

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1321 to 1324/Chny/2025
निर्धारण वर्ष/Assessment Years: 2014-15 to 2017-18

R. Viswanathan, Flat No.A-4, Rams Anjali Atrium No.8, Sundaram Salai, R.A. Puram, Chennai-600 028. [PAN: ADLPV 6760 G]	v.	The DCIT, Central Circle-1(4), Chennai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
आयकर अपील सं./ITA Nos.1556 & 1597/Chny/2025 निर्धारण वर्ष/Assessment Years: 2016-17 & 2015-16		
The DCIT, Central Circle-1(4), Chennai.	v.	R. Viswanathan, Flat No.A-4, Rams Anjali Atrium No.8, Sundaram Salai, R.A. Puram, Chennai-600 028. [PAN: ADLPV 6760 G]
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Assessee by	:	Shri. V. Naga Prasad, Advocate/AR
प्रत्यर्थी की ओर से /Department by	:	Smt. E. Pavuna Sundari, CIT/DR
सुनवाईकीतारीख/Date of Hearing	:	29.10.2025 / 17.11.2025
घोषणाकीतारीख /Date of Pronouncement	:	22.01.2026



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ORDER

PER BENCH:

These appeals preferred by the assessee and the Revenue arise from the orders passed by the Learned Commissioner of Income Tax (Appeals)-18 (hereinafter referred to as 'Ld.CIT(A)'), Chennai, dated 29.03.2025 for Assessment Years (hereinafter referred to as 'AY') 2014-15 to 2017-18 u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. It is noted that, except for variation in figures, the observations and findings rendered by the lower authorities are verbatim same across all these years and therefore, with the consent of both the parties, these appeals were heard together and are being disposed of by this common order.

3. The factual matrix of the case is that, a search was conducted u/s 132 of the Act upon the assessee on 12.09.2016, pursuant to which, notice(s) u/s 153A of the Act were issued inter alias for AYs 2014-15 to 2017-18. In response, the assessee filed return(s) of income disclosing the same income as originally returned u/s 139 of the Act. Thereafter, the AO issued notice(s) u/s 142(1) of the Act dated 09.11.2018 calling for several details and explanation wherein the assessee was inter alia required to explain the contents of certain material which was seized in



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the course of earlier search conducted at third party premises, viz. M/s Coastal Energy Group [in short 'CEG'] and the statement(s) recorded from various third parties which included Shri C P Anbunathan [in short 'CPA'], Shri Parasmal Lodha [in short 'PLA'], Shri P Janakar [in short 'PJR'], Shri Giridharan [in short 'Giri'] and Shri Sivakumar Singaravelu [in short 'SSU']. The assessee is noted to have furnished his detailed submissions, in response to this notice. It has been brought to our notice that, since there was no incriminating material whatsoever found in the course of search conducted at the assessee's premises, though notice(s) were issued u/s 153A of the Act, no addition(s)/disallowance(s) u/s 153A/143(3) of the Act was made for AYs 2014-15 to 2017-18. Instead, it was shown to us that, the AOs of Shri CPA, Shri Giri, M/s CEG & Shri PJR had recorded four (4) satisfaction note(s) all dated 03.12.2018 asserting that, the seized material found from the premises of these searched persons belonged to/ related to the assessee, basis which, the AO of the assessee recorded a common satisfaction note for the AYs 2014-15 to 2017-18, all of which (except AY 2017-18) were verbatim same, and initiated proceedings u/s 153C of the Act by issue of notice(s) all dated 03.12.2018. Having regard to the seized material found from the premises and electronic devices of Shri CPA, Shri PLA, Shri Giri, M/s CEG & Shri PJR and relying upon their sworn statement(s), the AO completed the assessment(s) u/s 153C of the



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Act on 31.12.2018 after making addition on account of coal-commission by way of 'Income from Other Sources' across all the years.

4. Aggrieved by the order(s) of the AO, the assessee preferred appeal(s) before the Ld. CIT(A) who confirmed the addition(s) made in AY 2017-18, enhanced the addition(s) in AY 2014-15, and allowed partial relief in AYs 2015-16 and 2016-17. Being aggrieved by the order(s) of the Ld. CIT(A), the assessee is in appeal before us in all the four (4) impugned years and the Revenue has come up in appeal in AYs 2015-16 and 2016-17.

5. We have heard the arguments advanced by the Ld. AR, Shri V. Naga Prasad, Advocate, appearing on behalf of the assessee and also the contentions put forth by the Ld. CIT, DR, Smt E. Pavuna Sundari appearing for the Revenue. We have also perused the materials placed on record, including the impugned order(s) and their written submission(s).

6. It is seen that, the assessee was an MLA from the constituency Natham in the State of Tamil Nadu, and he was inter-alia, the Minister of Electricity during the period 2011 to 2016. During the State elections, a search was conducted by flying squad of Election Commission of India upon Shri CPA in the course of which, cash of Rs.10.33 lacs was found and seized. Thereafter, search was conducted at various premises of Shri CPA on 22.04.2016 in which, cash of Rs.4.77 crores was found. Also, in



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the course of search, six (6) account book(s) were found and seized vide ANN/FAY/CPA/B&D/S-1. When enquired regarding the contents of the same, it is noted that, Shri CPA, in his statement u/s 132(4) of the Act had admitted that, these account books related to his real estate and finance commission business and that the cash found was also generated in his own business. It is observed that, a specific question was put to him by the Investigating Officer as to whether certain notings made by way of 'RV I' and 'RV II' meant the assessee, which he is found to have specifically denied. In his subsequent statement dated 02.07.2016, Shri CPA was enquired about the monies received by his several finance firms, to which, he inter alia stated that these were business loans taken by him from the entities of Shri PLA against his personal guarantee. In the several statements recorded in the course of search and the post-search enquiries, it is observed that, Shri CPA had, at all times, maintained that, he was engaged in real estate & finance business and that, the account book(s) ID marked ANN/FAY/CPA/B&D/S-1 seized from his premises contained entries of his business activities. However, much later (after a gap of one year) on 03.04.2017, Shri CPA is noted to have again been summoned u/s 131 of the Act and for the first time he stated that, the account book(s) and the amounts received by his several finance firms pertains to coal commission received by him on behalf of the assessee, which was withdrawn in cash, and paid directly at assessee's residence. It



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is seen that, another statement was also recorded on 10.04.2017. However, on 09.05.2017, Shri CPA is found to have retracted his statements dated 03.04.2017 & 10.04.2017 and filed a duly sworn affidavit reiterating his original statement and admitted that, the monies were received by the finance firms in their own proprietary capacity and that these firms will pay appropriate taxes thereon. Shri CPA is also noted to have filed affidavits from the partners of these finance firms and a separate letter explaining the manner of disclosure of additional income of Rs.205 crores. It is seen that, upon retraction, Shri CPA was again summoned by the Revenue u/s 131 of the Act and in his cross-examination recorded on 06.06.2017, he is found to have confirmed his original statement recorded u/s 132(4) of the Act and also categorically affirmed that, the account book(s) and the loans received by his finance firms belonged to him and that he had voluntary disclosed income of Rs.205 crores to tax. In spite of the foregoing admission of Shri CPA, the AO of Shri CPA on 03.12.2018 recorded his satisfaction that, the seized account books ANN/FAY/CPA/B&D/S-1 and the contents therein, '*belonged*' to the assessee and therefore this seized material had a bearing on the total income of the assessee. According to the AO of the searched person [Shri CPA, in this case], the account book(s) were maintained by Shri CPA for and on behalf of the assessee, which



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contained information regarding the coal commission earned by the assessee across AYs 2014-15 to 2017-18.

7. On the basis of the above satisfaction recorded by the AO of Shri CPA, the AO of the assessee is found to have recorded similar satisfaction that the contents of the account book(s) seized from the premises of Shri CPA related to the assessee. The AO was of the opinion that the amount(s) featuring against several acronyms in the notebooks represented the notings of coal commission derived by the assessee, which was being received by the finance firms of Shri CPA, withdrawn in cash and then handed over to the assessee. It is seen that, the AO of the assessee has sought to corroborate his satisfaction that the account book(s) of Shri CPA related to the assessee and had a bearing on his total income, by referring to sworn statement(s) of several persons viz., Shri Giri & Shri PLA, recorded in their respective search actions u/s 132 of the Act, and also the material which was unearthed from the electronic devices seized in the course of search upon Shri Giri. Thereafter, a search was also conducted upon the assessee on 12.09.2016 and he was confronted with these seized material and statement(s) and he is found to have denied the same. As already noted above, neither any incriminating material was found from the assessee's premises nor did the assessee incriminate himself or admit to earning any commission income in the statement recorded u/s 132(4) of the Act. However, according to the AOs



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of the aforesaid respective searched third parties [Shri CPA, Shri Giri] the material inter alia seized from their premises belonged/related to the assessee, as they corroborated the explanation given by Shri CPA in his statement(s) dated 03.04.2017 & 10.04.2017. Accordingly, the AO is found to have recorded his *satisfaction* that the account book(s) found from the premises of Shri CPA and the sworn statements of the aforesaid persons suggested that the assessee had received unaccounted commission of Rs.205,10,46,028/- across AYs 2014-15 to 2017-18.

8. It was also brought to our notice that, a separate search action was also conducted on 04.01.2017 upon one M/s CEG Group, in the course of which, two pages viz. ANN/SAA/KSI/LS/S-1, Page No.48 & 49, were found which inter alia contained entries titled 'Power M' and based on the statement given by one Shri SSU, General Manager, Accounts of CEG Group, these entries were held to be relating to the assessee. Accordingly, on the basis of this seized material, the AO arrived at a separate satisfaction in the same satisfaction note recorded u/s 153C of the Act that, the assessee had also derived unaccounted commission of Rs.41,55,00,000/- across AYs 2014-15 to 2017-18.

9. The Ld. AR further pointed out that, there was another search conducted upon Shri PJR on 10.05.2016. He showed us that, the AO of Shri PJR was of the view that, the loose sheets ID marked Annexure



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ANN/RB/PJ/LS/S found in the course of his search contained several jottings and calculations and that in his view, these notings related to the unaccounted monies amounting to Rs.28,55,86,500/- spent by him for and on behalf of the assessee in AY 2017-18. Consequently, the AO of the assessee incorporated reference to these seized material and sworn statement of Shri PJR in the satisfaction note drawn u/s 153C of the Act for AY 2017-18.

10. Overall therefore, on the basis of the material seized from the premises of these three parties, from third party searches, and the statement(s) given by various persons, the AO had formed his satisfaction that, the assessee was in receipt of commission in relation to the coal supplied by M/s Adani Global Pte Ltd [in short 'A Co'], M/s Knowledge Infrastructure Strategy Systems Pte Ltd [in short 'K Co'] and M/s CEG Group to Tamil Nadu Electricity Board [in short 'TNEB']. It was the AO's case that, this commission was being received by the assessee through the aid and assistance of Shri CPA, Shri Gobinath (in short Gobi), Shri Giri and Shri PLA, whose notings was found in the account book(s) seized from the premises of Shri CPA and that the same had not been offered to tax by the assessee in his returns of income for AYs 2014-15 & 2017-18. In so far as AY 2017-18 is concerned, the AO additionally observed that, the material found from the premises of Shri PJR revealed unaccounted cash expenses incurred by the assessee during that year election. With



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these observations, the AO usurped jurisdiction u/s 153C of the Act and issued notice(s) dated 03.12.2018. The AO in the impugned assessment order(s) is noted to have aggregated all the notings found in the account book(s) seized from the premises of CPA having different acronyms, names and abbreviations and held that, the aggregate amount(s) represented coal commission earned by the assessee and added aggregate sum of Rs.550.40 crores in the hands of the assessee by way of 'Income from Other Sources' in AYs 2014-15 to 2017-18. Also, the entries titled 'Power M' found in the ledger seized from the premises of M/s CEG amounting to Rs.41.55 crores, was separately added in the hands of the assessee in the respective years. Further, the alleged unaccounted cash expenses found noted in the loose sheets seized from the possession of Shri PJR was quantified at Rs.6.56 crores and added in the hands of the assessee in AY 2017-18.

11. At the time of hearing, the Ld. AR appearing for the assessee has assailed the action of the lower authorities on several fronts. Having regard to the arguments made before us, we find that, amongst the several legal challenge(s) and objection(s) to the merits of the addition(s), the first legal challenge of the assessee in all the AYs is inter-alia to the validity of usurpation of jurisdiction u/s. 153C of the Act, without satisfying the mandatory condition precedent prescribed by Section 153C of the Act i.e. the AO has not recorded a valid satisfaction-



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note before assumption of jurisdiction u/s 153C of the Act. In other words, the AO has issued notice u/s. 153C of the Act against the assessee, by invoking special provision of assessment u/s. 153C of the Act without satisfying the requirement of law as stipulated u/s. 153C of the Act, and therefore the action of AO was claimed by the Ld. AR to be ab-initio void. We are therefore inclined to first adjudicate this legal issue raised by the assessee, which if found valid, goes to the root of the matter *[since it challenges the jurisdiction exercised by the AO u/s 153C of the Act qua assessee, who is the 'other-person' as envisaged u/s 153C]*.

12. Assailing the action of the lower authorities, the Ld. AR appearing for the assessee, submitted that, the AO without satisfying the essential condition-precedents had erroneously usurped the jurisdiction u/s 153C against the assessee, based on searches conducted on third party premises are bad in law and hence the assumption of jurisdiction u/s 153C is ab-initio void. According to Ld AR, in order to validly usurp jurisdiction u/s 153C of the Act, it was incumbent upon the AO to first identify the relevant material, that was found and seized from the premises of the searched person(s), which in his view, 'belonged to' or 'related to' or 'pertained to' the assessee and had a bearing on the determination of his total income, (which is the jurisdictional-fact). The



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Ld. AR placed before us the summary details of the seized material referred to by the AO in his satisfaction note, which is as under:-

Document Identification Mark	Description of seized material	Nature of contents [As per AO]
ANN/FAY/CPA/B&D/S-1	Six account book(s) seized from the premises of Shri CPA	Daily notings of receipts and payments under several acronyms viz., R.V. I, R.V.(W), R.V. I (Per), R.V.II, Gobi R.V., Gobi (RV)I, Gobi. (RV)II, Gobi (Dubai), Lodha (HL), Thathu, Lodha, Lodha (Loan) HL, R.V.RL, Gobi HL(Dubai)
ANN/A/PA & ANN/SM/Valuable/S	Electronic devices seized from Shri CPA & Shri Sudarshan	Phone Chats between Shri CPA-Shri Sudarshan and Shri CPA-Shri Giri
ANN/A/GC, ANN/MKM/CG/ED/S	Electronic devices seized from Shri Giri	Email correspondence, agreements & invoices
ANN/SAA/KSI/LS/S-1 (Page No.48 & 49)	Loose sheets seized from the premises of M/s CEG	Loose notings of several amounts against nomenclature 'Power M'
ANN/RB/PJ/LS/S	Loose sheets seized from Shri PJR	Workings related to the total number of voters in constituencies along with calculations and estimations

13. The Ld. AR firstly took us through the 'satisfaction-note' recorded by the AO of Shri CPA, and pointed out that, the AO was categorical in observing that, the material seized from the premises of Shri CPA 'belonged to' the assessee. Narrating the legislative history of Section 153C and the amendment brought in by the Finance Act, 2015 with effect from 01.06.2015, the Ld. AR submitted that the AO was conscious of the judicial distinction between '*belongs to*' and '*relates to*' and that the scope



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of the former was much narrower. He then took us through the material seized from the premises of Shri CPA and his statement(s) which has been extensively relied upon in the satisfaction-note as well as the assessment order(s). According to the Ld. AR, under no circumstance could these account book(s) be said to be '*belonging to*' the assessee and he wondered as to how the AO was able to come to such a conclusion. The Ld. AR argued that, Shri CPA had categorically averred in his statement recorded u/s 132(4) as well his subsequent statements dated 17.06.2016 & 02.07.2016 that, these seized account books belonged to him and that the entries therein also related to his proprietary business activities. In fact, he showed us that, Shri CPA had later on also quantified and admitted to unaccounted income on the basis of the entries found in these account books. He also took us through the contents of these account books and showed that there was nothing contained therein which would even remotely suggest that they belonged to the assessee or for that matter, related to the assessee. In light of the foregoing, and the statutory presumption laid down in Section 132(4A) and 292C of the Act, the Ld. AR contended that, the AO of Shri CPA, while drawing his satisfaction note, had erroneously stated that these seized material belonged to the assessee and thus in his view, the satisfaction-note suffered from fundamental infirmity, which vitiates the finding of jurisdictional-fact itself necessary for successful assumption of power u/s



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153C of the Act. The Ld. AR further argued that, even otherwise 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 viz., the assessee and therefore when there was nothing contained in the seized material relating to the assessee, the assumption of jurisdiction u/s 153C of the Act by the AO was inherently flawed. The Ld. AR also painstakingly took us through the several statement(s) given by Shri CPA before the Investigating authorities and the inferences drawn by the AO of the assessee therefrom in the satisfaction-note. The Ld. AR claimed that the AO's observation in the satisfaction-note dated 3.12.2018 that, Shri CPA had confirmed on oath that the notings in the account books belonged/related to the assessee was factually perverse and suffered from serious infirmities, when admittedly Shri CPA has retracted the same and filed affidavit sworn before Notary Public reiterating his statements/admission given earlier.

14. The Ld. AR next took us through the electronic evidences seized from the premises of Shri Giri, which again, as per the satisfaction-note was stated to be '*belonging to*' the assessee. He argued that, these email communications, agreements and invoices belonged to different persons / companies and clearly didn't belong to the assessee. He further claimed that, even the information contained in these communications didn't relate to the assessee in any manner. According to him therefore, the



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email correspondence found in devices ID marked ANN/A/GC & ANN/MKM/CG/ED/S, as referred to in the satisfaction-note, didn't have any bearing on the total income of the assessee. Moreover, the authenticity of the electronic information's are suspect, and couldn't be relied without statutory-certification. The Ld. AR further assailed the statement given by Shri Giri and showed that it suffered from serious contradictions, and hit by hearsay and the AO erred in placing reliance on it.

15. The Ld. AR then invited our attention to the documents ID marked ANN/SAA/KSI/LS/S-1, Page No.48 & 49 seized from the premises of M/s CEG Group and argued that the notings contained on these pages on stand-alone basis cannot be said to relate to the assessee in any manner. He pointed out that, the satisfaction of the AO hinged on the bald-statement of one employee of M/s CEG Group, Shri SSU who had averred that this was paid to one person presumably on behalf of the assessee. According to Ld. AR, the AO could not have merely acted on such hearsay statement while recording his satisfaction. The Ld. AR also pointed out that Shri SSU had since retracted his statement and thereafter confirmed his retraction in the course of cross-examination by the AO as well. The Ld. AR thus claimed that, the AO was unjustified in holding these seized material to relate to the assessee having bearing on his total income.



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16. The Ld. AR thereafter took us through the rough notings, scribblings found in the loose sheets seized from the premises of Shri PJR and submitted that not only were they dumb in nature but it could not be said to relate to the assessee. He also took us through the statement of Shri PJR and showed that, the searched person had at all times had maintained that, these were rough notings and estimations and did not reflect any actual transactions. The Ld. AR further submitted that, Shri PJR at no time had implicated the assessee of any wrong-doing and therefore the satisfaction-note drawn by the AO of the assessee was unsustainable.

17. Summing up his arguments, the Ld. AR submitted that, the seized material were dumb documents from which, no prudent person properly instructed in law could have inferred that they related or pertained to the assessee, leave alone that it belonged to third party 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 several persons, 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 per-se hearsay, and either unreliable or misleading or suffered from interestedness. The Ld. AR thus claimed that, when there were no seized assets or books of accounts or documents found belonging or relating or



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pertaining to the assessee, which contained information having a bearing on his total income, the jurisdiction assumed by the AO u/s 153C of the Act was misconceived and invalid. According to him, in absence of incriminating material against the '*other person*' i.e., the assessee, found in the course of search and there being nothing in the form of '*valuable asset*' (money, bullion, jewellery or other valuable article or thing seized), or '*books of account*' or '*document*' seized or any information contained therein which relates to the '*other person*' [assessee], then the condition laid down u/s. 153C(1) cannot be said to have been met, merely on the basis of bald and self-serving statement(s) of some interested third parties, and thus cannot justify initiation of proceedings u/s. 153C(1) of the Act. According to him, even otherwise, such statements alone cannot be the basis to justify initiation of proceedings u/s. 153C(1) of the Act. In support, the Ld. AR relied on the following decisions of this Tribunal:

- **DCIT vs. VVD & Sons (P.) Ltd [2024] 158 taxmann.com 395**
- **Saveetha Institute of Medical & Technical Sciences vs. ACIT [2012] 25 taxmann.com 138**
- **ITO vs. Ramachandra Setty & Sons [2024] 163 taxmann.com 666.**

18. The Ld. AR also emphasized on the fact that, neither the Investigating Authorities nor the AOs of the searched persons nor the AO of the assessee, had made any enquiries or investigation from A Co. or K Co. who allegedly paid the impugned commission income to the assessee. He claimed that, there was nothing brought on record to show that any of these suppliers had ever admitted to have paid any commission to the



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assessee in lieu of the coal supplied by them to TNEB. According to him therefore, when the purported source of payment viz., the suppliers, had not been examined or investigated, and the origin of the so-called commission payments had not been established, the entire case made out by the Revenue in their satisfaction note as well as the impugned assessment order(s) hinged solely on theoretical assumptions and surmises.

19. Considering the nature of the allegation(s) emanating from the satisfaction note, this Bench had inquired from the Ld. AR as to whether at all, the assessee was having a say in the award of contract or he was holding any position or post in TNEB [now 'TANGEDCO'] and was he involved in awarding contracts to the suppliers who had allegedly paid commission to him. To this, the it was brought to our notice that, the assessee neither held any post or position in TANGEDCO and he had absolutely no role in the open tender process followed by TANGEDCO for awarding coal contracts. The Ld AR in this regard also took us through the reply furnished by TANGEDCO to the enquiry made by the AO in the course of assessment and showed that these contract(s) were awarded through an open tender process, and the contemporaneous data showed that the rates at which coal were supplied by A Co & K Co were commensurate or lower to the rates at which other coal suppliers supplied coal to



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TANGEDCO during the same period. The Ld. AR thus submitted that, even these contemporaneous facts negated the satisfaction drawn by the AO.

20. The Ld. AR further submitted that, even the search action conducted upon the assessee and the post search enquiries didn't result in unearthing of any valuable asset, or any material or information which would correlate with the allegation involving receipt of such huge magnitudes of cash by the assessee in his personal capacity. According to him therefore, the impugned satisfaction note was based purely on hypothesis and it was not backed by any tangible asset or document or books of accounts found in the course of search, which related to or pertained to the assessee. The Ld. AR thus urged us to quash the impugned order(s) passed u/s 153C/143(3) of the Act as the initiation of proceedings u/s 153C of the Act itself stood vitiated in law. The Ld. AR has furnished detailed written arguments in support of his contentions, which, to avoid repetition, we shall be discussing in the ensuing paragraphs.

21. Per contra, the Ld. CIT, DR appearing for the Revenue, Smt. Ms. E. Pavuna Sundari, supported the order of the AO. She contended that, the AO had undertaken an extensive exercise while drawing up the satisfaction note and conducted a detailed analysis of the seized material and sworn statements for arriving at his conclusion that, the contents



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thereof related to the assessee having bearing on his total income. She narrated the entire sequence of events from the first search which was conducted on the premises of Shri CPA, and the subsequent searches on Shri Giri, Shri PLA, Shri PJR. According to her, if the statements of all these persons are read in conjunction, then one would be able to infer that the account book(s) seized from the premises of the CPA contained information which related to the assessee alone. She also took us through the extensive findings recorded by the lower authorities while making the addition(s) made on account of coal commission and argued that the assessee has created an elaborate facade to derive the same with the assistance of the aforementioned persons. The Ld. CIT, DR thus submitted that, the AO had validly reopened the assessment u/s 153C of the Act for AYs 2014-15 to 2017-18 and urged us to reject this legal challenge raised by the assessee.

22. We have heard both the parties and perused the relevant provisions of the Act. Before we advert to the legal issue raised by the assessee, it would first be necessary to take note of the legislation of Section 153C itself. We note that Section 153A/153C of the Act was introduced by the Finance Act, 2003 w.e.f. 01.06.2003. It replaced the provisions relating to block assessment contained in Chapter XIV-B and introduced an altogether new procedure for making assessment u/s. 153 of the Act. The Scheme of assessment u/s 153A/153C is available to the department in



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addition to all other methods of assessments, revisions and reassessments and each scheme has its distinct set of conditions and stipulations that must be strictly adhered to. The sub-heading of Section 153A of the Act is "*Assessment in case of Search or requisition*" which is a special provision for assessment in case of an assessee against whom search u/s. 132 or requisition under section 132A of the Act is carried out by the department. Section 153B of the Act prescribes the time limit for completion of assessment u/s 153A and 153C of the Act. Section 153C of the Act bears the heading "*Assessment of income of any other person*" which is a special provision in respect of assessment of income of "*any other person*" (third party) against whom no search u/s. 132 or requisition u/s. 132A of the Act was carried out, provided certain safeguards, (conditions precedents) are satisfied as envisaged under Section 153C of the Act; and Section 153D of the Act is the provision regarding approvals, for assessment in case of search or requisition as per section 153A and 153C of the Act. And as noted, section 153A of the Act is a special provision for assessment of the '*searched person*'. From a reading of Section 153A of the Act, it is noted that in case of '*searched person*', the AO is mandated to issue notice for six AYs preceding the year of search in as much as once a person is searched, he is bound to call upon such an assessee to furnish returns of income for the six preceding AYs. However, where during the course of search u/s 132 of the Act, if it



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is found that any money, bullion, jewellery or other valuable articles or things seized or requisitioned belongs to, or any books of account or documents seized or requisitioned pertains to or any information contained therein relates to "*other than the person*" searched u/s. 153A of the Act [i.e. a third party, in this case the 'assessee'], then the AO of the '*searched person*' has to first record his satisfaction that the money, bullion, jewellery or other valuable articles or things seized or requisitioned belongs to the '*other person*' or that any books of account or documents seized or requisitioned or any information contained therein relates to the '*other person*', segregate the seized material of the '*other person*' from that of the '*searched person*'; and then, hand over the relevant material which belongs/pertains/relates to the '*other person*' to the AO having jurisdiction over such '*other person*' and thereafter, the AO of the '*other person*' shall record his satisfaction that, the relevant incriminating material belongs/relates/pertains to the '*other person*' which has a bearing on the determination of the total income of such '*other person*'. As Section 153C is a special provision against an assessee who has not been searched by the department, the safeguards stipulated by the statute contained in Section 153C has to be scrupulously followed.

23. It is judicially settled that the recording of the satisfaction note by AO, as to existence of jurisdictional fact as enumerated u/s 153C is mandatory, in the absence of which, no notice u/s 153C of the Act can be



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validly issued. The rationale behind this exercise stipulated by the Legislature is because; the special provision of Section 153A would ordinarily be triggered only against the persons who are subjected to search u/s. 132 of the Act. However, if any valuables/asset are found in the searched premise, which belongs to a third party or books/documents is found which pertain to/relate to a third party, then the third party would be subjected to assessment/re-assessment as per Section 153C of the Act. In order to do so, the safe guard/condition-precedent prescribed in Section 153C of the Act by the statute has to be scrupulously followed/complied. The satisfaction of Assessing Officer should be based upon reliable/legal/cogent material, and such satisfaction is expected to be that of a prudent/reasonable person. The reason for it, is that, Section 132(4A)(i) of the Act clearly stipulates that when inter alia any 'asset' or 'books of accounts' or 'document' is found in the possession or control of any person in the course of a search, it may be presumed that such asset / material belongs to such person (the 'searched person'). The presumption as to the asset, books of accounts, etc. found during the course of search u/s. 132 or survey u/s. 133A of the Act is also recognized by Section 292C(1)(i) of the Act which provides that it belongs to the person from whom the said assets/documents was found. In other words, whenever an asset/document is found from a person who is being searched, the presumption of fact is that the said asset/document belongs



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to that person, and the contents of it are true. It is for the Assessing Officer to rebut that presumption and come to a conclusion or '*satisfaction*' that the asset/document in fact belongs/pertains/relates to somebody else viz., '*other person*'. Existence of cogent and demonstrative material is germane to Assessing Officer's satisfaction in concluding that material belongs/pertains/relates to '*other person*' for initiating action u/s 153C of the Act. Surmise and conjecture cannot take the place of '*satisfaction*' and the same interpretation has been given by various Courts.

24. At this juncture, we gainfully refer to the following observations made by the Hon'ble jurisdictional Madras High Court in the case of **Agni Vishnu Ventures Pvt. Ltd. vs DCIT (460 ITR 438)** which are as follows:

"77. The ingredients of Section 153C are:

(i) Satisfaction of the Assessing Officer who is Assessing Officer of the section 153A notice that money/bullion/jewellery/other valuable article or thing/books of account or documents (incriminating materials) seized/requisitioned belongs to/pertain to or any information contained, relates to, a third party.

(ii) Recording of satisfaction as above.

(iii) Handing over of the incriminating material to the Assessing Officer having jurisdiction over the third party.

(iv) Recording of satisfaction by the Assessing Officer of the third party that the incriminating material has a bearing on the determination of total income of the third party.



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(v) Upon condition of recording of the satisfaction of both officers as above, notices be issued to assess/reassess the income of the third party in accordance with the procedure stipulated under Section 153A.

78. In my considered view, there is a vital distinction between the object, intention as well as the express language of Sections 153A and 153C. Section 153A addresses the searched entity and the procedure set evidently a notch higher for this reason. There is no discretion or condition precedent under Section 153A to the issuance of notice save the conduct of a search under Section 132 or making of a requisition under Section 132A. Upon the occurrence of one of the aforesaid events, it is incumbent upon the office to issue notice under Section 153A to the searched entity in line with the procedure stipulated.

79. Section 153C however requires the satisfaction of two conditions prior to issuance of notice:

- (i) Recording of satisfaction by the Assessing Officer of the searched entities that some of the incriminating materials relate to a third party.
- (ii) Recording of satisfaction by the Assessing Officer of the third party that the incriminating materials have a bearing on the determination of the total income of that third party.

80. Notice under Section 153C would have to be issued only upon satisfaction of both conditions as aforesaid. To this extent, there is, in my considered opinion, a clear and marked distinction between the provisions of Section 153A and 153C.

The contention of the revenue that a mandate is cast upon the Assessing Officer of the third party to issue notice under Section 153C for all the years comprising the block, mechanically and automatically, is thus rejected.

81. To clarify, it is only where the satisfaction note recorded by the receiving Assessing Officer, i.e., the Assessing Officer of the third party reflects a clear finding that the incriminating material received has a bearing on determination of total income of the third party for 6 assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, that such notice would have to be issued for all the years.

82. It thus flows from the provision that the receiving assessing officer must apply his mind to the materials received and ascertain precisely the specific year to which the incriminating material relates. It is only when this determination/ascertainment is complete that the flood gates of an assessment would open qua those particular years. The issuance



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of a notice cannot be an automated function unconnected to this exercise of analysis and ascertainment by an assessing officer.

83. The construction of Section 153A and 153C is consciously different and is seen to apply different yardsticks to an entity searched and a third party, such yardstick being more exacting in the case of the former. The process of assessment is demanding and an assessee, once in receipt of a notice, is bound by the stringent procedure under the Act, till finalization of the process.

84. In other words, a Damocles sword appears over the head of an assessee with the issuance of every notice which is laid to rest only upon conclusion of the proceedings. The sword cannot be invoked lightly and except if the statutory condition is satisfied. That is to state, an officer has to analyze and compartmentalize the incriminating material year wise, to arrive at a categoric determination as to the year to which the incriminating material relates and issue notices only for those years.

85. Needless to state these are some situations/issue when the spread of information and the nature of the issue itself might need more, and in-depth probing before such year-wise determination is possible. In such cases, the officer would be well within his right to state the nature of the issue and detail the difficulties that present themselves in precise bifurcation at that stage. This would reflect application of mind and, in my considered view, would serve as sufficient compliance with the statutory condition."

25. It is therefore noted that, in a case to which Section 153C of the Act applies, first the AO of the searched person has to satisfy himself that the material in his possession (of the searched person) is likely to implicate the third party, since the money/bullion/jewellery/other valuable article or thing/books of account or documents (incriminating materials) seized belongs to/pertain to or any information contained, relates to, a third party; and then record his satisfaction that the material seized from the searched person belongs/pertain/relate to third person/other-person, then hand over the satisfaction-note along with such materials to the third party's AO. [Existence of jurisdictional fact qua third-party is the



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foundation which should be discernable from the first satisfaction-note of AO of the searched person.] Then the AO of the third party should record satisfaction that the materials he received from the AO of the searched-party "*have a bearing on the determination of the total income*" of the '*third-party/other-person*', i.e. the second satisfaction-note should reveal how such material have a bearing on the determination of the total income of the third party. [if there is a legal challenge regarding the validity of the second satisfaction-note, it would essentially be a mixed question of fact & law]. Existence of jurisdictional fact qua third-party is the foundation which should be discernable from the first satisfaction-note of AO of the third party, which requirement is sine qua non for valid handing over of the material to the AO of the third party; and then the AO of the third party has to apply his mind and come to independent satisfaction that such materials (handed over to him by AO of the searched party) have a bearing on the determination of the total income of the third-party; and then only he can be said to have validly assumed jurisdiction u/s 153C of the Act against the third party. In other words, notice under Section 153C against third party can be issued only upon satisfaction of both conditions as aforesaid. At this juncture, it is made clear that if the AO of the searched party and the third-party is the same, then satisfaction-note may be one, but contents of it should fulfill both the condition-precedents/requirement of law. However, if the



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documents/material which are said to relate/pertain to the '*other person*', is found does not '*belong / relate / pertain to*' the other-person/third-party or does not have "*bearing on the determination of the total income*" for any particular AY, the AO would stand deprived of the authority to initiate action under Section 153C for that year. Hence, where there is absence of material found from the premises of '*searched person*' which is "*having a bearing on the determination of the total income*", it would constitute the non-fulfillment of jurisdictional fact/law, then the AO cannot assume jurisdiction u/s 153C of the Act. This is a vital stipulation which is to be met by the AO because if the same is ignored or is treated in a casual or farcical manner, then it would result in assessments coming to be reopened under Section 153C of the Act even though there is no material which relates to/pertains to the '*other person*' or is not having '*any bearing on his total income*' for the impugned AYs. In case if the AO erroneously assumes existence of such jurisdictional fact, and confer upon himself jurisdiction to assess third-party u/s 153C which it otherwise does not possess, would vitiate the entire proceedings and notice issued u/s 153C, would be held to be wholly without jurisdiction. In this regard, we gainfully refer to the following excerpts of the decision of the Hon'ble Supreme court in **Sinhgad Technical Education Society's case (397 ITR 344)**, wherein their Lordship took note of the Hon'ble High Court's findings while confirming Tribunals view which is as under:—



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"6. The tribunal has found that incriminating material seized and stated to be pertaining to all six assessment years did not establish any correlation document-wise with the assessment year in question. In other words, the tribunal concluded that the present matter indicates that the issue of notice could be on the basis that there is specific incriminating information in possession of the Assessing Officer. It is in these circumstances that the tribunal found and as indicated in paragraph 8 of the impugned order that the revenue's assertion that the Assessing Officer is empowered under the statute to assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted and therefore the satisfaction which is recorded in the satisfaction note is enough, is erroneous. Therefore, the notice cannot be upheld and such stand of the revenue cannot be accepted. The reasons therefor are to be found in paragraph 9 and 10 of the impugned order. If certain items pertain to assessment year 2004-05 or thereafter then it cannot be assumed, that the documents seized or incriminating material giving information are specific and to all assessment years. The tribunal found that they were concluded assessments. They could not have been disturbed. The documents in question are neither incriminating ones nor unaccounted transactions of the assessee. They also did not relate to the four assessment years. It is in these circumstances that the tribunal found that it will not be possible to uphold the stand of the revenue that overall approach in matters of concealment by the group assessee and all the discoveries of the search on Shri Navale and it concerns, will have to be taken into account while forming the satisfaction. The satisfaction note was very closely examined and the reasons assigned by the Assessing Officer were found to be silent about the assessment year in which specific incriminating information or unaccounted or undisclosed hidden information was discovered or seized by the revenue from the assessee. In the circumstances, the general satisfaction and as recorded in the note is not enough. The tribunal has found that with regard to cash and jewellery, the explanation of the assessee was that he had agricultural properties and derived agricultural income. That income was utilised to acquire jewellery that was belonging to him and his family. With regard to cash stated to be recovered from the students for granting admissions, we do not find that any inquiries were made. There is absolutely nothing to indicate as to in which educational courses, the education is imparted and institution-wise. Whether the admissions are granted to the technical courses merit-wise or on the basis of marks obtained in XIIth standard HSC exam. If any fee structure is approved and cash component is therefore collected over and above the sanctioned fees are matters which ought to have been gone into and there cannot be a general or vague satisfaction as is relied upon.



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9. We are of the opinion that the tribunal's conclusion cannot be termed as perverse and given the above-noted factual background. None of these appeals raises any substantial question of law. They are accordingly dismissed. No costs."

26. And the aforesaid finding of Hon'ble High Court has been affirmed by the Hon'ble Supreme Court as under:-

"18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy." (emphasis supplied)

27. We also gainfully refer to the decision of the Hon'ble Supreme Court in the case of **PCIT Vs Abhisar Buildwell (P) Ltd (454 ITR 212)** wherein it has been held in unequivocal terms that absent incriminating



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material, the AO would not be justified in seeking to assess or reassess completed assessments. The same position would prevail in context of Section 153C of the Act as well. Here too, the AO is mandated to firstly identify the AYs' to which the material gathered in the course of the search may relate to and consequently those assessments would face the specter of Section 153C of the Act. The additions here too would have to be based on material that may have been unearthed in the course of the search or on the basis of material requisitioned. The statute thus creates a persistent and enduring connect between the material discovered and the assessment that may be ultimately made. All the above discussed judgments thus reinforce the requirement of incriminating material having an ineradicable link to the determination of income for a particular AY in as much as it reinforces our view that notice u/s 153C can be validly issued only when the AO records his objective satisfaction that he has incriminating material belonging/pertaining to or relating to the '*other person*' for the relevant AYs and which may be concerned with their disclosed and undisclosed income. Absent any material qua the '*other person*' that may either cast a doubt on the determination of total income for a particular year or years, the AO would not be justified in invoking his powers conferred by Section 153C of the Act. It would only be consequent to such satisfaction being reached that a notice u/s 153C of the Act would be liable to be issued.



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28. In this context, it has to be kept in mind that, when the challenge is to the validity of the satisfaction note basis which the AO has usurped jurisdiction u/s 153C of the Act, we have to examine the satisfaction recorded by the AO as it stands and no new words can be imported or read into his '*satisfaction note*' nor can the Revenue now supplement or improve upon the satisfaction note. For this, we draw strength from the jurisprudence available in the context of examination of the reasons recorded/satisfaction drawn by the AO for re-opening the assessment u/s. 147 of the Act. It is settled law that reasons as recorded for reopening the reassessment are to be examined on a '*stand-alone*' basis. Neither anything can be added to the reasons so recorded nor anything be deleted from the reasons so recorded. The Hon'ble Bombay High Court in the case of **Hindustan Lever Ltd. v. R.B. Wadkar [2004] 137 Taxman 479/268 ITR 332** inter alia, held "*it is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No addition can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded by him. He has to speak through the reasons.*" Their Lordships added that "*the reason recorded should be self explanatory and should not keep the assessee guessing for reasons. Reasons provided the link between the conclusion and the evidence.....*". It is a settled law that the reasons recorded cannot evolve or be allowed to grow with age and



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ingenuity. The reasons which are recorded cannot be supplemented by affidavits. If the reasons are allowed to be added, subtracted or deleted, then by the time the matter reaches the Court/Tribunal, the Assessing Officer would be allowed to change his reasons to believe escapement of income. The Hon'ble Supreme Court in **New Delhi Television Ltd. (NDTV), v. DCIT [2020] 116 taxmann.com 151(SC)** has held that the Assessing Officer is not allowed to alter his reasons, which must be considered only based on their recordings. In our considered view, this ratio decidendi of the Hon'ble Supreme Court is applicable with equal force to the satisfaction note prepared by the AO for assuming jurisdiction to issue notice under section 153C of the Act.

29. Having regard to the above laid down well settled legal principles, we now revert back to the facts involved in the case before us. It is noted that, the issuance of the notice(s) u/s 153C of the Act was preceded by satisfaction note(s) drawn up by the AO for AYs 2014-15 to 2017-18 all dated 03.12.2018. Since the satisfaction-notes would have a material bearing on the legal challenge raised before us, it is relevant to first take cognizance of the same. We observe that, the contents of satisfaction note(s) for AYs 2014-15 to 2016-17 were identical. In so far as AY 2017-18 is concerned, it is seen that, the first seven (7) paragraphs is identical to earlier years and that the only additional satisfaction recorded in Paras 8 to 11 concerns the material seized from the premises of Shri PJR, which



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according to AO, had bearing on the total income for AY 2017-18 only. With the consent of both parties, and to avoid repetition, we thus proceed to examine the satisfaction note for AY 2017-18, and our findings rendered in relation thereto shall *mutuatis mutandis* apply to all other AYS 2014-15 to 2016-17.

"2. During the course of search conducted in the case of Shri. C. P. Anbunathan, Karur, six account books found were seized vide ANN/FAY/CPA/B&D/S-1 dated 23.04.2016. On examination of the seized material i.e. ANN/FAY/CPA/B&D/S-1 dated 23.04.2016, it is seen that the cash accounts were meticulously maintained with ledger folio number containing minute details including petty expenses and entries were made in code words viz. R.V. I, R.V.(W), R.V. I (Per), R.V.II, Gobi R.V., Gobi (RV)I, Gobi. (RV)II, Gobi (Dubai), Lodha (HL), Thathu, Lodha, Lodha (Loan) HL, R.V.RL, Gobi HL(Dubai) etc. in the seized books found. When Shri. C.P. Anbunathan was asked about these entries, he confessed that the code words, R.V. I, R.V.(W), R.V. I (Per), R.V.II, Gobi R.V., Gobi (RV)I, Gobi. (RV)II, Gobi (Dubai), Lodha (HL), Thathu, Lodha, Lodha (Loan) HL, R.V.RL, Gobi HL(Dubai) etc. indicated 'Natham R Viswanathan' and that he had received the cash amounts including other commission income on your behalf. Shri. C.P. Anbunathan has already confessed vide sworn statement recorded from him that, he maintained and delivered to you, your coal commission income viz., for supply of coal to TNEB, for projects' approval and commission for windmills and solar power establishments. Hence, it is clear that the cash amounts handled and delivered by Shri. C.P. Anbunathan to you is mentioned in code words R.V. I, R.V.(W), R.V. I (Per), R.V.II, Gobi R.V., Gobi (RV)I, Gobi. (RV)II, Gobi (Dubai), Lodha (HL), Thathu, Lodha, Lodha (Loan) HL, R.V.RL. Gobi HL(Dubai) ect.,. It is pertinent to note that such amounts received through banking channel of Rs. 205,10,46,028/- has already been admitted by Shri. C.P. Anbunathan in his sworn statement, as received on your behalf and handed over to you. The seized books of accounts also contain entries pertaining to Interest received by you.

3. The above facts have been brought to your notice while recording sworn statements from you on 14.09.2016 and 15.06.2017 and you have denied the contents of the seized material and the transactions figuring therein. However, examination of sworn statements of various persons which includes Shri. C.P. Anbunathan, Shri. Parasmal Lodha, Shri. Sudarshan, Shri. C. Giridharan confirms these entries as coal commission paid for you to Shri. C.P. Anbunathan, who has in turn



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delivered the same to you/through Shri. Gobi (Gobinath, your nephew and PA) to you.

4. Further, from the mobile phones of Shri. C.P. Anbunathan seized vide ANN/A/PA dated 10.05.2016 and ANN/SM/Valuable/S dated 23.04.2016, electronic device containing e-mail correspondence of Shri. C.P. Anbunathan seized vide ANN/PA/MK/S dated 23.04.2016, mobile phones of Shri. C. Giridharan seized vide ANN/A/GC dated 11.05.2016, electronic device containing e-mail correspondence of Shri. C. Giridharan seized vide ANN/MKM/CG/ED/S dated 12.05.2016 and mobile phones and electronic device containing e-mail correspondence of Shri. S. Sudarsan seized vide ANN/ST/SS/ED/S-1 & 2 dated 12.05.2016 reveals that transactions have taken place between various entities in connection with transfer of coal commission offshore which was routed to India and paid to Shri. C.P. Anbunathan, who in turn delivered the same to you/ through Shri. Gobi (Gobinath, your nephew and PA) to you.

5. During the course of search conducted in the case of M/s. Coastal Energy P Ltd and Coastal Energen P Ltd, (M/s. ETA and Buhari Holdings P Ltd. Group) at the residence of Shri. Syed Ameer Ali (an employee of M/s. Coastal Energy P. Ltd.) at No.662/1, 1st Floor, 1st Block, 1st Street, Muthamizh Nagar, Kodungaiyur, Chennai 600118 on 04.01.2017, certain Loose sheets were seized vide Annexure ANN/SAA/KSI/LS/S-1 (Page No.48 & 49), which shows that cash payments have been made to 'Power M' amounting to Rs.41,55,00,000/- during the period from 09.12.2013 to 21.04.2016.

6. Shri. Sivakumar Singaravelu, General Manager (Finance & Accounts), M/s. Coastal Energy Pvt. Ltd. vide sworn statement recorded from him u/s 132(4) of the I.T. Act, 1961 on 07.01.2017 (photo copy furnished to you on 05.03.2018), has admitted that the payment of Rs.41.55 Crores is the cash payment made to political person, Power Minister viz., the then Electricity Minister of Tamilnadu. It is pertinent to note that you were the then Minister of Power, Tamilnadu. He has also admitted that the cash will usually be given to your PA, Shri. Gobi (Gobinath),

7. These facts have been brought to your notice while recording sworn statement from you on 15.06.2017 and you have denied having received such payments. However, examination of sworn statements of Sh. Sivakumar Singaravelu categorically confirms these entries as cash paid to you through your PA, Shri. Gobi (Gobinath).

8. During the course of search conducted in the case of Shri. P. Janakar at 51/3, Spencer Compound, Dindigul, on 10.05.2016, certain Loose sheets were seized vide Annexure. ANN/RB/PJ/LS/S dated 10.05.2016, which reveal that payments (cash distribution) have been made to



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voters of Athoor constituency in which you contested during the Tamilnadu Assembly election in May 2016, amounting to Rs.28,55,86,500/-Among the loose sheets found are papers pertaining to the affidavit to be furnished before the Returning Officer for election to Tamilnadu Legislative Assembly, bearing your name. Shri. P. Janakar has stated vide sworn statement recorded from him that the expenditure reflected in the loose sheets pertains to workings related to the total number of voters in each booth in Athoor constituency and estimation of payments to voters.

9. The Loose sheets/pocket diary seized also have notings viz., 'RVN Varavu', "RECEIPTS RVN 35', 'RV' & 'Anbu". The code words 'RV', 'RVN' & 'Anbu' relate to "Natham R Viswanathan' & 'Anbunathan'. Shri. P. Janakar has also stated vide swarn statement recorded from him on 17.07.2017 that you are his family friend and you contested in Athoor Constituency during the Tamilnadu Assembly Election, 2016.

10. In view of the above, the loose sheets/pocket diary seized from the premises of Shri. P. Janakar, who is your close friend, contain entries including details of polling booth, booth-wise details of voters, total payment made to voters, details of main places in Athoor Constituency viz., Dindigul, Nilakkottai, VDR (Vedachenthur), ODC (Ottanchathram), Palani, Natham etc., and number of voters available in the said places.

11. Accordingly, the total payment made as recorded in the material seized vide Annexure ANN/RB/PJ/LS/S dated 10.05.2016 is found to be the expenditure incurred towards distribution of cash to the voters of Athoor Constituency during the Tamil Nadu Assembly election in May 2016. Since you had contested in Athoor Constituency election, you are found to be the real beneficiary for the amount of Rs.28,55,86,500/-spent.

12. In view of the above, the books of accounts, Loose sheets, electronic devices, etc., seized pertain to and the information contained therein relates to you, which has a bearing on the determination of your total income. Therefore, the case Squarely falls under the provisions of section 153C of the Income Tax Act, 1961. Hence, I am satisfied that the incriminating material as mentioned above found during the search in the case of Shri. C.P. Anbunathan, M/s.Coastal Energy Pvt. Ltd. & M/s. Coastal Energen Pvt. Ltd., and Shri. P. Janakar have a bearing on your total income for the A.Y.2017-18. Therefore a notice u/s 153C of the IT Act, 1961 is issued and enclosed along with this letter for your compliance."

30. Upon reading of the above satisfaction note, we find that it can be sub-divided into three categories viz., **(a)** satisfaction drawn regarding



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receipt of coal commission on the basis of the material seized from the premises of Shri CPA in light of sworn statements of Shri CPA, Shri Giri, Shri PLA etc., **(b)** satisfaction drawn regarding earning of commission from CEG Group on the basis of loose sheets seized from their premises and **(c)** satisfaction drawn regarding incurrence of unaccounted expenses on the basis of the loose sheets seized from the premises of Shri PJR.

31. We first take up the first satisfaction **(a)** recorded by the AO, which is set out in Paras 2 to 4 of his satisfaction note. Reading of Para 2 of the satisfaction note reveals that, according to AO, the account book(s) ID marked ANN/FAY/CPA/B&D/S-1, which was seized from the premises of third party ['Shri CPA'], contained notings titled - R.V. I, R.V.(W), R.V. I (Per), R.V.II, Gobi R.V., Gobi (RV)I, Gobi. (RV)II, Gobi (Dubai), Lodha (HL), Thathu, Lodha, Lodha (Loan) HL, R.V.RL, Gobi HL(Dubai). The AO has observed that, when enquired about these notings, Shri CPA in his sworn statement had indicated that, all these entries related to the assessee and that these entries denoted the coal commission received by Shri CPA on behalf of the assessee. The AO therefore arrived at his satisfaction that, the cash amount(s) found noted in these account books were handled and delivered by Shri CPA to the assessee, who was mentioned by way of the several acronyms, as noted in the foregoing. The AO thereafter has sought to corroborate his satisfaction drawn in Para 2, by relying upon the sworn statement(s) of Shri Giri & Shri PLA, in Para



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3 of his satisfaction note. In Para 4, the AO has referred to the electronic data which was seized during the searches conducted at the premises of Shri CPA & Shri Giri from 10.05.2016 to 12.05.2016, which in his view, contained evidences which corroborated the payment of coal commission by Shri CPA to the assessee and that the notings found in the account book(s) seized from the premises of Shri CPA related to the assessee. The AO accordingly quantified that, Shri CPA had received aggregate amount to the tune of Rs.205 crores through banking channels in his finance firms, for and on behalf of the assessee. The AO was of the view that, these monies were withdrawn from the bank account(s) by Shri CPA and delivered in cash to the assessee through Shri Gobi.

32. We find that, the foundational premise of the above satisfaction drawn by the AO against the third-party assessee was the account books ID marked ANN/FAY/CPA/B&D/S-1 which was seized from the premises of searched-party ['Shri CPA'] in the course of search conducted upon him on 22.04.2016. The AO has sought to unravel the coded notings found in the account book(s) of Shri CPA, which otherwise is ex-facie indecipherable, by relying upon the statement(s) given by Shri CPA, Shri Giri & Shri PLA. Hence, it is imperative for us to examine the material seized from the premises of Shri CPA in light of their sworn statement(s). For doing that let us look at the satisfaction drawn by the AO. In this context it is noted that though the AO has recorded two satisfaction-



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notes, the AO is same for both searched-person/Shri CPA as well as the assessee (other-person/third party). A look at the satisfaction drawn by the AO [in his capacity as assessing officer of Shri CPA] for coming to the conclusion that, the aforesaid seized material belonged/pertained to third-party (assessee in this case) which information (found from books) relates to him/assessee, basis which it was necessary to proceed/record further second satisfaction-note (as the AO of the assessee) to issue notice u/s 153C against third-party assessee. So, when we evaluate the satisfaction-note recorded by the AO in her capacity as AO of Shri CPA, who was searched, she was of the view that, these account books ID marked ANN/FAY/CPA/B&D/S-1 '**belonged to**' to the assessee and not Shri CPA and therefore the contents therein were to be inferred in the hands of the assessee. The relevant satisfaction note recorded by the AO of Shri CPA is being reproduced below:

Satisfaction Note recorded in the matters of CPA u/s 153C

1.	Name of the Group searched	Shri. C. P. Anbunathan Group
2.	Name and PAN of the person referred to in section 153A	Shri. C. P. Anbunathan (PAN: AHMPA6511H)
3.	Date of initiation of search in the case of the person referred to in section 153A	22.04.2016
4.	Name, Address and PAN of the person in whose case action under section 153C is proposed	Shri. Natham R. Viswanathan (PAN: ADLPV6760G) No.2-3, East Street, Vembarpatti village, Dindigul.
5.	Specific details of seized material on the basis of which Action under section 153C is proposed: (a) Nature of the seized material (money/bullion/Jewellery /other valuable article or thing/book of account/ documents)	Books of accounts/documents/ Electronic devices



	<p>(b) Description of seized material</p> <p>(c) Address of premise/place from where such material was seized.</p> <p>(d) Date of seizure of such material</p> <p>(e) particulars of relevant panchanama</p> <p>(f) Annexures/S.No./ Page number etc. (particulars to be specified)</p>	<p>Details of transactions related to TNEB coal commission & other commission received through various entities including offshore bank accounts and maintained by Shri. C.P. Anbunathan on behalf of Shri. Natham R. Viswanathan and transaction pertaining to Interest payments made to Shri. Natham R. Viswanathan.</p> <p>ANN/FAY/CPA/B&D/S-1 dated 23.04.2016 from No. 104, Orathai Road, Bypass/ Ayyampalayam, Thottkuriuchi Post, Karur in the case of Shri. C. P. Anbunathan.</p> <p>ANN/A/PA dated 10.05.2016 from Room No. 2321, ITC Windsor Hotel, No. 25, Windsor Square, Golf Course Road, Bangalore -52.</p> <p>ANN/SM/Valueable/S dated 23.04.2016 from No.10/97C, Ayyampalayam, Thottakurichi Post, Karur</p> <p>ANN/PA/MK/S dated 23.04.2016 from No. 10/97C, Ayyampalayam Thottakurichi Post, Karur</p> <p>ANN/ST/SS/ED/S-1 & dated 12.05.2016 at Income Tax Investigation Wing, No. 46, N.H. Road, Nungambakkam, Chennai 600 034.</p> <p>23.04.2016, 10.05.2016, 12.05.2016</p> <p>Panchnama dated 23.014.2016, 10.05.2016, 12.05.2016.</p> <p>i) ANN/FAY/CPA/B&D/S-1 dated 23.04.016 ii)ANN/A/PA dated 10.05.2016 iii)ANN/SM/Valuable/S dated 23.04.2016 iv) ANN/PA/MK/S dated 23.04.2016 v)ANN/ST/SS/ED/S-1 &2 dated 12.05.2016</p>
6.	Relationship of the person referred in S. No. 4 with the person referred to in S. No.	Shri . C. P. Anbunathan is a close aide of Shri. Natham R.



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	2	Viswanathan and has received and maintained the Tamilnadu Electricity Board (TNEB) coal commission/ other Commission on behalf of Shri. Natham R. Viswanathan
7.	Satisfaction of the assessing officer of the person referred to in section 153A that the seized material referred to in S. No. 5 relates to the person referred to in S. No. 4	I am satisfied that the Books of accounts/ documents/electronic devices seized as per annexures above belong to Shri. Natham R. Viswanathan and have a bearing on the determination of Total Income of Shri. Natham R. Viswanathan for the AY. 2017-18.
8.	Assessment Years involved	2017-18

33. From the above, it is seen that, the AO had concluded that the account books ID marked ANN/FAY/CPA/B&D/S-1 seized from Shri CPA, '*belonged to*' the assessee. Having perused the contents of the seized material which was placed in **Paper-book Volume - IV**, the Ld. AR has rightly pointed out to us that, there was nothing contained in this seized material, basis which any prudent person could deduce that, they '*belonged to*' the assessee. We find that there is no such indication in the seized material. The Ld. AR has rightly submitted that, there is also no mention of name of the assessee, or his signature or acknowledgment therein, which would suggest that it '*related to*' him, let alone '*belonged to*' him. It is imperative to remind ourselves at this stage that, presumption set out in Section 132(4A) of the Act is that, the documents found in the course of search shall be presumed to belong to the searched person [CPA, in this case]. Further, the presumption as to any asset, books of accounts, etc. found during the course of search u/s. 132 of the Act is also governed by section 292C(1)(i) of the Act, which presumes



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that, the same belong or belongs to the person from whom the said assets/documents were found during the course of search. Therefore, in our considered view, the statutory presumption of fact qua the account books ID marked ANN/FAY/CPA/B&D/S-1 seized from the possession of Shri CPA at the time search was that, they belonged to him and that, the contents thereof were presumed to be true qua him. According to us therefore, it was for the searched person [Shri CPA, in this case] or the AO of the searched person to rebut this presumption and bring on record some tangible corroborative evidence to show that, the seized material did not '*belong to*' or '*relate to*' him i.e. the searched person [Shri CPA, in this case], but that of assessee, which we find is absent in the present case.

34. The Ld. AR reminded us that, prior to the amendment made by the Finance Act, 2015, in order to invoke Section 153C, the AO of the '*searched person*' was required to demonstrate that the books of accounts '*belongs or belonged to*' the '*other person*'. He recapitulated the litigation which ensued on the interpretation of '*belongs or belonged to*' used in Section 153C of the Act and particularly pointed out the decision of the Hon'ble Delhi High Court in the case of **Pepsico India Holdings (P.) Ltd. v. Asstt. CIT (370 ITR 295)** wherein the High Court has observed that the words "*belongs or belong to*" should not be confused with the words '*relates to or refers to,*' the former being much narrower than the



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latter. He explained to us that, in relation to searches which were conducted on or before 01.06.2015, the provisions of Section 153C could not have been invoked unless the documents/material *'belong to'* the third party (other than the searched person). Vide Finance Act, 2015, w.e.f. 1-6-2015, section 153C was amended by way of substitution to replace the words *"belongs or belong to"* with the words *"pertains or pertain to"* insofar as books of account and documents are concerned. Hence, the words *"pertains or pertain to"*, is of much wider import than *"belongs or belong to"* and therefore post 01.06.2015, if incriminating documents/materials *'pertaining to'* a third party are found, the Revenue can proceed against such third party u/s 153C of the Act.

35. According to the Ld. AR, the AO [while acting in capacity as assessing officer of Shri CPA] was fully aware of the legislative amendment that broadened the scope of Section 153C to material even if it did not *'belonged to'* but *'related to'* another person. However, the AO of the Shri CPA ultimately recorded his satisfaction by applying the narrow scope of *'belonged to'* in relation to the account book(s) seized from the premises of the searched person [Shri CPA]. This conscious use of the terminology *'belonged to'*, in Ld. AR's opinion, demonstrates a deliberate analytical decision, whereby the AO of Shri CPA though being aware of the expanded textual remit of the provision had concluded that the factual matrix of the case at hand did not fall within the broadened scope of



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'related to' and held that, the seized material 'belonged to' to the assessee. The Ld. AR has contended that, the rejection of the wider amended scope of Section 153C [vide Finance Act, 2015] was not an oversight by the AO of Shri CPA, but a considered judicial exercise. Upon taking judicial note of the foregoing, we are of the opinion that, the satisfaction drawn by the AO of Shri CPA is required to be read and examined as it stands to which no new words or meaning can be imported therein. Accordingly, there is merit in the Ld. AR's contention that, this satisfaction recorded by the AO [in her capacity as assessing officer of Shri CPA] supra observing that the impugned seized material viz., ANN/FAY/CPA/B&D/S-1 '**belonged to**' the assessee was factually perverse, on the given facts before us and therefore all consequent actions including the impugned satisfaction drawn by the AO of the assessee stands rendered bad in law.

36. The Ld. CIT, DR however has vehemently contended that, though the AO in her capacity as Assessing Officer of Shri CPA may have used the terms 'belonged to' but in the capacity as the AO of the assessee had rightly drawn satisfaction that the impugned material 'related to' the assessee and thus there was no infirmity in the satisfaction of the AO of the assessee. For the sake of completeness, we consider it fit to also examine as to whether the impugned seized material 'related to' the assessee and therefore whether it had any bearing on his total income. In



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order to adjudicate the same, it is necessary to keep in mind the well-settled 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 [Shri CPA, in this case] and not against any other third party [assessee, in this case]. Reason being that, if any loose notings found in the seized material at third party premises is assumed 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 account book 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. The evidentiary value of regular account book, the Hon'ble Apex Court has held in V.C. Shukla, [1998] 3 SCC p.433, in para 37, by approving the view of the Nagpur High Court in Beni v. Bisan Dayal [AIR 1925 Nagpur 445] wherein it was observed that entries in books of accounts 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



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given to the party who relies upon such entries to support his claim against another.

37. Coming back to the facts of the present case, we find that neither was there any explicit mention of name of the assessee, or that he was specifically identifiable from the notings made in the account books ID marked ANN/FAY/CPA/B&D/S-1. Only certain 'letters' in abbreviated form written. It is seen that, the assessee had also not signed nor acknowledged any of these pages. Hence, prima facie there was no indication that, the entries in the account book(s) '*related to*' the assessee. Further, the presumption set out in Section 132(4A) and 292C of the Act regarding the contents of the account books ID marked ANN/FAY/CPA/B&D/S-1 is found to have been reinforced by the searched person [Shri CPA, in this case] in his deposition recorded u/s 132(4) of the Act dated 22.04.2016. We find that, when confronted with these account books at the time of search, Shri CPA, is noted to have stated as under:-

"Q.No.9. I am showing six account books related to your business. All these are seized from your office? Give details about it?"

Ans: These six account books relate to my business. My staff, Sri. Mohan Raj had written and maintained it. Presently, in a road accident he is admitted in KMCH, Kovai and getting treatment."

38. It is seen that, his answer was quite categorical that, the impugned material viz., ANN/FAY/CPA/B&D/S-1 belonged to and related to him. He



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had also explained that the books were maintained and recorded by his own staff, Shri Mohan Raj. Prima facie therefore, the satisfaction drawn by the AO in the second paragraph of his satisfaction note dated 03.12.2018 is found to be factually wrong, as the original statement of Shri CPA recorded u/s 132(4) of the Act does not show that, he had indicated in any manner, that the entries in the account book(s) related to the assessee.

39. The Ld. AR further brought to our notice that, the Investigating Officer also did not dispute the above statement of Shri CPA, at the time when Shri CPA was again examined u/s 132(4) of the Act in his second search action conducted along with Shri Giri on 10.05.2016. The Ld. AR showed us that, no question whatsoever was put to him on this aspect in this statement dated 10.05.2016. It is observed that, two statement(s) u/s 132(4) was recorded from Shri CPA and in none of them did he state that the noting(s) in the account book(s) pertained to the assessee. Rather, he is found to have owned up to these notings in his own proprietary capacity. It is to be kept in mind that, the statement(s) recorded u/s 132(4) carries evidentiary value and therefore stands on a higher pedestal to statement(s) recorded u/s 131 of the Act.

40. The Ld. AR thereafter pointed out that, another two statements u/s 131 of the Act dated 17.06.2016 & 02.07.2016, were also recorded in the



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post search enquiries by the Investigating Officer of Shri CPA. He showed us that, specific & pointed question(s) were again posed to Shri CPA enquiring about the nature of entries found in these account books, to which Shri CPA in his several answers had explained that, these related to his proprietary business transaction(s) conducted in the course of the real estate & finance business. The relevant excerpts from his statement dated 02.07.2016, taken note of by us, is as below:-

"Q.6. I am showing Page No.206, Sl.No. Book 1, ANN/FAY/CPA/B&D/S-1, dtd.23.04.20156-In this there is a mention about Giridharan, Chennai, Submit the details about him and the transactions carried out with him?

Ans: I have seen the page of the Document properly. Giridharan is a friend of mine. I know him for the past 5 years. He was introduced to me through one Sasikumar, Real Estate Agent. Myself and Giridharan have together, purchased land in Tambaram, Sriperumbudur, Neelankarai and other places and sold it. Money Transactions (Hand loan) were also there between myself and Giridharan. Apart from this, Giridharan used to collect and give, loan amounts due to me from my borrowers. From this income, I used to give commission to him. In the past 5 years, I have given an amount of about Rs.2 Crores, as commission to him.

Q.7. I am showing you Page no. 206 of Sl.No: Book -1, ANN/FAY/CPA/B&D/S-1, dtd.23.04.2016, wherein entry in the name of "Lodha" is found. Give your explanation.

Ans: Lodha is introduced to me by Giridharan. Joining with him I did real estate and finance business. Between ourselves, fund transfers in cash as well as by cheque have taken place. In total, about Rs.100 crores of transactions was done.

Q.8. Give Bank account details through which the above stated (i.e. about Rs.100 Crores) fund transfers had taken place.

Ans: The amount of about Rs.100 crores received by me from Lodha was in RTGS. At present, I do not remember the account numbers of said bank accounts. These accounts belong to many finance firms. I am



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the Financial Advisor of these firms. I do not remember the names of these firms immediately.

Q.9. I am showing you the statement recorded by S.Manikandan, IRS, 13.05.2016 from Sri.Giridharan and DDIT (Inv.)(I/C), Trichy, on Annexure - 5 to it. As per the said statement, Giridharan had stated that you have 30 accounts in Canara bank, Karur and Karur Vysya Bank, Karur West, LNS Branch. I am also showing the messages sent to you by Lodha through Email. Give the details for it.

Ans: The 30 bank accounts listed in Annexure - 5 belongs to the finance firms. I am the Financial Advisor of all this firms. But as stated by Giridharan, I have not received any coal commission. All the receipts are loans from Lodha.

.....

Q.11. Based on your personal guarantee, the above said firms have received loans of 100 crores from Lodha for their finance business. Why the monies are not received directly by you or by concerns directly related to you and used for your finance business?

Ans: I am already a partner in 38 Concerns. Hence, on my advice, the above said 30 finance firms, managed by my relatives, have received the monies as loans and doing business."

41. From the above, we find that, Shri CPA had explained that, the entries found in the account book(s) related to his proprietary business activities and he had also explained the business rationale for receiving monies from Shri PLA in his finance firms. The important aspect to be noted, according to us, is that, in none of his answers did he ever name the assessee or suggest that he was involved in any business or transactions with the assessee in any manner or that these account books belonged to the assessee or that the entries therein pertained to the assessee. Again, we find that there is no indication in these answers which could be linked to the assessee.



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42. The Ld. AR next invited our attention to another statement of Shri CPA which was again recorded u/s 131 of the Act on 28.12.2016 wherein when enquired about the details of income & expenditure noted in these account books, Shri CPA had explained that, they related to his finance business for the past three years and that he shall work out the income from his business and pay taxes thereon. The relevant portion of this statement, is also reproduced hereunder:-

"Q.4.In the book (ANN/FAY/CPA/B&D/S-1) seized during the search proceedings at your house on 22-04-2016, details of income and expenditures are written in S.No.1 to 6. Explain the details for it.

Ans: I am in finance business at Karur, for the past 10 years. The entries in the books seized relate to my finance business in the past 3 years. I have been doing finance business, as written in the book, seized from my office. I do not have copies of the book that has been seized. Hence, out of my remembrance, I shall arrive at the income from the finance business and pay the tax on that. I shall submit before you, my income tax accounts within a week's time. Further, if there is a difference between my submissions and the amount found in the book seized, I shall agree and pay the tax on such difference also. I have nothing more to say."

43. This statement again reinforces the original statement recorded u/s 132(4) of the Act dated 22.04.2016, which by itself is valuable piece of testimony having evidentiary value and also his subsequent statement(s) dated 10.05.2016, 17.06.2016 & 02.07.2016. We therefore find sufficient force in the Ld. AR's submissions that, at no point of time, during the course of search or in post search enquiries had the searched person [Shri CPA] ever averred that, the account books seized from his possession belonged to another person [assessee, in this case] or that the



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entries of income & expenditure therein related to another person [assessee, in this case]. Rather, the searched person [Shri CPA] had categorically stated that, these account book(s) belonged to him and the entries therein related to his real estate & finance business and had also offered to work out his unaccounted income and pay taxes thereon.

44. At this stage, a query was put across by this Bench as to when the assessee had never been named by Shri CPA in any of his answers, then how did the assessee come to feature in this entire narrative. The Ld. AR pointed out to us that, the name of the assessee first featured in a leading question (Q no. 10) which was put forth by the Investigating Officer to Shri CPA on the date of search itself i.e. 22.04.2016, in which the Investigating Officer observed that, "*...Does RV mean Natham R Viswanathan. Is Gobi his brother-in-law?*" In his answer, Shri CPA is noted to have responded with a 'No' and stated that, they are not the same persons. The relevant portion of the statement is noted as under:-

"Q.No.10. In page No.4,5 &7 of Book no.3, it is mentioned as RV I, II. Further, in RV I, there is an outstanding of 1 Crore, in RV II, outstanding of 14 crores is there. Further, in page no.77, 78, transactions of 60 crores have taken place. Does RV mean Natham R Viswanathan. Is Gobi his brother-in-law? Explain? Further in page no. 10 it is mentioned VL account. Is it vaidhiyalangam?

Ans: No, they are not the persons, named by you. I do not know."

45. According to the Ld. AR, this particular line of questioning (Q No.10) by the Investigating officer reeked of prejudiced mindset and pre-



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meditated notion against the assessee. The Ld. AR made us wonder as to how this question and such pointed allegation against the assessee arose in the mind of the Investigating Officer on the date of search, when neither the seized material nor any answers of Shri CPA indicated or incriminated the assessee in any manner. The Ld. AR took us through the entire contents of the seized material and showed that the name of the assessee nowhere featured in the account book(s) seized from the premises of Shri CPA. He also explained that, the premises where the alleged cash was found from the possession of Shri CPA was not located within the constituency of the assessee and that, admittedly, there is no allegation that the seized cash '*belonged to*' the assessee. The Ld. AR also took us through all other questions put to Shri CPA in his statement(s) and the answers given at the time of search and showed us that, there was no such answer given by Shri CPA to any of the questions put to him, which would indicate that the entries titled 'RV' suggested the assessee.

46. Rather, the Ld. AR invited our attention to certain other answers given by Shri CPA in his statement dated 22.04.2016 [Q No.5], 10.04.2017 [Q No. 6] wherein Shri CPA had mentioned that, he was a trustee in one '*RVS Trust*' and even the Investigating Officer had found large value deposits in the bank account of the said Trust and therefore they had questioned him regarding the same. For ease and convenience, the relevant excerpts from these statements are extracted herein-below:-



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"Statement dated 22.04.2016

Q.No.5 Apart from the businesses mentioned in your answer to question no.2, do you carry on any other business?

Ans: I was in RVS Trust. I am also a member of Brilliant Trust. I am also running Samyuktha trust.

Statement dated 10.04.2017

Q.No.6 You were the Managing Trustee of RVS Educational Trust in the year 2014. At that time, in RVS Bank A/c (No.4522101000317) in September 2014, through RTGS, lots of money was deposited. What is your explanation.

Ans. I was looking after the administration of RVS Educational Trust only. The Bank accounts were operated by Shri. Muthusamy Chettiyar. Only he should give the explanation for this. I do not have any connection with RVS Educational Trust, Trichy."

47. According to him therefore, ordinarily, any prudent investigator could have initially suspected that the acronym 'RV' used in the account books may suggest the 'RVS Trust' with whom the searched person [Shri CPA] had an inextricable connection and was also a large educational conglomerate. The Ld. AR pointed out that, the account book(s) inter alia contained several notings of banking transactions with the 'RVS Trust', which Shri CPA had admitted to and accepted as well. He also showed us from the statement of Shri CPA recorded on 22/23.04.2016 that, Shri CPA was the Managing Trustee of 'RVS Trust' for a year. And it is in public domain that RVS Trust operated two (2) schools and two (2) colleges. According to him therefore, the needle of suspicion as to the nature of code wordings 'RV' ought to first have been towards 'RVS Trust' with whom Shri CPA was admittedly related to and had regular business



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transactions as well (refer his statement dated 03.04.2017 and ledger account of Giri). The Ld. AR submitted that, rather than conducting an impartial and unbiased fact-based inquiry, the Investigating Officer posed leading questions that appeared designed to elicit false response implicating the assessee, despite the absence of any relevant material against him. The Ld. AR thus claimed that, the aforesaid line of questioning at the time of search to subjectively implicate the assessee not only undermined the integrity of the investigation but also raised serious concerns about the objectivity and fairness with which it was conducted.

48. To buttress his above contention, the Ld. AR painstakingly took us through the individual entries of income and expenditure recorded in the account book(s) seized from the premises of Shri CPA. The Ld. AR placed before us a summary of receipts found in these books, to show that the entries therein cannot by any stretch of imagination be said to relate or pertain to the assessee. The tabulated details of sample notings of receipts are as under:-

S. No	Particulars	Amount (Rs. in crores)	Remarks
1	Personal investment of Mr. Anbunathan in his School in Coimbatore	13.55	All sources for investment were out of receipts through bank accounts of finance firms
2	Payment to acquire property belonging to HMCL through share purchase	39.78	-Do-



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3	Payment to A Co 20.07.2015 – Rs. 35 cr 13.02.2016 – Rs. 2cr 07.09.2015 – Rs. 25 Cr Cash receipt	37.00 15.70	Sources for payments were out of receipt through bank accounts of finance firms Out of Rs. 62 cr, payment of Rs. 25 cr made to 'A' on 7.9.15 is considered in payments to Thakur in S. No. 4 below
4	Loan given to Thakur Payments received from Thakur as per his account in seized book	45.00 5.50	Sources for payments were out of receipts through bank accounts of finance firms Repayments received through bank accounts of finance firms
5	Payments from A to HD (HD) Highways dept.	12.00	No possible connection to the assessee
6	Payments to 'G' (Dubai)	20.00	It was the repayment of HL from Lodha (page 16/PB 4) Sources for payments were out of receipts through bank accounts of finance firms. Hence, Considered only once.
7	Receipt from Gobi	41.48	Running account was maintained in the name of Gobi containing receipts as well as payments
8	Receipts from: Vaibhav Jyoti, Hyd Hind Bharath Shakti Sugars	8.54 2.00 5.00	Sources for payments were out of receipts through bank accounts of finance firms The money was returned/repaid to the concerned on 20.07.2015, 05.01.2016 & 20.07.2015.
9	Payments to BGL	7.00	Sources for payments are out of receipts through bank accounts of finance firms.
10	Meenakshi Mission, Madurai	5.65	Facilitated encashment of DDs of MMM for a commission. Sources for payments are out of receipts through bank accounts of finance firms.



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11.	Contra Items -			9.58	Where money received was deposited in bank accounts on the same day for further remittance to somewhere else. Cannot be alleged as receipts pertaining to the assessee.
	S. No (Ann.1)	Date	Amt. (cr)		
	7	27.4.15	0.10		
	14	9.5.15	0.30		
	17	9.6.15	2.00		
	76	27.10.15	1.20		
	77	28.10.15	4.00		
	96	17.12.15	1.98		
Total			9.58		
Total			267.78		

49. It is observed by us that, several of the above notings suggests personal investments made by Shri CPA in school(s). As noted earlier, Shri CPA was actively involved in RVS group which was an educational conglomerate and also other educational institutions (Brilliant Educational Trust) and therefore these notings appears to suggest that, it related to Shri CPA's own proprietary business activities. Likewise, there is indication of several receipts from Meenakshi Mission. It is observed from the sworn statement(s) of Shri CPA and Shri Giri that, it was related to personal business transactions of Shri CPA and not the assessee. Overall, the Ld. AR has attempted to identify receipts to the tune of 267 crores [88% of the notings] which prima facie appeared to relate to Shri CPA rather than any third person. Therefore in our considered view, the Ld. AR has rightly contended that the contents of these account book(s) cannot be said to relate to any third person [assessee, in this case], but contained



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information pertaining to Shri CPA alone and denoted record of his own business transactions.

50. To summarize our above observations, admittedly, the impugned seized material was found from the possession of Shri CPA and the same was maintained by his own staff, Shri Mohan Raj. It is seen that, Shri CPA in his statement u/s 132(4) of the Act had categorically admitted that, the account books and entries therein related to his business and had also explained its contents and offered to pay taxes thereon. Also, the nature of entries, as observed by us above, denotes that it was a record of Shri CPA's own business transactions. In light of the foregoing, the answer which eludes us is how did then the AO of the assessee infer in his satisfaction note that, these account book(s) were being maintained by Shri CPA for and on behalf of the assessee. To this, it was pointed out by the Ld. CIT, DR that, Shri CPA subsequently had given statements dated 03.04.2017 & 10.04.2017 *[after almost a year from the date of search]* wherein he completely changed his original narrative and stated that, all these entries made in the account book(s) and the monies received by his finance firms were not for himself but, for and on behalf of the assessee. The copy of these statements is found placed at **Pages 52 to 85** of **Paper Book, Vol II**. According to the Ld. CIT, DR, the sworn statement(s) of Shri CPA mentioned in the satisfaction note recorded by the AO relate to these two (2) statements. The Ld. AR however rebutted



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this plea of the Ld. CIT, DR by showing us that, Shri CPA had retracted these statements on 09.05.2017 and thereafter he was also cross-examined by the Revenue and his statement was recorded on 06.06.2017. The Ld. AR submitted that during his cross examination, Shri CPA had affirmed that the notings in the account book(s) belonged to him and that he shall pay the taxes thereon. The Ld. AR showed us that, Shri CPA along with his finance firms had also filed affidavits declaring to pay taxes on the unaccounted income found noted in these account book(s). He thus submitted that these retracted statements could not have been relied upon by the AO to record valid satisfaction u/s 153C of the Act on 03.12.2018.

51. Though we find that the statement(s) dated 03.04.2017 & 10.04.2017 had been retracted and also subjected to cross-examination prior to the recording of satisfaction note by the AO, we however consider it prudent to once examine its contents as well. Having gone through these statements, it is seen that, Shri CPA had completely changed his stand from his original statements dated 22.04.2016, 10.05.2016, 02.07.2016 & 28.12.2016. Though, in all his earlier statements, Shri CPA had consistently maintained that, the account book(s) belonged to him and the entries related to his own business, but in his statement dated 03.04.2017, he is found to have, for the first time, stated that, the notings titled 'RV' denoted the assessee. When further questioned



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regarding the source of Rs.498 crores found credited in thirty eight (38) finance firms of which he claims to be advisor, Shri CPA stated that, once the entries concerning 'RVS' institutions [*not related to the assessee*] and inter-banking transactions are eliminated, then the balance which remains in the bank account(s) is Rs.205 crores. According to Shri CPA, these monies were withdrawn from the bank accounts of these finance firms and handed over to the assessee in cash through Shri Gobi (relative of assessee). According to Shri CPA, he was only the facilitator/broker/mediator for the assessee to facilitate receipt of commission from coal companies who were supplying coal to TNEB. Shri CPA submitted that, the assessee would directly talk to coal suppliers, who would send commission to foreign-companies/companies of one Shri PLA, and who in turn, would transfer monies to the bank account(s) of his thirty eight (38) firms, which Shri CPA would withdraw in cash and hand over to the assessee. Shri CPA however expressed his unknowingness to the manner and mode in which the coal companies would allegedly pay monies to Shri PLA but submitted that somehow he would receive the monies in the bank account(s) of his thirty eight firms. Shri CPA further stated that, he had met Shri PLA through his friend, Shri Giri.

52. The Ld. AR of assessee has countered this statement on several fronts. He firstly submitted that, when Shri CPA in all his earlier testimonies dated 22.04.2016, 10.05.2016, 02.07.2016 & 28.12.2016



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had admitted to these account books and entries therein to be exclusively belonging and pertaining to him, then this sudden and complete recantation of the original testimony in the above statement dated 03.04.2017 recorded u/s 131 of the Act baldly shifting the ownership of these material to another person [assessee, in this case] without any valid basis or corroborative evidence was unbelievable, untenable and unjustified. The Ld. AR pointed out that, this statement was recorded after almost a year 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 indecipherable notings which would suit his ulterior purpose. He pointed out that, the total credits in the book of accounts was Rs.498 crores, out of which Shri CPA had admitted that certain credits related to his 'RVS' institutions and inter-banking transactions and only those bank credits which were withdrawn in cash, that Shri CPA had arbitrarily attempted to shift the onus from himself to the assessee. According to the Ld. AR, ordinarily if the banking transactions found in the same account book(s) pertained to 'RVS' institutions, then ordinarily the suspicion ought to be against the 'RVS' institutions that the entries relating to cash withdrawals from bank accounts also related to them. As noted earlier, Shri CPA had admitted to several notings of banking transactions with the 'RVS Trust' found entered in the same account book(s) and it is also not in dispute that Shri CPA



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also served as Managing Trustee of the said institution for some period. The Ld. AR accordingly claimed that, the purported notings with code words 'RV' could possibly relate to the unaccounted activities of 'RVS Trust' which Shri CPA was attempting to shift to the assessee for the first time after a year of search. The Ld. AR further contented that he learned that, one RVS School at Trichy under the RVS Trust, had been transferred to one Shri R Vaidialingam, by Shri CPA and then he exited from the Trust and Shri R Vaidialingam, initials could be that of code 'RV' in Shri CPA's book. The Ld. AR showed us that, Shri R Vaidialingam was also a Minister from the same political party with which Shri CPA was associated with, and therefore he claimed that, it could also possibly be a case that, the assessee was bidding to shield his transactions with Shri R Vaidialingam and therefore misrepresent facts and mislead the authorities into believing that the entries related to the assessee, though Shri CPA was unable to demonstrate any cogent linkage with the assessee. The Ld. AR further explained to us that, the assessee is commonly known as Natham R Vishwanathan, which fact has been acknowledged by the AO in the impugned assessment order(s) wherein the AO in the cause title has framed the assessment in the name 'Natham R Vishwanathan'. The Ld. AR therefore contended that assessee is commonly referred to as 'NRV' and not 'RV'. Rather, according to him, 'RV' could possibly have been 'RVS Trust' or for that matter Mr. R Vaidiyaligam or possibly some other person



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as well or Shri CPA himself. He claimed that, the searched person was unable to discharge the burden of proof on his shoulder and show that the entries code named 'RV' pertained to the assessee. And no investigation worth the salt has been carried out to establish who is 'RV', instead the AO has gulped the inconsistent/retracted statement of Shri CPA, to record satisfaction against assessee, which action according to Ld AR, smacks of arbitrariness. The Ld. AR submitted that, Shri CPA was well aware that, since the application of cash withdrawal was nowhere discernible from the account book(s), he had made a desperate attempt to paint these cash withdrawals as unaccounted payments made to the assessee as opposed to his own proprietary receipts from his real estate and commission business. The Ld. AR contended that such a self-serving and biased statement given by him without any corroborative evidence could not be relied upon.

53. Coming to the Ld. AR's assertion supra that, the use of words 'RV' in the account book(s) could have possibly denoted some other institution in which he was an active trustee or for that matter even some other person / person(s) whom he was attempting to shield, by throwing the assessee under the bus, we find merit in the same that, the bald statement given by Shri CPA averring that 'RV' denotes the assessee cannot be held against the assessee at its face value, without there being any corroborative evidence/material on record, which reasons will be



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discussed infra. The Ld. AR brought to our notice Q No. 5 put to Shri CPA in his statement dated 03.04.2017, wherein he was asked to give proof that the transactions recorded in the account book(s) happened at the instructions of the assessee. It is seen by us that, his answer was completely vague and lacked any specific proof or details. He was unable to provide any proof of linkage, as questioned by the Investigating Officer. The only link explained by Shri CPA was that, he was a member of the political party to which the assessee also belonged. According to us, to accord probative weight to such a tenuous link would necessitate the acceptance of a standard of relevance so broad as to be meaningless.

54. It was further brought to our notice that, Shri CPA had named one relative of the assessee, Shri Gobi, whom he would meet, and according to him, Shri Gobi would give him the details of the monies to be received from Shri PLA. Shri CPA had averred that, he was only a facilitator in this entire modus operandi between the assessee and Shri PLA and that; he didn't derive any benefit from the assessee or Shri PLA for facilitating these transactions. Again, we find that, this averment of Shri CPA constitutes a futile attempt by resorting to extraneous or non-material points, indicative of a failure to establish any linkage with the assessee. Firstly, we find that this statement of Shri CPA contradicts the version narrated by Shri PLA, which we shall be dealing in the ensuing paragraphs. Further, the Ld. AR brought to our notice that, that Shri CPA



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had originally stated in his statement recorded u/s 132(4) of the Act that, he did not have any business transactions with Shri Gobi and that he was his personal friend, who simply happened to be distant relative of the assessee. He invited our attention to the answer given by Shri CPA at Q No. 19 of his statement dated 02.07.2016 that, he had got some favors/promotion/transfer work for known persons done through him. The Ld. AR submitted that, Shri CPA and Shri Gobi being personal friends may have had their proprietary transactions amongst themselves but this fact alone cannot be taken as proof to allege that Shri CPA was acting as broker for and on behalf of the assessee, on the basis of instructions received from Shri Gobi. We find that, apart from making bald averments, Shri CPA was unable to offer any evidence or proof in support of his claim. In our considered view, this purported linkage drawn by Shri CPA was nothing but conjecture and thus inadmissible. It was also brought to our notice that, Shri Gobi had also been searched on 10.05.2016 viz., the same date on which Shri CPA and Shri Giri was also subjected to search. It is not in dispute that, there was nothing incriminating found from the premises of Shri Gobi which would suggest that he was in any manner involved in any of alleged activities with Shri CPA or Shri Giri or that he was handling any cash for and on behalf of the assessee. It was also brought to our notice that, the statement of Shri Gobi was also recorded in the course of search u/s 132(4) of the Act wherein he denied having



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any such linkage with Shri CPA on behalf of the assessee. We note that, the Revenue has not been able to bring any relevant material to disprove the statement of Shri Gobi. The Ld. DR for Revenue however pointed out that, the noting(s) found in the account book(s) seized from Shri CPA inter alia included five (5) entries aggregating to Rs.5,47,000/-, which reconciled with the books of accounts/bank statements of Shri Gobi and this fact according to her supported the AO's case that Shri CPA was having regular transactions with Shri Gobi, who was acting on behalf of the assessee. She pointed out that, this transaction with Shri Gobi was crucial evidence as pointed out by the AO to justify the linkage between Shri CPA and the assessee. We however are unable to countenance this proposition of the Revenue considering the facts and surrounding circumstances. Firstly, Gobi was not assessee's PA, but a business man, Secondly, the entries found relating to Shri Gobi in the account book(s) was regular business transactions forming part of books of accounts and it is nobody's case that they were unaccounted for. Further, the transactions between Shri Gobi and Shri CPA across all the years was for a paltry sum of Rs.5.47 lacs and therefore the same cannot be treated as a relevant piece of evidence to suggest that amount(s) more than Rs.550 crores was being paid by Shri CPA to the assessee through Shri Gobi. Moreover, there is nothing to show that the sum of Rs.5.5 lacs received by Shri Gobi was thereafter paid to the assessee. The Ld. AR pointed out



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to us in this regard that, it is not in dispute that, Shri CPA and Shri Gobi were known to each other being member(s) of the same party and therefore both in the course of their respective businesses may have transacted Rs.5.5 lacs in their respective proprietary capacities. This fact by itself cannot be treated as a valid and cogent link to the assessee to allege that the cash withdrawn by Shri CPA from the bank accounts of his finance firms were being paid to the assessee through Shri Gobi. Having considered the foregoing, there is force in the Ld. AR's plea that, Shri CPA had engaged in a vain attempt to locate support to prove that he had transactions with the assessee, where such support is found to be conspicuously absent in the given facts before us. Rather, the search action conducted upon Shri Gobi and the non-discovery of any incriminating material from his premises, corroborates the case of the assessee that Shri Gobi was not involved in any manner with the assessee or Shri CPA nor was he dealing in any cash collection(s), as was being alleged/suggested by the Revenue.

55. To corroborate his above submission, the Ld. AR also pointed out apparent contradictions in the statement given by Shri CPA dated 03.04.2017 wherein he alleged making payments at the residence of assessee. To this allegation, the Ld. AR first pointed out that it was retracted and the revenue has cross-examined him in June 2018 wherein he reiterated his statement recorded during search in April 2016. For



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argument's sake, the Ld. AR pointed out that the inherent fallacy in the purported proof of delivery of cash, as stated by Shri CPA. He reminded us that Shri CPA in his original statement(s) recorded u/s 132(4) of the Act had averred that the nothings pertain to his own business and that, more than a year from the date of search and after recording of several statements u/s 131 of the Act [17.06.2016, 02.07.2016 & 28.12.2016], Shri CPA for the first time claimed that he was not withdrawing cash from the bank accounts of the finance firms for himself, but for the assessee. When required to adduce proof, Shri CPA had stated that he was directly delivering the withdrawn cash to the residence of the assessee. The Ld. AR submitted that this altogether new averment was per se unbelievable. The Ld. AR reminded us that the assessee, at that material time was a minister and it is common knowledge that for security reasons, his residence was under 24*7 police protection and surveillance (CCTV / Video recording) and therefore, if there was even an iota of truth that he was delivering cash at assessee's residence, then he could have easily asked the Investigating Authorities to seize the video recordings or obtain the surveillance records from the residence of the assessee, which could have corroborated his claim. The Ld. AR pointed out that there was no such adverse evidence or material brought on record. He further showed us that the assessee had already been subjected to search u/s 132 of the Act, much prior to this statement of Shri CPA dated 03.04.2017 and



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10.04.2017 and that the assessee's search also did not yield any such evidence, as suggested in the foregoing. According to the Ld. AR therefore, it was prima facie clear that Shri CPA had falsely asserted against the assessee and when he understood that his testimony regarding the proof of delivery of cash would not withstand the test of scrutiny / investigation, he conveniently changed his tact and improved his testimony. The Ld. AR submitted that Shri CPA was aware that, he may not be able to adduce any proof of direct link to the assessee and his bluff will be called off, therefore, knowing well that his friend Gobi was a distant relative of the assessee [and Shri Gobi had arranged temple visit for him through assessee's office, recommended some transfer/posting etc], Shri CPA changed his testimony and alleged that he was handing over the cash to Shri Gobi instead of the assessee. This material contradictions as to the proof of delivery and the continuous shifting stand of Shri CPA coupled with his subsequent retraction, according to the Ld. AR showed that Shri CPA was simply misleading the Department and thus his testimony was untrustworthy, so unbelievable. The Ld. AR further showed us certain inherent fallacies in the narrative of Shri CPA that, the entries in his account book(s) to the tune of Rs.205 crores denoted entries of coal commission received from suppliers which was handed over to the assessee. It was brought to our notice that, this figure of Rs.205 crores stated by Shri CPA was the summation of the aggregate



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sum of cash which was withdrawn from the bank accounts of his finance firms, whose entries were also appearing in his account book(s). Taking us through the contents of the seized account book(s), the Ld. AR showed us that the net entries corresponding qua the withdrawals and the code 'RV' was not even Rs.21 crores. According to the Ld. AR, this material fact bellies the allegation of Shri CPA that, he had delivered cash of Rs.205 crores to the assessee/Gobi. The Ld. AR further pointed out that, there were both credit as well as debit entries recorded against the 'RV' indicating monies coming and going out qua 'RV'. The Ld. AR argued that, why would the assessee, who was the alleged beneficiary of the monies would regularly make payments back to Shri CPA, who as per his own version, was only a conduit who was collecting monies and handing it over to the assessee. The Ld. AR submitted that, if Shri CPA was simply withdrawing and delivering the cash then ordinarily there ought to have been only debit entries, viz. monies going out to him and no credit entries ought to have been there. Having perused the seized account book(s), it is seen that, there were regular debit and credit entries against the title 'RV', which ordinarily would suggest of someone with whom Shri CPA had regular business transactions. The entries does not apparently insinuate that Shri CPA was only an agent who was collecting and paying the monies to the assessee. Had that been the case, no credit entries would have ordinarily been there in the account book(s) and raises a question



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mark as to accepting the allegation as it is against assessee. No attempt was made by AO to elicit an explanation about this contradiction in the noting's vis a vis allegation against assessee. Rather, the regular manner in which both debit and credit entries appeared against the title 'RV' abrogates the narrative of Shri CPA, which appears to be fable and fanciful story cooked up to shield his actual transactions. To buttress his above submission, the Ld. AR then countered Shri CPA's assertion that the entries in account book(s) against 'A Co' denoted the monies coming into the finance firms from the suppliers. The Ld. AR showed us from the same account book(s) that, apart from credit entries appearing against 'A Co', there were also debit entries therein succeeding the entries relating to the monies withdrawn from the bank accounts of the finance firms, which indicated that the monies withdrawn were being paid back to the alleged 'A Co'. It was brought to our notice that, the debit entries reflecting payment made to the alleged 'A Co' aggregated to Rs.62 crores approx. The Ld. AR made us wonder as to why any received of commission would return back to the to the payer who was supposed to be shelling out the commission. These debit entries of payments totalling to Rs.62 crores back to A Co renders the version narrated by Shri CPA to be unbelievable. There is no reasonable explanation forthcoming from Shri CPA as to why was there were debit entries indicating monies withdrawn from bank account of finance firms being paid back to the



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same supplier 'A Co'. According to us therefore, the tale recited by Shri CPA does not add up. The Ld. AR has rightly submitted that, it is preposterous and against all human probabilities that, the person in receipt of commission would pay the same back again to the payer of commission and that too on regular basis. Hence, we agree with the Ld. AR that, the entries in account book(s) shows that, what is being tutored by Shri CPA before the authorities smacks of falsehood and spuriousness. The Ld. AR has therefore claimed that, the entries in the account book(s) did not add up to the story of Shri CPA in as much as it did not indicate receipt of monies from one person [supplier] and payments to another [assessee, in this case]. Rather, it inter alia suggested regular transfer of monies, both debit and credit, amongst some persons, whose identities have not been proved. Perusal of these entries ex-facie disproves the narrative of Shri CPA that all the entries were being made on someone else's behalf. Instead, it appears to indicate that it was a record of Shri CPA's own proprietary transactions. For this, the Ld. AR reminded us of the nature of payments, as discussed in Para 51 above, which demonstrated that, the payment/debit entries corresponding to the entries relating to monies withdrawn from the bank accounts of the finance firms were actually being used by Shri CPA for his own business purpose. This material fact, pointed out to us by Ld. AR, repudiated Shri CPA's assertion that he was only a conduit who was receiving monies



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from one person [suppliers] and handing it over to another person [assessee, as alleged in his case]. We also find that, Shri CPA in his answer to Q No. 10 of his statement dated 10.04.2017 had admitted to paying on-monies for the immovable properties acquired in the names of his family members. Hence, it is seen that, the application of cash withdrawn from the bank accounts of the thirty eight concerns was not towards alleged payment to the assessee. Instead, it is prima facie discernible that, it was being applied by Shri CPA for his own benefit. The Ld. AR also brought to our notice the answer given by Shri CPA to Q No. 4 in his statement dated 10.04.2017 wherein he had admitted to aggregate unaccounted income & investment of Rs.71.67 crores. The Ld. AR explained that, if Shri CPA was not deriving any benefit in any form, from the purported notings found in the account book(s) as they purportedly solely related to the assessee [Refer answer to Q No. 5 of statement dated 03.04.2017], then how could Shri CPA have made such huge magnitude of unaccounted investments in his own personal capacity. We find merit in the contention of the Ld. AR that, if the statement(s) of Shri CPA is read as a whole, along with the entries in account book(s), it was evident that, Shri CPA was undertaking large scale unaccounted real estate & finance business in his own right and was dealing in several crores withdrawn from the bank account(s) of the finance firms in his own proprietary capacity. There is yet another intriguing aspect brought to our



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notice by Ld AR. He pointed out from the assessment order that, the AO had inferred that coal commission allegedly being paid was at USD 2 per MT. Keeping this in mind, the Ld. AR invited our attention to the reply furnished by TANGENCO wherein they had inter alia provided the details of the coal delivered by several suppliers. The Ld. AR pointed out that, the two purported suppliers i.e. 'A Co.' & 'K Co' had supplied coal weighing 34,94,199 MT and 76,750MT respectively in FY 2014-15. Applying the alleged rate of USD 2 per MT, the Ld. AR showed us that, the alleged commission payable would work out to Rs.44.47 crores for FY 2014-15. He now invited our attention to the entries in the seized account book(s) and showed that the entries against the title 'RV' [as also quantified by the AO] was to the tune of Rs.270 crores approx, which was 600% of the alleged quantum of commission. Likewise, he also illustrated similar calculation for FY 2015-16, wherein the purported commission corresponding to the quantum of coal supplied by the suppliers works out to Rs.55.75 crores, whereas the commission quantified by the AO from the seized account book(s) was Rs.247.31 crores. Having regard to the foregoing, it does appear that there was no prima facie correlation between the entries found in the seized account book(s) vis-à-vis the corresponding coal supplied or the possible coal commission, payable thereon, if at all such was the case. It is observed that, the AO before recording his satisfaction did not even any attempt to unravel the truth by



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conducting impartial investigation. Rather, we find that, the AO treated whatever Shri CPA stated to be gospel truth, without any independent examination of facts or application of mind. The above contemporaneous aspects pointed out by the Ld. AR does makes it implausible for us to believe the averments made by Shri CPA in his statements dated 03.04.2017 & 10.04.2017 attempting to incriminate the assessee. We find that, though the above gaping holes in the statements dated 03.04.2017 & 10.04.2017 of Shri CPA was prima facie discernible from the seized material, but the AO failed to take note of these apparent contradictions. Instead, the AO is found to have simply gulped down whatever was being served by Shri CPA who kept changing his statements/affidavit filed by him. Having considered the foregoing contradictions and fallacies, as pointed out by the Ld. AR, we agree with him that, it was unsafe to rely on these fleeting statement(s) dated 03.04.2017 & 10.04.2017 as it was riddled with inconsistencies, bald allegations and contradictions. Overall therefore, having regard to the above intriguing aspects brought to our notice by the Ld. AR, it can't be said that Shri CPA has discharged the statutory presumption of fact u/s 132(4A)/292C(1)(i) of the Act and hence, the AO erred in recording in the satisfaction note that books seized from the premises of Shri CPA belonged to assessee. The AO failed to bring any material on record to disbelieve the original statement of Shri CPA dated 22.04.2016 wherein he had admitted that the account book(s)



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ID marked ANN/FAY/CPA/B&D/S-1 and the notings found therein belonged to him.

56. The Ld. AR thereafter explained to us the plausible reason for making allegation against assessee after an year of search in his premises. According to him, the searched person [Shri CPA, in this case] was aware that, the contents of these seized materials were to be presumed to be true qua his income-tax assessment in terms of Section 132(4A) of the Act and hence these notings on stand-alone basis would have entailed substantial tax liabilities on him. However, according to the Ld. AR, what Shri CPA did not foresee was that he would be faced with consequences under other regulations such as PMLA, FEMA violations etc. as well. The Ld. AR submitted that, the Revenue had subsequently [within few days] searched his associates/friends i.e., Shri Giri & Shri PLA and unearthed large-scale movement of funds amongst them in connection with their own businesses activities. The Ld. AR was of the opinion that, Shri CPA being aware that, both of them had implicated him and had stated that they were routing monies at his instructions, he would not only be faced with serious tax implications but other regulatory consequences as well, a new theory was promulgated by Shri CPA (more than a year after the date of search) which was evidently a biased one to shift the entire onus and blame onto the assessee and tailor-made to suit his purpose to reduce the tax incidence on himself as well wriggle out of



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the clutches of other law-enforcement agencies and create chaos and confusion in the mind of AO.

57. On overall conspectus of the facts placed before us, we thus find that Shri CPA had baldly stated that (a) these notings did not pertain to him but the assessee, (b) these were details of transactions between Shri PLA and assessee, but feigned ignorance about its details and specifics, (c) he did not derive any benefit from these transactions, but he was maintaining records and coordinating on their behalf pro bono and (d) he was unaware about the origin of these monies but it was somehow received by him in his controlled bank accounts and also used by him for making investments. We agree with the Ld. AR that, this statement of Shri CPA was evidently an after-thought, tutored and based on interestedness, sans any believable or reliable material/evidence. According to us therefore, such an apparent self-serving statement could not be used against the assessee. Having considered the foregoing and having due regard to the earlier admission(s) dated 22.04.2016, 10.05.2016, 02.07.2016 & 26.12.2016, we find force in the submissions of the Ld. AR that the statements dated 03.04.2017 & 10.04.2017 given by Shri CPA does not inspire confidence, and is found to be based on incompetence and self-serving, which was tailor made to suit his own purpose. Hence, these statements cannot be relied upon as it is not free from blemish.



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58. The Ld. AR otherwise also raised serious doubts on the objectivity and credence of this investigation. Recapitulating the chronology of events already discussed above, the Ld. AR submitted that, when the seized material did not in any manner indicate the assessee and even Shri CPA in his sworn statement(s) recorded at the time of searches and on several occasions had never named or implicated the assessee, then according to him, a pertinent question arises as to why all of a sudden, Shri CPA was again summoned more than a year after the search had concluded and again another statement was recorded from him. The Ld. AR submitted that, the Revenue has not been able to give any plausible circumstances or justification for this personal enquiry being again conducted on 03.04.2017 against Shri CPA after almost a year from the date of search, even though Shri CPA had consistently averred in his sworn statement(s) that the seized material belonged and pertained to him and Shri CPA had also accepted to pay taxes on the appropriate income emanating from these account book(s). The Ld. AR then reminded us of the leading question which was put across to Shri CPA in his original statement dated 22.04.2016 wherein the Investigating Officer had directly named the assessee and had required Shri CPA to explain whether the notings in account books related to the assessee, to which Shri CPA had categorically answered in the negative. According to the Ld. AR, this recording of statements on 03.04.2017 & 10.04.2017 may also have been



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an attempt made by the Revenue with a prejudiced mind to somehow implicate the assessee, though neither the seized material nor the statement(s) recorded from the searched person(s) suggested anything adverse qua the assessee. Though having taken note of these arguments, we do not see any reason to dwell on the same, having already held above that, the statements dated 03.04.2017 & 10.04.2017 [since retracted] to be unreliable.

59. Moreover, as observed earlier, Shri CPA had subsequently retracted his statement(s) dated 03.04.2017 & 10.04.2017 and stood by his original testimony given at the time of search u/s 132(4) of the Act. We find from the retraction affidavit duly sworn by Shri CPA before the Notary Public on 09.05.2017 that he had not only reaffirmed his original offer of undisclosed investment/income of Rs.77 crores but also stated that, whatever he had stated in his statement(s) dated 03.04.2017 & 10.04.2017 was factually wrong and out of mental duress. It is seen that, he had also offered to tax the sum of Rs.205 crores received by his finance firms in their respective hands. The relevant extract of this retraction affidavit, is reproduced below: -



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தமிழ்நாடு தமில்நாடு TAMILNADU

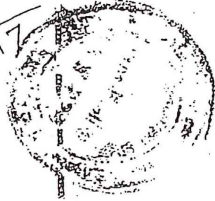
C.P. அனபுநாதன்
அல்

BC 534320

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TRICHY 620 017
Cell: 9345112204

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9/05/17



SWORN AFFIDAVIT

I, C.P.Anbunathan, S/o.Periyasamy residing at No.98, Ayyamapalayam, Punjai Thattakurichi Post, Karur – 639 113 do solemnly affirm and state as under

- i. I am assessed to income tax under the PAN of AHMPA6511H under the jurisdiction of DCIT Circle 2, Trichy.
- ii. There was a search U/s. 132 of the Income Tax Act at my business premises and residence on 23/04/2016.
- iii. Subsequent to the search, I have appeared many times before the Joint Director of Income Tax(Inv) and Deputy Director of Income Tax (Inv), Coimbatore.
- iv. During the post search proceedings before the JDIT/DDIT, Coimbatore, I have admitted a sum of Rs.76 crores as my undisclosed income/ investment and I have accepted the same to admit into tax and agree to pay tax due thereon.
- v. There was a notebook with entries found during the search. None of the entries made in the said notebook was by my hand.

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P. Selvaraj



தமிழ்நாடு தமிழ்நாடு TAMILNADU

673 09/05/17 C.P. சீராய்மணி

ABC 534321
S. SELVARAJ, B.Sc.
STAMPVENDOR L.No 15759 93
THENNUR VANDI STAND BUS STOP
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- v. In the said notebooks there were entries to an extent of Rs.205 crores which have been received by the various finance concerns to which I act as an advisor.
- vi. The said notebook also has entries or payments to various persons made out of the above said receipt of Rs.205 crores.
- viii. There were no such payments made either in cash or by cheque to any persons.
- ix. The entire receipt of Rs.205 crores belongs to the various finance concerns which have received by it by way of cheque / transfers.
- x. The said finance concerns shall admit the respective receipts totaling of Rs.205 crores in its hands as income and agreed to pay tax due thereon.
- xi. Whatever I have stated with regard to payments to various persons before the JDIT/DDIT, Coimbatore were factually wrong and was made out of mental duress.

Executed at Trichy on this 9th day of May 2017 and signed by me and also duly notarised.

Notary Public

Signature
V.S. BASKARAN, B.Com., B.C.
DEPUTY & NOTARY PUBLIC
GOVT. OF INDIA
41, BUSSOR ROAD, SIVA COMPLEX, 1ST FLOOR
PALAYAM, TRICHY-620 017
CELL: 944268484
NOTARY PUBLIC
GOVT. OF INDIA
REG. NO 9320

60. Upon filing of his sworn retraction affidavit, it is seen that, the DDIT had again summoned Shri CPA on 06.06.2017 for cross-examination and this time the Investigating Officer is noted to have tabulated the noting(s) found in the account book(s) in a year-wise manner and Shri CPA is noted to have expressly stated that the sum of Rs.205 crores received by the finance firms were their respective unaccounted income(s) and he accepted to pay taxes on the same. The relevant portion of the statement is reproduced below:-

"Q.3. During the Income Tax search proceedings, conducted at your residence on 22-04-2016, From the books of accounts seized vide ANN/FAY/CPA/B&D/S-1 dt.23-04-2016, the details of unaccounted income for F.Y.2014-15, the names and the total amount are listed hereunder:



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Read and give your explanation.

List 2014-15:

RV - II	16,00,00,000
RV- 1(Per)	1,00,00,000
RV Party Found	7,06,99,000
Gobi (RV)	65,60,90,060
Gobi (RV)-II	80,00,000
Gobi Dubai	22,65,00,000
Lodha HL	30,00,000
Thathu	20,00,00,000
Lodha	56,50,00,000
Total	189,92,89,060

Mathalai Muthu	10,00,000
VL Account	5,58,21,222
Malleswaran	3,756,000
Sakthivel AE (RR)	5,00,000
RVS School	1,31,73,124
TNPL	63,61,330
Muthusamy Er	10,00,654
R.R.Er	45,00,000
Meenakshi Mission	5,11,20,000
KCP Karur	50,00,000
Kathappan, Natham	20,00,000
Senthilnatham Vigneswara	15,00,000
Rama Moorthy Ceylon	1,00,00,000
Total	15,23,51,330

FY 2015-16:

Advance	33,55,991
Balance Cash	7,50,369
Cash	26,500
Cash Returned	1,00,000
Chit	92,20,500
Commission	35,000
HL	49,67,52,107
Home Cash	214,62,38,050
Interest	31,13,000
Interest	4,09,48,520
Interest repayment	74,13,000
Land sale	11,73,750
Lease amount	50,000



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Principal	30,000
Principal repayment	8,74,10,000
Receipt	119,47,79,779
Sale	11,90,000
Sale advance	11,00,000
Withdrawal bank	179,36,72,417
Total	578,73,58,983

List FY 2016-17:

01.04.2016 – Opening Balance	2,70,674
Receipt – Sivasamy	1000
Home Cash	1,75,00,000
Home Cash	25,00,000
Home Cash	3,00,00,000
04.04.2016 Home Cash	2,00,000
07.04.2016 Home Cash	9,00,000
08.04.2016 Interest – velmohan	1,00,000
Receipt Asian pipes (Dr.Nedunjezhian)	15,00,000
09.04.2016 interest – uppupalayam	300
Total	5,36,01,300

The above listed transactions happened through whom, for whom and when did it happen.

Ans: As I have already submitted in my affidavit, out of Rs.578 Crores mentioned in the list above for F.Y.2015-16, Rs.205 Crores are unaccounted income of 40 Finance firms, for which I accept to pay tax. I am not in a position to submit the details of accounts, for the balance amount of Rs.373 crores. I shall consult my Accountants, Thavamani and Ganesan and give my submissions in three months. Further, I shall submit the details of transactions of F.Y.2014-15 & 2016-17 within three weeks.”

61. During the cross-examination held on 06.06.2017, Shri CPA was also asked to clarify whether he had any relations with TNEB and whether he facilitated receipt of coal commission, to which he answered in the negative. The relevant question and the answer given by Shri CPA is noted as under:-



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"Q.No.6 Did you function as a coal commission agent for TNEB or in any other position. Give the details.

Ans. I am not in any position or commission agent with TNEB. Further, I do not have any connection with the officers of TNEB."

62. It is seen that, subsequent to the above retraction by Shri CPA and the cross-examination held by the Revenue, even the partner(s) of all the finance firms had voluntarily filed their respective sworn affidavit(s) all dated 03.08.2017 wherein they affirmed the disclosure given by Shri CPA and agreed to pay taxes on the monies received from the entities of Shri PLA. It is seen that, later on, letters were also filed in September 2017 wherein the partner(s) of the finance firms reiterated their offer and also stated that they were mobilizing funds to pay the taxes. It was brought to our notice that, after this cross-examination held in June 2017 and the filing of disclosure affidavits by the partners of the finance firms in September 2017, no further enquiry or investigation was conducted by the DDIT / AO of the searched person. The next crucial event which occurred was on 03.12.2018, when the AO recorded his satisfaction that, the seized material ID marked ANN/FAY/CPA/B&D/S-1 '**belonged to**' the assessee and had a bearing on the total income of assessee, which triggered the impugned action u/s 153C of the Act.

63. According to us, having regard to the contemporaneous facts discussed above, it is seen that, Shri CPA had, at all times, maintained that the account book(s) ID marked ANN/FAY/CPA/B&D/S-1 belonged to



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him and the notings therein (including 'RV') pertained to his own business activities. Even the content(s) of the notings and the undisclosed investments unearthed in the course of search corroborated his statement recorded u/s 132(4) of the Act that, these notings pertained to him and not the assessee. It is also seen that, the amount(s) received by the finance firms were managed and controlled by Shri CPA and the respective finance firms had offered to pay tax on such receipts to tax. It is also seen that, not only Shri CPA had originally denied have any relation with the assessee but the only time when he had implicated the assessee to be the person denoted by the noting 'RV', Shri CPA was unable to give any cogent proof of link with the assessee in support of the same. Moreover, as observed earlier, Shri CPA had also retracted this statement and reiterated that the notings pertained to him and offered to pay tax thereon.

64. In view of the above, we are of the considered opinion that, the action of the AO holding that the impugned seized material viz., ANN/FAY/CPA/B&D/S-1 belonged / related to the assessee was factually perverse. Also, the averments made by the AO of the assessee in the satisfaction note viz., Shri CPA had admitted that, the notings in the seized material, particularly 'RV', pertained to the assessee, is erroneous and contrary to the facts as discussed above.



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65. Before us, though the Ld. CIT, DR appearing for the Revenue was unable to controvert the fact that Shri CPA had retracted his statement(s) dated 03.04.2017 & 10.04.2017 and had affirmed his retraction in the course of cross-examination held on 06.06.2017, but he vehemently relied on a subsequent letter dated 28.12.2018 filed by Shri CPA before the AO of the assessee in the course his assessment u/s 153C of the Act [*i.e. an event after the recording of satisfaction on 03.12.2018 to proceed against assessee u/s 153C*] which submission of Revenue is noted for being rejected for the reason given infra. It is seen that, Shri CPA had again recanted from his retraction, changed his stand, and once more stated that, the noting(s) in the account book(s) were being maintained by him for and on behalf of the assessee and that all the notings concerned the coal commission received by Shri CPA on behalf of the assessee. The Ld. AR has rightly submitted that, this letter having been filed by Shri CPA subsequent to the initiation of proceedings u/s 153C of the Act has to be ignored by us, when examining the validity of the satisfaction recorded prior to issuance of notice u/s 153C of the Act dated 03.12.2018. According to us, when this letter was not available either before the AO of Shri CPA or the assessee at the material time(s) when the satisfaction was recorded on 03.12.2018, the Revenue cannot now supplement their satisfaction recorded u/s 153C before this Tribunal, by relying on such subsequent letter of Shri CPA. For this, we rely on the



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ratio laid down by Hon'ble Apex Court in the decision(s) of NDTV Ltd & Bombay High Court in Hindustan Lever Ltd., as discussed (supra) and hold that, this letter dated 28.12.2018 [submitted by Shri CPA post recording of satisfaction by the AO] cannot be relied upon by the Revenue to justify the initiation of proceedings u/s 153C of the Act

66. The Ld. AR even otherwise pointed out that, this letter dated 28.12.2018 submitted by Shri CPA more than two years after the date of search is nothing but an after-thought and thus ought to be discarded. He pointed out that, the income-tax assessment(s) of Shri CPA was also ongoing wherein ordinarily Shri CPA was required to honor his disclosure given vide his sworn affidavit dated 09.05.2017. According to Ld. AR, Shri CPA had discernibly failed to pay the agreed taxes and therefore as a last-ditch attempt, and at the fag-end of the assessment proceedings, he had filed this letter disowning the content(s) of the seized account book(s) found from his premises which contained noting(s) relating to his business activities [*already taken note of by us above*]. Instead, he again baldly incriminated the assessee by attempting to shift the ownership of these account book(s) to the assessee without any evidence or proof. The Ld. AR has rightly relied on the decision of the Hon'ble Rajasthan High Court in the case of **Pr.CIT Vs Roshan Lal Sancheti (150 taxmann.227)** wherein on similar facts, it was held that, the statement recorded u/s 132(4) and later on confirmed u/s 131 of the Act cannot be discarded



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simply because the assessee had later on retracted the same. It was held that, duration of retraction assumes significance and that where retraction is made after a long gap [in the present case, from statement recorded u/s 132(4) in April 2016, more than two years elapsed as on 28.12.2018], then such retraction without cogent reasons are not entertainable, which is absent in this case. The only plea of Shri CPA to first retract on April 2017, after an year, to allege against assessee, was that the assessee was a minister in April 2016, so he didn't made allegation against assessee at the time of search. But the Ld AR, countered such an explanation to justify retraction and brought to our notice that assessee was a minister only till 22 May 2016 [i.e. less than a month from the date of search at Shri CPA's premise] and that assessee wasn't a minister in the State thereafter. Therefore, the Ld AR wondered as to why Shri CPA didn't retract at the earliest point of time if there was any truth in it and ought to have made allegation against assessee when he was not minister from 23rd May 2016 onwards. Hence according to Ld AR, the delay of an year to first make allegation against assessee in April 2017 and then subsequent conduct of Shri CPA, viz retract the allegation, file affidavit in support of it and again retract the retraction in 28.12.2018, doesn't justify the so called retraction and is therefore unbelievable and needs to be discarded and at any rate according to him, it is unsafe to place reliance on it and the AO erred in placing reliance on



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such untrustworthy testimony which vitiates the satisfaction-note recorded against assessee u/s 153C. In this context, it is gainful to look at the relevant findings of the Hon'ble High Court in **Roshan Lal Sancheti** supra which is as follows:-

"In view of the law discussed above, it must be held that statement recorded under section 132(4) of the Act and later confirmed in statement recorded under section 131 of the Act, cannot be discarded simply by observing that the assessee has retracted the same because such retraction ought to have been generally made within reasonable time or by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duly sworn affidavit or statement supported by convincing evidence. Such a statement when recorded at two stages cannot be discarded summarily in cryptic manner by observing that the assessee in a belatedly filed affidavit has retracted from his statement. Such retraction is required to be made as soon as possible or immediately after the statement of the assessee was recorded. Duration of time when such retraction is made assumes significance and in the present case retraction has been made by the assessee after almost eight months to be precise, 237 days.

67. Further, we have also perused this letter dated 28.12.2018 and find that, Shri CPA has essentially reiterated what he had stated in the statement(s) dated 03.04.2017 & 10.04.2017 [*which he retracted/filed affidavit/withstood the cross of AO to retract what he stated on 03.04.2017 & 10.04.2017 discussed supra*]. We have already discussed the apparent contradictions and infirmities in this theory advanced by Shri CPA, in the preceding paragraphs and therefore do not wish to repeat the same. It is observed that, even in this letter, Shri CPA was unable to show any proof or provide any corroborative linkage with the assessee qua suppliers. No reliable material to show flow of money from the coffers



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of suppliers of coal via him (CPA) to the hands of assessee is found missing, which undermines the spear-head of the narration of case setup by him against assessee. Rather, his averments are found to be unbelievable, since it cannot be ruled out that it is an outcome of tutoring and afterthought. The narration setup by him is bald and duplicitous, with the intent to implicate public functionaries and reputed business houses by making empty sensationalized claims, which untrustworthy statements, cannot be acted upon against assessee, without dislodging the statutory presumption on the searched person and the AO erred in placing reliance to it and record satisfaction that books seized from premises of Shri CPA belonged to assessee.

68. The Ld. CIT, DR appearing for the Revenue however relied upon the Paras 3 & 4 of the satisfaction note wherein the AO had taken note of the statement(s) given by Shri Giri and Shri PLA, which according to him corroborated the statement of Shri CPA dated 03.04.2017 and 10.04.2017 [*retracted as on date of recording satisfaction-note on 03.12.2018*] that, he was only facilitating the receipt of commission through these persons, for and on behalf of the assessee and therefore the notings found in account book(s) actually related to the assessee. We find that, a joint-search action was conducted upon Shri CPA and Shri Giri on 10.05.2016 at the ITC Windsor Hotel, Bangalore, in the course of which electronic data was found and seized from both these searched



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persons, and their sworn statement(s) were also recorded. We first take up the statement(s) of Shri Giri, which was recorded across several dates, copies of which has been placed at **Pages 87 to 117** of **Paper Book Volume VI**.

69. According to the Revenue, Shri Giri had admitted that, Shri CPA was facilitating routing of commission through Shri PLA for and on behalf of the assessee, which corroborated the statement of Shri CPA as well. Refuting this assertion of the Revenue, the Ld. AR for assessee took us through the entire contents of the statement(s) of Shri Giri. We first note that, when enquired about his nature of business activities in which he was involved, like Shri CPA, Shri Giri had also stated that he was also involved in the business of real estate, conducted through his company M/s Straived Ventures Pvt. Ltd. Shri Giri is found to have stated that, Shri CPA is his friend who is also in the business of real estate and is running educational institutions. The Ld. AR pointed out that, when the Investigating Officer had enquired Shri Giri about his connection with Shri CPA, he had not admitted that either he or Shri CPA was involved in any facilitation of coal commission. It is also seen that, Shri Giri in his initial answers did not name the assessee or suggest that Shri CPA was running finance firms for and on behalf of the assessee. Rather we find that, when enquired about the nature of finance firms of Shri CPA, Shri Giri is found to have stated that, he was not even aware of their exact names. The Ld.



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AR brought to our notice that, after recording of this initial statement, the Investigating Officer had adjourned the same and the recording of his statement was resumed late at night, at 11:30 pm. This time, Shri Giri was required to explain his business transactions with Shri CPA. The relevant question put to him and his answer is extracted below:

"Q-18 Do you have any business relation or financial transaction with Mr. Anbunathan C P? If yes please explain in detail.

Ans. My association as stated above started since the year 2013 wherein one of my client Dr. Gurushankar, Vice Chairmen of Meenakshi Medical Mission Hospital, Madurai approached me to exchange Meenakshi Medical Mission Hospital's multiple demand draft to the tune of Rs. 25 Crores, to encash it to use it in a land deal. Therein I introduced Mr. C.P.Anbunathan as a financier based at Karur, who receives demand draft in the name of his multiple companies/firms-and in turn provides cash, after deducting-5% of his commission-charges for the transactions As Dr. Gurushankar was interested in this type of transaction, he has given multiple DD since late 2013 to Mr. C P Anbunathan who had routed the funds through his various concerns such as M/s Global Equipment, M/s Kavi Traders, M/s Kundan Traders etc. Our oral agreement was that my share will be 1% of the total transactions. I received commission of Rs. 25 Lakhs from Mr. Anbunathan-in-multiple slots, out of this transactions and that's how, I have started my business relation with my Mr. Anbunathan. Mr. Anbunathan was very much impressed in this deal and he wanted to take this business relationship to the next level."

70. Though, in his above reply, Shri Giri did not name the assessee or suggest that he was involved in facilitating any alleged coal commission, the Investigating Officer is noted to have enquired from him about the '*next level of your business with Mr. Anbunathan*'. It is observed that, this time, Shri Giri submitted that, Shri CPA had enquired from him whether he was close to one, Shri PLA as he was to receive certain sums from the



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A Co. According to Shri Giri, he had introduced Shri CPA to Shri PLA and when the latter assured links with A Co, Shri CPA entrusted Shri PLA to arrange transfer of funds from A Co to his finance firms, for and on behalf of the assessee. Shri Giri is found to have also conveniently stated that, he did not derive any benefit or commission for facilitating this transaction. When enquired as to how was this transaction executed, Shri Giri is found to have made vague assertions that, the funds were transferred in multiple slots through multiple companies, which in turn was transferred by the entities of Shri PLA to the finance firms of Shri CPA. According to Shri Giri, his role was only to coordinate and make sure that all the funds were transferred to Shri CPA. He further submitted that, out of the total monies facilitated, he had also coordinated transfer of a sum of Rs.4 crores by Shri PLA to a foreign bank account of Shri CPA.

71. The Ld. AR firstly made us carefully read the answer given by Shri Giri to Q No. 19 and pointed out that, he had actually named the assessee solely on *hearsay* as because it was Shri CPA who had purportedly informed him that the monies to be routed were on the assessee's behalf, and Shri Giri has gulped it as gospel truth and then he introduced Shri CPA to Shri PLA. The Ld. AR has rightly shown that, such a statement of Shri Giri is not reliable being hearsay because, he has not directly seen or heard anything from the assessee, hence, it is unsafe to rely on such hearsay statement of Shri Giri, unless there was any material or tangible



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link provided by Shri Giri in this regard. Taking us through the other answers given by Shri Giri, the Ld. AR showed us that, all his transactions, dealings and conversations were with Shri CPA alone and that, Shri Giri was unable to make out any connection or relation or any link with the assessee.

72. The Ld. AR further argued that, the above version narrated by Shri Giri was fanciful, far-fetched and improbable. He submitted that, if for a moment, the Revenue's allegation against the assessee is taken at its face value, then it is highly implausible that, the assessee who was a minister would have given such a task to Shri CPA to go around and find out if anyone knows the coal-suppliers and then use their connection for collecting the purported commission. Thus according to Ld AR, the modus operandi as narrated by Shri CPA and role played by Shri Giri along with Shri PLA, defies logic. According to Ld AR, the modus-operandi narrated by Shri CPA is not comprehensible. On one hand Shri CPA says that he was asked by assessee to collect the coal-commission, in such an event, according to Ld AR, Shri CPA should be expected to know the coal-supplier which was a reputed group in their own right and instead he had to scout for and approach Shri Giri a local person to enquire about them to make a connection with them. Further, according to Ld. AR, it was also incongruous that Shri CPA would have asked Shri Giri whether he knows someone called Shri PLA as he is required to receive monies from a



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certain supplier who supplied coal to TNEB. According to him, if Shri CPA knew about Shri PLA and the fact that he had links with the supplier, then there was no need or purpose to enquire about him from Shri Giri. The Ld. AR pointed out that, it was also not a case that Shri PLA was in any manner related to the supplier(s) and therefore on preponderance of probability, it is unsafe to accept Shri Giri's testimony that Shri PLA could have possibly assured links with the suppliers, particularly when it is seen that Shri PLA in his testimony dated 28.06.2016 [Q No. 41] had denied having any such link with the coal suppliers. It was also brought to our notice that, Shri CPA had already dealt with Shri PLA which involved real estate deal of 200 flats for a value of Rs.50 crores and therefore Shri Giri's testimony alleging that Shri CPA did not know Shri PLA and that he had only facilitated their meetings was ludicrous and unreliable. This argument of the Ld. AR is also supported by the testimony of Shri PLA wherein he had clearly stated that he was known to Shri CPA as he had met him long back for solar projects, though it did not materialize. Having considered the foregoing, we find this particular answer given by Shri Giri wherein he had named the assessee is hearsay as well to be filled with infirmities and gaping holes.

73. The Ld. AR thereafter emphasized on Shri Giri's assertion in the same answer viz., he had only introduced Shri CPA to Shri PLA and that he was not involved in their transactions and therefore did not derive any



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commission or benefit therefrom. According to Ld. AR, this testimony was factually wrong as Shri Giri was later on found to have been actively involved with them and he was regularly exchanging email correspondences with them regarding routing of funds for Shri CPA. It may be added, at this juncture, that these email correspondences also did not contain any link with the assessee, which we shall deal in the ensuing paragraphs. He also pointed out that, there were several notings with the acronym 'Giri' in the account book(s) of Shri CPA with corresponding details of payments/receipts, which according to Ld. AR showed that, Shri Giri was indeed deriving monetary benefits from the transactions being conducted amongst Shri CPA, Shri PLA and him. According to Ld. AR, this evidently exposes the false assertion/narration made by Shri Giri, which raises serious doubt on the veracity of his answer given to Q No.19 and rather showed that, it was a fanciful theory surmised by Shri Giri to escape from the rigors of tax consequences.

74. The Ld. AR further also pointed out several infirmities and contradictions in the statement of Shri Giri, which according to him, rendered it unsafe to be relied upon. He first reminded us that, Shri Giri and Shri CPA were searched together in the same premises i.e. ITC Hotel, Bangalore on 10.05.2016 and both their statements were recorded u/s 132(4) of the Act. He pointed out that, Shri CPA had categorically stated that, he was only doing real estate transactions and other commission



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business with Shri Giri; whereas Shri Giri had stated that, apart from conducting some few commission related activities for encashment of demand drafts and introducing Shri CPA to Shri PLA, he did not have any other business related transactions with Shri CPA. According to Ld. AR therefore, the contradictory answers given by Shri Giri showed us that, he was attempting to hide the true nature of his proprietary transactions between him and Shri CPA and shift the onus to third parties *[as noted above, acronym 'Giri' has been found noted at several places in note book(s) seized from the premises of Shri CPA]*. Another striking contradiction pointed out by Ld. AR was that, unlike Shri Giri, when Shri CPA was confronted with the electronic data found from the same premises, he had not averred that, they related to any coal commission received for the assessee through Shri PLA.

75. Rather, the Ld. AR showed us that, the seized material and the sworn statement(s) of both these persons showed that, Shri Giri had assisted Shri CPA in encashing demand draft of Rs.25 crores for Meenakshi Medical Mission Hospital for using it in a land deal for which he derived commission of 5% for facilitating this transaction. Shri Giri had thereafter admitted to have provided regular assistance in routing of funds to Shri CPA into his various finance firms, for which, he would receive commission of 1%. According to the Ld.AR, these averments of Shri Giri were also corroborated by the notings found in the account



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books of Shri CPA, which showed that Shri CPA and Shri Giri were business associates engaging in several business transactions in their own right. According to him, ordinarily any person would maintain separate records of his own proprietary transactions and where he undertakes transactions on someone else's behalf. Bringing us back to the content(s) of the account book(s) viz., ANN/FAY/CPA/B&D/S-1, the Ld. AR showed us that, the entries relating to Meenakshi Medical Mission Hospital and other dealings of the finance firms, RVS institutions etc. were all recorded in the same ledger where the monies received from PLA was recorded. He argued that, if it is assumed for a moment that the monies routed through Shri PLA related to someone else, it would be incongruous to maintain mixed accounts as it would not be possible to segregate the transactions. The Ld. AR thus submitted that, the monies routed through Shri PLA by Shri CPA is indeed his own business transactions amongst Shri PLA, Shri Giri & Shri CPA, and they do not relate to any third person [assessee, in this case]. Having considered these arguments, we find sufficient force in the same.

76. The Ld. AR further showed us that, according to Shri CPA's statement, the assessee had directly dealt with the coal suppliers and that he had only dealt with Shri Gobi; whereas according to Shri Giri, it was Shri CPA who has actively taken steps to approach the top management of the coal suppliers regarding payment of commission and that he was



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following-up and coordinating the entire transactions. The Ld. AR further brought to our notice that, Shri CPA had stated that, the transactions were between the assessee and Shri PLA and that he was only a conduit who would only hand over the monies, when received in his controlled bank accounts. On the other hand, Shri Giri had stated that, the transactions were between Shri CPA and Shri PLA and that Shri CPA would actively pursue these transactions. Also, Shri CPA had stated that, he did not derive any benefit or income by facilitating these transactions between the assessee and Shri PLA, whereas Shri Giri stated that, he was the one who did not derive any benefit from these transactions. We further observe that Shri CPA's statement averring that, he did not earn any income from these transactions, was contradicted by the answer given by Shri Giri [Q No.20], wherein he had admitted that, he had transferred sum of Rs. 4 crores through Shri PLA into the personal foreign bank account of Shri CPA. We thus find that, the sworn statement of Shri Giri did not support the statement of Shri CPA and the answers given by both of them were solely motivated by self-preservation, and is thus held to be inherently unreliable.

77. Our above observation is corroborated by the fact that, subsequent to conclusion of search on 10.05.2016, the Investigating authorities had scrutinized the electronic devices and found that the statement given by Shri Giri suffered from falsity as he had stated that he was not involved in



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the transactions conducted between Shri CPA and Shri PLA, but they had found email exchanges amongst these persons which showed that Shri Giri was complicit in their unaccounted transactions. When confronted with the same on 13.05.2016, we find that, Shri Giri had recanted his earlier answer and now stated that, he was the one who had reached out to Shri PLA on behalf of Shri CPA and would exchange mails regarding the transactions. Shri Giri is noted to have then narrated an altogether new version explaining how Shri CPA met Shri PLA for facilitating routing of coal commission for and on behalf of the assessee. According to Shri Giri, Shri CPA had enquired about a company in Delhi, to which he mentioned that Shri PLA, Giri's known contact, would be able to assist. Thereafter, Shri CPA sought Shri Giri's assistance to avail help from Shri PLA to reach out to certain supplier and that because the supplier wanted to pay commission abroad, Shri CPA sought the services of Shri PLA. This time around Shri Giri further stated that, all of them viz., Shri CPA, Shri PLA and himself, had undertaken these transactions for no consideration or fee or commission, because Shri CPA had promised future help from 'concerned people'. When enquired as to who are this 'concerned people', Shri Giri feigned ignorance and answered that Shri CPA did not introduce them to anyone. The Ld. AR pointed out that, Shri Giri had even refrained from naming the 'concerned people'. According to him, if this answer was true, then it corroborated the assessee's plea that, Shri Giri had named



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the assessee in his answer to Q No. 19 purely on hearsay. According to him therefore, these answers were given with the sole intent to simply exculpate themselves and implicate someone else and thereby confuse the investigation teams attention from them. We agree with the Ld. AR that, this entire narrative of Shri Giri sounds not-believable that these several transactions conducted amongst themselves regularly did not yield any income for any of them. According to us, such a statement which is purely self-serving, so as to attribute the entire liability to another without a substantial, genuine admission of the maker's own delinquency cannot be believed. Having gone through these different versions and contradictory answers narrated by Shri Giri in his several statements and considering their conducts, we are in agreement with the assessee that, no credence can be attributed to his hearsay, shifty statements, which makes it unsafe to rely on such an untrustworthy testimony.

78. The Ld. AR explained to us that, Shri CPA was searched on 22.04.2016 and that the search action took place on Shri Giri only on 10.05.2016, when he was meeting with Shri CPA in Bangalore. According to Ld. AR therefore, Shri Giri, being a business associate, must have been aware of the material unearthed by the Investigating authorities in first search action and would most likely have been alerted and might have known that several notings in his names relating to the business



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transactions conducted between Shri CPA, Shri Giri & Shri PLA had been found in the account book(s) seized from the premises of Shri CPA. Hence, according to Ld. AR, in order to save their/his skin, from the rigors of tax, penalty & prosecution consequences, Shri Giri had given this self-serving statement and attempted to shift the onus onto the assessee without any tangible evidence other than the hearsay statements.

79. The Ld. AR further showed us that, the above statement(s) given by Shri Giri [Q No. 19 of statement dated 10.05.2016 & Q No. 4 of statement dated 17.05.2016] was in contradiction to the purported version later on narrated by Shri PLA in his statement dated 28.06.2017 [Q No. 39] and Shri CPA dated 03.04.2017 [Q No. 4]. Having perused these answers, we find that not only the narratives regarding the nature of relationship amongst them was contradictory but later on in their answers, each of them is noted to have shifted the blame to the other person and had averred that none of them were actually undertaking these transactions but were only coordinating for the other and therefore none of them derived any benefit or income from these transactions. We therefore find it unsafe to rely on any of their testimonies as they are found to be based on their respective interestedness and bias.

80. The Ld. AR thereafter narrated several plausible theories as to why these bald averments could have been made by Shri Giri to wrongly



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implicate the assessee. The Ld. AR contended that, it could be a case that Shri CPA had misled Shri Giri into believing that these transactions were being undertaken by him for someone else to divert any suspicion from himself. The Ld. AR alternatively contended that, Shri Giri was ordinarily charging hefty commission for facilitating routing of monies for and on behalf of Shri CPA and therefore, according to him, Shri CPA could have possibly named a senior public figure to Shri Giri to make him waive off the commission on these transactions. The Ld. AR also pointed out that, as per the admission of Shri Giri [Q No. 16 of statement dated 11.05.2016], Shri CPA and Shri PLA had actually dealt in real estate which involved delivery of 200 flats for a consideration of Rs.50 crores, but according to Shri Giri, the deal didn't ultimately materialize. The Ld. AR submitted that, possibly the payments by Shri PLA to the finance firms of Shri CPA could pertain to this real estate deal and that these parties were acting in connivance to shift the ownership of these unaccounted transactions from themselves to the assessee. The Ld. AR further showed us that, Shri CPA was actively involved in education and medical institutions [including 'RVS' Trust, Meenakshi Medical Mission Hospital & Brilliant Education Trust] and other real estate deals and therefore the name of the assessee and a fabricated story was concocted to shield someone else by falsely implicating the assessee. Having already held the testimony of Shri Giri to be unreliable, though the aforesaid theories



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narrated by the Ld. AR does appear plausible, we find that no useful purpose would be served by speculating on them.

81. The Ld. AR also submitted that, even the electronic data seized during the course of search upon Shri CPA & Shri Giri on 10.05.2016, which has been relied upon by the AO in his satisfaction note, does not have any probative value in as much as none of them relate to the assessee. He first took us through the chats/messages extracted from the mobile phones of these searched persons(s). We find that, though the AO has laid emphasis on these chats and has averred that they incriminated the assessee of being in receipt of coal commission, but having carefully gone through the same, this satisfaction recorded by the AO to be factually misplaced. It is observed that, several messages were sent to one party, 'Sutha CEO 2', which was possibly Shri Sudarshan. The contents of these messages are inter alia found to be details of the bank accounts of the finance firms of Shri CPA [CPA claims to be advisor of finance-firms]. We are unable to understand as to how these messages are of any relevance to the case of the assessee before us. It is further seen that, in the same conversation, it was written that '*received the cash and hand over to sister*'. The Ld. AR submitted that this message also does not implicate the assessee in any manner. He pointed out that, it was an admitted fact that, Shri CPA was regularly withdrawing cash from the bank accounts of the finance firms and therefore this message stating



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receipt of cash and handing over to his sister does not in any manner suggest any handing over of cash to the assessee or for that matter Shri Gobi, but only reinforces that withdrawn cash was handed over to someone else/sister. Nothing more can be read in to it, unless the sender of message explains the relevant facts which led to sending of such message, and supports the same with cogent material. Further, merely on the basis of such contents of message, the veracity untested, it is unsafe to rely on such messages, and therefore we can't draw adverse view against assessee, basis such messages. Similarly, the message which read '*Noted in Laptop Secret*' or the message where the foreign bank account details of Shri CPA was shared, according to us, doesn't incriminate the assessee [third party] in any manner. We are in agreement with the Ld. AR that, these messages nowhere name the assessee or in any manner implicates the assessee, or for that matter, lend any credence to the bald statement of Shri CPA incriminating the assessee wherein he had stated that, he was withdrawing cash for and on behalf of the assessee, which was being handed over allegedly to Shri Gobi. Rather, when considered in the overall surrounding facts, these messages tends to show that, Shri CPA was actively involved in his own proprietary business dealings which involved surreptitious activities viz., withdrawal of cash and making private notings of the same of being handed over to someone else/sister.



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82. Likewise, it is seen that there are messages exchanged between Shri CPA and Shri Sarvanan, wherein he asks him to call him, to which he responds calling in five minutes and thereafter, the foreign bank account details of Shri CPA are shared with Shri Sarvanan. It was pointed out to us that, Shri Sarvanan is a Singapore resident providing accounting services through his company M/s Seyon Pro Pte Ltd and is also involved in trading activities through M/s Atshy Pte Ltd. According to Ld. AR, these messages thus appear to suggest that, there are some proprietary dealings of Shri CPA and he has shared his personal bank account details to enable Shri Sarvanan to make payments to him. The Ld. AR has rightly showed us that even these chats do not relate to the assessee in any manner.

83. The next chats referred to by the AO was between Shri CPA with one contact, 'Giri Annalaksmi 2', who is stated to be Shri Giri. Again, we find that, Shri CPA would text details of the bank accounts of the finance-firms to him. The conversation is found to center around informing one, Mr. Satya who wants money in Chennai and Hyderabad. Apart from the foregoing, the other texts are generic conversations. These messages therefore reveal that Shri CPA and Shri Giri were talking to handover money to one, Mr. Satya. There is no indication in these messages of any coal commission, any cash payments to Shri Gobi or any reference to the assessee. It is therefore observed that the statement(s) given by Shri Giri



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and Shri CPA attempting to incriminate the assessee were bald and not backed by any tangible evidence. Thus, the AO's reliance on the chat messages found from the mobile phones is noted to be factually wrong, having no linkage with the assessee.

84. The Ld. AR further brought to our notice that, when the above mobile phones was seized from the possession of Shri CPA at the time of his second search action on 10.05.2016, the Investigating Officer had again recorded his statement u/s 132(4) of the Act. He pointed out that, apart from confirming the fact that the mobile phones were seized from his possession, no questions were put to him regarding the electronic data contained in the mobile phone. He took us through the entire statement and submitted that none of the questions and answers in this statement indicated that the material seized from the possession of Shri CPA had any remote connection with the assessee. The Ld. AR reminded us, that Shri CPA in his statement dated 10.05.2016 had categorically stated that, he was doing real estate transactions and other commission business with Shri Giri. According to him therefore, the ordinary presumption was that the conversations and chats between Shri CPA, Shri Giri, Shri Sarvanan and Shri Sudarshan was regarding their proprietary real estate transactions and commission business. The aforesaid statement recorded at the time of search, coupled with the fact that even the electronic data contained in mobile phone did not in any manner relate to the assessee,



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justifies the Ld. AR's contention that the averments made by the AO linking these statement(s) and electronic data with the assessee, in his satisfaction note, was factually unsustainable.

85. In so far as the email correspondences containing agreements, invoices etc., found from the electronic devices of Shri CPA & Shri Giri is concerned, the Ld. AR has challenged the veracity of these digital evidence and contented that they were not authentic/genuine. He pointed out that, Shri CPA had been searched twice, first on 22.04.2016 and then along with Shri Giri on, 10.05.2016. Taking us through the panchanama of Shri CPA dated 22.04.2016, the Ld. AR showed us that, his electronic devices were seized back then as well, but no such emails, agreements or invoices, etc. were found on his electronic devices or his emails. The Ld. AR therefore expressed his dismay as to how these digital evidences which are pre dated 22.04.2016, viz. they pertained to FY 2015-16, was suddenly found in the electronic devices of Shri CPA and also Shri Giri, when none of them were unearthed in the first search dated 22.04.2016. The Ld. AR thus cast his skepticism on the conduct of these searched persons and alleged that, these digital evidences without certificate of authenticity are unsafe to even being considered as material in this case, since it were fake, and fabricated to save some ones skin. The Ld. AR also asserted that, even otherwise, these digital evidences neither, belong/relate/pertain to assessee nor have any bearing on the total



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income of the assessee and therefore according to him, they couldn't have been relied as material/evidence by the AO for assumption of jurisdiction u/s 153C of the Act; and by relying on such digital evidences, the AO erred in usurpation of jurisdiction u/s 153C of the Act, which action vitiates the issuance of notice u/s 153C of the Act.

86. The Ld. AR firstly took us through the satisfaction recorded by the AO, [AO is the same for Shri Giri and the assessee] and showed that, even otherwise, the contents of these seized material did not contain any information or values, which could be said to *'have any bearing on the total income of the assessee'* for any of the AYs 2014-15 to 2017-18. When this aspect was pointed out, according to Revenue, these seized materials were meant to aid the content(s) of the account book(s) seized from the premises of Shri CPA. We find that, the provisions of Section 153C empowers the AO to assume jurisdiction over a third person [assessee, in this case] if the material seized from the premises of the searched person [Shri Giri, in this case] related to the third person [assessee, in this case] and had a bearing on his total income. Hence, the condition precedent to assume jurisdiction is two-fold viz., (a) the material relates to the third person [assessee, in this case] and (b) the contents or information in this material has a bearing on the total income of the third person [assessee, in this case]. We agree with the Ld. AR that the conditions were evidently not met, in the given facts before us.



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87. Secondly, the Ld. AR showed us that, the impugned seized material comprised of email correspondences, agreements, invoices etc. which only pertained to AY 2016-17. However, the AO is found to have referred to these seized material in the satisfaction notes recorded for all AYS 2014-15 to 2017-18, which prima facie is unjustified, and thereby exposes the non-application of mind. It was also brought to our notice that, the AO [while recording his first satisfaction in the matters of Shri Giri] had recorded his satisfaction that these seized material ID marked ANN/A/GC & ANN/MKM/CG/ED/S '*belonged to*' the assessee. Having perused the contents of these emails, invoices, agreements etc., we agree with the Ld. AR per-se they neither '*belonged to*' or '*related to*' the assessee. It is observed that, these emails, invoices & agreements relate to the foreign companies, M/s Spring Traders Ltd Hong Kong, M/s Seyon Pro Pte Ltd Singapore, M/s Petramex Chemicals Ltd Singapore and several other foreign entities based out of UAE. From the details available on record, it is observed that, these companies were managed and controlled by Shri Sarvanan [friend of Shri Giri / Shri CPA], Shri Pankaj Baid [associate of Shri PLA] etc. The fact however remains that none of these entities had any connection with the assessee or any of the coal suppliers to the TNEB. We observe that, the Revenue had also made enquiries through FT&TR from these countries and the Ld. CIT, DR [*even after us giving time to produce any material as on date of hearing in October*



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2025] was unable to show us any adverse material or information gathered from these enquiries which would implicate the assessee or any of the alleged coal suppliers mentioned by these persons in their sworn statement(s). We are therefore unable to comprehend as to how the AO arrived at the satisfaction that these seized material '*belonged to*' to the assessee. Rather, we find that there was no linkage or connection with the assessee whatsoever. At the cost of repetition, it is to be kept in mind that the presumption u/s 132(4A) and 292C of the Act is qua the searched person and it is presumed that the contents of the material as seized, is true. The contents of the seized material, ordinarily presumed to be true (unless rebutted), prima facie indicates that, certain foreign companies were receiving commission for assisting foreign coal traders for procuring coal to be supplied by them. The agreements suggest that they pertain to the business support and marketing assistance to be provided by them and the invoices also spelt out the nature & purpose of remittances. Further, the email correspondences did not contain anything incriminating, rather it majorly contained attachments of these invoices and agreements. According to us, this electronic data at their face value only suggested that commission was paid by certain foreign coal traders to foreign agents. On stand-alone basis, we find that this seized content has no link or relation with the assessee.



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88. The Ld. AR further pointed out to us that, the above electronic data, particularly the agreements and invoices revealed serious infirmities exposing their lack of credibility. He brought to our notice that most of these invoices and agreements are unsigned or partly signed and bank remittance advices of only few are available. He further showed us that, several invoices didn't contain any address or had phone number with ISD code of different country or contained wrong addresses etc. According to him therefore, these email correspondences contained fake documents which existed only on paper. Taking us through the contents of the agreements, he showed that these lacked basic details and therefore were not genuine. According to him therefore, the purported coal commission which is found to be a common template in these correspondences was nothing but a facade created by Shri CPA and his associates to cover up their hawala transactions and that there is no substance in their testimonies. In support, he invited our attention to the statement of Mr. Sarvanan of Singapore who was the sole founder and director of the two entities namely Seyon Pro Pte Ltd and Atshy Pte Ltd wherein he had categorically stated that all these agreements and invoices were fake and the underlying transactions didn't take place. The Ld. AR thus submitted that the AO's reliance on these fake and bogus material was factually misplaced and unjustified.



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89. The Ld. AR further brought to our notice that, if these agreements and invoices are put together, then the alleged commission transacted was USD 87,20,000 whose Rupee equivalent works out to Rs.56.68 crores. He pointed out that the alleged commission which was added in the hands of the assessee was Rs.546 crores, which nowhere correlated with this electronic data. He reiterated that, if the narrations of the agreements are taken at their face value, then it was meant for assisting and sourcing of coal by the coal suppliers and not for selling them. Therefore viewed from any angle, these electronic data did not suggest any receipt of commission by the assessee and it did not have evidentiary value, in the present case.

90. The Ld. AR also pointed out that, though Shri Giri had alleged that these transactions related to coal commission facilitated for and on behalf of the assessee, but there was no such admission originally made by Shri CPA who was also subjected to search. As noted above, Shri Giri had named the assessee only on hearsay, because Shri CPA had allegedly told him that these transactions were on account of the assessee. According to Ld. AR therefore, it could also be a case that, Shri CPA had misled Shri Giri into believing that these transactions were for someone else, whereas it actually related to him, to avoid giving him hefty commission. The Ld. AR reminded us that, even in the subsequent statement(s) given by Shri CPA dated 17.06.2016, 02.07.2016 & 28.12.2016, at no point of time, did



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he ever name the assessee or state that the monies being facilitated through Shri Giri & Shri PLA into the finance-firms were for and on behalf of the assessee. Instead, as noted earlier, Shri CPA had stated that, they were relating to his own business transactions. We have also observed earlier that substantial unaccounted cash and unaccounted investments were also found from the possession and in the name of Shri CPA and his family members, whereas nothing was found from the assessee. These material contemporaneous facts further supports the assessee's case that, the statement given by Shri Giri guessing that Shri CPA was receiving monies at the instance of the assessee was hearsay, cooked-up story.

91. Overall, according to us, neither the material seized from the premises of Shri CPA & Shri Giri nor their sworn statement(s) were able to establish any link with the assessee. It is also seen inter alia that, Shri CPA in his statement dated 03.04.2017 [since retracted as on date of satisfaction on 03.12.2025] had alleged that, he was having link only with Shri Gobi, through whom, he was dealing on behalf of the assessee. We however find that, Shri Gobi had clearly denied the same. The Ld. AR brought to our notice that even Shri Gobi had been subjected to search u/s 132 of the Act as early as on 10.05.2016, (along with Shri Giri & Shri CPA) and no incriminating material or document was found from his premises, which would even remotely suggest that he was acting as a link



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between the assessee and Shri CPA. The Ld. AR pointed out that, even the electronic devices seized from the possession of Shri Gobi and Shri CPA didn't reveal any such conversation or correspondence, which would suggest that they were facilitating any alleged coal commission transactions. It is not in dispute that, Shri CPA and Shri Gobi were friends. Also, Shri CPA and Shri Gobi being members of the same political party had dealt for some non-business-related work(s) such as transfer(s), promotion(s), etc and in a small business transaction of less than Rs. 5.50 Lakhs. The Ld. AR has rightly pointed out that, apart from the foregoing link, there was no indication in any seized material that, Shri CPA and Shri Gobi were involved in any transactions, for and on behalf of the assessee. Hence, in absence of any proof of linkage with the assessee, these statement(s) in our view were indeed unreliable and cannot be said to relate to the assessee.

92. It is seen that, the Revenue has attempted to establish linkage with the assessee essentially through two pieces of evidence found in the electronic data, viz., (i) One e-mail which was forwarded to mail ID - mails.epe@gmail.com found from the electronic device of Shri CPA which contained salutation 'Hi Gopi', and (ii) One letter addressed by the assessee to a temple requesting arrangements for visit of certain persons which inter alia included Shri CPA. Having perused the contents of these seized material, we are unable to fathom as to how such communication



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could be used to draw connection of a wrong doing of such magnitude against a public figure like assessee; and if we validate such a flimsy connection on these communication, as then we would have to adopt a criterion of relevance so expansive which would lose all practical utility.

93. Rebutting the first alleged link, the Ld. AR brought to our notice the statement of Shri Gobinath recorded at the time of search, wherein he had enlisted his three (3) email IDs. It is seen that, the email ID mails.epe@gmail.com does not feature therein. The Ld. CIT, DR was unable to show that, this statement given by Shri Gobinath had been disproved by the Revenue at any point of time. Hence, according to us, the purported email sent with salutation 'Hi Gopi' to an email ID, cannot be treated as a proof of linkage to justify such large scale monetary transaction between Shri CPA and Shri Gobinath on behalf of the assessee, without credible material.

94. In so far as the letter addressed by the assessee for a temple visit is concerned, we agree with the Ld. AR that these types of requests are a common occurrence in the daily routine of public functionaries and only because the assessee had recommended arrangements for temple visit of several persons which inter alia included Shri CPA is of no consequence to allege any business link between them. The Ld. AR explained to us that, admittedly, Shri CPA and Shri Gobinath were friends and that the latter



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was a distant relative of the assessee and therefore it was indeed likely that Shri Gobinath would have arranged Shri CPA's temple visit through the assessee. According to us, this particular seized material is also not decisive enough to accuse the assessee of having any business link with Shri CPA involving huge magnitude of transactions through the latter. Rather, according to us, the fact that, the Revenue had to rely on such recommendation letters for temple visits to justify linkage with the assessee, shows that, the invasive search actions conducted upon Shri CPA, Shri Gobinath and the assessee actually did not yield any useful link amongst them basis which any prudent person could allege that the account book(s) maintained by Shri CPA contained notings relating to the assessee.

95. Overall therefore, we are therefore in agreement with the Ld. AR that, the assessee's name taken by Shri Giri in his answers was based on tittle-tattle and smear-work sans any evidence. We find in particular that, Shri Giri was unable to provide any material whatsoever giving any proof of linkage with the assessee or the coal suppliers. As noted above, the electronic data seized from him was dumb in nature and did not have any relation with the assessee. There is also no evidence found in his statement(s) which would suggest that the foreign companies in which amount(s) were received abroad had any link to any of the coal suppliers. Also, nothing cogent was brought on record in relation to the trail of



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monies received by the finance firms of Shri CPA. Shri Giri was also not able to show any identifiable source of any coal supplier wherefrom the monies were coming. According to us therefore, such bald/hearsay statement of Shri Giri, in absence of any credible, corroborative evidence, cannot be said to relate to the assessee and have any bearing on his total income.

96. We now turn our attention to the statement of Shri PLA which was recorded across four days from 28.06.2016 to 01.07.2016. It is seen that, Shri PLA was searched almost two (2) months after search took place on Shri CPA and thereafter Shri Giri. The Revenue has not brought on record any incriminating material found in relation to the impugned issue, in the course of his search. The satisfaction recorded by the AO of the assessee only refers to his sworn statement recorded at the time of search, copy of which is found placed at **Pages 48 to 86** of **Paper Book Vol - VI**. It is noted that, on the first day of recording of his statement i.e. 28.06.2016, thirty eight (38) questions were put to him wherein he had explained his business interests, sources of income, activities in M/s Peerless Consultancy in which he was a director, details of personal expenses at his daughter's wedding etc. We find that, none of these questions and answers given by Shri PLA had any relation or connection with the assessee and he had not suggested that he was involved in facilitating any commission for the assessee.



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97. The Ld. AR then showed us that, the recording of statement of Shri PLA resumed only on 29.06.2016 at 8PM and this time Shri PLA was asked about his connection with Shri CPA. In his answer, Shri PLA explained that, he had met him 4-5 years ago and that Shri CPA had introduced him to the assessee, with whom he discussed about some solar projects in the State, which did not materialize. The Ld. AR pointed out that, this averment was vague & bald and that Shri PLA had not provided any proof evidencing that he actually met the assessee. In the same answer, Shri PLA is found to have further stated that, subsequently, Shri CPA had approached him and informed him that, he will through Maheshwari Coal Company arrange to remit some monies abroad, which Shri PLA is required to ensure that it is given to his CA, Shri Sarvanan in Singapore and for these services, Shri PLA had charged 1% commission. According to him, Shri CPA was presumably getting commission from this company for coal supply contract to Government. However, when he was asked to provide any details or documents or evidence to justify this assertion, Shri PLA expressed his inability to provide anything. The Ld. AR again pointed out to us that, such statement sans any evidence cannot be entertained. He further brought to our notice that, this connection with Shri CPA, as explained by Shri PLA, was contrary to all the versions narrated by Shri Giri in his several statement(s). This according to the Ld. AR showed that, all these witnesses, whose statements the AO was



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seeking to rely upon in his satisfaction note, were evidently making false assertions and that none of their theories were tallying nor were they backed by any material or evidence, making it unsafe to rely on any of their testimonies.

98. We further observe that, when Shri PLA was confronted with the statement of Shri Giri, wherein Shri Giri had stated that, Shri PLA was giving assistance to Shri CPA to obtain commission from A Co., Shri PLA had outrightly denied the same, which casts further doubt on the testimony of Shri Giri. Instead, Shri PLA is found to have submitted that, he had only advanced loan(s) to Shri Giri and that he didn't have any financial transaction with Shri CPA. We observe that, in none of these answers had Shri PLA named the assessee at anytime or suggested that he was arranging routing of coal commission for and on behalf of the assessee. Instead, it appears that, though he had admitted to have facilitated receipt of commission from some other entity [not A Co.] to Shri CPA, but later on denied having any financial transaction with Shri CPA. According to us, these answers are also found to be riddled with infirmities and interestedness and hence cannot be taken at their face value.

99. It is seen that, Shri PLA, had identified two companies viz., M/s Spring Traders Ltd and M/s Petramex Chemical Pte Ltd, which according



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to him, were used to transfer commission and he had stated that, one of these companies were controlled by one 'Pankaj', which he later identified as Shri Pankaj Baid. The Ld. AR has rightly contended that, apart from giving this name, no specifics were provided by Shri PLA to identify this person or his relation with Shri PLA or with Shri CPA or with any of the alleged coal suppliers. We are unable to understand as to how these answers given by Shri PLA in his sworn statement(s) are sought to be used by the Revenue against the assessee. What transpires from the statement of Shri PLA is that, he was a hawala operator whose role was to get the monies from bank accounts of offshore companies of money changers to India and he was inter alia providing these services to Shri CPA as well. It appears that Shri PLA was assisting Shri CPA in routing his monies being received abroad by the concerns controlled by his Chartered Accountant of Singapore into India. However, there is no whisper of the source of monies and wherefrom was this monies being received by Shri Pankaj Baid. It is also not clear as to where were these monies applied to, paid by the Singapore concerns of Shri CPA. There is also no enquiry made by the Revenue as to how was this monies coming into India. In absence of any details regarding the source of monies, its trail and ultimate application, according to us, the ordinary presumption would be against Shri CPA and Shri PLA and that these transactions were on their own proprietary account. It is seen that, though Shri Giri had affirmed



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this narrative by stating that, the monies received abroad by Shri PLA was being brought back into India, and it was being paid by the entities controlled by Shri PLA to the entities of Shri CPA, but we find that, Shri PLA had clearly denied any such transactions and the Investigating Officer did precious little to investigate any further and marshal the actual facts. Though the contemporaneous facts does show that the finance firms controlled/advised by Shri CPA had received monies to the tune of Rs.205 crores, but the origins of these monies has not been traced by the Revenue. Nothing has been brought before us which shows that, these monies originated abroad or from the coffers of any coal suppliers to State of Tamilnadu. Overall therefore, we find that, though Shri PLA had admitted to providing money changing services abroad to Shri CPA, but there is nothing cogent shown by him which could lead one to believe that the monies being transacted abroad for Shri CPA, pertained to the assessee. According to us, the inference drawn by the AO in his satisfaction note by relying on the statement of Shri PLA, was also far-fetched having no rational basis whatsoever.

100. We also agree with the Ld. AR that, the statement of Shri PLA qua assessee is hearsay, and without reliable material to establish it, adverse view against assessee is untenable. Looking from any angle, such a statement incriminating the assessee could have been said to be valid and be used for the purposes of any regular assessment, only if it was



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supported by corroborative material, which as held above, was absent in the present case. The Ld. AR had cited before us several judgments wherein it has been consistently held that, the statements recorded u/s 132(4) of the Act do not by themselves constitute incriminating material found in the course of search for the AO to assume jurisdiction to disturb unabated assessments of the assessee, unless they are backed by some corroborative evidence. Some of the relevant decisions taken note of by us are as follows:-

(i) CIT v. Harjeev Aggarwal (290 CTR 263) (Del HC)

“19. In view of the settled legal position, the first and foremost issue to be addressed is whether a statement recorded under Section 132 (4) of the Act would by itself be sufficient to assess the income, as disclosed by the Assessee in its statement, under the Provisions of Chapter XIV-B of the Act.

20. In our view, a plain reading of Section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the explanation to Section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the Assessee during search operation.”

(ii) PCIT v. Best Infrastructure (India) Pvt. Ltd. (ITA No. 13 of 2017) (Del HC)



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"38. Fifthly, statements recorded under Section 132 (4) of the Act of the Act do not by themselves constitute incriminating material as has been explained by this Court in Harjeev Aggarwal (supra). Lastly, as already pointed out hereinbefore, the facts in the present case are different from the facts in Smt. Dayawanti Gupta (supra) where the admission by the Assessee themselves on critical aspects, of failure to maintain accounts and admission that the seized documents reflected transactions of unaccounted sales and purchases, is non-existent in the present case. In the said case, there was a factual finding to the effect that the Assessee were habitual offenders, indulging in clandestine operations whereas there is nothing in the present case, whatsoever, to suggest that any statement made by Mr. Anu Aggarwal or Mr. Harjeet Singh contained any such admission."

(iii) PCIT v. Anand Kumar Jain (HUF) (ITA No. 23 of 2021) (Del HC)

"7. The preliminary question under consideration before us is whether a statement under Section 132(4) constitutes incriminating material for carrying out assessment under S. 153(A) of the Act. A reading of the impugned order reveals that the statement of Mr. Jindal recorded under Section 132(4) forms the foundation of the assessment carried out under Section 153A of the Act. That statement alone cannot justify the additions made by the AO. Even if we accept the argument of the Revenue that the failure to cross-examine the witness did not prejudice the assessee, yet, we discern from the record that apart from the statement of Mr. Jindal, Revenue has failed to produce any corroborative material to justify the additions. On the contrary we also note that during the course of the search, in the statement made by the assessee, he denied having known Mr. Jindal. Since there was insufficient material to support the additions, the ITAT deleted the same. This finding of fact, based on evidence calls for no interference, as we cannot re-appreciate evidence while exercising jurisdiction under section 260A of the Act."

(iv) Saveetha Institute of Medical & Technical Sciences v. ACIT (25 taxmann.com 138) (ITAT Chennai)

"8. The Assessing Officer has opined that the capitation fees so collected cannot tantamount to voluntary contribution or subscriptions to the corpus of the society but are in the nature of donations and capitation fees. However, this addition has been deleted by the learned Commissioner of Income-tax (Appeals) by observing that no such



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addition can be made solely on the basis of statements recorded under section 132(4) of the Act and there being no related evidence having been found during search showing receipt of such donations. He has also found that no one has really accepted having received donation/capitation fees as has been alleged by the Assessing Officer.

9.... There being no incriminating evidence regarding receipt of capitation fees, particularly when no document was put to Dr. B. Muthukumaran regarding charging of capitation fees, such a statement cannot be made a basis for making such a huge addition. His statement was rather denied by the managing trustee/president. Shri T.A. Varadarajan, finance manager also denied the statement of Dr. B. Muthukumaran. In any other case, even one goes by this statement, this would not make any meaningful sense. Dr. B. Muthukumaran has stated that the money had been handed over to one Shri Saravanan, accounts officer, but Shri Saravanan was never enquired by the Department. The statement of Dr. N.M. Veeraiyan, who is the president/management trustee of the trust, never accepted having receipt of capitation fees or donation and he had rejected and denied the statement of Dr. B. Muthukumaran. Statement of Dr. N.M. Veeraiyan was recorded under section 131 on November 9, 2007, in which he has stated that whatever was received from the students was reflected in the books of account. This statement confirms the contention of the assessee that some well wishers were giving donations which were duly received and reflected in the books of account. In fact, the statement of Dr. N.M. Veeraiyan was recorded under section 131 on November 9, 2007 which has also been made a basis for this addition. He was not examined under section 132(4) of the Act. A statement made under section 131 cannot be equated with a statement recorded under section 132(4) of the Act. A statement recorded under section 132(4) is a valid and relevant piece of evidence but a statement recorded under section 131 is not so relevant. Nevertheless, even a statement recorded under section 132(4) cannot be made a sole basis for any such addition unless corroborated by seized material. If any admission is made in a statement recorded under section 132(4), this can be used with reference to any piece of evidence found during the course of search. In this case, as we have stated above, no such piece of evidence or to say any incriminating evidence was either found or seized. What was found was a note giving the break-up of number of students who were admitted under different quotas in various courses. In our well considered view, this addition could not have been made at all in the hands of the assessee-trust on the basis of such evidence. Recording of some questions after verification could be viewed as an involuntary statement, extracted from the deponent. In any case, a possibility of such inference is always there. With regard to such statement, the Central Board of Direct Taxes has issued instructions vide Circular No.



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286/2/2003-IT, wherein it has been directed that search party shall not obtain confessions. So, the admission made under section 132(4) by the concerned officer cannot be treated even as a valid piece of evidence. There being no incriminating document having been found or seized during search and the statement also being abstruse, the addition in question has no legs to stand on. Had there been a valid statement, even then, solely on the basis thereof, addition could not have been made. This is a well settled principle of law by now and there are umpteen decisions in support of this view.”

(v) DCIT v. VVD & Sons (P) Ltd. (158 taxmann.com 395) (ITAT Chennai)

“8.5 The addition made by the Assessing Officer was merely on the basis of statement and is not corroborated by any documentary evidence. It is not denying the fact that statement was on oath and can be used as evidence. However, mere statement cannot be the basis of addition. Without credible evidence, the Department cannot make addition purely based on the confessions made during search/survey operation as envisaged by the CBDT vide instruction F.N. 286/2/2003 dated 10-3-2003 and reiterated by the Board vide its letter dated 18-12-2014.”

101. Having regard to the ratio decidendi laid down in the above decisions (supra), we find that the case of the assessee stands on a better footing. The assessee is not the '*searched person*' but is the '*other person*' in the facts before us. In the above judgments, it has been held that the statement recorded u/s 132(4) of the Act cannot be solely relied upon to justify an addition in the hands of the '*searched person*', nor can be treated as an incriminating material found in the course of search, then as a corollary, such a statement of a '*searched person*' cannot have been used as an incriminating material qua '*other person*', who is a third party, unless corroborated by cogent, relevant materials. In the given facts before us, the assessee has been able to establish that not only the



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statement of Shri PLA was hearsay, it is also untrustworthy and is noted to be but not backed by any independent evidence, and therefore we are of the considered view that, the AO's reliance on the same to justify usurpation of jurisdiction u/s 153C of the Act was fallacious since fundamentally flawed.

102. Overall therefore, we find that the satisfaction drawn by the AO in Paras 2 to 4, was based only on suspicion alone, sans any relevant material. The AO is found to have simply relied on bald and untrustworthy testimonies of Shri CPA, and hear-say statements of Shri Giri & Shri PLA to allege that, the notings found in the account book(s) of Shri CPA belonged/pertained to the assessee, and contained information regarding alleged coal commission collected by him, no link with coal-suppliers has been established. As observed above, none of the material seized from the premises of Shri CPA and Shri Giri contained any information which could incriminate the assessee in manner. In fact there is nothing contained in these materials which related to the assessee. We thus are unable to countenance the *satisfaction recorded* by the AO as on 03.12.2018 u/s 153C of the Act, as it was a pure guess work and not based on any cogent, tangible material.

103. The Ld. AR has argued that, it was a classic case where the search action had laid bare the unaccounted hawala transactions of Shri CPA,



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Shri Giri & Shri PLA, and all these persons had vindictively acted to implicate the assessee, in order to save themselves or someone else. The Ld. AR pointed out that, all these persons i.e. Shri CPA, Shri Giri & Shri PLA in their sworn statement(s) were simply mumbling names of senior public functionaries and reputed businessmen, without any proof of linkage or evidence, with the sole intent to sensationalize the issue(s) and shift the limelight from them onto these people. Having considered the gamut of facts, [*as on the date of recording of satisfaction i.e. on 03.12.2018*], sans relevant material, which cannot be basis to justify assumption of jurisdiction u/s 153C of the Act.

104. On a holistic consideration of the array of facts and material placed before us, according to us, the burden of proof was on the searched person(s) to show that the transaction recorded in their account books and the monies received by them related to another person. In the present case, we find [other than the interested/hear-say evidence] that there was no valid material/evidence adduced by any of the searched persons [Shri CPA or Shri Giri or Shri PLA] which could be considered believable enough to shift the burden, which burden initially rested on them of establishing that the monies which came into their hands was being received on behalf of the assessee. Rather, the seized material, as discussed in the foregoing, are found to be either of no relevance or relation, or contradictory, or fake and untrustworthy. Hence, the



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sweeping and evasive statements suggesting that, the monies were being transacted at the directions of the assessee are found to be without any basis or material or details and instead it is found based on inconsistent/retracted statement of Shri CPA or hear-say of Shri Giri & Shri PLA and therefore, such fleeting testimonies does not inspire any confidence, to justify the AO's assumption of jurisdiction u/s 153C of the Act in the matters of the assessee.

105. On overall consideration of the factual matrix before us, the question as to whether the AO of the assessee had in his possession any material or document which related to the assessee and had a bearing on his total income, is noted to be a question of fact, and for this, we have to weigh the probabilities in light of the relevant indicia. In our considered view, the following parameters would guide us to adjudicate the legal challenge before us.

- (i) What was the source of monies which came to Shri CPA
[searched person]
- (ii) What was the nature of transaction amongst Shri CPA, Shri Giri and Shri PLA and the motive for routing the monies?
- (iii) What is the position and relationship of the searched persons with the assessee



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(iv) Whether the amounts in question was shown to be received by the assessee

106. According to us, the source wherefrom the money came is by far the most important test for ascertaining the veracity of the statement(s) given by the searched persons that the monies which came into their hands, in reality was for the benefit of another person [assessee in this case]. The burden of proof for showing that the monies received by the entities of Shri CPA and the transactions having found recorded in his books, actually belonged to another person [the assessee] lies on the searched person who asserts that it is such a transaction. The statement of searched party, as in this case implicating a third party (assessee in this case) is an adverse information (which may be exclusively in the knowledge of that person), may trigger '*reason to suspect*'; then, the AO to make reasonable enquiry and collect material to form a satisfaction that books of accounts seized from Shri CPA pertains or the information contained therein relates to assessee and that the books seized have a bearing on the determination of total income of third party [i.e. assessee] Existence of cogent and demonstrative material is germane to AO's satisfaction in concluding (i) that material belongs/pertains/relates to 'other-person' (ii) and that such material have a bearing on the determination of total income of 'other-person' for valid initiation of action u/s 153C of the Act against 'other-person'/third party (assessee in



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this case). At this juncture, it is necessary to remind ourselves that, the entries in the regular books though relevant, are not sufficient to charge any third party with liability. In other words, such books even if authentic can't fix the liability upon the person in the absence of independent evidence of trustworthiness [refer CBI v V.C. Shukla 1998 Cr.LJ 1905 (SC)]. It should be borne in mind that 'satisfaction' of the AO as to the existence of jurisdictional fact against the assessee as envisaged u/s.153C, should be that of a prudent person. The AO before recording the 'satisfaction' to usurp jurisdiction u/s.153C of the Act against the third party (assessee in this case) should consider the matters before him, either believe to the existence of jurisdictional fact or considers its existence so probable that a prudent man ought under the circumstances of the case, to act upon the supposition that it exists. Having stated so, it has to be also remembered that statutory presumption of fact against searched person i.e., Shri CPA (from whom the books were discovered) doesn't shift, unless, he dislodges the presumption of fact against him. Therefore, Shri CPA is bound to prove the source wherefrom the money came into his hands, and show by adducing some reliable material to prove that in reality the money was for the benefit of another person [assessee in this case], or else, the burden to prove remains on his shoulder i.e, on Shri CPA, the searched-person [Refer Section 132 (4A) & 292C of the Act]. And in such an event, it (burden of proof) cannot be



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said to have shifted to someone else/assessee. In other words, as discussed, statement alleging culpability on another person (like in this case the assessee), may raise a suspicion, which would trigger an investigation by the AO, who should investigate and see whether there is any truth in it; and if there is any relevant material/evidence unraveled in the investigation, (i.e. any nexus found out of passing of monies from the supplier to assessee) then the AO should collect such material/evidence against the third party (in this case the assessee), and then he should weigh the evidence before him and see whether the searched person has been able to discharge the statutory burden which is cast upon him; if the AO is satisfied that searched person has been able to dislodge the burden, then in that event only he will be justified in proceeding against the third party/other-person as envisaged under section 153C of the Act. That is, basis Shri CPA's testimony against assessee, if the AO finds reliable material supporting the fact that the money in question was for the benefit of assessee, and able to credibly link the assessee with alleged commission payment from any coal-suppliers, it can be said that Shri CPA has been able to discharge the burden of proof, and then the 'onus shifts' to the shoulder of assessee, who can be called upon to meet the material/evidence found against him. Thus, the AO is duty bound to satisfy himself about the existence of the essential jurisdictional facts against third-party/other-person assessee before successfully usurping



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jurisdiction under section 153C of the Act. As noted, if the AO finds reliable material supporting the allegation made by Shri CPA against assessee, and able to credibly link the assessee with alleged commission payment from any coal-suppliers, then with the support of such material in his possession, he should draw his satisfaction-note explaining how the information contained in the seized books relates to assessee, which in-turn has a bearing on the determination of total income of assessee, then the AO may be justified in proceedings against the third-party/assessee. However, if the AO fails to collect relevant material/evidence against the third party, then the burden of proof against the searched party doesn't shift and it will continue to be on him till he discharges. In such a scenario, the AO won't be justified in proceedings against the third party by simply roping him by filling up the 'Form for satisfaction u/s.153C of the Act' and asking him to prove the negative, which action of AO will be unjustified/arbitrary, which cannot stand the scrutiny of law. That is why safe-guards/condition-precedents are stipulated before AO assumes jurisdiction u/s 153C of the Act against third-party/other-person. And satisfactions of such condition-precedents are *sine qua non* for valid assumption of jurisdiction against third-party/other-person. The Rule of Evidence is that burden of proof to prove any particular fact which is in the exclusive knowledge of a person lies on that person. Hence in the case in hand, the burden is on the searched person (Shri CPA) from whom



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materials/books have been unearthed, and it should be kept in mind that such burden doesn't shift even if he accuses any other third party for whom he states to be maintaining the books or holds ownership of asset; and if he wants the AO to believe in existence of such fact then he has to prove it.

107. Having taken note of these legal guiding principles, we find that the searched person has not been able to dislodge the statutory presumption of fact against him and likewise, the AO has also failed to satisfy the requirement of law for invoking the provisions of Section 153C of the Act against the assessee. To put it simply, the case of the Revenue is that the impugned notings found in the account books and the corresponding monies found credited in the bank accounts of the firms advised and controlled by Shri CPA, in reality, related to the monies received by the assessee from the alleged suppliers. We however find that, precious little has been done by the Revenue to justify such an assertion. As already noted earlier, there is also no material at the stage of recording satisfaction indicating that any monies were actually delivered to the assessee or Shri Gobi by Shri CPA. In so far as the source of such monies is concerned, it is observed that, neither the Investigating Authorities nor the AO attempted to make any enquiries from the suppliers who allegedly paid the impugned commission to the assessee. Neither any link established to show any flow of money from the coal-suppliers to bank-



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accounts of Firms of Shri CPA. Hence, we find that there is no material to show us that any of the suppliers, who allegedly paid commission, had admitted to the same or averred that they had paid any monies to the companies controlled by Shri CPA or Shri PLA. Hence, it is seen that, the source of monies coming to Shri CPA in his finance firms has also not been established to actually relate to the assessee qua alleged quid pro quo with the coal suppliers. In that view of the matter, according to us, the foundation of impugned satisfaction fails because the searched person [Shri CPA] has been unable to discharge the burden of proof lay upon him to rebut the statutory presumption of fact against him. Further, as noted earlier, the Revenue had made independent enquiries through FT&TR from the respective States where the foreign companies like M/s Petromax Chemical Pvt Ltd, M/s Atshy Pvt Ltd, M/s Seyon Pro Pvt Ltd, M/s RJB General Trading LLC, M/s Shakti Sona Trade Corporation Ltd, M/s Global Equipment Trading Pvt Ltd, M/s Springs Traders Ltd was domiciled and it is seen that, nothing adverse has been brought on record to show that these foreign companies were in receipt of any monies from any of the alleged coal suppliers or that they were related to any of the alleged coal suppliers in any manner. It was brought to our notice that, these companies except M/s Springs Traders Ltd, was controlled by the associate(s) of either Shri PLA or Shri CPA and therefore, evidently, the monies transacted through these companies did not have any relation



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with any of the alleged coal suppliers. The Ld. DR for the Revenue however pointed out the flow chart prepared by the AO at Page 69 of the assessment order, according to which, one coal supplier [K Co.] had procured coal from M/s Spring Traders Limited, which in turn paid coal commission to the foreign entities of Shri PLA / CPA. According to the Ld CIT DR, as per the AO, M/s Spring Traders Limited was a group concern of K Co. Thus, the Ld. DR claimed that the 'link' had been demonstrated by the AO, which evidenced payment of commission. Countering the same, the Ld. AR showed us that this flow chart was not prepared on the basis of any tangible material or corroborative evidence. Rather, the flow chart was prepared on the basis of the hearsay statement of Shri PLA. The Ld. AR emphasized that the allegation that M/s Spring Traders Limited related to K Co. group was not backed by any evidence, but was emanating from the hearsay statement of Shri PLA. The Ld. AR claimed that M/s Spring Traders Limited had no connection or relation with K Co. group and to support his averment, he placed before us the credentials of the company as available in the public domain to demonstrate the same. In order to verify this assertion of the assessee, the Bench had required the Ld. DR, to adduce some material basis which the AO observed that M/s Spring Traders Limited was group concern of the K Co. group. Though sufficient time was given, the Ld. DR was unable to furnish any evidence or material in this regard. The Revenue was also unable to show us that,



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the FTTR enquiry conducted by them suggested that M/s Spring Traders Limited was part of K Co Group or that M/s Spring Traders Limited had supplied any coal to K Co., which in turn, was supplied to TNEB. Having regard to these facts, we agree with the Ld. AR that, the flow chart set out at Page 69 of the assessment order cannot come to the aid of Revenue because it did not depict the facts as available on record in as much as it lacked the crucial link between the suppliers and M/s Spring Traders Limited. There is also merit in the Ld. AR's contention that, the hearsay statement of Shri PLA having not been tested on the touchstones of cross-examination was unsafe to be relied upon. Apart from the foregoing, it is also observed that there is another missing link in the flow chart viz., the correlation between the sums transacted through these bank accounts of foreign entities with the monies found credited in bank account(s) of the finance firms and / or the entries found noted in the account books. The Ld. DR also referred to the trail of events set out by the AO at Para 18.2 of the assessment order, which according to her, also suggested linkage to the assessee. The Ld. AR, on the other hand, countered by submitting that the purported trail of events drawn out by the AO was factually erroneous which did not emanate from the seized material but was a figment of AO's own conjecture and surmises. He pointed out that, the AO had referred to the alleged emails exchanged and chat messages between Shri CPA, Shri Giri and Shri PLA, which



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according to the AO suggested payment of coal commission on behalf of the assessee. As already discussed by us above, these emails / correspondences did not contain any material or evidence which incriminated the assessee in any manner or related to him. The AO thereafter is found to have referred to the statement recorded from Shri CPA on 03.04.2017, which as held above, was untrustworthy and unsafe to be relied upon. Lastly, the AO has referred to the bank statements of the several finance firms controlled by Shri CPA, which also does not have any link or relation with the assessee. The Ld. AR has rightly pointed out that the trail of events narrated by the AO was his own theory deduced on whims and suspicion in as much as the same was neither supported nor backed by any material or corroborative evidence, which we have already discussed in the earlier paragraphs. Moreover, it is observed that even this trail of events lacks the crucial link of source wherefrom the monies came to Shri PLA, Shri Giri or Shri CPA and also the evidence regarding payment to the assessee. For the above reasons, we find that, the Revenue has been unable to make out a case that, the value of amounts transacted or the amount alleged to be commission income of the assessee had any link or nexus with the coal suppliers or the value of coal supplied to TNEB. According to us therefore, the searched person [Shri CPA] had failed to discharge the burden of proof which rested upon them to rebut the statutory presumption against them and show that the



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source of monies in the bank account(s) of the finance firms did not belong to him but some other person [coal suppliers as alleged] and that the entries in the account book(s) relating to withdrawal of the monies did not pertain to him but some other person [assessee, in this case]. Therefore, as a corollary, the impugned satisfaction drawn by the AO u/s 153C of the Act, on the basis of such dumb material and bald testimonies was unjustified.

108. On a conjoint reading of the seized material in light of the sworn testimonies of the searched persons, it is seen that neither the searched persons nor the AO could establish the true nature of the transactions and the motive for routing these monies through Shri CPA, Shri PLA and Shri Giri. From the discussions made above, it is palpable that Shri CPA was an influential and resourceful person in his own right. He was engaged in the business of real estate and financing and was also involved in running of educational institutions. On analysis of some of the sample notings, it has been gathered above that the notings in the account books inter alia comprise of several proprietary business transactions of Shri CPA and the unaccounted income derived by him is also found to be corroborated by unaccounted investments unearthed in the course of search. Hence, according to us, the notings in the seized account books should have been properly explained by him, which he didn't, so without dislodging the statutory-presumption against him, his allegation against assessee fails.



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According to us, the purported linkage sought to be made by the AO on the basis of acronym 'RV' found noted in the account books with the assessee was meaningless, as no cogent rationale is discernible from the material(s) which would demonstrate the nature of transactions between the assessee and Shri CPA and motive behind the same. According to us, a mere denial by Shri CPA could not have shifted the onus of proof onto the shoulder of assessee. In order to do so, Shri CPA was required to corroborate his assertion with independent tangible evidence that links the nature and motive behind the seized notings with the assessee, which we find is absent in the present case.

109. On the other hand, the Ld. AR showed us that, the entire case sought to be made out by the Revenue had no logic or rationale, because the assessee had no role whatsoever in the coal contracts awarded by TNEB to the coal suppliers. It is seen that, the approval / sanction is given by the BLTC and board members of TANGEDCO alone which is a separate legal entity. The details of the persons who held post of the Chairman of TANGEDCO from 2011 to 2018 was also placed on record and we find that, the assessee was neither the Chairman nor the member of BLTC or the Board of TANGEDCO. It was also shown to us that the cabinet was also not required to accord any approval or sanction to TANGEDCO. The Ld. AR further narrated the entire tender and bidding process undertaken by TANGEDCO for awarding coal supply contracts, which was available in



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public domain. He showed that, it was a global tender process for the period in question and that not only the two coal suppliers in question, but several other coal suppliers including PSUs were awarded contracts to supply coal. Having considered these contemporaneous facts, we find that when assessee has no role in awarding contract to suppliers of Coal, then question of assessee deriving any '*quid pro quo*' from suppliers is difficult to believe unless credible material is brought on record. So, on this count also the purported allegation against assessee as set-up by Shri CPA & others fails.

110. To further disprove the notion harbored by the AO in his satisfaction note, the Ld. AR also invited our attention to the enquiry made by the AO of the assessee from the chairman of TANGEDCO who had provided the complete details of the global open tender process followed by them along with the details of the different quantities of coal purchased from several suppliers. Having gone through the same, it is seen that, apart from K Co & A Co, TANGEDCO had obtained supply of coal from two public sector undertakings, viz. MMTC and MSTC and one private supplier, viz. M/s Chettinad Logistics Pvt Ltd during the same period. It is seen that, the CIF rate of coal supplies made by these other parties to TANGEDCO during the same period was commensurate and, in some instances, higher than the rates at which the A Co & K Co had supplied coal to TANGEDCO. This contemporaneous data, according to us, negated the case of the Revenue



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that two private suppliers (A Co & K Co) were paying unaccounted commission for supply of coal, as because there is nothing on record which shows that, there was any undue benefit being received by A Co & K Co in the form of higher prices, to justify payment of purported commission.

111. It is further noted that, the searched persons were also unable to offer any proof of linkage or relationship with the assessee and therefore, any of their averments incriminating the assessee as set-up by Shri CPA cannot be accepted. As already held above, the tenuous link sought to be made between the assessee and Shri CPA through Shri Gobi who was a friend of Shri CPA and a distant relative of the assessee, does not meet the threshold standard of relevancy, because there is no material or evidence brought on record from the searches conducted upon Shri CPA and Shri Gobi to justify such a linkage. Therefore, in absence of any evidence demonstrating any cogent relationship between the assessee and the searched persons, it cannot be countenanced that, these searched persons were conducting such high value transactions on behalf of the assessee. Hence, after considering the matters before us, and applying the prudent man's test by looking through his (the prudent man's) eyes, considers the non-existence of such linkage probable and inclined to act upon the supposition that it does not exist.



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112. Instead, we find that, the Ld. AR was able to demonstrate that, Shri CPA was actively associated with one '*RVS Trust*' with whom he had several dealings both through bank and in cash and he also had transacted with another person named Shri R Vaidialigam. These contemporaneous facts coupled with our above observations makes it further unsafe to assume that the notings code worded 'RV' could only suggest the assessee and him alone, particularly when no linkage or dealing with the assessee qua suppliers of coal was proved by Shri CPA.

113. We also observe that the Investigating Authorities as well as the searched persons were unable to offer any evidence as to the payment of purported monies to the assessee. As noted above, the assessee was also subjected to search and nothing incriminating was found from his premises. There is no allegation of unearthing of any unaccounted expenses or unaccounted investments or discovery of any valuable assets from the possession of the assessee. According to us therefore, without providing any evidence as to the actual receipt of monies by the assessee, the bald/hearsay testimonies of the searched person attempting to shift the ownership of the impugned notings onto the assessee and imposing addition of more than Rs 500 crores is held to be unjustified.

114. The Ld. AR has further brought to our notice that, the Revenue has later on (more than a year after the assessee's assessment) protectively



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assessed the impugned sum(s) in the hands of Shri CPA as well. He pointed out that, inspite of making enquiries through FT&TR in relation to all foreign entities named in the statement(s) of searched persons, the Revenue was unable gather even an iota of evidence which would suggest or show any linkage with the assessee. He also showed us that, the Revenue thereafter, in several cases of the finance firms controlled/advised/owned by Shri CPA, has again made protective additions in excess of Rs.247.65 crores on account of the monies credited in their bank accounts through the entities of Shri PLA viz., for instance, in the matters of M/s ARM Capital, the income-tax protective assessment making an addition of Rs.3 crores in AY 2016-17 was completed on 22.09.2021. It was also brought to our notice that, similar protective addition(s) qua the notings found in account book(s) were also made in the hands of Shri Gobi. Having regard to these facts, we are reminded of the legal maxim '*res ipsa loquitor*' meaning the thing speaks for itself. In the present context, the actions of the Revenue speak for itself that, they are still searching for the *right person* or *right source* qua the impugned notings and not having found the same, they were shooting arrows in the dark in as much as even they were not sure as to whom did these notings actually pertain to and therefore they taxed the same amount(s) in several hands.



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115. Overall therefore, for the above reasons, we find that none of the parameters as laid down above was met by the AO, which would suggest that, he had in his possession any material or document found from the premises of searched person(s) which related to the assessee [third person] and had a bearing on his total income. We thus answer this question of fact & law in the negative and allow the legal challenge raised by the assessee, and hold that the AO's usurpation of jurisdiction u/s 153C of the Act was invalid, as neither was there any material found in the course of search which related/pertained to the assessee nor was there any incriminating material unearthed having a bearing on the total income of the assessee.

116. Overall therefore, to sum it up, it is seen that the AO had sought to usurp jurisdiction u/s 153C of the Act, against the assessee pursuant to the search action conducted upon Shri CPA, Shri Giri and Shri PLA, by relying on the following documents / material, which in his view, related/pertained/belonged to the assessee and also had a bearing on his total income.

- (i) The account book(s) ID marked ANN/FAY/CPA/B&D/S-1 seized from the premises of Shri CPA;
- (ii) Email correspondences, phone chats, messages between Shri CPA, Shri Giri and Shri PLA;



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(iii) Agreements and invoices between foreign companies associated with Shri CPA and Shri PLA; (iv) Statements of Shri CPA, Shri Giri and Shri PLA

As held by us above, the above referred material / documents cannot be said to contain any information which related to the assessee or would incriminate him in any manner, by applying the test of a prudent person. Further, the statement(s) of these persons have been found to be untrustworthy, self-serving and unreliable, which does not inspire any confidence. Also, the vital link which would show that the purported monies received by the finance firms originated from the coffers of the alleged supplier(s) is absent in the present case. Even there is no evidence or material adduced which would suggest that the assessee was the ultimate beneficiary of the purported monies, whose entries were found in the account book(s). It is also observed that even subsequent to initiation of proceedings u/s 153C of the Act, no relevant material or evidence could be gathered from the independent enquiries made from FT&TR, TNEB, etc. which would have otherwise justified the initial satisfaction drawn by the AO. We also note that apart from the above material, which was relied upon at the time of recording of satisfaction, no new material or evidence has been brought on



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record by the AO to otherwise support the allegations being levelled against the assessee. As already held above, the AO has only prepared flow chart / trail of events, which suffers from factual infirmities. The AO has further relied upon another letter dated 28.12.2018, filed by Shri CPA retracting his retraction and reiterating the averments made in his statement(s) dated 03.04.2017 and 10.04.2017. According to us, the entire conduct of Shri CPA was that of an untrustworthy witness and therefore, it is imprudent to draw any adverse inference on the basis of his bald statement(s). Hence, we find that none of the parameters as laid down above was met by the AO, which would suggest that, he had in his possession any material or document found from the premises of searched person(s) which related to the assessee [third person] and had a bearing on his total income. We thus answer both the question of existence of jurisdictional fact and the mixed question of fact and law, in the negative and allow the legal challenge raised by the assessee. We hold that the AO's usurpation of jurisdiction u/s 153C of the Act was invalid, as neither was there any material found in the course of search which related/pertained to the assessee nor was there any incriminating material unearthed having a bearing on the total income of the assessee.



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117. We now turn our attention to Paras 5, 6 & 7 of the satisfaction note which was recorded by the AO of the assessee on the basis of the material seized from the premises of M/s CEG Group during the search conducted upon them 04.01.2017. According to the AO, two loose sheets ID marked ANN/SAA/KSI/LS/S-1, Pages 48 & 49 was found from the premises of CEG Group whose title was 'Power M'. Though there are no names or specifics or nature of transaction mentioned in these loose sheets, it is observed that, the inference drawn by the AO in the satisfaction note was entirely based on the testimony of one Shri SSU, employee of CEG group, who had stated that the notings on these loose sheets denoted cash which was paid to Shri Gobi, presumably on behalf of the assessee. At the cost of repetition, the relevant portion of the satisfaction, is again reproduced hereunder:-

"5. During the course of search conducted in the case of M/s. Coastal Energy P Ltd and Coastal Energen P Ltd, (M/s. ETA and Buhari Holdings P Ltd. Group) at the residence of Shri. Syed Ameer Ali (an employee of M/s. Coastal Energy P. Ltd.) at No.662/1, 1st Floor, 1st Block, 1st Street, Muthamizh Nagar, Kodungaiyur, Chennai 600118 on 04.01.2017, certain Loose sheets were seized vide Annexure ANN/SAA/KSI/LS/S-1 (Page No.48 & 49), which shows that cash payments have been made to 'Power M' amounting to Rs.41,55,00,000/- during the period from 09.12.2013 to 21.04.2016.

6. Shri. Sivakumar Singaravelu, General Manager (Finance & Accounts), M/s. Coastal Energy Pvt. Ltd. vide sworn statement recorded from him u/s 132(4) of the I.T. Act, 1961 on 07.01.2017 (photo copy furnished to you on 05.03.2018), has admitted that the payment of Rs.41.55 Crores is the cash payment made to political person, Power Minister viz., the then Electricity Minister of Tamilnadu. It is pertinent to note that you were the then Minister of Power, Tamilnadu. He has also admitted that the cash will usually be given to your PA, Shri. Gobi (Gobinath),



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7. These facts have been brought to your notice while recording sworn statement from you on 15.06.2017 and you have denied having received such payments. However, examination of sworn statements of Sh. Sivakumar Singaravelu categorically confirms these entries as cash paid to you through your PA, Shri. Gobi (Gobinath)."

118. The Ld. AR first invited our attention to the contents of these loose sheets which were placed at Pages 46 & 47 of the Paper Book Volume IV. It is seen that, these loose sheets were titled 'Power M'. The Ld. AR showed us that, there were several notings across several dates of purported 'cash paid', which was being alleged to pertain to the assessee. We however observe that, these notings did not contain any name, details of payer or payee or any other specifics, basis which a prudent person could suggest that it related to the assessee. Also, there were no sign or signature or acknowledgment by the assessee, or that, any abbreviation etc. was mentioned which would suggest the notings to be remotely relating to the assessee. There is absolutely no mention in the seized material regarding the nature of the said transactions of cash payments, the purpose of such payments and the precise identity of such transaction. A narration made in a loose sheet by a third person with scanty details cannot be used to fasten tax liability upon the person whose name does not appear at all. In the absence of any corroborative evidence to attribute the entries to such a person, such seized material is liable to be treated as a dumb document, which does not have any evidentiary value in respect of the entries found therein, unless



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corroborative evidence is available which can provide necessary reliable basis for deciphering the nature and character of the said entries.

119. It is by now a well-settled proposition of law that entries appearing in private notings or sheets or diaries maintained by third parties, without supporting evidence or linkage to the assessee, constitute “dumb documents” and cannot be relied upon to fasten tax liability. Unless there is independent, credible, and corroborative evidence linking such entries to the assessee, the same are devoid of evidentiary value. Some of the decisions to this effect are; MM Financiers (P) Ltd Vs. DCIT (2007) 107 TTJ (Chennai) 200, Regency Mahavir Properties Vs ACIT [2018] 169 ITD 35 (ITAT-Mumbai), Mumbai), ACIT Vs. Katrina Rosemary Turcotte [2017] 190 TTJ 681 (ITAT-Mumbai), Mumbai), DCIT Vs. Vipin Aggarwal [2017] 83 taxmann.com 6 (ITAT Chandigarh), S.P Goyal Vs DCIT [2002] 82 ITD 85 (TM) IPAT, T.S Venkatesan Vs ACIT [2000] 74 ITD 298 (Cal) and Monga Metals (P) Ltd Vs ACTT [2000] 67 TTJ 247 (All). No corroborative evidence has been brought on record to demonstrate actual flow of money. The assessment order also does not refer to any independent material supporting the alleged payments. Hence, it was of critical importance for the AO to bring some tangible evidence on record to corroborate the entries indicating payments in the seized material found with a third party with specific reference to the fact regarding actual transfer of money from the said third party to the recipient named in the



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said entries in the seized material. For this, we gainfully rely on the decision rendered by the ITAT, Mumbai in the case of **Riveria Properties Private Limited Vs ITO in ITA No.250/MUM/2013** where it was held that, the AO is required to bring further evidence on record to show that, the money was actually exchanged between the parties in a case, where there is no other evidence on record to prove that on-money was paid, except the loose sheet found in the premise of a third party and admission made by the third party. The relevant part of the said decision is reproduced as under:

"In the present case on hand, except loose sheet found in the premises of third party and admission made by the third party in their assessment proceedings, there is no other evidence on record to prove that on money is paid. The assessing officer, without brought on record any evidence to prove that on money is exchanged between the parties, merely harping upon the loose sheet and the third party admission, which cannot be considered as conclusive evidence against the assessee to bring on money to tax as undisclosed income. The AO is required to bring further evidence on record to show that actual on money is exchanged between the parties, but literally failed to do so. The A.O. did not conduct any independent enquiry relating to the value of the property instead, merely relied upon the statement given by the purchasers of the property, which is not correct. Further, there is no proof of origin and destination of on money. The A.O failed to prove the source of the purchasers as to how the money was arranged and also failed to prove the deployment of unaccounted money by the seller by any form of evidence. Under these circumstances, based on paper jottings as conclusive evidence on money cannot be brought to tax as income from undisclosed sources."

120. We also find merit in the contention of the Ld. AR for the assessee that, the impugned satisfaction was made out on the basis of '*loose sheets*', which does not come under the ambit and scope of '*books of*



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entry' or as '*evidence*' under the Indian Evidence Act, Act 1872 and therefore is not admissible as evidence. For this, we have carefully examined the law declared by the Hon'ble Apex Court with regard to acceptance of loose sheets in n the case of **V.C. Shukla [1998] 3 SCC 410, 410** wherein at paragraphs 16 to 18 of the judgment, it was observed as under:

"16. To appreciate the contentions raised before us by the learned counsel for the parties it will be necessary at this stage to refer to the material provisions of the Act. Section 3 declares that a fact is relevant to another when it is connected with the other in any of the ways referred to in the provisions of the Act relating to the relevancy of facts; and those provisions are to be found in Section 6 to 55 appearing in Chapter II. Section 5, with which Chapter II opens, expressly provides that evidence may be given in any suit or proceeding of the existence or non-existence existence of every fact in issue and the facts declared relevant in the aforesaid section, and of no others. Section 34 of the Act reads as under:- "34. Entries in books of account when relevant - Entries in book of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire but such statements shall not alone be sufficient evidence to charge any person with liability."

17. From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed.



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18. "Book" ordinarily means a collection of sheets of paper or other material, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as 'book' for they can be easily detached and replaced. In dealing with the work 'book' appearing in Section 34 in Mukundram vs. Dayaram [AIR 1914 Nagpur 44], a decision on which both sides have placed reliance, the Court observed:-

" In its ordinary sense it signifies a collection of sheets of paper bound together in a manner which cannot be disturbed or altered except by tearing apart. The binding is of a kind which is not intended to the moveable in the sense of being undone and put together again. A collection of papers in a portfolio, or clip, or strung together on a piece of twine which is intended to be untied at will, would not, in ordinary English, be called a book...I think the term "book" in S. 34 aforesaid may properly' be taken to signify, ordinarily, a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used collectively in one volume. It is easier however to say what is not a book for the the purposes of S. 34, and I have no hesitation in holding that unbound sheets of paper in whatever quantity, though filled up with one continuous account, are not a book of account within the purview of S.34."

121. The aforesaid observations are noted and applying the above tests, it must be held that the loose sheets ID marked ANN/SAA/KSI/LS/S-1, Pages 48 & 49 cannot be regarded as '*books of accounts*' or '*documents*' seized in course of search. We also gainfully refer to the decision of the Hon'ble Supreme Court in the case of **Common Cause (A Registered Society) Vs Union of India (394 ITR 220)** wherein at paragraphs 278 to 282 of the judgment, it has been observed as under:

"278. With respect to the kind of materials which have been placed on record, this Court in V.C. Shukla case has dealt with the matter though at the stage of discharge when investigation had been completed by same is relevant for the purpose of decision of this case also. This court has considered the entries in Jain Hawala Diaries, note books and file containing loose sheets of papers not in the form of "books of accounts"



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and has held that such entries in loose papers/sheets are irrelevant and not admissible under section 34 of the Evidence Act, and that only where the entries are made in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible.

279. It has further been laid down in V.C. Shukla case as to value of entries in the books of account, that such statements shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held that even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

280. This court has further laid down in V.C. Shukla that meaning of account book would be spiral note book/pad but not loose sheets. The following extract being relevant is quoted herein below: (SCC pp.423-pp.423 27, paras 14 and 20) "14. In setting aside the order of the trial court, the High Court accepted the contention of the respondents that the documents were not admissible in evidence under section 34 with the following words: "70.an account presupposes the existence of two persons such as a seller and a purchaser, creditor and debtor. Admittedly, the alleged diaries in the present case are not records of the entries arising out of a contract. They do not contain the debts and credits. They can at the most be described as a memorandum kept by a person for his own benefit which will enable him to look into the same whenever the need arise to do for his future purpose. Admittedly the said diaries were not being maintained on day-to day to day basis in he course of business. There is no mention of the dates on which the alleged payment were made. In fact the entries there in are on monthly basis. Even the names of the persons whom the alleged payments were made do not find a mention in full. they have been shown in abbreviated form. Only certain 'letters' have been written against their names which are within the knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to." 20. Mr. Sibal, the learned counsel for the Jains, did not dispute that the spiral note books and the small pads are 'books' within the meaning of Section 34. He, however, strongly disputed the admissibility of those books in evidence under the aforesaid section on the ground that they were neither books of account nor they were regularly kept in the course of business. he submitted that at best it could be said that those books were memoranda kept by a person for his own benefit. According to Mr. Sibal, in business parlance 'account' means a formal statement of money transactions between parties arising out of contractual or fiduciary relationship. Since the books in question did not reflect any such relationship and, on the contrary, only contained entries of monies received from one set of persons and payment thereof to another set of persons it could not be



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said, by any stretch of imagination that they were books of account, argued Mr. Sibal. He next contended that even if it was assumed for argument's sake that the above books were books of account relating to a business still they would not be admissible under section 34 as they were not regularly kept. It was urged by him that the words 'regularly kept' mean that the entries in the books were contemporaneously made at the time the transactions took place but a cursory glance of the books would show that the entries were made therein long after the purported transactions took place. In support of his contentions he also relied upon the dictionary meanings of the words 'account' and 'regularly kept'.

281. With respect to evidentiary value of regular account book, this Court has laid down in V.C. Shukla, thus: (SCC p.433, para 37) "37. In Beni v. Bisan Dayal [AIR 1925 Nagpur 445] it was observed that entries in books of accounts 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. In Hira Lal v. Ram Rakha [A. I. R. 1953 Pepsu 113] the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been prove, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business re relevant whenever they refer to a matter in which the court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to 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 the were in accordance with facts.

282. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court."

122. At this juncture, we rely on the guiding principles laid down by the Hon'ble Karnataka High Court in the case of **DCIT vs. Sunil Kumar**



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Sharma (159 taxmann.com 179) which was also seized with the question that as to whether '*loose sheets*' under the Indian Evidence Act, 1872 can be relied upon to usurp jurisdiction u/s 153C of the Act, in absence of any independent corroboration. The Hon'ble Karnataka High Court held that the '*loose sheets*' does not constitute material evidence in relation to a third person and therefore set aside the notices issued u/s 153C of the Act, holding it to be void. The relevant findings are as follows:

"22. The entire allegation is made out on the basis of loose sheets of documents, which does not come under the ambit and scope of 'books of entry' or as 'evidence' under the Indian Evidence Act.

23. In view of the aforementioned aspects, we have carefully examined the law declared by the Hon'ble Apex Court with regard to acceptance of diaries/loose sheets by the respondent-Revenue. In the case of V.C. Shukla (supra), at paragraphs 16 to 18 of the judgment, it is observed thus:

....

24. The aforesaid approach is in accordance with good reasoning and we are in full agreement with it. Applying the above tests, it must be held that the two spiral note books (MR 68/91 and 71/91) and the two spiral pads (MR 69/91 and MR 70/91) are "books" within the meaning of Section 34, but not the loose sheets of papers contained in the two files (MR 72/91 and MR 73/91).

25. The Hon'ble Supreme Court in the case of Common Cause (supra) at paragraphs 278 to 282 of the judgment, has observed thus:

....

26. It is established in law by the Hon'ble Apex Court that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. Following the law declared by the Hon'ble Apex Court, we are of the view that the action taken by the respondent/Revenue against the Assessee based on the material contained in the diaries/loose sheets, are contrary to the law declared by the Hon'ble Apex Court. In that view of the matter,



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impugned notices issued under section 153C of the Act, based on the loose sheets/diaries are contrary to law, which require to be set aside in these writ appeals, as the same are void and illegal."

123. From the above, it is established in law by the Hon'ble Apex Court that a sheet of paper containing jottings of amount(s) across several dates, not shown to form part of the books of accounts regularly maintained by the searched assessee or his business entities, cannot be said to constitute material evidence. Following the law declared by the Hon'ble Court (supra), we are of the considered view that the action taken by the AO against the assessee based on the material contained in the impugned '*loose sheets*' ID marked ANN/SAA/KSI/LS/S-1, Pages 48 & 49 are contrary to the law declared by the Hon'ble Apex Court (supra). In that view of the matter, the impugned satisfaction note/notice issued u/s.153C of the Act, based on the loose-sheets are per-se contrary to law, which action of the AO can't be countenanced and hold that the "loose-sheets" [Page No.48-49 supra] can't be regarded as '*books of accounts*' or any other '*document*' to empower the AO of the assessee to usurp jurisdiction u/s 153C of the Act.

124. In so far as the testimony of Shri SSU is concerned, though Shri SSU had initially implicated the assessee as the recipient of alleged 'cash paid' found on these loose sheets, but we find that no proof or evidence was given by him. It is not in dispute that, the impugned 'loose sheets'



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were found from the possession of one Shri Syed Ameer Ali and the maker of these entries was one, Shri Ahmed Buhari. According to us therefore, when the person(s) who prepared these loose sheets and from whose possession they were found, had not implicated the assessee, the AO's action of making additions, without any corroborative material, using only the bald testimony of an employee, Shri SSU to infer the contents of these notings was arbitrary and unjustified.

125. It was further brought to our notice that, the assessee had been confronted with this statement of Shri SSU and he had denied having received any payments. Accordingly, the Revenue is found to have afforded the assessee an opportunity to cross-examine Shri SSU and the result of the cross-examination, is noted to be as under:-

"Q.2 Did you handle Cash Transaction also?

Ans. No I did not handle the cash transactions other than those recorded in the regular books of accounts of the company.

Q.3 You have stated in your sworn statement dated 07-01-2017 in answer to Q.No.35 that you have handed over some cash to one Shri. Gobi. Do you have any documentary evidence to prove the statement.

Ans. I do not handle the cash transactions. The narration given by the management was only recorded. I have not given any cash or handled any cash and paid to any person. I do not have any documentary evidence for the same.

Q.No.4 With regard to the Loose Sheet Nos.48 & 49 seized on 04.01.2017 as per Annexure ANN/SAA/KSI/LS/S-1 from the residence of Shri. Syed Ameer Ali (employee of M/s. Coastal Energy Pvt. Ltd.), in answer to Q.No.35 of the sworn statement recorded from you u/s 132(4) of the Income Tax Act, 1961 on 07.01.2017, you have stated that a sum of Rs.41.70 crores is the cash received from Coal & Oil LLC,



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Dubai (Rs.17 Cr.) and M/s. Coastal Energen Pvt. Ltd. (24.7 Cr.) and that Rs.41.55 Cr. is the cash payment made to 'Power M'. You have also stated that 'Power M' is the then Electricity Minister of Tamilnadu. You have further stated that the cash will be usually given to his PA, Shri. Gobi. You have also admitted that a sum of Rs.50,00,000/- (paid on 21.04.2016) was given in Delhi through money transfer channel using Isthikar. Please clarify, if you were not handling cash transactions, how did you state in answer to Q.No.35 of statement recorded from you on Oath on 07.01.2017 that cash was usually given to the Electricity Minister's PA Shri. Gobi' Also explain in detail, for what purpose cash of Rs.41.70 Cr. was received and why cash of Rs.41.55 Cr. was paid to the Electricity Minister. Also explain what is Isthikar.

Ans. I am not aware about these transactions as they are not related to M/s. Coastal Energy (P) Ltd. where I used to work. These questions have to be asked to Mr. Ahmed Buhari only. I am not aware about these transactions, neither did I handle this cash, so I took clarification on the same from Mr. Ahmed Buhari and Mr Syed Ameer Ali and have reproduced what has been conveyed by them to me. I am not able to recollect what Isthikar means."

126. From the above, we find that, Shri SSU in his cross examination had denied having handled any cash transactions. When enquired as to whether he had handed over any cash to Gobi, as averred in his original testimony dated 07.01.2017, he is found to have recanted and denied having paid any cash to such person. Subsequent to this successful cross-examination by the assessee, we find that, the Revenue had cross-examined Shri SSU against his original statement dated 07.01.2017. Having perused the same, it is seen that, Shri SSU had withstood the cross-examination and affirmed his retraction to the original statement. The relevant portion of this cross examination is also set out below:-

"Q.No.10. I am showing you Q.No.22 of the Sworn statement recorded from you u/s 132(4) of the Income Tax Act, 1961 on 07.01.2017 by the Investigation Wing, Chennai and your answer to the question, wherein you have stated as follows:



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"Q.No.22: During the course of search and seizure operations, at the residence of Shri. Ameer Ali at No.662/1, 1st Floor, 1st Block, 1st Street, Muthamizh Nagar. Chennai 600 118 on 04.01.2017, a bunch of loose sheets were found and seized as ANN/SAA/KSI/LS/S-1. I am showing the page No.1 to 133 of the above annexure. Please go through the same and explain the contents.

Ans: I have gone through the pages from 1 to 133 of the materials seized from the residence of Shri. Ameer Ali. I confirm that it is a parallel cash book maintained by Shri Ameer Ali outside the regular books of accounts on my instructions. I reiterate that all the transactions detailed in the above pages are done outside the regular books of accounts. They are explained below

From your statement, it is clear that the entries in the seized Loose sheets including Loose Sheets Nos. 48 & 49 of ANN/SAA/KSI/LS/S-1 on 04.01.2017 have been made only on your instructions and it cannot be inferred or accepted that you were not aware of the transactions reflected in Lie seized loose sheets. Further, in your statement recorded on 07.01.2017, you have explained in detail all the transactions figuring in the seized loose sheets from page 1 to page 133 which includes Loose Sheet Nos.48 & 49. Please explain the contradiction in the sworn statement given by you on 07.01.2017 and the present sworn statement.

Ans. As mentioned earlier in my statement, I have never been responsible for maintaining books of accounts outside of the regular books of accounts. These loose sheets seem to have been maintained on instructions from Mr. Ahmed Bhari as all transactions pertaining to the sam, are not the regular genuine book transactions of the company. As I understand, these seem to be personal transactions of Mr. Ahmed Buhari.

I was under lot of mental strain and stress and was pressurized into accepting the facts put before me. The transactions which I explained were based on the explanations given by Mr. Ahmed Buhari to me.

Q.No.15. As it is seen that you are contradicting the statement given by you earlier on 07.01.2017, please clarify, how did you clearly depose in that cash was usually given to the Electricity Minister's PA Shri. Gobi and a answer to Q.No.35 of statement recorded from you on Oath on 07.01.2017 sum of Rs. 50,00,000/- paid on 21.04.2016) was given in Delhi through money transfer channel using Isthikar. Please also explain as to what basis or proof are in possession of with regard to the



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contradiction in your present statement from the statement given earlier by you.

Ans. As mentioned earlier. I was not handling the cash and hence I was not privy to the transaction. Hence, no proof is available with me. The information given in the earlier statement on 07.01.2017 was the information provided to me by Mr. Ahmed Buhari

Q.No. 16. After a lapse of more than 2 and 4 years after deposing in the sworn statement recorded from you dated 07.01.2017, you have denied knowledge of the transactions reflected in Loose Sheet Nos. 48 & 49 on the Cash payments made to Power M. Considering that considerable time has elapsed since your statement made under oath on 07.01.2017, your present statement retracting or denying knowledge of the cash transactions at this point in time can only be construed as an afterthought. What do you have to say on this?

Ans. The statement was recorded in January 2017 and till date I have not asked for the copies of the statement which I made. Also, due to assessment in the case of Shri. Natham R. Viswanathan, I was called upon as evidence which has resulted in me giving a fresh statement after recollecting the events which had earlier taken place and hence I wish to state that my statement is not an afterthought."

127. It is thus noted that, Shri SSU had retracted his original testimony upon cross examination by the assessee, and he had also withstood the cross-examination of the Revenue. Shri SSU had made it abundantly clear that, he had not paid any cash to the assessee or Shri Gobi. As a consequence, we are of the considered view that, the original testimony of Shri SSU had lost its evidentiary value, and thus the AO was unjustified in relying upon the same to justify the incomprehensible notings found on loose sheets ID marked ANN/SAA/KSI/LS/S-1, Pages 48 & 49 to be pertaining the assessee, in his satisfaction recorded u/s 153C of the Act.

128. It is further seen that the AO was also unable to explain as to why CEG Group was making the impugned payments to the assessee. It is not



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in dispute that CEG Group did not have any transactions with TNEB in as much as it did not supply any coal during this period. This contemporaneous fact is discernible from the details furnished by the Chairman of TANGEDCO, which is found reproduced at Pages 34 to 39 of the assessment order. The Revenue has been unable to establish the fundamental principle of reciprocity. We find that, no quid pro quo has been shown as to why the impugned alleged payment was made by CEG Group and what did they allegedly receive in consideration from the assessee. In absence of these corroborative details, coupled with the retraction of Shri SSU, we hold that the satisfaction recorded by the AO [Paras 5 to 7 of his satisfaction note] by referring to the notings found in 'loose sheets' ID marked ANN/SAA/KSI/LS/S-1, Pages 48 & 49 was based on guesswork and conjectures. There is nothing shown to us to establish the veracity of the same with corroborative evidence or by bringing cogent material on record to back the same. We find that the Revenue has failed to satisfy the condition precedent set out in Section 153C for recording this satisfaction and thus we hold it to be bad in law.

129. Having regard to our above findings, the satisfaction note(s) drawn up by the AO for AYs 2014-15 to 2016-17 stands rendered bad in law and consequently the usurpation of jurisdiction u/s 153C of the Act is held to be null and void. In so far as AY 2017-18 is concerned, as noted earlier, the satisfaction note for the relevant year contained separate reference to



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certain material, which was seized in the course of search conducted at third party, Shri PJR, which according to the AO, had bearing on the assessee's total income for AY 2017-18. According to the satisfaction note, the AO was of the view that the seized material contained information of unaccounted cash expenses of Rs.28,55,86,500/- incurred by the assessee. It was brought to our notice that, this satisfaction of the AO emanated from the satisfaction drawn by the AO of Shri PJR before transmitting the relevant seized material to the AO of the assessee. Having gone through the satisfaction of the AO of Shri PJR, it is seen that, the following seized material was inferred to be possibly pertaining to the assessee.

- Annexure ANN/RB/PJ/LS/5-2, Page Nos. 12 to 118 – These are loose sheets dated 10.05.2016 which inter-alia include name of polling booths, details of booth-wise voters etc., relating to State Assembly Election.
- Annexure ANN/RB/PJ/LS/S-1 :- This is noted to be a pocket diary in which details of main places of Athoor constituency, number of voters available in the said places, name of persons with mobile numbers, in-charge of each polling booth have been noted.
- ANN/RB/PJ/LS/S-2, Page 11 & 8 to 10 – This is found to be an unsigned affidavit to be furnished by election candidate before the Returning Officer for election to Tamil Nadu Legislative Assembly from Natham prepared in the name of the assessee.
- Loose Sheet titled Annexure ANN/RB/PJ/LS/S-1 – These contains entries as 'RVN Varavu', 'RECEIPTS RVN 35' which is suspected to denote payment of Rs.35,00,000/- by the assessee.
- Loose Sheet, Page No. 10 of Annexure- ANN/RB/PJ/LS/S-1 – This page contains details of panjayath polling booth numbers, under Reddiyar Chathiram along with a column for name & signatures



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130. Bare reading of the satisfaction drawn by the AO of Shri PJR reveals that, the allegation of assessee having incurred cash expenses is found to be based primarily on suspicion and guess work. We observe that, the pocket diaries of Shri PJR contained the details of polling booths and voters etc. of several constituencies in the State inter alia including Athoor wherefrom the assessee had contested the elections. Separately, there were certain loose sheets which contained rough jottings of several numbers and calculations, which according to AO, were estimations of the number of voters in the constituencies and the expected amount(s) to be paid to them. It is seen that, in none of these diaries or loose sheets was there any mention of the assessee. It is also not a case that, the assessee's name featured anywhere in these diaries or that he had signed or acknowledged any of these loose sheets or pages in the pocket diaries. It is seen that, the AO had found two loose sheets where it was scribbled 'RVN Varavu', 'RECEIPTS RVN 35'. Also, an unsigned affidavit to be furnished by an election candidate to the returning officer in the name of the assessee was found. The AO therefore linked the assessee to the rough jottings of several numbers and calculations made by Shri PJR in his pocket diaries and suspected that the notings must pertain to the assessee, who would have possibly paid cash through Shri PJR to the voters during elections. The satisfaction recorded by the AO of Shri PJR shows that, only because the assessee had contested elections during the



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year, led him to believe that, *'there is every possibility that the money spent for election belongs to Shri Natham R. Viswanathan'*. We thus observe that, the tone and tenor of the satisfaction recorded by the AO of Shri PJR suggested surmises, instead of any tangible or corroborative material.

131. We first proceed to examine the contents of the relevant pages of the two pocket diaries(s) seized from the premises of Shri PJR viz., Ann/RB/PJ/ LS/ S-2, Pages 12-118 & Ann/RB/PJ/ LS/S-1, Pages 11-39. Having perused these diaries, which is found placed at Pages 48 to 97 of Paper Book Vol IV, we find that these were rough jottings & scribbings of several numbers, calculations, estimations etc. For instance, some of the pages contained the names of polling booths, booth wise number of voters etc., and there were separate columns for in charge/signature etc. Evidently no monetary or financial transaction was discernible from these pages. The Ld. AR has rightly pointed out that, these details were a matter of fact which was easily accessible in public domain. According to Ld. AR, it is common for older persons to know who are interested in the election process, to keenly gather details of various kinds for the purpose of monitoring elections. He thus submitted that, these data was apparently general in nature and there was nothing incriminating contained therein. Moreover, we observe that, several of these pages only



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contained rough scribblings having no discernible meaning. For the ease of understanding, some of these pages are extracted below:-

27/

2,54,000 -
~~1,00,000~~
1,54,000

285386500 -

28,57,865
28,68,355

3,00,00,000 -
2,41,71,000 -
12,38,90,500 -
9,00,00,000 -
2,00,00,000 -
0.1754
28.50
17,54,000

2,02,000

57,51,000 -
2,02,000

35,49,000

28,55,86,500 -
28,53,35,500

Balance 2,51,000 -
2,02,000 -
19,000 -

28,53,755

52 (114) - 25588
115 (115) - 25588
194 (114) 206
227 (114) 249

8-14
57219

Part-1	Part-2	Part-3	Part-4
(1) - (26)	26	16525	
(27) - (52)	26	20005	
(53) - (114)	62		35588
(115) - (152)	37		21631
(153) - (193)	41		24537
(194) - (226)	33	MANY	18194
(227) - (249)	23		13702
(250) - (271)	22		11922
(272) - (296)	25		16893
(297) - (310)	14		7813
(311) - (316)	6		3254
(127)	1	627	
TOTAL	316	37157	153234

95 - 114

Summation - 207-316
Balance - 115 to 127
SVA - 128 to 152

153-193 = 24537
194-226 = 18194
227-249 = 13702
250-271 = 11922
272-296 = 16893
297-310 = 7813
311-316 = 3254

115-127 = 15214
128-152 = 5214

153-193 = 24537
227-249 = 13702
272-296 = 16893
297-310 = 7813
311-316 = 3254

115-127 = 15214
128-152 = 5214

153-193 = 24537
227-249 = 13702
272-296 = 16893
297-310 = 7813
311-316 = 3254

115-127 = 15214
128-152 = 5214

153-193 = 24537
227-249 = 13702
272-296 = 16893
297-310 = 7813
311-316 = 3254



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132. These rough notings do not contain the name of the assessee, nor do they mention any identifiable particulars connecting the noting to the assessee. It is not the case of the Revenue that the handwriting appearing on the seized loose sheets belongs to the assessee. According to us therefore, the contents of the above seized material was ex-facie dumb in nature and the purported linkage sought to be made by the Revenue to the assessee bordered on absurdity. The Ld. AR has also brought to our notice the statement given by the searched person [Shri PJR] u/s 132(4) of the Act on 07.01.2017, when he was confronted with these pocket diaries. It is observed that, Shri PJR had explicitly stated that, these were mere estimates and assumptive calculations. It is seen that, Shri PJR was again interrogated on 19.07.2017 & 20.11.2018 u/s 131 of the Act. We observe that, Shri PJR had at all times dismissed these rough notings as estimations done for his own academic interests. He had also clearly stated that, they were not notings of actual cash payments and that no cash was paid or received through him. The relevant excerpts from his statement(s) are reproduced hereunder:-

"Statement dated 17.07.2017

Q8. As per Der your reply to above question regarding page no. 5, you had stated that that page contains details of contract work. But as per your reply regarding pages 8-39 and the Number mentioned in that pages, it is understood that you answer is not revealing the true facts. I am giving you one more opportunity to explain the same.

Ans. Page No. 5 explains the assumption of expenditure which may occur in constituency assembly election in Dindigul District. During election period, I read the newspaper that the major political parties are



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paid Rs. 250/- per voters to get the vote in their favours. Based on that, in the Page No 32 to 37 I had written the total no of voters in constituency wise and estimation of payments to voters. I had written the above details in the page no. 5 and cumulatively totaled estimated expenditures around 28.5 crores.

Q10. Now I am showing you the page no.12 of folder containing loose annexure sheets serially numbered (1) to (39) seized vide Ann/RB/PJ/LS/S No.3 dated 10/05/2016. Please go through this and offer your explanation.

Ans. This page contains the details of same estimated expenditures as mentioned in the page no. 32 to 37 and there is small revision in the estimation which is written on this page in front and back.

Q11. Based on your reply to question no. 8 to 11, It is crystal clear that you had made the payments to the voters to get votes in the favour of your related person because your projection were revised and made final in the page no. 12 which means the above stated figures are not projection whereas the actual payments paid by you or your family friend Shri Natham R Vishvanathan. Please state why not the payment of Rs. 28.5 crores may not be treated as your/ your family friend Shri Natham R Vishvanathan's unaccounted income.

Ans. I am reconfirming the reply to question no. 8 to 11 that it is only projection of expenditures. Actual expenditures have not made.

Statement dated 19.07.2017

Q.17. On 17-07-2017 you had given a statement. In continuation of that, I am showing you loose sheets serially numbered 1 to 39 seized vide Annexure ANN/RB/PJ/LS/S Dated 10-5-2016. Please go through the page No.5 and offer your explanation.

Ans. As I already stated these are the estimation figures in the case of constituency assembly election in Dindigul District.

Q.19. In the same page (No.5), seized vide Annexure ANN/RB/PJ/LS/S Dated 10-5-2016, you have deducted 123890500 from the total of 285586500 and further you have deducted 34191000 and further deducted 4000000 and finally arrived 123505000, which means you have made the payments and deducted, otherwise without transaction or movement of cash there is no possibility to deduct the amount from the total if it is a mere estimation. Please offer your explanation.

Ans. First of all I deny the payment made by me. Based on the newspaper projection, initially I estimated for total number of voters would be a final total ie. Rs.28,5586,500/-, but after doing all the permutation and combination, I finally arrived the figure around Rs. 12 crore. This would be the actual money distribution to be the voter. This is only the assumption.



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Q.22. Please explain about the notings at Page No.32, seized vide Annexure ANN/RB/PJ/LS/S Dated 10-5-2016.

Ans: Natham means Natham constituency. 180930 denotes the total number of voters in the constituency. 4,52,32,500 denotes if the political parties paid to the voters @Rs.250/- per head, the total amount would be Rs.4,52,32,500/-. I do not remember the person owning the mobile no. noted in the sheet.

133. It is a matter of ordinary understanding that, the contents of any seized material can be explained only by the maker of these documents or the person from whose possession it is found. On a stand-alone basis, the contents of the seized material is found to be vague and dumb and no cogent meaning can be discerned on a plain reading of the same. More particularly, these notings/jottings, considered on stand-alone basis, does not in any manner suggest any cash payments by the assessee through the searched person [Shri PJR]. According to us therefore, ordinarily, it was for the searched person to explain the nature of these notings. It is to be kept in mind that, the presumption u/s 132(4A) and 292C qua the ownership of these entries is against the searched person. However, if the searched person intends to rebut this presumption and suggests that they pertained to someone else, then he is required to bring on record some corroborative and tangible evidence to prove the same. In the present case however, we find that, the searched person [Shri PJR] has nowhere suggested or implicated the assessee. Rather, he is found to have explained that the notings were made by him for his own personal consumption and that they were estimations and assumptions drawn in rough. We find that, though the Revenue interrogated him on several



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occasions but the searched person [Shri PJR] did not reveal or suggest anything which could even remotely link the rough scribblings to the assessee.

134. In our considered view, the assumption of the AO that, the loose notings of 'RVN' suggested the assessee was nothing but a wild guess without any basis. The Ld. AR brought to our notice that, the searched person [Shri PJR] had confirmed that the scribblings of 'RVN Varavu' & 'RECEIPTS RVN 35' did not relate or pertain to the assessee. Indeed, the AO is entitled to interpret notings in a plausible manner, but that cannot substitute the discovery of fact to implicate any 'other person', other than the person searched. We thus agree with the Ld. AR that, it was incumbent upon the AO to first establish the identity of the person qua such notings with proof of linkage, in order to assume jurisdiction u/s 153C of the Act. It is seen that, though the impugned satisfaction was recorded almost two years after the search was carried out in Shri PJR, but we find that, the AO was unable to bring on record any corroborative evidence to support his guess-work.

135. In so far as the purported unsigned affidavit seized vide ID mark ANN/RB/PJ/LS/S-2, Page 11 & 8 to 10 is concerned, we agree with the Ld. AR that, this document had no evidentiary value. Firstly, there was no signature or acknowledgment of the assessee and therefore it cannot be



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assumed to pertain to him, secondly, the contemporaneous fact is that, the assessee never contested election from Natham Constituency that year to which the affidavit related to, and therefore evidently it could not have any relation to the assessee. Most importantly, this unsigned affidavit on stand-alone basis had no significance or relevance in the context of the present case, as no prudent person could have possibly linked the same to the rough jottings found in pocket diaries and treat it as a sufficient linkage that the notings related to the person named in this unsigned affidavit.

136. Overall, according to us, this purported linkage drawn from these two scribbling of 'RVN Varavu' & 'RECEIPTS RVN 35' and the unsigned affidavit constitutes a non sequitur, resting upon a flawed premise that attempts to conflate unconnected and substantively different factual matrices. The alleged inferences sought to be drawn is found to be speculative, remote, and based on assumptions rather than demonstrable proof, rendering the resulting conclusion conjectural and without foundation in law or logic. In our view therefore, any satisfaction predicated on this tenuous and inappropriate comparison must be disregarded for lack of essential evidentiary value and relevance.

137. Hence, in our considered view, when the seized material considered on stand-alone basis does not suggest that it relates to the assessee and,



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even the statement of searched person from whose possession it was found, does not implicate the assessee, the AO's satisfaction qua these notings against the assessee, is found to be nothing but a fanciful notion sans any supporting material or evidence and is thus held to be bad in law.

138. Overall therefore, for the above reasons, we allow the legal issue raised by the assessee, and hold that the action of AO to invoke section 153C of the Act was without jurisdiction as neither was there any material found in the course of search which related/pertained to the assessee nor was there any incriminating material unearthed having a bearing on the total income of the assessee. Therefore, the impugned action of AO to issue notice u/s. 153C of the Act is null in the eyes of law and therefore ab-initio void and so the assessment order impugned before us is quashed.

139. Before parting, we would like to observe that, in order to justify the addition(s) of Rs.547 crores in the hands of the assessee, other than the material discussed above, the AO has brought in only two pieces of material viz., (i) reply from TANGENCO providing the details/rates at which coal was supplied by several parties and (ii) letter dated 28.12.2018 filed by Shri CPA, retracting the retracted-statement dated 09.05.2017 and thereby took a somersault of the position taken in the sworn affidavit. According to Ld AR, either Shri CPA's Statement given



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under section 132(4) at the time of search corroborated by sworn affidavit should be correct or his statement given accusing assessee given after an year of search should be correct, but, both cannot be true. Be that as it may, since we are not inclined to examine the merits of the addition(s) since we have already allowed the legal issue above and have already held the usurpation of jurisdiction u/s 153C of the Act to be invalid for failure to satisfy the condition precedent laid down therein and quashed the assessment orders impugned before us, the grounds agitated by both sides against the merits of the addition(s) have been rendered academic in nature.

140. Our above decision rendered in ITA No.1324/Chny/2025 for AY 2017-18 shall apply *mutatis mutandis* to the other appeals in ITA Nos.1321 to 1323, 1556 & 1597/Chny/2025 for AYs 2014-15 to 2016-17. Accordingly the legal ground raised in these appeals are allowed and the assessment order(s) are held to be vitiated in law due to invalid usurpation of jurisdiction by the AO u/s 153C of the Act.

141. As we have already held the usurpation of jurisdiction u/s 153C of the Act to be invalid for failure to satisfy the condition precedent laid down therein and quashed the notice issued u/s 153C of the Act against the assessee, the assessment orders are held to be non-est in the eyes of law, the grounds agitated by both sides against the merits of the



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addition(s) have been rendered academic in nature. Before parting, it may be clarified that, we have not looked into the merits of issues emanating from the assessment order(s), and therefore the challenge raised on merits as well as other legal issues are left open.

142. In the result, all appeals filed by the assessee are allowed and the appeals of the Revenue are dismissed.

Order pronounced on the 22nd day of January, 2026, in Chennai.

Sd/-
(एस. आर. रघुनाथा)
(S.R.RAGHUNATHA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 22nd January, 2026.
TLN

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF