials seized vide annexure ANN/DSG/PVS/B&D/S-1 TO S-11 & ANN/DSG/PVS/LS/S-1 & S-2, it is observed that the values written are in lakhs. The materials seized vide annexure ANN/DSG/PVS/B&D/S-3 & 4 are containing the values in lakhs for individual contracts and the value written are 7.5% to 16% of the value of the contract either executed by the contractors or the tenders awarded to them. In such a situation how are you claiming that the values are materials supplied by you ?

Ans: 7.5% to 15% is the margin for the material supplier. Certain materials constitute 16% of the total material value. Hence the percentages are written against the value. I receive share of profit only on the value of payment received by the material suppliers."

10. The AO thereafter observed that, if all the figures mentioned across all the loose documents & diaries are taken together and arranged chronologically, then according to him, the assessee had received Rs.273.97 lacs in FY 2017-18 and Rs.42108.82 lacs in FY 2018-19. Against these cash receipts, there were notings of expenditure incurred in cash which was paid to various persons, but no details were available. The AO is noted to have rejected the above explanation given by the assessee that the notings related to contracts and supply of materials/electrical items for which the assessee derived share of profit for facilitation services. The reasons for arriving at this conclusion by the AO is noted to have been elaborately set out at Para 4, Pages 15 to 26 of the assessment order of AY 2019-20.

11. According to AO, there were numerous slips which contained project value in which 7.5% of the value was calculated, but the assessee was



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unable to explain the same. He further noted that Shri P V Saravanan in his original statement recorded u/s 132(4) of the Act had clearly stated that, the entries under the title 'collection' and 'deduction' were cash received and paid for and on behalf of the assessee. He observed that, the retraction stating that the entries under the title 'collection' and 'deduction' were the bills passed for suppliers was an after-thought, for which no evidences was furnished by the assessee to show that these were contract amounts/receipts. The AO noted that, the assessee was unable to provide the details of the contracts performed, names of persons, details of purchase bills, transport bills, delivery challans etc. The AO thus held that these notings were cash receipts and cash payments of the assessee and not details of contract amounts of the projects, as claimed by the assessee.

12. The AO further noted that, several suppliers of materials claimed by the assessee qua these notings had names of companies, corporations, districts, officials etc. mentioned against it. The assessee in his statement recorded on 10.07.2019 had explained that, these notings represented value of materials received at those respective sites. According to AO, this explanation of the assessee was not logical at all which according to him, was evidenced by the fact that, the assessee was unable to provide the details of suppliers/contractors who supplied material at this site.



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13. The AO however later on observed that, the assessee had provided a list of 102 suppliers for whom he had arranged material and received his share of profit for the facilitation services. Out of the total list, the AO is noted to have made enquiries from 17 persons, out of which only 5 persons confirmed transactions with the assessee and that too for a small value and the four of them denied the same. The AO also observed that, the assessee had claimed these notings to be pertaining to his concern, M/s General Traders but the name of the said concern did not feature in any of the notings and hence rejected this as an after-thought.

14. The AO further noted that, under the title 'deduction', values were mentioned against several names & places, which according to him, were cash payments in crores. The AO tabulated some of these notings and observed that these are nothing but cash expenditure paid to different persons. The AO again referred to the original statement of Shri P V Saravanan recorded in course of search and observed that, these notings suggested that the assessee was receiving monies periodically which were being also disbursed periodically.

15. Apart from the material which was seized from the premises of Shri P V Saravanan, the Investigating authorities had also found and seized Havell notepads from the premises of the assessee. Before the AO, the assessee had claimed that the Havell notepads seized vide



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ANN/KR/NS/B&D/S4 & S5 contained value of electrical materials supplied by M/s Dowell Associates and the diary marked as ANN/KR/NS/B&D/S-2 contained the details of electrical items delivered. This according to the AO was an incorrect explanation. Instead, the AO observed that the 'collection' & 'delivery' mentioned in these diaries represented cash receipts and cash disbursements because it correlated with the notings found in the seized material at the premises of Shri P V Saravanan. He noted that, against some notings in the Havell notepads, there were names of Baskar, Ving and Vinayakar which were also found mentioned in the diaries seized from the residence of Shri P V Saravanan. The AO further observed that Mr. Baskar had also been examined in the course of search and in his statement recorded u/s 132(4) of the Act, he had stated that he was in charge of collecting cash from different persons, packing it in boxes and delivering it to different persons. The AO thus inferred that the notings made by the assessee in Havells notepads were not for supply of electrical items but were for delivery and disbursement of cash. The AO in the impugned order also cited three particular instances where the dates & figures found mentioned in diaries of Shri P V Saravanan was cross-verifiable with the notings found in the notepads seized from the premises of the assessee. The AO accordingly concluded that, the notings related to collection and disbursement of cash and not electrical items as claimed by the assessee. For this, the AO reiterated his reliance on the



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statement of Mr. Baskar and observed that the assessee was in the practice of routinely collecting cash from various persons, packing them and then disbursing it to different persons.

16. In light of the above observations, the AO is noted to have inferred that the notebooks maintained by Shri P V Saravanan and also the notepads of the assessee taken together were the books and documents for the unaccounted cash receipts of the assessee. The AO observed that, the assessee had not denied the ownership of the contents of the notebooks found from the premises of Shri P V Saravanan but had only disputed the notings to be relating to electrical items and not cash receipts, but no evidence was furnished in support of the same. According to AO, even in relation to 'deduction' viz., cash payments, the assessee could not furnish any supporting materials and accordingly held that only the cash receipt notings are to be considered as undisclosed and unaccounted income of the assessee. The AO accordingly added the aggregate receipts found noted in these documents & diaries to the tune of Rs.273.97 lacs in FY 2017-18 and Rs. 42108.82 lacs in FY 2018-19 by way of unaccounted income of the assessee in the respective AYs 2018-19 & 2019-20.

17. Being aggrieved by the order of the AO, the assessee preferred appeal before the Ld. CIT(A). On appeal, the Ld. CIT(A) found merit in the



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assessee's submissions and held that, the notings found in the seized material were to be inferred as value of material supplied through facilitation services and not cash receipts. The Ld. CIT(A) estimated the assessee's share of profit therein at 6% of the value of materials supplied which worked out to Rs.16,43,280/- and Rs.25,26,52,920/- for AYs 2018-19 & 2019-20 respectively. Having regard to the fact that the assessee had already offered share of profit of Rs.15,13,92,900/- in the return of income filed for AY 2019-20, the Ld. CIT(A) confirmed addition to the extent of Rs.10,12,60,020/- [Rs.25,26,52,920 - Rs.15,13,92,900] in AY 2019-20 and made the addition of entire profit of Rs.16,43,280/- estimated in AY 2018-19. Aggrieved by this order of the Ld. CIT(A), both the parties are now before us.

18. Assailing the action of the Ld. CIT(A), the Ld. CIT, DR appearing before us heavily relied on the observations and inferences drawn by the AO from the scribbles found in the diaries & notepads basis which he had concluded that the notings were relating to unaccounted cash receipts of the assessee. The Ld. CIT, DR also furnished written submissions in support thereof. Perusal of the same reveals that, the Ld. CIT, DR has summarized the findings of the AO which were recorded in the assessment order. In respect of the findings recorded by Ld. CIT(A),



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the Ld. CIT, DR argued that it was based on wrong appreciation of facts and therefore urged that the order of the AO be restored.

19. Per contra, the Ld. AR principally supported the order of the Ld. CIT(A). He however contended that, the share of profit estimated by the Ld. CIT(A) was excessive and that the share of profit offered & declared in the return of income for AY 2019-20 was fair & reasonable and that no further sum ought to have been added by the Ld. CIT(A).

20. We have heard both the parties, gone through the relevant seized material, statements of the key persons and the observations and findings recorded by the lower authorities. The addition impugned before us relates to the noting's found in the material seized from the premises of Shri P V Saravanan. The AO is noted to have inferred these noting's to be relating to unaccounted cash receipts of the assessee for which he has set out his reasoning in the assessment order and also relied on the original statement given by Shri P V Saravanan in the course of search conducted u/s 132(4) of the Act. On the other hand, it is assessee's case that, these notings were relating to the value of the material supplied by lorry owners/suppliers to contractors in relation to the contractual works conducted at the sites mentioned in the diaries, which had been facilitated by the assessee, for which he received a share of the profits as a percentage of the value of materials supplied. According to assessee, Shri



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P V Saravanan had retracted his original statement and he had also confirmed his retraction in the subsequent examination conducted by the Investigating authority u/s 131 of the Act on 22.05.2019. The assessee has also shown before us that, detailed enquiries were made from him u/s 131 of the Act by the authorities on several dates viz., 24.05.2019, 21.06.2019 & 10.07.2019 wherein he also had explained the contents of these noting's and that these related to the details of material supplies in relation to contractual works facilitated by the assessee for various suppliers at various sites. Having considered the rival submissions on this issue, we find that, it is first relevant to analyze the seized material which is in dispute.

21. The seized material in dispute is noted to comprise of loose sheets ID marked ANN/DSG/PVS/LS/S-1 & 2 & pocket diaries ID marked ANN/DSG/PVS/B&D/S-1 to 11 which was found and seized from the premises of one, Shri P V Saravanan. Upon perusal of the contents of these material, it is noted that they comprise of cryptic noting's of various figures against either names of persons or names of contract works or names of municipalities or corporations. If one reads these noting's on a stand-alone basis, we find that there is no noting or indication in the seized material regarding the nature of transactions. It is observed that the AO in the impugned order had referred to the amounts mentioned in



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these seized material as 'collections'. We find merit in the Ld. CIT(A)'s findings that the word 'collections' does not appear in these seized documents. Hence, we countenance the Ld. CIT(A)'s observation that the AO has wrongly stated the noting's found to be 'collections', which is not found to be in accordance with the contents of the seized material. Indeed, however, it is noted that the word '*deduction*' appears in the seized material but it is noted to be only present in few instances. We thus note that, the seized material does not throw complete light on the nature of the transactions noted therein. It is not ascertainable from these noting's on standalone basis as to how the noting's are being regarded by the AO as '*collections*' and that too, collection of cash. We are therefore in agreement with the Ld. CIT(A) that this inference drawn by the AO does not emanate from the noting's in the seized material, when read on stand-alone basis.

22. We at the same time agree with the Ld. CIT, DR that, ordinarily noting's relating to unaccounted business or cash transactions are made cryptically or in a coded manner by the person searched. However, in such a scenario, when the notings found are cryptic or not properly discernible, the onus is on the Investigating Officer to make requisite enquiries from the searched person or other sources and corroborate the said notings with tangible material in order to justify the adverse



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inference, if any, he intends to draw from these notings, which he is considering to be incriminating in nature. Without doing so, the Revenue cannot act on mere surmises and assumptions and interpret these notings in the manner they consider fit, without bringing any corroborative evidence to back such an interpretation.

23. In the present case, it is noted that the Investigating Officer had not conducted any post search enquiries from the persons, entities etc. mentioned in these notings nor had the AO conducted any verifications in assessment proceedings to corroborate their theory that, these notings found in the seized material related to notings of unaccounted cash receipts. We find that the case of the Revenue primarily hinges on the statement of Shri P V Saravanan recorded u/s 132(4) of the Act on 28.03.2019 wherein he had admitted that these notings were '*cash collections*' which he had jotted down on the instructions of Shri Vinod Kumar at the behest of the assessee. The AO is noted to have extracted the contents of his statement wherein he had admitted that these notings were in his hand writing and that the figures noted were suppressed by five decimals and that it related to cash collected by Shri Vinod Kumar. The Ld. AR, on the other hand, pointed out that, this original statement had already been retracted by Shri P V Saravanan before the Investigating Officer and therefore it was unsafe to rely on the same and



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take it as a basis to justify the addition. He also took us through the statement of Shri P V Saravanan to show that, even if the statement was considered at its face value, there were factual infirmities and inconsistencies therein, which according to the Ld. AR showed that they were recorded under duress and undue influence.

24. The Ld. AR showed us that, Shri P V Saravanan had stated in his original statement that these seized material, viz., loose sheets and pocket diaries were being maintained by him under the instructions of one Shri Vinod Kumar who was assisting the assessee in his business affairs. He is noted to have specifically stated that, he was not the employee of the assessee and therefore he was not competent to describe the exact nature of these notings as he is not aware of the transactions. The Ld. AR therefore pointed out that, it was evident from this answer that, Shri P V Saravanan did not have first-hand knowledge of the transactions or the details which were being noted by him in the seized material and that he had merely made the notings based on what was told to him by Shri Vinod Kumar on hearsay basis. According to him therefore, such a statement could not be taken at face value to draw adverse inference against the assessee. The Ld. AR then showed us that leading questions had been put to Shri P V Saravanan wherein the Authorized Officer would himself state in the question that *'it seems you are receiving cash from*



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various persons and the same is maintained in the notebooks', to which Shri P V Saravanan would agree and state that the notings in the seized material was 'cash collections'. According to the Ld. AR, these leading questions showed that the Authorized Officer had been unduly influencing Shri P V Saravanan to adhere to his version that these notings were notings of cash receipts. The Ld. AR brought to our notice that, apart from stating general modus operandi, Shri P V Saravanan did not elaborate or explain as to the nature and source of these so-called cash collections or cash payments. According to the Ld. AR, if Shri P V Saravanan was aware that these notings were of cash receipts, particularly when he had also collected cash in absence of Shri Vinod Kumar, then he ought to have known and divulged atleast specific details of some persons from whom cash was received, locations from where cash was collected, etc. Considering the fact that, the figures of so-called cash collections was in excess of Rs.400 crores, any normal person of prudence would have enquired into the nature and source of these cash receipts and as to from which business activity was such huge sums being generated and where was it being deployed, particularly when no other material or tangible evidence or unexplained asset found in the course of search which would justify or correlate such humongous cash notings. The Ld. AR however showed us that, no such further investigation or enquiry was made by the Authorized Officer. He pointed out that, the statement of Shri P V



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Sarvanan did not even contain a whisper of any specific details or specific projects for which such huge cash collections were being made. Instead, he showed us that, the statement of Shri P V Saravanan conveniently avoided providing these details and instead, he had stated that, he would make these notings at the directions received orally from Shri Vinod Kumar and that, he had no knowledge about the notings but he was jotting it down on the basis of whatever was being communicated by Shri Vinod Kumar. According to Ld. AR therefore, this statement relied upon by the AO to justify the additions impugned before us was not only general and vague but factually unreliable as well. Having gone through the statement ourselves, we agree with the Ld. AR that this statement alone does not inspire confidence to justify the addition, for the reason that not only was this subsequently retracted but also the averments made therein was general in nature without divulging any specific details regarding the nature and source of the so-called cash receipts. Even the Ld. CIT, DR. was unable to rebut these inconsistencies pointed out by the Ld. AR, as outlined in the foregoing, in the statement of Shri P V Sarvanan.

25. Further, we find that the Ld. CIT(A) had rightly noted that, Shri P V Saravanan had retracted his original statement and had changed his explanation with regard to the nature of entries and therefore the original



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statement was no longer reliable. It is not in dispute that, the Investigating Officer had subsequently re-examined Shri P V Saravanan u/s 131 of the Act on 22.05.2019, in which he had backed his retraction statement. In this subsequent statement, he explained that these notings did not relate to any cash collections by Mr. Vinod Kumar or him and rather these were relating to contract / tender amounts, which had been written by him as dictated by Shri Vinod Kumar. He had confirmed in his retraction before the Investigating Officer that the original statement was given by him under stress. He is noted to have pointed out that, he had serious problem in his eye sight for which he had underwent a surgery subsequent to the search and therefore he could not properly see the words 'cash collections' which had been used by the Authorized Officer in his replies to the various questions. It is noted that this retraction made by Shri P V Saravanan to his original statement before the Investigating Officer cannot be discarded or ignored. Once the original statement stood retracted before the Investigating Officer and the statement giver also withstood cross-examination u/s 131 of the Act, in our considered view, it is not safe to rely on the original statement, since it had lost its sanctity and relevance and could no longer be used as a valid evidence/material by the Assessing Officer. We therefore uphold the following findings of the Ld. CIT(A) holding that the original statement having been properly



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retracted was unreliable and therefore, it was unsafe to rely on it and that such original statement cannot be used as a basis to justify any addition.

"29. In the said factual situation regarding the incompleteness of the seized material to ascertain the exact nature of the transactions noted therein, it is important that any inference with regard to the nature of the said transactions can be drawn based only on the basis of any other corroborative material or evidences gathered during the post search enquiries or the assessment proceedings. In this connection, it is seen that no corroborative material has been gathered either during the post search enquiries or the assessment proceedings in order to ascertain the exact nature of the amounts noted in the seized material either as collections or deductions. The AO relied on the statement of Shri. P V Saravanan recorded u/s 132(4) on 28.03.2019 in order to arrive at the inference that the notings in the seized material represent cash receipts of the appellant and cash payments by the appellant. However, it is noticed that Shri. P V Saravanan was not competent to describe the exact nature of the notings in the seized material as he was not an employee of the appellant who is aware of the transactions of the appellant. Shri. P V Saravanan is a friend of Shri. Vinoth Kumar and he merely noted down the transactions in the seized material as per the details orally communicated to him by Shri. Vinoth Kumar. It is evident from the statement of Shri PV Saravanan that he did not have first-hand knowledge of the transactions that were noted down by him in the seized material and he had merely made the notings based on what has been told to him by Shri Vinoth Kumar. In the said circumstances, it cannot be considered that the statement given by him on 28.03.2019 that the notings in the seized material are in the nature of cash receipts and cash payments is based on reliable and accurate knowledge of the actual nature of the said transactions. Further, it is also noticed that Shri. PV Saravanan has nowhere mentioned in the said statement that the transactions noted by him in the seized material pertain to Shri. Sabesan, the appellant, which also goes to show that he was unaware of the complete details of the said transactions. The only reference made by Shri. P V Saravanan to the name of the appellant in the statement is with regard to the notings found at page nos. 22 to 31 of the seized note book vide ANN/DSG/PVS/B&D/S-7, which are in the handwriting of the appellant.

30. Moreover, it is noticed that Shri. P V Saravanan has retracted and changed his explanation with regard to the nature of entries in the subsequent statement recorded u/s 131 on 22.05.2019. In the said statement, Shri. P V Saravanan explained that the notings made in the



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seized material are relating to the contracts/ tender amounts awarded by various municipalities, corporations, DRDA and TWAD which have been written by him as stated by Shri. Vinoth Kumar. Shri. P V Saravanan further stated that no cash was either collected by him or by Shri. Vinoth Kumar. As regards the reasons for retraction, he stated that he was under stress and the answers given by him in the statement u/s 132(4) on 28.03.2019 were actually meant otherwise. He stated that he had a problem in his left eye for which he underwent a surgery subsequent to the search and that he could not see the word "cash collections" in the replies to various questions recorded at the time of search due to the said problem as well as due to fatigue. In view of this reason and the reasons mentioned in the preceding paragraph, the statement of Shri. P V Saravanan given on 28.03.2019 cannot be considered to be a reliable statement and consequently, no adverse inference can be drawn against the appellant based on the said statement."

26. It is noted that, consequent to the original statement of Shri P V Saravanan, the Investigating Officer had also recorded the statement from Shri Vinod Kumar on the same date, since Shri P V Saravanan had stated that, he was maintaining these pocket diaries at the behest of Shri Vinod Kumar. Having perused this original statement of Shri Vinod Kumar, it is noted that no questions were posed to him with regard to the material seized from the residence of Shri P V Saravanan and the nature of notings contained therein. The Ld. CIT(A) is noted to have observed that Shri Vinod Kumar was confronted with the relevant material for the first time only on 23.05.2019 and in his statement which was recorded u/s 131 of the Act on the said date, he had agreed with the second statement of Shri P V Saravanan dated 22.05.2019 affirming that the notings in the seized material pertained to the contracts/works awarded



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by municipalities/corporations/DRDA/TWAD and that, the said works are pertaining to the contracts completed on daily basis/pending completion/pending payments, for which the assessee does follow up of payments and other documentation to be submitted to the concerned departments. Shri Vinod Kumar is noted to have also affirmed that, he would give the information to Shri. P V Saravanan for making notings in the seized material and that such information was received by him from the assessee. He is noted to have also clarified that neither he nor Shri. P V Saravanan received cash from any persons. Having regard to the foregoing, we find merit in the Ld. CIT(A)'s findings that this statement of Shri Vinod Kumar further disproved the original statement of Shri P V Saravanan dated 28.03.2019 basis which the AO had inferred that these notings related to cash receipts. Rather, from this statement of Shri Vinod Kumar and the subsequent statement of Shri P V Saravanan dated 22.05.2019, it is seen that, the figures noted by him in the pocket diaries and loose sheets pertain to the contract amounts for the materials supplied for which the assessee was providing facilitation services.

27. It is further observed that, the assessee was also examined u/s 132(4) of the Act but no questions were put to him regarding the material seized from the residence of Shri P V Saravanan on 28.03.2019. The Ld. CIT(A) has noted that, this seized material was confronted to the



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assessee for the first time only on 24.05.2019 and upon analyzing his answers, the Ld. CIT(A) has summarized the assessee's explanation qua the notings in the seized material, which reads as follows:

"41. Further, it is noticed that though a statement u/s 132(4) of the appellant was recorded on 28.03.2019, no questions were posed to him with regard to the material seized from the residence of Shri. P V Saravanan on 28.03.2019 in the said statement. The said seized material was confronted to the appellant for the first time in the course of statement recorded u/s 131 only on 24.05.2019. In the said statement, the appellant explained that the notings made in the material seized from the residence of Shri. P V Saravanan, which were based on the information given by the appellant to Shri. Vinoth Kumar and the information in turn given by Shri. Vinoth Kumar to Shri. PV Saravanan, pertained to the supply of material by the local lorry owners and suppliers to the contractors carrying out works in various corporations/municipalities/DRDA/TWAD based on the facilitation done by the appellant. The appellant also explained that the payments received by the said suppliers were also noted in the seized material, as per the information received from his employees. He explained that the said notings are made to enable him to collect his share of profit from the local lorry owners and the suppliers. He stated that the share of profit received by him varies between 5% to 7% of the amounts received by the local lorry owners and suppliers."

28. The Ld. CIT, DR appearing before us was unable to disprove the above factual observations of the Ld. CIT(A). He was unable to show us that, either the assessee or his employee Shri Vinod Kumar had ever stated that the transactions noted in the seized material represented cash receipts and cash payments of the assessee. Accordingly, we find that there was no corroborative material by way of statements of the relevant persons which would support the AO's case that the transactions found noted in the seized material was cash receipts of the assessee. In fact,



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the only person who had stated so, i.e. Shri P V Saravanan had averred that he was only making notings based on information given by Shri Vinod Kumar and that he did not have first-hand knowledge regarding the nature of the said transactions and later on had retracted this statement as well subsequently before the Investigating Officer.

29. We also agree with the Ld. CIT(A) that the AO did not even attempt to gather any other corroborative material which would assist him in drawing proper and correct inference regarding the nature of transactions. The relevant findings of the Ld. CIT(A) taken note of by us, is as follows:

"43. It is also pertinent to observe that the AO has not gathered any other corroborative materials/ evidence in order to assist him in drawing proper and correct inference regarding the exact nature of the transactions found noted in the seized material. It is noticed that the AO did not make any enquiries with the municipal corporations/municipalities/DRDA/TWAD against whose names the relevant amounts have been found noted in the seized material in order to ascertain whether the appellant has been awarded any contracts by the said bodies/organisations and any payments have been made to him in pursuance of such contracts. Further, it is noticed that the AO has not made any attempt to make enquiries with the said bodies/organisations regarding the names of the persons who had carried out various contract works during the relevant period and thereby make enquiries with the said contractors to ascertain whether any payments were made by them to the appellant either by way of sub-contract payments or commission payments or any other nature of payments."

30. According to us, when the AO was aware that Shri P V Sarvanan had already retracted his original statement, basis which, the Revenue was inferring that the notings found in the seized material was cash



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receipts, then rather than placing reliance on such unreliable and unsafe statement, he ought to have corroborated his theory by making enquiries from the persons found named in the seized material, which admittedly he did not do. Hence, without corroborating these cryptic notings with proper tangible material, according to us, the AO could not have straightaway presumed that all these notings represented cash receipts, aggregate of which, denoted the unaccounted income of the assessee.

31. On the other hand, we find that the assessee had in fact furnished evidences both before the Investigating Officer and the Assessing Officer to corroborate his explanation that the notings related to the value of material supplied through the facilitation services rendered by him, for which he derived share of profit. The assessee is noted to have explained the meaning of 7.5% appearing in numerous slips seized from the premises of Shri P V Saravanan. He explained that, under the different schemes undertaken in various town panchayats, for which the assessee provides facilitation services, the retention money involved in various projects is 7.5%. On the AO's query as to how the notings are in rounded numbers as it is impossible for such figures to relate to the material supplied by contractors, the assessee had explained that, these were values per unit of the relevant materials, which were facilitated by him, which are generally in round numbers.



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32. The assessee is also noted to have provided the details of the contractors which were represented by him and to whom materials had been supplied, for which he had received share of profit. It is observed that the Investigating Officer had made enquiries from three contractors who had confirmed on oath that they had paid share of profit to the assessee for providing facilitation services in relation to material supplied. Likewise, the assessee had also provided a list of 102 contractors to whom materials were supplied and showed that four of these contractors had paid share of profit and deducted TDS on the same as well, which was appearing in his Form 26AS as well. Having taken note of the foregoing, we agree with the Ld. CIT(A) that, the assessee had been able to corroborate his claim that that the notings made in the seized material pertains to the value of supplies made by the local lorry owners/suppliers to the contractors and that the figures mentioned represented the payments received by them against such supplies, for which he only receives share of profit from the suppliers/contractors in respect of facilitation services rendered by him.

33. Before us, the Ld. CIT, DR had contended that, although some of the contractors had confirmed the assessee's version but, there were several suppliers who had denied having any knowledge about the assessee. It was observed by the AO that, the assessee had provided a



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list of 102 suppliers, out of which, he had made enquiries from seventeen (17) suppliers, out of which, only five (5) suppliers had admitted that they had conducted business transactions with the assessee and paid cash for his facilitation services but seven suppliers had denied having business with the assessee. It is noted that, these names provided by the assessee were not of the suppliers but of the contractors and therefore the fundamental premise of the AO is found to be erroneous. The Ld. AR showed us that, the materials / supplies were arranged from locals to the contractors, which was facilitated by the assessee and that it was the contractors who shared profit as a percentage of the material supplied to it. It is noted that, three (3) contractors had confirmed on oath, before the DDIT (Inv.), that the assessee was providing them facilitation services for which they were paying profits and five (5) of the contractors had confirmed the same before the AO as well. Only because, some of the contractors did not confirm having transactions with the assessee cannot be said to be sufficient reason to disprove the assessee's explanation, particularly when, other contractors had confirmed the same. The Ld. AR for the assessee pointed out that, these contractors had paid the assessee's share of profit in cash and therefore understandably, some of them may not have admitted to this fact due to fear of consequential tax proceedings against them. He also pointed out that, the Revenue was unable to bring on record any other positive evidence to disprove the



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assessee's explanation. We find merit in the Ld. AR's contention that, if the assessee's explanation was not acceptable to the Revenue, then the onus was on the Revenue to bring on record some positive material as to the source or business activity from which the assessee was receiving these so-called cash receipts. As noted above, there were names of persons, municipalities, corporations and locations mentioned in the seized material. If it was the Revenue's case that the figures noted against them represented cash receipts, then it was for the Revenue to show as to why and how were these persons, municipalities, corporations, paying such cash receipts to the assessee and for what. No person would pay such huge sums to any individual without any reason or purpose. We therefore find ourselves in agreement with the assessee that the case made out by the AO was far-fetched and on conjectures.

34. We now come to the material which was seized from the premises of the assessee, viz., ANN/KR/NS/B&D/S2, S4 & S5 which according to the AO, correlated with the notings found in the pocket diaries seized from the premises of Shri P V Saravanan and corroborated the AO's case that the seized material represented the cash day book of the assessee. Having perused the notepads seized from the residence of the assessee, it is noted that, the words 'delivery', 'boxes' and 'collection' are mentioned against some of the figures. There is no mention of any 'cash' or 'Rs.'



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against any of these figures. Hence, one cannot prudently infer these notings to represent cash receipts. The assessee is noted to have explained that these notings were in relation to the electrical materials collected and delivered in the course of his business and that, the names Baskar / Ving / Vinayakar mentioned against some notings referred to his driver, Shri Baskar who would collect and deliver these electrical materials. The AO however is noted to have disagreed with this explanation. According to AO, Mr. Baskar had admitted to receiving cash and taking it to a location 'Lakshmi Flats' and therefore, his inference was that the notings made in the Havells notepads also represented cash receipts. We however are unable to convince ourselves with this reasoning of the AO. Reading of the statement recorded from Shri Baskar shows that he was the driver of the assessee. He only admitted to collecting cash on behalf of the assessee and did not offer any explanation regarding the notings in the notepads as the same was maintained by the assessee and it was not within his knowledge. Hence, only because the driver was involved in collecting cash, the AO's assumption that the notings in the notepads denotes cash receipts, cannot be countenanced. It is not in dispute that these notepads were found from the possession of the assessee and were maintained in his handwriting and therefore, we agree with the Ld. AR that, it would only be within assessee's exclusive knowledge as to the nature of these notings. Hence, the statement of Mr.



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Baskar cannot be said to be of relevance to render context of these notings. The assessee is noted to have been examined qua these notings by the DDIT (Inv.) wherein he had categorically averred that, these related to collection and delivery of electrical items. The assessee is also noted to have explained that, his driver was collecting these electrical items noted in his notepads and also collecting cash, which was represented by his share of profit qua the notings found in the material seized from Shri P V Saravanan. According to the Ld. AR, the AO took the statement of Mr. Baskar out of context and had drawn incorrect inferences based solely on assumptions. Having considered the foregoing, we agree with the Ld. AR of the assessee that, the notings found in the material which was seized from the premises of the assessee cannot be said to represent 'cash receipts'.

35. The Ld. CIT, DR has further relied upon the co-relation exercise of the AO in respect of select few entries found in the pocket diaries seized from the premises of Shri P V Sarvanan with the notepads found in the premises of the assessee, and has argued that the notings found in the notepads were 'cash receipts'. We find that the assessee had pointed out the following factual inconsistencies in this exercise, which was noted by the Ld. CIT(A) in his order, as follows: -



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"17. As regards the observations made by the AO at page No.23 of the assessment order in respect of matching of some entries in the loose sheets seized from Shri. P. V Saravanan vide ANN/DSG/PVS/LS/S-2 and the Havell notepad seized from the appellant vide ANN/KR/NS/B&D/S-5 for drawing the inference that the said entries shown as 'deduction' in ANN/DSG/PVS/LS/S-2 are in the nature of cash payments only, the appellant pointed out that the observations of the AO are not factually correct. He stated that names are mentioned against the relevant amounts in the seized material ANN/DSG/PVS/LS/S-2, whereas no names are mentioned in the relevant entries of the seized material ANN/KR/NS/B&D/S-5. He stated that the AO has selectively taken only those figures which are matching for a particular date and assumed that they represent cash delivered. He pointed out that while there are two entries of 500.00 and 30.00 on 26.12.2018 at page No. 11 of ANN/KR/NS/B&D/S-5, only one entry of 500.00 is reflected at page No.67 of the seized material ANN/DSG/PVS/LS/S-2. Similarly, while there are two entries of 1500.00 and 130.84 on 27.12.2018 at page No. 11 of ANN/KR/NS/B&D/S-5, only one entry of 1500.00 is reflected at page No.67 of the seized material ANN/DSG/PVS/L.S/S-2. In the same manner, while there are two entries of 500.00 and 225.70 on 04.01.2019 at page No.13 of ANN/KR/NS/B&D/S-5, only one entry of 500.00 is reflected at page No.68 of the seized material ANN/DSG/PVS/LS/S-2. He also pointed out that the entries for the date 07.01.2019 are completely different in the two sets of seized material. He stated that it only shows that the AO has conveniently ignored the entries which are not matching on the same date and the dates on which the entries are not at all matching with each other.

18. With regard to similar observations made by the AO at page No.24 of the assessment order by comparing two entries found at page No.68 of the seized material ANN/DSG/PVS/LS/S-2 and the entries found in the pages of the seized material ANN/KR/NS/B&D/S-2 bearing the date 04.01.2019 and 08.01.2019, the appellant stated that the AO has wrongly co-related the said entries in order to conclude that the same represent delivery of boxes containing cash. The appellant stated that if the entire contents of the page bearing the date 04.01.2019 in the seized material ANN/KR/NS/B&D/S-2 are taken into account, it can be seen that it is clearly mentioned therein regarding counting of 3 cases of ballasts and 2 cases of lamps and Basker taking the said 5 boxes for delivery. In the case of page bearing the date 08.01.2019 in the seized material ANN/KR/NS/B&D/S-2, it can be seen that it mentions that Basker has taken 2 books whereas the AO has wrongly mentioned the same as 2 boxes being taken by Basker. The appellant also pointed out that Basker had not at all mentioned in his statement recorded during the search that he delivers cash. The appellant therefore contended that



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the analysis of some entries in the seized material made by the AO at page No.23 and 24 of the assessment order to draw the inference that the entries shown under 'deduction' in the seized material are cash payments made by the appellant is not justified."

36. It is noted that, the Ld. CIT(A) has examined the same and found the observations made by the AO, in the correlation exercise, to be unsustainable. The relevant findings of the Ld. CIT(A) taken note of by us is as follows:-

"28. Though the AO made an attempt to co-relate the entries found in the material seized from the residence of Shri. P.V. Saravanan with the entries found in the material seized from the residence of the appellant in the discussion made at page Nos 23 and 24 of the assessment order and draw the inference that the entries in the seized material represent cash receipts and cash disbursements of the appellant, it is seen on careful examination of the relevant entries in the seized material and the rebuttal furnished by the appellant with regard to the discussion made in the assessment order that the analysis made by the AO is not convincing and justified. In the discussion made at page No.23 of the assessment order, the AO has selectively taken very few entries where there is matching of the amount and date for drawing his conclusions, though there are large number of other entries on various other dates in the seized material where there is no such matching at all. Even in respect of the said few entries where the AO has observed matching of date and amount, it is noticed that the other details/description found in the seized material against the said entries are not matching. No valid inference can be drawn based on such selective and incomplete matching of the entries Further, in the discussion made at page No.24 of the assessment order, the AO has taken only one sentence into consideration and quoted it out of context in respect of the contents of page bearing the date 04.01.2019 in the seized material ANN/KR/NS/B&D/S-2. Though the full contents of the said page clearly show that the 5 boxes taken for delivery by Basker pertain to the electrical items as referred to in the preceding sentences mentioned therein, the AO has made an erroneous analysis by ignoring the same and by wrongly interpreting it as delivery of boxes containing cash. The AO also made an erroneous observation with regard to the contents of the page bearing the date 08.01.2019 that Bhasker has taken delivery of 2 boxes, whereas the seized material clearly shows that Basker has taken 2 books and not 2 boxes. Hence, it is held that the discussion



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made at page No.23 and 24 of the assessment order is factually erroneous and the conclusion reached by the AO based on the said analysis that the entries in the seized material represent cash receipts and cash payments of the appellant is clearly unsustainable.

The above findings could not be controverted by the Ld. CIT, DR and therefore does not warrant any interference.

37. Moreover, the addition on account of unexplained cash receipts for the year of search alone is in excess of Rs.400 crores and if that be so, then some unaccounted assets or unaccounted investments relating to the said receipts would have been found or unearthed by the Investigating authorities in the course of search. It was brought to our notice that, search did not result in unearthing of any corroborative cash, jewellery, bullion or any other valuable article or undisclosed investment. Also, as discussed above, the Revenue has also not been able to explain as to from which source did the assessee derive such huge receipts. We thus find merit in the Ld. CIT(A)'s findings that, in the absence of unearthing of any evidence during the search regarding the earning of such huge quantum of undisclosed income by way of any undisclosed assets/investments/expenditure, the case of the Revenue stands on a very weak footing.

38. For the above reasons, we uphold the Ld. CIT(A)'s order holding that, there is no reliable evidence/material brought on record by the



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Revenue to show that the noting's in the seized material represent the unaccounted cash receipts and cash payments of the assessee. Rather, we note that, the assessee and his key persons during the post search enquiries has brought on record material, explanation and evidences etc., in support of his claim that the noting's in the seized material represent value of material supplied by the suppliers in the course of facilitation done by him which resulted in earning of share of profit. We further countenance the following findings of the Ld. CIT(A) estimating the share of profit of the assessee in relation to these noting's found in the seized material at 6% of the value of the material supplied through the facilitation services of the assessee.

"47. The amount of Rs.2.73,97,000/- and Rs. 421,08.82,000/- quantified by the AO as unaccounted income for AYs 2018-19 & 2019-20 respectively by considering the entries in the seized material as unaccounted cash receipts is therefore required to be correctly inferred as the value of the material supplied through the facilitation services rendered by the appellant. In respect of such value of the material supplied, the appellant stated that he has received share of profit ranging between 5 to 7% of the value of the material supplied, after receipt of the payment by the contractors/suppliers in respect of such supplies. The share of profit of the appellant constitutes the income of the appellant from the said activity of facilitation services rendered by him. Having regard to the statement of the appellant during the post search enquiries that he earned share of profit varying between 5 to 7% for his services, it is considered that the share of profit can be reasonably adopted at 6% of the value of the material supplied through the facilitation services of the appellant, net off all expenses incurred for providing such services. Accordingly, the share of profit of the appellant is worked out at Rs. 16,43,820/- for AY 18-19 and Rs. 25,26,52,920/- for AY 2019-20. On perusal of the returns of income filed by the appellant for the said assessment years, it is noticed that the appellant did not disclose any income by way of share of profit for AY 2018-19.



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However, the appellant declared income of Rs. 15,13,92,900/- by way of share of profit under the head "Income from other sources" in the return of income filed for AY 2019-20. Having regard to the same, the AO is directed to adopt the unaccounted income of the appellant at Rs. 16,43,820/- for AY 18-19 instead of Rs. 2,73,97,000/- worked out in the assessment order. With regard to AY 2019-20, the AO is directed to adopt the unaccounted income of the appellant at Rs. 10,12,60,020/- [difference between Rs. 25,26,52,920 and Rs. 15,13,92,900/-] instead of Rs. 421,08,82,000/- worked out in the assessment order."

39. For the above reasons, we see no reason to interfere with the findings of the Ld. CIT(A).Accordingly, Ground No. 2 of the Revenue's appeals and the cross objections No. 2 of the assessee stands dismissed.

40. Ground No. 3 of the Revenue's appeal and Ground No. 3 of assessee's cross objections for AY 2019-20 relates to the addition of Rs.15,14,57,100/- made u/s 69A of the Act. The facts as noted are that, cash aggregating to Rs.15,14,57,100/- was seized from different premises of the assessee and his key persons. The AO in the course of assessment required the assessee to explain the source of this cash found in the course of search. In response, the assessee is noted to have claimed that, he had already quantified and offered the share of profit of Rs.15,13,92,900/- received by him from the activity of providing facilitation services, as found noted in the material seized in the course of search. According to the assessee, the cash found in the course of search stood explained by this share of profit offered in the return of income and therefore he urged that, no separate addition be made u/s 69A of the Act.



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The AO however did not agree with this explanation of the assessee holding it to be an after-thought. He thus added the impugned sum as unexplained money of the assessee u/s 69A of the Act. On appeal, the Ld. CIT(A) is noted to have applied the principle of telescoping and allowed the benefit of set-off of the income of Rs.15,13,92,900/- already offered to tax by the assessee in the return of income against equivalent sum of the unexplained cash found in the course of search and confirmed balance addition u/s 69A of the Act to the extent of Rs.64,200/- [Rs.15,14,57,100 (-) Rs.15,13,92,900]. Being aggrieved by the action of the Ld. CIT(A), the Revenue is in appeal before us and the assessee has filed cross objections against the addition confirmed by him.

41. Heard both the parties. Before adverting to the facts of the case, we first take note of the principle of telescoping which has since been judicially approved by the Hon'ble Supreme Court in the case of **AnantharamVeerasinghaiah& Co. Vs CIT (123 ITR 457)**. In the decided case, it was held that where the assessee offers any income on ad hoc basis, then such income is commonly described as intangible addition; but it is very much a part of assessee's real income as disclosed in his account books and has the same concrete existence. The Hon'ble Court held that the secret profits or undisclosed income of an assessee earned in the same or an earlier assessment year may constitute a secret



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fund, even though concealed, from which the assessee may draw subsequently for meeting expenditure or introducing amounts in his account books. The intangible additions were held to be available to the assessee as the regular book profits could be. The Apex Court thus held that, when the unexplained cash deficits and the cash credits can be reasonably attributed to a pre-existing fund of concealed profits or by reference to concealed income earned in that very year then no addition is warranted on account of such cash deficits or cash credits.

42. Gainful reference in this regard may be made to the decision of the jurisdictional Hon'ble Madras High Court in the case of **S K. Muralidhar Vs CIT (51 ITR 757)**. In the decided case, the AO had initially made an addition by way of inflation of purchases in the hands of the assessee across AYs 1947-48 to 1950-51. Thereafter, the AO came in possession of information that the assessee had lent certain amounts in mortgage in the name of his brother and also made investment in name of his wife and daughter in an entity 'S', for which separate additions were made in AYs 1949-50 & 1950-51. On appeal, the AAC is noted to have held that there was no justification in making the subsequent addition as it stood justified out of the addition made on account of inflated purchases in AYs 1947-48 to 1950-51. On further appeal, the Tribunal upheld the action of AO. On appeal by the assessee, the Hon'ble High Court is noted to have



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elaborately discussed the theory of telescoping of income against investment / expenditure and allowed the assessee's claim by holding as under:-

"The question in issue is quite simple and yet the Tribunal misdirected itself and went wrong. It is a hard fact that for the two years 1947-48 and 1948-49 a total addition of Rs. 52,230 was made by the department in computing the assessable income. This was, therefore, treated as the real income of the assessee for the years in question. There was nothing notional or fictional about it. However convenient it might be to describe the addition as "intangible" as has been done by the department and the Tribunal, the fact is that it was found to have accrued to the assessee and was not merely supposed to have been earned by him. Once the addition is made the department is fixed to the position that the assessee earned the amount in the relevant year. There can be no relaxation from that position and we have no doubt that the department cannot deviate from or wriggle out of it without departing from ordinary standards of justice and fairplay. If in such a case the assessee points to that addition as the source from which he got a particular amount which he is called upon to explain, the department is bound to accept it as exceedingly likely and probable, consistent with its previous act in treating the addition as income, unless it be that it is possible to say that the source was not available to the assessee. The onus of proving this would be on the department. Otherwise, it would amount to the department saying, "heads I win, tails you lose".

The decision of the Andhra High Court in Lagadapati Subba Ramaiah v. Commissioner of Income-tax [1956] 30 ITR 593 is a case in point. In that case the assessee was a shareholder of a private limited company styled the Nellore Bus Transport Co. Ltd. According to the books of the company its profits for its entire period of existence, that is to say, for the years of account ending with 31st December, 1946, 31st December, 1947, 31st December, 1948, nth May, 1949, amounted in all to Rs. 34,352. The revenue declined to accept the books of the company and estimated its income at a higher sum on which tax to the tune of Rs. 62,000 was assessed and paid. The company purported to issue the dividend warrants to its shareholders aggregating to a sum of Rs. 1,16,280. The assessee stated that he got the dividends of Rs. 6,800 and Rs. 4,800 for the account years ending with 31st December, 1946, and 31st December, 1947, respectively, the dividends having been declared by the company on 2nd March, 1949. The assessee, however, claimed a refund on the basis of only one dividend warrant dated June



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9, 1949, for Rs. 6,800. The department as well as the Tribunal rejected the claim of the assessee. The view taken was that after the payment of income- tax of Rs. 62,000 levied on the company there were no funds available with it out of which, dividends could have been declared and paid. The question before the High Court was whether the assessee was not entitled to a refund of tax in respect of the dividends in question. In dealing with the matter, Viswanatha Sastri J. observes thus at page 599:

"In the present case, it is somewhat difficult to say that there were no profits of the company out of which a dividend could have been paid. When the revenue authority levied a tax of Rs. 62,000 on the company, it proceeded on the basis that the books of the company which showed a total income of only Rs. 34,532 for all the four years of its existence were unreliable and that the bulk of the company's profits had been kept outside its books. Now those secret profits less the income-tax paid, therefore, would be available with the company for distribution as dividends. Once the secret profits had been assessed to tax, it would have been open to the company to bring those profits into the books and distribute them, or what remained after payment of tax, as dividends.... Having assessed the company on a large sum as its undisclosed income, it cannot, at the same breath, say that these profits did not in fact exist because they did not appear from the company's books and could not, therefore, have been available for the payment of dividends. Among common men, such an attitude would be regarded as blowing hot and cold or playing fast and loose."

The order of the Tribunal shows that it has missed the real point for decision. The only question that the Tribunal had to decide was whether the assessee could have derived the amount of Rs. 52,230 from the prior years which according to the department the assessee did earn. The Tribunal does not say, nor would the materials on record enable it to say, that the sum was not available to the assessee either to advance the mortgage loan in the name of Murugesu Mudaliar or for the other advances. If there had been any evidence to show that the assessee devoted that amount for other purposes it may well be that the mortgage loan and other advances were made from an unexplained or undisclosed source. But that is not so in the present case. The Tribunal's conception of "intangible additions" is somewhat queer and we confess our inability to appreciate it. The Tribunal observes in its order : "Intangible additions, as the name itself suggests, are purely matters of estimate which may err on the wrong side for the department. For want of proper evidence, additions on account of deficiency of gross profit or



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other defects may be made but this would not mean putting in possession of the assessee their equivalent in hard cash available for expenditure or investment. It may be said that having suffered a harsh assessment in a particular year, the assessee's case should be considered sympathetically in the subsequent year when an investment of the nature we are discussing is brought to light." Additions are no doubt made very often on estimate basis. But it can never be said, or at any rate the department cannot contend, that the amount of the addition is not the real income but something which the assessee may not have earned. It is wholly illogical for the department to contend that the addition was only for purposes of taxation and that it should never be taken as true income of the assessee. We must point out that the Tribunal is wrong in thinking that an assessee suffers a "harsh assessment" when his income is computed by making additions. Such an assessment is perfectly within the four corners of the Act and there is no reason to suppose that it is in any way inequitable or unjust. We are also unable to understand the real scope of a sympathetic treatment of the assessee in the matter of assessment to tax. The assessee is either liable to tax or not, and if he is really liable to tax he cannot get rid of it by pleading equity or by invoking the sympathy of the assessing authority. The faulty reasoning of the Tribunal was certainly not conducive to a correct conclusion in the matter. In our opinion, there are no materials for the addition of Rs. 40,000 and Rs. 12,230 in respect of the two assessment years 1949-50 and 1950-51 respectively, and that the order of the Tribunal cannot be sustained."

43. The above view is noted to have been reiterated by Hon'ble jurisdictional Madras High Court in the case of **CIT v. K. S. M Guruswamy Nadar and Sons, [1984] 149 ITR 127**. In the decided case also, it was held that when there are two separate additions viz., one on account of suppression of profit and another on account of cash credit, then it is open to the assessee to explain that, the suppressed profits had been brought in as cash credits and has to be telescoped into the other.

44. Gainful reference may also be made to the decision of the Hon'ble Bombay High Court in the case of **CIT vs J.J. Gandhi (39 CTR 127)**. In



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this judgment also, the Hon'ble High Court had approved the theory of telescoping and held that it could be applied in cases where additions in relation of unexplained money/investment are sought to be made in the hands of the assessee. The Hon'ble Court explained that if an addition towards undisclosed income was made and the AO also seeks to make certain addition in relation to unexplained investment then, it can be treated by the assessee that the unexplained investment is sourced out of the undisclosed income already taxed.

45. The principle which emerges from the above is that, the same income should not be taxed twice i.e. once at the time of generation and thereafter at the time of application for making investment or any undisclosed asset. Having regard to this settled legal position, we now come back to the facts of the case. It is noted by us that, in the course of search conducted upon the assessee, several diaries and loose sheets were found, which as held above, contained notings regarding the material supplies facilitated by him, for which he had derived share of profit from the contractors. These notings were admitted by the assessee and he is noted to have offered income of Rs.15,13,92,900/- derived from facilitation business earned outside the books of accounts in the return of income filed for AY 2019-20 and the same was reflected in the balance sheet as '*amount lying with revenue authorities*'. Apart from the



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foregoing, we have also confirmed the Ld. CIT(A)'s action of assessing additional income of Rs.10,29,03,840/- [Rs.16,43,820 + Rs.10,12,60,020] in relation to these notings across AYs 2018-19 & 2019-20, which is also in the nature of '*intangible addition*'. On these facts, we note that, the income of Rs.15,13,92,900/- offered to tax by assessee and the further addition of Rs.10,29,03,840/- upheld by us, represented an intangible addition or to say secret profit available with the assessee, which applying the judicially approved principle of telescoping, was legally available for being set off against any unexplained money/investment found by the Revenue.

46. The assessee is noted to have claimed that the above income of Rs.25,42,96,740/- [Rs.15,13,92,900 + Rs.10,29,03,840] assessed to tax, is available to be set-off and telescoped against this cash found in the course of search. The case of the Revenue however is that, the cash found was from some other source which was not explained by the assessee, ignoring the undisclosed income offered by the assessee to tax. Having regard to the position of law in light of the facts discussed in the foregoing, we are however unable to agree with this contention of the Revenue. According to us, the additional income of Rs.25,42,96,740/- assessed to tax by way of income derived from facilitation services was available to be set off against the unexplained money of



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Rs.15,14,57,100/- found in the course of search. Hence, on principle, we agree with the Ld. CIT(A)'s action of allowing the telescoping benefit and set-off of the amount of undisclosed income against the unexplained money. Having regard to the judicially approved principle of telescoping, according to us, since the aggregate additional income assessed to tax in AYs 2018-19 & 2019-20 was sufficient to cover the unexplained cash found in search, no separate addition was further warranted u/s 69A of the Act. Accordingly, the entire addition of Rs.15,14,57,100/- made u/s 69A of the Act is directed to be deleted. Hence, Ground No. 3 of the Revenue's appeal stands dismissed and the cross objection no.3 of the assessee stands allowed.

47. In the result, both the appeals of the Revenue for AY 2018-19 & 2019-20 stands dismissed. Further, the cross objections of the assessee for AY 2018-19 is dismissed and the cross objections for AY 2019-20 is partly allowed.

Order pronounced on the 11th day of December, 2024, in Chennai.

Sd/-
(मनोजकुमारअग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखासदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबीटी. वर्की)
(ABY T. VARKEY)
न्यायिकसदस्य/**JUDICIAL MEMBER**



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चेन्नई/Chennai,
दिनांक/Dated: 11th December, 2024.
TLN, Sr.PS

आदेशकीप्रतिलिपिअग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF