

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

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
माननीय श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
HON'BLE SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1155 & 1156/CHNY/2024

निर्धारण वर्ष/Assessment Year:2018-2019

M/s. Cholan Auto Finance,
43, Padma Tower, 3rd floor,
Covai Road,
Karur 639 002.

Vs. The Deputy Commissioner
of Income Tax,
Central Circle 2,
Trichy.

आयकर अपील सं./ITA Nos.1191 & 1192/CHNY/2024

निर्धारण वर्ष/Assessment Year:2018-2019

The Assistant Commissioner of
Income Tax,
Central Circle 2,
Trichy.

Vs M/s. Cholan Auto Finance,
43, Padma Tower, 3rd floor,
Covai Road,
Karur 639 002.

[PAN : AAGFC 1043B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by

: Shri N.V.Balaji, Advocate

Department by

: Shri. R. Clement Ramesh Kumar,
IRS, CIT.

सुनवाई की तारीख/Date of Hearing

: 23.10.2024

घोषणा की तारीख/Date of Pronouncement

: 13.12.2024

आदेश /ORDER

PER BENCH:

These cross appeals are arising out of the orders of the
Commissioner of Income tax (Appeals) – 19, Chennai [hereinafter

referred to as the "CIT(A)"] in DIN and Order No: ITBA/APL/S/250/2023-24/1061601766)(1) and DIN and Order No: ITBA/APL/S/250/2023-24/1061609001(1) both dated 29.02.2024. The assessment was framed by the DCIT, Central Circle -2, Trichy (hereinafter referred to as "AO") for the assessment year 2018-19 u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the "Act"), vide order dated 28.12.2019. The order of assessment was subsequently rectified u/s. 154 vide order dated 25.08.2021.

2. The facts necessary to adjudicate the issues raised in appeal are as under:

A person namely Mr.K.Murugesan invited few people at Karur to form a group of finance firms to carry on the business of financing/money lending. The Group consisted of 77 firms, formed in Oct 2008, with an initial capital of Rs.90.09 lakhs. The assessee and all other 76 firms filed their returns regularly. A search operation u/s. 132 was carried out on 11.11.2010 in the premises of the assessee group. The loan liability on the date of search was Rs.29,32,89,250/-. Out of the above, the assessee and its group voluntarily offered a sum of Rs.3,61,35,890/- as their income for the F.Y.2008-09, 2009-10 and 2010-11 and filed revised returns for all 77 firms. In the course of assessment, post search additional sum of Rs.2,76,44,321/- was considered as income of the assessee group

and assessment orders were passed in the hands of all 77 firms on 30.03.2013.

3. Another search operation u/s.132 was carried out in the assessee's premises from 10.08.2017 to 13.08.2017 and in the course of search, a bunch of loose sheets depicting financial position of the group as at 30.06.2017 was found and seized. During the course of search, it was claimed by few partners and accountant of the group of the firms Mr.Sakthivel, in their sworn statements that the seized document was prepared on the instruction of Mr.K.Murugesan after incorporating the interest accrued (as if fully recoverable) on all the loans given.

4. Based on the loose sheet seized, the AO completed the assessment u/s.143(3) of the Act on 28.12.2019 making the following additions:

Particulars	Section	Addition (Rs.)	Nature of addition
Loans extinguished – Part 1 of the loose sheet	69C	2,91,92,500	Substantive
Unaccounted deposits – Part 2 of the loose sheet	69	22,22,50,000	Protective
Business Profit – Part 4 of the loose sheet	28	10,14,12,246	Substantive
Unaccounted Cash (seized)	69A	84,18,700	Substantive
Total additions		36,12,73,446	

The additions made protectively for Rs.22,22,50,000/- in the hands of assessee (supra) was simultaneously added in the hands of the

partners of the firm, the assessments were framed by making substantive additions towards their contributions in the firm.

As the amount of Rs.11,10,00,000/- mentioned in Part 3 of the loose sheet, pertaining to partner's profit was omitted to be added to the total income and hence, the AO invoked the provisions of section 154 of the Act and passed an order under u/s.154 of the Act on 25.08.2021 adding the said sum, in the hands of the assessee protectively.

5. Against the order of assessment passed u/s.143(3) of the Act, the assessee preferred an appeal before the Id.CIT(A) challenging all the additions.

6. With reference to the protective addition of Rs.22,22,50,000/- being contribution of the partners, the main contention of the assessee before the Id.CIT(A) was that the amount was not contributed during the year under appeal. It was only opening balance. The assessee relied on the contents of seized material to support its contention. In the seized material, the amount payable to each partner, the amount of interest shown as arrears and number of months for which the interest was in arrears as at 30.06.2017 was shown. As the number of months as on 30.06.2017 was more than three months, it was assessee's contention that the amount was opening balance as at 01.04.2017 and therefore the same could

not be taxed as income of the year under appeal. The Id.CIT(A), first converted the protective addition as substantive addition in the hands of the assessee and thereafter, by accepting the contention of the assessee, held that the amount in question was only opening balance and consequently, directed the AO to delete the addition.

With reference to the addition of Rs.2,91,92,500/- made u/s.69C, being loan extinguished, the main contention of the assessee before the Id.CIT(A) was that the addition was made on presumptive basis without any evidence found in the course of search that the said amount was actually incurred / paid. On perusal of the submission and by accepting the contention of the assessee, the Id.CIT(A) allowed this claim in favour of the assessee.

7. As regards to the cash seized of Rs.84,18,700/-, the assessee contended that the managing partner Mr.K.Murugesan, in the statement recorded post search, stated that the aggregated cash balance available in all the 77 firms was Rs.30,44,307/- and owned up the balance of Rs.53,74,393/- as his unaccounted income. Relying on the sworn statement of Mr.K.Murugesan, recorded at the time of search and the trial balance of the group of the firms seized as on the date of search, depicting the availability of cash, the Id.CIT(A) directed to delete the addition made by the AO in the hands of the assessee.

8. In respect of the addition of Rs.10,14,12,246/- being business profits, the contention of the assessee was that the said amount was not actually earned or accrued but was only hypothetical or notional in nature. The amount was quantified after including interest on all the loans lent as if they were fully recoverable. Further, the seized material itself clearly indicates that cases were pending in the courts for recovery of loans to the tune of Rs.21,02,55,734/-. Further, the assessee contended before the Id.CIT(A) that there was no other corroborative evidence to establish that the assessee had actually earned such income, except the notings in the loose sheet. Further, the assessee contended that the income belonged to 77 firms and hence cannot be taxed in the hands of the assessee and if at all it is taxed only to the extent of its share of income. The Id.CIT(A) noted the fact that the seized material itself clearly depict the fact that there were cases pending before the courts and therefore, the interest income of Rs.14,19,89,427/- worked out on those disputed loans did not really accrue to the assessee. Having stated so, the Id.CIT(A) directed the AO to delete the addition of Rs.3,09,89,427/- only and reserved the balance sum Rs.11,10,00,000/- to deal with the addition made in the order passed u/s.154 by the AO. The Id.CIT(A), did not accept the contention of the assessee that the income attributable to the assessee alone has to be added and not

the entire income of all 77 firms and upheld the action of the AO in making addition of the entire income in the hands of the assessee for the reasons that the borrowers did not know from which concern, out of the 77 firms, they were borrowing.

9. Against the rectification order passed u/s.154 of the Act, the assessee preferred an appeal before the Id.CIT(A) challenging the protective addition of Rs.11,10,00,000/- mainly on the ground that the income worked out was hypothetical. The assessee also raised two legal grounds, i.e. as the issue being debatable, the addition could not be made in a rectification proceeding u/s.154 and the order is void ab initio for the reasons that when the AO has made protective addition in the hands of the assessee, there were no substantive additions in the hands of the partners. The Id.CIT(A), as observed in his order against the order of the AO u/s.143(3), held that the amount of Rs.11,10,00,000/- was not real income to the assessee and therefore directed the AO to delete the same. However, the Id.CIT(A) held that the order passed u/s.154 of the Act was valid as the issue was not debatable.

10. Aggrieved by both the orders of the Id.CIT(A), both the Revenue and the Assessee are in cross appeal before us.

11. The Revenue challenged the relief granted by the Id.CIT(A) in favour of the assessee in the appeal filed by the assessee against

the order passed u/s 143(3) of the Act bearing ITA No.1192/CHNY/2024. However, the Revenue did not challenge that portion of the order of the Id.CIT(A) directing to delete the addition of Rs.84,18,700/- being cash seized and thus, it attained finality.

12. The Grounds raised by the Revenue in ITA No.1192/Chny/2024 are as under:

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

2 The Ld.CIT(A) erred in deleting the protective addition Rs.22,50,00,000/- towards unaccounted deposits of partners made on the basis of incriminating material vide loose sheet titled as "CAF balance sheet- 30.06.2017", contents of which were confirmed by Shri. K.Sakthivel, accountant of assessee firm and Shri.A.Vijayan, Manager cum partner.

2.1. The Ld.CIT(A) erred in accepting the assessee's submission that the movement of available funds from FY 2009-10 viz., initial contribution of partners, amount of deposit treated as income consequent to first search, deposit accepted in earlier years resulted into availability of balance of Rs.22,45,47,917/-. The Ld.CIT(A) failed to appreciate that the assessee had not furnished such explanation during the course of assessment proceedings.

2.2 The Ld.CIT(A) relied on the reconciliation of movement of deposits and partner's capital account in all firms from the financial year 2009-10 furnished by the assessee. The Ld.CIT(A) erred in not providing opportunity to the assessing officer under Rule 46A to verify the reconciliation furnished by the assessee during the appellate proceedings.

3. The CIT(A) erred in restricting the addition to the extent of Rs.7,04,22,819/- as against the addition of Rs.21,24,12,246/-, being substantive addition towards profit not shared among partners to the tune of Rs.10,14,12,246/- and protective addition towards profit shared among partners to the tune of Rs.11,10,00,000/- as mentioned in the seized document titled ""CAF balance sheet-30.06.2017".

3.1 The Ld.CIT(A) erred in giving credit for Rs.14,19,89,427/- interest portion receivable reflected in the seized loose sheets as requested by the assessee firm in its alternative submission and sustaining only a sum of Rs.7,04,22,819/- as interest income, without appreciating that the assessee is following mercantile system of accounting and the interest receivable mentioned in the seized documents is also considered to be income of the assessee.

4. The Ld.CIT(A) erred in deleting the addition of Rs.2,91,92,500/- towards expenses payable mentioned in the loose sheet holding that the Assessing officer has invoked the provisions of Sec.69C without proving that the assessee had actually incurred such expenditure.

4.1 The Ld.CIT(A) failed to appreciate that the source for corresponding credit in the balance sheet found in the loose sheet to such extent remains unexplained which falls within the ambit of Sec.68 of the Act.

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

13. The assessee challenged the addition sustained by the Id.CIT(A) in the appeal filed by the assessee against the order passed u/s.143(3) of the Act in the appeal bearing ITA No.1155/CHNY/2024. The Grounds raised by the assessee in its appeal are as under:

1. *The order of the Hon'ble Commissioner of Income-tax (Appeals) is opposed to law and contrary to the facts of the case and against equity and principles of natural justice.*
2. *Re: Taxing other persons' income in the hands of the appellant*
 - 2.1 *The Hon. CIT (Appeals) erred in bringing to tax the profit amount of Rs.7.04 crores pertaining to 77 firms in the hands of the appellant*
 - 2.2 *The Hon. CIT (Appeals) ought to have held that as the appellant is part of a group of firms comprised of 77 finance firms, the income attributable to the appellant alone has to be taxed in the hands of the appellant.*
 - 2.3 *The Hon. CIT (Appeals) ought not to have upheld the action of the learned Assessing Officer in assessing the entire business income of the appellant group in the hands of the appellant especially when, post first search operations, the income was assessed in the hands of all 77 firms individually.*
 - 2.4 *The Hon. CIT (Appeals) ought to have followed judicial precedents in this regard, holding that income can be taxed in the hands of the right person and the right person alone.*

In view of the above grounds and such other additional grounds as may be adduced at time of hearing, it is prayed before the Hon'ble Income Tax Appellate Tribunal;

- i) to direct the learned assessing officer to restrict the addition to the extent of income attributable to the appellant, and*
- ii) to pass such other consequential orders as the Hon'ble Income tax Appellate Tribunal may deem fit and just.*

14. Further, the Revenue challenged the relief granted by the Id.CIT(A) in the appeal filed by the assessee against the order passed u/s.154 of the Act in its appeal bearing ITA No.1191/CHNY/2024. The Grounds raised by the Revenue in ITA No.1191/Chny/2024 are as under:

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

2 The CIT(A) erred in restricting the addition to the extent of Rs.7,04,22,819/- as against the addition of Rs.21,24,12,246/-, being substantive addition towards profit not shared among partners to the tune of Rs. 10,14,12,246/- and protective addition towards profit shared among partners to the tune of Rs.11,10,00,000/- as mentioned in the seized document titled ""CAF balance sheet-30.06.2017.

2.1 The Ld.CIT(A) erred in giving credit for Rs.14,19,89,427/- interest portion receivable reflected in the seized loose sheets as requested by the assessee firm in its alternative submission and sustaining only a sum of Rs.7,04,22,819/- as interest income, without appreciating that the assessee is following mercantile system of accounting and the interest receivable mentioned in the seized documents is also considered to be income of the assessee.

2.2 The Ld.CIT(A) failed to appreciate that the interest amount of Rs.10,14,12,246/- and Rs.11,10,00,000/- appeared on the credit side of the balance sheet found in the loose sheet titled "CAF Balance sheet-30.06.2017 and the assessee's claim that interest receivable to the extent of Rs.14,19,89,427/- was not the real income earned is not based on any evidence.

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

15. The assessee also filed an appeal against the order of the Id.CIT(A) in upholding the action of the AO in passing the order u/s.154 of the Act in its appeal bearing ITA No.1156/CHNY/2024.

The Grounds raised by the assessee in its appeal are as under:

1. *The order of the Hon'ble Commissioner of Income-tax (Appeals) is opposed to law and contrary to the facts of the case and against equity and principles of natural justice.*
2. *Re: Non-adjudication of grounds raised*
 - 2.1 *The Hon. CIT(Appeals) ought to have adjudicated on all grounds raised by the appellant.*
 - 2.2 *The Hon. CIT(Appeals) ought to have made a specific finding about the legality of the order passed making protective addition without there being any substantive addition made on any other person at the time of making the protective addition.*

In view of the above grounds and such other additional grounds as may be adduced at time of hearing, it is prayed before the Hon'ble Income Tax Appellate Tribunal;

1. *to declare that the order of assessment is invalid, void ab initio, non-est,*
2. *Alternatively, to direct the Hon. CIT(Appeals) to adjudicate on the ground raised regarding protective addition made in the assessment order without there being any substantive addition made on any other person at the time of making the protective addition, and*
3. *to pass such other consequential orders as the Hon'ble Income tax Appellate Tribunal may deem fit and just.*

16. Firstly, we will take up the appeal of the Revenue in ITA No.1192/CHNY/2024.

The addition of Rs.22,22,50,000/- towards unaccounted deposits introduced by the partners into the firm:

17. The Ld. AR for the assessee stated that based on the loose sheet seized, the AO has made a protective addition of

Rs.22,22,50,000/- as the income of the assessee u/s.69 of the Act. The Id.AR drew our attention to the contents of the loose sheet (Paper Book Page No.95-101), relied on by the AO, the typed copy of the same is reproduced for the sake of clarity:

Part-2

1 Partners Deposit Amount

22,22,50,000

Loans allotted for this amount

22,02,50,000

CAF Groups

30/06/2017

Partner: K. Ravindran

Sl. No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest payable
1	K. Ravindran	2,40,00,000	01.8.2016	30.6.2017	3,00,000	11	33,00,000
2	R. Palanistry	3,00,000	01.3.2017	30.6.2017	3,750	4	15,000
3	R. Aadhith Ram	1,00,000	01.8.2016	30.6.2017	1,250	11	13,750
4	N. Srivarsan	1,00,000	01.8.2016	30.6.2017	1,250	11	13,750
		2,45,00,000			3,06,250	11	33,42,500

(2) Partner : S.RAMASAMY

30/06/2017

S.No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest Payable
1	S.Ramasamy	2,20,00,000	01/08/2016	30/06/2017	2,75,000	11	30,25,000
2	A.Rathinam	10,00,000	01/08/2016	30/06/2017	12,500	11	1,37,500
3	R.Rajamani	15,00,000	01/08/2016	30/06/2017	18,750	11	2,06,250
		2,45,00,000			3,06,250	11	33,68,750

Partner: R.M. RAJESH KUMAR (RR)

30/06/2017

Sl. No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest payable
1	R. Ramasamy	2,35,00,000	01.7.2016	30.6.2017	2,93,750	12	35,25,000
2	R. Vasanthi	4,00,000	01.12.2016	30.6.2017	5,000	7	35,000
3	Ramachandran (Covai)	5,00,000	01.7.2016	30.6.2017	6,250	12	75,000
4	Jayashree	1,20,000	01.12.2016	30.6.2017	1,500	6	9,000
		2,45,20,000			3,06,250	11	36,44,000

(4) Partner: K. THANGARAJ

30/06/2017

Sl. No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest payable
1	K. Thangaraj	2,22,20,000	01.8.2016	30.6.2017	2,77,750	11	30,55,250
2	Muthusamy	7,00,000	01.08.2016	30.6.2017	8,750	11	96,250
3	M. Vishnanathan	7,00,000	01.08.2016	30.6.2017	8,750	11	96,250
4	M. Karthick	2,90,000	01.12.2016	30.6.2017	3,625	7	25,375
		2,39,10,000			2,98,875	11	32,73,125

(5) Partner : P.SELVARAJ							30/06/2017
S.No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest Payable
1	P.Selvaraj	2,50,00,000	01/08/2016	30/06/2017	3,12,500	11	34,37,500
		2,50,00,000			3,12,500	11	34,37,500

(6) Partner: K.N. PRABHU

30/06/2017

Sl. No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest payable
1	K.N. Prabu	2,32,00,000	01.8.2016	30.6.2017	2,90,000	11	31,90,000
2	M/s.Pradigm Intl (AC)	9,00,000	01.7.2017	30.6.2017	11,250	0	0
3	Mallika	10,00,000	01.12.2016	30.6.2017	12,500	7	1,75,000
4	Pranitha	3,00,000	01.08.2016	30.6.2017	3,750	11	41,250
5	P.Sathyan Parameshwaram (Ac)	9,50,000	01.7.2017	30.6.2017	11,875	0	0
		2,63,50,000			3,29,375	11	34,06,250

(7) Partner : S.SIVAKUMAR					30/06/2017		
S.No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest Payable
1	S.Sivakumar	32,55,000	01/08/2016	30/06/2017	40,688	11	4,47,563
2	P.N.Sanyal Sivakumar	50,000	01/08/2016	30/06/2017	625	11	6,875
3	H.Santhosh	3,00,000	01/08/2016	30/06/2017	3,750	11	41,250
4	Moorthy	20,00,000	01/08/2016	30/06/2017	25,000	11	2,75,000
5	Umamaheshwari	15,00,000	01/08/2016	30/06/2017	18,750	11	2,06,250
6	Surveyor Thangavel	7,60,000	01/08/2016	30/06/2017	9,500	11	1,04,500
7	K.M.Periyasamy (Ravi)	1,50,000	01/08/2016	30/06/2017	1,875	11	20,625
8	P.Marimuthu	3,00,000	01/08/2016	30/06/2017	3,750	11	41,250
9	Kuppusamy	4,00,000	01/12/2016	30/06/2017	5,000	7	35,000
10	Joseph	4,00,000	01/08/2016	30/06/2017	5,000	11	55,000
11	Alibaba	3,00,000	01/08/2016	30/06/2017	3,750	11	41,250
12	Mahesh	1,00,000	01/08/2016	30/06/2017	1,250	11	13,750
13	Mumbai Rekha	5,00,001	01/08/2016	30/06/2017	6,250	11	68,750
14	D.Matheswari	1,00,000	01/08/2016	30/06/2017	1,250	11	13,750
15	Poongodi	1,00,000	01/08/2016	30/06/2017	1,250	11	13,750
16	Abibulla H.R.Vasthrad	1,50,000	01/08/2016	30/06/2017	1,875	11	20,625
17	(M/s.Vijaya coconut) A/C	10,00,000	01/01/2017	30/06/2017	12,500	6	75,000
					1,42,063	11	14,80,188

(8) Partner:P. Sekar

30/06/2017

Sl. No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest payable
1	P. Sekar	1,40,00,000	01.7.2016	30.6.2017	1,75,000	12	21,00,000
2	P. Subramani	60,00,000	01.7.2016	30.6.2017	75,000	12	9,00,000
3	Kumar Trichy	50,00,000	01.7.2016	30.6.2017	62,500	12	7,50,000
					3,12,500	12	37,50,000

(8) Partner:P. Sekar

30/06/2017

Sl. No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest payable
1	P. Sekar	1,40,00,000	01.7.2016	30.6.2017	1,75,000	12	21,00,000
2	P. Subramani	60,00,000	01.7.2016	30.6.2017	75,000	12	9,00,000
3	Kumar Trichy	50,00,000	01.7.2016	30.6.2017	62,500	12	7,50,000
		2,50,00,000			3,12,500	12	37,50,000

(8) Partner:P. Sekar

30/06/2017

Sl. No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest payable
1	Balakrishnan (1)	20,20,000	01/08/2016	30/06/2017	25,250	11	2,77,750
2	Balakrishnan (2)	20,45,000	01/08/2016	30/06/2017	25,563	11	2,81,188
3	3 P.Nallusamy (River tex)	14,00,000	01/08/2016	30/06/2017	17,500	11	1,92,500
4	R.Lakshmi	3,50,000	01/08/2016	30/06/2017	4,375	11	48,125
5	N.Rajendran, Puliyaampa	3,00,000	01/08/2016	30/06/2017	3,750	11	41,250
6	M.Kandasamy	1,00,000	01/08/2016	30/06/2017	1,250	11	13,750
7	Pappa Naicker	13,90,000	01/08/2016	30/06/2017	17,375	11	1,91,125
8	Manivel	4,00,000	01/08/2016	30/06/2017	5,000	11	55,000
9	Kittusamy	1,00,000	01/08/2016	30/06/2017	1,250	11	13,750
10	Sanniyappa gounder	1,35,000	01/08/2016	30/06/2017	1,688	11	18,568
11	Velusamy. Puliyaampatti	60,000	01/08/2016	30/06/2017	750	11	8,250
12	Ramasamy, Puliyaempatti	1,00,000	01/08/2016	30/06/2017	1,250	11	13,750
13	S.Periyasamy, T.Pudhur	50,000	01/08/2016	30/06/2017	625	11	6,875
14	R.Palanisamy, Nallipalayam	2,00,000	01/08/2016	30/06/2017	2,500	11	27,500
15	S. Sellamuthu	10,00,000	01/06/2017	30/06/2017	12,500	1	12,500
16	P.Subbarayan (Chennai)	20,00,000	01/08/2016	30/06/2017	25,000	11	2,75,000
17	N.P.Palanisamy (Puliyaampatti)	1,00,000	01/04/2017	30/06/2017	1,250	3	3,750
18	N.P.Palanisamy (Puliyaampatti)	50,000	01/02/2017	30/06/2017	625	5	3,125
19	Palaniyappa Goundar	1,00,000	01/08/2016	30/06/2017	1,250	11	13,750
		1,19,00,000			1,48,750	11	14,97,500

(10) Partner : P.SARAVANAN							30/06/2017
S.No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest Payable
1	P.Saravanan	82,00,000	01/08/2016	30/06/2017	1,02,500	11	11,27,500
		82,00,000			1,02,500	11	11,27,500

(11) Partner: S. Paramasivam

30.06.2017

Sl. No	Customer Name	Deposit Amount	Interest Form		1 Month interest	No. of months	Interest payable
1	S. Paramasivam	49,75,000	1.8.2016	30.6.2017	62,188	11	6,84,063
2	s. Manickavasagam	20,00,000	1.8.2016	30.6.2017	25,000	11	2,75,000
3	R. Dhanasekaran	2,00,000	1.12.2016	30.6.2017	2,500	7	17,500
4	Bank Ramasamy	5,00,000	1.12.2016	30.6.2017	6,250	7	43,750
5	Nandhi Finance	10,00,000	1.12.2016	30.6.2017	12,500	7	87,500
		86,75,000			1,08,438	11	11,07,813

(12) Partner : A.SIVASUBRAMANIAN

30/06/2017

S.No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest Payable
1	S.Sivasubramanian	30,00,000	01/08/2016	30/06/2017	37,500	11	4,12,500
2	Karthick	10,00,000	01/08/2016	30/06/2017	12,500	11	1,37,500
3	R.Murali,Kolkotta	10,80,000	01/08/2016	30/06/2017	13,500	11	1,48,500
4	K.Prabhakaran	10,00,000	01/08/2016	30/06/2017	12,500	11	1,37,500
5	R.Periyasamy,Vpm	2,00,000	01/08/2016	30/06/2017	2,500	11	27,500
6	Nagaraj	3,00,000	01/08/2016	30/06/2017	3,750	11	41,250
7	Rameshkumar	5,00,000	01/08/2016	30/06/2017	6,250	11	68,750
8	Subramani(kasappu)	5,00,000	01/08/2016	30/06/2017	6,250	11	68,750
9	Karuppusamy	4,00,000	01/08/2016	30/06/2017	5,000	11	55,000
10	Chinnu	50,000	01/08/2016	30/06/2017	625	11	6,875
		80,30,000			1,00,375	11	11,04,125

Chinnu
10.8.17

The Id.AR stated that the assessee has contended before the Id.CIT(A) that the addition made by the AO in the hands of the assessee protectively is unsustainable in law for the following reasons:

- a. The amount in question was opening balance and not introduced or credited in the impugned assessment year;
- b. There were ample evidence available in the seized material itself to demonstrate that the amount was opening balance and not the credits during the year;
- c. The addition was made by the AO based on the seized material and having no other corroborative evidence;
- d. No addition can be made u/s.69 in respect of the opening balance carried forward from the preceding assessment years.

Further, the Id.AR highlighted the submission made by the assessee before the Id.CIT(A) is reproduced hereunder, for the sake of clarity:

- i. *The appellant submits that the addition has been made merely based on loose sheets found, without any other corroborative evidence. Relevant portion from Para 13 of the order is extracted below:*

13. Thus, from the evidence (in the form of loose sheets seized during search) it becomes clear that an amount of Rs.22,22,50,000/- was introduced by the partners and exact amount introduced by each partner is also available. Further, the relevant portion of the statement recorded from Shri. A. Vijayanan on 24.04.2018 is as under;-

- ii. *It is clear that the learned assessing officer has relied on the loose sheets themselves as evidences, without any other corroborative evidence for making addition.*

- iii. *The appellant submits that the deposits pertain to the period prior to 01.04.2017. This fact can be ascertained from the contents of the loose sheet itself.*
- iv. *In the loose sheets, the amounts contributed/ canvassed by the partners are shown, along with the period for which interest payments were in arrears, as on 30.06.2017.*
- v. *Following is the extract of the relevant content from the loose sheet.*

CAF Groups

30.6.2017

11

(1) Partner: K. Ravindran.

Sl. No	Customer Name	Deposit Amount	Interest Form		1 Month interest	No. of months	Interest payable
1	K. Ravindran	2,40,00,000	1.8.2016	30.6.2017	3,00,000	11	33,00,000
2	R. Palanisamy	3,00,000	1.3.2017	30.6.2017	3,750	4	15,000
3	R. Aadith Ram	1,00,000	1.8.2016	30.6.2017	1,250	11	13,750
4	N. Srivarsan	1,00,000	1.8.2016	30.6.2017	1,250	11	13,750
		2,45,00,000			3,06,250	11	33,42,500

(2) Partner : S.RAMASAMY

S.No	Customer Name	Deposit Amount	Interest From		1 month interest	No of months	Interest Payable
1	S.Ramasamy	2,20,00,000	01/08/2016	30/06/2017	2,75,000	11	30,25,000
2	A.Rathinam	10,00,000	01/08/2016	30/06/2017	12,500	11	1,37,500
3	R.Rajamani	15,00,000	01/08/2016	30/06/2017	18,750	11	2,06,250
		2,45,00,000			3,06,250	11	33,68,750

From a perusal of the above, it can be clearly seen that the date from which interest runs is well before 01.04.2017 which amply demonstrates that the balance showing as deposits are opening balances for the financial year 2017-18.

On perusal of the submissions of the assessee the Id.CIT(A) in his order, held as under:

6.4.14 Also, the noting found in the seized material clearly prove that as on 30.06.2017, the interest amount was payable on these deposits for a period of more than 3 months. Further, the noting also prove that the loans were given out of the deposits much prior to 01.04.2017. When this being the position,

it can be stated that the amount in question can only be the opening balance as on 01.04.2017

....

6.4.21 It may be appreciated that the AO in the assessment order while making the addition of Rs. 22,22,50,000/- in the hands of the Appellant Firm has relied upon the noting made in the loose sheet and subsequent statements recorded. The narration in the loose sheet does not indicate that the Appellant has introduced the said amount during the FY 2017-18 relevant to the year under consideration. The addition was contemplated by the AO without correct appreciation of facts of the Appellant Group, more particularly, without taking into consideration of the first search and its consequent completion of assessments. Thus, the presumption arrived by the AO that the Appellant Firm has introduced a sum of Rs. 22,22,50,000/- is improper and lacks merits.

.....

6.4.27 In view of the above discussion and findings, the undersigned is of the considered view that the addition of Rs. 22,22,50,000/- made protectively can no longer hold good. Accordingly, the AO is hereby directed to delete the protective addition of Rs. 22,22,50,000/- made in the hands of the Appellant Firm. Even though the undersigned has made a finding that the addition should have been made in the Appellant Firm substantively. In view of the specific findings the undersigned is of the view that the even any substantive addition of Rs. 22,22,50,000/- the same cannot be made in the hands of the Appellant Firm.

18. Per contra, the Ld.DR relied on the orders of the AO and did not bring any other corroborative evidence other than seized material to justify the additions made.

19. We have heard the rival contentions, perused the material on record and gone through the orders of the authorities below. It is

admitted fact that the additions made by the AO is purely based on the incriminating material seized during the search operations. It is evident that the interest calculated for the pending months as on 30.06.2017 as per the loose sheet (seized material) which is for more than 3 months on the loan amounts lent (debtors), which clearly demonstrate that the amount in question was opening balance and the same cannot be added as income of the current year in appeal u/s.69 of the Act. We find force in the argument of the Ld. AR that the opening balance cannot be added as income of the current year by invoking section 69 of the Act. We also notice that the AO made addition based on the loose sheets seized but without bringing on record any other evidence to support his case that the amount in question was invested by the partners during the impugned assessment year. Further, the Ld. DR also could not bring on record any evidence or advance any argument to canvass the point that the amount in question was invested by the partners into the firm in the impugned assessment year. Therefore, we are of the considered opinion that the amount in question, being opening balance, cannot be added as income of the assessee u/s.69 of the Act and we find no infirmity in the order of the Id.CIT(A) in so far as his direction to delete the addition made by the AO. Therefore, we

do not find any reason to interfere in the order of the Id.CIT(A) and hence, we uphold the same.

20. Further on the issue of violation of Rule 46A of the Income Tax rules by the Id.CIT(A), the Ld. DR contended that the Id.CIT(A) granted the relief to the assessee based on the recasted balances from the books of account, which amounts to fresh submissions and fresh evidence which is in violation of Rule 46A of the Income Tax Rules. The Ld. AR, however, contended that during the course of search, the books of account of all 77 firms maintained in "foxpro" software were seized as per panchanama dated 13.08.2017 read with "Annexure ANN/MP/CAF/ED/S Page 1". Further, it was submitted that statements were recorded from Mr. K.Murugesan, few of the other partners of the group and Mr.Sakthivel, Accountant of the group of finance firms. Mr.Sakthivel had also confirmed that the books of account were maintained in FOXPRO server in his sworn statement dated 31.10.2008 in Q.5 and Q.6 (page No. 91 of the paper book). It is the submission of the Ld.AR that the summary/abstract of the balance sheet as at 31.03.2017 and 10.08.2017 of all the 77 firms filed before the Id.CIT(A) were only extracted from the books of account which were seized and available with the AO. There is no recasting or reclassification of balances were carried out but only an extract prepared from the seized books

of account. According to the Id.AR, there was no evidence which is in the nature of fresh evidence submitted by the Assessee during the course of proceedings before Id.CIT(A) and thus, Rule 46A of the Income Tax Rules, 1962 ["Rules"] has no application in the present case.

21. In this issue, we find force in the arguments of the Ld.AR that the seized material contains the books of account maintained in "FoxPro" and the financial position of the group was extracted only from the books seized. Further, we have observed that the revenue has not disputed either the data or the figures mentioned in the extracts furnished by the assessee before the Id.CIT(A). Therefore, the extract prepared from books seized could not be regarded as fresh evidence, within the meaning of Rule 46A of the Income Tax Rules 1962.

22. Thus, all the grounds raised by the Revenue, relating to addition of Rs.22,22,50,000/- made by the AO towards unaccounted deposits, directed to be deleted, in the order passed by Id.CIT(A), are hereby dismissed.

23. Addition of Rs.2,91,92,500/- made u/s. 69C towards loan extinguished:

The AO made the above addition u/s.69C of the Act, based on the loose sheet found. The following is the extract of the loose sheet found:

CAF Balance Sheet - 30.06.2017			30.06.2017
S.No	Description	Credit	Debit
Part-1			
1	Other Loan Payable	2,20,14,790	
2	General Deposit Payable	43,07,063	
3	Auditor Fees Payable	25,00,000	
4	IncomeTax Payable	2,70,647	
5	Room Rent Payable	1,00,000	
		<u>2,91,92,500</u>	
	Loans allotted for this amount		4,15,89,000

The assessee submitted before the Id.CIT(A) that the above amounts were not expenses actually incurred. They were payable towards expenses incurred. Thus, they were not part of the income.

The Id.CIT(A) has held that the above addition u/s.69C of the Act is not sustainable. The finding of the Id.CIT(A) is reproduced as under:

"6.7.3 The undersigned has carefully examined the back ground upon which the AO has contemplated the addition and the submission made by the Appellant in this regard. The AO has relied upon the noting in the loose sheet seized during the course of search. While going through the loose sheet relied upon by the AO, it can be seen that it includes the expenses payable, partners deposit amount, loans allotted for the deposit by the partners, partners Profit amount, balance profit amount, balance no partition amount etc. From this narration it can be stated that it is the road map

chalked out to wind up the business. It includes the probable income, loan amounts and interest amounts recoverable and to be allotted to the partners in the event of recovery. This loose sheet contained detailed narration about the expenses payable amounting Rs.2,91,92,500/-. Obviously, the said amount is not the real income earned by the Appellant Firm during the financial under consideration.

6.7.4 The AO in the assessment order while making the addition has observed the following viz..

"loans payable, in part-I of the loose sheet no.62 @ 2,91,92,500/- claimed to be other loan expenditure payable is nothing but payments earmarked out of the profits earned and hence constituent only income are assessee substantively here."

6.7.5 The above findings made by the AO in the assessment order lacks merit on account of the following viz..

(i) the AO has not made out a case as to how the expenditure stated in the loose sheet partake the character of income earned by the Appellant Firm.

(ii) the AO has invoked the provisions of section 69C of the Act in making the addition as unexplained expenditure without proving the Appellant that the Appellant has actually incurred such expenditure. Unless and until it is proved that the Appellant Firm has actually incurred such expenditure, such addition can only be a presumption.

(iii) the AO during the course of assessment proceedings has not brought on record any finding based upon any corroborative evidence to prove that the Appellant Firm has actually incurred such expenditure.

*6.7.6 In view of the above discussions, the undersigned is not inclined to sustain the addition of Rs.2,91,92,500/- which was made on presumptive basis u/s. 69C of the Act other than any cogent and corroborative reliable evidence. In this backdrop all the grounds raised by the Appellant upon this issue are hereby treated as **allowed** and the AO is hereby directed to **delete** the addition of Rs.2,91,92,500/- made u/s.69C of the Act."*

24. Before us, the Ld.DR did not bring on record any cogent evidence to support the contention of the AO that the assessee had incurred such expenditure. The Ld.DR further advance a new argument that the source for such liability was not explained and hence the provisions of section 68 would apply.

25. Per contra, the Ld.AR argued that the amount in question was not paid at all. Further, Ld.AR argued that the AO during the course of assessment applied his mind and invoked section 69C of the Act and it is not mere quoting of wrong section. If such being the case, the Revenue should not be permitted to raise the same as a ground before this Tribunal.

26. We find force in the submission of the Ld.AR that when the AO originally invoked section 69C for making an addition, the Revenue should not be permitted to raise a new ground of making addition u/s.68 of the Act. We also find substance in the argument of the Ld.AR that when there was no incurring of liability / payment thereof, the provisions of section 69C would not apply.

27. Thus, as the assessee did not incur/pay the expenses, as gathered from the seized material, the addition made u/s. 69C of the Act cannot sustain and we uphold the direction of the Id.CIT(A), whereby the AO is given direction to delete the sum of Rs.2,91,92,500/-. Hence, all the grounds raised by the Revenue

relating to the additions made u/s.69C by the AO, directed to be deleted by the Id.CIT(A) are hereby dismissed.

28. The next issue is with reference to addition of Rs.10,14,12,246/- towards business profits.

This addition was also made by the AO based on the loose sheet found during the search operations. Following portion of the loose sheet is reproduced for the sake of clarity:

<u>Part-3</u>	
1 Partners Profit Amount	8,40,00,000
90,00,000 x 13 shares = 11,70,00,000	
Less: K.Murugesan(2) = 1,80,00,000	
Less: D.S.Senthivel = 90,00,000	
Less: S.Manickavasagam= 30,00,000	
Less : N.Arun = 30,00,000	
<u>Balance Amount = 8,40,00,000</u>	
Loans allotted for this amount	8,40,00,000
2 Partners Profit Amount	
K.Murugesan(2) = 1,80,00,000	
D.S.Senthivel = 90,00,000	
<u>Total Amount = 2,70,00,000</u>	2,70,00,000

Part-4

Balance Profit amount	10,14,12,246	
Balance no Partition amount		11,80,15,746
	<u>46,38,54,746</u>	<u>46,38,54,746</u>

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From the above, it can be seen that there were two amounts of profits – namely, Rs.10,14,12,246/- shown in part 4 and Rs.11,10,00,000/- in part 3 of the loose sheet. As already observed, the amount of Rs.10,14,12,246/- was added by the AO, substantively, as business income of the assessee, while passing order u/s.143(3) of the Act. However, the amount of Rs.11,10,00,000/- was omitted to be taxed and hence the same was added to the income of the assessee, protectively, by way of rectification proceedings u/s.154 of the Act.

29. The Assessee challenging the above addition, before the Id.CIT(A), the assessee made three-fold submissions, viz,

- merits of the addition,
- alternatively quantum of addition and
- taxing the income of other person in its hands.

On merits, the assessee submitted that the total amount of Rs.21,24,12,246/- was computed by including all arrears of interest as if they were realisable and the said amount was hypothetical but not real. Further, the seized material itself contains the details of cases filed before the courts for collection of dues. The assessee submitted before the Id.CIT(A) that unrealisable interest needs to be excluded from the income quantified. Further, the assessee submitted that the balance of income belongs to 77 firms and therefore, what could be taxed was only assessee's share. The

alternate submission of the assessee filed before the Id.CIT(A) is reproduced as under:

"Additions made in the order of assessment for the profits of Rs.10,14,12,246/-.

Further addition of Rs.11,10,00,000/- was made by an order passed u/s 154 dated 25.08.2021.

If the above are considered as profits of the group of firms, the total works out to the following:

Particulars	Amount (Rs.)
<i>Profits as per loose sheet (Part 4)</i>	<i>10,14,12,246</i>
<i>Share of profit as per loose sheet (Part 3) - Order u/s 154</i>	<i>11,10,00,000</i>
Total profits of the group of firms	21,24,12,246

It has been already explained that the loose sheet was prepared by Mr.Murugesan only to present a rosy picture to the other partners, and hence he had included in the statement all interest receivable as if the entire amount of interest is recoverable from the loan debtors.

Even in mercantile system of accounting, the income does not get accrued by way of interest on loans advanced, merely by passage of time. There must be certainty about its ultimate realisation.

As already submitted, the above-mentioned profits include arrears of interest on very many loans for which disputes are going on in the court of law (as evidenced by the loose sheets).

In view of the above, one has to reduce the arrears of interest (not realized/realizable) from the profits computed, to arrive at the income.

As already submitted, the income was earned by all 77 firms in the group and hence, such income would pertain to all the 77 firms in the group.

*The aforesaid amount, apportioned to each of the 77 firms based on the capital and partners' deposit balances is worked out in **Annexure D**.*

Income that can be brought to tax in the hands of the appellant and the amount pertaining to the other 76 firms in the group are summarized in the below table:

Income pertaining to	Assessed – S 143(3)	Assessed – S 154	Amount – Rs.
Profits of the group	10,14,12,246	11,10,00,000	21,24,12,246
Less: Arrears of interest on loan	3,09,89,427	11,10,00,000	14,19,89,427
Net income of the group	7,04,22,819	0	7,04,22,819
Share of Appellant	10,22,875	0	10,22,875
Share of Other 76 firms	6,93,99,944	0	6,93,99,944
Total	7,04,22,819	0	7,04,22,819

The appellant once again submits that the additions, pursuant to the first search conducted on 11.11.2010, were made in the hands of each of the 77 firms in the group and not in the hands of the appellant alone.

When that being the case, in the second search the entire profits earned by the Group of firms cannot be taxed in the hands of the appellant alone.

In view of the above, it is submitted that the action of the learned assessing officer in making addition of entire business profits in the hands of the appellant is not in accordance with law.

The appellant further submits that the share of the appellant as stated above can be the amount, that can be added as income of the appellant and the balance amount of business profit added by the learned assessing officer needs to be deleted.

Submissions w r to taxing of income of other persons in the hands of the appellant

The learned assessing office ought to have considered that the 'Balance Profit' as shown in Part 4 of the loose sheet is the cumulative amount of the estimated profit that may have been earned by the group of firms.

The appellant submits that, as explained in 4.2 above, the addition made, while on the one hand having been worked out without reasonable basis, on the other hand, includes profit amount that pertains to 76 other persons.

Each of the 77 firms in the group have been allotted with separate PANs and have been filing returns of income regularly.

The appellant submits that the action of the learned assessing officer in taxing the income earned by other persons in the hands of the appellant is not accepted in law.

The appellant relies on the decision of the Hon'ble Supreme Court in **ITO vs Ch.Atchiaiah [1995 (12) TMI 1]**, wherein it has been held that additions have be made on the right person. Extract from the judgement is reproduced below:

".....We are of the opinion that under the present Act, the Income-tax Officer has no option like the one he had under the 1922 Act. He can,**and he must, tax the right person and the right person alone.** By " right person ", we mean the person who is liable to be taxed, according to law, with respect to a particular income....."

On perusal of the submissions of the assessee, the Id.CIT(A) while disposing the appeal held as under:

"6.6.5 The AO in the assessment order has added the profit amount as Rs.10,14,12,246/- (Substantively) followed by an order u/s.154 of the Act on 25.08.2021, wherein he has added the amount of Rs.11,10,00,000/-(Protectively) as unaccounted profit of the partners u/s.69 of the Act. Thus, the total addition made by the AO as profit in the hands of the Appellant Firm is Rs. 21,24,12,246/-.

6.6.6 The Appellant in the written submission, has made a submission upon three heads viz. merits of the addition, alternative submission on quantum of addition and taxing of income of other persons in the hands of the Appellant.

Regarding the merits of the addition

6.6.7 The AO has relied upon the loose sheet seized during the course of search as the primary evidence to support the addition. While going through the loose sheet relied upon by the AO, it can be seen that it includes the expenses payable, partners deposit amount, loans allotted for the deposit by the partners, partners Profit amount, balance profit amount, balance no partition amount etc. From this narration it can be stated that it is the road map chalked out to wind up the business. It includes the probable income, loan amounts and interest amount recoverable and to be allotted to the partners in the event of recovery. This loose sheet contained detailed narration about the profits of Rs. 21,24,12,246/-. Obviously, the said amount is not the real income earned by the Appellant Firm during the financial year under consideration. The AO in

the assessment order while making the addition of Rs.10,14,12,246/- has made a finding as under:

"balance profit amount, in Part IV of the loose sheet No. 62 @ of Rs. 10,14,12,246/- represents profit as per the assessee's own used against them in the absence of concrete and corroborative evidence."

6.6.8 *The above findings made by the AO in the assessment order lacks merit on account of the following viz.. (i) the AO has not made out a case as to how the profit stated in the loose sheet partake the character of income earned by the Appellant Firm. (ii) the AO has made the addition without proving that the Appellant has actually earned such profits. Unless and until it is proved that the Appellant Firm has actually earned such profits, such addition can only be a presumption. (iii) the AO during the course of assessment proceedings has not brought on record any finding based upon any corroborative evidence to prove that the Appellant Firm has actually earned such profits.*

6.6.9 *The Appellant in this regard has relied upon the decision of the Hon'ble Apex Court in the case of CIT vs. Godhra Electricity Co. (1997) 225 ITR 746 (SC) wherein the Hon'ble the Apex Court has held that if income does not result at all, there cannot be any tax and that if an income has not materialized, then merely an entry made about a hypothetical income by following book-keeping methods, the liability to tax cannot be attracted. Going by the decision of the Hon'ble Apex Court an income cannot be considered to have materialized even in case of entries passed in books of account by following book keeping methods, if the income is hypothetical. In view of the above discussion, the undersigned is of the considered view that the addition made by the AO lacks merit.*

Alternative submission on quantum of addition

6.6.10. *The Appellant in the alternative submission has brought out clearly, the income earned by the Appellant after reducing the interest portion receivable. The Appellant has worked out the interest portion receivable amounting Rs. 14,19,89,427/-. This amount is reflected in the seized loose sheets numbered from 10 to 26 of the seized material at column No. 5. When this amount is reduced from Rs.21,24,12,246/- (21,24,12,246 - 14,19,89,427 = 7,04,22,819) the amount of Rs. 7,04,22,819/- is the actual profit earned by the Appellant Firm during the financial year*

under consideration based upon the loose sheet seized. This amount of Rs.7,04,22,819/- has to be assessed in the hands of the Appellant Firm for the AY 2018-19 (substantively) as its business income. The Appellant in the alternative submission has agreed to assess the amount of Rs.7,04,22,819/- as the income of the Appellant group of the Firms.

Submission on quantum of addition and taxing of income of other persons in the hands of the Appellant

*6.6.11 The undersigned in the earlier paras of this order has held categorically as to how the income was assessed by the AO on account of the peculiar functioning of the business activities of the Appellant Firm. Accordingly, this amount cannot be assessed in the hands of the constituent Firms but to be assessed only in the hands of the Appellant Firm (substantively). Therefore, the claim made by the AR in the submission that it has to be assessed in the hands of the constituent Firms is hereby **rejected**.*

*6.6.12 In the back drop of the above discussions made, out of the addition of Rs.10,14,12,246/- a sum of Rs. 7,04,22,819/- is hereby sustained as the business income for the AY 2018-19 and the AO is hereby directed to delete the balance addition of Rs.3,09,89,427/-. Thus, all the grounds raised by the Appellant in this regard are treated as **partly allowed**."*

In other words, out of uncollectible interest of Rs.14,19,89,427/- a sum of Rs,11,10,00,000 was carved out by the Id.CIT(A) for the addition made in the rectification proceeding initiated u/s.154 of the Act and he had directed the AO to reduce the balance of uncollectible interest of Rs.3,09,89,427/- from the addition made for Rs.10,14,12,246/- in the proceeding u/s.143(3) of the Act.

30. With reference to the relief of Rs.3,09,89,427/- given by the Id.CIT(A), the revenue is in appeal before us.

31. The Ld. DR did not dispute the fact that the addition was made only based on loose sheets and without any other corroborative

evidence to suggest that the assessee had earned the income. Further the notings in the seized material clearly indicating that there were cases pending before the courts for recovery of loans for Rs.21.00 crores.

32. While controverting the arguments of the Id.DR, the Ld. AR drew the attention of the bench that the seized document was prepared by the managing partner Late K.Murugesan to show good amount of profits to all partners and therefore interest on uncollectible principal amounts were also included. The Ld.AR further relied on the rulings of Hon'ble Supreme Court in the case of Godhra Electricity Co. Ltd v CIT (1997) 225 ITR 746.

33. We have carefully considered the submissions made by Ld.AR and the Ld.DR and perused the materials available on record. The seized document clearly demonstrate that the cases were pending in courts for recovery of principal amounts lent. When such is the case, computing the interest thereon and treating the same as income of the assessee is nothing but taxing hypothetical income. We find force with the submission of the Ld.AR that the real income alone could be taxed and not the hypothetical one. In view of the above, we find no infirmity in the direction of the Id.CIT(A) to reduce the addition of Rs.3,09,89,427/- and thus all the grounds raised by the Revenue in this regard is dismissed.

34. ITA No.1155/CHNY/2024 – Appeal of the Assessee:

With reference to sustaining of an addition of Rs.7,04,22,819/- the assessee is in appeal before us in ITA No.1155/CHNY/2024.

The Ld.AR submitted that the assessee group consisted of 77 firms and all of them were regularly assessed to tax since inception under their respective PAN. The Ld.AR further submitted that when the first search was conducted, all the 77 firms filed revised returns offering additional income and while completing the assessment, further additions were made in the hands of all 77 firms. The Ld.AR drew our attention to the assessment orders for the AY 2009-10, AY 2010-11 and AY 2011-12 were placed in Page Nos.128 to 139 of the paper book filed. The assessee and its group concerns accepted the additions made and no appeals were filed against the said orders passed for three assessment years in the hands of all 77 firms. However, in the second search, the AO has taken an altogether different stand that the entire income was to be assessed in the hands of the assessee. The Ld.AR argued that this is not permissible under the law as it is contradicting to the stand taken by the revenue during the assessment of earlier search. He further relied on the ruling of the Hon'ble Supreme Court in the case of ITO vs. Ch.Atchiah[1996]218 ITR 239, to support his contention that the income of some other person cannot be added in the hands of one

person. He also submitted that Id.CIT(A) also grossly erred in upholding the action of the AO in making addition of entire income of the group in the hands of assessee.

35. The Ld AR, in his submission, stated that in the very same loose sheet seized, in page No.95 of the paper book, the title states "CAF balance sheet – 30-06-2017". In the next page (Page No.96 of the paper book) it states "CAF GROUPS". He also submitted that consolidated trial balance of the group available in the seized material relied by the AO for making addition, also states that it is financial position of the group. The same is reproduced hereunder for the sake of clarity

M/s.Cholan Auto Finance /2018-19

Cholan Auto Finance Group
Balance From 01/04/2017 To: 10/08/2017

Sl.No	Description	Credit	Debit
1	Capital Account	8,02,61,604.32	
2	Personal Loan Credit	14,07,52,001.00	
3	Other Loan Credit	10,00,000.00	
4	IPL Interest Credit	8,30,760.00	
5	CIL Interest Credit	60,15,570.00	
6	IPL party current A/c.	20,91,242.19	
7	Promote Loan interest payable	2,44,430.00	
8	Income Tax Refund Credit	13,620.00	
9	Income Tax Refund Interest Cr	480.00	

The Ld. AR further submitted that there was no evidence to suggest that the assessee and its group concerns only requested for one

single assessment as against the assessment in the hands of all 77 firms, while completing assessment post first search. He also drew attention of the bench to the fact that when the assessee and all other 76 firms filed revised returns offering additional income for three years and further additions were made in the hands of all 77 firms, how the assessee could have asked for making assessment in the hands of the assessee. The fact that the assessee did not file any appeal against the orders passed in the earlier search assessments in the hands of 77 firms itself prove that the assessee would not have any such claim. At any rate, when there was no appeal filed against the assessment made in the hands of 77 firms, consequent to the first search, the issue attained finality.

36. Per contra, the Ld. DR made two-fold submissions to support the case that the addition made in the hands of the assessee needs to be sustained. One is, the title of loose sheet seized based on which the additions were made is "CAF Balance Sheet – 30.06.2017" (page no: 95 of paper book filed by the assessee) and thus the addition is correctly made by the AO in the hands of the assessee and sustained by the Id.CIT(A). The second one is, during the course of assessment post first search, the assessee and its group requested for making additions in the hands of assessee instead of 77 firms and now, in the proceedings, consequent to the second

search the assessee objects for the additions made in the hands of the assessee.

37. We have carefully considered the rival submissions made and perused the materials relied on. It is undisputed fact that the assessee and other 76 firms were independently assessed to tax under their respective PAN since their formation. This fact is further supported by the orders passed in the hands of all 77 firms, for three years, while completing the assessment post first search. The seized material also indicate that the position extracted as on 30.06.2017 was not that of the assessee alone but that of the entire group. We are unable to accept the contention of the Ld.DR that the seized material states "CAF – BALANCE SHEET – 30.06.2017" and therefore the addition was rightly made by AO in the hands of the assessee and the same got upheld by the CIT(A). The seized material has to be read as a whole. When the next page of the seized material states "CAF – GROUPS", one should not read one line in seized material in isolation. Also, the consolidated trial balance relied on by the AO from the seized material for the purpose of making addition, states that it is for the "CAF- Group". Therefore, submission of the revenue that the addition was made by the AO in the hands of the assessee, based on the seized material, lacks merit and the same is hereby rejected.

38. As regards to the Ld. DR submission that it was the assessee who asked for addition in assessee's hands in the first search which was what the AO did in the assessment consequent to the second search. We found that consequent to the first search, revised returns were filed by the 77 firms in the assessee's group and further additions were also made in the hands of all 77 firms. Against the said additions made, neither the assessee nor the group concerns (76 other firms) filed any appeal. So, the issue attained finality. It is submission of the Ld.AR that when the issue attained finality, Revenue should not be permitted to raise the same issue in the present appeal. Therefore, we find force in the argument of the Ld.AR.

39. The reasoning given by the Id.CIT(A) for upholding the addition in the hands of the assessee was the peculiar modus operandi followed by the assessee group in its business. It is the submission of the Ld.AR that when there was no difference in the modus operandi of the business conducted between first and second search, Revenue was not right in taking different position in the assessment made consequent to the second search as against the one in first search. We find that the ruling of the Hon'ble Supreme Court, in the case of Ch. Atchiaiah (supra), relied on by the assessee is squarely applicable to the facts of the assessee. When all 77 firms carried on

business under their respective PAN, assessing the entire income earned by the group of firms, in the hands of the assessee alone is impermissible. We are unable to accept the reasoning given by the Id.CIT(A) in sustaining the addition of Rs.7,04,22,819/- in the hands of the assessee.

40. In view of the above, we hold that the income of Rs.10,22,875/- as shown in the page No.3 of the paper book, alone has to be assessed in the hands of the assessee and direct the AO to delete the addition of Rs.6,93,99,944/- made by him and confirmed by the Id.CIT(A). Thus, all the grounds raised by the assessee, in connection with the above issue, are hereby allowed.

41. ITA 1191/CHNY/2024 appeal of the Revenue:

In the appeal by the Revenue in ITA No.1191/CHNY/2024, filed against the order passed by the Id.CIT(A) granting relief to the assessee in respect of addition made for Rs.11,10,00,000/-, in the rectification proceedings made u/s.154, the revenue challenges the action of the Id.CIT(A) in directing the AO to delete the addition made. We have already held in the earlier paragraphs that the said amount of Rs.11,10,00,000/- did not represent income at all and therefore uphold the action of the Id.CIT(A) in directing the AO to delete the addition made. Thus, all the grounds raised in this appeal by the Revenue are hereby dismissed.

42. ITA 1156/CHNY/2024 Appeal of the Assessee:

This appeal by the Assessee in ITA No.1156/CHNY/2024, filed against the order passed by the CIT(A) granting relief to the assessee in respect of additions made for Rs.11,10,00,00/- in the rectification proceedings u/s.154, the only grievance of the assessee is that the ground raised by the assessee that no protective additions can be made in the hands of assessee when no substantive additions were made in the hands of partners, was not adjudicated. We have already upheld the action of the Id.CIT(A) in directing to delete the addition made by AO, as the same did not constitute income at all and therefore same could neither be taxable in the hands of the assessee nor in the hands of the partners of the firm substantively or protectively. Thus, we are of the considered view that Id.CIT(A) is right in concluding that the ground raised by the assessee becomes academic and liable to be dismissed and hence all the grounds raised by the assessee are dismissed.

43. In the result, both the appeal of the Revenue in ITA No.1191/CHNY/2024 and 1192/CHNY/2024 are dismissed. The appeal of the assessee in ITA No.1155/CHNY/2024 is allowed. The appeal of the assessee in ITA No.1156/CHNY/2024 is dismissed.

Order pronounced in the open court on this 13th December 2024

Sd/-

(□□□ □□□□□ □□□□)

(MANU KUMAR GIRI)

□□□□□□□□□□□□□□ / **JUDICIAL
MEMBER**

Sd/-

(एस . आर. □□□□□□□)

(S.R. RAGHUNATHA)

□□□□□□□□□□□□□□ / **ACCOUNTANT
MEMBER**

चेन्नई/Chennai,

दिनांक/Dated, the 13th December, 2024

KV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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