

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**  
**SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.3310 to 3314/Chny/2024  
निर्धारणवर्ष/Assessment Years: 2017-18 to 2021-22

M/s.Bannari Amman- Educational Trust, 1212, Trichy Road, Coimbatore-641 018.	v.	The ACIT, Central Circle-3(2), Chennai.
[PAN: AAATB 1235 C]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
आयकर अपील सं./ITA Nos.3353 & 3354 to 3358/Chny/2024 निर्धारणवर्ष/Assessment Years: 2015-16 & 2017-18 to 2021-22 & Cross-Objection No.42/Chny/2025 (in ITA No.3353/Chny/2024) निर्धारणवर्ष/Assessment Year: 2015-16		
The ACIT, Central Circle-3(2), Chennai.	v.	M/s.Bannari Amman- Educational Trust, 1212, Trichy Road, Coimbatore-641 018.
		[PAN: AAATB 1235 C]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent/Cross- Objector)
Assessee by	:	Mr.Vikram Vijayaraghavan, Advocate (virtual)/Ld.AR
Department by	:	Mr.Shiva Srinivasan, CIT/DR
सुनवाईकीतारीख/Date of Hearing	:	27.06.2025
घोषणाकीतारीख /Date of Pronouncement	:	14.08.2025



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 2 ::

## आदेश / ORDER

### **PER ABY T. VARKEY, JM:**

These cross appeals preferred by the assessee and the Revenue are arising out of the orders passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Learned Commissioner of Income Tax (Appeals)-20, Chennai (hereinafter referred to as 'Ld.CIT(A)'), dated 30.10.2024 for the Assessment Years (hereinafter referred to as 'AY') 2015-16, 2017-18 to 2021-22. Since the issues involved are common, all the appeals were heard together. Both the parties also argued them together, raising similar arguments on these issues. Accordingly, for the sake of convenience and brevity, we dispose all the appeals by this consolidated order.

**2.** Before adverting to the grounds taken in the cross appeals, it is first relevant to cull out the background facts of the case. The assessee is a registered charitable trust u/s 12AA of the Act, which is running one college in the name of M/s Bannari Amman Institute of Technology and one school in the name of M/s Bannari Amman Vidya Niketan Matric Higher Secondary School. A survey action u/s 133A of the Act was conducted upon the assessee trust on 25.02.2020. Later on, a search and seizure action u/s 132 of the Act was conducted in the Chettinad Group of



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 3 ::

cases on 09.12.2020. During the course of search upon Chettinad Group, three diaries vide ANN/CTSPL/SB/B&D/S (1 to 3) and one loose sheet folder vide ANN/CLTSP/SB/LS/S were seized, which according to the Investigation officers, contained evidence for receipt of cash by Chettinad Builders Private Limited (in short 'CBPL') from M/s Bannari Amman Sugars Pvt. Ltd. (in short 'BASPL'). From these notings, it was inferred that, the cash was received by CBPL in lieu of rebate of 15% given in the construction bills. According to the AO of the searched person, the seized material contained information which pertained to the assessee trust and had a bearing on their total income. After recording his satisfaction, the AO issued notice(s) u/s 153C of the Act, requiring the assessee to furnish return(s) of income for AYs 2015-16 to 2020-21 and the case for AY 2021-22 was taken up for regular scrutiny by issue of notice u/s 143(2) of the Act. The summary of additions/disallowances made by the AO, which are in dispute in the cross appeals, for AYs 2015-16 and 2017-18 to 2021-22 are as follows:-

Issue	2015-16	2017-18	2018-19	2019-20	2020-21	2021-22
Addition on account of cash returned against rebate in construction bills	2,32,57,925	1,18,91,844	1,98,20,622	3,65,03,728	2,95,28,722	59,96,742
Addition of surplus by way of extra fees from value added courses	-	3,11,20,709	6,88,66,285	9,91,98,681	2,71,43,739	3,38,00,154
Addition of surplus from incidental business due to non-maintenance of separate books of accounts	-	11,98,98,607	13,87,71,532	17,46,38,717	-	-



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 4 ::

**3.** It is noted that the reasoning given by the AO for making the above additions were verbatim same across all AYs. Hence, for the sake of convenience, and to avoid repetition of facts, we deem it fit to adjudicate each of the common issues across all the AYs before us together.

**4. Issue 1 – Addition on account of cash returned against rebate in construction bills**

Ground Nos. 2 to 13 & 15 to 17 of assessee's appeal for AYs 2017-18 to 2021-22

Ground Nos.2 to 6 of Revenue's appeal for AY 2015-16

**4.1** Briefly noted, the facts of the case are that, in the course of search conducted u/s 132 of the Act at the premises of Chettinad Group, the above-mentioned material was found & seized, which according to the AO contained evidence for receipt of cash for the construction work done by CBPL for the assessee. The AO tabulated the details of amounts inferred from the entries found in the seized material at Para 6.2 of his assessment order, which is noted as follows:



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 5 ::

Date	Transacting Company	Amount	Seized Material
29.01.2020	BANNARI AMMAN SUGARS LIMITED TRIUVANAMALAI	1415500	48-LS, B&D(1)-220
22.04.2019	BANNARI AMMAN SUGARS	2130690	B&D(2)-103
23.04.2019	BANNARI AMMAN SUGARS	10000000	B&D(2)-103
25.04.2019	BANNARI AMMAN SUGARS	5000000	B&D(2)-103
26.04.2019	BANNARI AMMAN SUGARS	10000000	B&D(2)-104
07.12.2019	BANNARI AMMAN SUGARS	30000000	B&D(1)-222
11.06.2020	BANNARI AMMAN SUGARS	10000000	47-LS, B&D(1)-222
16.07.2020	BANNARI AMMAN SUGARS	10000000	B&D(3)-20
17.07.2020	BANNARI AMMAN SUGARS	10000000	B&D(3)-20
21.05.2019	JAI FROM BANNARI AMMAN SUGARS	2125000	48-LS
20.09.2019	BANNARI AMMAN SUGARS	1199000	48-LS B&D(1)-220
21.10.2019	BANNARI AMMAN SUGARS	802660	48-LS B&D(1)-220
	<b>Total</b>	<b>9,26,72,850</b>	

**4.2** The AO observed that, several bills which were raised by CBPL for the construction work of various buildings undertaken for the assessee, was also found and seized from the same premises of the Chettinad Group. The AO noted from the bills raised by CBPL upon the assessee, that, a rebate of 15% was given on the gross value of all the bills which were from inception till date i.e., FYs 2014-15 to 2020-21. According to the AO, Shri Yegappan, the Finance officer/cashier in CBPL, Shri M. V. Jayashankar, Ex-General Manager of CBPL and Shri S. P. Palaniappan, Assistant Vice-President Finance had confirmed the receipt of cash from the assessee in lieu of the 15% rebate allowed in these bills. The AO noted that, later on, a sworn statement u/s 131 was recorded from Smt.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 6 ::

V. Valliammai, CFO of the Chettinad Group, who furnished the details of various construction projects undertaken by CBPL for the assessee and, according to her, the 15% discount was offered in respect of the project at Sathyamangalam for assessee's college, Bannari Amman Institute of Technology from FY 2014-15 and onwards. The details of gross value of work done and the discount allowed in the respective years, was tabulated by the AO at Para 6.5 of his order, which is as follows:

F.Y.	Invoice Amount (in Rs.)	Discount	TDS Details
2014-15	15,50,52,832	2,32,57,925	24,40,597
2015-16	10,93,78,499	1,64,06,775	2,93,558
2016-17	7,92,78,964	1,18,91,844	17,06,417
2017-18	13,21,37,479	1,98,20,622	21,27,133
2018-19	24,33,58,190	3,65,03,728	65,15,543
2019-20	19,68,58,150	2,95,28,722	38,94,321
2020-21	3,99,78,278	59,96,742	50,486
Total	95,60,42,392	14,34,06,358	1,69,28,055

**4.3** The AO further observed that Smt. V. Valliammai, in her answer to Question No. 2, had stated that, the 15% discount on the bill value was given on the request of the assessee from FY 2014-15 and onwards and when CBPL requested for increase of rates, then the assessee agreed to pay the 15% discount amount in cash from FY 2016-17 and onwards till FY 2019-20. According to the AO however, this statement of Smt. V. Valliammai was not correct as he observed from the contemporaneous evidences on record that, though the bills were raised in various Financial Years and payments through banking channels were also received in the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 7 ::

respective financial years, but the notings found in the seized material suggested that the entire cash component was received together in a span of one year ranging between FYs 2019-20 and 2020-21. However, still relying on her statement, the AO inferred that, the total 15% discount amount of Rs.14,34,06,358/- pertaining to FYs 2014-15 to 2020-21 was returned in cash by the assessee and not Rs.9.06 crores as sought to be quantified by Smt. V. Valliammai. The AO therefore show caused the assessee as to why the above mentioned amounts should not be brought to tax as the assessee's unaccounted cash payments across AYs 2015-16 to 2021-22.

**4.4** The assessee, vide letter dated 28.02.2022 objected to the validity of the notice issued u/s 153C of the Act and *inter alia* contended that the seized material didn't pertain to it in as much as the jottings made in the seized diaries were vague and inconclusive. The assessee further contended that, even in the sworn statements, the name of the assessee was not mentioned. In the same submission, the assessee further pointed out the errors and defects in the seized notings, basis which, it was being alleged that they represented cash transactions of the assessee. The assessee is noted to have attempted to negate the theory propounded by the AO regarding the payment of cash in lieu of rebate on various fronts.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 8 ::

The summarized version of the assessee's arguments has been reproduced by the AO at Pages 5-6 of his assessment order, which is extracted below:-

"7.1 Vide its letter dated 28.02.2022, the assessee has objected to the notice u/s 153C which are summarised below:

i. The expression 'pertain to' (or information contained therein 'relate to') brought in the Statute w.e.f. 1.6.2015 would normally indicate a reference in the seized document to the other person. Merely from the name of the other person appearing in the seized documents, it cannot be inferred that it would pertain to "other person". The general meaning of this term is "to have reference, relation, or relevance on to be appropriate or (to) belong to be apart (of). Thus, in the expression "pertain to" some kind of belongingness is inbuilt.

ii. Even in a case where information is culled out from the seized document which relates to 'other person', then inbuilt requirement is such information is leading to taxable income of other person.

iii. Notice u/s 153C has been issued on the basis of noting in the diaries seized from the Chettinad Group and the noting do not specifically mention the name of the assessee and it is only in the nature of 'vague information'. The information in the dairies are also not specific and they simply mention words like '50', '100'.

iv. Simply because the searched party, Chettinad group, had made jottings in some diary that too in vague manner will not lead to the conclusion that the documents seized pertain to or information contained therein would relate to the assessee herein. Also, just because the assessee had transactions with Chettinad would not mean that every jotting in the diary would immediately relate to the assessee.

v. Even in the sworn statement copies provided to the assessee, do not conclusively say that the cash payments have emanated from Bannari Amman Educational Trust. In fact, Mr. Muthu and Mr. Yegapan, employees of searched assessee have stated that they are not very much sure as to from which source the alleged cash payments have arisen. Nowhere, the name of the assessee, Bannariamman Educational Trust is mentioned.

vi. In the Karnataka High Court judgement in the case of CIT vs. IBC Knowledge Park Private Limited [2016] 69 taxmann.com 108, it has



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 9 ::**

been held that seizure of incriminating material leading to an inference of undisclosed income is sine qua non for the invocation of section 153C.

vii. Even otherwise, the issue of notice u/s 153C for the A.Ys. 2015-16 to A.Y. 2018-19 is not legally tenable since the so-called materials seized contain information that is applicable only to A.Y. 2020-21 and A.Y. 2021-22. The Assessing Office has no power to take this payment relating to any earlier assessment years.

....

7.3 In the same submission, the assessee has stated that without admitting the so-called transaction on the basis of vague diary noting, the assessee has explained the transactions with Chettinad group and has highlighted the errors and defects in the alleged cash transaction from its perception as summarised below:

- i. After necessary negotiations based on the large volume of construction works, the assessee requested for discount at the rate of 15% of the bill value which was duly agreed and confirmed by the Chettinad. Based on the same all the bills were raised by the contractor, i.e. Chettinad granting a discount of 15% and payments were effected through banking channels only.
- ii. the assessee does not derive any advantage by booking less than the value reflected in the bills. It is a common knowledge and business principle that every assessee would like to book the legitimate expenditure supported by vouchers so that the expenditure can be fully claimed while computing the total income.

7.4 The assessee has made further submissions vide letter dated 5.7.2022, objecting to the notice u/s 153C and denying the entire payment to the Chettinad in cash in lieu of the rebate in the bills. The objections are more or less repetitive and are briefly summarised as below:

- i. The seized diaries wherein certain amounts have been stated to have been paid do not have any co-relation to the assessee's transaction which is the requirement as per section 153C. In the diaries, they have simply noted the Bannari group name without any specific marks or identifiable person's name.
- ii. The noting made in the diary is not clear and does not provide the clear description about the money received. Section 153C requires that the material seized from a particular assessee's premises, the possession of third party documents must specifically indicate to which identifiable person relates. The broad mention of "Bannari Group" would



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 10 ::**

no ipso-facto would mean that it is co-relatable to the assessee. The initiation of proceedings on incomplete data would not be legally tenable in the eyes of law.

iii. Proposal of addition indicated in the notice is simply and totally based on other person's diary noting without being confirmed by the other party.

iv. Vide the notices, the department appears to have concluded that the discount @ 15% related to the F.Y. 2014-15 has been settled at much later point of time during the F.Y. 2019-20 based on the diary noting. Hence, it can very well be deduced that no business prudence is established in the Department's contention.

v. The Chettinad group for the reasons best known to them, without any iota of evidence the Bannari Group's name has been implicated.

vi. Granting but not conceding, the assessee is a trust and whatever the money spent is eligible for reckoning for application of income. In such an eventuality, there is no legal or factual need for the assessee to reduce/subside the expenditure by resorting to any other mode of payment. Net bill after discount only has been accounted by the assessee Trust. The liability to pay over and above the invoice value does not arise at all. Hence, the contention of the Department is not at all tenable."

**4.5** The AO is noted to have rejected the assessee's challenge to the validity of proceedings u/s 153C of the Act. The AO thereafter proceeded to examine the notings found in the seized diary and observed that, they were well corroborated and not vague jottings as was being contended by the assessee. The AO reproduced sample loose sheets seized from the premises of the Chettinad Group at Pages 8 & 9 of his assessment order, which for the sake of convenience, is also extracted below:



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 11 ::

07.12.19 <sup>(222)</sup> 18604195555 <sup>(225)</sup>  
3 Cr. Recd. from BASL for Rebat 15%  
on 07.12.19  
11.06.2020  
1 Cr. Recd. from BASL for Rebat 15%  
on 11.06.2020

CBPL <sup>Salavud</sup> a/c - credit <sup>(216)</sup> <sup>(47)</sup>  
2.04.19 - Old Balance Cr Rs: 30,693-  
1.05.19 - Bannari Cr Rs: 21,25,000-  
20.09.19 - Bannari  
(Chiruvannamalai) Rs: 11,99,000-  
20.09.19 - Mr Siddharth  
(Kallippalayam Lane) Rs: 7,60,000-  
21.10.19 - Bannari (Rich Road  
(Compound wall) Rs: 8,02,660-  
29.01.2020 - Bannari  
(Chiruvannamalai) Rs: 14,15,500-  
15.06.2020 - Bannari a/c 1,00,00,000-  
11.09.2020 - KMCH - Scrap Advance - 50,000-  

---

1,63,82,853

**4.6** The AO was of the view that, the above notings are not vague but are very specific and relates to the assessee. The AO further observed that, Shri Muthu and Shri Yegappan, employees of the searched person,



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 12 ::

had stated that, they had received the cash from the head cashier of M/s Bannari Amman Sugar Limited for the work done at Tiruvannamalai and the above notings were recorded at the instructions of Shri M V Jayashankar. The relevant portion of their statements are noted to be as under:

**“Statement of Mr. V Muthu**

**Q.No.11. I am showing you a Blue Diary of Chettinadu Builders- seized during the course of Search in the case of M/s Chettinadu Lignite Transport Service Private Limited at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore - 641018 vide Annexure Ann/CLTSPL/SB/B &D/S, dated 09.12.2020 SI No.2, page no. 103 of the said book. Please identify and explain all the entries made in the page.**

Ans. I have carefully perused the page no.103 of the said note book shown to me. I am to state that:

1. Entry no.1 on 22.04.19 with the noting Bannari Amma-Kovil 50 denotes receipt of cash amounting to Rs. Fifty Lakhs (Rs. 50,00,000/-) received by Mr. Jaishankar (then general manager) from Bannari group.
2. Entry no.2 on 22.04.19 with the noting Alagapan a/c denotes the Cash amounting to Rs. Twenty- One Lakhs thirty thousand six hundred and ninety-three (Rs.21,30,693/-) handed over by Mr. Alagappan (Former Cashier who worked with our Organization) to me.
3. Entry no.5 on 23.04.19, denotes the cash of Rs. One crore (Rs.1,00,00,000/-) received from Bannari amman group through Mr Jaishankar and handed over to me.
4. Entry no.6 on 23.04.19 represents the delivery of Rs. One Crore Seventy Lakhs (Rs.1,70,00,000/-) to Mr. GK for delivery to Chennai as instructed by RMPL (R.M. PALANIAPPAN) (Mob: 9941796999, 8428266216).

**Q.No.13. I am showing you a Blue Diary of Chettinadu Builders seized during the course of Search in the case of M/s Chettinadu**



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 13 ::

**Lignite Transport Service Private Limited at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore 641018 vide Annexure Ann/CLTSPL/SB/B &D/S, dated 09.12.2020 SI No.2, page no. 104 of the said book in Sl. No. 2 of 25.04.19. Please identify and explain the entry made in the page.**

Ans. I have carefully perused the entry in Sl. No.2 dated 25.04.19 of page no.104 of the said note book shown to me. I am to state that, the entry was the receipt of Rs. 50,00,000/- from Bannari Educational trust/Bannari sugars Ltd. through Mr. Jaishankar (Previous General Manager of Chettinadu Builders Private Limited).

**Q.No.14. I am showing you a Blue Diary of Chettinadu, Builders seized during the course of Search in the case of M/s Chettinadu Lignite Transport Service Private Limited at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore 641018 vide Annexure Ann/CLTSPL/SB/B &D/S, dated 09.12.2020 SI No.2, page no. 104 of the said book. Please identify and explain the 03 entries made in the page.**

Ans. I have carefully perused the 03 entries dated 26.04.19 of page no.104 of the said note book shown to me. I am to state that:

1. The entry in sl. No.1 corresponds to the receipt of Rs.9.76 Lakhs in cash from M/s Trans India towards sale of the apartment No. B-501 of Chettinadu Burgundy, a housing project undertaken by our company.
2. The entry in sl. No.2 corresponds to the receipt of Rs.1,00,00,000/- in cash from Bannari Amman Group through Mr. Jalshankar.
3. The entry in sl. No.3 corresponds to the handing over of Rs.1,50,00,000/- in cash to Mr. GK (Ph.: 8754703956) for transfer to Chennai as instructed by RMPL (R.M. PALANIAPPAN) (Mob: 9941796999, 8428266216). The delivery was against token no. 22Q529629 through Mr. Jaishankar.

**Q.No.17. I am showing you a Blue Diary of Chettinadu Builders seized during the course of Search in the case of M/s Chettinadu Lignite Transport Service Private Limited at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore 641018 vide Annexure Ann/CLTSPL/SB/B &D/S, dated 09.12.2020 SI No.2, page no. 111 of the said book. Please identify and explain the entry made on 21.05.19 in the page.**



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 14 ::**

Ans. I have carefully perused the entry dated 21.05.19 of page no.11-1 of the said note book shown to me. I am to state that, it is the entry corresponds to Rs.21,25,000/- received in cash from M/s Bannariamman group by Mr. Jaishankar and handed over to me on 21.05.2019.

**Q.No.22. I am showing you a Blue Diary of Chettinadu Builders seized during the course of Search in the case of M/s Chettinadu Lignite Transport Service Private Limited at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore 641018 vide Annexure Ann/CLTSPL/SB/B &D/S, dated 09.12.2020 SI No.2, page no. 152 of the said book. Please identify and explain all the entry made in the page.**

Ans. I have carefully perused the entries (in page no.152 of the said note book shown to me. I am to state that:

The entry on 19.09.19 corresponds to cash payment of Rs. 23,00,000/- to Silica Mr. Kittu. This payment was made out of cash available with me. 4

2. The entry no. 3 on 20.09.19 corresponds to cash of Rs. 11,99,000/- received from Bannariamman sugars/ Bannariamman educational trust group, Tiruvannamalai through Mr. Yegappan, Cashler.

3. The entry on 21.09.19 corresponds to cash of Rs.7,60,000/- received from Mr. Siddharth, Kallipalayam for Kallipalayam land.

**Q.No.26. I am showing you a Blue Diary of Chettinadu Builders seized-during the course of Search in the case of M/s Chettinadu Lignite Transport Service Private Limited at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore 641018 vide Annexure Ann/CLTSPL/SB/B &D/S, dated 09.12.2020 SI No.2 page no. 186 of the said book. Please identify and explain the entry made on 29.01.20.**

Ans. I have carefully perused the entries in page no.186 of the said note book shown to me. I am to state that, cash of Rs.14,15,000/- received from Mr. Yegappan pertaining to Bannariamman Sugars/Bannariamman educational trust, Tiruvannamalai.

**Q.No.34. As noted in your seized dairies and loose sheets, we have consolidated the cash transactions related to Bannari Amman Sugars/Bannari Amman educational trust and**



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 15 ::

**Chettinadu Burgundy as below. Can you please confirm the same?**

Bannari Amman sugar/Bannari Amman Educational Trust-Cash Received			
23	29.01.2020	BANNARI AMMAN SUGARS LIMITED TRIUVANAMALAI	1415500
3	22.04.2019	BANNARI AMMAN SUGARS	2130690
4	23.04.2019	BANNARI AMMAN SUGARS	10000000
6	25.04.2019	BANNARI AMMAN SUGARS	5000000
8	26.04.2019	BANNARI AMMAN SUGARS	10000000
17	07.12.2019	BANNARI AMMAN SUGARS	30000000
1	11.06.2020	BANNARI AMMAN SUGARS	10000000
6	16.07.2020	BANNARI AMMAN SUGARS	10000000
7	17.07.2020	BANNARI AMMAN SUGARS	10000000
10	21.05.2019	JAI FROM BANNARI AMMAN SUGARS	2125000
		Total	9,06,71,190

Ans. Yes sir. I have scrutinized entire cash transactions. All the cash transactions summarized above are same as I have entered in my diaries and loose sheets. It is reflecting the transactions I have entered in my Diary, the above cash received from various persons were to Mr RM Palaniappan through the persons sent by Mr. RM Palaniappan's Phone (Mob: 9941796999, 8428266216)

**Statement of Mr. Yegappan**

**Q.No.6. Please explain the nature of your work in in M/s Chettinad Products & Services Private Ltd.**

Ans: My main duty involves cashier work only. I receive self-cheques from head office towards petty cash expenses, which is encashed and given for day to day expenses of the company. Petty cash register is maintained in the office computer. No other books of account are maintained by me. I am also looking after the maintenance of construction bills raised for project undertaken with Bannari Amman



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 16 ::**

group of companies. I receive the bills raised by the company M/s Chettinad Products & Services Private Ltd and certified by the architect and 4 copies of the same is made. Original is forwarded to Bannari Amman Group Company, one copy to architect, one copy to site office, one copy to head office at Chennai and one copy is maintained here. I also, collect the cheque payment for the bills raised from Bannari Amman Group of companies and deposit the same into the bank accounts of the company maintained with Axis Bank a/c 916020043758979 and HDFC bank account no. 57500000204572 maintained at Chennai.

**Q.No.9. I am showing you a Blue Diary of Chettinadu Builders seized during the course of Search in the case of M/s Chettinadu Lignite Transport Service Private Limited at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore 641018 vide Annexure Ann/CLTSPL/SB/B &D/S, dated 09.12.2020 SI No.1, page no. 220 and 222 of the said book. Please give details of the entries made in these two pages.**

Ans: I have carefully perused the page no.220 of the said note book shown to me. These are the entries made by me for cash of Rs. 11,99,000/- received on 20.09.19, cash of Rs.8,02,660 received on 21.10.19 and cash of Rs 14,15,500/- received on 27.01.2020 from the head cashier of Bannari Amman Sugar Ltd (BASL) situated at Trichy Road Coimbatore, for the work undertaken at Tiruvannamalai. The cash received was handed over to Shri. Muthu PRO of M/s Chettinad Products & Services Private Ltd at regional office.

The entries made in Page 222 of the above said seized Blue Diary were transactions recorded on the direction of Shri. MV Jayashankar, Ex General Manager of the company. The transactions recorded are cash of Rs. 3 crore received by Shri. M V Jayashankar on 07.12.19 and cash of Rs.1 crore received by Shri. M V Jayashankar on 11.06.2020 from Bannari Amman Sugars Ltd and given to Shri. Muthu, PRO of the company M/s Chettinad Products & Services Private Ltd on the said dates."

**4.7** The AO observed that, Shri M V Jayashankar, the Ex-General Manager, in his statement confirmed the receipt of cash from M/s Bannari



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 17 ::

Amman Sugar Limited and his relevant answers to Question Nos. 7 & 8 in his sworn statement, are as under:

**“Q.No.7. I am showing you a Blue Diary of Chettinadu Builders seized from Mr. Yegappan, Cashier (Chettinadu Builders Pvt. Ltd.) during the course of Search in the case of M/s Chettinadu Lignite Transport Service Private Limited at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore -641018 vide Annexure Ann/CLTSPL/SB/B &D/S, dated 09.12.2020 SI No.1, page no. 220 and 222 of the said book. Please give details of the entries made in these two pages.**

Ans: I have carefully perused the note book shown to me, the entries are notings of cash received from Bannari amman sugars limited on the following dates:

1. Rs.11,90,000/-on 20.09.2019
2. Rs.8,02,660/- on 21.10.2019
3. Rs.14,15,500/- on 27.01.2020
4. Rs.3,00,00,000/- on 07.12.2019
5. Rs.1,00,00,000/- on 11.06.2020

for the 15% rebate given on the bills raised against the work done by our company chettinadu products and services limited. The above cash received by me from cashier of Bannari Amman Sugars Limited on the instructions of Assistant Vice President (Finance) Mr. S.P. Palaniappan and handed over the amount to Mr. V. Muthu, PRO at Coimbatore office. Mr. V. Muthu transferred these amounts to Mr. R.M. Palaniappan in Chennai. The above entries in the notebook made by Mr. Yegappan, Finance officer (Cashier) on my instructions.

**Q.No.8. I am showing you box files seized during the course of Search in the case of M/s Chettinadu Lignite Transport Service Private Limited at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore 641018 vide Annexure Ann/CLTSPL/SB/B &D/S, dated 09.12.2020 SI No.7 to 13 which contain the bill raised by the company for the work undertaken by Bannari Amman Group of companies. On verification, it is seen that bill**



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 18 ::**

**raised by the company contains rebate @15% on the total value of contract carried out. Please explain.**

Ans: The box files shown to me contain copies of the bills raised by the company for the work undertaken for Bannari Amman Group of companies. The term 'Rebate @15%' mentioned in the diary and bills are one and the same, also the rebate amount in the bills and cash received from them also matching, actually rebate is allowed in the bill to receive the amount in cash for cash requirements of our concern."

**4.8** The AO further observed that, when Shri M V Jayashankar was required to confirm the consolidated entries found in the seized diaries & pages found from the possession of Shri Muthu and Shri Yegappan, he had confirmed that these entries related cash received in lieu of rebate allowed to Bannari Amman Sugars / Bannari Amman educational trust. According to the AO therefore, the statement of Shri M V Jayashankar along with the subsequent statement of Smt. V Valliammai, CFO of Chettinad Group, which was recorded on 30.07.2021, corroborated the seized notings, and evidenced that the assessee had made payments in cash in lieu of the 15% rebate amount allowed in the bills by CBPL. The assessee is noted to have requested for cross examination of both Shri M V Jayashankar and Smt. V. Valliammai on whose statements the AO was relying to justify the impugned addition. It is noticed that, the AO expressed his inability to provide cross examination of Shri M V Jayashankar, but the cross examination of Smt. V. Valliammai was held on 23.03.2023. We note that, Smt. V. Valliammai reiterated that CBPL



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 19 ::**

had received cash from the assessee towards the 15% rebate but only in the financial years 2016-17 to 2019-20.

**4.9** In light of the above, the AO is accordingly noted to have summarized his reasons for rejecting the contentions of the assessee and making the impugned additions at Para 10.2 of his lead assessment order for AY 2015-16, whose relevant extracts are as follows:

- i. As already explained in the show cause notice dated 13.02.2023, the notings in the loose sheets are well corroborated and are not vague notings as alleged by the assessee.
- ii. Even though mode of receipt is not mentioned, the persons who have received confirmed that the same has been received in cash.
- iii. The persons who have maintained the loose sheets and diaries have clearly mentioned that the notings mentioned in abbreviated form relates to the
- iv. The name of the assessee is only mentioned in abbreviated form, as is the practice while recording unaccounted transactions where the persons recording the same would record the same in a manner he only understands.
- v. Mr. Muthu and Mr. Yegappan have only recorded the transactions as directed by Shri M. V. Jayashankar, while Shri M. V. Jayashankar, in the sworn statement recorded from him u/s 132(4) of the Act on the date of search has clearly stated that he has received the cash from M/s Bannariamman Sugars Ltd. and also that the same has been received against 15% rebate.
- vi. There is no requirement to provide opportunity to the assessee before initiating proceedings u/s 153C of the Act. However, during the post search proceedings, opportunity of explaining the contents of the seized material was provided to the assessee. A sworn statement u/s 131(1A) was recorded from Shri Guru Sampathkumar, representative of Bannari amman Group. He could not give proper explanation to the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 20 ::**

seized materials. In this regard, the relevant portion of the sworn statement is reproduced as under:

.....

Thus, it is not correct on the part of the assessee to say that no opportunity was provided to explain the seized material before initiation of proceedings u/s 153C.

vii. The loose sheets and diaries are well corroborated inasmuch as repeatedly, the persons of Chettinad group have been confirming in the sworn statements recorded from them regarding the transactions. Mostly recently, Smt. V. Valliammai, CFO, in the cross examination also confirmed that cash was paid by the assessee against rebate.

viii. Thus, the loose sheets are not dumb documents as alleged by the assessee and are well corroborated and hence, the judicial decisions relied on by the assessee are not applicable to the facts of its case.

ix. In fact, M/s Chettinad Products Private Limited have filed settlement application for the A.Ys. from 2015-16 to 2020-21 admitting the said amount of cash received from the assessee and in the A.Y. 2021-22, in the return of income filed has declared the said income.

X. Further the submission that cash was received as per the evidence only in 2019-20 and no evidence for receipt of cash during the earlier F.Ys. also do not hold water as the cash amount receivable for earlier years only has been received from F.Ys. 2019-20 onwards.

10.3 Thus, the assessee's objections to the proposed addition is not accepted and the unaccounted payments made to Chettinad Builders Pvt. Ltd. in cash amounting to Rs.2,32,57,925/- against the Rebate 15% allowed in the bills of the Assessee is added to the returned income."

**4.10** With the above observations, the AO is noted to have added the rebate of 15% allowed in all the bills by CBPL by way of unaccounted cash payments returned by the assessee in AYs 2015-16 to 2021-22, as was tabulated by him in the show cause notice, already extracted earlier.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 21 ::**

Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A).

**5.** The Ld. CIT(A) is noted to have summarized the arguments put forth by the assessee at Para 5.3 of his appellate order, which is reproduced below:

"i) The assessment u/s 153C of the Act has been initiated merely based on the notings of seized documents (diaries and loose sheets) and the sworn statement of employees/personnel of CBPL on the basis of the assumption that alleged cash has been received by CBPL from the appellant against the rebate of 15% allowed in the bills for the construction works carried out by CBPL for the appellant.

ii) The appellant and M/s. CBPL have entered into an agreement for undertaking various construction activities for the appellant and M/s. CBPL had provided a discount of 15% on all the bills raised on the appellant for the construction activities/ works carried out by CBPL considering the long association with the appellant and on considering the charitable activity carried out by the appellant.

iii) The entries on page no. 222 of loose sheets on 07.12.2019 & 11.06.2020 have a gap of six months but the writing shows that it is written on the same day and it is an afterthought and also the appellant's name is not mentioned.

iv) In the seized material, it is not clear in the noting whether it represents cash or cheque.

v) The notings in the loose sheets were in the form of rough scribbling, in coded form with several abbreviations and no definite interpretation could be given to the same. These uncorroborated, rough loose sheets could not form the sole basis for initiation or addition u/s 153C of the Act.

vi) The employees of the searched party, Mr. Muthu and Mr. Yegappan have affirmed that the source of amount and the party from whom the amount has been received is not known to them and they have recorded the transaction purely based on the sayings of Mr. Jayasankar.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 22 ::

vii) Ms. Valliammai, CFO of Chettinad Group has also confirmed that the rebate of 15% was given as a pre-negotiation price. Further, the CFO has also confirmed that the appellant has not paid any cash till FY 2015-16.

viii) The addition was made by the AO merely based on the rough notings in the loose sheets and diaries and the assumed facts given vide sworn statement of the employees of CBPL without any corroborative evidence cannot be constituted as valid documents. Hence, the addition made on the assumptions on rough noting on the loose sheets/diaries is invalid in the eyes of law.

ix) Even though Ms. Valliammai confirmed her sworn statement in the cross examination, she herself had assumed that name 'Bannari Amman' implies Bannariamman Educational Trust and she had also admitted that she was not part of the negotiation while finalizing the rebate of 15%.

x) The opportunity for cross examination of Mr. M.V. Jayasankar was not given and Mr. Jayasankar had left service in Chettinad group. The appellant had submitted a letter from Mr. Jayasankar during the assessment proceedings wherein he had rebutted the sworn statement given by him at the time of search proceedings."

**5.1** The Ld. CIT(A) observed that, the seized materials which were maintained by the employees of Chettinad Group showed that they were involved in collecting cash from Bannari Group at Coimbatore which they would transfer to Chennai. He further noted that Shri Yegappan, Shri Muthu, and Shri Jayashankar had stated in their sworn statements that, they used to collect cash from the chief cashier of the BASPL. It is noticed that, the Ld. CIT(A) after extensively extracting the sworn statements of these persons in the appellate order, observed that, since FY 2016-17, CBPL was doing civil construction work for Bannari Amman Institute of Technology and the sworn statement of employees revealed that the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 23 ::

rebate of 15% given in the bills raised by CBPL was actually collected in cash from the assessee by Shri Jayashankar and Shri Muthu, who would send the cash to Chennai. The Ld. CIT(A) was of the view that the persons at Chennai head office were actually aware of the projects in which the assessee had paid cash and that the employees at Coimbatore had acted only under the directions of the Head Office.

**5.2** The Ld. CIT(A) thereafter noted that, Smt. V. Valliammai, CFO of Chettinad Group, in her later statement recorded u/s 131 of the Act on 30.07.2021 had explained the nature of activities carried out by the Chettinad Group for the construction undertaken for the assessee. She had clarified that, the rebate was provided by CBPL to the assessee from FY 2014-15 and onwards by way of 15% of the value of bills raised, and when, CBPL had requested for rate revision, the assessee in lieu had offered to pay the 15% discount amount in cash from FY 2016-17 and onwards, which was again discontinued from FY 2020-21. The Ld. CIT(A) noted that, Smt. Valliammai had also clarified that, though in other construction contracts there was a rebate of 7.5%, but according to her, these rebates were genuine which was usually given at the time of business negotiation and no cash was received in those contracts. She had however reiterated that, the rebate of 15% given to the assessee was



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 24 ::

received back entirely in cash only during the period FYs 2016-17 to 2019-20. The Ld. CIT(A) in order to verify the claim made by Smt. V. Valliammai, had carried out a verification of the seized material and he found that the invoices raised by CBPL upon the assessee had a rebate of 15%, but according to him, the other invoices raised by CBPL in the name of BASPL didn't have rebate of either 7.5% or 15%. According to the Ld. CIT(A), this factual aspect corroborated the statement of Smt. V. Valliammai that the 15% discount, which was shown only in the bills of the assessee, would have been received back in cash. The Ld. CIT(A) rejected the assessee's attempt to disprove the statement of Smt. V. Valliammai on the ground that she had admitted that she was not privy to the terms of negotiation for finalizing the rebate @ 15%. According to the Ld. CIT(A), the employees at Coimbatore had clearly stated that the persons at the head office were aware about the transactions and therefore, according to him, Smt. V. Valliammai who was working at the Chennai office would indeed be aware about the same. The Ld. CIT(A) also observed that, her name was also found mentioned in one of the notings made by Shri Muthu in the same diary, which according to him evidenced that she was in know of the transactions involving cash collections in lieu of rebate. The Ld. CIT(A) also reiterated his reliance on the statement of Shri Jayashankar wherein he had inter alia averred that



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 25 ::

the notings found in the diary related to the assessee as well. The Ld. CIT(A) thus held that, the seized material available on record, read along with these statements, did show that the assessee had made unaccounted cash payments to CBPL towards construction of their building.

**5.3** However, according to the Ld. CIT(A), the employees of the Chettinad Group as well as Smt. V. Valliammai, CFO had clearly stated that, the cash payments were only made for the period from FY 2016-17 and onwards, and therefore, going by their statement(s), he held that the addition on account of unexplained cash payment(s) could be validly made only in FY 2016-17 and onwards. He thus confirmed the additions made in AYs 2017-18 to 2021-22 and deleted the additions made by the AO in FYs 2014-15 and 2015-16 as they were neither backed by any seized material nor supported by any sworn statements of the employees of the Chettinad Group. Aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal before us in AYs 2017-18 to 2021-22 and the Revenue has come up in appeal in AY 2015-16.

**6.** The Ld. AR/Counsel appearing for the assessee, Shri Vikram Vijayaraghavan, vehemently opposed the action of the lower authorities and contended that the seized material were dumb documents from



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 26 ::**

which, no prudent person properly instructed in law could have inferred that they related or pertained to the assessee. He also pointed out several defects and fallacies in the notings, which, in his view, showed that the said jottings didn't relate to the assessee. He also took us through the sworn statements of the employees of the Chettinad Group, which were relied upon by the lower authorities and argued that, if one, closely analyses the same, it would be discerned that these statements were either unreliable or misleading or given with a biased mindset. The Ld. AR also narrated the entire chain of events and background facts relating to the buildings constructed by CBPL for the assessee and argued that that the notings found in the seized documents which allegedly suggested cash payments during the period 2019 to 2020 could not have possibly pertained to the past construction work which was done from FY 2014-15 and onwards, whose bills had also been cleared by the assessee from time to time in the earlier years. The Ld. AR furnished detailed written arguments in support of his contentions, which, to avoid repetition, we shall be discussing in the ensuing paragraphs.

**7.** Per contra, the Ld. CIT, DR appearing for the Revenue, Shri Shiva Srinivasan, supported the order of the AO. He contended that, though the Ld. CIT(A) had rightly set out his extensive reasons for upholding the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 27 ::

AO's findings and that the seized material and sworn statements of Chettinad Group clearly evidenced that the assessee had made unaccounted cash payments in lieu of 15% rebate received from CBPL. However, in his view, the Ld. CIT(A) had erred in deleting the addition made in AY 2015-16. According to him, as the seized material/statements evidenced that the assessee had been paying back the 15% discount amount in cash from FY 2016-17 and onwards, then, the AO was justified in extrapolating the same to in the earlier years as well. He accordingly urged us to uphold the additions made by the AO on the impugned issue, in all the AYs before us.

**8.** We have heard both the parties and carefully perused the material seized from the premises of Chettinad Group, the sworn statements being relied upon by the lower authorities and the written submissions and oral arguments put forth before us. The facts on record reveal that, a search action u/s 132 of the Act was conducted upon the Chettinad Group on 09.12.2020. In the course of search, three (3) diaries vide ANN/CTSPL/SB/B&D/S (1 to 3) and one (1) loose sheet bunch vide ANN/CLTSP/SB/LS/S was seized, which according to the AO of the searched person, *inter alia* contained evidence of receipt of cash by CBPL from *BASPL [M/s Bannari Amman Sugars Pvt Ltd]*. The Ld. AR specifically



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 28 ::

pointed out that, the initial suspicion recorded by the Revenue in the satisfaction note after going through the seized material was that, the Chettinad Group had received cash from M/s Bannari Amman Sugars Pvt Ltd/ BASPL and not the assessee. For this, he invited our attention to the details of the notings found in these seized diaries/loose sheets across various dates, whose details we have already extracted above, but at the cost of repetition, the same is again set out below:

Date	Transacting Company	Amount in Rs.
29.01.2020	BANNARI AMMAN SUGARS LIMITED TRIUVANAMALAI	1415500
22.04.2019	BANNARI AMMAN SUGARS	2130690
23.04.2019	BANNARI AMMAN SUGARS	10000000
25.04.2019	BANNARI AMMAN SUGARS	5000000
26.04.2019	BANNARI AMMAN SUGARS	10000000
07.12.2019	BANNARI AMMAN SUGARS	30000000
11.06.2020	BANNARI AMMAN SUGARS	10000000
16.07.2020	BANNARI AMMAN SUGARS	10000000
17.07.2020	BANNARI AMMAN SUGARS	10000000
21.05.2019	JAI FROM BANNARI AMMAN SUGARS	2125000
20.09.2019	BANNARI AMMAN SUGARS	1199000
21.10.2019	BANNARI AMMAN SUGARS	802660
	Total	9,26,72,850

**8.1** It is noticed by us that, in none of the notings/jottings found in the seized material, was the name or abbreviation of the assessee mentioned. It is for this reason that the Revenue had not initially raised any suspicion against the assessee trust. It is observed that, Shri Yegappan, the finance officer of CBPL, in his statement recorded u/s 132(4) of the Act, had



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 29 ::

stated that the entries found in these materials related to the cash received from BASPL, which he would hand over to Shri Muthu, PRO of CBPL at their regional office. Shri Muthu is noted to have stated that, the amount of cash received by him and the notings made by him were at the instance and instructions of one, Shri M V Jayashankar, an ex-employee of CBPL, who had left the company, a few months ago, prior to the date of the search. The Ld. AR, at this juncture pointed out that, both the finance officer and the head cashier had not directly implicated the assessee-trust in their statement nor had they averred that they had received any cash from the assessee. Rather, these employees had later on explicitly clarified that, they had never physically received any cash from the assessee or BASPL, but it was received only from Shri M V Jayashankar and the notings/names mentioned in the seized material was recorded by them, under his instructions. Accordingly, even the statement(s) of these two persons from whose possession these seized material was found did not contain anything adverse qua the assessee trust.

**8.2** It is noted that, it was Shri M V Jayashankar (ex-employee of CBPL), at whose instructions these two persons were jotting the impugned notings, had averred in his statement recorded u/s 131 of the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 30 ::**

Act that, these notings in the seized material related to the cash received by CBPL from the Bannari Amman Sugars / Bannari Amman Educational Trust, in lieu of the 15% rebate which was allowed in their construction bills. According to AO, the Revenue thereafter had examined the several box files which were seized from the premises of the searched person, and it was gathered that, CBPL had raised bills for construction of buildings for and on behalf of both BASPL and the assessee, and that the bills raised upon the assessee contained a rebate of 15% which was allowed on their gross invoice value. Hence, in light of the statement of Shri M V Jayashankar, the Revenue shifted their suspicion from BASPL to the assessee trust. According to Shri M V Jayashankar, this receipt of cash in lieu of 15% discount was done under the instructions of Shri SP Palaniappan, Assistant Vice President, Finance, who had also confirmed the same in his statement. Later on, it is noted that, another sworn statement u/s 131(1A) of the Act was recorded from Smt. V. Valliammai on 30.07.2021, almost after six (6) months from the date of search. In this summon enquiry, she was required to explain the impugned notings and was also confronted with the details of construction bills which were raised by CBPL upon the assessee. The Investigating officer had pointed out to her that, the figures of the bills and the rebate of 15% allowed to the assessee did not correspond to the notings found in the seized



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 31 ::**

material. To this, she is noted to have explained that, though the rebates were given across all the bills raised from FYs 2014-15 to 2020-21, but, no cash was received in FYs 2014-15 and 2015-16 and that, only when a request for rate revision was made in FY 2016-17, that the assessee had paid the 15% discount amount in cash from FYs 2016-17 to 2019-20 and that, again from FY 2020-21 and onwards, no cash was received in lieu of the discount amount. According to her, if the discount value is quantified from FYs 2016-17 to 2019-20, then, it would corroborate with the value of notings found in the seized material. We note that, based on this chain-linking of the sworn statements of several employees/ex-employees of Chettinad Group, the Revenue had inferred the notings/jottings found in the seized material, which were dated 2019 & 2020, as the unaccounted cash amount which was returned by the assessee trust in lieu of the 15% discount given by CBPL on their bills from FYs 2014-15 and onwards. Though, the purported cash notings aggregated to Rs.9,26,72,850/-, the AO presumed that the same modus would have been followed by the assessee and CBPL in all the bills raised and therefore, added the 15% discount amount found mentioned in all the bills raised from FYs 2014-15 to 2020-21, by way of unaccounted cash payment made by the assessee, totaling to Rs.14,34,06,358/- in AYs 2015-16 to 2021-22.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 32 ::

**8.3** Before we proceed to examine the merits of the impugned issue, in light of the third party seized material and the sworn statements, as discussed above, it is necessary to keep in mind the position of law that, the presumption u/s 132(4A) of the Act regarding the contents of seized material is only against the searched person and not to any other third party, which is the assessee in the present case. Reason being that, if any loose notings found in the seized material at third party premises is presumed to pertain to third party, at its face value, then any person for that matter can mention anyone's name in any loose paper/diary at their sweet will and that can be used to implicate such other person for no fault of the latter. Hence, the well settled judicial principle is that, an entry made in a diary or notebook by a third person with scant details cannot be used to fasten tax liability on the person whose name appears therein, unless corroborative evidence is brought on record. This is a basic rule of prudence.

**8.4** For this, we gainfully refer to the decision of the Hon'ble Supreme Court in the case of **V.C. Shukla [1998] 3 SCC 410** wherein, on the evidentiary value of entries found in the books of account of a third party, it was held that such entry will not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible. It was



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 33 ::

held that, even then, independent evidence is necessary to establish the trustworthiness of those entries, which is a requirement to fasten the liability. The Hon'ble Supreme Court in case of **Common Cause (A Registered Society) & Ors Vs. UOI (394 ITR 220)** following the judgment rendered in case of **V.C. Shukla (supra)** explained that, ordinarily entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act. It was held that, entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence, no relief can be given to the party who relies upon such entries to support his claim against another. The Hon'ble Apex Court further held that, even if books of account are regularly kept in the ordinary course of business, the entries therein shall not alone be sufficient evidence to charge any third person with liability. It is not enough to merely prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with the facts. We also gainfully refer to the decision of Hon'ble Supreme Court in the case of **CIT**



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

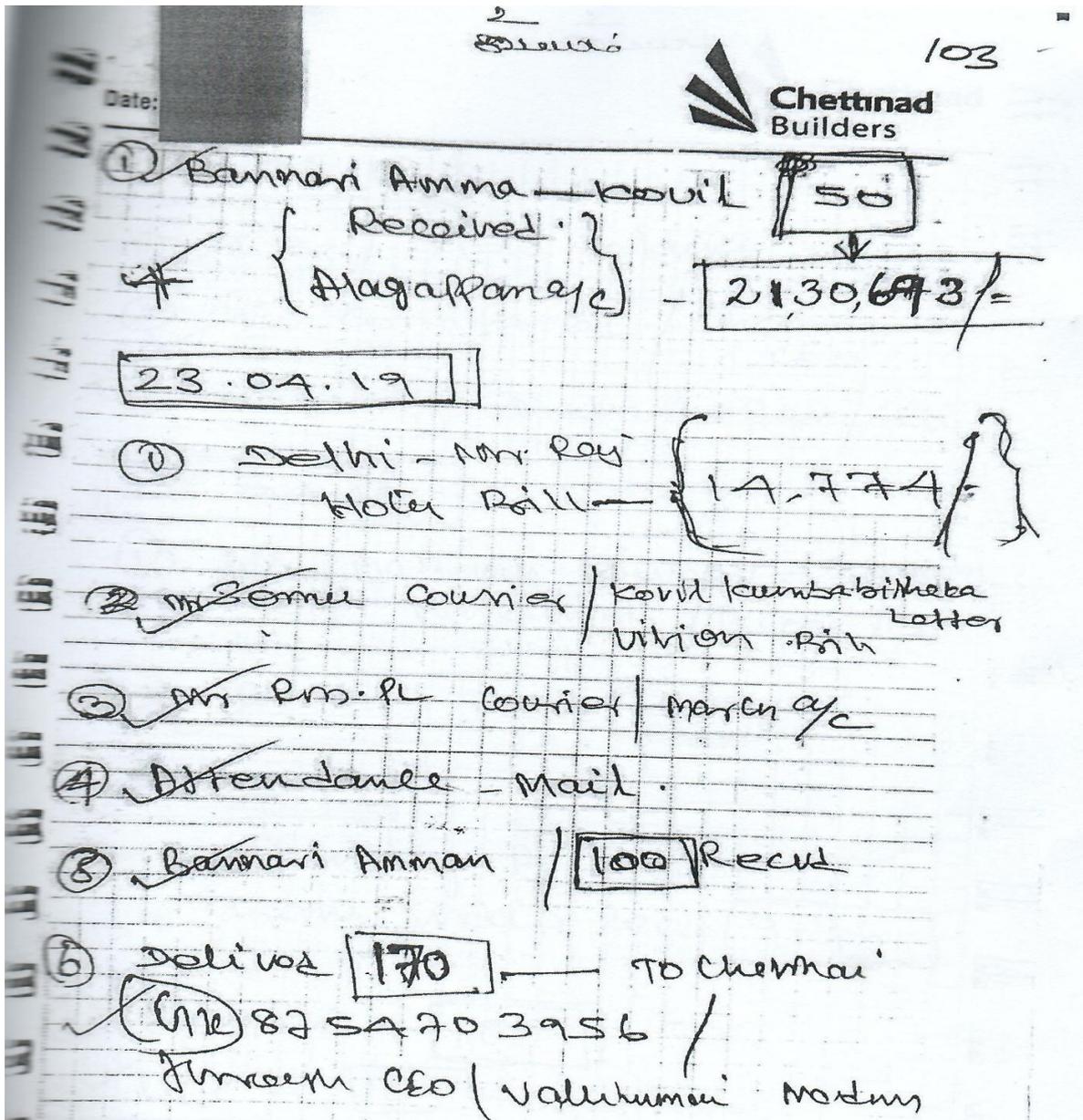
:: 34 ::

**Vs. P.V. Kalayanasundaram (294 ITR 49)** wherein at Para 5, it was observed that, the notings on the loose pieces of paper may be a cause for suspicion but the same cannot be relied upon, unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction.

**8.5** Having taken note of the above position of law, we now again revert back to the facts of the present case. According to us, the first and foremost aspect which requires our consideration is the contents of the seized material which was found from the third-party premises of Chettinad Group, copy of which was placed before us at **Pages 61 to 68 of the Paper Book**. The Ld. AR painstakingly took us through each of the seized loose papers/diary page and showed us that, there was neither any mention of the name of the assessee or their abbreviation or the mode of receipt or payment, viz. cash or cheque or the name of any person from whom it had been received. He pointed out that, the names/abbreviations used were either common or suggested some other entity and that, no prudent person could have interpreted these rough notings to be relating or pertaining to the assessee. In this context, we find it prudent to extract a sample loose sheet, i.e. Page No. 103 of the seized diary, whose notings have been added in the hands of the assessee.



:: 35 ::



**8.6** For the sake of convenience, the typed version of the notings/jottings in the above seized material, reads as under:-



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 36 ::

1. Bannari Amma – Kovil { Received Alagappan a/c }	<div style="border: 1px solid black; width: 100px; height: 30px; margin: 0 auto;"></div> <div style="text-align: center;">↓</div> <div style="border: 1px solid black; width: 200px; height: 30px; margin: 0 auto;"></div>
<div style="border: 1px solid black; width: 150px; height: 25px; margin-bottom: 5px;"></div> <p>1. Delhi – Mr. Roy     Hotel Bill - { 14,774/- }</p>	
2. Mr. Somu Courier	Kovil Kumbabirheba lotter Union Bill
3. Mr. Rm.PI Courier	March a/c
4. Attendance – Mail	
5. Bannari Amman	<div style="border: 1px solid black; width: 100px; height: 25px; display: inline-block;"></div> Recvd
6. Delived	<div style="border: 1px solid black; width: 120px; height: 25px; display: inline-block;"></div> - To Chennai
G/k 8754703956 / Guresh CEO / Valliumou Modam	

**8.7** From the above, it is noted that, the first entry in question, is in the name of 'Bannari Amma Kovil'. The Ld. AR pointed out that, the assessee had no presence in Kovil (Kovil means Temple) and rather, there was a temple by the same name, in that location, which didn't relate to or belong to the assessee. According to him therefore, this entry on a standalone basis could not have been said to be pertaining to the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 37 ::

assessee. He further pointed out that, only a number '50' was mentioned against this name and the Revenue had extrapolated and presumed this number '50' as Rs. 50 lacs. He further pointed out that, immediately below the said noting, there was a figure of '21,30,693' jotted by the maker of the diary and therefore, in his view, the number '50' could not be assumed to be '50 lacs', particularly when the maker of the entry in the same page had written full figures for the amounts which were in lacs. Likewise, he pointed out that there was another entry as Sl. No. 8, on this page where 'Bannari Amman' was jotted with '100 Recvd'. The Ld. AR again claimed that this noting was quite vague and dumb to be inferred as cash received from the assessee trust and that too, '100 lacs'. The Ld. AR further invited our attention to another entry on the same page, which was assumed to be relating to the assessee in the name of 'Alagappan Account'. He pointed out that, there was no such person on the payroll of the assessee and therefore there was no basis to infer this noting to be pertaining to the assessee. Having perused the above notings in light of the explanation put forth by the assessee, we find that, if these notings are to be considered on a stand-alone basis, then, it does appear to be ambiguous & vague and is not clinching enough to be tied to the assessee.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 38 ::

**8.8** The Ld. AR similarly took us through other seized pages and showed us similar infirmities and fallacies in the Revenue's interpretation of these pages. The relevant notings found across these pages along with our observations have been compiled and tabulated below:

Seized Material	Date of entry	Narration of entry	Amount	Observations
(48 - LS)	21.05.2019	Bannari Cr.	21,25,000	It is noted that only the bald-name "Bannari" appears which cannot conclusively be said to relate to the assessee. The assessee didn't had any transaction during that date nor any bill found to corroborate it. There is no mode of payment i.e. cash or cheque, person from whom received, nor any initial or acknowledgment etc. is there.
(48 - LS)	20.09.2019	Bannari - Thiruvannamalai	11,99,000	The assessee has shown that it does not have any establishment or construction work at Thiruvannamalai. Hence, only because the name "Bannari" appears it cannot be said to relate to the assessee.
(48 - LS)	29.01.2020	Bannari - Thiruvannamalai	14,15,500	
(48 - LS)	21.10.2019	Bannari - Trichy Rd Compound Wall	8,02,660	The assessee has shown that it does not have any project at the Tirchy Road and therefore this alleged cash noting cannot relate to them. Hence, only because the name "Bannari" appears it cannot be said to relate to the assessee.
B&D (2) - 104	26.04.2019	Bannari Cr. 100	1,00,00,000	It is noted that only the bald-name "Bannari" appears which cannot convincingly be said to relate to the assessee. Further the assessee pointed out that there is no clue about what the "100" denotes and that the Revenue extrapolated the number "100" as "100 Lakhs".



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 39 ::

B&D (1) - 222	07.12.2019	3 Cr Recd from BASL for Rebate 15%	3,00,00,000	These appear to be two identically worded entries made at an interval of six months. The name or the abbreviation of the assessee is not mentioned but 'BASL' appears. There is no mode of payment i.e. cash or cheque, person from whom received, nor any initial or acknowledgment etc. is there.
B&D (1) - 222	11.06.2020	1 Cr Recd from BASL for Rebate 15%	1,00,00,000	
B&D (3) - 20	16.07.2020	Bannari Receive - '1 C' Bannari - A/c	1,00,00,000	It is noted that only the name "Bannari" or "Bannari D" appears which cannot be said to conclusively relate to the assessee. According to assessee, the term '1C' has been extrapolated to Rs.1 crores, which in our view, is not corroborated by independent evidence as discussed infra
	17.07.2020	Bannari Received - '1 C' Bannari D - A/c	1,00,00,000	
B&D (1) - 220	20.09.2019	TVmalai work - Recvd from BASL & handed over to Mr.Muthu @ RO	11,99,000	These are noted to be repeated notings as found mentioned on seized page 'LS-48" already discussed above. Again these entries does not have any mention of the name of the assessee and the assessee does not have any such construction work at the mentioned location.
	21.10.2019	Compound Wall work Recvd from BASL & handed over to Mr.Muthu @ RO	8,02,660	
	29.01.2020	Recvd from BASL & handed over to Mr.Muthu @ RO	14,15,500	

**8.9** Having gone through the notings/jottings found in the seized loose papers/diaries at the third party premises, and in light of our observations



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 40 ::

as mentioned in the above table, at first blush, we find force in the Ld. AR's argument that, the notings were vague and cannot be said to relate to or pertain to the assessee. It was also pointed out to us that, the usage of the term 'Bannari' is not exclusive to the assessee trust and it is a well-known place situated at Tamil Nadu-Karnataka border viz., Bannari-Amman Kovil, and that there were several other entities with same first name, under the larger Bannari group to which the assessee belonged. Hence, it was wrong to presume that the terms 'Bannari' or 'Bannari Amman' or 'BASL' or 'Bannari Amman Sugars' used in these notings could have only related to the assessee trust. It was also brought to our notice that there is no mention of any of the nature of payment(s), work order or invoice number or service description in relation to which these notings were made, which would have otherwise assisted in identifying the person or entity to which these notings related to. Rather, it is noted that certain locations were found mentioned in these notings which did not co-relate with any of the places where assessee trust was carrying on construction work, and therefore it raises doubt on the purported correlation/ inference being drawn by the AO. According to Ld. AR, the statement(s) of employees revealed that, they were undertaking hawala transactions for CBPL across several places in Tamil Nadu and therefore the use of words '*Bannari Amman*' in the seized notings may suggest the location (*as*



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 41 ::**

*Bannari Amman is a well-known place*) from where the cash was collected /paid and not the name of the assessee trust. Also, the Ld. AR has rightly pointed out that, there was no signature or initial of any of the employees or persons of the assessee trust on these pages/loose sheets. We thus find that, these loose sheets and the notings therein on a stand-alone basis was conspicuous of any data consistency or acknowledgement and also the basic minimum attributes required to qualify as an admissible evidence qua the assessee. We also find it very strange to believe that these notings relate to the assessee as it also doesn't contain any attestation from the assessee's side, being not having any name or seal of the assessee and also there was no other incriminating evidence found in the course of search conducted upon Chettinad Group or the survey at the assessee's premises, which would otherwise correlate or corroborate these notings. If the seized material is considered on a stand-alone basis, then, we are in agreement with the Ld. AR that, no prudent person could have inferred the impugned notings to represent alleged cash returned by the assessee in lieu of 15% discount amounts given by CBPL in their invoices raised upon the assessee. In our considered view, such an inference drawn by the AO, from these notings/jottings appear to be far-fetched qua the assessee.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 42 ::

**8.10** According to the Ld. CIT, DR however, the fact that, CBPL was constructing building for the assessee and there was mention of 'Bannari Amman' or 'BASL' in these notings, which were associates of the assessee Trust, it was reasonable to infer that these notings pertained to the assessee. It is noted that, this contention is based on an assumption without there being any independent corroborative evidence to back the same. Ordinarily, the impugned notings being found from the possession of a searched person is admissible as evidence and the contents thereof are presumed to be true qua such searched person and corroboration, unless required under the statute, only goes on the add weight to the value of evidence. This principle however does not apply to a third party. It is a sound rule in practice in income-tax laws that, while dealing with the same evidence (impugned notings) in the case of a third party (assessee), it cannot be acted upon in absence of independent corroboration. As stated earlier, this principle is based on the basic rule of prudence. It is settled position of law that, no addition in the assessment of a third party can be made merely based on assumptions, suspicion or guess work. These pages/loose sheets are unsigned documents having no mention of the assessee or their school/college or their locations. Being so, the assumption sought to be made by the Revenue cannot be countenanced when the seized material, which was found from a third-



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 43 ::

party premises apparently does not contain any direct or specific reference to the assessee; unless there was some independent corroborative evidence found in the course of search or post search investigation, which we find is absent in the present case.

**8.11** The Ld. CIT, DR further pointed out Loose Sheet Pg No. 222 whose notings, according to him, was the foundational premise on which it was deduced by the Revenue that the relevant entries found in the diary seized from Shri Muthu may relate to alleged cash received from the assessee trust. For the sake of convenience, the relevant contents of loose sheet No. 222 is extracted below:

<u>07.12.19</u>	8604195555
3 Cr. Recd. From BASL for Rebate 15% On 07.12.19	
<u>11.06.2020</u>	
1 Cr. Recd. From BASL for Rebate 15% On 11.06.2020"	

**8.12** It is observed that this page contains two notings dated 07.12.2019 and 11.06.2020 for an amount of Rs.3 Cr and 1 Cr received from BASL for rebate 15%. To this, the Ld. AR first pointed out to us that, there is no mention of the name of the assessee or the mode of receipt or any initial or acknowledgement of the assessee and therefore it was incorrect to



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 44 ::

presume that the notings on this loose sheet related to the assessee. He also showed us that, the Investigating Officer had specifically required Mr. Yegappan, the maker of these notings, to explain its contents. It is noticed that Mr. Yegappan in his answer to Q No. 9 had specifically averred that these notings related to BASPL and he had not named the assessee trust to whom these notings related to. The Ld. AR also brought to our notice that, Mr. Jayashankar, under whose instructions Mr. Yegappan had made the impugned notings, had also named BASPL to be the person to whom these notings pertained to and not the assessee. Prima facie therefore, there is merit in the Ld. AR's submission that the contents of this page cannot be said to relate to it.

**8.13** The Ld. CIT, DR however contended that, it was the usage of the term '*rebate 15%*' which led the Revenue to decipher that these notings related to the assessee trust and not BASPL since it correlated with the rebate of 15% found mentioned in the construction bills raised by CBPL upon the assessee. According to him, this aspect was clarified by Smt. Valliamai in her subsequent statement(s) dated 26.07.2021 & 30.07.2021. As already noted above, these notings by itself did not relate or pertain to the assessee. Also, the sworn statements which were recorded from the maker of these notings (Mr. Yegappan) and the person



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 45 ::

under whose instructions these notings were made (Mr. Jayashankar) had not implicated the assessee or stated that these notings related to the assessee. It is thus noticed that, the Revenue had acted on a mere hunch and suspicion. According to us, when the impugned notings itself did not speak of the assessee trust and even the main witnesses in their testimonies had specifically named BASPL and not the assessee trust, the suspicion of the Revenue is held to be unfounded. So far as their reliance on the subsequent statement of Smt Valliamai is concerned, it is noted that, neither did the maker of these notings (Mr. Yegappan) nor the person under whose instructions these notings were made (Mr. Jayashankar) had averred that, Smt. Valliamai was aware about the contents of these notings and therefore it would not be prudent to solely rely on her statement to infer that these notings relate to the assessee trust.

**8.14** The Ld. AR also argued that, the statement given by Smt. Valliamai was with a biased attitude to falsely allege that the notings related to the assessee, when the notings itself did not suggest so. According to him, her statement, which was recorded more than six months after the date of search, and after she had access to the complete incriminating material seized in the course of search at Chettinad Group, and her answers which



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 46 ::

were riddled with inconsistencies and contradictions was meant to cover-up CBPL's own unaccounted transactions and hide their truth. The Ld. AR argued that, her statement was untrustworthy for the reason that there was an apparent contradiction between the testimonies recorded u/s 132(4) of the Act and her later statement u/s 131 of the Act. The Ld. AR thus contended that her statement dated 30.07.2021 being inconsistent with the testimonies of other witnesses could not be accepted at its face value. He also pointed out several factual inconsistencies and gaping holes in her statement, which according to him, made Smt. Valliamai an incompetent witness. For the reasons discussed (infra) in the later paragraphs, we agree with the Ld. AR that her statement did not inspire any confidence and thus it was unsafe to rely on her statement to hold that these notings related to the assessee.

**8.15** The Ld. AR also vehemently contended that this particular sheet was concocted to implicate the assessee. He doubted the veracity of the two entries mentioned in this sheet, by showing us that, though the notings are supposedly made at an interval of more than six months, but the same was recorded in the exact same manner and also in the same pen. According to him, this highly unusual feature raised suspicion on the veracity of the entries. He further pointed out that, unlike all other seized



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 47 ::

material where there are several notings/entries found in several names / abbreviations, there are no other entries on this page, apart from these two notings. He further pointed out that, this was the only sheet where there was mention of "rebate 15%" and that, against none of the other purported cash collections did the cashier, Shri Yegappan use this phrase in any of the other pages / diary. The Ld. AR further showed that, the invoices raised by CBPL upon the assessee trust in 2019 (upto 30.06.2019) was less than Rs.3 crores (*lower than the value of notings itself*) and the corresponding rebate amount to these invoices was almost Rs.45 lacs. According to him, the purported notings suggested that the assessee had paid aggregate cash of Rs.4 crores in lieu of 15% rebate in 2019, which did not correlate with the actual rebate of Rs.45 lacs allowed in the relevant period. He thus argued that the impugned notings also did not correlate with the contemporaneous facts and therefore these notings were unreliable.

**8.16** The Ld. CIT DR on behalf of the Revenue however contended that, the impugned notings inter alia represented the cash paid by the assessee in lieu of 15% rebate given by CBPL on all their construction bills raised between FYs 2014-15 to 2020-21. It is noticed that, the notings found on this particular page was only dated 2019 and related to FY 2019-20.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 48 ::

Further all other notings found across all other pages of the seized material were also dated either 2019 or 2020, which along with the impugned notings of Rs.4 crores, aggregated to Rs.9,26,72,850/-. There is merit in the Ld. AR's contention that, it is highly improbable that the assessee would have paid the cash equivalent of the rebate allowed across several years [FYs 2014-15 to 2020-21] in a span of one year and that too when more than 4-5 years had elapsed from the first year of the construction contract. Also, if the case of the Revenue was that, the rebates allowed across all years was paid together in a span of one year viz., between April 2019 to July 2020, then as a corollary any addition(s) by way of unaccounted cash payments could have been legally made only in the year of purported payment(s), which as per the seized notings could have only been FYs 2019-20 & 2020-21 relevant to AYs 2020-21 & 2021-22 respectively. Going by this analogy put forth by the Ld. CIT, DR, we agree with the Ld. AR that, the addition(s) made by the AO in AYs 2015-16, 2017-18 & 2018-19 & 2019-20 had no legs to stand on. We thus observe that the overall approach of the AO to the impugned notings suffered from infirmities and the inference drawn by him was unjustified.

**8.17** Having considered the above submissions of the assessee, we find force in their contention that this loose page No. 222 cannot be presumed



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 49 ::

to relate to the assessee, as the name of the assessee does not feature therein, the maker of these entries also did not implicate the assessee and also the notings of purported 15% rebate amount aggregating to Rs. 4 crores did not correlate with the actual rebate given in the bills during that relevant period.

**8.18** To further disprove the case sought to be made out by the Revenue, the Ld. AR took us through the background facts relating to the construction work done by CBPL for the assessee. The Ld. AR submitted that, the assessee had engaged CBPL for the construction of their hostel buildings, dormitory and laboratory at Bannari Amman Institute of Technology at Sathyamangalam in the year 2013. Inviting our attention to Page 26 of the Paper-Book, the Ld. AR showed us that CBPL had submitted their tender documents on 17.06.2013 which was revised vide letters dated 28.06.2013 and 04.07.2013 and the assessee had expressed their intent to engage them vide letter dated 10.07.2013. After much negotiations, CBPL had agreed to offer discount of 15% on the total value of work proposed to be undertaken by them. He pointed out that, CBPL was constructing the buildings and other infrastructure from FY 2013-14 and onwards and that it was raising bills progressively depending upon the quantum of work completed. Taking us through the ledger of CBPL



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 50 ::

and their sample bills which were placed at Pages 210 to 277 of the Paper Book, he showed us that CBPL had been raising invoices regularly and the assessee was also making the payments through banking channels from FYs 2014-15 to 2021-22. The Ld. AR in light of these contemporaneous evidence submitted before us that, the case sought to be made out by the Revenue was illogical as it would be commercially absurd for a builder to collect cash payments for the work already done / completed starting from FY 2014-15, after a gap of four/five years in 2019 & 2020. He pointed out that, as per the AO's logic, though the builder had undertaken and completed the tasks on progressive basis from FYs 2014-15 to 2019-20 for which bills were also raised and banking payments had been made by the assessee in the respective years, but the cash component viz. the 15% rebate amount mentioned in all these bills had been collected from the assessee lock stock and barrel in the years 2019 & 2020. The Ld. AR was of the view that, such an inference defies commercial prudence. In light of these contemporaneous facts, we also find force in the submissions of the Ld. AR that, the theory being propounded by the Revenue qua the impugned notings does appear to lack commercial logic.

**8.19** The Ld. AR further took us through the several rate revisions which were requested by CBPL and was agreed upon and paid by the assessee.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 51 ::**

He first invited our attention to Page 27 of the Paper Book to show that, the assessee had agreed with CBPL for an increase of 2.5%, over and above the rates originally approved, for the work to be done from 18<sup>th</sup> May 2014 and onwards. This contemporaneous fact is noted to negate the statement of Chettinad's employee, Smt. Valliammai that the assessee did not agree to rate revision in the FY 2014-15. The Ld. AR then brought to our notice that another rate revision was requested by CBPL in fag-end of FY 2015-16, which was negotiated and agreed on 30<sup>th</sup> January 2016, whose details were placed at Pages 28 to 31 of the Paper Book. It is noticed that the rate revision ranged from 5% to 10% across different items and it was applicable from the period starting January 2016 and onwards. We find that there was another rate revision agreed upon in March 2019 between the assessee and CBPL in the range of 5% to 10%, details of which was placed before us at Pages 32 to 60 of the Paper Book. These rate revisions shows that, the increase in rate(s) as and when requested by CBPL was actually acted upon and paid by the assessee through banking channel. These material facts shown by the assessee not only obliterates the theory of the Revenue qua the impugned notings but also factually disapproves the statement of Smt. Valliammai that the rate revisions proposed by CBPL was not agreed on paper but was paid in cash in lieu of 15% discount amount.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 52 ::

**8.20** At the instance of the Bench, the Ld. AR tabulated the basic rates originally agreed upon, bills raised by CBPL, percentage of rate increase in the respective periods and also the approximate value of rate increase from FY 2016-17 and onwards, which is extracted below:

AY	Basic	Discount	Net of Discount	GST /Service Tax	Total Invoice and corresponding ledger extract	%Rate increase period	Period	Approximate rate increase
2017-18	10,12,56,760	1,51,88,514	8,60,68,246	51,15,326	9,11,83,571	Ranges from 5% to 10%	Jan 2016 to March 2019	88,90,274
2018-19	10,40,45,518	1,56,06,828	8,84,38,690	1,37,71,816	10,22,10,507			91,35,125
2019-20	21,41,73,748	3,21,26,062	18,20,47,686	3,27,68,583	21,48,16,269			1,88,04,309
2020-21	19,85,19,815	2,97,77,972	16,87,41,843	3,03,73,532	19,91,15,375	Ranges from 5% to 10%	From April 2019	2,58,93,889
2021-22	9,91,17,920	1,48,67,688	8,42,50,232	1,51,65,042	9,94,15,274			1,29,28,424

**8.21** From the above, it is seen that, the assessee had from time to time agreed for a rate increase, as and when proposed by CBPL, whose approximate value for the period FYs 2016-17 to 2019-20 (leaving aside 2.5% increase of FY 2014-15) worked out to Rs.7.56 crores. These facts relating to the upward rate revisions agreed & acted upon between the assessee and CBPL apparently contradicts the AO's theory that impugned notings related to the rate revision component of 15% which was being paid in cash by the assessee. There is also merit in the Ld. AR's argument that, if both the parties had already agreed that a certain component of the construction cost would be paid in cash, then there was no rationale



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 53 ::

to first increase the bill value by the cash component amount and then reflect the cash component by way of 15% discount. Also, if the parties had agreed that 15% of the construction cost was to be paid in cash, then, there was no commercial logic to increase/revise the rates upwards from time to time, on which the builder would then again give 15% discount in lieu of cash component. Another way to look at this, Smt. Valliammai had averred that the 15% discount amount was in lieu of rate revision which she quantified at Rs.9.26 crores (approx.), which was separately agreed by the assessee outside the books starting from FY 2016-17 and onwards. The facts on record shows that, the assessee had evidently agreed for and paid the rate revisions for AY 2016-17 and onwards in cheque, which is noted to be in excess of Rs.7.55 crores (approx.). In that view of the matter, there is no apparent logic to the Revenue's theory that the cash was being paid in lieu of rate revision (15% discount amount), when the contemporaneous facts show that the rate revisions had in fact been paid in cheque.

**8.22** Moreover, the above discussed contemporaneous facts regarding the terms of the construction contract and rate revision brought on record by the assessee, further leads us to wonder as to why a builder would execute a contract, negotiate for an escalated rate to compensate for



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 54 ::

their increased cost, complete it, receive full payment in bank as per the invoice raised upon the customer, but thereafter, wait for several years and receive the cash component which though supposedly fell due progressively across all the years, but was collected all at once much later in 2019 and 2020. We therefore find that the assessee has been able to demonstrate fundamental infirmities and evidentiary gaps in the seized notings being relied upon by the AO and the inference being drawn therefrom, which we consider fit to summarize below:-

- (i) The name or abbreviation of the assessee does not feature in the impugned notings and therefore cannot be presumed to relate to the assessee;
- (ii) There is no mention of any specifics viz., details of work/order etc. for which the payments were made or the name of person from whom it was received;
- (iii) The locations/places mentioned in the impugned notings does not co-relate with the location of the assessee's construction site;
- (iv) There is no sign or acknowledgment or seal of the assessee on any of these pages and no other independent corroborative evidence was found to justify the contents of these notings;
- (v) The makers of these entries had recorded these notings on hearsay and therefore these notings are not reliable;
- (vi) There was no other independent material or evidence found in the course of search which would corroborate or justify the impugned notings;
- (vii) The assessee has also brought on record several contemporaneous facts regarding the construction work done by CBPL, bills raised by them, rate revisions agreed upon etc., as discussed above, which disproves the theory of the Revenue that the 15% discount given by CBPL on their bills was being paid by the assessee in cash.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 55 ::

**8.23** According to us therefore, the impugned notings/jottings on stand-alone basis were vague & unreliable. We however find that the case made out by the lower authorities actually rests on the statement(s) of the employee(s) of the Chettinad Group wherein they have purportedly averred that these impugned notings (though not in assessee's name) pertained to the assessee trust and it represented the cash returned in lieu of the rebate @ 15% mentioned in the invoices towards the rate revision sought by CBPL. According to the Revenue, it is these statement(s) which corroborates the impugned notings found in the seized material / loose sheets. We thus now turn our attention to the sworn statements which have been relied upon by the lower authorities to justify the impugned addition(s).

**8.24** The Ld. AR first invited our attention to the statement of Shri V Muthu dated 09.12.2020, who was the Public Relations Officer working in M/s Raja Muthiah Chettiar Educational & Charitable Trust of the Chettinad Group. It is noted that, the seized diary, where the impugned notings were found, was seized from his possession, and he had admitted that, he was maintaining the said diary. We observe that, when enquired about the contents of the relevant notings found at Page No. 103, 104 & 111 of the said diary, he submitted that, these were entries of receipt of cash



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 56 ::

from '*Bannari Amman Group*' through Shri M V Jayashankar. It is noticed that, he was unable to specifically identify the exact person or entity to whom the notings found on these pages related to. Again when he was enquired regarding the contents found on Page No. 152 of the dairy, it is noted that, while explaining Entry No. 3, he stated that, it corresponded to cash received from Bannari Amman Sugars/Bannari Amman Educational Trust Group, Tiruvannamalai through Mr. Yegappan. The Ld. AR pointed out that, even in this answer, he was not clear as to whom did this single noting of Rs.11,99,000/- pertain to. The Ld. AR brought to our notice that thereafter, a leading question (Q No. 34) was put forth by the Investigating Officer to Shri Muthu, in which the Investigating Officer observed that, "*we have consolidated the cash transactions related to Bannari Amman Sugars/Bannari Amman Educational Trust..... can you please confirm the same?*". In his answer, Shri Muthu is noted to have responded with a 'Yes' and stated that the cash collected was transferred to Mr. R M Pallaniappan. The Ld. AR brought to our notice that, later on, Shri Muthu was summoned again u/s 131 of the Act and his statement was recorded on 26.07.2021. In this statement, he was particularly interrogated regarding the impugned notings which he had originally alleged to relate to '*Bannari Amman Group*' / '*Bannari Amman Sugars*' / '*Bannari Amman Educational Trust*' and he was required to specifically



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 57 ::

identify which notings pertained to whom and also provide the details of the person from whom he would receive the cash and the modus in which this cash transaction was being carried out. We find that, in his answer, he submitted that nobody from BASPL had ever handed over the cash to him and rather it was only Shri Jayashankar who would hand over the cash to him. He also clarified that, the notings made by him in these names, was under the instructions of Shri Jayashankar and that he did not know whether the cash actually belonged to BASPL or the assessee trust. The relevant portion of Question Nos. 11 and 12 and his answers, are reproduced below:

**“Q.No.11. During the course of search proceedings at the office of M/s. Chettinad Lignite Transport Service Private Limited at Rani Meyyammai Building, No. 43, Race Course Road, Coimbatore a sworn statement was recorded from you. In your statement, you have stated that you also received cash from the representative of M/s. Bannari Amman Sugars Pvt Ltd (BASPL). Who is the representative person of M/s. BASPL from whom you have received cash?”**

Ans. No body from M/s. BASPL has ever come and handed over any cash to me. The General Manger of Chettinad Builders Pvt Ltd, Shri Jaisankar used to come and hand over the cash to me, which I usually keep it in my office almirah. He generally told the amount of cash being handed over to me. I used to count the cash and get myself satisfied that the exact amount was received by me. Shri Jaishankar used to say that this cash was from Bannari. Accordingly, I entered those figures in my diary, which was later seized by the Income Tax Department during the search at my office on 09.12.2020.

Shri R.M. Palanlappan at our head office in Chennai told me that Shri Jai Shankar, G.M. of Chettinad Buildiners Pvt Ltd would come and hand over cash to me which I had to send to our Chennai office as and when



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 58 ::

Shri Palanlappan directs me to do so. Shri Jai Shankar used to hand over cash to me and just say that the cash was from Bannari. I do not know whether the cash belonged to Bannari Amman Sugars Pvt Ltd or Bannari Amman Educational Trust.

**Q.No.12. In relation to M/s. Bannari Amman Sugars Pvt Ltd (BASPL) / Bannari Amman Educational trust (BAET) please furnish the following details:**

- 1. Since, from which date and year, you have been receiving this cash from M/s. BASPL/BAET**
- 2. What is the maximum amount you have received in a single transaction?**
- 3. What you do with that cash?**
- 4. As of now, how much cash you have received from M/s. BASPL/BAET in total?**

Ans. I received cash ranging from Rs. 50 lakhs to Rs 1 crore from Shri Jaishankar from the year 2019 to the date of search conducted in our group concerns.

The total cash so received from Shri Jalshankar (Mobile No. 73589-81505) during that period is around 9.06 Crore rupees.

Shri R.M Palaniappan from our head office used to call me on my mobile phone and instructed to give so and so cash to one Shri Siddarth who would come to my office. However, Shri Siddarth never comes to my office, he used to send his employee. On reaching my office his staff used to call Shri R.M Palaniappan on his mobile no. and give the phone to me. On phone Shri R.M Palanlappan use to instruct me to hand over so and so amount of cash to the person.

I used to take out the cash from the safe in my office and count the cash and then handover the cash to that person.

That person never counted the cash, he only counted the number of bundles and leave my office. After that, I used to call back Shri R.M Palaniappan and confirmed that as per instruction the cash was given to the person who connected me to Shri palanlappan on his phone. I have entered details of the cash given to Siddarth's staff in my diary, which



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 59 ::

was seized by Income Tax Department during the course of search in December, 2020.”[emphasis given]

**8.25** According to us, this subsequent statement of Shri Muthu flips over the averments made by him in his original statement recorded at the time of search. Co-joint reading of both of his statements dated 09.12.2020 and 26.07.2021 reveals that, he actually had no clue as to the source of cash, as it was being handed over to him by Shri M V Jayashankar and that he was also unaware whether the cash was actually received from the assessee trust or not. The notings made by him in his diary is thus found to be based on only hearsay. He was simply a book keeper who was making the notings under the instructions of another person, i.e. Shri M V Jayashankar, completely unaware whether these notings were actually true or not. We note that the lower authorities had failed to take cognizance of this subsequent statement of Shri Muthu, which was recorded by the Investigating Officer on 26.07.2021 and had rather selectively relied upon only his original statement. According to us, such action of the lower authorities was unjustified. At this juncture, we may gainfully refer to the decision of the Hon’ble Delhi High Court in the case of **CIT Vs Sant Lal [2020] 118 taxmann com 432 (Del)**, whose legal principle, in our considered view, aptly applies in the context of the present case. In the decided case, the Department relied upon the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 60 ::

noting's of hundi in the diary seized from the premises of third party. The said noting's allegedly contained entries of hundi transactions on behalf of parties including assessee whose names were written in abbreviated/code words. The Hon'ble Delhi High Court relying on its earlier decision in the case of **CIT v. Mahabir Gupta in ITA No. 814 of 2015 dated 20-10-2015** is noted to have held that no addition can be made in the hands of an assessee on the basis of any diary seized during the course of search proceedings of a third party, since such diary was neither found at the assessee's premise and that the department had failed to provide any cogent material or gather any corroborative evidence to substantiate that it pertained to the assessee. The Court observed that the searched person could have written anyone's name on his own sweet will in his diary and therefore such noting on stand-alone alone along with the statement of the searched person, cannot be used as a reliable evidence against the assessee.

**8.26** We now take up the statement of Shri M Yegappan, from whose possession certain loose sheets were seized. It is noted that, he was questioned regarding the entries maintained by him in Page No. 220 of his book, which is found to be similar to the notings found on Page No. 152 of the diary seized from Shri Muthu. As noted above, Shri Muthu had



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 61 ::**

vaguely answered this question by stating that the entry of Rs.11,99,000/- found on this page was the cash received from Bannari Amman Sugars/Bannari Amman Educational Trust Group, Tiruvannamalai through Mr. Yegappan. Shri Muthu had not specifically set out the identity of the person to whom this entry related to or for what purpose was the cash given or the relevant invoice/order against which the said amount was allegedly received. Instead, it is noticed that, Mr. Yegappan had specifically stated that, the noting was made by him for the cash which he received from the head cashier of BASPL. We find that, though Mr. Yegappan had named BASPL [not the assessee trust] to whom the entry related to, but he had surreptitiously refrained from identifying the 'head cashier' of BASPL. It is highly improbable that the person receiving the cash would not even know the basic details of the person who handed over the cash viz., his name or address etc. Shri Yegappan is found to be aware of the person-in-charge of affairs of CBPL (Mr. Jayashankar), to whom he handed over the cash (Mr. Muthu) but does not know the person who gave the cash ('head cashier'). It is noticed that, in the same question, when he was enquired regarding the notings found on Page No. 222, he submitted that these related to cash received by Shri Jayashankar from BASPL (not the assessee trust), which Shri Jayashankar had handed over to Shri Muthu. It is again observed that, he had not



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 62 ::

linked the impugned notings to the assessee trust but at the same time, he again answered evasively by not providing the details of the person from BASPL who handed over the cash to him. According to the Ld. AR, this missing vital link shows that Shri Yegappan was a prevaricating witness and his answers being vague and incomplete could not be relied upon. The Ld. AR also brought to our notice his later answer to Question No. 10, wherein when he was probed further regarding these notings by the Investigating Officer, Shri Yegappan had stated that these notings made by him were at the directions of Shri M V Jayashankar. The relevant Question No. 10 and his answer is reproduced below:

**"Q.No.10. Please explain the term 'Rebate 15%' recorded in page 222 of the Blue Diary of Chettinadu Builders, seized during the course of Search in the case of M/s Chettinadu Lignite Transport Service Private Limited at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore 641018 vide Annexure Ann/CLTSPL/SB/B &D/S, dated 09.12.2020 SI No.1.**

Ans: I have only recorded the transactions as per the directions of Shri. M V Jayashankar, Ex General Manager of regional office of M/s Chettinad Products & Services Private Ltd."

**8.27** The above answer is noted to vitiate his previous answers wherein he had linked BASPL to the notings / entries maintained by him. Like the testimony of Shri Muthu, we find that his testimony was also inconsistent and based on hearsay. To put it summarily, the impugned seized material including the diaries as well as loose sheets found from the possession of



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 63 ::

Shri Muthu and Shri Yegappan had been recorded and maintained by them at the directions and instructions of Shri M V Jayashankar and that both these persons had absolutely no clue as to the veracity of the notings made by them. Rather, their statements reveal that, they had not received cash from BASPL or the assessee trust and it was received only from Shri M V Jayashankar and the notings were also made at his instance and thus it appears that only Shri M V Jayashankar was the person who could be aware about the nature and contents of these notings. For the reasons as discussed in the foregoing therefore, we are of the view that, it is unsafe to rely on the testimonies of Shri Muthu & Shri Yegappan to draw any adverse inference against the assessee.

**8.28** In view of the above, we find that the case of the Revenue primarily hinges on the statement of Shri M V Jayashankar, which according to the Ld. AR, is the star-witness of the Revenue in the present case. We thus now proceed to examine the statement of Shri M V Jayashankar, which is extracted as under:-

Sworn Statement of Shri.M.V. Jayasankar (Aadhar card no 938273542191), aged 55 years, S/o. Shri.M. Venugopal, recorded u/s.131(1A) of the Income Tax Act, 1961, on 09.12.2020, at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore 641018 (Phone no. 7358981505) during the course of Search proceedings conducted u/s 132 of the Income Tax Act, 1961, in the case of M/s Chettinadu Lignite Transport Service Private Limited, at the above mentioned address. The sworn statement was deposited before, Shri. S. Bharathi, IRS, Assistant Commissioner of Income Tax, Central Circle-2, Coimbatore.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 64 ::**

Oath Administered

I, Shri.M.V. Jayasankar (Aadhar card no 938273542191), aged 55 years, S/o. Shri.M. Venugopal, recorded u/s.131(1A) of the Income Tax Act, 1961, on 09.12.2020, at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore - 641018, Swear in the name of God that I will speak the truth, the whole truth and nothing but the truth.

Q.No.1. Please identify yourself?

Ans: I am Shri.M.V. Jayasankar (Aadhar card no 938273542191), aged 55 years, S/o. Shri.M. Venugopal, I was working as General Manager (Projects-Coimbatore region) of Chettinadu Builders Private Limited. Few months back the name of the company changed (after demerger) to Chettinadu products and services Private Limited. I joined as Chief engineer in South India Corporation in 1997. I resigned from the post of General Manager (Projects-Coimbatore region) on 02.11.2020. I have completed BE (Civil). I am married to Smt R. Malarvizhi and permanently residing a No5/2, Lloyds avenue, Podanur, Coimbatore - 641023. I have two children. My Son J Gowtham and my Daughter J Kalavani is. My Contact No. is 7358981505. My Aadha No. is 938273542191.

Q.No.2. Are you in a sound state of mind to give a sworn statement ?

Ans: Yes Sir, I am in a sound state of mind and physically alert and fit to give a swo statement.

Q.No.3. Do you know the consequences of giving false statement under oath?

Ans: Yes Sir. I have been made aware of the consequences of giving false statement under Oath after the same has been explained by you to me. I assure that I will speak the truth, the whole truth and nothing other than the truth.

Q.No.4. You are once again reminded that this statement is being recorded on oath and you have been made aware about the consequences of giving false statement on oath including penalties u/s 179 of IPC, Section 180 o IPC, Section 275A of Information Technology Act and Section 277A of the Income-tax Act.

Section 179 of IPC : Refusing to answer question.

Section 181 of IPC : False Statement of Oath.

Section 180 of IPC : Refusing to sign the statement

Section 275A of Information Technology Act, 2000 : Refusing to give password.

Section 277A of Income-tax Act, 1961 : Enabling others to evade taxes.

Ans: I confirm that I have been made aware about the consequences of giving false statement on oath and about the other penal provisions.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 65 ::

Q.No.5. Do you have PAN? Whether you have been assessed to tax? Are you filing your return of income?

Ans: Yes Sir. My PAN is AEGPJ4826B. I have filed my Income-tax returns regularly.

Q.No.6. Please explain the nature of your work in M/s. Chettinadu Builders Private Limited.

Ans: Sir, I was involved in execution, coordination with consultants and completion of projects in Coimbatore region namely:

1. KMCH
2. TICEL
3. Bannari Sugars
4. Bannari educational institutions
5. NGP
6. JSS
7. Chettinadu Burgundy

**"Q.No.7. I am showing you a Blue Diary of Chettinadu Builders seized from Mr. Yegappan, Cashier (Chettinadu Builders Pvt. Ltd.) during the course of Search in the case of M/s Chettinadu Lignite Transport Service Private Limited at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore -641018 vide Annexure Ann/CLTSPL/SB/B &D/S, dated 09.12.2020 Sl No.1, page no. 220 and 222 of the said book. Please give details of the entries made in these two pages.**

Ans: I have carefully perused the note book shown to me, the entries are notings of cash received from Bannari amman sugars limited on the following dates:

1. Rs.11,90,000/-on 20.09.2019
2. Rs.8,02,660/- on 21.10.2019
3. Rs.14,15,500/- on 27.01.2020
4. Rs.3,00,00,000/- on 07.12.2019
5. Rs.1,00,00,000/- on 11.06.2020

for the 15% rebate given on the bills raised against the work done by our company chettinadu products and services limited. The above cash received by me from cashier of Bannari Amman Sugars Limited on the instructions of Assistant Vice President (Finance) Mr. S.P. Palaniappan and handed over the amount to Mr. V. Muthu, PRO at Coimbatore office. Mr. V. Muthu transferred these amounts to Mr. R.M. Palaniappan in Chennai. The above entries in the notebook made by Mr. Yegappan, Finance officer (Cashier) on my instructions.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 66 ::

**Q.No.8. I am showing you box files seized during the course of Search in the case of M/s Chettinadu Lignite Transport Service Private Limited at Rani Meyyamai Building, No.43, Race Course Road, Coimbatore 641018 vide Annexure Ann/CLTSPL/SB/B &D/S, dated 09.12.2020 SI No.7 to 13 which contain the bill raised by the company for the work undertaken by Bannari Amman Group of companies. On verification, it is seen that bill raised by the company contains rebate @15% on the total value of contract carried out. Please explain.**

Ans: The box files shown to me contain copies of the bills raised by the company for the work undertaken for Bannari Amman Group of companies. The term 'Rebate @15%' mentioned in the diary and bills are one and the same, also the rebate amount in the bills and cash received from them also matching, actually rebate is allowed in the bill to receive the amount in cash for cash requirements of our concern."

Q.No.9. As noted in the seized dairies of V.Muthu,M Yegappan and loose sheets, we have consolidated the cash transactions related to Bannari Amman Sugars/Bannari Amman educational trust as below. Can you please offer your comments?

Bannari Amman sugar/Bannari Amman Educational Trust-Cash Received			
23	29.01.2020	BANNARI AMMAN SUGARS LIMITED TRIUVANAMALAI	1415500
3	22.04.2019	BANNARI AMMAN SUGARS	2130690
4	23.04.2019	BANNARI AMMAN SUGARS	10000000
6	25.04.2019	BANNARI AMMAN SUGARS	5000000
8	26.04.2019	BANNARI AMMAN SUGARS	10000000
17	07.12.2019	BANNARI AMMAN SUGARS	30000000
1	11.06.2020	BANNARI AMMAN SUGARS	10000000
6	16.07.2020	BANNARI AMMAN SUGARS	10000000
7	17.07.2020	BANNARI AMMAN SUGARS	10000000
10	21.05.2019	JAI FROM BANNARI AMMAN SUGARS	2125000
		Total	9,06,71,190

Ans. Yes sir. I have scrutinized entire cash transactions. All the cash transactions summarized above are same was entered in the dairies and loose sheets, the above cash received against 15% rebate allowed to Bannari Amman Sugars/Bannari Amman educational trust were handed over to V. Muthu and transferred to Mr RM Palaniappan.

Q.No.34. Do you want to say anything else.

Ans. Nothing sir. I have stated truth to the best of my knowledge. I once again reiterate that all the averments above are truth, the whole truth and nothing but the truth. I also assure to co-operate the Department in all future proceedings.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 67 ::

I have seen through the above statement and the same was recorded & deposed. The above statement was given by me voluntarily, without any force or coercion. I confirm that statement given by me true to the best of my knowledge & belief.

*[Signature]*  
09/12/2020

**8.29** It is observed that, Shri Jayashankar in his answer to the nature of work which he was in-charge of, had submitted that, he was involved in execution or coordination with consultants and completion of projects in Coimbatore Region for KMCH, TICEL, Bannari Sugars, Bannari Educational Institutions, NJP, JSS and Chettinadu Burgundy. Thereafter, it is noted that, three (3) questions were put to him which specifically related to the impugned material seized from the possession of Shri V Muthu and Shri M Yegappan. It is observed that, in Question No. 7, he was asked to provide the details of the entries found in Page Nos. 220 and 222 of the seized material. In his answer, he is found to have averred that these notings were entries of cash received from BASPL for the 15% rebate given on their bills against the work done by CBPL. The Ld. AR pointed out that, he had not named the assessee trust in his answer and therefore according to him, the Revenue was completely unjustified in inferring these notings to relate to the assessee trust. He thereafter brought to our notice that,



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 68 ::

even his answer to Question No. 7 that, the cash was being received from BASPL was factually inconsistent. Taking us through the invoices/construction contract of BASPL, the Ld. AR showed us that CBPL had allowed rebate of 7.5% to BASPL and therefore according to him, the averment of Shri Jayashankar that, the cash was received in lieu of 15% rebate given to BASPL was inconsistent with the contemporaneous facts. He further emphasized that, Shri Jayashankar was also conspicuously silent as to the identity of the person from whom the cash was being received. Like Shri Yegappan, Shri Jayashankar had also mentioned that, he would receive the cash from 'Chief Cashier' of BASPL but the specific identity of this chief cashier was never revealed by him. According to Ld. AR, it is highly improbable that substantial cash was being received by him from a person whose basic identity was not known to him. According to him, when even Shri Jayashankar had not named the 'chief cashier', the Investigating Officer ought to have asked him searching questions to unravel his identity so that the said person from the Bannari Group could have also been confronted & examined and the correct state of affairs viz., who was paying this cash, on whose behalf i.e. whether BASPL or assessee trust or someone else etc. could have been unearthed, which in turn, would then have corroborated the case sought to be made out by the Revenue. The Ld. AR contended that, no such action was taken by the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 69 ::

Investigating Officer to ascertain this vital link to the assessee, without which in his view, the testimonies were vague and unsafe to be relied upon. The Ld. AR thus argued that, not only was the answer of Mr. Jayashankar viz., that the cash was being received in lieu of 15% rebate given to BASPL, was factually inconsistent but his evasive reply avoiding to identify the person from Bannari Group who gave him this cash, casted serious doubt on his credibility as a worthy witness.

**8.30** It is noticed that, the Investigating Officer had thereafter showed him all the box files of CBPL, which contained the construction bills raised by them inter alia including the bills raised upon the Bannari Amman Group of Companies and in Question No. 8, Shri Jayashankar was required to explain the rebate of 15% given on the total value of contracts. Shri Jayashankar is noted to have answered that, these bills are for the work undertaken for Bannari Amman Group of Companies and that the rebate @ 15% was allowed in the bills to receive the amount in cash. The Ld. AR again contended that this answer was also vague has Shri Jayashankar had not specifically identified the assessee trust to be involved in making any unaccounted cash payment. Instead, Shri Jayashankar had averred that, the cash in lieu of rebate was being received in relation to the bills raised upon the companies of the Bannari



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 70 ::

Group, which suggested that the assessee which was a charitable trust was not involved in the same. He again pointed out that, CBPL had actually not allowed rebate of 15% in any of their bills raised upon the companies of Bannari Group and therefore this answer given by Shri Jayashankar was also factually erroneous. According to him, when this factual infirmity was so palpable in light of the contemporaneous facts, the Investigating Officer ought to have done something more to unravel the truth, rather than accepting this inconsistent testimony as gospel truth. It was brought to our notice that, the Ld. CIT(A) had also called for and examined the seized material and found that there was no such 15% rebate allowed to BASPL but it was allowed only to the assessee trust. The relevant findings of the Ld. CIT(A) are found to be recorded at Para 5.8 of his appellate order, which is reproduced below:-

"5.8. In order to further verify the claim made by Ms. Valliammai, a verification was also carried out on the seized materials which the AO had relied upon in the assessment order. One among them is Sr.No. 7 to 13 of ANN/CLTSPL/SB/B&D/S. I had requested the AO to produce these seized materials and I have personally examined the contents therein. On examination, it was found that Sr no. 7, 8, 9, 12 & 13 of ANN/CLTSPL/SB/B&D/S are the box files which contain the invoices raised by CBPL in the name of BAET/BITS only. These invoices pertain to the period from 2018 to 2020 and all the invoices invariably have 15% rebate of the total bill value. However, the Sr. no. 10 & 11 contain the invoices raised by CBPL in the name of BASL and none of the invoices has rebate, either @ 7.5% or 15%, meaning thereby that there is no rebate mentioned in these invoices raised by CBPL on BASL for the same period."



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 71 ::

**8.31** The Ld. CIT, DR appearing for the Revenue was unable to controvert the above finding of fact rendered by the Ld. CIT(A) that there was no rebate of 15% allowed to BASPL. We thus observe that, the above statement given by Shri Jayashankar was contrary to the contemporaneous facts and was thus not reliable. The Ld. CIT, DR however emphasized that, the Ld. CIT(A) had found that the construction bills of the assessee revealed rebate of 15% and what Shri Jayashankar had intended to suggest that, it was this 15% rebate allowed to assessee trust, who also belonged to the Bannari Group, which was received back in cash by CBPL. The Ld. AR however rightly countered this argument by submitting that one cannot infer new words or new meaning into the answers given by Shri Jayashankar and that his statement was to be read and interpreted as was averred by him under oath. He submitted that, when Shri Jayashankar had not named the assessee Trust in his answers to Question Nos. 7 & 8 (as discussed above), the Revenue could not assume that the '15% rebate' mentioned in his statement was meant for the assessee trust and not BASPL. If the Revenue intended to infer so, then in law, they were required to summon and again re-examine Shri Jayashankar on this aspect, which has not been done in the present case. The Ld. AR showed us that, the 15% rebate which was allowed in all the bills of assessee Trust was appropriately accounted for in the books of



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 72 ::

accounts and it reconciled with the bills found inside the box files and therefore these construction bills by itself cannot be said to incriminate the assessee of any wrong-doing or unaccounted cash payment. He contended that, only because the assessee was allowed 15% rebate in their bills, could not be ipso facto assumed to have been paid back in cash, because Shri Jayashankar had averred that CBPL was receiving cash in lieu of rebate of 15% from BASPL (*which has also been found to be factually erroneous*). Having considered these submissions put forth by the Ld. AR in light of the findings rendered by Ld. CIT(A), in our considered view, the answers given by Shri Jayashankar to Question Nos. 7 & 8 were ex-facie erroneous and thus could not be relied upon.

**8.32** The Ld. AR thereafter invited out attention to the answer given by Shri Jayashankar to Question No. 9 put to him by the Investigating officer, wherein for the first time, he had inter alia named the assessee trust as well. The Ld. AR pointed out that unlike Question Nos. 7 & 8, where specific questions were put to Shri Jayashankar enquiring about the contents of the seized material, Question No. 9 was a leading question where, according to him, the Investigating Officer had already presumed that, these notings inter alia related to the assessee trust and only required Shri Jayashankar to confirm the same. It was pointed out to us



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 73 ::

that, the Investigating officer had tabulated the notings found in the seized material in this question and though his own tabulation does not contain the name of the assessee trust, but in his question he observed that, *'...we have consolidated the cash transactions related to Bannari Amman Sugars/ Bannari Amman Educational Trust as below. Can you please offer your comments?'*. To this, Shri Jayashankar is noted to have answered in the same manner as Shri Muthu i.e. 'Yes' and stated that, the above notings was the cash received against 15% rebate allowed to *Bannari Amman Sugars/ Bannari Amman Educational Trust*. He submitted that, though in the same statement, at Question Nos. 7 & 8, Shri Jayashankar had only identified BASPL or the companies of Bannari Group (not the assessee trust) from whom cash was being received, but when a leading question (Q No. 9) was put to him, wherein the Investigating Officer had also roped in the assessee trust also with BASPL to be the persons whom these notings pertained to. According to the Ld. AR, it was unsafe to rely on such a contrary answer given to a leading question put forth by the Investigating Officer. According to the Ld. AR, this was a material contradiction made by the star-witness to his own earlier statement, while answering a leading question of Investigating Officer, apropos his previous answers, where he took a stand that it was BASPL alone who handed over the cash in lieu of rebate. According to him



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 74 ::

therefore Shri Jayashankar was an inconsistent and shifty witness and there was serious discrepancies in his own statement at different stages, which rendered his statement to be unreliable.

**8.33** It was also brought to our notice that, apart from making the above averment, Shri M V Jayashankar has not provided any specifics relating to this so-called cash dealings with the assessee trust viz., particulars of project for which it was received, why the cash was received much later than the construction, person from whom it was received etc. The Ld. AR contended that, his answer to Question No. 9 was generic wherein he simply roped in the assessee as well to be one of the persons to whom the impugned cash notings pertained to, solely at the instigation of the Investigating Officer, without providing any context to the same. The Ld. AR reiterated that, the assessee had demonstrated that the construction work was actually done and the bills were raised by CBPL across FYs 2014-15 to 2020-21 and therefore the statement of Shri Jayashankar that, the 15% rebate allowed in these bills were received back in cash much later viz., 2019 & 2020 lacked credibility. Also, as noted earlier, even the value of the notings did not correlate with the quantum of rebates allowed in these bills. The Ld. AR further reminded us that, the rate revision sought by CBPL, in lieu of which, it was being alleged that



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 75 ::

15% discount amount was paid back in cash, had actually been acted upon on three different occasions in 2014, 2016 & 2019 and that such rate revision component was paid through banking channel and not in cash. In light of these contemporaneous facts, the statement of Shri Jayashankar was claimed to be based on incorrect assumption of facts. It was also brought to our notice that, CBPL was otherwise also allowing rebate albeit 7.5% in their other construction projects but these rebates were explained by the Chettinad Group to be genuine involving no cash element. The Ld. AR thus submitted that, it was an apparent case of pick and choose having no rationale and according to him, it showed that these answers were built on lies and the statement given was a subterfuge to hide the real truth.

**8.34** Having considered the above, we are of the view that Shri Jayashankar had initially not named the assessee trust to be involved in any unaccounted cash payment in lieu of rebate nor had he linked the assessee to the impugned notings. Instead, as rightly pointed out by the Ld. AR, the name of the assessee cropped up along with BASPL only when a leading question was put to Shri Jayashankar by the Investigating Officer. It is observed that the statement of this star-witness to earlier questions before the Investigating Officer and later when answering the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 76 ::**

leading question put up by the Investigating Officer, may or may not have been false but certainly both cannot be true. It is also noticed that, Shri Jayashankar was unable to identify the 'chief cashier' who allegedly paid him crores of monies in cash on behalf of the assessee / BASPL. In our view, the absence of this vital link which would have connected the identity of the payer of the monies to the impugned notings vitiated the reliance being placed on his statement. It is also noted that, his answers were factually erroneous as the Ld. CIT(A) upon examination had found that, CBPL had not given any such rebate of 15% on the construction bills of BASPL, as was being averred by him. Moreover as noted earlier, the construction work of the assessee was undertaken much earlier vis-à-vis the alleged dates of cash payments and also the rate revisions had been actually agreed upon and paid by the assessee through banking channel in the respective years. The Ld. AR had also pointed out that, Shri M V Jayashankar had retracted his original statement on 27.03.2023 and this fact was available before the lower authorities. For the aforesaid reasons, we are therefore of the view that, it cannot be said the testimony of Shri Jayashankar was the true version. His testimony, in our view, is not strong enough to wipe out the evidences and contemporaneous facts brought in this regard by the assessee as it is contrary to what the star-witness has stated, thereby rendering his testimony to be unworthy.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 77 ::

**8.35** It was also shown to us that, the only relevant questions put forth by the Investigating Officer to Shri Jayashankar just related to Bannari Amman Group, as discussed above. The Ld. AR pointed out that, though Shri Jayashankar had averred in his initial answers that, he was looking after several other projects during his time at CBPL but no other questions regarding the Chettinad Group or the other projects overseen by him, were put to him by the Investigating Officer. The Ld. AR showed us that, the seized diary found from the possession of Shri V Muthu not only comprised of the alleged entries relating to '*Bannari Amman*' but also included several entries relating to the '*Chettinadu Burgundy*' Project, entries regarding other projects at Coimbatore and several alleged hawala transactions for movement of cash. The Ld. AR submitted that, though, Shri M V Jayashankar had clearly stated that, he was the one who was in-charge of all the projects in Coimbatore and, that even Shri V Muthu & Shri Yegappan had also stated that they were only maintaining the impugned notings under his instructions, but still, surprisingly, only questions relating to Bannari Amman Group were put to him and that he was not questioned regarding any other projects of CBPL at Coimbatore including Chettinad Burgundy [*whose alleged cash entries were found in the same diary*] or the other alleged hawala transactions of the Chettinad Group found jotted in the same diary. The Ld. AR thus contended that this



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 78 ::

unusual aspect of his testimony reeks of biasness and prejudice against the assessee and thus without providing an opportunity of his cross-examination, it was improper to rely on such a statement.

**8.36** The Ld. AR also pointed out that, Shri M V Jayashankar had resigned from CBPL much prior to the date of search and was gainfully employed somewhere else. The Ld. AR thus showed us that, though this person was no longer employed with CBPL but, surprisingly he was present at the searched premises on the date of search and that he also gave his statement u/s 131(1A) on that date. The fact that, his statement was recorded u/s 131(1A) of the Act, according to the Ld. AR, shows that, he may have already been intimated by the Revenue to be present at the searched premises, and was coerced to give adverse statement against the assessee with a pre-conceived & prejudiced mindset. The Ld. AR further submitted that, having left CBPL, Shri M V Jayashankar was no longer in-charge of CBPL. He was neither the agent nor employee nor person-in-charge of CBPL and therefore he also could not have given any statement for and on behalf of CBPL. According to him, since there was no responsibility or accountability attached to his statement, as he was an ex-employee (may be disgruntled as well), any of his answers ought to be



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 79 ::

considered with a pinch of salt and not at the face value, which as noted above, suffered from serious factual errors.

**8.37** For the reasons discussed above, in our view, the testimony of Shri Jayashankar suffered from serious discrepancies and was not free from all blemish and even the circumstantial evidences pointed out by the Ld. AR showed that it was not credible enough to be solely relied upon to implicate the assessee. Rather, the assessee is found to be consistent with the contemporaneous material placed before us. Hence, if the Revenue wanted to act upon such a vague and inconsistent testimony to implicate the assessee, it was crucial for the Revenue to have re-examined Shri Jayashankar to iron out the gaps and infirmities in his answers, which we find was not done in the present case. According to us, it was imperative to unravel and atleast bring on record the identity of 'chief cashier' who was paying the cash to Shri Jayashankar, confront the said person and unearth the purported modus operandi which was being allegedly followed by the parties. It was also necessary to ascertain from Shri Jayashankar as to why did he mention that cash was being received from BASPL in lieu of rebate of 15%, when evidently there was no such rebate discernible from their bills. It was also essential to understand from Shri Jayashankar as to why the alleged cash was being paid by the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 80 ::

assessee trust in 2019-2020 in lieu of construction bills which dated back to almost five to six years. Also since the 15% rebate amount did not reconcile with the purported value of notings, it was necessary to probe Shri Jayashankar to explain this apparent discrepancy. In our considered view therefore, in the present case, the AO ought to have personally examined Shri Jayashankar, and then should have allowed the assessee an opportunity to cross examine the said person and bring on record the true and correct state of affairs. Having not done so, we are unable to countenance the reliance placed by the lower authorities on the testimony of such unworthy witness, Shri Jayashankar, for the reasons already discussed above. The Ld. AR has rightly pointed out that, this statement of Shri Jayashankar was recorded in the absence / back of the assessee and therefore the assessee also did not have any means to determine the veracity or correctness of the averments made in this statement, which had since been retracted as well. In our view therefore, the failure to afford the assessee an opportunity to cross-examine Shri Jayashankar rendered the action of AO to rely on his statement as bad in the eyes of law for violation of principles of natural justice.

**8.38** In the present case, we find that, when the assessee had specifically requested cross examination of Shri M V Jayashankar, the AO



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 81 ::**

had expressed his clear inability to provide the same because this person was no longer employed with the Chettinad Group. According to us, this inability expressed by the AO further goes on to support the assessee's contention that, his statement (since retracted), which was also recorded in the capacity of an ex-employee, could not have been relied upon. Hence, in our view, affording the opportunity of cross-examination in the given facts of the case assumed significant importance. We however find that, without doing so, the AO has simply accepted the retracted statement of a third person, Shri M V Jayashankar at its face value and believed it as gospel truth against the assessee. In our view, if this statement triggered suspicion in the mind of the AO that the seized notings related to the assessee, then as held earlier, the AO could not have used it without testing it on the touch stone of cross-examination, particularly when the above discussed facts shows that he was not trustworthy and that his statement lacked credibility. We may in this regard, gainfully refer to the decision of Hon'ble Apex Court in the case of **CIT v. Odeon Builders (P.) Ltd. [2019] 110 taxmann.com 64/266 Taxman 461/418 ITR 315**. In this decided case, the Revenue had disallowed the purchases made by the assessee holding it to be bogus based on the statements given by a third party. On appeal, the Ld. CIT(A) noted that, on one hand, the assessee had discharged its initial burden of



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 82 ::

substantiating the purchases by producing all relevant documentary evidences which it was ordinarily required to maintain in the regular course of business, whereas on the other hand, the Revenue had denied the opportunity of cross examination to the assessee. The Ld. CIT(A) therefore held the purchases to be acceptable and deleted the disallowance made by the AO. On the self-same reasoning, this Tribunal and later on, the Hon'ble High Court also dismissed the appeal of the Revenue. On further appeal, the Hon'ble Supreme Court also concurred with the findings of the Ld. CIT(A) and did not find any infirmity in the orders passed by the lower appellate authorities and accordingly dismissed the appeal of the Revenue. The relevant portion of the judgment of the Hon'ble Supreme Court reads as under:

"3. However, on going through the judgments of the CIT, ITAT and the High Court, we find that on merits a disallowance of Rs. 19,39,60,866/- was based solely on third party information, which was not subjected to any further scrutiny. Thus, the CIT (Appeals) allowed the appeal of the assessee stating:

"Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income-tax Return. In view of the above discussion in totality, the purchases



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 83 ::

made by the appellant from M/s Padmesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for Rs. 19,39,60,866/-, is directed to be deleted."

4. The ITAT by its judgment dated 16th May, 2014 relied on the self-same reasoning and dismissed the appeal of the revenue. Likewise, the High Court by the impugned judgment dated 5th July, 2017, affirmed the judgments of the CIT and ITAT as concurrent factual findings, which have not been shown to be perverse and, therefore, dismissed the appeal stating that no substantial question of law arises from the impugned order of the ITAT."

**8.39** It is by now a settled proposition of law that, where in the revenue proceedings, any inference is drawn against the assessee on the basis of statements of any third person, then such inference is legally unsustainable if opportunity of cross examining the Departmental Witness / third party is not granted to the affected person. In this regard, we also rely on the following findings recorded by the Hon'ble Apex Court in the case of **Andaman Timber Industries Ltd v. CCE [2015] 62 taxmann.com 3/52 GST 355**, which reads as under:

"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected."

**8.40** In view of the above judicial precedents (supra) and the reasons elaborately set out above, we are of the considered view that, the AO's failure to allow the assessee opportunity to cross examine this



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 84 ::

Departmental witness, Shri Jayashankar, on whose statement he was relying upon, was a serious and fundamental error which rendered the impugned addition(s) to be untenable.

**8.41** We now turn our attention to the statement(s) of Smt. V Valliammai recorded u/s 131 of the Act on 26.07.2021 and 30.07.2021, which has been extensively relied upon by the Ld. CIT(A) to justify the impugned addition. Unlike Shri Muthu, Shri Yegappan and Shri Jayashankar who had stated that the impugned notings related to BASPL, Smt. V Valliammai had categorically controverted their testimonies and averred that the impugned notings exclusively pertained to the assessee trust and that no cash whatsoever was ever received in lieu of the rebate allowed to BASPL. Though the testimonies given by other employees of CBPL are apparently contradictory to Smt. V Valliammai, but it is to be kept in mind that a testimony of a credible witness outweighs the testimony of number of other witnesses of different characters. According to us, it is the quality of evidence and not the quantity of evidence which is of relevance, as long as the evidence found was above reproach or suspicion. Before proceeding further, we find it necessary to remind ourselves that, Shri Muthu and Shri Yegappan from whose possession the impugned seized material was found, had nowhere mentioned the name of Smt. V



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 85 ::

Valliammai in their statement(s). According to them, the alleged notings and the contents therein were within the exclusive knowledge of Shri M V Jayashankar. Further, the examination of the statement of Shri Jayashankar (supra) shows that, he had not identified Smt. V Valliammai to be the person in-charge of the construction or billings of the assessee. Prima facie therefore, it is noted that, the concerned persons from whose possession the impugned seized material was found or under whose instructions the notings were made, when immediately confronted with the seized material, had nowhere suggested that, Smt. V Valliammai was involved or aware regarding the notings found in the seized material. Having regard to this background, the Ld. AR was of the view that, her statements recorded in July 2021, which was after a substantial gap of more than six months from the date of search viz., 05.12.2020, to explain the contents of the impugned seized material (*which was neither seized from her possession nor jotted down at her instructions*), does appear to be quite unusual. According to the Ld. AR, this inordinate delay in recording her statement reeks of after-thought, tutoring etc. and therefore biasness and falsehood in her answers cannot be ruled out.

**8.42** Bare reading of her statement shows that, she was the Chief Financial Officer in M/s Chettinad Super Speciality Hospital and was not



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 86 ::**

the CFO of Chettinad Group, as averred by the lower authorities. The Ld. AR pointed out to us that, she had no official role in CBPL and therefore, according to him, she could not have been possibly aware about the nuances of the transactions of CBPL. He also pointed out that, when she was enquired during her cross-examination as to whether she was involved in the negotiations of the rebate in the construction contract of the assessee, she had answer in the negative. The Ld. AR thus wondered that, when she was neither the CFO of CBPL nor was involved in the negotiations with the assessee and even the concerned employees who were making the impugned notings had not identified her to be in-charge of the affairs of CBPL, then how was she identified to be in a position to explain the nuances of the rebates allowed by CBPL in the bills of the assessee and other customers as well. According to him, her statement suffered from bias as she had given answers to suit the requirements of CBPL having no actual knowledge of the transactions and that her answers were based on hearsay. The Ld. AR claimed that her statement was analogous to that of an accomplice turned approver, whose statement by its very nature was suspect being that of a participator in the whole case.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 87 ::

**8.43** In support of his above contention, the Ld. AR first invited our attention to Question No. 2 of her statement, where she was enquired regarding the 15% rebate given by CBPL for the projects undertaken on behalf of Bannari Amman Group. To this, she is noted to have answered that, 15% discount was offered only to Bannari Amman Institute of Technology at their request from FY 2014-15 and onwards and when CBPL had requested for increase in rates, the assessee did not accede to the request in FY 2014-15 and had offered to pay 15% discount amount in cash only from FY 2016-17 and onwards, and again from FY 2020-21, no cash was received for the discount amount. According to her therefore, though 15% discount was given on all the construction bills raised from FYs 2014-15 to 2020-21, but only the discount amount pertaining to FYs 2016-17 to 2019-20 was received back in cash and that the discounts given in other years to the assessee was actual and genuine. The Ld. AR first pointed out that, there was no valid justification given by her as to why 15% discount(s) given in some years was genuine and why in some years, the 15% discount amount was claimed to have been received back in cash in lieu of alleged rate revision request. He further showed us that, this answer of hers was also factually erroneous. The contemporaneous facts placed before us shows that, the rate revision which was first requested by CBPL in FY 2014-15 had actually been accepted and that an



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 88 ::

increase of 2.5% which was agreed between the parties. So far as the rate revision of FY 2016-17 is concerned, we have already noted earlier that, there were rate revisions requested by CBPL in the years 2016 and 2019 and at both times, the rate revisions were accepted by the assessee in the range of 5% to 10%, which was paid through banking channels and not in cash. Having considered the foregoing, according to us, when we weigh the evidence brought on record by the assessee against the testimony of Smt. Valliamai, we find that her initial testimony to be tainted and unreliable and thus rendering her oral averments to be suspicious.

**8.44** According to the Ld. AR, what the searched person had done was that, they had reverse engineered the aggregate notings found in the seized material and since the aggregate value somewhat correlated with the 15% discount allowed to the assessee during FYs 2016-17 to 2019-20, it was claimed that these notings related to the assessee, though none of the impugned notings was in their name. He pointed out that, Smt. Valliammai's statement was recorded after six months from the date of search, when the searched person had full access to all their seized material and was therefore capable of narrating any tutored version qua the impugned vague notings which would suit their purpose. The Ld. AR



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 89 ::

showed us that, in her answer to Question No. 4, Smt. V Valliammai had herself admitted that, the total contract value from FYs 2014-15 to 2020-21 was Rs.95.60 crores and the rebate was Rs.14.34 crores, but she had quantified the value of rebate received back in cash only for FYs 2016-17 to 2019-20. He pointed out that, if the bills for FYs 2016-17 to 2019-20 is considered, and bills for FYs 2014-15, 2015-16 and 2020-21 are ignored, then, the value of the net basic amount would work out to Rs.52,52,96,465/-, and the discount component worked out in the ratio of 85:15, would yield an answer of Rs.9,26,99,376/-. The Ld. AR showed us that, the aggregate cash notings as per the seized material was Rs.9,26,72,850/-, which somewhat matched the figure quantified by Smt. V Valliammai. He thus argued that, Smt. V Valliammai, had selectively picked and chosen only those bills whose rebate in total, would somehow match with the notings/jottings found in the seized material. According to him, by doing so, she was able to ensure that these notings are regarded as unaccounted business receipts as opposed to the Chettinad's own unaccounted monies/on-money from their real estate projects or their hawala transactions, which was otherwise discernible from other entries / notings in the impugned seized material.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 90 ::

**8.45** The Ld. AR pointed out that, the impugned notings were vague and that apart from certain values written against words 'Bannari Amman' or 'BASL', nothing specific was discernible. He showed us that, certain notings were for amounts of Rs.11,99,000/- and Rs.8,02,600/- etc. According to him, it is unnatural in today's world that the cash component involved in construction work would be paid in thousands or hundreds and that too for the work which was done years ago. According to him, having regard to the size of CBPL and the value of their contracts, ordinarily the cash payments would be in round figures of lacs / crores. The Ld. AR submitted that, it was unclear from the impugned notings as to whether it was payment or receipt. Hence, according to him, the searched person could dish out any plausible explanation which would suit their purpose. He argued that, if the notings are carefully perused, it could also be inferred as jottings of cash payments & cash receipts maintained by cashier of CBPL. The names mentioned in the dairy were meant to identify the project towards which he had incurred the expenses for their internal control and bookkeeping purpose. According to him, in such a scenario, the mention of 'BASL' or 'Bannari Amman' did not mean that the customer viz., 'Bannari Amman' had paid the cash but it was notings of cash expenses incurred by the contractor out of their own working capital towards their project(s) and thus these notings otherwise had no relation



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 91 ::**

to the assessee. He argued that, the searched person and Smt. Valliamai were well aware that the contents of these seized material was to be presumed to be true qua their income-tax assessment in terms of Section 132(4A) of the Act and hence these notings on stand-alone basis would have entailed a substantial tax liabilities on CBPL. The Ld. AR submitted that, the searched person was aware that business receipts are taxed at lower rates and that particularly, in case of on-monies received from customers, only the profit element and not the entire value of notings is to be brought to tax. He thus submitted that, the explanation put forth by Smt. V Valliammai (*much later after the date of search*) was a biased one which was tailor made to suit their purpose to reduce the tax incidence on Chettinad Group and mitigate other adverse implications. According to him, it was a case where though the name of assessee was nowhere mentioned in the seized notings, the statement was given by her with the malafide intent to shift the onus & implication onto the assessee and save CBPL from higher tax liability or save others who actually gave cash as consideration. He thus argued that, such an apparent self-serving statement could not be used against the assessee. Having considered the foregoing, we find force in the submissions of the Ld. AR and the statement of Smt. Valliamai does not inspire confidence being riddled with material infirmities, and found to be based on interestedness,



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 92 ::

incompetence and subordination which was tailor made to suit the purpose of Chettinad Group. Hence, this statement cannot be relied upon as it is not free from all blemish.

**8.46** It is further observed from reading of her statement that, even the Investigating Officer was not convinced with her initial reply. In Question No. 5 put to her, the Investigating Officer had observed that, when the rebate amount was the actual cash payment, then why not the entire rebate amount of Rs.14.34 crores be taken as the unaccounted income of CBPL. It is noticed that, she again gave evasive replies and reiterated that the discount given in FYs 2014-15 and 2015-16 was actual and that cash was received towards their request for increase of rates from FY 2016-17 and onwards and again no cash was received in FY 2020-21. The Ld. AR pointed out apparent factual inaccuracies in this answer, which we have already taken note of earlier. It was also brought to our attention that, as per the seized notings, the cash was received only in the FYs 2019-20 and 2020-21, whereas, according to her statement, the cash was received from FY 2016-17 and onwards and which stopped in FY 2019-20 and no cash was received in FY 2020-21. The Ld. AR thus argued that, there were apparent clues in her answers which showed that her statement was built on lies to hide the actual truth and that she actually had no



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 93 ::

knowledge of the transactions of CBPL. We find ourselves to be in agreement with the Ld. AR that, her statement was in clear contradiction to the notings found in the seized material and are therefore unable to countenance the blind reliance being placed by the lower authorities on her factually inconsistent statement. We observe that, some of her answers were also disbelieved by the AO, who expressly rejected selective portions of her statement, by observing as under:

"6.6 This statement of Shri V. Valliammai was found to be not correct since bills were raised in various financial years and payments through banking channels were also received in the respective financial years and that the entire cash of 9.06 crores was only received during 2019-20 and 2020-21 in a span of just more than one year."

**8.47** It is thus noticed that the AO himself had found her statement to be not fully reliable and had selectively acknowledged those convenient portions which suited his purpose. Now if the AO was seeking to rely on her statement to allege that the rebate of 15% was paid back in cash by the assessee, then her statement ought to have been considered in its entirety and not selectively, unless such selective portions were otherwise justified by corroborative reliable evidence. There is however no such case made out by the AO or Ld. CIT(A). Going by her statement, addition(s) was warranted only in AYs 2017-18 to 2020-21 and that no addition(s) could have justifiably been made in AY 2014-15, 2015-16 & 2021-22. The very fact that the Department itself has not embraced her



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 94 ::

statement in its entirety, and has ignored those averments by making additions in all years as it did not serve the Department's stance vitiates the reliability of the statement, which as discussed earlier, also lacks consistency, competency, and corroboration.

**8.48** It is further noted that, Smt. V Valliammai in her statement had submitted that, CBPL would give rebate of 7.5% in all other contracts but these rebates were actual and genuine. The Investigating Officer had pointed out to her that, CBPL had also given rebate of 7.5% to BASPL in their construction bills and therefore questioned her whether such rebate was being received back in cash or not. To this, she had submitted that, this rebate was also genuine and was allowed a part of business negotiation prior to signing the contract. According to her, it was only the rebate given to the assessee-Trust and that too for a specific period of FYs 2016-17 to 2019-20 was not genuine but for other years qua the assessee and for all the years qua all other customers including BASPL, the rebate mentioned in the bills was genuine. There is merit in the Ld. AR's contention that such bald assertion made by her, in absence of any independent corroboration, cannot be acted upon. The Ld. CIT DR however supported this answer of Smt. Valliammai by relying on the Ld. CIT(A)'s finding that the rebate of 7.5% allowed in other contracts



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 95 ::

including that of BASPL was indeed agreed prior to signing of the agreement and they were not explicitly mentioned in the bills raised by CBPL. To this, the Ld. AR invited our attention to the sample bills raised by CBPL on BASPL, copies of which were placed at Pages 278 to 281 of the Paper Book. Perusal of the same shows that, the rebate of 7.5% was separately reflected in each of the invoices and therefore, the findings of the Ld. CIT(A) that the 7.5% rebate was allowed to BASPL at the time of negotiation itself and did not form part of the invoice value, is not correct. In fact, it is noted that, almost in all bills raised by CBPL there was a rebate of 7.5%. The Ld. AR had rightly pointed out that, if 7.5% discount was being actually extended by CBPL to other customers including BASPL, then, logically atleast half of the discount given to the assessee ought to have been presumed as genuine. According to him, the fact that Smt. V Valliammai had stated otherwise and averred that the entire 15% rebate given to the assessee that too for a selective period, out of the entire duration of the project, was being received back in cash, shows that she was an interested witness whose answers were unnatural and artificial.

**8.49** In light of the above, we agree with the Ld. AR that, Smt. Valliammai's statement read as a whole doesn't rings true and we have hesitation to act upon it, particularly having regard to such bald &



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 96 ::

selective assertions made by her, in absence of any independent corroboration. It does appear that Smt. Valliammai's answers suffered from falsehood and after-thought to somehow link the values of the impugned notings with the value of rebate given to the assessee by reverse engineering the numbers, for reasons best known to her or CBPL.

**8.50** It is also noted that, the AO had given an opportunity to the assessee to cross examine Smt. V Valliammai. In the course of cross examination, the assessee is noted to have required her to provide the names of the persons with whom she had negotiated the 15% rebate given to the assessee, to which she had answered that, one Shri H.B. Srinivasa, Vice-President of CBPL, was involved in the negotiations, who has since left the company. It is observed that even she also unable to name even a single trustee or officer-in-charge of the assessee trust who had agreed to pay back the 15% discount rebate in cash. So to recapitulate, neither was the cashier, Shri Yegappan nor the manager, Shri Jayashankar nor the purported CFO, Smt. Valliammai were aware about the identity of the person who was paying cash to them for and on behalf of the assessee. It is indeed surprising that no one knows where the cash came from. According to us, the absence of this vital link to the assessee vitiates the testimonies of these employees.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 97 ::

**8.51** It is further noted that Smt. Valliamai was thereafter specifically asked as to whether she was present when the alleged negotiation of paying back cash in lieu of discount was finalized with the assessee, to which, she again answered in negative. In spite of saying so, she is noted to have confirmed that, the diary notings mentioned as 'Bannari Amman' or 'BASL' implied the assessee trust and that CBPL was collecting cash from the assessee in lieu of 15% rebate allowed during the period FY 2016-17 to FY 2019-20. According to us, when the admitted facts are that Smt. Valliamai had no official role in CBPL and she herself had confirmed that she was not involved in negotiations of rebate with the assessee trust nor does she know the person from the assessee trust who was involved in this modus operandi or the identity of person who gave them the cash, her averments that the rebate allowed to the assessee was in lieu of cash, rings hollow and is at best based on hearsay having no actual knowledge of the transactions. It is noted that, though the foregoing aspect was brought to the notice of the Ld. CIT(A) but he had brushed it aside by observing that, her name was appearing in one of the pages of the impugned seized material (Page No.103) at the bottom last place and therefore, this mention of her name by Shri Muthu in his diary suggested that, she was aware about the transactions which was being noted by him. According to us, this was a bald assumption made by the Ld. CIT(A),



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 98 ::

particularly when Smt. Valliamai had herself denied that she was not involved in the negotiations with the assessee trust in her cross-examination. We thus reject these findings rendered by the Ld. CIT(A). Hence, once we brush aside all the unreliable answers given by Smt. Valliamai in her testimony, then we find that there is no corroboration made out by her to support the addition. In our considered view, Smt. Valliamai's statement doesn't inspire confidence due to inherent contradictions found at different stages and is therefore held to be unreliable. Rather, overall, we find that the assessee's case has all along been consistent with the contemporaneous material placed before us.

**8.52** It was also brought to our notice that, a survey action had been conducted upon the assessee trust on 25.02.2020, much prior to the date when search was conducted upon CBPL. The Ld. AR pointed out that, the year in which the survey was conducted corresponded with the purported year (as mentioned in the seized diary) in which, the assessee had allegedly paid cash to CBPL. It is noticed that, no cash or unaccounted asset was recovered in the course of survey. It is also not the case of the Revenue that any incriminating material or evidence was found which would suggest that the assessee had made unaccounted payments for construction of their building. It is also not a case that, any bogus



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 99 ::**

expense or revenue leakage was identified by the survey team, which would otherwise justify the source of such huge amounts of cash paid in the years 2019 and 2020. Undisputedly, the assessee is a charitable trust which is providing education and therefore has limited sources of revenues. It is not the case of the Revenue that, any unaccounted fee collections, etc. was found in the course of survey, out of which, the impugned unaccounted cash payments could have been made. Moreover, the assessee being a registered charitable trust u/s 12AA of the Act is enjoying exemption from Income-tax u/s 11 of the Act. The Ld. AR pointed out that, all the receipts of the trust, whether in cash or in cheque, are eligible for exemption u/s 11 of the Act and that, any payments made towards construction of building, either in cash or in cheque, is eligible to be treated as application of income u/s 11 of the Act. He also brought to our notice that the provisions of Section 40A(3), 40(a)(ia), 43B were not applicable to the assessee trust. The Ld. AR thus submitted that there was no cogent reason or tax benefit otherwise to the assessee trust by making any unaccounted cash payments to CBPL. The Ld. AR reiterated that, Smt. V Valliammai had categorically accepted that CBPL would ordinarily give rebate of 7.5%, to all other customers. According to him, since the assessee was a charitable trust and the construction work was in relation to a college in the locality where CBPL



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 100 ::**

had a significant economic presence, CBPL had agreed to extend higher rebate of 15% in comparison to 7.5% for their other projects, knowing that the work being carried out was meant for social purpose and benefit of the people in that area. According to Ld. AR, it was for this reason that, as and when CBPL requested for rate revisions at regular intervals, the same was also acceded to by the assessee. He thus contended that, the reason for higher rebate given by CBPL to the assessee in comparison to their other construction projects also stood explained. Overall, in our considered view, these surrounding facts and circumstantial evidences pointed out by the assessee further supports their case that the impugned addition lacked cogent basis and was not backed by the contemporaneous facts available on record.

**8.53** At this juncture, we gainfully refer to the decision of the coordinate Bench at Mumbai in the case of **Anand Jaikumar Jain v. ACIT (ITA Nos. 3820-3823/Mum/2019)**. In the decided case, entries were found in the data found and seized from the premises of Dalmia Group, which according to AO, contained the details of transactions conducted with the assessee. The key employees of the Dalmia Group had averred that these entries were unaccounted for. On the basis of these third party material & statement, the AO made addition in the hands of the assessee. On



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 101 ::**

appeal, the Tribunal observed that, these entries were not substantiated with any clinching evidence or corroborative material and that the assessee had shown that the employees of Dalmia Group maintaining these entries were not aware about the correct import of the transaction. It was thus held that, only because two cheque entries on these seized pages matched with the books of the assessee did not ipso facto mean that other entries on these pages represented unaccounted transactions. The Tribunal is noted to have accordingly deleted the addition.

**8.54** We also refer to the decision of the coordinate Bench at Lucknow in the case of **Mahendra Lalka Vs ITO (ITA No. 172/Lkw/2023)**. In the decided case, a search action was conducted upon one SSS Group, in the course of which, a ledger copy of the assessee was found which according to AO contained several entries, some of which, matched with the cheque entries in the books of the assessee. Based on the statement of Mr. Patel of SSS Group, the AO held that the unmatched entries represented unaccounted transactions of the assessee and added the same to the total income. On appeal, this Tribunal observed that, the assessee had denied the contents of the ledger at all stages and therefore it was incumbent upon the lower authorities to have investigated further to bring out the correct facts. It was noted that, there was no clinching evidence brought



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 102 ::**

on record to support the ledger entries and also the assessee was not given an opportunity to cross examine Mr. Patel. The Tribunal is according noted to have deleted the addition, by observing as under:-

"7. It is very much evident in the face of such specific denial by the assessee not only before the Assessing Officer but before the first appellate authority, no further inquiry or investigation was made by them to rebut the contention of the assessee. No further corroborative evidence has been brought on record to establish that the entries in the ledger copy seized from a third party are genuine and correct. Surprisingly, no statement has been recorded from the third party from whom the incriminating material was seized with regard to the entries in the ledger copy. There is nothing on record to suggest that the third party from whom the ledger copy was seized admitted of having received the cash payment from the assessee. This is so because neither the Assessing Officer nor learned CIT(A) have referred to any such statement or admission by Shri Viral K. Patel with reference to the seized material. Even, assessee's repeated request to cross examine Shri Viral K. Patal have been cold shouldered by the Department Authorities. Thus, as facts on record stand, except the ledger account stated to have been seized from the computer of Shri Viral K. Patel, no other corroborative material has been brought on record by the Departmental Authorities to establish that the entries appearing in the ledger copy are genuine and the assessee had actually made the cash payment. Merely because the payments made by cheque appearing in the ledger copy and actually made by the assessee tallied, it cannot lead to the conclusion that the assessee has also made the cash payments. More so, when from the very beginning the assessee has vehemently denied of having made the cash payments. Thus, in my considered opinion, in absence of any clinching evidence to show that the assessee had made the cash payments, the addition of so called cash payment of Rs.17 lacs could not have been made. Accordingly, the addition made, being wholly unsustainable, I direct the Assessing Officer to delete the same."

**8.55** It is by now settled in law that that suspicion however strong it may be, cannot take the place of proof or evidence as held by the Supreme Court in **Uma Charan Shaw & Bros. Vs CIT (37 ITR 271)**. Any



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 103 ::**

addition(s) to income must be based on cogent, credible, credible, and corroborated evidence, which we find is not present in the case before us. In light of the above decisions (supra) and having regard to the facts as discussed in the preceding paragraphs, we are of the considered view that the impugned addition(s) made by way of unaccounted cash payment was unjustified both on facts and in law. Our findings for arriving at this conclusion is summarized as follows :-

(a) The impugned seized material comprising of notings/jottings in a diary/loose sheets seized from third party premises cannot be treated as admissible evidence in the matters of the assessee. [*Refer decision of SC in V C Shukla (supra) & Common Cause (supra)*]

(b) The notings found in the impugned seized material are vague and did not bear the name of the assessee or any endorsement or acknowledgment of the assessee and therefore such entries are not conclusive proof against the assessee, without independent corroboration.

(c) There are several factual consistencies found in the impugned notings qua the case sought to be made out by the AO viz., there is no mention of any details of work/order etc. for which the payments were made or the name of person from whom it was received and the locations/places mentioned in the impugned notings does not co-relate with the location of the assessee's construction site, and therefore these entries are not reliable on stand-alone basis.

(d) The assessee has further demonstrated that the construction bills, whose 15% rebate is being alleged to have been paid back in cash, was progressively raised from FYs 2014-15 and onwards and therefore it defies common prudence that the customer would pay the cash component, having paid the cheque in full in those respective years, much later after a gap of 5-6 years, in 2019 & 2020.

(e) Also, the case of the Revenue that the entire rebate pertaining to FYs 2014-15 to 2020-21 was made within a span of one year is found to be implausible. Further, if that be so then addition could have been made only in the year to which the seized notings pertained to, and the addition(s) made in all other years were legally untenable.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 104 ::**

(f) The case made out by the Revenue that the 15% rebate was being paid back in cash, in lieu of the rate revision sought by CBPL is also found to be factually inconsistent with the contemporaneous facts which reveal that the rate revisions were agreed between the assessee and CBPL thrice viz., 2014, 2016 & 2019 and the payments on account of rate revision which was approx. Rs.7.55 crores for the period 2016-17 to 2019-20 was actually paid through banking channel.

(g) It has been seen that rebates given to other customers albeit 7.5% on the construction bills has been claimed by CBPL and their employees to be actual and genuine and that according to the employee(s) even for certain periods [FYs 2014-15, 2015-16, 2020-21], the 15% rebate given to assessee was also actual and genuine. However, no rationale was given as to why only the rebates given to the assessee trust alone, amongst several other customers and that too for a specific period was not genuine but received back in cash. This allegation is found to be based on surmises, without any corroboration with independent evidence.

(h) The makers of these entries viz., Shri Muthu and Shri Yegappan have been found to have recorded these notings on hearsay and had no actual knowledge of these transactions and therefore we have hesitation to act upon their statements.

(i) The statement of ex-employee, Shri Jayashankar is also found to be riddled with inconsistencies, inherent contradictions and suffers from evidentiary gaps, which coupled with his subsequent retraction, raises doubt on the veracity of his statement. Also, the AO's express denial to afford his cross examination renders the reliance on such bald statement to be vitiated in law.

(j) Smt. Valliammai is noted to be an interested witness and who is found to be artificial and unnatural. Her testimony is found to be riddled with material infirmities and is suspicious of incompetence, interestedness and subordination, for the reasons elaborately discussed above. Even the lower authorities have found her statement to be partially incorrect and thus only picked up selective portions of her answers which suited their convenience to justify the impugned addition, which according to us was vitiated having regard the discrepancies made out before us.

(k) Moreover, the survey action conducted upon the assessee prior to the date of search did not reveal any unearthing of unaccounted cash payment or unexplained asset or unknown sources of income etc. which would justify such huge cash payments.

(l) The assessee is noted to be a charitable trust enjoying exemption u/s 11 of the Act in respect of all their receipts, whether in cash or cheque and all the expenses on construction of college, irrespective in cash or cheque is allowable as application of income. In that view of



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 105 ::**

the matter, we find there was commercial prudence for the assessee to otherwise make the impugned unaccounted cash payments.

**8.56** In light of the above facts, evidences and circumstances, we hold that the impugned addition(s) made by the AO on account of unaccounted cash payments was unsustainable. The AO is accordingly directed to delete the same. Hence, the grounds raised by the assessee in AYs 2017-18 to 2021-22 is allowed and the grounds of the Revenue in AY 2015-16 stands dismissed.

**9. Issue 2: Addition on account of surplus from extra fees charged from students above the fee prescribed by the Government.**

*Ground Nos. 1 to 4 of Revenue's appeal for AYs 2017-18 to 2021-22*

**9.1** Briefly noted, the facts of the case are that, in the course of survey conducted upon the assessee trust, the Investigating Officer was of the view that the assessee was collecting fees over and above the fees prescribed by the State Government. Upon enquiry, the Investigating Officer further gathered that the college which was run by the assessee trust was also collecting fees over and above the fees fixed by the Fee Fixation Committee. The AO noted that, Shri VM Krishnamoorthy, Manager – Administration of the assessee trust had explained that the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 106 ::**

institution was collecting college fees, development fee, transport fee, mess fee, food charges, and university fees along with refundable deposits from the students. The concerned manager had further explained that the college fee included, the tuition fee collected as per the norms of the State Fee Fixation Committee, exam fee and special fees for value added skill development programs, other than the regular curriculum. In light of the foregoing, the AO observed that, the college was collecting fees apart from the tuition fees in different names and therefore called for the relevant details. The AO particularly noted that, the assessee was charging extra additional fees for providing additional value added courses to the students in addition to the curriculum prescribed by AICTE. According to the assessee, these additional education activities was meant to enhance the knowledge of the students and make them equipped for placement programs and industry ready. The assessee is noted to have explained before the AO that, the surplus derived from such activities was again applied for providing educational services. The AO however was of the view that such extra / additional fees collected by way of 'value added course fees' (optional fees) was in violation of the prescribed norms. According to the AO, such amount collected from the students for extra / value added courses cannot be construed as for the purposes of charity. The AO accordingly quantified the surplus from value



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 107 ::**

addition course fees and added the same by way of Business Income of the assessee in AYs 2017-18 to 2021-22. Aggrieved by the impugned order, the assessee preferred appeal before the Ld. CIT(A) who was pleased to delete the same. Now, the Revenue is in appeal before us.

**10.** Heard both the parties. The Ld. CIT, DR appearing for the Revenue has reiterated the findings recorded by the AO for making the impugned addition and contended that, since the value addition course fees was being collected over and above the fees fixed by the Fee Fixation Committee, the AO had rightly added the surplus by way of Business Income. It is noticed that the assessee is running a college which is having an autonomous status from UGC and is also recognized by AICTE. The Ld. AR had pointed out that the college follows the curriculum specified by Anna University of Tamil Nadu. It is observed by us that, apart from the regular prescribed curriculum, the college was also providing various value added courses to the students, for a nominal fee, with the intent to make them knowledgeable and employable when they graduate. These value added courses was an extension to the curriculum prescribed by the AICTE. It was brought to our notice that, these courses were optional and was collected from students opting for these courses, after being admitted into the college, and therefore, it was not in nature



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 108 ::**

of capitation fees for admission. Rather, it was a part of the yearly fees collected from students for the academic activities. It is also not the case of the AO that the surplus generated out of these value added courses was diverted for personal benefits of any trustees or utilized for any purpose other than the objects of the trust. Instead, the assessee has shown that the entire surplus from this activity was applied towards the main charitable object, i.e. education by the trust.

**10.1** Having regard to the above discussions, we are in agreement with the Ld. CIT(A) that though the assessee had collected extra fees over and above the fees fixed by the Fee Fixation Committee, but the fact remains that, such fees was collected in pursuance of their charitable objects and the surplus generated out of such activities was also applied towards the objectives of the trust in terms of Section 11(1) of the Act, and there being no violation of provisions of Section 13 of the Act, the impugned addition made by the AO was unjustified. We thus concur with the following findings rendered by the Ld. CIT(A) in this regard.

"5.4.3. I have perused the assessment order and the written submissions made by the appellant. On perusal of the same, it is noted that the appellant has got autonomous status from UGC and also recognized by AICTE. The appellant also follows the curriculum specified by Anna University of Tamil Nadu. During the course of survey proceedings, it was found that the appellant is collecting extra fees over and above the fees fixed by Fee Fixation Committee for providing various value-added courses to the students of different streams who



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 109 ::**

are admitted to colleges run by the trust. It was also submitted by the appellant that being an autonomous college, there are certain expectations as specified by UGC. In order to make those expectations fulfilled and make the students more knowledgeable and employable, the appellant is providing various value-added course to bring the students knowledgeable and employable when they are graduated and for this purpose it had charged a nominal fee for imparting the value addition. It was also submitted by the appellant that the fees collected for various value-added courses are in the nature of fees received for imparting education to the students as an extension to the curriculum prescribed by AICTE. Further, the appellant had also submitted that it is not the case that the surplus generated out of these value-added courses has been diverted to the benefit of the trustees or applied to any other object other than the educational purposes. It was also submitted by the appellant that the surplus generated was utilized in improving the infrastructure and the other facilities of the college every year. Further, the appellant had submitted that these fees were collected once the students were admitted in the college, meaning that it is not in the nature of capitation fees for admitting the students in the colleges run by the appellant. It was also submitted by the appellant that the entire income earned by the trust including the surplus from this activity was applied to the charitable object of the trust - Education and more than 85% of the total receipts was applied in each and every year and it is eligible for exemption u/s 11(1) of the Act for the surplus generated out of fees collected for providing value added courses to the students.

5.4.4. On perusal of the assessment order and the submissions of the appellant, it is noted that the only observation of the AO for denial of exemption u/s 11(1) of the Act wrt surplus generated out of fees collected for providing value added courses to the students is that the appellant had collected excess fees over and above the fees fixed by the Fee Fixation Committee. It is also noted from the assessment order that the AO did not bring out any other facts that the surplus generated out of above activity was not applied for the benefit of the trust or it was diverted for the personal benefits of the trustees or utilized for the purposes other than the objective of the trust. It is observed from the submissions made by the appellant that the appellant is offering various value-added courses in addition to the curriculum prescribed by AICTE/Anna University so as to improve upon the knowledge of the students so that they are employable which was not disputed by the AO in the assessment order. The appellant is expected to provide these extra curriculum-based courses to meet out of the guidelines issued by



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 110 ::**

UGC as an autonomous institute. The only issue is that the appellant is collecting certain extra fees for providing these courses to the students in addition to the curriculum prescribed by AICTE which according to the AO is not correct and the claim of exemption on surplus income was not allowed and the same was brought to tax. On perusal of the facts, it is noted that the appellant had collected extra fees to provide certain value-added course other than the curriculum prescribed by Anna University. It is also not a capitation fees or donations which was also accepted by the AO. Once, it is not in the nature of capitation fees, the fees collected for value-added courses become part of the yearly fees collected from students for academic activities which is in the nature of providing education to students. These fees were collected on year-on-year basis from the students and entire fees collected is also accounted in the books of accounts of the appellant. It is also not the case of the appellant that there are no expenses on this activity. The expenses were regularly booked and the resultant surplus out of this activity is either added in to total surplus of the trust or utilized for the purpose of object of the trust. The AO could not bring any evidence regarding diversion of surplus either for the personal benefits of the trustees or purposes other than the object of the trust. On the basis of the facts and circumstances of the case, I am of the opinion that even though the appellant has collected extra fees over and above fees fixed by Fee Fixation Committee but the surplus generated out of such activity was applied only for the purpose of objective of the trust and the AO did not bring any material evidence that it is being mis utilized or diverted to the personal benefit of the trustees which is in violation to the provisions of sec 13 of the Act. Therefore, the addition made by the AO is hereby deleted and grounds raised by the appellant are allowed."

**10.2** We find that the case of the assessee is also supported by the decision of the coordinate bench of this Tribunal in the case of **DCIT v. Sindhi Educational Society (158 taxmann.com 659)** wherein also it was held that the extra/miscellaneous fees collected by the assessee trust from the students, over the prescribed limits, cannot be said to be in violation of Tamil Nadu Education Institutions (Prohibition of Collection of



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: III ::**

Capitation Fee) Act, 1992. This Tribunal accordingly held the extra fees collected to be eligible for exemption u/s 11 of the Act as the surplus was applied towards the charitable objects by the assessee. Similar view is noted to have been expressed by the Cuttack Bench of this Tribunal in case of **Indus Educational & Charitable Trust vs. ITO (ITA No. 19/Ctk/2020)**. In the decided case, the Tribunal after taking cognizance of the decision of Hon'ble Supreme Court in the case of **TMA Pai Foundation vs State of Karnataka 2002 (8 SCC 481)** deleted the addition made by the AO on account of the extra / additional fees collected by the assessee beyond the prescribed limits towards value added course fees, training, hostel fees etc. It was noted that, these fees were collected in the course of rendering educational activity from the students and the same was applied towards the infrastructure of the assessee trust and therefore was held to be eligible for exemption u/s 11 of the Act.

**10.3** In view of the above, we therefore see no reason to interfere with the above order of the Ld. CIT(A) and accordingly, dismiss the grounds raised by the Revenue.



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

*:: 112 ::*

**11. Issue 3: Addition on account of surplus generated from incidental activities, viz. hostel, transport of students by buses, stationery, etc.**

*Ground Nos. 5 to 11 of Revenue's appeal for AYs 2017-18 to 2019-20*

**11.1** The facts relating to this issue are that, the assessee trust has been carrying out activities incidental to providing education, viz. running of hostel, mess, transportation of students, sale of books and stationery, etc. and the surplus derived therefrom was used towards providing education. The AO however noticed that, the separate books of accounts for the receipts and expenses from these incidental activities was not found in the course of survey. Referring to Section 11(4A) of the Act, the AO observed that, the profits and gains derived from any business carried on by the assessee will be eligible for exemption u/s 11, if the same is incidental to the charitable objects and the surplus is applied towards charitable purposes and separate books of accounts are maintained for such activity. According to the AO, though it was not in dispute that, the impugned activities were incidental to education, and was being provided by the assessee to the students alone, and that the surplus was being used for educational purposes, but he was of the view that the assessee had not maintained separate books of accounts, as provided in law. The



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 113 ::**

AO held that, all the conditions of Section 11(4A), as discussed in aforesaid, were required to be cumulatively satisfied by the assessee. In his view, since the assessee failed to meet one condition viz., maintenance of separate books of accounts, he held that the benefit of Section 11(4A) cannot be allowed in respect of the surplus derived from such incidental activities. Upon being shown caused on this aspect, the assessee is noted to have provided the separate Income & Expenditure Account for each of these incidental activities before the AO. The AO is noted to have brought to tax such surplus derived from the incidental activities by way of business income and denied the benefit of Section 11(4A) on the ground that the assessee had not maintained separate books of accounts. Aggrieved by this order of the AO, the assessee preferred appeal before the Ld. CIT(A) who deleted the impugned addition. Now aggrieved by the Ld. CIT(A)'s order, the Revenue is in appeal before us.

**12.** Heard both the parties. We note that the assessee is running an engineering college and a higher secondary school at Sathyamangalam, Erode District, Tamil Nadu. It was brought to our notice that, the school has more than 1500 students and the college is educating nearly 7200 students, most of whom are coming from other States. The assessee trust



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 114 ::**

is therefore noted to provide hostel, fooding and transport facilities to these students, for which, a separate fee is being charged. We find that, the AO has also not disputed that these activities / facilities were being provided to the students alone and were indeed incidental to the main object of education. The AO has also not disputed that the surplus derived from these activities were being applied for the assessee's main charitable purpose, i.e. rendering of education. We accordingly note that, the impugned incidental activities squarely fell within the ken of Section 11(4A) of the Act. The case of the Revenue before us is that, though these activities were incidental to the main object and the surplus was being applied towards charitable purposes, but the assessee had not maintained separate accounts for these incidental activities, which was one of the pre-conditions set out in Section 11(4A) of the Act. According to the Revenue therefore, in absence of separate accounts being maintained for such incidental business activity, the benefit of Section 11(4A) cannot be extended to the assessee.

**12.1** It was brought to our notice that, the above observation of the AO emanated from the findings of the survey, according to which, separate accounts for these activities were not found at the premises of the assessee. According to the Ld. AR, there was a fundamental error in the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 115 ::**

understanding of the AO. He pointed out that, the assessee Trust was maintaining the entire accounts on an accounting software from which the segmental accounting entries for each of the incidental activity was easily identifiable and therefore the maintenance of separate books of accounts stood fully diluted. He submitted that, the relevant segmental data qua each incidental activity was easily extractable from the accounting software. He brought to our notice that, the assessee had furnished the separate accounts extracted from this accounting system for each of these incidental activities before the AO. We observe that, the Ld. CIT(A) had called for the impounded books of accounts which was maintained in electronic data and after going through the same, the Ld. CIT(A) observed that, though no separate books of accounts was maintained on standalone basis, but, since the assessee was maintaining individual ledgers, it was possible to segregate and obtain the individual Income & Expenditure Account for each of the activity. The Ld. CIT(A) found that the assessee had drawn up the separate accounts from the detailed accounts maintained in this computerized data and the same was noted to be verifiable. It is also noticed that, the AO did not dispute the correctness of the separate accounts furnished by the assessee and the computation of surplus for each of these incidental activities. Having gone through the details placed before us, we find that the value of addition



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 116 ::**

impugned before us, is in fact, the same figure which is disclosed in these separate accounts furnished by the assessee. It is thus noted that the Revenue is blowing hot and cold at the same time. On one hand, we find that the Revenue is contending before us, that the assessee has not maintained separate accounts, whereas on the other hand, the Revenue is relying on the separate accounts as provided by the assessee in support of the impugned addition. We are unable to countenance such an action of the Revenue. We thus find ourselves in agreement with the following findings rendered by the Ld. CIT(A) on the impugned issue, which is as under:-

"5.5.3. I have carefully considered the submissions made by the appellant and also the assessment order and the materials impounded during the course of survey from the premises of Bannari Amman Educational Trust Satyamangalam Campus. The only contention of the AO to deny the claim of exemption u/s 11(1) of the Act wrt to surplus income arising from running of transport, hostel and stationery activities in the assessment order is that even though the income generated from these activities are incidental to the objective of the trust but in the absence of non-maintenance of separate books of accounts as required under section 11(4A), the exemption u/s 11(1) of the Act on the amount of surplus generated out of these activities will not be allowed. On the other hand, the appellant had contended that the allegation of the AO that the separate books of accounts were not maintained by the appellant is not correct, whereas the AO himself in the assessment order has computed income and expenditure from the various incidental activities in his assessment order itself, which undoubtedly clears that there are books of accounts for these incidental activities. The appellant has also contended that the maintenance of separate books of accounts for incidental activities gets fully diluted in the era of software accounting, where the segmental accounting entries can be easily segregated to ascertain the income and expenditure from each activity. Further, it was also stated by the appellant that the AO has reproduced



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 117 ::**

the data from books of accounts maintained by the appellant for each activity and computed the income and expenditure separately and it is clear that there are books of accounts for incidental activities and the said books of accounts, income and expenditure from each activity can be computed. It was also submitted by the appellant that during the course of assessment proceedings, the books of accounts for hostel, transport and stationery were extracted from the separate books of accounts and submitted to the AO and the AO has accepted the income and expenditure accounts extracted from the books of accounts maintained by the appellant and the AO had accepted in totality the income and expenditure submitted by the appellant derives from the separate books of accounts maintained by the appellant. Hence, according to the appellant the claim of exemption on the surplus generated out of the above activities cannot be denied and it is eligible for the exemption u/s 11(1) of the Act.

5.5.4. In order to verify whether separate books of accounts were maintained by the appellant or not, I had sought the books of accounts impounded from the premises of Bannari Amman Educational Trust, Satyamangalam Campus during the survey proceedings conducted on 25.02.2020 from the AO. As requested, the AO had made available the impounded books of accounts of the trust in the course of survey proceedings on 25.02.2020 in soft copy format to verify the nature of accounts maintained by the appellant trust. On going through the extracts taken from the specialized software used by the appellant to maintain the books of accounts, it was found that the trust was maintaining the books of accounts which was in the nature of consolidated books of accounts and it has the receipts and payments of its entire activities including the activities of running of hostel, stationery and transportation of students. These books of accounts were maintained by the appellant on a regular basis and the same were impounded during the course of survey by copying of backup data and kept as evidence. In the course of appeal proceedings, the appellant had also furnished the trial balance and ledger account wrt to these activities. On verification of both the impounded books of accounts which is available with the AO and the income and expenditure account, trial balance and ledger accounts submitted by the appellant before the appeal proceedings are same barring some difference over clubbing of different schools and colleges of the trust. This makes clear that even though there is no separate set of books of accounts on stand-alone basis for the activities of running of hostel, stationery and transportation of students but all the receipts and payments related to these activities are part of the consolidated trust account which is maintained in



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 118 ::**

specialized software. It is from software maintained by the appellant only the individual income and expenditure account was segregated and the was taken by both the AO and the appellant at the time of assessment proceedings. Since, the books of accounts were maintained by the appellant in computerized format, this was made possible. If we strictly apply the condition that no separate books of accounts maintained by the appellant as mandated u/s 11(4A) of the Act, it will not be fair to the appellant after maintaining detailed accounts wrt these above-mentioned activities, In this regard the appellant has relied on number of judicial decisions in support of the claim that the activities of running of hostel, stationery and transportation of students are integral part of education which is the main objective of the trust in its written submissions. The appellant has also relied upon the decision of jurisdictional ITAT in the case of DCIT vs Sindhi Educational Society (Madras) 158 taxmann.com 659(Chennai-Trib). In the said decision, the Hon'ble ITAT Chennai, held that providing the incidental activities like sale of textbook to the students, plying of buses and running of canteen are incidental to the attainment of main objects of the assessee's society. Further, the Hon'ble ITAT also held that the AO himself in the assessment order has computed income and expenditure from various activities in the part of assessment order itself which undoubtedly clear that there are books of accounts maintained by the appellant and allowed the exemption claimed u/s 11 of Act in the said case. The relevant part of the decision is reproduced as under.

24. Coming back to generating income from incidental activities. It is an admitted fact that the assessee is providing various incidental activities like sale of textbooks to students, plying of buses for the benefit of commutation of students, running of canteen and renting out sports ground for the purpose of sports tournaments. These activities are incidental to the attainment of the main objects of the assessee society, because, in any school these facilities are essential. Therefore, there is no dispute on the incidental activities carried out by the assessee which is necessary for attainment of main objects of imparting education. In fact, the AO is not disputing above facts, but the allegation of the AO is that the assessee did not maintain separate books of accounts for incidental activities as required u/s. 11(4A) of the Act.

25. We do not find any merit in the allegation of the AO for simple reason that the AO himself in his assessment order, has computed income and expenditure from various incidental activities and reproduced in tabular form at Page No. 12 of his assessment



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

**:: 119 ::**

order. From the above, it is undoubtedly clear that there are books of accounts for incidental activities. In any event, maintenance of separate books of accounts for incidental activities gets fully diluted in the era of software accounting, where, segmental accounting entries are posted, which can be easily segregated to ascertain separate income and expenditure from each activity. Further, the AO himself has culled out data from books of accounts maintained by the assessee for each activity and computed income and expenditure separately. From the above, it is clear that there are books of accounts for incidental activities and from said books of accounts, income and expenditure from each activity can be computed. Therefore, we are of the considered view that the allegation of the AO that there is no separate books of accounts for incidental activities as required u/s.11(4A) of the Act, is devoid of merits. In any event, as per the provisions of Sec.2(15) of the Act, providing such activities with certain threshold limits is permitted and as per details furnished by the assessee, we find that income generated by the assessee from incidental activities does not overshooting the threshold limits prescribed therein. Therefore, we are of the considered view that the reasons given by the AO in light of incidental activities carried out by the assessee for rejection of exemption u/s. 11 of the Act, is devoid of merits.

5.5.5 The facts of the case under appeal are identical to the facts of the case above cited. By respectfully following the decision of the jurisdictional ITAT in the case of DCIT vs Sindhi Educational Society (Supra), I am of the opinion that the appellant is eligible for exemption u/s 11 of the Act w.r.t. the surplus generated out of activities such as running of hostel, stationery and transportation of students. Therefore, the addition made by the AO of Rs.11,98,98,607/- is deleted and these grounds of appeal of the appellant are allowed."

**12.2** For the above reasons, we see no reason to interfere with the same.

Accordingly, these grounds raised by the Revenue stands dismissed.

**13.** The assessee in their appeals has also raised legal grounds (Ground No.14), inter alia, challenging the validity of the satisfaction note recorded prior to issuance of notice u/s 153C of the Act and the



ITA Nos.3310 to 3314/Chny/2024  
(AYs 2017-18 to 2021-22)  
ITA Nos.3353 & 3354 to 3358/Chny/2024  
(AYs 2015-16 & 2017-18 to 2021-22)  
M/s.Bannari Amman Educational Trust

:: 120 ::

assessment framed u/s 153C/143(3) for the unabated assessments for want of incriminating material. Since we have already deleted the addition(s) impugned in their appeals on merits, these legal grounds have become academic in nature and are therefore not being separately adjudicated upon and is left open.

**14.** In the result, all the appeals filed by the assessee are partly allowed and the appeals filed by the Revenue as well as CO's filed by assessee are dismissed.

Order pronounced on the 14<sup>th</sup> day of August, 2025, in Chennai.

**Sd/-**

(जगदीश)

**(JAGADISH)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(एबी टी. वर्की)

**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 14<sup>th</sup> August, 2025.

**TLN**

आदेश की प्रतिलिपि अग्रेषित /Copy to:

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