

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

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2116 /Chny/2024, निर्धारण वर्ष /Assessment Years: 2019-20

आयकर अपील सं./ITA No.2291 /Chny/2024, निर्धारण वर्ष /Assessment Years: 2020-21

Asst. Commissioner of Income Tax,
Company Circle-2(1)
Trichy.

Arunai Motor Finance,
No.326(895), First Floor,
Jawahar Bazaar, opp. to Taluk Office,
Karur
Tamil Nadu-639 001.
[PAN: AAZFA7179B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Shri R.Venkata Raman, C.A & Shri
Vishwa Padmanabhan, C.A.

प्रत्यर्थी की ओर से /Revenue by

: Shri G.Nantha Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 16.01.2025

घोषणा की तारीख /Date of Pronouncement

: 19.02.2025

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

These appeals are filed by the Revenue against the order bearing
DIN & Order No.ITBA / APL / S / 250 / 2024-25 / 1065635952(1) dated
13.06.2024 and No.ITBA/APL/S/250/2024-25/1066363659(1) dated
03.07.2024 of the Learned Commissioner of Income Tax [herein after
"CIT(A), for the assessment years 2019-20 & 2020-21. Through the
aforesaid appeals the Revenue has challenged orders u/s 250 dated
13.06.2024 & 03.07.2024 passed by CIT(A), Chennai. Both the appeals

are centering around nearly identical facts and hence are adjudicated together for the purposes of convenience.

ITA No.2116 /Chny/2024, Assessment Year: 2019-2020

2.0 The Ld. DR submitted following facts of the case, common to both the AYs under appeal that is AY-2019-20 and 2020-21. The assessee firm is engaged in the business of money lending and derives income primarily from the interest on account of advancement of loans. A search u/s 132 of the Act was carried out at the business premises of the Appellant firm located at Bharathi Nagar, Karur on 25.03.2021. During the course of search, it was ascertained that many other finance concerns also operate from the same premises of the Appellant Firm and the Appellant firm has transactions with all those finance Firms operating there. During the course of search at the business premises of the Appellant firm, books and documents, loose sheets and an External Hard Disc were found and seized. On analysis, the said loose sheets, inter-alia, including print outs of extracts from WhatsApp message communications of an employee of the Appellant Firm which contained information about interest pending along with original principal. These loose sheets were marked as Sl. No. 1 &2 and seized vide ANN / PP / AMF / LS/S SI No. 1 & 2 respectively. As per the seized loose sheet it was ascertained that cash loans were advanced to the tune of Rs.20

Crores and the interest earned on the loans advanced was recorded at Rs.8.18 Crores. During the course of the search the Authorized Officer confronted about the contents in the loose sheets and recorded a statement from the Partner of the assessee firm. The Ld. DR submitted that assessment u/s 143(3) was completed making additions of Rs.2.81 Crs and Rs.5.91 lakhs on account of unexplained cash credit u/s. 68. The Ld. DR has heavily relied upon the order of Ld. AO while contesting the relief accorded by the Ld. CIT(A). It was submitted that entire addition has been made by the Ld. AO, on the basis of incriminating document found from assessee premises.

3.0 The first issue contested by the Revenue is regarding an addition of Rs.2.81 Crs. The Ld. DR drew our attention to the reasoning given by the Ld. AO in para 10.1.8 at page 10 of his order. The assessee had submitted that the source of cash loans advanced by it was attributable to the interest income earned on such cash loans. In support of its contentions, the assessee had submitted detailed charts and information in tabular form indicating cash flow from 2015-16 to 2021-22 – the years covered by the search proceedings. The Ld. AO premised that in the absence of any day wise or month wise cash flow statement, the assessee's arguments cannot be accepted. Consequently, the Ld. AO made an addition of Rs. 2.81 Crores as unexplained cash credit u/s. 68

r.w.s.115BBE. The Ld. DR argued that the relief accorded by the Ld.CIT(A) from para 6.3.9 to 6.3.14 at pages 78 to 80 is not based upon correct appreciation of the facts of the case. The Ld. Counsel for the assessee vehemently argued that it had, through detailed charts and tables, established the veracity of its statements. It was submitted that whatever additional income was ascertained, on account of search proceedings, was suo moto offered and taxes paid and therefore the addition made by the Ld. AO was excessive and unsubstantiated. It was argued that consequently relief accorded by the Ld.CIT(A) is based upon correct understanding and appreciation of the facts of the case. The Ld. DR however requested that the matter may be remitted to the file of the Ld.AO for the consideration of the matter as he did not have opportunity to examine in detail the reconciliation statement produced by the assessee. The Ld. Counsel for the assessee submitted that all the details were filed before the Ld. AO and that in his order he has not raised any presumption of non-submission of any information by the assessee.

3.0 We have heard rival submissions in the light of the materials available on records. The Ld. CIT(A) has adjudicated the matter by way of his common order for AYs-2015-16 to 2019-20. The Ld. Counsel for the assessee had informed that the Revenue has not contested the relief accorded by the Ld. CIT(A) for AY-2015-16 to AY-2018-19 apparently on

account of low threshold tax limits. A loose paper found during the search containing transactions amounting to Rs.20,18,30,000/- is seminal to the additions made in this case. The Ld. CIT(A) has handled the issue at para 6.3.3 of page 76 of his order.

“....6.3.3 During the course of Appellate Proceedings, the AR contended before the undersigned that the Appellant firm was initially managed by one Shri.K. Murugesan who was deeply involved in the money lending business and generated significant "referral income" by directing clients to other lenders. This referral income which was in cash was reinvested into the firm. Post his demise in December 2017, the new manager, Shri.K. R. Ragu Sundar, had to disclose all these earnings of the Appellant Firm. Further (Late) Shri. K.Murugesan was also a partner in Life Line Auto Finance, where a survey conducted u/s 133A of the Act, revealed transactions between Life Line Auto Finance and the Appellant Firm. These transactions, were managed through Murugesan's accounts, included advances and interest payments. The AR also submitted that the Appellant Firm always followed cash accounting system, as reported in their original returns u/s 139(1) of the Act and consequent to the search u/s 132 of the Act, the firm reconstructed its books to include referral income, additional interest, and transactions with Life Line Auto Finance in its return of income e-filed in response to the notice (s) u/s 153A of the Act. In execution of such exercise the Appellant Firm was able to provide detailed charts and cash flow statements before the AO during the course of assessment proceedings, justifying the declaration of additional income and explaining the source of funds for the lending activities of the Appellant Firm during the FY 2014-15 to 2018-19 relevant to AY(s) 2015-16 to 2019-20. The AR also made available before the undersigned a copy of the above said submission that was submitted before the AO for perusal....”

3.1 On the issue of failure of Ld AO to do any independent enquiries into affairs or to counter arguments of assessee , we have noted that the Ld. CIT(A) has made following observations on para 6.3.6 at page 77 of his order:-

“..... 6.3.6 The AO after having rejected the explanation did not make any effort to conduct a detailed enquiry to ascertain the creditworthiness of the lenders who have advanced such amounts as described in the summary. In addition the

AO failed to examine the claim for the amount(s) that were lent to the Appellant Firm have been duly accounted in the regular books of accounts....”

3.2 Coming to the addition of Rs 2.81.30,000/- made by the Ld AO u/s 68 , we have noted the matter has been extensively dealt by the Ld CIT(A) in his order in para 6.3.9 to para 6.3.14 at pages 78 to 30 of his order. For the purposes of clarity the same are reproduced hereunder:-

“...6.3.9 The Appellant firm reconciled the loans, reconstructed its books, and incorporated the additional income from the loans and referral fees. This additional income, dealt separately in the financial statements, was reported for tax purposes on cash receipt basis under the head "Business Income." Further the cash flow statement, capturing the new loans, sources, and transactions with Life Line Auto Finance through the late K. Murugesan's account were also recognized.

6.3.10 As claimed by the Appellant firm, the additional income was reinvested into the firm's lending business. Any shortfall in cash was reported as referral income and is subjected to tax since the firm had no other sources for generation of income. From the above cash flow it is clear that the reconstructed books and detailed cash flow statements, matching the seized materials, showed referral income of Rs.3,76,00,000, additional interest income of Rs.3,76,83,872, interest payments of Rs.30,43,015, and transactions from K.Murugesan's account. This is evident in the return of income filed in response to the notice(s) issued u/s 153A of the Act. The Appellant firm provided a cash flow statement explaining the sources for Rs.6,36,90,000 in loans, recorded in the reconstructed books for AYs 2015-16 to 2019-20. Despite this, the AO added the same amount again as unexplained cash credit u/s section 68 of the Act for the years under consideration.

6.3.11 The undersigned upon examination of the cash flow statement, and the arguments advanced by the AR during the course of Appellate proceedings, is of the considered view that the explanation of the Appellant in the above table for each entry as found in the loose sheet that was written by the accountant for his own understanding is effectively reconciled.

6.3.12 The cash flow properly explains the source for lending for each of the years under consideration. Thus, there exists no cause for the AO to bring to tax once again the loan amount only on the ground that the day wise or month wise cash flow was not made available before him. Further the AO has not brought on record any finding or any material to prove that the Appellant firm had any another source to generate income over and above what has been declared by the Appellant Firm. The attempt of the Appellant to declare the

additional income in the return u/s 153A by reconstructing the books of account and furnishing a cash flow statement requires to

6.3.14 The taxing of the same income again amounts to double taxation, admitted by the Appellant in the return of income filed in response to the notice (s) u/s 153A of the Act for the years under consideration and again bringing the same loan amount to tax as unexplained cash credit u/s 68 is not appropriate and is against the principles of taxation. The additions contemplated over and above the amounts admitted are only a hypothetical income and not real income of the Appellant Firm. Thus, the AO's double taxation of the same income is unjustified and therefore requires to be deleted. Further the invocation of Section 68 of the Act by the AO is unfounded, as the loans advanced were a part of the "Sundry Debtors" and did not meet the criteria to be termed as "unexplained cash credit". Accordingly, the undersigned is of the considered view that the addition made by the AO treating additional income admitted voluntarily as unexplained cash credit u/s 68 of the Act is unwarranted. In view of this all the grounds raised by the Appellant upon this issue are hereby treated as allowed and the AO is directed to delete the addition(s) of Rs. 75,00,000/-,, Rs. 1,62,50,000/-, Rs. 70,40,000/-, Rs. 48,00,000/- and Rs. 2,81,00,000/- made as unexplained cash credit u/s 68 of the Act for the AY(s) I2015-16,2016-17,2017-18,2018-19, and 2019-20 respectively...

3.3 The Ld. CIT (A) has rightly held that the assessee has fully reconciled the loans and the income earned by it from interest as well as referral fees. In para 6.3.11 supra he observed that the explanation given by the assessee in respect of entries found in the loose sheet was satisfactorily justified. He accordingly, concluded that since the impugned amounts were offered for taxation in the respective years, no case for any further taxation of the same was made out. We find sufficient force in the argument of the Ld. CIT (A) that a case of double taxation was made out qua action of the Ld. AO to add the same since these amounts were already offered by the assessee in its return filed u/s 153A of the act. The conclusion drawn by Ld. CIT(A) that additions contemplated over and

above the admitted amounts are only hypothetical income has also been found to in order. We are in conformity with the observation of Ld.CIT(A) towards incorrect invocation of section 68 of the act by the Ld.AO as the loans advanced were part of “sundry debtors” and did not meet the criteria of unexplained cash credit u/s. 68. We have also noted that the Ld. CIT(A) has analyzed the entire facts of the case and discussed this elaborately. Accordingly we are of the view that no case of any interference is made out with the order of the Ld.CIT(A) and the same is therefore confirmed. **All the grounds of appeal raised by the Revenue on these issue are therefore dismissed.**

4.0 Another issue raised by the Revenue is regarding an addition of Rs. 5,91,500/- made by the Ld. AO. As per discussions made in para 10.3.2 on page-13 of his order, the Ld. AO has premised that the assessee could not substantiate with any documentary evidence the inter link between loan repayments and interest / referral incomes and therefore its claim of telescoping is unsubstantiated . The Ld DR assailed the decision of Ld CIT(A) as not based upon correct understanding of the facts . The Ld counsel for the assessee supported the order of the Ld. First Appellate Authority.

5.0 We have heard rival submissions in the light of material available on records. We have noted the following observations of Ld.CIT(A) recorded on para 6.5.10 to para 6.5.12 on page 83 of his order.

“.....6.5.10 The AO has not brought on record any finding or any material to prove that the Appellant firm had any another source to generate income over and above what has been declared by the Appellant Firm. The attempt of the Appellant to declare the additional income in the return u/s 153A by reconstructing the books of account and furnishing a cash flow statement required to be considered on merits.

6.5.11 The undersigned upon examination of the cash flow statement, and the arguments advanced by the AR during the course of Appellate proceedings, is of the considered view that the explanation of the Appellant on the basis of the table (supra) has effectively reconciled and income has been duly admitted by the Appellant Firm. When the Appellant was able to furnish the trail of cash flow, the Appellant should be provided the benefit of telescoping of unaccounted income as source for the unaccounted repayments of loan and interest paid. In the case of the Appellant firm, the AO has not brought on record any cogent and corroborative material evidence to reject the reasonable explanation of the Appellant Firm.

6.5.12 In this backdrop, the undersigned, is of the considered view there exists no ground to sustain the addition(s) of Rs.10,75,550/, Rs.10,00,000/- and Rs.5,91,500/- for the AY(s) 2017-18, 2018-19 and 2019-20 and accordingly all the grounds raised upon this issue are hereby treated as allowed and the AO is hereby directed to delete the addition of Rs.10,75,550/, Rs.10,00,000/- and Rs.5,91,500/- made as unexplained credit u/s 68 of the Act for the AY(s) 2017-18, 2018-19 and 2019-20 respectively....”

5.1 We are of the view that the Ld.CIT(A) is correct in holding that when the Ld. AO has not brought on record any findings, by way of his independent enquiries, to prove that the appellant had any other source to generate income over and above the one declared, there cannot be a case of having any other view on the matter. We find force in the argument of the Ld. CIT(A) that when the appellant assessee has been

able to furnish the trail of cash flow, it should be provided the benefit of telescoping of unaccounted income as source for repayment of unaccounted loans and interest. Accordingly we are of the view that no case is made out to disturb the order of the Ld. First Appellate Authority at this stage. **The order of the Ld.CIT (A) is therefore sustained in respect of the impugned addition of Rs.5,91,500/- u/s 68 and all the grounds of appeal raised by the Revenue are therefore dismissed.**

6.0 In the result, the appeal of the Revenue in ITA No.2116 / Chny / 2024, Assessment Year: 2019-2020 is dismissed.

ITA No.2291 /Chny/2024, Assessment Years: 2020-21

7.0 As far as above appeal of the Revenue is concerned we have noted that the grounds of appeal no.2 & 3 of the Revenue are identical to the issues adjudicated in para no.3.2 to 3.3 on page No.6 to 8 herein above while adjudicating assessee's appeal for ITA No.2116 /Chny/2024, Assessment Years: 2019-20. As the facts for both the years were reported to be identical by the rival parties, the decision taken in confirming the order of Ld. First Appellate Authority, would apply mutatis mutandis. **Accordingly, the ground of appeal Nos. 2 & 3 raised by the Revenue are dismissed.**

8.0 The next issue raised in this appeal vide grounds of appeal No.4 to 6 is regarding an addition of Rs.5 Crs. relating to an alleged loan to one

KCP and ground of appeal No.7 is regarding an addition of Rs.3.50 Crs. relating to an alleged loan to one V.Gunasekar Guru Tex . The Ld. DR informed that the Ld. AO has discussed the issue in para 10.1.9 to 10.1.11 at page 10 of his order. It was contended that based upon the incriminating information received during the search, the assessee had prepared a tabular chart of its claiming the loans received by it and the sources thereof. As regards, an entry of Rs. 5 Crs in respect of a party name "KCP" the assessee had submitted that no such loan was taken from the said party and hence the same was not included for the purposes of income computation in the cash flow statement. Similarly as regards the amount of Rs.3.50 Crs. relating to an alleged loan to one V.Gunasekar Guru Tex is concerned it was submitted that the entry referred to a probable market value of land to be arranged as a guarantee / collateral security to the firm. The Ld. DR submitted that the Ld. AO rejected the assessee's arguments holding that loan document has been confirmed by the assessee and that when the assessee accepted all the entries in the seized loose sheet, the one pertaining to "KCP" was also valid transaction. As for as entry concerning V.Gunasekar Guru Tex is concerned the Ld. AO rejected the argument of the assessee holding that as the amount of Rs.3.50Crs has been included in the aggregate total and no supporting evidence for the same being a collateral entry was

provided. The Ld DR argued that the relief accorded by Ld CIT(A) is on wrong conclusions. It was contended that the entries are all on same loose sheet of paper from which the assessee has done its tabulations to offer undisclosed income and that therefore this exclusion of few entries is unwarranted. On the impugned issues the Ld counsel for the appellant assessee argued placing heavy reliance of the order of Ld CIT(A). He contended that the assessee had demonstrated with sufficient evidences that the impugned transactions were not real transactions and therefore excluded. It was submitted that the Ld. AO has also failed on its part to establish through any enquiries to prove falsity of assesses arguments.

9.0 We have heard rival submissions in the light of material available on records. We have noted the following observations of Ld.CIT(A) recorded on para 6.5.8 to para 6.5.19 on page 37-41 and 6.6.3 to 6.7.7 on pages 43-45 of his order.

Extracts of para 6.5.8 to para 6.5.19 on page 37-41

“..... 6.5.8 The undersigned carefully examined the issued and the submission made substantiating the grounds raised. While going through the assessment order it can be seen that the findings of the AO emanates from the entries found in the loose sheets seized. Upon examination of the loose sheets it is observed that it contained both type of entries, one is entries that has been recorded in the books of account and the other is those which are outside the books of account. During the course of post search proceedings the Appellant has duly deciphered those items on which additional income has to be genuinely declared. Further the Managing Partner Shri.K.R. Ragu Sundar had deposed about this entry during the course of post search proceedings in the statement recorded from him and therefor such the explanation cannot be construed as an afterthought and has its own merits for consideration. Shri.K.R. Ragu Sundar also stated that the contents in the said loose sheets were noted only for

enquiry and follow up purposes after the demise of the erstwhile Managing Partner Late K Murugesan in December 2017.

6.5.9 It has been claimed that these loose sheets were purely used for internal purposes and were prepared and presented in the manner understood by the partners about the state of affairs in lending and all other activities related to the lending namely the partner following up, the name of financial aggregator, original principal amount irrespective of the current outstanding etc.,

6.5.10 The AR contended that these loose sheets maintained for identity purpose, apart from containing the details of interest pending and its original principal at the time of lending, it also contains some additional information which include the value of security available to the firm in the form of immovable property (land) for recovery in the case of default / long accumulated outstanding as collateral security.

6.5.11 The noting made in the said loose sheets in the name of "KCP" along with its interest outstanding, but during the course of search, no loan documents were found to be available with the firm. During the course of Appellate proceedings the AR submitted that, the Appellant firm has reconstructed the books on the basis of evidence gathered and has admitted additional income in its return of income filed u/s 153A of the Act wherever there were traces of moneys lent and interest collected outside the regular books of account. When no loan document was found and its enquiries with KCP also proved futile, it deleted the interest part in the second loose sheet which is well evident in the said loose sheet. In addition it is also evident from the loose sheet that the Appellant is in litigation with some borrowers which is on the basis of the loan documents available, even when no entry has been made in the regular books of account, and the lending has also been made in cash.

6.5.12 The Appellant had produced evidences for initiating legal actions in the case of loan parties which were already recorded in books and even in cases where the said loan were given in cash, which was also considered in the reconstructed books so as to enable the Appellant to admit additional income. In this regard, the Appellant had also brought to the notice of the undersigned that in the seized loose sheet, the name of the parties in whose cases legal actions are initiated are noted separately with words "Court" along with their names and in separate serial numbers. This proves that the Appellant firm is in litigation even in cases where the lending's were in cash. However, no legal action could also be initiated against KCP on account of the fact that there existed no loan documents. The fact that, this amount has also been captured in the total sum does not substantiate the advancement of any loan. During the course of assessment proceedings the Appellant has also filed an affidavit re-affirming the facts already narrated by it. The contents of the affidavit have not been disproved by the AO by any material evidence.

6.5.13 From the facts deciphered from the assessment order it can be seen that the addition of Rs. 5 Crore made as unexplained credit u/s 68 of the Act hinges

only on the entries found in the loose sheet seized during the course of search. At sl. No. 6 of the loose sheet SI No. 1 there exists an entry as under

		PRIN	DATE	INT. PENDING
6	KCP KM	5,00,00,000		3,74,00,000

6.5.14 whereas at sl. No. 9 of the loose sheet SI No. 2 there exists an entry as under:-

		PRIN	DATE	INT. PENDING
9.	KCP KM	5,00,00,000		

6.5.15 From the above, it can be stated that other than the above, no documents or evidences in any other form were unearthed during the course of search. Further the AO as evident in the assessment order has not conducted any independent enquiry to verify the veracity of the above contents in the loose sheet. More significantly the AO has not brought on record about the identity of the narration "KCP", "KM". When the identity of the person to whom the loan was advanced by the Appellant Firm was not established, the AO have no occasion to verify the transactions with regard to the advancement of loan amounting Rs.5 Crores.

6.5.16 Further, the entries made in seized loose sheet which was relied upon by the AO in making the addition of Rs.5 Crores as unexplained credit had its own defects viz...

- i) The date on which the amount of Rs.5 Crores was advanced, the seized loose sheet is silent about this.**
- ii) The identity of "KCP " as narrated in the loose sheet was not brought on record.**
- ii) There exists no acknowledgement of the person termed "KCP" about the receipt of loan.**
- iv) No evidence was found / collected during the course of search to the ascertain identity of such person named "KCP"**
- v) No documentation of any kind about the advancement of loan amount of Rs. 5 Crores was found during the course of search.**

6.5.17 Unless and until any cogent and corroborative evidence is brought on record to prove the advancement of Rs.5 Crores on loan by the Appellant Firm, any inference drawn about such advancement based upon the entries found in the loose sheet alone can only be a presumption. Any addition on presumption is devoid of merits.

6.5.18 In the case of ACIT v. Satyapal Wassan (2007] 295 ITR (AT) 352/[2008] 5 DTR 202 (Jab)(Trib.), the following important observations were made in the matter of utilization of notings on loose sheets as evidence in assessment proceedings:

(i) A document found during the search must be a speaking one. Without any second interpretation, the notings must reflect all the details about a transaction.

(ii) Any gap in the various components for the charge of tax must be filled up by the Assessing Officer by correlating the notings with other material found either in the course of search or during investigations.

(iii) It is the duty of the Assessing Officer to carry out necessary investigations for correlating the notings on the document with other documents seized, with regular books of account, with records kept by debtors/creditors and finally by recording statements of the concerned persons so as to arrive at any inference necessary to bring the amount to charge.

(iv) Such correlation is necessary unless the document indicates the source of income, year of the transaction, ownership of the transaction and quantum thereof.

(v) As a quasi-judicial authority, the Assessing Officer has to satisfy himself, on the basis of cogent material either found in the course of search or during post-search enquiries, that the transaction recorded in the document is real and not imaginary and it has actually taken place.

(vi) The document should speak either out of itself or in the company of other material found on investigation and/or in the search. The speaking from the document should be loud, clear, and unambiguous in respect of all the components required for computation of income. Only then can a charge be levied.

6.5.19 In view of the above detailed discussion made and the judicial decision, the undersigned is of the considered view that the AO contemplated the addition of Rs.5 Crores as unexplained credit solely based upon the entry found in the loose sheet without making any enquiries by bringing any cogent and corroborative evidence to prove that the entry found in the loose sheet relating the advancement of Rs.5 Crores to "KCP" has actually taken place or not. Further the undersigned is of the view that invocation of Section 68 of the Act by the AO is unfounded, as the loans advanced were a part of the "Sundry Debtors" and did not meet the criteria to be termed as "unexplained credit". Accordingly, the undersigned is of the considered view that the addition made by the AO treating the loan advanced as unexplained cash credit u/s 68 of the Act is not appropriate. In this backdrop the undersigned is not inclined to sustain the addition of Rs.5-Crores made as unexplained credit u/s 68 of the Act

by the AO for the AY 2020-21. Accordingly, all the grounds raised by the Appellant upon this issue are hereby treated as allowed and the AO is directed to delete the addition of Rs.5,00,00,000/- made as unexplained credit u/s 68 of the Act. ...”

Extracts of para 6.6.3 to 6.6.7 para 6.5.19 on page 43-45

“...6.6.3 The undersigned has carefully examined the issue raised under consideration. At the outset the addition contemplated is again based on the seized loose sheets, which is reflected without any serial number. It is appreciated here that the Appellant has recorded the lending of Rs.2 crores pertaining to the entry by name V GUNASEKAR at serial No.26 in the reconstructed books for FY 2018-19. Further, the Appellant has admitted an additional income of Rs.2,68,89,262/- in the return of income filed u/s 153A for the FY 2018-19 after reconstructing its books of accounts taking into consideration of entries in the seized loose sheets. This has been brought in and reflected in the cash flow statement also. The additional income admitted by the Appellant was not disputed by the AO.

6.6.4 For the other item found in the loose sheet mentioning "V.GUNASEKAR GURUTEX" of Rs.3,50,00, 000/-, the Appellant submitted that it is not a loan but represents the probable market value of a land that may be available as guarantee to the firm in the case of default of loan. Further in the seized loose sheet there exists no entry for the interest pending against the said amount of Rs.3.50 Crores.

6.6.5 Further, it is pertinent to note that no separate serial no. is assigned after sl.No.26 in loose sheet as on 31.10.2019. It is also pertinent to note that in the seized loose sheet sl. No. 2 containing details as on 31.12.2019, the said entry is noted as "Guru Tex (Land), again without any serial number and without any interest details. The land in that locality is said to have been identified as GURU TEX LAND. The above explanation of the Appellant clubbed with the manner in which the amount of Rs.3,50,00,00/- noted as V GUNASEKAR GURUTEX in the loose sheets without any serial number and without any interest, but captured under the loan amount in serial number 26 in the name of V.GUNASEKAR is reasonable to the facts of the case.

6.6.6 The observation made by the undersigned in respect of the addition of Rs.5 Crores in the name of "KCP" supra will hold good here also. It is once again re- iterated that other than the loose sheet relied upon by the AO, no documents or evidences in any other form were unearthed during the course of search. Further as evident in the assessment order the AO has not conducted any independent enquiry to verify the veracity of the contents in the loose sheet. More significantly, the AO has not brought on record about the identity of the narration "V GUNASEKAR GURUTEX. When the identity of the person to whom the loan was advanced by the Appellant Firm was not established, the AO have no occasion to verify the transactions with regard to the advancement

of loan amounting Rs.3.50 Crores. Further, the decision relied upon by the undersigned in the case of ACIT V. Satyapal Wassan [2007] 295 ITR (AT) 352/[2008] 5 DTR 202 (Jab)(Trib.) supra, and the consequent findings will squarely hold good for this addition also.

6.6.7 In view of the above detailed discussion made and the judicial decision, the undersigned is of the considered view that the AO contemplated the addition of Rs.3.50 Crores as unexplained credit solely based upon the entry found in the loose sheet without making any enquiries by bringing any cogent and corroborative evidence to prove that the entry found in the loose sheet relating the advancement of Rs.3.50 Crores to "V GUNASEKAR GURUTEX" has actually taken place or not. Further the undersigned is of the view that invocation of Section 68 of the Act by the AO is unfounded, as the loans advanced were a part of the "Sundry Debtors" and did not meet the criteria to be termed as "unexplained credit". Accordingly, the undersigned is of the considered view that the addition made by the AO treating the loan advanced as unexplained cash credit u/s 68 of the Act is not appropriate. In this back drop the undersigned is not inclined to sustain the addition of Rs. 3.50 Crores made as unexplained credit u/s 68 of the Act by the AO for the AY 2020-21. Accordingly. All the grounds raised by the Appellant upon this issue are hereby treated as allowed and the AO is directed to delete the addition of Rs. 3,50,00,000/- made as unexplained credit u/s 68 of the Act.

6.7

AY	Grounds
2020-21	20,21 & 22

6.7.5 The Appellant firm has generally stated that the entries without dates are non-recoverable advances keeping in mind the entries relating to KCP and V.GUNASEKAR. As far as the instances of SI.No.12, 20 and 26 are concerned, the AR has drawn the attention of the undersigned that there are narrations of date details for the above serial numbers in the subsequent list as on 31.12.2019 and wherever the interests were collected, the same were also offered to tax in the AY2020-21....”

9.1 The Ld. First Appellate authority has observed that the loose sheet of paper found during the search, contained both type of entries, one which were recorded as well as those which were not recorded. He observed that the statement of the managing partner Shri K.R.Raghusundar, on the matter, recorded during the course of post search proceedings cannot be construed as an afterthought. Thus the

loose sheet apart from containing income information also contained additional information like values of any collateral security available qua loans advanced etc. As regards entry of "KCP", he observed that no loan documents were found to support any real transaction. The assessee had submitted that in the absence of any loan document and enquiries with "KCP", there was no case for adding any income. The Ld. CIT(A) also considered assessee's argument that it was even in litigation with some parties to whom cash loans were advanced. The Ld. CIT(A) had also noted the affidavit filed by the assessee in this regard. The Ld. CIT(A) had also observed that the Ld. AO had failed to identify "KCP", date on which the loan was advanced, non-availability of any loan document or any other document in search to indicate its veracity, non-conduct of any independent enquiry by the Ld.AO to corroborate his findings. Consequently the Ld.CIT(A) proceeded to delete the impugned addition of Rs.5Cr. While doing so he also observed about incorrect invocation of section 68 of the act by the Ld.AO as the loans advanced were part of "sundry debtors" and did not meet the criteria of unexplained cash credit u/s. 68.

9.2 As regards the issue concerning V.Gunasekar Guru Tex the Ld.CIT(A) observed the assessee has offered and admitted additional income of Rs.2,68,89,262/- in AY-2019-20 qua a party named

V.Gunasekar appearing at Sl.No.26 in the reconstructed books. This amount has not been disputed by the Ld. AO. As regards the item found in loose sheet mentioning amount of Rs.3.5 Crs. against V.Gunasekar Guru Tex, the appellant had submitted it represents apparently the market value of the land available as a collateral security. Thus it was submitted by the assessee that V.Gunasekar Guru Tex and V.Gunasekar are inter related and former being a collateral value of land security for the loan advanced. The Ld. CIT(A) provided relief to the assessee reiterating his observations that the Ld.AO has not done any independent enquiries to cast any holes in the theory propounded by the assessee. For both the entries, the Ld.CIT(A) relied upon the decision of Hon'ble Coordinate Bench of Jabalpur tribunal in the case of Satyapal wassan(2007) 295 ITR (AT) 352. He also reiterated his hypothesis about incorrect invocation of section 68 of the act by the Ld.AO as the loans advanced were part of "sundry debtors" and did not meet the criteria of unexplained cash credit u/s. 68.

9.3 Upon detailed consideration of the order of the Ld.First Appellate Authority, we are of the view that he has correctly interpreted and appreciated the facts of the case in the light of arguments put forth by the assessee as well as judicial landscape covering the subject. We are therefore of the considered view that there is no case for any interference

to be made to the order of the Ld.CIT(A) at this stage. **Accordingly, we confirm the order of the Ld.CIT(A) on the issue of deletion of Rs.5 Crores in respect of entry named “KCP” and of Rs. 3.5 Crores in respect of entry named “V.Gunasekar Guru Tex” and dismiss all the grounds of appeal raised by the Revenue.**

10.0 The next issue raised by the Revenue is regarding the deletion of an addition of Rs.4,41,35,088/- by the Ld.CIT(A). The Ld. DR invited our attention to para 10.2 to 10.2.6 of the Ld. AO's order. The Ld. AO had noted that the loose sheet of paper found and seized during the search contained total interest income of Rs. 8,18,18,960/- however the assessee had offered interest income only of Rs.3,76,83,872/- qua entries against which a specific dates were mentioned on the said sheet. The assessee had submitted that there are lot of defaulters in its line of business and also that it is maintaining books and offering income on cash receipt basis. Thus it was explained that the dated entries were those in respect of which interest was received whereas no interest was received in respect of undated entries. The Ld. AO noted that by not offering interest income against undated entries the assessee had not disclosed interest income of Rs.4,41,35,088/-(Rs. 8,18,18,960 - Rs.3,76,83,872). The Ld. DR informed that the impugned argument was not acceptable as it indicated towards selective willful omission of

interest entries. The Ld.AO held the view that the assessee was seen advancing further loans to the interest defaulters which proves that they were not real defaulters as in money lending business, defaulters would not be given further loans. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) has very vividly, through specific illustrations, brought out in his order that the hypothesis drawn by the Ld.AO is erroneous and faulty. The Ld. Counsel thus placed heavy reliance upon the order of the Ld.CIT(A) to delete the impugned addition by referring to erroneous conclusions of the Ld.AO and at the same time accepting assessee's method of cash accounting in respect of loans advanced by it.

11.0 We have heard the rival submissions in the light of material available on records. We have noted that the Ld.CIT(A) in para 6.7.5 to para 6.7.7 at page 49 to 51 of his order observed as under:-

“....6.7.6 With respect to the observation of the AO that amounts were paid in tranches for the serial numbers 12, 20 and 26, it is seen that except for SI.No.12, there is no repeated lending in respect of SI.Nos.20 and 26 and to this extent the observation made by the AO is incorrect. Further, the AO for bringing to tax of the amount of Rs.4,41,35,088/- on account of the noting in loose sheet under the head "Int. Pending", had made a finding that amounts were paid to defaulters in the SI Nos 12, 20 and 26 in tranches in the AY 2020-21 or later and reproduced the Table 2 in page 15 of the assessment order which is reproduced in Para 6.7.1 of this order. This finding of the AO was to strengthen his own stand to tax the difference between the interest pending as on 31.10.2019 and the interest admitted in the return(s) of income filed u/s 153A of the Act. However, the above observation of the AO is factually incorrect, as no amounts were lent in tranches for the above SI. Nos. 12, 20 and 26 in the AY(s) 2020-21 or later, which is evident from the table brought out by the AO at page 15 of the assessment order. Hence this conclusion drawn by the AO is devoid of merits. The Appellant always endeavours to make the maximum recoveries from any loan given. When the recovery cannot be made in full, obviously it has to be written

off. Before the recovery of the principle amount, the Appellant cannot admit any interest income on accrual basis.

6.7.7 Prima facie the method of accounting followed by the Appellant is Cash System, and the Appellant cannot be expected to admit interest income without its receipt / realization. The Appellant has admitted interest income 'received / recovered' after analyzing each entry even in respect of those entries. The undersigned is of the considered view that there exists no material available with the AO to hold that the interest of Rs.4,41,35,088/-has been received, while the seized material itself clearly speaks that interests are pending and the amounts proposed to be taxed are out of the head " INT Pending". The AO should have brought on record the names of persons from whom such interest has been received, more particularly, during the period 01.04.2019 to 31.03.2020, relevant to AY 2020-21 and should have conclusively established with other corroborative evidences to tax the interest. There is no question of taxing the interest only on assumptions and presumptions. Therefore there is no reason to make any addition over and above what has been offered by the Appellant on receipt basis, in the absence of cogent corroborative material to substantiate the addition. It is also noted that the Appellant consistently admits income on receipt basis since inception. The observation made by the undersigned in respect of the addition of Rs.5 Crores in the name of "KCP" supra will hold good here also. It is once again re-iterated that other than the loose sheet relied upon by the AO, no documents or evidences in any other form were unearthed during the course of search. Further as evident in the assessment order the AO has not conducted any independent enquiry to verify the veracity of the contents in the loose sheet about the receipt of interest income more particularly when it has been recorded as "Interest Pending. In addition, the decision relied upon by the undersigned in the case of ACIT v. Satyapal Wassan [2007] 295 ITR (AT) 352/12008] 5 DTR 202 (Jab)(Trib.) supra, and the consequent findings will squarely hold good for this addition also. Accordingly, all the grounds raised by the Appellant upon this issue are hereby treated as allowed and the AO is directed to delete the addition of Rs.4,41,35,088/- made as undisclosed business income for the AY 2020-21..."

11.1 We find sufficient force in the argument of the Ld CIT(A) that the assessee in consonance to cash method of accounting, is within its rights to offer only that part of interest income which has been received by it. We have also noted the infirmities and inherent contradictions pointed out by the Ld CIT(A), in conclusions drawn as well as lack of any independent enquiry by the Ld AO . It is trite law that no income can be taxed on mere

assumptions and presumptions unless supported by cogent , verifiable and demonstrative evidences. We are therefore of the considered view that there is no case for any interference to be made to the order of the Ld.CIT(A) at this stage. **Accordingly, we confirm the order of the Ld.CIT(A) on the issue of deletion of Rs. 4,41,35,088/- in respect of interest income and dismiss all the grounds of appeal raised by the Revenue.**

12.0 Before parting we would like to make an observation deemed critical to the facts of the present case. The department had during the search proceedings had found digital evidences comprising WhatsApp chats between the managing director and partner etc of the assessee. There are references in the assessment order that these were inventorized and seized in the normal manner of making bunches of papers, paging and sealing. This is conventionally done for all paper documents. Since the advent of electronic working in last about two decades, several statutory changes have brought in governance. Introduction of Information Technology Act and corresponding amendments in the Indian Evidence Act are to name few changes. Thus significance, relevance and admissibility of electronic or digital evidence has now been given due recognition and importance so as to avoid any

conflict. Section 65 B of Indian Evidence Act is one such historic statute mandating procedure to be adopted in respect of admission of said digital evidence in judicial proceedings. Hon'ble High Courts and the Apex court has also risen to the occasion to lay down a detailed set of guidelines qua relevance and admissibility of digital evidences in a case. The ratio laid down by Hon'ble Apex court w.r.t section 65B of Indian Evidence Act in the case of Shreya Singhal followed in many other decisions is presently the law of the land as far as admission of digital evidences in a judicial proceeding, including quasi-judicial, is concerned. Before the Ld. First Appellate Authority the Assessee had contested the issue of use of admissibility of the impugned digital evidences in the case with no success. The issue has not been contested before us. Though during the present proceedings also the Ld. DR submitted that due compliance has been made to provisions of the Information Technology Act. We are however of the view that Hon'ble Apex court in Shreya Singhal and other cases has laid down detailed guidelines, albeit now law of the land, prescribing mandatory compliance structure while dealing with digital evidence and that non-compliance thereof would render the matter void ab initio. In the present case said compliance was found to be wanting. The Income Tax department has, in last decade, made several changes in its functioning, inter alia, including the faceless assessment and

appellate work in digital eco system. Compliance to laid rules and procedures qua handling of digital evidences has thus become a sine qua non for valid quasi-judicial proceedings. We therefore recommend that revenue should consider an immediate in-depth training course for its officers in intricate nuances of handling and admission of digital evidences in its statutory proceedings. The move would surely equip the revenue to defend its actions, appropriately, effectively and adequately in electronic environment.

13. In the result, both the appeals raised by the Revenue vide ITA Nos.2116/Chny/2024 & 2291/Chny/2024 are dismissed.

Order pronounced on 19th, February-2025 at Chennai.

Sd/-

(यस यस विश्वनेत्र रवि)

(SS VISWANETHRA RAVI)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 19th, February-2025 .

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त/CIT - Madurai

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF