आयकर अपीलीय अधिकरण,'सी'न्यायपीठ,चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**'C' BENCH, CHENNAI**

श्री वी दुर्गा राव,न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./**ITA Nos.: 895, 896, 897, 898, 899, 900, 901, 902, 903, 904 & 905/Chny/2022**

निर्धारणवर्ष / Assessment Years: 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 & 2019-20

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| Deputy Commissioner of Income Tax, Central Circle -2(1), Chennai – 600 034. | v. | Shri. T.S. Kumarasamy, Prop. Christy Friedgram Industry, A2 & A3, SIDCO Industrial Estates, Andipalayam, Namakkal, Tiruchengode – 637 214 **[PAN: ADOPK-5292-P]** |

आयकरअपीलसं./**ITA Nos.: 872, 873, 874, 875, 876, 877, 878 & 879/Chny/2022**

निर्धारणवर्ष / Assessment Years: 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 & 2019-20

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| Shri. T.S. Kumarasamy, Prop. Christy Friedgram Industry, A2 & A3, SIDCO Industrial Estates, Andipalayam, Namakkal, Tiruchengode – 637 214 **[PAN: ADOPK-5292-P]** | v. | Deputy Commissioner of Income Tax, Central Circle -2(1), Chennai – 600 034. |

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

Assessee by : Shri. D. Anand, Advocate &
Mr. R. Gopalakrishnan, Advocate &
Mr. V R Suresh, FCA

Department by : Shri. M. Rajan, CIT

सुनवाई की तारीख/Date of Hearing : 10.04.2023
घोषणा की तारीख/Date of Pronouncement : 07.07.2023

## आदेश /O R D E R

**PER BENCH:**

This bunch of 19 cross appeals filed by the Revenue and, as well as the assessee are directed against common order passed by the ld. Commissioner of income tax (Appeals)-19, Chennai, dated 03.09.2022 and pertains to Asst. Year 2009-10 to 2019-20. Since, facts are identical and issues are common, for the sake of convenience, these cross appeals filed by the revenue and the assessee are being heard and disposed off, by this consolidated order.

2. The assessee has, more or less raised common grounds of appeal for Asst. Year 2012-13 to 2019-20. Therefore, for the sake of brevity, grounds of appeal filed in ITA No. 872/Chny/2022 for the Asst. Year 2012-13 are reproduced as under:

*"1. The order of the learned CIT(A) in so far as it is against the Appellant is contrary to law, erroneous and unsustainable on the facts and in the circumstances of the case.*

*2. The learned CIT(A) is erred in not appreciating the warrant of authorization issued against the Appellant as the same is bad in law thereby the assessment order passed u/s 153A of Income Tax Act, 1961 is required to be quashed as initiated on any and each of the following grounds;*

*a. the joint warrant of authorization has been issued without reason to believe for issuance of such warrant of authorization*

*b. the joint warrant of authorization does not conform to the requirements of clauses (b) and (c) of section 132(1) though the said clauses were invoked while issuing the warrant.*

*c. Authorizing more than one official for issuing a warrant of authorization is against law.*

*d. Authorizing same officials for more than one authorization at the same time for search and seizure proceedings at different premises is against law and amounts to non application of mind.*

*e. Issuing the warrant of authorization in the name of TS Kumarasamy / Nalinasundari, is non application of mind and bad in law. Thereby the assessment order required to be quashed.*

*3. On the facts and in the circumstances of the case, the learned CIT(A) erred in dismissing the contentions of the appellant with regard to the illegalities in the conduct of the search and seizure proceedings, thereby the assessment is required to be quashed on any and each of the following grounds;*

*a. As against the warrant of authorization issued in the name of TS Kumarasamy / Nalinasundari search and seizure proceedings were conducted against four entities, which is bad in law.*

*b. Without warrant of authorization search and seizure proceedings have been initiated against the appellant with respect to certain premises thereby search and seizure proceedings is unlawful and bad in law.*

*c. As against law the cab drivers of the authorities have been employed for witnessing the entire search and seizure proceedings, thereby search and seizure proceedings is unlawful and bad in law.*

*D. During search and seizure proceedings the appellant have been detained as against law and thereby the search and seizure proceedings and further proceedings are illegal.*

*e. Materials have been planted from the unauthorized premises and used against the appellant, thereby the entire proceedings are illegal and required to be quashed*

*f. Coercion had been employed against the appellant and its employees during the search and seizure proceedings, thereby the search and seizure proceedings and further proceedings are illegal.*

*g. Illegal proceedings initiated u/s 132(3) and 132(9B) of income Tax, 1961 have made search and seizure proceedings and further proceedings illegal.*

*h. The illegal proceedings in seizing, handing over and processing the Electronic devices have made the search and seizure and further proceedings unlawful and illegal.*

*i. The search and seizure proceedings have been initiated, conducted and concluded by· involving unauthorized officials as against warrant of authorization which has made the search and seizure proceedings and further proceedings illegal ..*

*4. The leaned CIT (A) ought to have held that issuance of notice u/s 153A of Income Tax, 1961 and subsequent assessment proceedings are without authority and without jurisdiction on any and each of the following grounds;*

*a. The transfer of file from jurisdiction Namakkal to Central Circle, Chennai is not in accordance with law as laid down u/s 127 of income Tax, 1961.*

*b. As per section 132(1) r/w 132(9A) of Income Tax, 1961 the materials handed over to the Assistant Commissioner of Income Tax, Central Circle 2(1) is without jurisdiction. In such a scenario, the materials become nonexistence in the eyes of law for issuing notice u/s 153A of Income Tax, 1961.*

*c. without prejudice to the legal position taken by the appellant as stated above the material has been handed over to the Assistant Commissioner Income Tax central circle 2(1) beyond the mandatory period of 60 days contemplated u/s 132(9A), thereby the materials are non-existence as per law.*

*d. Without prejudice to the above said position taken by Appellant the notice has been issued u/s 153A of Income Tax Act, 1961 without any physical possession of material in hand, thereby the issuance of notice and subsequent proceedings are illegal.*

*e. Clause 1.3 of the circular FNo: 286/161/2006-lT (Inv.JI) dated 22/12/2006 on the receipt of the material examination note required to be prepared jointly by the range head and the Assessing Officer for issuing the notice u/s 153A of Income Tax Act, 1961. However, in our case, without preparation of examination note, the notice was issued uls 153A of Income Tax Act, 1961, thereby the notice and the subsequent proceedings are illegal.*

*f. When the entire issues are pending before Authority of Advance Ruling, Mumbai, the assessment order has been passed without any jurisdiction and the same is illegal.*

*5. The learned CIT(A) ought to have held that the entire assessment order is based on the statements of the appellant, his employees and third parties were recorded during the search proceedings and the same do not carry any evidentiary value and cannot be held against*

*the appellant as the same were retracted within reasonable time on the ground that they were pre-drafted statements obtained under coercion, threat and physical abuse and particulars and facts are contradictory within the statements, hence all such statements relied by the revenue have lost it evidentiary value, thereby the assessment order is illegal.*

*6. The learned CIT(A) erred in upholding the legality of the assessment order though the assessing officer proceeded to exercise the jurisdiction and pass the assessment order without complying the mandatory provisions of section 124(4) of Income Tax Act, 1961 in response to the objection to his jurisdiction filed by the appellant within the time specified under section 124(3) of Income Tax Act, 1961.*

*7. The learned CIT(A) ought to have held that the assessment order is null and void in view of Section 153D of Income Tax Act 1961, on any and.each of the following grounds:*

*a. the approval u/s 153D of Income Tax Act, 1961 which is contrary to the deviation note endorsed by Addi. Commissioner and the approval was given mechanically and without application of mind particularly when the Assessing Officer declined to provide a copy of the deviation note during remand proceedings.*

*b. The approval has not been accorded as per the procedure laid down under FNo: 286/161/2006-IT(Inv.IJ) dated 22/12/2006.*

*c. The Addl. Commissioner neither discussed the illegalities raised by the Appellant nor applied his mind that the Assessing Officer also failed to consider independently the illegalities agitated by the Appellant in the draft assessment order while according the approval, thereby the approval and assessment proceedings fails.*

*d. While giving the approval, the Addi. Commissioner failed to apply his mind that in the draft assessment order, the Assessing Officer has indicted the Appellant based on certain evidence which have not been raised in the Show Cause Notice. This apparent flaw on the part of Addi. Commissioner makes the approval and assessment order illegal.*

*e. While giving approval the Addi. Commissioner failed to apply his mind that the disclosed amount of Rs 3 9 Crs belonging to the assessment year 2018-19 have been treated as undisclosed income and apportioned to all search assessment years by the Assessing officer. The approval has been given without application of mind, thereby the approval and assessment order fails.*

*f. Instead of giving approval u/s 153D of Income Tax Act, 1961, after examining the draft assessment order submitted by the Assessing Officer, as against law, the Addi. Commissioner directed to incorporate certain alleged findings on suo moto basis without any proposal from Assessing Officer or examination of said findings by the Assessing Officer or giving any opportunity to the Appellant. Even assuming the direction was given u/s 1444 of Income Tax Act, 1961 any such direction without providing any opportunity to the Appellant is unlawful. Hence the approval and assessment order fails.*

*g. While giving the approval the Addi. Commissioner failed to apply his mind that the Assessing Officer have simply apportioned an amount of Rs. 687 Crs for all the assessment years as per the dictation of the investigation wing and the approval accorded by the Addl. Commissioner based on the said incorporation is illegal, thereby the approval and the assessment order fails.*

*h. While giving the approval u/s 153D of Income Tax Act, 1961, the Addi. Commissioner of Income Tax, failed to apply his mind that issuance of notice u/s 153A of Income Tax Act, 1961 is not in accordance with law. Hence the approval and the assessment order fails.*

*i. When the matter is pending before Authority of Advance Ruling, Mumbai the approval given by the Addi. Commissioner u/s 153D of Income Tax Act, 1961 is against law thereby the approval and the assessment order fails.*

*j. The Addl. Commissioner failed to apply his mind that the Assessment orders have been proposed for approval is nothing but verbatim of appraisal report in terms of analysis and estimation of undisclosed income. The Addl. commissioner failed to appreciate or consider any piece of explanation submitted by the Appellant. It establishes total non-application of mind while giving approval. Hence the assessment order fails.*

*k. While giving the approval, the Addl. Commissioner failed to apply his mind that the Assessing Officer have not provided the entry wise undisclosed income of Rs.2056 Crs as allegedly computed by the employees and confirmed by the Appellant and imposed against the Appellant, thereby the approval and the assessment order fail.*

*l. While giving the approval, the Addl. Commissioner failed to apply his mind that the Assessing Officer has determined the undisclosed income of Rs. 2056 Crs neither based on mercantile system nor based on cash system, hence the approval fails.*

*m. While giving the approval, the Addl. Commissioner failed to apply his mind that as against law, without providing the alleged incriminating materials to the Appellant, the Assessing Officer directed to file the return of income, thereby the approval fails.*

*n. While giving the approval, the Addl. Commissioner failed to apply his mind that the Assessing Officer has rejected the Special audit report without approval of the sanctioning authority who has ordered the Special audit and failed to appreciate the reasons for rejection is untenable, thereby the approval and the assessment order fails.*

*o. While giving the approval, the Addl. Commissioner failed to apply his mind that the Assessing Officer has not examined and given any appropriate finding in the draft assessment order (final assessment order) as to who have maintained or made entries in the "ErandaamThall", which is instrumental for imposing undisclosed income, in a situation where there are contradicting statements recorded u/s 132(4) of Income Tax Act, 1961, in this regard, as detailed above, thereby the approval fails.*

*p. While giving the approval, the Addl. Commissioner failed to apply his mind that the electronic devices namely "ErandaamThaal" which have been the instrumental for arriving undisclosed income have not been vouched by the person namely Karthikeyan from whom the said device has been seized, thereby approval fails.*

*q. Year wise application of mind regarding year wise income computation by the Addl. Commissioner is not evidenced in his order given /s 153D of Income Tax Act, 1961, thereby approval fails.*

*8. The learned CIT (A) has erred in law and facts in upholding the addition to the extent of Rs.14,33,33,771 for AY 2012-13 u/s 69C of the Income Tax Act, 1961,*

*9. The learned CIT(A) erred in directing the adoption of unexplained expenditure s 69C on the basis of the special audit report in respect of the contents of "Erandam Thall" without appreciating that the seized electronic record represented by the "Erandam Thall" is dump document and it is inadmissible as evidence in view of non-compliance to the mandatory requirement of section 65B of the Evidence Act, 1872 and other mandatory requirements, which are also applicable to the proceedings under the Income Tax Act, 1961.*

*I0. The learned CIT(A) erred in apportioning the unmatched expenditure as per "Erandam Thall" of Rs. 211.37 crores for AY 2012-13 to 2018-19 arrived at in the special audit report dated 15.04.2021*

*to the appellant and three other associate concerns, purely on the basis of estimation and without giving a finding based on evidence as to the person who incurred the said expenditure, which is impermissible for making addition u/s 69C of the Income Tax Act 1961 in the assessment made u/s 53A of the Income Tax Act 1961.*

*11. The learned CIT(A) erred in relying on unmatched entries in "Erandam Thall" representing the unmatched expenditure Rs. 211.37 crores for AY 2012-13 to 2018-19 quantified in the special audit report dated 15.04.2021, as the said entries were neither 'speaking one' nor supported by corroborative evidences regarding actual incurring of such expenditure and hence were unreliable for making addition u/s 69C of Income Tax Act, 1961.*

*12. The CIT(A) failed to appreciate that for application of section 69C the parameters set therein in the provisions have to be satisfied in as much as the appellant incurring the alleged expenditure has not been established for the purpose of making the addition, invoking u/s 69C of Income Tax Act, 1961, was not in accordance with law.*

*13. Each ground is requested to be read independently and without prejudice to each other.*

*14. The Appellant craves leave to add to, alter, amend or vary the aforesaid grounds of appeal at or before the time of hearing.*

*15. That the appellant prays leave to adduce such further evidence to substantiate its case as the occasion demands."*

3. The revenue, has more or less raised common grounds of appeal for the Asst. Year 2009-10 to 2019-20. Therefore, for the sake of brevity, grounds of appeal filed in ITA No. 895/Chny/2022 for Asst. Year 2009-10 are reproduced as under:

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

*2 The Ld.CIT(A) erred in holding that the retraction of statement made by the assessee, his employees and other associated persons as valid and acceptable, though the retractions were filed after reasonable time of 90 days. The CIT(A) ought to have appreciated that the statements recorded during July 2018 were retracted in January 2019, which proves that the retraction was merely an afterthought.*

*2.1 The Ld.CIT(A) erred in failing to appreciate that the assessee has not proved that the statements were recorded under duress, coercion and other adverse circumstances.*

*2.2 The Ld.CIT(A) failed to appreciate that the retractions made by the assessee, employees and other persons are without basis and no other credible explanation backed by evidences have been offered with regard to the incriminating material found and seized during the search.*

*2.3 The Ld.CIT(A) ought to have appreciated that in the case of assessee's own case of earlier search assessment (Block assessment 1986-87 to 1996-97) in T.S.Kumarasamy vs ACIT (98) 65 ITD 188 (Madras) the Hon'ble High Court held that no ground for coercion or duress or any ground for the involuntary statement was made by the assessee in his retraction, following the decision of the Hon'ble Supreme Court of India in the case of Shri. Surjeet Singh Chhabra vs UOI (97) 1 SCC 508.*

*3. The Ld.CIT(A) erred in holding that the notice u/s.153A issued for this assessment year, in violation to fourth proviso to sec.153A(1) is legally unsustainable and annulling the consequent assessment order u/s.143(3) r.w.s.153A.*

*3.1 The Ld CIT(A) erred in failing to appreciate that the assessee indulged in generating unaccounted income over the years and incurring unexplained expenditure also as a going concern. The income generated over the years was kept in the form of cash, which was evidenced by the fact that the assessee has offered 124.79 crores under PMGKY and IDS Scheme.*

*3.2 The Ld CIT(A) failed to appreciate that the assessee has kept unaccounted income generated over the years in the form of Cash, which is an asset and further as per the explanation 2 to fourth proviso to Sec.153A, definition of asset is inclusive one.*

*3.3 The Ld.CIT(A) failed to appreciate that during the course of search total cash of Rs.16 crores was found &seized and further the assessee has paid on money of 9 crore for purchase of property during the AY 2016-17, which proved that the assessee has generated asset in the form of cash over the years. As such, satisfaction of the conditions mentioned in the fourth proviso to Sec.153A(1) were recorded before issue of notice u/s.153A.*

*4. The Ld.CIT(A) erred in deleting the addition of Rs.20,92,63,464/- made towards undisclosed income being the*

*difference between the net profit as per the seized tally accounts and net profit reported in the ITR holding that the seized tally accounts are incomplete and inaccurate.*

*4.1 The Ld.CIT(A) erred in failing to appreciate that Smt.R.Anandhi, in her sworn statement u/s.132(4) dated 07/07/2018 admitted that the difference between the income as per tally accounts and income reported in ITRs was the unaccounted income generated.*

*4.2 The Ld.CIT(A) failed to appreciate that Shri.M.Vannakkannan, DGM(Finance), in his sworn statement dated 07/07/2018 has also confirmed the statement given by R.Anandhi and admitted the working of unaccounted income made by her.*

*4.3 The Ld.CIT(A) failed to appreciate that Shri.T.S.Kumarasamy, Chair person of this group has also admitted the discrepancies with regard to the income arrived as per seized tally accounts and income reported in ITRs in his sworn statement dated 09/07/2018.*

*4.4 The CIT(A) erred in failing to appreciate that the statements were recorded without any coercion or undue influence. The retractions of statements are merely after thought and without any basis.*

*5. The Ld.CIT(A) erred in deleting the addition of Rs.39,21,03,525/- being the difference of undisclosed income of Rs.751,05,65,605/- admitted by the assessee in the statement u/s.131 dated 13.07.2018 and the unaccounted income quantified at Rs.711,84,62,080/- by the assessing officer for AYs 2009-09 to 2018-19 on various issues, which has been apportioned among assessment years 2009-10 to 2018-19.*

*5.1 The Ld.CIT(A) erred in failing to appreciate that the assessee and his three group concerns incurred unaccounted expenditure of Rs. 2,056/- crores, after adjusting unaccounted income quantified in the case of assessee and three concerns, the balance amount is only added as unexplained expenditure u/s.69C in the hands of assessee. This shows that this amount of Rs.39,21,03,525/- represented unaccounted income utilized for incurring unexplained expenditure. Even if this income has been considered as regular income, the credit for assessess's unexplained expenditure to that extent would get reduced and this amount would be assessed as unexplained expenditure u/s.69C*

*6. The Ld.CIT(A) erred in holding that the rejection of the first special audit report u/s.142(2A) and complete disregarding of the second special audit report by the assessing officer is not legally sustainable.*

*6.1 The CIT(A) erred in failing to appreciate that the Special Auditor stated to have conducted independent enquiries which were beyond the mandate of the special audit and he had to rely on the information furnished by the assessee himself, which are false and contradictory, considering the ITR opening &Closing stock balances and the tally data that is seized.*

*6.2 The CIT(A) failed to appreciate that the Special Auditor who is not privy to the confidential findings of the search, could not provide a true &correct picture, as the assessee's modus operandi of manipulation was not in the domain of knowledge of the Special Auditor.*

*6.3 The ld.CIT(A) erred in failing to appreciate that the Special Auditor starts with the proposition that the final product as reported by the assessee is a true and correct picture and then proceeds to work out the expenses by applying an estimate of expenses that would have been reasonably incurred to produce that amount of finished product. But it is proved in the findings of search, that the assessee manipulates both qualitative and quantitative part of production and sales.*

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

4. The brief facts of the case are that, the assessee Mr. T.S. Kumarasamy, Prop: M/s Christy Fried Gram Industry (in short CFI) is engaged in the business of production and supply of weaning food/nutrient supplements to government schemes and mainly to ICDS program of Government of India and Civil Supplies Department of Government of Tamil Nadu, besides, supplying edible oil, dal, rice, eggs to the Midday meal Scheme of the Government of Tamil Nadu. The assessee procures raw materials required for production of nutritional foods, weaning food, blend,

pulses and other items, etc., for supply to ICDS, Government of Tamil Nadu, Civil Supplies Corporation, as per the Suppliers Contract. Further, the assessee is also engaged in the business of trading of agro commodities. The assessee procures the raw materials from various sources, including from farmers, traders, commission agents, agricultural produce marketing committing (APMC), local market purchases through executives/staff/agents, as well as through government allotment as per tender. The assessee has filed return of income for assessment years 2009-10 to 2018-19 u/s.139(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") under 'no books category' and followed net worth basis in terms of the CBDT Circular No.2/48/68, dated 26.02.1969. The return of income filed by the assessee has been either assessed u/s.143(1)/143(3) of the Act. There was a search and seizure operation u/s.132 of the Act, on 05.07.2018 in the residential and business premises of the assessee. During the course of search, various incriminating documents including two pen drives and back up of tally data was found and seized. The department had also found loose sheets and other documents which contains various transactions of the assessee. Further, a sworn statement u/s. 132(4) of the Act, was recorded from various employees of the assessee, including Mr.Karthikeyan, Mr.Valeeswaran, Mrs.Anandi and Shri Harihara Krishna, CA, (AGM Finance) with reference to books of accounts and other incriminating materials found during the course of search. The said statements are confronted to the assessee and a statement u/s. 132(4) of the Act was recorded. Post search enquires were conducted and during the course of post search enquiry, a statement u/s. 131 of the Act, on 30.07.2018 was recorded from

the assessee, where the assessee has admitted undisclosed income of Rs. 751,05,65,605/- in the hands of M/s. Christy Friedgram Industry.

5. Consequent to search, the case of the assessee was transferred to Central Circle, Chennai and accordingly, notices u/s. 153A of the Act, was issued and called upon the assessee to file true and correct return of income for assessment years2009-10 to 2018-19. In response, the assessee has filed his return of income on 02.03.2020 for all assessment years. The case has been selected for scrutiny and during the course of assessment proceedings, the AO called upon the assessee to explain and reconcile various incriminating material found during the course of search including two pen drives called "Erandam Thall". The assessee challenged the assessment proceedings before the Hon'ble High Court of Madras by writ jurisdiction and contended that, search conducted in the case of assessee is illegal on account of various reasons, including for the reasons of using coercion while recording statement u/s. 132(4) of the Act etc. However, subsequently the assessee has withdrawn writ application filed before the Hon'ble High Court of Madras, challenging validity of search proceedings and consequent assessment proceedings.

6. During the course of assessment proceedings, the Assessing Officer, considering the voluminous data found during the course of search and complexity involved in the accounts of the assessee, directed the assessee to get his accounts audited as required u/s. 142(2A) of the Act. The special auditor appointed in

terms of section 142(2A) of the Act, has submitted their audit report for all assessment years vide their audit report dated 03-12-2020. A further reference was made to special auditor to look into voluminous data found during the course of search including Erandam Thall. The special auditor vide their audit report dated 15-04-2021 has submitted supplementary audit report and commented upon the correctness and authenticity of documents found during the course of search and has also verified entries recorded in Erandam Thall and quantified unidentified entries. The Assessing Officer, has rejected special audit report submitted by the auditor in terms of section 142(2A) of the Act, and completed the assessment on the basis of various incriminating documents found during the course of search coupled with statements recorded form the assessee and his employees and made additions towards under reporting of income towards difference between net profit as per seized tally accounts and net profit reported by the assessee in ITR Form filed for the relevant assessment year, on the ground that the assessee has under-reported his income when compared to net profit as per seized tally data. The Assessing Officer, has also made additions towards undisclosed income on account profit earned from bough note purchase and sales. Similarly, the AO had also made additions towards income generated from transaction with dummy entities and also made additions of Rs. 2056.76 crores as unexplained expenditure u/s. 69C of the Act, towards various payments recorded in Erandam Thall and made addition towards difference between income quantified in the hands of the assessee and estimated expenditure of Rs. 2056.76 crores as unexplained expenditure taxable u/s 69C of the Act. The AO had also made

additions towards cash found and seized during the course of search as unexplained money u/s 69A of the Act, for assessment year 2018-19 and also made addition towards on money paid for purchase of property. Similarly, the Assessing Officer made additions towards disallowances of interest u/s 36(1)(iii) of the Act, for diversion of interest bearing funds to give loans and advances to sister concerns.

7. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the ld. CIT(A), the assessee has challenged the assessment order passed by the AO u/s. 143(3) r.w.s. 153A of the Act, on various grounds, including legality of search conducted and consequent assessment proceedings, jurisdiction of the AO in assessing the income of the assessee, satisfaction recorded by the AO for issue of notice for assessment years 2009-10 to 2012-13 i.e, beyond six years immediately preceding the assessment year in which search took place, in light of forth proviso to section 153(1A) of the Act. The assessee had also challenged approval granted by the Additional/Joint Commissioner in terms of section 153D of the Act, on the ground that before according approval, the authority did not apply his mind to relevant materials and books of accounts found during the course of search which vitiates the entire assessment proceedings. The assessee had also challenged additions made by the AO towards under reporting of income as per seized tally data and ITR filed for relevant assessment years, additions towards difference between bought notes purchases and bought note sales, for assessment years 2015-16 & 2016-17, additions of unaccounted income arising from bogus purchases

through dummy entities and sales for assessment years 2017-18 & 2018-19 and also additions towards unexplained expenditure u/s. 69C of the Act, towards unaccounted expenses quantified as per seized Erandam Thall, etc.

8. The ld. CIT(A), after considering relevant submissions of the assessee and also taken note of various reasons given by the AO to make various additions in the assessment order, partly allowed appeal filed by the assessee, where in respect of assessments for assessment years 2009-10 to 2012-13, the CIT(A) held assessment order passed by the AO for these assessment years is invalid, void, ab-initio and liable to be quashed, because in order to assess the income for a period beyond six years, there should be an undisclosed income of specified amount in terms of forth proviso to section 153A(1) of the Act. Since, the AO fails to make out a case of undisclosed income beyond specified amount in respect of these assessment years, the conditions prescribed under forth proviso to section 153A(1) of the Act are not satisfied and thus, the notice issued u/s. 153A for assessment years 2009-10 to 2012-13, in violation of the provisions of forth proviso to section 153A(1) is bad in law and unsustainable. Consequently, the assessment order passed by the AO for assessment years 2009-10 to 2012-13 are annulled.

9. The CIT(A), had also deleted additions made by the AO towards under reporting of income, being difference between net profit as per seized tally accounts and income reported in ITR filed for the relevant assessment year, by holding that the assessee could able to reconcile difference between total income reported

in ITR filed for the relevant assessment year and net profit as per seized tally data. Similarly, the CIT(A) deleted additions made by the AO towards undisclosed income on account of transaction from bought note purchases and bought note sales, additions towards bogus purchases through dummy entities. The CIT(A) had also deleted additions made by the AO towards unexplained expenditure u/s. 69C of the Act, towards unaccounted expenditure quantified as per seized pen drive called Erandam Thall, on the ground that the so called Erandam Thall and entries contained therein are not identifiable to any specific entity/concern and further, entries contained therein are already accounted/recorded in the regular books of accounts maintained by the assessee for the relevant assessment year. But, the ld. CIT(A) has enhanced the assessment and directed the AO to make additions towards unexplained expenditure u/s. 69C of the Act, as per supplementary special audit report issued by the auditor and quantified unexplained expenditure in respect of unidentified entries in Erandam Thall and apportioned to all four entities and for all assessment years. In so far as additions towards cash found during the course of search, for the reasons stated in their appellant order, allowed partial relief to the assessee and out of additions made towards cash seized amounting to Rs 16,26,67,400/-, sustained additions to the extent of Rs. 40,00,000/- and deleted balance on the ground that the assessee has explained availability of closing cash balance as on the date of search, in the name of various group entities. The CIT(A) had also deleted additions made by the AO towards on money paid for purchase of property at Muthukadu by holding that the property has been purchased in the name of M/s.

Handhold Ventures Pvt. Ltd, a separate legal entity and additions if any to be made, then it can be made in the hands of the entity which purchased the property but not in the hands of the assessee. The CIT(A), had also deleted additions made towards unaccounted gold coins and bullion amounting to Rs. 48,04,600/-, by holding that the assessee has explained source for purchase of gold coin and bullion and has also accounted in their books of accounts. The CIT(A) had also deleted addition made towards disallowance of interest u/s 36(1)(iii) of the Act. Aggrieved by the CIT (A) order, the assessee and, as well as the revenue are in appeal before the Tribunal.

10. The first issue that came up for consideration from appeals filed by the assessee for the assessment year 2012-13 to 2019-20 is legality of search and consequent assessment proceedings completed u/s. 153A of the Act. The ld. Counsel for the assessee Shri. D. Anand, Advocate submits that alleged authorized officers conducted search under joint warrant of authorization dated 02.07.2018 (i.e., along with assessee wife name) in more than 54 places including our premises for 56 days (initially for 5 days without any break) and made illegal seizures and issued prohibitory orders, and attachment orders etc. When there is a joint warrant of authorization, the warrant issuing authority ought to have established that both the assessee have colluded with each other and thereby the acts of both appellants jointly fall under Sub-section (a), (b) or (c) of section 132(1) of the Income Tax Act, 1961 or the warrant issuing authority should have justified themselves with any other appropriate reason under law for issuance of joint warrant of authorization. In the instant case,

there is no single word about the information and reason to believe against the wife of assessee, more specifically, there is no information that assessee wife has done any malafide action against the law in convenience/collusion with the assessee necessitating the issuance of the "said warrant of authorization against assessee and his wife jointly". In addition to that the department has not established that there was any joint dealing between assessee and his wife and that they jointly acted in violation of law which led the warrant issuing authority to issue the said joint warrant of authorization. It is very clear that the information, reason to believe has not been arrived against the assessee and his wife in common and jointly. Hence, the issuance of joint warrant of authorization is without application of mind and illegal. The ld. Counsel for the assessee further submitted that Appellant's above said submissions has not been duly considered by the CIT(A) in the appellate order. Therefore, the counsel submits that consider this issue and consequently declare that the entire proceeding is non-est in the eye of law and void ab initio.

11. The ld. Counsel for the assessee further submits that Warrant of Authorization has been issued in the name of the Appellant/Smt. Nalinasundari for searching the premises of A-2 & A-3, SIDCO Industrial Estate, Andipalayam, Tiruchengode, but search proceedings have been conducted in different places and by different officials at different dates and times. From the above said proceedings, it has been clearly established that three sets of officials, who were not authorized in the said warrant of authorization dated 02.07.2018, have participated in the search proceedings illegally, leading to harassment of the Appellant and

the employees in obtaining coercive statements. On this ground itself the entire search and seizure proceedings are liable to be declared as illegal and void. Further, as per the Panchanama Proceedings drawn on 09.07.2018 the officials – Shri. Krishna Prasad and Shri. Dayanand Prasad – who are shown as assisting officials have participated in the proceedings on 29.08.2018 as authorized officers. At the time of authorization, the above said two officials had not been authorized except to assist. Subsequently, these two officials have participated in the proceedings as authorized officers without any further warrant of authorization. Hence the entire search and seizure proceedings are liable to be declared as illegal and void.

12. The ld. Counsel for the assessee further submits that the warrant of authorization is against T.S. Kumarasamy /Nalinasundari, whereas search has been conducted against 4 entities namely M/s. Rasi Nutri Foods, M/s. Natural Food Products, M/s. Suvaranabhoomi Enterprises Pvt Ltd and the Appellant T.S. Kumarasamy, M/s Christy Friedgram Industry at the same time with same warrants, even though there is no warrant in the name of M/s. Rasi Nutri Foods, M/s. Natural Food Products, M/s. Suvaranabhoomi Enterprises Pvt Ltd and the records concerned to the entities i.e., tally etc., belonging to them have been seized.

13. The ld. Counsel further submits that without prejudice to the stand of the Appellant in the illegality in issuance of warrant, the Appellant further submits that though the Warrant of Authorization was only for A-2 & A-3, SIDCO Industrial Estate, Andipalayam, Tiruchengode, search was conducted in more than

20 premises without any proper warrant of authorization. The Department in their reply to the rejoinder filed before the Hon'ble High Court of Madras, have stated that the search has been conducted in 20 premises", whereas the authorization was given only to A2 & A3 SIDCO Industrial Estate is given, because the petitioner himself has filed his ITR for various assessment years for his proprietorship business with address A2 & A3 SIDCO Industrial Estate/ based on which the Warrant of Authorization was issued". The counsel for the assessee further submits that during the period of search there were no independent witnesses as required under Rule 112(6&7) of the IT Rules, 1962 was present and called. But, the cab drivers of the search team, who did not know the importance of the procedures/documents, were used as the only witnesses. With respect of this allegation, the Appellant clearly established by way of affidavits of the said witness (cab Drivers) namely T. Arunkumar and P. Rajasekar that under which circumstances the search has been conducted. The said affidavit of T. Arunkumar and P. Rajasekar is annexed in Volume-V of paper book Page No: 26-41.

14. The ld. Counsel for the assessee further submits that during search the Appellant had been taken accosted in Bhopal on 05/07/2018 (Annexed in Volume - II of paper Book page No: 85 - 88) and was forcefully brought to Bengaluru by the officials of the department where the Appellant was illegally detained for four days in the custody of the department and extensively examined and harassed. The Appellant was then brought by car to his office in Tiruchengode by the department officials for the purpose of executing pre-drafted inculpatory oath statements at 2.00 a.m on

09/07/2018. In response to this, the search team themselves admitted in their counter filed in WP No: 28986, 28991, 29001, 29016 & 29033 of 2018 before the Hon'ble High Court of Madras, that "Merely following the Appellant in his predetermined travel to Bengaluru and then to Tiruchengode is not illegal". The counsel further submits that the authorized officers conducted illegal search other than the place mentioned in the warrant and brought all the material to the place mentioned in the warrant, as if all the materials were seized at the place mentioned in the warrant, and such allegation has been proved by the Appellant from the affidavits of Mr. K. Shanmugasundaram, V.P. Balakrishnan, K. Yogananthan and N. Shanmugam, albeit the same, the AO did not give any specific reason and justification in the assessment order but simply cited the counter filed by the search team in the writ petitions, which itself proves that the AO did not take any steps to find the veracity of such allegation. The said affidavits of Mr. K. Shanmugasundaram, V.P. Balakrishnan, K. Yogananthan and N. Shanmugam are annexed in paper book Page No: 15 - 25. The Counsel for the assessee further explained that during the search, pre-drafted statements were obtained from various persons under coercion, manhandling and these statements were duly retracted including by Ms.Anandhi (Annexed in Volume- I of paper book Page No: 783 -788), Mr.R.Rajaram Mohan (Annexed in Volume- I of paper book Page No: 637 -642),Mr.M.Vannakannan (Annexed in Volume- II of paper book Page No: 47 - 48), Mr.S.Hari Hara Krishnan) (Annexed in Volume- II of paper book Page No: 81 - 82), Mr.R. Valeeshwaran (Annexed in Volume- I of paper book Page No: 687 690), Mr.R. Thirupathi and the Appellant. He, further submits that the Appellant clearly established the

coercion and duress suffered by the Appellant and his employees by way of affidavits submitted on 31/10/2018, before the Hon'ble High Court in the W.P. Nos. 28986, 28991, 29001, 29016 &, 29033 02018, and stated under which circumstances those statements were recorded by the search team. The same was served on the department in time also. But, the CIT(A) without visualizing such environmental coercion created by the search team for obtaining those statements and trauma faced by the Appellant and his employees, passed the impugned appellate order by discarding objections which is unjust and unfair. The counsel further submits that the CIT(A) did not make any efforts to call the Appellant and his employees to know the truth and fact, which itself demonstrates that the CIT(A) has a predetermined mind while passing the impugned order.

15. The counsel for the assessee further submits that the prohibitory orders issued u/s 132(3) and 132(9B) has not been lifted within sixty days from the date of its order respectively as per Section 132(8) and 132(9C) of the Act, respectively. The authorized officers obtained all the statements by issuing prohibitory orders on the bank accounts, stalling assessee business, stopping the salaries of the employees and the affidavit dated 13/07/2018 had been given by the Appellant under the inducement of lifting the prohibitory orders. This itself shows that under which circumstances those statements were recorded.

16. The Counsel for the assessee Shri. D Anand, Advocate further submits that the department does not followed due

procedures while seizing and handing over electronic devices which is clear from the following sequence of events:

a. The seizure of the Electronic Devices has not been duly recorded in the panchanama.

b. The Hash value of each Electronic Devices have not been recorded in the panchanama.

C. No photograph along with respective reference like cubicle number or name room surrounding etc., has been taken as per the seizure guidelines of the above said manual.

d. The Serial number of the collected electronic evidence mentioned in the inventory list is different from the serial number mentioned in the Digital Evidence Collection Form and Chain of Custody Form.

e. Similarly, the MD5 [Message Digest Algorithm] hash value is also different among log entry, digital evidence collection form and certificate 65B;

f. Similarly, the SHA [Secure Hash Algorithm] hash value is also different among log entry, digital evidence collection form and certificate 65B

g. The chain of custody form is completely silent about proper custody of the said electronic device, which creates doubt on the integrity of the said device. On repeated request also no copy of the imaged data has been provided to the Appellant.

h. The AO, vide mahazar dated 09/09/2020 gave this electronic device to one Mr. Surendar, Forensic expert for extracting data. In this regard no chain of custody form was drawn, which questioned the admissibility of such evidence

and Ms.Anandhi has never been called for enquiry for verifying the authenticity of the data.

i. The time of seizure mentioned in the Digital Evidence and inventory of Collections Form is contradictory to Devices dated 05/07/2018.

j. The transfer of custody of Electric Devices is completely absence in the Chain of custody forms.

k. As per the Inventory of Electronic Devices dated 05/07/2018, the alleged Electronic Devices had been seized on 05/07/018 and at the same time handed over for imaging on 06/07/2018, which clearly demonstrates that the said devices were under illegal custody for 2 days.

l. That apart, "Erandam Thall" is said to be seized by authorized officer Mr. Venkateswaran, whereas the same have been opened and imaged by unauthorized officer Mr. Parthivel, who did not seize the said document and the statements based on such document have been recorded by another authorized officer Mr.Sankarapandi from Mr. Hari Hara Krishnan. The custody of Electronic Devices from one office to another office is completely absent in the Chain of Custody Form dated 06/07/2008. This proves the stand of the Appellant that the electronic devices have been in illegal custody, manipulated, tainted, lost its evidentiary value and hence not only statement of Mr. Hari HaraKrishnan but also the "Erandam Thall" fails and cannot be used against the Appellant. On perusal of the copies of digital evidence collection form, the chain of custody form and certificate u/s 65B of The Information Technology Act, 2000 furnished by the appellant in respect of all the electronic devices

seized from Shri.P.Karthikeyan on 05.07.2018 vide ANN/GV/ PK/ ED/S1, it is noticed that the digital evidence collection form and chain of custody form were prepared on 06.07.2018 and the certificate u/s 65B was prepared on 08.07.2018. Further, it is noticed that the digital evidence collection form does not contain any signatures including that of Shri P Karthikeyan and the chain of custody form and certificate u/s 65B are signed by a person other than Shri.P.Karthikeyan. As regards the compliance to rule 112(13), it is seen on perusal of the relevant proceedings of the DDIT(Inv), Unit 4(3), Chennai dated 06.07.2018 for imaging and verification of data that the seals placed on the electronic devices seized on 05.07.2018 at the time of their seizure were removed in the presence of Shri.Harihara Krishnan and opened on 06.07.2018, for the purpose imaging the said devices. It is noticed that the same was not independent witnesses carried out in the presence of Shri P.Karthikeyan, which is inviolation of the provisions of the said rule. Thus, it is noticed that certain procedural irregularities have taken place in the process of seizure and imaging of the said electronic devices, which contained electronic evidence in the form Erandam Thall.

17. In so far as, transfer of cases u/s 127 of the Income Tax act, 1961, the impugned order dated 29.01.2019 is bad in law, since the requirements of Section127(2) of the Act have not been complied with as much as the agreement envisaged under Section 127(2) between DGIT (Inv.) Chennai and the CCIT, Trichy has not been arrived at. Further, the condition precedent for show-

cause notice, as well as, the order under Section 127(2) of the Act mandates that there has to be an agreement between DGIT (Inv.) Chennai and the CCIT Trichy and without there being an express agreement, the principal conditions for invoking the provisions of Section 127(2) cannot be treated as having been met. In this case, neither show cause notice nor impugned transfer order, even remotely suggest about the agreement between DGIT (Inv.) Chennai and CCIT Trichy and/or Pr. Commissioner of Income Tax, Salem and Pr. Commissioner of Income Tax, Central Circle, Chennai. Further, show-cause notice dated 29.10.2018 as well as impugned order dated 29.01.2019, clearly indicate transfer proceedings were initiated not at the instance/request of officers, in terms of decision taken under Section 127(2) of the Act. From the above, it is clear that there is non-application of mind in as much as the PAN in the notification is not of the appellant, but it is of Christy Friedgram Industry Pvt. Ltd. Further, although it was subsequently corrected, but the procedure laid down under section 127 of the Act was not followed. Since, the invocation of the provisions of Section 127(2) of the Act itself is illegal, void and in absence of any positive agreement being arrived at between the authorities of equal rank, the impugned order is bad in law. From the above submissions, it is established by the appellant that the Notification issued by PCIT Salem to transfer the case from Namakkal to Chennai is PCIT Salem agreeing to the proposal of DGIT Chennai. As the parties to the agreement are not officers of equal rank the requirement under sec. 127(2) (a) is not fulfilled. Further, ACIT Circle-1, Namakkal from whom the case is transferred is subordinate to PCIT Salem. The DCIT Central Circle 2(1), Chennai, to whom the case is transferred is

subordinate to PCIT Central 2, Chennai, and not to PDIT,(Inv) Chennai. There is no agreement between PCIT Salem and PCIT Central Circle 2, Chennai. The condition for invoking the provisions of section 127(2) is not met and thus, the transfer is not valid in the eyes of law.

18. The ld. Counsel for the assessee further submits that notice issued u/s 153A of the Act, is illegal and bad in law, because, the Assessing Officer does not have the benefit of seized materials at the time of issue of notice. The Counsel for the assessee referring to Appellant reply to the show cause notice has submitted that the assessee has brought to the notice of the Assessing Officer that the notice u/s 153A and Show Cause Notice were issued in a mechanical manner and without any documents on the date of issuing the notice u/s 153A. However, the Assessing Officer made the observation in para 15.6.8 of the order that "Notices u/s 153A of the Income Tax Act, 1961 were issued on the basis of initiation of search u/s 132 of the Act and are not dependent on seized documents or materials as per section 153A(1) of the Act. The assessing officer automatically acquires jurisdiction to issue notices u/s 153A of the Act on the basis of initiation of search and is independent of the provisions of sections 139, 147, 148, 149, 152 and 153 of the Act". From the above observation, the AO admitted that he has issued notice u/s 153A to the Appellant without any incriminating materials in hand, which is further evidenced from the letters dated 05/02/2019 and 17/05/2019 in the file of the AO. Though, the Appellant has established and demonstrated the above said violations done by the search team and which were also admitted by the search team before the

Hon'ble High Court, such vital evidence and documents were intentionally ignored by the Assessing Officer while passing the Assessment order. In addition to that Assessing Officer blatantly ignored the direction of the Hon'ble High Court of Madras given in WP No: 26881 / 2018 dated 10/02/2020 and passed the assessment order with a observation that "raising this issue before this office is only a dilatory tactics to stall the assessment proceedings", which is totally erroneous and against the direction given by the Hon'ble High Court of Madras and also demonstrated the non-application of mind on the part of the Assessing Officer.

19. The ld. Counsel for the assessee further submits that, the Assessing Officer has initiated the proceedings u/s 153A of the Act, in the absence of any material in possession of the Assessing Officer. Although, the assessee raised objection, but the AO rejected objections by stating that notices u/s 153A of the Income Tax Act, 1961 (hereinafter called 'Act) were issued on the basis of initiation of search u/s 132 of the Act and are not dependent on seized documents or materials as per section 153A (1) of the Act. The assessing officer automatically acquires jurisdiction to issue notices u/s 153A of the Act on the basis of initiation of search and is independent of the provisions of sections 139, 147, 148, 149, 152 and 153 of the Act. In this regard, the Counsel submits that the Public Accounts Committee directed the CBDT to issue guidelines for assessments relating to search and seizure cases and CBDT in compliance issued guidelines vide circular F.No: 286/161/2006-IT(Inv-II) dated 22.12.2006, and the action is placed before both the houses on 27.04.2007. The Board Circular prescribes various stages of conducting the assessment

proceedings in the search and seizure Cases. Further, the said Board circular is amended vide F.No: 286/161/2006-IT(Inv-II) dated 27.04.2007 which prescribes that "The Assessing Officer may issue notices under Section 153A immediately after receiving the appraisal report and seized materials and ascertaining the cases where notices under- Section 153A of the Income Tax Act 1961 are required to issued". Further, the Circular dated 22.12.2006 states that "on receipt of the appraisal report and seized material, the Assessing Officer and Range Head should jointly scrutinize the material and prepare an appraisal report and seized examination Note to decide: (i)Cases where notices u/s 153A of the Income- tax Act, 1961 are required to be issued. (ii) Cases where notices u/s 153C of the Act are required to be issued". From the reply of the Assessing Officer, it is evident that the Assessing Officer did not possess any seized materials in hand at the time of issuance of notice u/s 153A of the Act., which is evidenced from the Assessing Officer's communication dated 05.02.2019. In such a case, it is impossible for the Assessing Officer to imagine in which case the warrant was issued and, in whose name, and accordingly issue the notice either u/s. 153A/153C of the Act. In view of the intention of the legislature, non-receipt of seized materials in hand of the AO on 18.03.2019 and non-examination of seized materials proves that the decision of the Assessing Officer is illegal, untenable and hence, the issuance of notice u/s.153A of the Act dt 18.03.2019 needs to be quashed.

20. The ld. Counsel for the assessee further submits that on repeated occasions, the Appellant sought for the copies of seized

materials and especially at the time of receipt of notice u/s. 153A of the Act. But, the Assessing Officer has not provided any copies of seized materials till 20.02.2020. The counsel further submits that Board circular dated 22.12.2006, it is noted that the Assessing Officer should ensure that the appellant has been provided an inspection of the seized material and copies thereof as requested by him. If possible, a certificate in this regard may be obtained from the appellant. Assessing Officer failed in respect of the Board guidelines and later decided that the Appellant had not filed full details of opening/closing balance in the Income tax return filed u/s. 153A which is misleading and untenable. The counsel further submits that as per Sec 116(d), Deputy Commissioner of Income Tax is placed above the Assistant Commissioner of Income Tax which means Deputy Commissioner of Income Tax is the higher officer and Assistant Commissioner of Income Tax, Central Circle- 2(1) is the lower officer. Hence, when jurisdiction is exclusively conferred on Deputy Commissioner of Income Tax, any exercise of jurisdiction by a lower officer is not valid in the eyes of law. Further, as per Sec 2(7A) of the Act, the Deputy Commissioner, Central Circle - 2(1) was the jurisdictional officer who was vested with the relevant jurisdiction by virtue of notification dated 29.01.2019 issued Sec 127 of the Income Tax Act. Therefore, issuance of Notice under Sec 153A in the case of the appellant ought to have been done by the Deputy Commissioner, Central Circle - 2(1), whereas the issuance of Notice under Sec 153A was done by Assistant Commissioner of Income Tax, Central Circle 2(1) which is illegal and therefore, the entire proceedings ought to have been held as void ab initio.

21. The ld. CIT-DR, Shri. M. Rajan, on the other hand supporting order of the CIT(A) submitted that the assessee has made various allegations on procedure followed in conducting search and seizure operations in light of certain circulars issued by CBDT and argued that search proceedings and consequent assessment orders passed by the Assessing Officer are illegal, but if you go through counter affidavit filed by the revenue before the Hon'ble High Court of Madras in reply to Writ appeal filed by the assessee, it is very clear that the Department has followed due procedure in conducting search, impounding incriminating documents and recording statements. Further, various lapses pointed out by the Assessing Officer are in the nature of procedural mistakes which can be cured. Therefore, for those procedural lapses, it cannot be held that whole search proceedings are invalid and consequent assessment proceedings are null and void. The CIT-DR, further referring to provisions of section 153A of the Act, submitted that the Assessing Officer acquires jurisdiction to issue notice u/s 153A/153C of the Act, in pursuant to search action conducted u/s. 132(2) or requisition u/s. 132A of the Act, but issuance of notice is not at all dependent on availability of incriminating material, if any found during the course of search. Therefore, the arguments for the counsel for the assessee that the Assessing Officer has issued notice u/s. 153A/153C of the Act without any application of mind and in absence of incriminating material and appraisal report is devoid of merit. The CIT-DR, further submits that in so far as the arguments of the assessee on the issue of jurisdiction of the Assessing Officer and transfer of case from one Assessing Officer to another Assessing Officer, the Department has followed due

procedure provided u/s. 124 and 127 of the Act, which is evident from the fact that the appellant case has been transferred from PCIT, Trichy to DGIT, Central, Chennai by passing a valid order in terms of section 127 of the Act. Therefore, he submits that the arguments of the assessee on this issue also without any merits.

22. The ld. CIT-DR, referring to ground no. 2 to 2.3 of revenue appeal for assessment year 2009-10 to 2019-2020 submitted that the ld. CIT(A) erred in holding that the retraction of statement made by the assessee, his employees and other associate persons has valid and acceptable, though the retractions were filed after reasonable time of 90 days, which is evident from the date of statement recorded and date of retraction filed by the assessee. The CIT-DR further submits that the ld. CIT(A) failed to appreciate that the assessee has not substantiated his claim that the statements were recorded under duress and coercion and also under adverse circumstances. Therefore, retraction filed by the assessee and his employees can be said to be an afterthought to circumvent additions made by the Assessing Officer towards undisclosed income. In this regard, the CIT-DR, relied upon the decision of Hon'ble High Court of Madras in the case of TS Kumarasamy vs ACIT [1998] 65 ITD 188 and also the decision of Hon'ble Supreme Court in the case of Shri. Surjeet Singh Chhabra vs Union of India [1997] 01 SCC 508.

23. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We have also carefully considered affidavits filed by the assessee and his employees and counter affidavits filed by the revenue before

Hon'ble High Court of Madras. The assessee has challenged validity of search and consequent assessment proceedings initiated u/s. 153A /153C of the Act, right from the assessment stage and filed a Writ Petition no.30765 & 30771 of 2018, before the Hon'ble High Court of Madras, on the ground that joint warrant of authorization issued in the name of the assessee and his wife is without application of mind and illegal. The appellant had also challenged the validity of search proceedings in light of authorizing more than one officer, conducting simultaneous search on four entities and also regarding search has been conducted in unauthorized premises. Similarly, the appellant had also challenged search and consequent assessment proceedings on the issue of using the cab drives as witness, illegal detention of appellant, implanting material brought from outside and also on the issue of coercion and manhandling during search proceedings and raised various contentions. The assessee and their employees filed detailed affidavits before the Hon'ble High Court of Madras and explained how and why search proceedings conducted in the case of the appellant is illegal. According to the appellant, unless the Department make out a case, that there is enough material to allege that two persons have colluded with each other and thereby the acts of both persons jointly fall under sub section (a),(b) or (c) of section 132(1) of the Act, joint warrant of authorization cannot be issued. The revenue has filed counter affidavit before the Hon'ble High Court of Madras and explained how the contentions raised by the assessee in the Writ petition is contrary to facts on record.

24. We have examined the affidavits and counter affidavits filed by the assessee and revenue and after considering relevant averments, we find that there is no illegalities with respect to initiation and conducting of search, including issuance of warrant of authorization under the provisions of the Income Tax Act read with applicable Income Tax Rules as well as relevant CBDT Circulars, manuals, Information Technology Act, 2000 and Indian Evidence Act, 1872. We further noted that, the issues raised by the appellant are in the nature of procedural irregularities and such irregularities may have kept inadvertently. For this reason, the whole search proceedings and consequent assessment proceedings cannot be treated as void and illegal. At this stage, it is relevant to refer to the decision of Hon'ble Delhi High Court in the case of MDRL Restores Pvt. Ltd vs CIT [2014] 221Taxman 83 (Delhi), where it has been held that, though there are certain lapses and failures to comply with requirements of search and seizure manual, this would not affect the validity of the search or nullify the notice issued u/s. 153A /153C of the Act. The Hon'ble Madhya Pradesh High Court in the case of Naraindasvs CIT [1984] 148 ITR 567(MP) held that, search and seizure action could not be held to be illegal where respectable persons of the locality were not called as witnesses, as bonafide inadvertent procedural errors do not render the very search action illegal. Further, the Hon'ble Supreme Court in the case of Deepak Agro Foods vs State of Rajasthan & Others [2008] 07 SCC 748, had examined the issue of legality of search, and after considering relevant provisions has drawn a fine distinction between the orders which are null and void and the orders which are irregular, wrong or illegal. The Hon'ble Supreme Court further observed that, all irregular or

erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and ovoid and the orders which are irregular, wrong or illegal. Where an authority making order lapse inherent jurisdiction, such order would be without jurisdiction, null, non-est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. However, exercise of jurisdiction in a wrongful manner cannot result in a nullity, it is an illegality capable of being cured in a duly constituted legal proceedings. From the above observation of Hon'ble Supreme Court, it is clear that, if the Department conducts search in an illegal manner without there being any warrant of authorization, then it can be said that such proceedings is illegal and null and void. But, in a case where there are some procedural lapses, then those procedural lapses can at best be considered as technical mistakes, and for those technical reasons or typographical error, whole search proceedings cannot be held illegal. In this case, the warrant of authorization has been issued in the joint name of the appellant and his wife on the basis of appraisal of relevant material and thus, we are of the considered view that there is no merit in arguments of the assessee on this issue. Accordingly, grounds of appeal of the assessee are dismissed.

25. In so far as, authorizing more than one officer, we find that the assessee is having business at multiple locations and it is impossible for one officer to carry out simultaneous search in all places of business and residence of the assessee. Therefore,

considering the size and magnitude of operations of the assessee, the Department has engaged number of officials, who had been authorized to enter and conduct searches in various places of the business, and also drawn panchanama at the time of search. Although, in one or two places the Department has engaged officers who have not been authorized, but those officers are assisting the authorized officers in carrying out search operations. Therefore, we are of the considered view that, the arguments of the assessee that the Department has engaged more than one officer to conduct search and such search proceedings is illegal is devoid of merits. We further noted that, the assessee had also challenged conducting search in four entities, even though the warrant of authorization is only in the name of assessee and his wife. In this regard, we find that the assessee and his wife are proprietor, partner or director in number of companies, which are all engaged in various businesses. The Department needs to cover all places of business and residence of the assessee including various companies which are operating at different locations. It is not necessary to issue warrant of authorization in each and every case. Further, if the authorized officer has reason to suspect that books of accounts, other documents, money, bullion, jewellery or other valuable article or things are kept in different places, then the authorized officer can enter and search any building, place, vessel**,** vehicle, aircraft, where he has reason to suspect such books of accounts or articles are kept. Therefore, we are of the considered view that, there is no error in the procedure followed by the Department in conducting search on four entities and also on various premises. Thus, we reject grounds of appeals filed by the assessee.

26. In so far as, the argument of the assessee that the Department has kept the appellant in detention, we find that it was the contention of the assessee that the Department has taken the appellant from Bhopal to Bangalore and kept in illegal detention of four days for examination. However, on perusal of affidavit filed by the Assessing Officer before the Hon'ble High Court of Madras, it was noticed that when the warrant of authorization was issued to search the appellant, he was stationed at Bhopal. Therefore, the appellant has been bought to Bangalore and then to Thiruchengode, in connection with verification and questioning various documents found during the course of search. Form the contents of department affidavit, we find that the allegation of the appellant with regard to his illegal detention is not substantiated with any evidences. No doubt, the search proceedings have continued for number of days and the department may have made the assessee to be present throughout the search proceedings, but it cannot be said that the department has kept illegal detention of the assessee. Therefore, we reject the arguments of the assessee. Likewise, the appellant has made various arguments with regard to using coercion and manhandling their staff during the course of investigation and said contention was raised before the Hon'ble High Court in Writ Petition. However, later it was noticed that the appellant himself had withdrawn Writ Application filed before the Hon'ble High Court with a liberty to put forth his contentions on merits or otherwise before the Assessing Authority in the course of assessment proceedings. The Hon'ble High Court allowed the withdrawal of writ petition vide order dated 10.02.2020. From the above, it is very clear that, although the appellant made various contentions

with regard to procedural and technical lapses in search conducted by the department, but because the appellant did not peruse the matter before the Hon'ble High Court, we are of the considered view that there is no merit in contentions raised by the assessee on legality of the search proceedings. Thus, grounds of appeal filed by the assessee on these issues are dismissed for all assessment years.

27. The appellant had also challenged notice issued u/s. 153A of the Act, in light of provisions of section 127 of the Act and argued that the requirements of section 127(2) of the Act, have not been compiled by the Department while transferring jurisdiction of the assessee from CCIT, Trichy-2, to DGIT(Investigation), Chennai. According to the appellant, the invocation of provisions of section 127(2) of the Act, itself is illegal and void and in absence of any positive agreement being arrived at by the authorities of equal rank, and thus, transfer of case to jurisdiction of DGIT(Investigation), Chennai is illegal. We have gone through the arguments advanced by the ld. Counsel for the assessee, in light of relevant provisions of the Act and as per section 127 of the Act, the Principal Director General, or the Principal Chief Commissioner, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so and after recording his reasons for doing so, transfer any cases from one or more Assessing Officers subordinate to him to any other Assessing Officer also subordinate to him. On careful examination of provisions of section 127 of the Act, it is very clear that the power to transfer of cases from one Assessing Officer to another Assessing Officer is rest with the Principal Director General or

Principal Chief Commissioner and thus, in our considered view the assessee cannot call in question the powers vested with the authorities to transfer the cases in a manner convenient to the Department. However, the only requirement is to give an opportunity to the assessee of being heard in the matter, wherever it is possible to do so. In the present case, it is not even the case of the assessee that the procedure laid down u/s. 127 of the Act has not been followed. Therefore, we are of the considered view that there is no merit in objection raised by the assessee on the issue of transfer of cases u/s. 127 of the Act and thus, grounds of appeal filed by the assessee on this issue are dismissed.

28. In so far as ground no. of 4.(b) to 4.(f) of the assessee appeal on the issue of validity of notice issued u/s. 153A of the Act, on the ground that the seized materials are not handed over as per section 132(9A) of the Act, we find that, the appellant has challenged the validity of notices issued u/s. 153A of the Act, in light of CBDT instruction no. 286/161/2006-IT(Inv-2), dated 24.07.2007 and argued that the Assessing Officer may issue notices u/s. 153A of the Act, immediately after receiving the appraisal report and seized materials, and ascertaining the cases where notices u/s. 153A of the Act are required to be issued. However, in the present case from the reply of the Assessing Officer, it is evident that the Assessing Officer did not possess any seized material in hand at the time of issue of notice u/s. 153A of the Act and thus, the notice issued u/s. 153A of the Act, can be said to be issued without any application of mind on appraisal report and seized material. We have gone through the

contentions of the assessee in light of relevant provisions of section 153A of the Act, and we ourselves do not subscribe to the arguments of the counsel for the assessee for the simple reason that, as per the provision of section 153A of the Act, in the case of the person where a search is initiated u/s. 132 of the Act, the Assessing Officer shall issue notice to such person requiring him to furnish within such period the return of income in respect of each assessment year falling within six assessment years to be filed and also assess or re-assess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted. From the plain reading of provisions of section 153A/153C of the Act, it is very clear that issuance of notice u/s. 153A and assess and re-assess the total income are not dependent on seized documents or materials. The Assessing Officer acquires jurisdiction to issue notice u/s. 153A/153C of the Act, on the basis of initiation of search and is not dependent on provisions of section 139, 147, 148, 152 & 153 of the Act. In the present case, the appellant is making out a case on the basis of reply furnished by the Assessing Officer to the objection filed by the assessee that, the Assessing Officer does not have the benefit of appraisal report and seized materials when the notice was issued u/s. 153A of the Act. But, fact remains that during the course of search, huge incriminating material was found and seized which clearly established necessity of issue of notice u/s.153A and 153C of the Act and thus, we are of the considered view that the arguments of the assessee on this issue is nothing but hypothetical and thus, we reject the grounds taken by the assessee on this issue.

29. The assessee and, as well as the revenue had challenged evidentiary value of statement recorded from various employees of the assessee, including statement of Ms. Anandhi, Mr. Vannakanna, Mr. HariHara Krishnan and Mr.Valeeswaran and also the appellant. The ld. Counsel for the assessee submits that statements from various employees has been recorded under coercion and duress, which is evident from the fact that all employees and appellant had retracted their statement by filing a sworn affidavit within a period of 90 days from the date of the statement. However, the Assessing Officer has made addition solely on the basis of statement of employees even though they have retracted from the statement by filing a sworn affidavit before the Hon'ble High Court of Madras. Therefore, argued that the statements of the employees of the appellant are not conclusive evidence and thus, the same needs to be rejected inlimine.

30. The ld. CIT-DR, Shri. M. Rajan, submitted that the ld. CIT(A) erred in holding that the retraction of statement made by the assessee, his employees and other associated persons as valid and acceptable, though the retractions were filed after reasonable time of 90 days. The DR further submitted that the CIT(A) ought to have appreciated that the assessee has failed to prove that the statements were recorded under duress, coercion and other adverse circumstances. The ld. DR further referring to counter affidavit filed by the revenue before the Hon'ble High Court of Madras in response to writ petition filed by the assessee, submits that the retractions made by the assessee and other associated persons are without basis and not backed by any credible

evidences because admission of undisclosed income in the statements is with regard to incriminating material found during the course of search. The ld. DR referring to the decision of Hon'ble High Court of Madras in the case of T.S. Kumarasamy vs ACIT [98] 65 ITD 188 (mad) submitted that, when assessee fails to prove coercion or Durres or any ground for the involuntary statement, then subsequent retraction without any evidence cannot be considered and in this regard relied upon the decision of Hon'ble Supreme Court in the case of Shri. Surjeet Singh Chhabra vs UOI [1997] 1 SCC 508.

31. We have given our thoughtful consideration to the arguments of the ld. Counsel of the assessee in light of relevant provisions of the Act and facts brought on record. The Assessing Officer has rejected retraction statement of various employees of appellant on the ground that retraction has been filed after lapse of more than 90 days from the date of recording of such statement. In this regard, it is noticed that the CIT(A) had given categorical finding that the appellant had filed retraction within 90 days from the date of search, which is evident from the fact that, the appellant and their employees have filed affidavits before the Hon'ble High Court of Madras on 31.10.2018 and contended that statement have been recorded under threat, coercion and duress and also they have been compelled to sign the statement without letting them to go through the contents. In our considered view, said affidavits are in the nature of retraction of statements. The retraction filed on 16.01.2019, referred to by the Assessing Officer are the retraction separately filed before the DDIT(Inv). The Assessing Officer has omitted to take the affidavit filed by the

appellant and his employees before the Hon'ble High Court on 31.10.2018, into consideration. Therefore, we are of the considered view that the reasons given the Assessing Officer to reject the retraction of the appellant and his employees on the basis subsequent letter filed before DDIT(Inv) is incorrect and untenable.

32. We, further noted that, admission in a statement recorded u/s. 132(4) of the Act, is not conclusive evidence, though it is an extremely important piece of evidence. It is open to the person who made the admission to show that the impugned statement has incorrectly being made. There are cases where the assessee on his own motion gives the disclosure of undisclosed income, however later on such an assessee may realize that such a statement was given under mistaken of facts or at times of nervousness, stress and panic and thereby the statement so tendered does not reflect the true state of affairs. Therefore, it is very important to consider the statement recorded during the course of search u/s. 132(4) of the Act, in light of their contents with reference to incriminating materials unearthed during the course of search. In a case, where the statement recorded u/s. 132(4) of the Act is supported by corroborative evidences like incriminating material, then those statements needs to be considered on face of it, because the assessee may have given admission after analyzing the material found during the course of search. In a case, where the statement recorded u/s. 132(4) of the Act is not supported by corroborative evidences like incriminating material found during the course of search, then the contents of those statements needs to be considered in light of

retraction, if any filed by the assessee and reasons given for filing said retractions. At the same time, it has to be kept in mind that merely because a statement is retracted, it cannot become a statement which is involuntarily or unlawfully obtained. For any retraction to be successful in the eyes of law, the assessee needs to show as to how the statement recorded earlier does not states the true facts or that there was coercion, inducement or threat while recording the statements. Therefore, from the above, it is very clear that retraction of a statement should not be rejected merely because the assessee has given admission during the course of search. In our considered view, although admission is an important piece of evidence, but it is not conclusive and it is open to the assessee to show that it is incorrect.

33. At this stage, it is relevant to refer to the decision of Hon'ble Supreme Court, in the case of Pullangode Rubber Produce Co. Ltd vs State of Kerala [1973] 91 ITR 18, where it has been clearly laid down that admission is an extremely important piece of evidence, but it cannot be said to be conclusive and that the maker can show that it was incorrect. The above judgment was followed by the Hon'ble High Court of Delhi in case of S. Arjun Singh vs CWT [1989] 175 ITR 91. The sum and substance of ratios laid down by various courts, including the Hon'ble Supreme Court is that, the whole atmosphere during the search is of utmost pressure and therefore, there is very little scope for free and fair thinking for the searched person. Therefore, when a person filed a retraction within reasonable time and such retraction is backed by valid reason, then the Assessing Officer cannot reject the retraction filed by the assessee merely for the

reason that the assessee has filed retraction after search, on the ground that said retraction has been filed with an afterthought. Therefore, we are of the considered view that the findings recorded by the ld. CIT(A) on this issue is well reasoned and does not call for any interference from our side. Thus, we reiterate the legal position that the retraction of the appellant and his employees and other associates persons has to be regarded as valid and acceptable, wherever the admission made in the statement is shown to be contrary to the facts available on record or seized material. Therefore, this principle has been followed while adjudicating other grounds of appeal dealing with various additions made by the Assessing Officer in the assessment order on the basis of the statement recorded during the course of search. Thus, we reject ground taken by the assessee and as well as the revenue on this issue for all assessment years.

34. In so far as the issue of jurisdiction of assessing officer, the assessee challenged the issue in light of provisions of section 124 of the Income tax Act, 1961. The assessee submits that although the appellant has raised the jurisdiction issue before the Assessing Officer, the Assessing Officer has decided the question of jurisdiction contrary to provisions of section to 124(2) of the Act, which is violation of section 124 of the Act. We find that, provisions of section 124 deals with jurisdiction of Assessing Officer in terms of any direction or order issued under sub-section (1) or sub-section (2) of section 120 of the Act. As per sub-section (2) of section 124 of the Act, where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be

determined by the Principal DGIT, or Principal Chief Commissioner of Income-tax, as the case may be, notified by the Board in the official gazette. In this case, the grievance of the assessee was that objection filed in this regard, in terms of sub-section (3) has been decided by the Assessing Officer himself without referring the matter to the DGIT or PCCIT. We have considered the arguments of the counsel for the assessee, in light of reasons given by the CIT(A) to decide the issue and after considering relevant facts, we do not subscribe to the arguments of the counsel for the assessee for the simple reason that, the jurisdiction was assigned to the DCIT, Central Circle-2(1), Chennai vide order u/s. 127 of the Act dated 29.01.2019 and in view of the said order there is no scope for having any doubt or ambiguity with regard to the jurisdiction of the Assessing Officer. Moreover, since the order assigning with jurisdiction of the Assessing Officer has been passed by the PCIT, the procedure for resolution of the dispute regarding the jurisdiction by reference to the higher authorities as laid down in section 124(2) is considered to be inapplicable and thus, ground raised by the assessee on this issue for all the assessment years are dismissed.

35. The next issue that came up for our consideration from ground no. 7 of assessee appeals for assessment year 2012-13 to 2019-20 is correctness of approval given u/s. 153D of the Act.The counsel for the assessee, Shri. D Anand, Advocate, submits that the Ld. Addl. CIT, Central Range-2, Chennai, erred in giving prior approval to the orders u/s.153A read with Sec.143(3) of the Income Tax Act, 1961, to bring to tax the undisclosed income and unexplained expenditure in a mechanical manner, without

application of mind and own reasoning, in complete defiance to the requirements of law or procedure. He, further submits that it is understood that there was no draft assessment order sent to the Addl.CIT, Central Range-2, Chennai for approval, but without such proposal the Addl. CIT, Central Range-2, Chennai, on her won returned to the Deputy CIT Central Circle-2(1), Chennai, on 24.06.2021, with the 'directions' to resubmit the draft orders, after incorporating income admitted during search in sworn statements, unexplained expenditure quantified as per Erandam Thall and undisclosed income towards difference between net profit as per seized tally from the premises of Mrs. Anandi and income declared as per ITR filed for the relevant assessment year. The Addl. CIT while issuing directions to the Assessing Officer to resubmit draft assessment order, stated that she had verified seized materials and matched them with the Income Tax Returns (ITR). Upon verification, a difference of Rs 9 lacs was found for AY 14-15. It shows that there was no substance in the claim of the appellant that the tally represents the true picture and the same represent accounts relied for filing for ITR. The Addl. CIT further stated that while preparing the Special Audit Report, the special auditor has exceeded the terms of reference by conducting independent enquiries. From the above correspondences, it is clear that the Deputy CIT Central Circle-2(1) was not in agreement with findings given in the Appraisal Report. Whenever the assessing officer is not in agreement with the findings given in the Appraisal Report, the Office Procedure Manual has laid down procedure. It is pertinent to note that the observations made in the Appraisal Report relating to examination/investigation as also issues identified in the course of examination of seized material

were carefully considered by Addl. CIT, Central Range-2 before endorsing it to the Addl.DIT, Unit-3, Chennai. The counsel for the assessee further submits that even after endorsing and forwarding the deviation note, the Addl. CIT, Central Range-2, as the sanctioning authority, took an altogether different stand by discarding her own judgment in giving directions to the draft assessment orders. Under Sec. 153D, it is the duty of the Addl. CIT to act in accordance with law, to apply mind while granting approval. The duty cast is to examine the record during searches, and, thereafter accord the statutory approval. Therefore, the manner and the material on the basis of which the approval was granted was mechanical and without application of mind.

36. The counsel for the assessee further submits that the primary duty while granting approval under Sec.153D of the Act, is to see that the draft order does not suffer from legal infirmity and that proper investigation has been conducted to unravel the facts. By doing so, not only the interest of the revenue is to be protected but also with the object of not causing undue tax burden and harassment to the appellant. If there was absence of explanation from Appu Direct Pvt. Ltd in respect of excel sheets, then directions cannot be given to make addition as unexplained expenditure in the hands of the appellant without carrying out verification through issuing summons/commissions. Similarly, when the proposal for conducting a Special Audit was under way, the terms of reference should have been properly taken care to include what is now said to be missing. Even the same could have been done while calling a second report on 15.04.2021. By maintaining silence and not raising objections at the appropriate

time and later on saying that the Special Auditor has done a perfunctory job cannot be taken as a shelter while giving approval. This could have been carried out even now as the assessments are to become time barred on 30.9.2021. Further, When Erandam Thall was found and seized at several places in the hands of different entities, the action required to be taken was under Sec.153C. It is such infirmities which the Addl. CIT, Central Range-2, is required to mention while granting u/s.153D approval. It is a dichotomy that after agreeing to the deviation note of the Deputy CIT Central Circle-2(1), the Addl. CIT, Central Range-2 gave approval to the findings given in the Appraisal Report. Therefore, the counsel submits that it amounts to giving approval u/s.153D to the Appraisal Report rather than to the proposed assessment orders. This reflects the non-application of mind while giving approval to the draft assessment order proposed by the Deputy CIT Central Circle-2(1).

37. The Counsel for the assessee further submits that the Addl. CIT, Central Range-2 has observed that the appellant has failed to produce major suppliers for verification before the Deputy CIT-Central Circle-2(1), despite the fact that modus-operandi of the bogus bought notes was discussed in detail in the Appraisal Report. It may be stated that placing reliance on the Appraisal Report, without carrying out the verification of the suppliers by issuing summons, is not enough to establish the non-genuineness of the transactions. On the other hand, where the appellant presented the suppliers, which are treated as dummy entities, the same have been treated as non-genuine by placing reliance on the Appraisal Report. The short-cut and self-serving

method adopted to rely on the Appraisal Report in the proceeding under Sec.153D by first agreeing to the deviation note cannot be taken lightly. Regarding seizure of cash from the individual lockers standing in the names of the employees, the same have been held to be under the control of the appellant, without invoking provision of Sec.153C. The appellant contention that the opening and closing stock for AY 2009-10 to 2011-12 matches with the seized tally has been disposed of by arguing that the same are not reflected in the return filed under Sec.153A and by saying that the appellant is not willing to give a true and correct picture of his accounts. Moreover, all these contentions are taken care of in the Special Audit Report and the findings therein were never objected. Therefore, it appears that the Addl. CIT, Central Range-2 is only going by the Appraisal Report and not drawing attention of the Deputy CIT Central Circle-2(1) to the law on the subject.

38. The ld. Counsel for the assessee further submits that the Assessing Officer, after incorporating the directions given in the letter dated 24.06.2021, final draft assessment orders were sent for approval on 05.08.2021. While seeking approval, the Deputy CIT Central Circle-2(1), categorically stated that "the additions has been made as stated in the appraisal report". He further stated that the undisclosed expenditure has been brought to tax on the basis of clarification furnished by the ADIT (Inv.) communicated through a letter dated 15.02.2021. There should be no iota of doubt that the draft assessment orders have been passed at the instance of the Investigation wing. The approval sought for the draft assessment order is in fact seeking approval

of the Appraisal Report. Even the 'directions' given in letter dated 24.06.2021 appears to be in the form of directions u/s 144A of the Act. The Addl. CIT, Central Range-2 has been forced to grant approval u/s. 153D to the assessment orders despite her clear disagreement as per the deviation note of the Deputy CIT Central Circle-2(1). Hence the approval was given in a mechanical manner, without application of mind and own reasoning, in complete defiance to the requirements of law or procedure. Therefore, he, submits that entire handing over file may be called for by your good office, from the file of the AO, to verify, whenever the files had been handed over to the Addl. CIT, Central Range-2, which enlightened the truth. Therefore, he submits that the entire search and assessment proceedings are illegal and invalid *in limine* when search has not resulted in identification of any unaccounted assets and the seizure of documents are admissible. Thus, the assessment orders not in conformity with section 153D of the Act, is illegal and un sustainable under law.

39. The ld. CIT-DR, Shri. M. Rajan, on the other hand supporting the order of the CIT(A) submitted that provisions of section 153D of the Act, deals with prior approval of the Joint Commissioner/Additional Commissioner before passing the assessment order and in this case, there is no dispute with regard to the fact that the assessment order has been passed with prior approval from the Range head in terms of section 153D of the Act. Further, the Counsel for the assessee claims that there is no proper approval as required u/s. 153D of the Act and such argument has been placed on the basis of correspondence between the Assessing Officer and the Addl. CIT, Range Head.

From the arguments of the assessee, it appears that there was lot of deliberations on draft assessment order passed by the Assessing Officer, in light of various incriminating material found during the course of search and appraisal report submitted by the DDIT-(Inv.) on the various issues including additions to be made towards undisclosed income on account of difference in net profit as per seized tally and net profit as per ITR filed for relevant assessment year and also additions towards unexplained expenditure u/s. 69C of the Act on the basis of seized Erandam Thall. In the note submitted to the Assessing Officer, the Addl. CIT categorically observed that on verification of seized material with ITR filed by the assessee there is a difference in income reported for various assessment years. Likewise, the Addl. CIT had also discussed other issues and gave directions to the Assessing Officer. Therefore, it cannot be said that approval granted u/s. 153D of the Act is mechanical and without any application of mind.

40. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The provisions of section 153D of the Act, deals with prior approval necessary for assessment in cases of search or requisition. As per said section, no order of assessment or reassessment shall be passed by the Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in section 153A(1)(b) of the Act. In the present case, there is no dispute with regard to the fact that the assessment order has been passed with prior approval from the Range head in terms of section 153D of the Act. Further, from the arguments of

the assessee itself, it appears that there was lot of deliberations on draft assessment order passed by the Assessing Officer, in light of various incriminating material found during the course of search and appraisal report submitted by the DDIT-(Inv.) on the various issues including additions to be made towards undisclosed income on account of difference in net profit as per seized tally and net profit as per ITR filed for relevant assessment year and also additions towards unexplained expenditure u/s. 69C of the Act on the basis of seized Erandam Thall. In the note submitted to the Assessing Officer, the Addl. CIT categorically observed that on verification of seized material with ITR filed by the assessee there is a difference in income reported for various assessment years. Likewise, the Addl. CIT had also discussed the issue and gave directions to the Assessing Officer to resubmit the draft assessment order. Therefore, it cannot be said that approval granted u/s. 153D of the Act, is mechanical and without application of mind. Further, the assessee rest his arguments solely on the basis of deviation note stated to have been submitted by the Assessing Officer proposing to make modifications to the unaccounted income suggested in the appraisal report and the endorsement by the Addl. Commissioner on said deviation note before forwarding the same to the Investigation Wing for their comments. But, fact remains that the assessee could not produce so called deviation note submitted by the Assessing Officer, to the Range head to prove their claim. Further, during appellate proceedings, the CIT(A) called for remand report on the issue and in response, the Assessing Officer submitted that deviation note being extended part of the appraisal report, is confidential in nature and thus, same cannot be shared

with the assessee or any appellate authority. The CIT(A), after considering relevant facts and also taken note of provisions of section 153D of the Act, came to the conclusions that in absence of availability of any documentary evidence, in respect of claim of the appellant with regard to deviation note, the arguments of the assessee can be said to be unsubstantiated. In our considered view, the findings of the facts recorded by the Ld. CIT(A) on appraisal of relevant facts is in accordance with law, because from the materials available on record, and also on the basis of arguments of the assessee, it is abundantly clear that there is enough proof to conclude that the Addl. CIT has given approval u/s. 153D of the Act after great deliberations with draft assessment order passed by the Assessing Officer in light of seized material and appraisal report submitted by DDIT(Inv) and thus, in our considered view the arguments of the assessee on this issue for all assessment years is fails. Thus, we reject grounds of appeal of the assessee on this issue for all the assessment years.

41. The next issue that came up for our consideration from Ground no 3 to 3.3 of Revenue appeal for Asst. Year 2009-10 to 2012-13 is issuance of notice u/s 153A of Income Tax Act, 1961, for AY 2009-10 to 2012-13.

42. The ld. CIT-DR, Shri. M. Rajan, submits that the ld. CIT(A) erred in holding that the notice u/s. 153A issued for the assessment year 2009-10 to 2012-13, is in violation to forth proviso to section 153A(1) of the Act, without appreciating the fact that the assessee indulged in generating unaccounted income

over the years and incurring expenditure also as ongoing concern. The income generated over the years was kept in the form of cash, which was declared as income amounting to Rs. 124.79 crores under PMGKY and IDS Scheme. Further, during the course of search, total cash of Rs. 16 crores was found and seized. It was further noticed that the assessee has paid on money of Rs. 9 crores for purchase of property during the financial year 2015-16. All these evidence goes to prove an undoubted fact that there is an undisclosed income in the form of cash which was rotated in the business even for assessment year 2009-10 to 2012-13 and this constitutes asset in terms of forth proviso to section 153A(1) of the Act. The CIT(A), without appreciating relevant facts simply annulled assessment order passed by the Assessing Officer for these assessment years, by holding that conditions precedent for invoking forth proviso to section 153A(1) are not satisfied.

43. The Counsel for the assessee, Shri. D Anand, Advocate on the other hand supporting order of the ld. CIT(A) submits that in order to invoke provisions of fourth proviso to section 153A(1) of the Act, the first and foremost condition is undisclosed income in excess of prescribed limit, which is absent in the present case. Further, the CIT(A) negated observations of the Assessing Officer with regard to conditions for imposing fourth proviso to section 153A(1) of the Act, and held that income declared under PMGKY and IDS scheme cannot be construed as asset and further cash seized during search pertains to assessment year in which date of search falls, but same cannot be extrapolated to previous assessment years. The Counsel for the assessee further submits that apart from issuing notices u/s 153A for six AYs immediately

preceding the AY relevant to the previous year in which search was conducted, the AO issued notices u/s 153A for 4 AYs which are beyond the said 6 AYs i.e AYs 2009-10 to 2012-13 and completed the assessments for AYs 2009-10 to 2012-13 u/s 153A r.w.s 143(3) and made addition towards underreporting of income without there being any evidence with the Assessing Officer to prove that the income represented in the form asset is escaped assessment for those assessment years. The legality of assumption of jurisdiction and issue of notices u/s 153A for AYs 2009-10 to 2012-13 was challenged by the appellant before the CIT(A) as the satisfaction of the conditions prescribed in the 4th proviso to sec 153A (1) is the sine qua non for such assumption of jurisdiction for "relevant assessment year or years" (AYs falling beyond the period of 6 AYs). The CIT(A) after considering relevant facts and also on appraisal of provisions of fourth proviso to section 153A(1) of the Act, held that issuance of notice in the case of the appellant for AY 2009-10 to 2012-13, in violation of the provisions the fourth proviso to section 153A (1) are bad in law and legally unsustainable. Accordingly, the CIT(A) held that the assessments made u/s 153A r.w.s 143(3) for the said assessment years are legally invalid and the same are, therefore, annulled. Therefore, he submits that the order of the CIT(A) should be upheld.

44. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The jurisdiction to issue notice u/s 153A of the Act, for the relevant assessment year or years, being the assessment years which fall beyond six assessment years, but not later than ten

assessment years from the end of the assessment year relevant to the previous year in which search is conducted, is vested with the AO only on fulfillment of conditions laid down in the fourth proviso to section 153A(1) of the Act, which was inserted in the Act with effect from 01.04.2017 by the Finance Act 2017. This becomes very clear when the language employed in the fourth proviso is taken into consideration. The said proviso starts with the phrase that "no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment years or year unless" followed by the enumeration of the specific conditions which need to be fulfilled. Unless the conditions laid down in clauses (a), (b) and (c) specified in the said proviso are fulfilled, the AO does not get the jurisdiction to issue notice u/s 153A for the relevant assessment years or years".

45. In light of above legal position, if you examine the facts of the present case, we find that, the assessing officer reiterated the discussion made in the satisfaction note regarding the fulfillment of the conditions spelt out in the fourth proviso at para. 15.6.5 of the assessment order. On careful examination of the satisfaction note, it is noticed that the assessing officer has relied on certain factual observations found during search to come to the conclusion that the books of accounts or other documents or evidence found during the search have revealed that income represented in the form of asset exceeding Rs 50 lakhs has escaped assessment for the relevant assessment years. On careful examination of reasons given by the Assessing Officer to assume jurisdiction for Asst. year 2009-10 to 2013-13, we find that as per the "Erandam Thall" found during the search, the

assessee has been making undisclosed/inadmissible expenditure over the years regularly and there has been generation of undisclosed income through bogus bought note and dummy entities. The unaccounted cash has been kept in the business of the assessee, which is a going concern and its group as working capital which is an investment/ asset. Therefore, the Assessing Officer opined that the threshold limit of Rs 50 lakhs is met for the assessment year or in the assessment years.

46. As regards the reference made to the "Erandam Thall" which was seized during the search, it is noticed that the same contained details of unexplained expenditure as per the assessing officer's own remarks and admittedly, there is no information/ details in "Erandam Thall" regarding undisclosed investment in any asset. Though, the assessing officer stated that the unaccounted cash has been kept in the business of the assessee as working capital, which is an investment/ asset, it is noticed that the assessing officer failed to specify the entries in the seized "Erandam Thall" which go to demonstrate that unaccounted cash has been retained in the business as working capital. The unexplained expenditure cannot be equated with the holding of unaccounted cash as working capital. Such inference drawn by the assessing officer defies logic. As regards reference to generation of undisclosed income through bought notes and dummy entities, which in turn was utilised for making unexplained expenditure as found noted in "Erandam Thall'", there is no such issue of generation of undisclosed income through bought notes and dummy entities in the assessment orders passed for assessment year 2009-10 to 2012-13 u/s 153A r.w.s 143(3). Thus, it is seen

that the said factual observation of the assessing officer in the satisfaction note is factually incorrect and not relevant to the issue of income escaping assessment for AY 2009-10 to 2012-13. The third observation of the Assessing Officer with regard to cash found during the course of search. The cash found/seized during a search is liable to be treated as income of the assessment year relevant to the previous year in which the search is conducted, in the event of failure of the assessee to satisfactorily explain the sources of such cash. The assessment year in which the taxability or otherwise of the seized cash is required to be considered in the case of the assessee is AY 2019-20 as the search was conducted on 05.07.2018. Thus, it is clear that the fact of cash seizure during the search is no-way related to the detection of undisclosed income, represented by an asset, for the assessment years 2009-10 to 2012-13. From the above, it is very clear that the observation of the Assessing Officer with regard to satisfaction of conditions prescribed in fourth proviso to section 153A(1) of the Act, is incorrect and opposed to law.

47. Further, it has been clearly laid down in clause (b) of fourth proviso to section 153A of the Act, that the income should have escaped assessment for the relevant assessment year or years only. It goes without saying that the cash seized during the search conducted in FY 2018-19 cannot be construed by any reasoning or logic to be representing income escaping assessment for AY 2009- 10 to 2012- 13. Further, it is noticed that the assessing officer made addition of Rs 9.00 crores towards on-money payment in the assessment order passed u/s 153A r.w.s 143(3) for AY 2016-17 in the case of the appellant. It is needless

to reiterate that the said transaction relevant to AY 2016-17 has no bearing at all or drawing satisfaction with regard to income escaping assessment, represented by an asset, for assessment years 2009-10 to 2012-13. Similarly, the declaration made under PMGKY is not in relation to any specific assessment year or years and there was no such requirement also under PMGKY. As regards the declaration made under IDS, it is noticed that the same was made for AY 2015-16 alone. Moreover, it has been clearly laid down in section 199-1 of Chapter IX-A of The Taxation Law (Second Amendment) Act, 2016 dealing with the tax and investment regime under PMGKY that the amount of undisclosed income declared under PMGKY shall not be included in the total income of the declarant for any assessment year under the Income Tax Act, 1961. In view of the said specific statutory prohibition, the action of the assessing officer in relying on the declaration made by the appellant under PMGKY to draw inference regarding income escaping assessment for assessment year 2009-10 to 2012-13 is in violation of the specific provisions of PMGKY and the same is not legally sustainable.

48. We further noted that in the satisfaction note recorded by the assessing officer prior to issue notice u/s 153A for AY 2009-10 to 2012-13, he does not bring out the fulfillment of the conditions laid down in the fourth proviso to section 153A(1) of the Act. The mandatory conditions that the seized material and other documents and evidences in the possession of the assessing officer should reveal that income, represented by an asset, has escaped the assessment for the relevant assessment year or years and such income escaping assessment should be in excess

of Rs 50 lakhs have not been satisfied in the appellant's case. The discussion made in the preceding paragraphs has brought out the fact that no undisclosed asset has been found in the case of the appellant which represents the income escaping assessment for the relevant assessment years. It is interesting to note that no undisclosed asset has been brought to tax by the assessing officer even in the assessment order passed u/s 153A r.w.s 143(3) of the Act, for A Ys 2009-10 to 2012-13. The CIT(A) after considering relevant facts rightly held that the reasons recorded by the AO in the satisfaction note do not bring out satisfaction of the mandatory conditions prescribed in the 4th proviso to sec 153A(1) which necessitate issue of notice for assessment years beyond six assessment years and thus, annulled the assessment orders passed by the Assessing Officer for AY 2009-10 to 2012-13. Therefore, we are of the considered view that, there is no error in the reasons given by the ld. CIT(A) to annulled the assessment for Asst. years 2009-10 to 2012-13 and thus, we reject grounds of appeal filed by the revenue and uphold the order of the CIT(A) for Asst. Years 2009-10 to 2012-13.

49. The next issue that came up for our consideration from ground no. 4 to 4.4 of revenue appeal for assessment years 2009-10 to 2014-15 is deletion of additions towards undisclosed income, being a difference between the net profit as per the seized tally accounts and net profit reported in the ITR filed for the relevant assessment year. The brief facts of the issue are that, during the course of search u/s. 132 of the IT Act, conducted on 05.07.2018, the Department has seized tally backup vide annexure VP/EP/SZ. The profit and loss account from seized

electronic devices were different from the one submitted to the Department. For example, for assessment year 2009-10 net profit as per the P&L account from the seized electronic device was Rs. 35.43 crores, whereas, the profit shown in the return of income filed for the year was at Rs. 14.5 crores. Likewise, the Assessing Officer has compared net profit as per seized electronic device to ITR filed for relevant assessment years and computed difference between income as per ITR and income as per seized electronic device for assessment year 2009-10 to 2014-15. The details are as under:

| AY | Income as per ITR | Income as per seized electronic devices vide Annexure VP/ED/S2 | Unaccounted Income |
|---|---|---|---|
| 2009-10 | 14,50,43,115 | 35,43,06,579 | 20,92,63,464 |
| 2010-11 | 34,25,24,801 | 38,38,75,986 | 4,13,51,185 |
| 2011-12 | 70,47,97,814 | 99,42,84,653 | 28,94,89,839 |
| 2012-13 | 67,73,13,951 | 1,86,73,46,489 | 119,0,32,538 |
| 2013-14 | 15,96,86,627 | 37,79,55,760 | 21,82,66,133 |
| 2014-15 | 21,56,01,358 | 1,32,93,72,383 | 111,37,71,025 |
| | | **TOTAL** | **306,21,74,184** |

50. It was further observed that, during the course of search sworn statement of Mrs. Anandhi, Consultant of M/s. Christy Friedgram Industry was recorded on 07.07.2018 and in response to specific questions, she had admitted that there is difference between net profit as per books of accounts seized during the course of search and net profit as per the Income-tax returns filed for relevant assessment years. The statement of Smt. R. Anandhi

was confronted with Shri. M. Vannakannan, DGM (Accounts), during the course of search, and in response to statement, he had admitted under reporting of income for assessment year 2009-10 to 2014-15. The assessee was asked to comment on the sworn statement given by Smt. R. Anandhi and Shri. Vannakannan and in response to specific question, the assessee Shri. T.S. Kumarasamy in the statement recorded on 09.07.2018 confirmed the replies given by Mr. Vannakannan, DGM (Accounts). The Assessing Officer, on the basis of sworn statement recorded from employees of the assessee made additions of Rs. 306,21,74,184/- for assessment year 2009-10 to 2014-15 towards undisclosed income on account of under reporting of income.

51. The assessee preferred an appeal before the CIT(A) against the assessment orders on the issue of additions towards under reporting of income. Before the CIT(A), the assessee contented that the Assessing Officer has made additions towards under reporting of income only on the basis of sworn statement recorded from Smt. Anandhi and confirmed by Mr. Vannakannan, ignoring reconciliation filed by the assessee explaining the difference between net profit as per P&L account in seized electronic device and net profit reported in ITR filed for the relevant assessment year. The CIT(A), for the reasons stated in their appellate order, deleted additions made by the Assessing Officer toward under reporting of income by holding that the assessee has explained and reconciled difference between net profit as per P&L account and net profit as reported in ITR filed for the relevant assessment year. Being aggrieved by the CIT(A), the revenue is in appeal before us.

52. The Ld. CIT-DR, Shri. M. Rajan, submits that the Ld. CIT(A) erred in deleting the addition made towards under reporting of income being the difference between the net profit as per the seized tally accounts and net profit reported in the ITR by holding that seized tally accounts are incomplete and inaccurate. The ld. CIT-DR further submits that the CIT(A) erred in not appreciating the fact that Smt. R. Anandhi, in her sworn statement u/s. 132(4) dated 07.07.2018, admitted the difference between the income as per seized tally accounts and income reported in ITR filed for the relevant assessment year was the unaccounted income generated for those assessment years and her statement was confirmed by Shri. M. Vannakanna, DGM (Accounts) in his sworn statement dated 07.07.2018 and the same has been confirmed by the assessee Shri. T.S.Kuamarasamy, in his sworn statement dated 09.07.2018. But, the CIT(A) deleted additions made by the Assessing Officer, on the basis of explanation submitted by the assessee, ignoring sworn statement of employees and assessee.

53. The ld. Counsel for the assessee, Shri. D Anand, Advocate, supporting order of the CIT(A) submits that sole basis for the Assessing Officer to make additions towards under reporting of income for Asst. Year 2009-10 to 2014-15 is seized electronic devise found in the possession of Smt. Anandhi, Consultant and sworn statement recorded from her during search. Further, the Assessing Officer had taken quantification of undisclosed income on the basis of Smt. Anandhi, sworn statement and confirmation from Shri. Vanakkanna, DGM (Accounts) without verifying the veracity of their statements, because Smt. Anandhi and Shri Vanakkannan have retracted their statements by sworn affidavits

and no reliance can be placed on the seized tally accounts which represented incomplete and inaccurate accounts and that the audited P&L account available in the seized material itself ought to have been considered by the AO. The ld. Counsel further submits that the appellant also contended that part of the variation between the net profit as per the seized tally accounts and income as per ITR is due to not providing for depreciation (for divisions other than Oats division) in the books of accounts though the same is claimed in the ITR as per the provisions of the Act. The assessee had also filed reconciliation statements and explained difference between net profit as per seized tally accounts and net profit reported in ITR filed for the relevant assessment years. The ld. Counsel took us to paper book filed by the assessee, which contains ITR filed for Asst. year 2009-10 to 2014-15 and shown to us how and where the Assessing Officer went wrong in considering figures in appropriate column of ITR form. The counsel for the assessee further submits that books of accounts seized from electronic devise contains incomplete data taken before finalization of accounts and the assessee explained how it was incomplete. The CIT(A) after considering relevant facts, rightly deleted additions made by the Assessing Officer towards under reporting of income, except to the tune of Rs. Rs.75,879 and Rs.3,89,921 towards shortfall in the income admitted in ITRs for AYs 2013-14 and 2014-15 respectively and their order should be upheld.

54. We have heard both the parties, perused relevant materials on record and gone through orders of the authorities below. We have also carefully considered working provided by the Assessing

Officer in assessment order and reasons for making additions. The sole basis for the Assessing Officer to make additions towards under reporting of income is electronic device seized from Smt. Anandhi, Consultant, during the course of search, a sworn statement was recorded from Smt. Anandhi u/s 132(4) of the Act, where she had admitted under reporting of income and the same has been confirmed by Shri. Vanakkannan, DGM(Accounts) and Shri. T S Kumaraswamy, the appellant. The Assessing Officer has considered under reporting of income being difference between net profit as per profit and loss account in seized tally accounts and income reported in ITR filed for the relevant assessment year. It was the explanation of the assessee before the Assessing Officer that the seized tally accounts in the possession of Smt. Anandhi are incomplete accounts before providing year end provisions like, depreciation, interest on loan and other provisions for various expenses. The assessee has filed a chart explaining difference in income with item wised debits and credits and ongoing through said reconciliation, we find that in the seized tally accounts, the assessee does not made provisions for depreciation, interest and other journal entries to rectify various mistakes in accounting income and expenditure. From the above, it is undoubtedly clear that the arguments of the assessee that tally accounts found in the premises of Smt. Anandhi is incomplete and same cannot be relied upon is backed by evidence.

55. Let us come back to year wise under reporting income computed by the Assessing Officer. For AY 2009-10, the AO quantified the under reported income at Rs 20,92,63,464/- by considering the difference between the net profit as per seized

electronic device (Seized Tally Account) of Rs 35,43,06,579/- and the income admitted in the ITR at Rs 14,50,43,115/-. During the course of the assessment proceedings, the appellant furnished a reconciliation between the net profit as per seized tally account and income disclosed in ITR. However, the AO rejected the said reconciliation in the assessment order at para 16.3 by stating the P&L account furnished in the return of income filed in response to notice u/s 153A had only entries "0" including the columns pertaining to "closing stock" and "opening stock" and the annexures furnished contained manually prepared return of income claimed to have been filed u/s 139 without any acknowledgement for having filed the said return before the department. But the ld. Counsel for the assessee took us to paper book and explained difference computed by the AO considering ITR filed for the relevant assessment year. From the reconciliation, we find that the reasons cited by the AO for his rejection of reconciliation furnished by the appellant are irrelevant and incorrect. It is an undisputed fact that the original return of income for AY 2009-10 filed u/s 139 was filed as "No account case". As a result, the original return of income did not contain any details of P&L account. As per the details relating to P&L account required to be furnished in a return filed under category of No Accounts case, the appellant separately furnished the details of gross receipts, gross profit, expenses and net profit in the relevant columns of the returns of income (Paper Book Vol1 page 447 -492). Further, the appellant furnished the details of sundry creditors, sundry debtors, closing stock and cash balance in the relevant columns of the return, which are required to be furnished in a return furnished under the category of No Accounts

case. While filing the return of income in response to notice u/s 153A, the appellant filed the details in the same manner. The appearance of "0" entries in P&L account, as observed by the AO in the assessment order, were due to this reason. The citing of occurrence of "0" entries in the P&L account by the AO as one of the reasons for rejecting the reconciliation is therefore found to be irrelevant for the purpose of examining the correctness or otherwise of the reconciliation. Further, it is observed that the AO has wrongly cited the reason of non-furnishing of the acknowledgement of the return of income filed manually u/s 139(1) for rejecting the reconciliation. The said acknowledgement of the manually filed return is already available in the seized material in the location "Backup 24.07.2014-First shifting" of the seized accounts (Paper book Vol-I Page 1, 35 and 57). Moreover, the non-furnishing of the acknowledgement has no bearing on the verification of the correctness of the reconciliation. Therefore, we are of the considered view that rejection of the reconciliation by the AO on the basis of irrelevant and incorrect grounds is not sustainable. The rejection of reconciliation furnished by the appellant for AYs 2010-11 & 2011-12 also for the same reasons is not sustainable.

56. In the reconciliation furnished by the appellant during the assessment proceedings for AY 2009-10, it was explained that a major portion of the difference between the profit as per the P&L account in the seized tally and the income as per ITR of Rs.20,92,63,464/- (Paper book Vol-I Page 493-495) is on account of difference in the opening stock. We find that the value of the closing stock as on 31.03.2008 as per the return of income filed

for assessment year 2008-09 and the statement of affairs furnished during the course of scrutiny assessment proceedings for the said assessment year amounted to Rs.24,53,18,327/- (Paper book Vol-I Page 493-495), whereas the opening stock as on 01.04.2008 reflected in the seized tally data amounted to Rs.5,31,50,692/- (Paper book Vol-I Page 493-495) for the financial year 2008-09 relevant to assessment year 2009-10. The difference in the opening stock therefore amounted to Rs.19,21,67,635/- (Paper book Vol-I Page 497-498)and the said difference accounted for a major portion of the total difference amount of Rs.20,92,63,464/- added as under reported income in the assessment order. With regard to this claim of the appellant, it is noticed that the same is factually correct on perusal of the return of income filed for assessment year 2008-09 and the statement of affairs furnished to the AO during the course of the scrutiny assessment proceedings for assessment year 2008-09. It is noticed that the return of income for AY 2008-09 was also filed under the category of No Accounts case and the details of sundry debtors, sundry creditors, closing stock and cash balance were furnished in the columns relevant for a No Accounts case. The closing stock was shown at Rs 24, 53, 18,327/- (Paper book Vol-I Page 493-495) in the relevant column of the return. Further, it is noticed that the appellant had furnished statement of affairs during the scrutiny assessment proceedings and the closing stock was shown therein at Rs 24,53,18,327/- (Paper book Vol-I Page 493-495). On perusal of the assessment order dated 12.11.2008 passed for AY 2008-09, it is noticed that the AO made an addition of Rs 200000/- (Paper book Vol-I Page 493-495) towards understatement of closing stock and determined the closing stock

at Rs 24,55,18,327/- (Paper book Vol-I Page 493-495). On the other hand, on perusal of the seized tally data, it is noticed that the opening stock as on 01.04.2008 for AY 2009-10 has been shown at Rs 5,31,50,692/- (Paper book Vol-I Page 704)as against the correct value of opening stock of Rs 24,53,18,327/-. (Paper book Vol-I Page 1 to 34) Thus, it is seen that the opening stock has been adopted at a lower figure by an amount of Rs 19,21,67,635/- (Paper book Vol-I Page 35-56) and the said mistake in the seized tally has resulted in overstating the profit for the year by the said amount of Rs 19,21,67,635/-. Similarly, the assessee has filed reconciliation explaining the difference for AYs 2010-11 and 2011-12 regarding the inaccuracy of the opening stock in the seized tally accounts and the same is found to be factually correct for AYs 2010-11 & 2011-12 also.

57. We further noted that, apart from the issue of wrong adoption of the value of opening stock in the seized tally account, the appellant also brought to the notice of the AO in the reconciliation furnished during the assessment proceedings that part of the difference between the net profit as per seized tally and the income as per the ITR is on account of depreciation claimed in the ITR (Paper book Vol-I Page 493-495). We find force in the arguments of the assessee, because the depreciation has not been provided in the seized tally except for the Oats division, whereas depreciation as per the provisions of the Act has been claimed in the ITR in respect of all divisions including Oats division. The fact that the appellant had not been providing for depreciation in the books of account (except for the Oats division) has been confirmed by the special auditor in his report (Paper

book Vol-I Page 493-495), after making necessary verification of the seized tally account. The appellant has not provided for depreciation in respect of its divisions other than oats division in the seized tally accounts, whereas he has claimed depreciation with regard to the said divisions in the returns of income as per the provisions of the Act. The variation between the net profit as per seized tally account and the income as per the ITR to the extent of Rs. 1,80,77,955/- for AY 2009-10, Rs.2,79,75,199/- for AY 2010-11 and Rs. 2,82,05,187/- for AY 2011-12 (Paper book Vol-I Page 35-84) is attributable to the depreciation not provided for in the seized tally accounts. Since, depreciation is a yearend provision, generally provided in books at the time of audit, and thus, we are of the considered view that there is no reason to doubt explanation of the assessee on this aspect.

58. In so far as AYs 2012-13 to 2014-15, the appellant contended during the course of the assessment proceedings, that Smt. Anandhi seized tally data represents incomplete data and the same cannot be taken into consideration for the purpose of drawing any inference of under reporting of income. It was pointed out that the complete and final accounts in respect of all the divisions for AYs 2012-13 to 2015-16 are found to be available in the pendrive seized (ANN/PKS/B&D/S) from residence of Shri Vannakannan and the income admitted in the ITR is in conformity with the audited P&L accounts available in the said seized device. It was stated that the details furnished in the ITR in respect of various columns relevant for category of a No Accounts case are matching with the audited P&L account and Balance sheet found in the said seized device and the audited financial

statements in the said seized device are also matching with audited accounts available in Smt. Anandhi device itself. It was accordingly contended that there is no under reporting of income for the assessment years under consideration, on taking into account the final accounts and audited P&L account seized from Shri.Vannakannan. The AO rejected the contention of the appellant by making comparison of the heads of account available in Smt. Anandhi seized tally account and Vannakannan seized tally account and pointing out certain differences between the two accounts. The explanation furnished by the appellant with regard to the said differences has been examined and the same was found to be acceptable. It is therefore evident that the inference drawn by the AO on the basis of comparison of heads of account between the Smt. Anandhi seized tally account and vannakannan's seized tally account that the tally data found with Smt. Anandhi cannot be treated as forming part of the tally data found with vannakannan and that both the accounts cannot be co-related is factually incorrect and not sustainable.

59. We further noted from the reconciliation statements for AYs 2009-10 to 2014-15, that the appellant highlighted the submissions made during the assessment proceedings regarding the incompleteness, inaccuracies and unreliability of the seized tally data. The appellant explained that the seized tally accounts represented the accounts prior to finalisation and audit and the same cannot be taken into consideration. The appellant stated that the finalised and audited accounts are available in the same seized electronic device and that the same were not taken into consideration by the AO. On careful examination, the explanation

furnished by the appellant is considered to be in tune with the normal accounting and auditing process in any commercial organisation. The initial entries made in the accounts do not always represent the true nature of the transaction. Some of the instances of such nature are transactions on revenue account being entered as transactions on capital account or vice versa, incomes required to be credited to P&L account being erroneously credited to capital account or vice versa. Any errors/omissions in making the entries are subsequently corrected by passing necessary journal entries at the time of finalisation of accounts. Similarly, entries are passed at the time of finalisation of accounts based on the reconciliation of bank statement, cash in hand, confirmations from suppliers/customers etc., Moreover, the entries relating to write off of bad debts, provisions for expenses, depreciation charged in the books, interest accrued on deposits, interest on capital in partnership firm etc., are required to be made only at the time of finalisation of accounts at the end of the year. In view of these reasons, the accounts which have not been taken up for finalisation cannot be regarded as accounts portraying the true financial performance of the concerned entity. In the case of the appellant, the seized tally accounts represented accounts which were not taken up for finalisation and they did not represent complete and accurate accounts. The said accounts represented the accounts standing prior to the finalisation and auditing process for ensuring completeness and accuracy of the accounts. This aspect of the nature of seized tally accounts is supported by the reconciliation statement furnished by the appellant. As can be seen from the reconciliation statement, the erroneous or incomplete entries made in the seized tally account

were corrected during the auditing of the accounts and in preparation of the audited P&L account and Balance sheet. It is pertinent to mention that the audited P&L account and Balance sheet for AYs 2009-10 to 2014-15 are available in the same electronic device seized from Mrs. Anandhi "Auditor Office 22.11.2014".

60. The discussion made regarding the incomplete and inaccurate nature of the seized tally accounts finds support from the remarks made by the special auditor in his report while preparing the final accounts for the AYs 2009-10 to 2014-15, by considering the seized tally accounts as the starting point. After thorough examination of the seized tally accounts, the special auditor stated in para 7(h) (Paper Book vol III Page 10) of the Audit Note that the said accounts are incomplete in nature. He observed that it was visibly noticed that there are many inappropriate entries in terms of passing the entries as well as non-understanding the nature of transactions, mis-grouping, treating the asset as revenue and vice versa, making consolidated entry as a single entry leading to negative cash balance, making the group of persons expenses under a single entry, non-entry of inward of stock leading to a negative stock, values being mistakenly entered for the consumed stocks, etc. The Special auditor, further observed with regard to the balance sheet items that expenses made are shown as advances, assets are shown as liabilities, opening balances of the general ledgers not carried forward to the closing balance, payments made to suppliers were not accounted etc,. The special auditor also made observations regarding the integrity of the seized tally data in the backdrop of

availability of multiple backups at multiple times in multiple storage devices and availability of such backups at multiple locations and stated that the same constitutes clear evidences of improper maintenance of data. From the above, it is very clear that the AO is completely erred in considering seized tally accounts of Smt. Anandhi, because said accounts are incomplete and does not give correct financial position.

61. The AO has rejected the report of the special auditor obtained u/s 142(2A) of the Act in the assessment orders. The discussion regarding the reasons for rejecting the special auditor's report has been made at para 16.7 of the assessment orders. On perusal of the same, it is noticed that the main reason cited by the AO for rejecting the report is that the special auditor conducted independent enquiries in respect of claim of quantum of purchases, use of raw materials with respect to the manufacturing of finished products etc., which was beyond the mandate of special audit and in spite of the fact that the special auditor was not privy to the confidential findings of the search in respect of the modus operandi of manipulation of accounts to inflate purchases and report losses. However, the said reason cited by the AO for rejection of special auditor's report is not relevant to the assessment years under consideration, since the issue of inflation of purchases is absent in this year as per the assessment orders passed u/s 153A r.w.s 143(3). The terms of reference of the special audit included preparation of final accounts for AY 2009-10 to 2018-19 (Paper Book Vol – II page 633 - 634 ) and accordingly the special auditor prepared the final accounts for the assessment years under consideration. While

rejecting the special auditor's report, the AO cited another reason that the books of account were prepared by the special auditor by making AY 2009-10 as the base year and by adopting the closing stock AY 2008-09 as opening stock of AY 2009-10 and proceeding to build the accounts for the remaining years on the accounts of said base year. The AO stated that the accounts so prepared for the base year are not acceptable since the appellant himself has reported "0" in opening and closing stock figures in the return of income filed u/s 153A for AY 2009-10. However, the said reason cited by the AO is factually untenable. It is an undisputed fact that the original return of income for AY 2009-10 filed u/s 139 was filed under the category of "No account case". As a result, the original return of income does not contain any details of profit and loss account. As per the details relating to P&L account required to be furnished in a return filed under category of No Accounts case, the appellant separately furnished the details of gross receipts, gross profit, expenses and net profit in the relevant columns of the return of income. Further, the appellant furnished the details of sundry creditors, sundry debtors, closing stock and cash balance in the relevant columns of the return, which are required to be furnished in a No Accounts case. While filing the return of income in response to notice u/s 153A, the appellant filed the details in the same manner. The appearance of "0" entries in P&L account, as observed by the AO in the assessment order, were due to this reason. The citing of occurrence of "0" entries in the P&L account by the AO as one of the reasons for rejecting the special auditor's report is therefore found to be irrelevant and untenable. Hence, the final accounts prepared by the special auditor for the assessment year under consideration

are required to be taken into consideration, instead of the seized tally accounts, which are incomplete and inaccurate.

62. From the discussion in preceding paragraphs, it is undoubtedly clear that the audited P&L accounts available in the seized material itself and the audited P&L accounts prepared by the special auditor for AYs 2009-10 to 2011-12 which are in agreement with each other are required to be taken into consideration instead of the seized tally accounts. As per the reconciliation statements furnished by the appellant, the difference between the net profit as per audited accounts and the income as per ITR for the said AYs is attributable to the claim of depreciation as per law in the ITR, barring a minor difference. Therefore, for above reasons we are in full agreement with reasons given by the CIT(A) to delete additions made towards under reporting of income.

63. Coming back to important observations of the AO with regard to sworn statements recorded from the appellant and his employees and from associates. The AO, while making the addition towards underreporting of income, represented by the difference between the net profit as per seized tally and income as per ITR, placed heavy reliance on the statement of Mrs. Anandhi recorded u/s 132(4) and on the confirmation of the said statement by Shri Vannakannan, DGM Accounts and the appellant in their statements u/s 132(4). The statements of these persons have been retracted subsequently and the appellant contended that the same cannot be relied upon for making the addition in view of such retraction. In this connection, it is pertinent to

observe that the appellant raised separate grounds of appeal with regard to the validity of the retracted statements and the same have been dealt with earlier in this order. As held while disposing off the said grounds of appeal, retraction is required to be considered as a valid retraction wherever the statement was given under a mistaken belief of fact and is contrary to other facts available on record. In respect of the admission given by Mrs. Anandhi in her statement u/s 132(4) that the seized tally data represents the true accounts and the difference between the net profit as per the said tally accounts and income as per ITR represents the under reported income for AY 2009-10 to 2014-15, as rightly stated by the appellant, it is observed that Mrs. Anandhi is providing consultancy services to the appellant from December 2015 onwards and she has no personal knowledge of the maintenance of accounts for the period prior to her engagement by the appellant. Though, she has accounting knowledge in view of her professional qualification, she was not aware of the status of the accounts maintained by the appellant for the assessment year 2009-10 to 2014-15, which fell during the period prior to her association with the appellant's organisation. It is also pertinent to mention that the relevant seized tally accounts were available in multiple backup files with dates of back up shown as 05.05.2014, 24.05.2014, 24.07.2014, 22.11.2014 etc., and that all such back up dates are prior to her engagement with the appellant's organisation from December 2015 onwards. Therefore, we are of the considered view that she was not conversant with the correct status of the seized tally accounts pertaining to the earlier period and the statement given by her that the said tally accounts

represent true accounts of the appellant has to be regarded as a statement given under mistaken belief of fact.

64. As regards, the confirmation of the admission of Mrs. Anandhi with regard to under reported income for AY 2009-10 to 2014-15 based on seized tally data by Shri Vannakannan, it is noticed that he has merely stated that the working of the under reported income shown to him as per the statement of Mrs. Anandhi is correct. It is evident from the statement that the seized tally account was not made available to him to go through and furnish his comments regarding the correctness and completeness of such seized tally account. As discussed earlier, the said seized tally accounts did not represent correct and complete accounts. In the light of the said fact, the reply given by him in the statement confirming the working of Mrs. Anandhi without the benefit of going through the seized tally account to ascertain its correct status has to be construed as a statement given under mistaken of belief of fact. The same applies squarely to the statement given by the appellant on the issue of under reporting of income. In view of these reasons, the reliance placed solely on the said statements by the AO for making the addition towards under reported income for AY 2009-10 to 2014-15 is held to be unsustainable. Therefore, we are of the considered view that the AO is completely erred in making additions towards under reporting of income for AYs 2009-10 to 2014-15, ignoring reconciliation filed by the appellant only on the basis of retracted statements of the appellant and his employees.

65. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that the ld. CIT(A) has rightly apprised the facts in light of various materials found during the course of search and come to the conclusion that addition towards under reporting of income is unsustainable in law. In the grounds of appeal, the revenue has disputed the finding of the CIT(A) that the seized tally accounts relied on by the AO for making addition of under reported income are incomplete and inaccurate. However, the revenue has not furnished any specific rebuttal to the reasons cited by the CIT(A) for holding that the said seized tally accounts are incomplete or inaccurate. The revenue has also contended in the grounds of appeal that though the under reported income was accepted by Mrs. Anandhi, Mr. Vannakannan and the appellant in their statements u/s 132(4), the CIT(A) has treated the retraction of such statements as valid in spite of the fact that there was no coercion or undue influence and the retractions are merely an afterthought and without basis. However, fact remains that the retractions statements filed by the assessee and his employees are considered valid not on account of the acceptance of the claim of coercion or undue influence, but on account of finding that the said statements were rendered under mistaken belief of facts for the reasons discussed in detail at para 151 & 152 of the CIT(A) order. The revenue has not specifically rebutted the said findings of the CIT(A). Therefore, we are of the considered view that there is no error in the reasons given by the ld. CIT(A) to delete addition made towards under reporting of income being difference between net profit as per profit and loss account in seized tally data and income reported in ITR filed for the relevant assessment

year. Thus, we are inclined to uphold the findings of the ld. CIT(A) and reject grounds taken by the revenue for AYs 2009-10 to 2014-15.

66. The next issue that came up for our consideration from Ground No. 4 to 4.3 of Revenue appeal for Asst. years 2015-16 and 2016-17 is additions towards unaccounted income arising from difference between bought note purchase and sales.

67. The facts with regard to impugned dispute are that, during the course of search huge cash purchases and cash sale by way of bought notes were noticed vide seized material ANN/VP/ED/S1 to S7.It was observed during the course of search that the assessee was resorted to under reporting of income by inflating bought note purchases. Bought notes are purchase bills containing the name of the seller, bought note no, quantity purchased and amount paid towards the purchase. The assessee group has made two types of bought note purchases namely (a) purchase of commodities directly from the farmers through bought notes in cash. (b) Purchase of commodities from dummy entities using bought notes and making payment through banks. During the course of search, the complete set of bought notes of M/s. Christy Friedgram Industry was seized on 27.08.2018. The bought notes were verified with tally accounts in the electronic device as per Annexure –VP/ED/ED/S1 to S7. The seized bought notes and tally extracts were found matching. It was further noted that, in respect of bought note purchases there was no weighment slips, no goods receipt notes (GRN). Further, during the course of post search investigation, it was found that same lorry number was

used for number of bought note purchases and instance of such cases has been furnished in Para 7.8 of Assessing order. During the course of search, on examination of books and accounts maintained in seized tally vide annexure -ANN/VP/ED/S1 to S7 from Smt. R. Anandhi, she was questioned about the nature of purchases, and in response to specific question, she had admitted that bought note purchases were booked for inflation of purchases. During the course of post search investigation, statement of Shri E. Aththiappan, was recorded and in response, he had admitted there was no stock register for financial year 2014-15 & 2015-16 and further, he is in possession of stock register for assessment year 2017-18 & 2018-19 only. A statement from M. Vannakannan, DGM (Accounts) was also recorded and he was asked to furnish the quantity details of Maize purchases since financial year 2008-09 onwards. In response, he submitted that quantitative details of maize purchases are available in tally from financial year 2017-18 and for earlier years only purchase value has been entered in the tally without keying in the quantitative details.

68. During the course of assessment proceedings, the Assessing Officer analyzed details of consumption of major raw materials taken from Mr. M. Yuvaraj, Deputy Manager (Production) and on analysis, it was noticed that purchases through bought notes in cash were at higher market price and simultaneously sales for the same is also booked at a much lower price. The Assessing Officer on the basis of various incrimination material found during the course of search, coupled with statement recorded from various persons, observed that bogus purchases were booked in lakhs of

metric tons, whereas the actual consumption is only 11,000 metric tons for financial year 2015-16. In order to verify and understand the veracity of bought note seized, a random set of bought notes were selected and compared with tally accounts seized in the case of M/s. CFI for the financial year 2014-15 and it was found that the assessee has booked bought notes purchases under the head exempted purchase category. The Assessing Officer further observed that bought notes purchases were not supported by necessary evidences including GRN, weighment slip etc. Further, there is a huge variation in purchase quantity and quantity consumed in production process. Therefore, opined that the assessee is indulged in booking bogus bought purchases and bogus bought notes sales to reduce profit. Therefore, by taking into bought note purchases and sale for the assessment year 2015-16 & 2016-17, computed unaccounted income arising out of bought note purchases and sales and details of which are as under:

| AY | Bogus Purchase (in Rs.) | Bogus Sales (in Rs.) | Unaccounted Income (in Rs.) |
|---|---|---|---|
| 2015-16 | 248,45,74,268 | 175,42,53,644 | 73,03,20,624 |
| 2016-17 | 264,41,58,035 | 222,65,13,854 | 41,76,44,181 |

69. Thus, the Assessing Officer in the assessment orders for AYs 2015-16 and 2016-17, held that the appellant indulged in bogus bought note purchases and corresponding bogus sales at less than the purchase value and the difference between such bogus purchases and bogus sales represented the unaccounted income of the appellant. The AO made additions of

Rs.73,03,20,624 and Rs.41,76,44,181 in the assessment orders u/s 153A r.w.s 143(3) for AYs 2015-16 and 2016-17 respectively towards such unaccounted income.

70. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee challenged the additions made by the Assessing Officer towards undisclosed income arising out of bogus bought note purchases and sales in light of various evidences and argued that the Assessing Officer has made additions only on the basis of statements of various employees of the appellant, even though the persons who gave the statements have filed retractions and explained how statements were obtained during the course of search. The assessee had also contended additions made towards difference in bogus bought note purchase and sales and argued that the Assessing Officer has completely disregarded explanation furnished by the assessee with regard to nature of business, and procedure followed for purchase of major raw materials. The assessee further contended that the observation of the Assessing Officer with regard to unavailability of weighment slips, GRN note and stock details in purely on suspicion, without there being any evidence to suggest that bought note purchases are bogus in nature. The assessee had also explained the deficiencies noticed in documentation and variation in quantities of purchases and consumption in production process. But, the AO disregarded explanation and made additions.

71. The CIT(A), after considering relevant submissions of the assessee and also taken note of reasons given by the Assessing

Officer to make additions towards undisclosed income arising out of bogus bought note purchases and sales, held that the finding of the AO that the appellant indulged in bogus bought note purchases and corresponding bogus sales to suppress his income is unsustainable on facts. The CIT(A) directed the deletion of the additions made for AYs 2015-16 and 2016-17 towards the unaccounted income arising from bogus bought note purchases and corresponding sales by holding that the observation of the Assessing Officer with regard to weighment slip, GRN and lorry receipt is hypothetical, because if you go through the process employed by the assessee for purchase of raw materials, it was very clear that bought note purchases are directly procured from farmers on 'as is where is' condition which are not supported by documents like weighment slips, GRN and lorry receipts like purchases from traders. The CIT(A) further observed that the observation of the Assessing Officer with regard to bought note purchases from APMC is completely contrary to facts on record, because it is impossible to imagine bogus purchases can be made from APMC which are regulated bodies from various state governments. The CIT(A) had also negated observation of the Assessing Officer with regard to variation in quantities of purchases and consumption and countered the findings of the Assessing Officer with facts on losses in production process including storage loss. Therefore, the CIT(A), observed that the Assessing Officer is erred in making additions towards unaccounted income being difference between bought note purchases and sales for assessment year 2015-16& 2016-17. Being aggrieved by the CIT(A) order, the revenue is in appeal before us.

72. The ld. CIT-DR, Shri. M. Rajan, submits that the CIT(A) erred in deleting addition made towards unaccounted income arising out of difference between purchases through bogus bought notes and sales through bogus bought notes, without appreciating fact that the assessee used bought notes for inflation of purchases and reduce profit and same has been confirmed by Smt. R. Anandhi in her statement recorded u/s. 132(4) of the Act, and it has been strengthened by the statement of M. Karthikeyan, where he had admitted that bought note purchases there would not be any supporting documents. The ld. CIT-DR, further submitted the CIT(A) erred in accepting the explanation of the assessee with regard to bought note purchases without appreciating fact that the assessee could not explain how a single lorry can be used to transport huge quantity of maize from different places in a single day. The Assessing Officer had brought out various facts in the assessment order about modus operandi of purchases through bought notes and sales through bought notes and the same has been supported by admission of employees of the assessee during the course of search. The CIT(A), without appreciating relevant facts simply accepted explanation of the assessee and deleted additions made towards unaccounted income arising out of bogus bought note purchases and sales.

73. The ld. Counsel for the assessee Shri. D. Anand, Advocate, supporting the order of the CIT(A) submits that the sole basis for the Assessing Officer to make additions towards unaccounted income arising out of bought note purchases and sales is sworn statement of Mr. Vannakannan, Mrs. Anandhi, Mr. HariHaraKrishnana, Mr, Valeeswaran, Mr. Vaidyanathan, obtained

during the course of search under coercion which were all subsequently retracted and said statements cannot be considered as valid evidence for making additions. The Counsel for the assessee further submits that the Assessing Officer completely erred in rejecting the purchase made under bought note and AMPC and the sales made through agents in the market without understanding the business model of the assessee. Further, the Assessing Officer has made additions towards unaccounted income from the books of accounts maintained by the assessee for these two assessment years without appreciating fact that bought note purchases and sales are accounted in regular books of accounts and purchases and sale has been accepted by the Sales Tax Department. The ld. Counsel for the assessee further submitted that the main business of the assessee is to supply nutrition food and other food supplements to various government departments. The Assessing Officer failed to appreciate that but for these purchases, the appellant could not have sold its products to the government and other customers. The Counsel for the assessee further submitted that the assessee has explained modus operandi employed for procuring major raw materials and one of the method employed by the assessee is to directly purchase from farmers. The purchases from farmers had been made through bought note purchases, because farmers does not have any formal system like any other traders. Therefore, bought note purchases does not have necessary supporting evidences like weighment slips, GRN because those purchases are directly made from farmers in their places and on where is as is basis. He further submitted that the Assessing Officer has treated even purchases made from APMC as bogus in nature without

appreciating fact that it is impossible to even think bogus purchase can be made from regulated markets. The assessee has explained the procedure followed in bought note purchases and also explained various deficiencies noticed by the department during the course of search and the CIT(A) after considering relevant facts has rightly deleted the additions made by the Assessing Officer and their order should be upheld.

74. We have head both the parties, perused materials available on record and gone through orders of the authorities below. We have also, carefully considered reasons given by the Assessing Officer to make additions, in light of various averments made by counsel of the assessee. On careful examination of various facts, we ourselves do not subscribe to the reasons given by the Assessing Officer for simple reason that sole basis for the Assessing Officer to make additions towards unaccounted income arising out of bought note purchases and sales is sworn statement of Mr. Vannakannan, Mrs. Anandhi, Mr. HariHaraKrishnana, Mr, Valeeswaran, Mr. Vaidyanathan, obtained during the course of search under coercion which were all subsequently retracted and in our considered view said statements does not have any evidentiary value in the eyes of law. Therefore, addition made by the Assessing Officer needs to be examined de-hors the sworn statements of various employees and also in light of evidences filed by the assessee.

75. The first and foremost objection of the Assessing Officer is with regard to deficiencies noticed in supporting documentation for bought note purchases and sales. In our considered view, the

documentation such as weighment slip, good receipt note, lorry freight slip is not relevant for bought note purchases made directly from the farmers/agents in cash as opposed to the purchases made from registered dealers on credit and consequently, the non-availability of such documentation in respect of bought note purchases cannot be used against the appellant for drawing adverse inference with regard to the genuineness of such purchases. We further noted that, the sole basis for the Assessing Officer to rest his observations on deficiencies in documentation is statement recorded from Shri. RajaRamMohan u/s. 132(4) of the Act, where he has explained, the different colour slip used for sending materials for production and taking material for quality check. In so far as, purchase from farmers through bought notes, as per the general trade practices, purchases are made from place of farmers and in this case, there is no question of availability of purchase orders, sale invoice like in purchases from registered dealers. Therefore, from the above it is very clear that purchases from farmers are made with self-made bought notes by the buyer organization which does not contain other details like weighment slip etc. Therefore, we are of the considered view that simply because certain documents are missing in support of bought note purchases, it cannot be held that purchases from farmers and AMPC are bogus purchases.

76. In so far observation of the Assessing Officer with regard to different colour of slips, we find that the Assessing Officer has placed reliance on the different types of test certificates prepared by the Quality Control Department in respect of purchases from the traders and bought note purchases. It was the observation of

the Assessing Officer that for genuine purchases blue color samples for lab test has be annexed with purchases invoice, whereas in case of bought note purchases sampling details in pink color slip is annexed. We find that the observation of the Assessing Officer with regard to the genuineness of the purchases through bought note is on hypothetical basis because pink color slip annexed with invoices is used to take samples for testing in the course of production process. On the other hand, blue slip which is prepared when the samples are taken at the stage of receipt of goods from registered dealers/manufacturers. From the above, it is very clear that, the observation of the Assessing Officer with regard to pink slip used for bogus bought note purchases is found to be incorrect. Further, the assessee made it very clear that no quality control test is conducted in respect of bought note purchases. Therefore, we are of the considered view that, quality control test has no relevance to bought note purchases as the said purchases are made on "as is where is" basis with no option to reject the same on the basis of the test report. The observation of the AO that the test certificate prepared by the lab in respect of bogus bought note purchases is annexed with a pink colour sampling detail slip as opposed to the blue colour samples for lab test slip in the case of purchases from dealers and no entries are made in sample register for bought note purchases has been found to be factually incorrect. The pink colour sampling details slip which was considered by the AO to be a document prepared only for bogus bought note purchases is found to be a slip prepared for taking the sample for lab testing at the time of issue of raw material for production as evident from

the format of the said slip and has no relation at all to the purchase of the raw material.

77. The lorry movement analysis made by the AO for a single day on a sample basis in respect of bought note purchases has been held to be based on incorrect appreciation of facts and without regard to the trade practice of dispatch of material from the agent's storage area to the buyer. The mentioning of same vehicle number on multiple bought notes of the same day has been wrongly construed by the assessing officer to mean that the vehicle has picked up the material from the addresses of each of the farmers without regard to the trade practice of picking up the material by the buyer from the agent's storage area after the material is moved by the agent from the farm gate to his storage area. Moreover, such analysis for a single day was also held to be inadequate to draw a general conclusion for the entire year. As regards, the finding of the AO regarding the non-availability of delivery vehicle number on the bought notes was held to be factually untenable as it was noticed that the same is invariably mentioned in the unloading slip available with each bought note in the seized material. Since, the bought note has no space earmarked for mentioning the vehicle number, the Assessing Officer appears to have erroneously concluded that delivery vehicle number is not available in the bought note. However, as is bought note is accompanied by three other documents including the unloading slip, as observed by the Assessing Officer himself, and the delivery vehicle number is found mentioned in unloading slip, in our considered view the findings of the

Assessing Officer regarding non-availability of vehicle number in bought note is factually incorrect.

78. The finding of the assessing officer regarding the non-availability of stock registers with quantitative details of the raw materials has been held to be patently erroneous as it was found that the seized tally accounts for AY 2015-16 and AY 2016-17 contain the stock register with quantitative details of all raw materials other than maize and the Excel sheet in the hard disk seized from Shri Vijayananthan contains the quantitative details of maize. In the assessment order, the Assessing Officer made a comparison of the quantity of purchase of maize and quantity of consumption of maize in production and pointed out that actual consumption of maize is less than 10% of quantity of maize purchased in the assessment years under consideration. Therefore, the Assessing Officer opined that the balance quantity of maize has been sold to third parties at a loss. The observation of the Assessing Officer on this aspect is factually incorrect for the simple reason that, based on the business exigencies and commercial considerations of the appellants' business, a finding has been given that the purchase and stocking of higher quantities of maize in comparison to the quantities required for production of finished goods is a part of the strategy to manage and mitigate various operational and business risks and it is not justified to draw the inference of bogus purchases and sales of maize on the basis of the factum of consumption being less than 10% of the purchases. The finding of the AO that bogus sales have been booked in order to match the quantity of bogus purchases has been held to be untenable on facts as the AO did

not make any quantitative analysis of alleged bogus bought note purchases and the alleged bogus sales in support of such finding. The contention of the appellant that the quantum of bogus bought note purchases of maize adopted by the AO wrongly included the maize purchases made in cash through APMC is found to be factually correct on verification of relevant details available in the seized material, as the genuineness of such maize purchases made through APMC has not been disputed by the AO (para 7.9– of the assessment order). Therefore, if you exclude amount of APMC maize purchases, then the difference works out to 18.45% between purchase value and sale value, which is relates to wastage on account of various reasons including deterioration in the quality of stock during the course of storage. The loss incurred due to sale of maize, which was not required for production, was found to be due to the deterioration in the quality during the course of storage and such loss was found to be inevitable on account of the business exigencies which compel the appellant to procure and stock higher quantities of maize than the quantity required for production. In view of this, the sale of maize at a loss cannot be construed adversely to conclude that the concerned bought note purchases and sales are bogus in nature.

79. The Assessing Officer had also considered Channa purchases as bogus only on the ground that there is no sales against purchases. But, the assessee explained with necessary evidences that entire purchase of Channa has been used as input for production of blend and weaning food supplied to the government. The loss computed on account of bogus purchases and sales in respect of Channa for AY 2015-16 has been held to

be factually incorrect since the appellant did not make any sale of the said commodity and the entire quantity of purchases has been utilised for conversion into Bengal gram dhal which was in turn utilised for production of finished goods, as per the quantitative details available in the seized tally accounts. Similarly, the inclusion of Toor dhal and Urid dhal in the commodities considered for working out bogus bought note purchases and sales for AY 2015-16 has been held to be factually erroneous since the appellant has shown profit from the sale of said commodities, as evident from the annexure to the statement of Mrs.Anandhi (Paper Book Vol-1 page 695 – 782) which was relied on by the AO to work out the quantum of bogus bought note purchases.

80. The assessing officer did not make any enquiries with the farmers/agents from whom bought note purchases were made or the persons to whom alleged bogus sales were made by the appellant and no adverse evidences have been brought on record in respect of said parties at the other end of the relevant purchase and sale transactions. The reasons furnished by the AO for rejection of the report of the special auditor, with particular reference to the findings in the said report regarding the quantum of purchases and use of raw materials in the production process, have been found to be erroneous and factually unfounded. The reason cited by the AO to the effect that the special auditor has acted beyond the mandate of the special audit, which was ordered for the purposes of preparation of final accounts, was held to be not based on proper appreciation of the process of finalisation and auditing of accounts and the relevant standards on auditing. In any case, the confirmations obtained by the special auditor and

the conclusions drawn by him based on the same with regard to the transactions recorded in the books of accounts, do not place any restriction on the powers of the AO to make enquiries and gather any adverse evidences in respect of the said transactions for drawing different conclusions. However, as already mentioned earlier, the AO has not conducted a single enquiry with the suppliers of the alleged bogus purchases or the buyers of the alleged bogus sales and has merely sought to rely on the statements of the employees recorded during the search. The statements of various employees and the appellant recorded u/s 132(4) or 131 on which the AO placed main reliance in support of the conclusion of bogus bought note purchases and sales have been considered as factually erroneous and rendered under mistaken belief of facts, as the discussion made in the appellate order with regard to various aspects having a bearing on the genuineness of the bought note purchases has clearly brought out that none of the admission of facts made by them are borne out by the facts available in the seized material. Hence, the retractions filed by them are considered as valid and it is held that the reliance placed on such statements is unsustainable. Similar findings has been given by the ld. CIT(A) with respect to each item of goods purchased for the assessment year 2016-17 and negated the observation of the Assessing Officer to arrive at a conclusion that the assessee has indulged in booking loss to reduce profit through bogus bought note purchases and corresponding sales.

81. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that

finding of the AO that the appellant indulged in bogus bought note purchases and corresponding bogus sales to suppress his income is unsustainable on facts. Therefore, we are of the considered view that the ld. CIT(A) right in deleting the additions of Rs 73,03,20,624 and Rs 41,76,44,181 made for AY 2015-16 and AY 2016-17 respectively towards the unaccounted income arising from bogus bought note purchases and corresponding sales. Thus, we are inclined to uphold the findings of the ld. CIT(A) and direct the AO to delete additions made towards unaccounted income arising out of bogus bought note purchases and sales for Asst. years 2015-16 and 2016-17.

82. The next issue that came up for our consideration from ground no. 4.1 to 4.3 of revenue appeal for assessment year 2017-18 & 2018-19 is addition of unaccounted income arising from bogus purchases through dummy entities and bogus sales.

83. The brief facts of the case are that, during the course of search huge set off documents and electronic devices containing the details of alleged dummy entities were found and seized at the residence of L. Shivakarthi, Account Assistant of M/s. CFI. It was further noted that, about 28 dummy entities were created in the name of various employees and relatives to book bogus purchases and sales to reduce profits. The Assessing Officer has discussed the modus operandi of purchases inflation through dummy entities in assessment order at Para 11 to 11.8. The Assessing Officer had also analyzed sworn statement recorded from Shri M. Vannakanna, DGM (Accounts), where he had admitted that bogus purchases and sales were booked through

these dummy entities. Shri. Valeeswaran, GM (Finance) of CFI explained the modus operandi of dummy entities and as per which based on the cash requirement of the main person of the group, Shri. T.S. Kumarasamy for making payments outside the books cash is withdrawn from one of the group concerns. Further, the required cash has been arranged by transferring money from the group concerns to the dummy entities as advance/payment to creditors and in turn, money has been transferred to 1,400 individual suppliers account as advance or payment to creditors. He further stated that cash is drawn from the banks by using free signed cheques in possession of the assessee and its group concerns. It was further noted that the management of the dummy entities has been handled by Shri. N. Vijayanathan. He was examined during the course of search where he explained modus operandi of dummy entities. He further stated that all dummy entities have maintained books of accounts and also filed their returns with various statutory authorities. However, there was no actual movement of goods. The Assessing Officer on the basis of information gathered during the course of search, coupled with post search enquiries opined that the assessee has created various dummy entities to book bogus purchase and sales in order to reduce profits. The Assessing Officer had discussed the issue in light of examination of more than 1,300 dummy suppliers and their deposition given during the course of assessment proceedings, seizure of free signed cheque books of all dummy entities including images of ATM cards and also on analysis of various bank accounts, came to the conclusion that the assessee has generated unaccounted income being difference between bogus purchases and bogus

sales through dummy entities and accordingly, made additions towards undisclosed income arising on account of purchases and sales through dummy entities for assessment year 2017-18 & 2018-19 and relevant details are as follows:

| AY | Bogus Purchase through dummy entities (in Rs.) | Bogus Sales through dummy entities (in Rs.) | Unaccounted Income (in Rs.) |
|---|---|---|---|
| 2017-18 | 407,42,41,878 | 285,55,32,973 | 121,87,08,905 |
| 2018-19 | 373,93,17,103 | 204,97,02,917 | 168,96,14,186 |

84. Being aggrieved by the Assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee challenged additions made by the Assessing Officer towards undisclosed income arising out of purchases and sales through dummy entities in light of retraction filed by various employees, whose statement was the basis for the Assessing Officer to make additions. The assessee has also furnished various evidences to negate the observations of the Assessing Officer with regard to contents of various statement recorded from various employees on the issue of dummy entities. The CIT(A), after considering relevant submissions of the assessee and also taken note of various facts deleted additions made by the Assessing Officer towards unaccounted income arising out of bought note purchases and sales by holding that the reasons given by the Assessing Officer to make additions towards difference between purchases and sales through dummy entities is unsustainable on facts. Being aggrieved by the CIT(A) order, the revenue is in appeal before us.

85. The CIT-DR, Mr. M, Rajan, submitted that the CIT(A) is erred in deletion of addition made towards unaccounted income in respect of bogus purchases through dummy entities and corresponding bogus sales to suppress income without appreciating fact that the partners of 28 dummy entities and the 1317 individual suppliers of such entities are the employees/ex-employees or his group concerns or their friends and relatives. The CT-DR, further submitted that the assessee used the names of his employees and their relatives to float dummy entities for the purpose of booking bogus purchases and sales which is evident from the facts gathered during the course of search, where the department has unearthed the modus operandi of dummy entities in light of huge evidences found and seized during the course of search. He further submitted that the department has seized documents from L. Shivakarthi, partner in one of the dummy entities which includes IT returns, cheques books and partnership deed of 28 dummy entities. The electronic devices seized from him included the list of persons, of the assessee concern who are put in charge of 28 dummy entities and list of various persons who are relatives of staff members. Further, statement recorded from Shri. N. Vijayananthan, clearly established the fact of operating the dummy entities by the assessee to book bogus purchases and to reduce profit. The statement of N. Vijayanathan is confirmed by Shri Vannakkannan, DGM (Accounts) and further strengthened by statement of Mrs. Anandhi, recorded on 07.07.2018. The Assessing Officer has brought out clear facts to the effect that purchases through dummy entities and corresponding sales is bogus in nature and thus, rightly made additions toward unaccounted income being

difference between purchases through dummy entities and corresponding sales. The CIT(A) without appreciating relevant facts simply deleted additions made by the Assessing Officer.

86. The ld. Counsel for the assessee, Shri. D. Anand, Advocate, supporting the order of the CIT(A) submitted that the assessee has filed various evidences to negate the observations of the Assessing Officer in respect of unaccounted income arising out of bogus purchases and sales through dummy entities and the same has been appraised by the CIT(A) to delete additions made by the Assessing Officer. The Ld. Counsel for the assessee further submitted that the Assessing Officer has completely erred in making additions towards unaccounted income for two assessment years solely on the basis of statements of various employees ignoring the fact that the persons who gave statements have withdrawn/retracted from their statement with valid reasons and thus, those statements cannot be considered as valid evidence for making addition. The assessee had also explained and negated observation of the Assessing Officer with regard to the loss computed from the bogus purchases and sales in respect of Channa, Ragi and explained that how the Assessing Officer fundamentally went wrong in making additions because the entire purchase of Channa and Ragi has been utilized for the production of finished goods. Similarly, the assessee had also explained loss computed by the Assessing Officer in respect of Toor/Toor Dal for two assessment years and explained that the Assessing Officer has erroneously compared the purchase of Toor with sales of Toor Dal. Similarly, the assessee had also negated observation of the Assessing Officer with regard to Urid Dal and

maize purchases and how Assessing Officer fundamentally went wrong in computing losses. The ld. Counsel for the assessee further submitted that the findings of the Assessing Officer with regard to dummy entities is factually incorrect because the sole basis for the Assessing Officer to arrive at adverse inference against the assessee is statements of various employees however, fact remains that those statements have been retracted and thus, same cannot be considered as valid evidences. The CIT(A) after considering relevant facts has rightly deleted additions made by the Assessing Officer and their order should be upheld.

87. We have heard both the parties, perused the material available on record, and gone through orders of the authorities below. The Sole basis for the Assessing Officer to make additions towards unaccounted income arising from bogus purchases through dummy entities is statement recorded from Smt. Anandhi on the date of search on 07.07.2018 and computation of product wise purchase value and sale value. As per the table provided in assessment order, in some products there is a purchase value and sale value, but in some products only purchase value is mentioned but no sale value is considered. The Assessing Officer on the basis of lesser sale value opined that the assessee has booked artificial loss to reduce profit by way of purchases through dummy entities. We have given careful consideration to the reasons given by the Assessing Officer, in light of arguments of the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for simple reason that except statements from Smt. Anandhi and other employees of the appellant there is details with the Assessing Officer with regard to

commodity wise breakup of the quantum of bogus purchases and sales through dummy entities. The statements of employees were recorded during the course of search in a hurried manner and no details as to how and where the purchase and sales figure has been culled out. Therefore, we are of the considered view that in absence of any supporting evidences with regard to computation of unaccounted income out of bogus purchases through dummy entities, the additions made by the Assessing Officer solely on the basis of statement cannot be sustained, because the statements relied upon by the Assessing Officer recorded from various employees does not have any evidentiary value as the persons who gave the statement has filed their retraction along with affidavit and thus, we are of the considered view that there is no evidence with the Assessing Officer to justify additions made towards unaccounted income. Further, the Assessing Officer had also taken support from various facts gathered during the course of search including seizure of bank account details of 28 entities and books of accounts maintained in a common place to draw an adverse inference against the assessee and such adverse inference was solely based on the statement of the person who maintains those details. But, fact remains that on perusal of statement of person who is in-charge of these 28 entities, nowhere it was stated that those entities are dummy entities created by the assessee for the purpose of inflating purchases. Further, evidences collected during the course of search itself proves beyond doubt that those 28 entities are separate legal entities and complied with all statutory laws including filing of returns under VAT Act, Income-tax returns etc. Therefore, from the above it is very clear that the Assessing Officer is completely

erred in coming to the conclusion that purchases from those entities is bogus in nature and difference between purchases and sales in unaccounted income of the assessee.

88. Coming back to the observations of the Ld. CIT(A) on this issue. The ld. CIT(A) had given categorical finding in their appellant order and negated observations of the Assessing Officer with regard to additions made towards unaccounted income arising out of purchases through dummy entities. We have carefully gone through the findings given by the ld. CIT(A) and we ourselves fully in agreement with findings recorded by the CIT(A) for the simple reason that loss computed on account of bogus purchases and sales in respect of Channa for AY 2017-18 and 2018-19 (Paper Book Vol-1 page – 746) is factually untenable since the appellant did not make any sale of the said commodity and the entire quantity of purchases has been utilised for conversion into Bengal gram dhal which was in turn utilised for production of finished goods as per the quantitative details available in the seized tally accounts. Similarly, the loss computed on account of bogus purchases and sales in respect of Ragi for AY 2017-18 and 2018-19 (Paper Book Vol-1 page – 746) is factually untenable since the appellant did not make any sale of the said commodity and the entire quantity of purchases has been utilised for conversion into malted ragi which was in turn utilised for production of finished goods as per the quantitative details available in the seized tally accounts. Further, the entire requirement of Channa for conversion into Bengal Gram dhal for utilisation in the production of finished goods and the entire requirement of Ragi required for conversion into Ragi malt for

utilisation in the production of finished goods have been procured only from entities among the alleged 28 dummy entities. Therefore, it cannot be considered that the said entities are merely dummy entities as alleged by Assessing Officer. The loss computed on account of bogus purchases and sales in respect of Toor/Toor dhal for AY 2017-18 and 2018-19 (Paper Book Vol-1 page – 746) is factually untenable as the AO erroneously compared the purchases of toor with sales of toor dhal and the quantitative details available in the seized tally accounts have revealed the conversion of toor into toor dhal and absence of any sales of toor as such. The inclusion of Urid dhal (Paper Book Vol-1 page – 746) in the commodities considered for working out bogus purchases and sales for AY 2017-18 is factually erroneous since the appellant has shown profit from the sale of said commodity. The loss computed on account of bogus purchases and sales in respect of urid/urid dhal for 2018-19 is factually untenable as the AO erroneously compared the purchases of urid with sales of urid dhal and the quantitative details available in the seized tally accounts have revealed the conversion of urid into urid dhal and absence of any sales of urid as such.

89. In so far as alleged bogus purchases of Maize for AY 2017-18 (Paper Book Vol-1 page - 746) consisted of bought note purchases apart from purchases through alleged dummy entities we have dealt this issue while dealing with the issue of additions made towards bogus bought note purchase and sales, where a detailed finding has been given in respect of purchase of maize and how the Assessing Officer fundamentally went wrong in computing loss from purchase of maize and sales. Since, we have

already noted that the Assessing Officer has included purchases from AMPC also in bogus purchases erroneously and if you exclude APMC purchases, then difference computed by the Assessing Officer between purchase and sales is on account of process and storage loss which in accordance with Industry standard and thus, the Assessing Officer is erred in computing loss from purchase and sale of maize through bought notes. With regard to the loss attributable to bogus purchases through dummy entities and bogus sales in respect of maize, it has been held based on detailed discussion made while dealing with the issue of bogus bought note purchases of maize for AY 2015-16 and 2016-17 that the said loss cannot be a valid ground for concluding that the appellant indulged in bogus sales and purchases having regard to the compelling reasons for making sales at a lower value than the purchase price in view of the commercial expediency for procuring higher quantity of stock in comparison to the consumption requirement and deterioration in the quality of stocks during the period of storage. We therefore, are of the considered view that the Assessing Officer is erred in computing unaccounted income from purchases through dummy entities.

90. The AO has treated all sales other than the sales to government entities as bogus sales in a sweeping manner without even adverting to the identity of the buyers and the characteristics of such buyer entities which make them liable to be treated as dummy entities and without making any enquiries in respect of such buyers to bring evidence on record at their end in support of the inference of bogus sales. The AO failed to establish

the factum of bogus sales with relevant details and evidences. The AO has included even the credit sales made by the appellant in the alleged bogus sales, though the sales proceeds in respect of the same are received through the banking channel. The said feature is visible from the information available in the annexure to the statement of Smt. Anandhi (Paper Book Vol-1 page 710 - 723), which was the basis for the figures of bogus purchases and sales adopted in the assessment order. The finding of the AO that the purchases shown from 28 dummy entities were not taken into stock in view of non-genuine nature of such purchases is opposed to the facts available in the seized material, as the said purchases have been taken into the stock registers containing quantitative details of the raw materials found in the seized tally accounts or Excel sheet in the seized hard disk as the case may be. The finding of the AO that bogus sales have been booked in order to match the quantity of bogus purchases is untenable on facts as the AO did not advert to the relevant facts and did not furnish the supporting data from the seized material. It is found on the basis of quantitative analysis made based on the data available in the seized material that there is hardly any matching between the quantity of commodity purchased from the 28 dummy entities and the quantity of sale of relevant commodity. Moreover, on careful perusal of the date wise purchases of the above mentioned commodities from the alleged dummy entities and date wise sales of the alleged bogus sale in the seized tally accounts as well as the data available in the Excel sheet in the hard disk seized from Shri. Vijayananthan, it is noticed that there is no matching of the quantities of alleged bogus purchases and sales on any day throughout the year and the finding of the AO that the entire

quantity of commodity purchased from 28 dummy entities is immediately sold at a lower value to dummy entities for generating artificial loss is found to be factually unsubstantiated.

91. In the light of findings above that the purchases from the alleged dummy entities have been entered in the stock registers/excel sheets and that there is no immediate sale after making purchases and in the absence of any finding of variation between the stock as per books and the physical stock found during the course of the search, the allegation of the AO that the purchases made from the 28 entities are dummy purchases and the corresponding sales made by the appellant are dummy sales is not tenable. The AO did not bring out any adverse evidence found during the search in respect of the documentation maintained by the appellant with regard to the purchases made from alleged dummy entities viz-a-viz the purchases from other registered dealers, which reveals that the purchases from alleged dummy entities are bogus as opposed to the purchases made from other registered dealers. The assessment order is completely silent regarding this aspect, particularly when the AO highlighted the non-availability of party weighment slip, goods receipt note, lorry freight slip, sample for lab test slip and entries in sample register with regard to the bought note purchases, which were considered as bogus by him in AY 2015-16 and 2016-17. This implicitly shows that no adverse evidence was found during the search in respect of the documentation maintained by the appellant with regard to purchases made from alleged dummy entities, which could reveal that the purchases made from them are bogus as opposed to the purchases made from other

registered dealers. The premise of the AO that the dummy entities were created by the appellant with view to book bogus purchases in their name and suppress the profits of the appellant has been held to untenable on the basis of the finding that the purchases of some commodities made from the alleged dummy entities have been treated as genuine purchases by the assessing officer while treating purchases of some other commodities from the said entities as bogus purchases, which is evident from the analysis of details of purchases available in the seized tally accounts.

92. The AO solely relied on the statements of employees of finance department with regard to the modus operandi of withdrawal of cash by using pre-signed cheques from the bank accounts of the 1317 individual suppliers of the alleged 28 dummy entities, without bringing any corroborative evidence on record by making necessary enquiries with the bank authorities regarding identity of the persons who encashed the bearer cheques. It is also pertinent to point out that the search did not result in unearthing of any documentary evidence by way of loose sheets, slips etc., containing any notings of handing over of cash and receipt of cash between various persons in the finance department from the time the cash is withdrawn from the bank and it is placed in the locker of the corporate office. In the normal course, notings regarding handing over of cash and receipt of cash are expected to be found when cash changes hands to serve as evidence for the same in order to resolve any possible disputes that may crop up given the nature of cash transactions.

93. The finding of the AO that the dummy entities are being controlled by Shri.Vijayananthan (Paper Book Vol-II page - 13), consultant of the appellant on behalf of the appellant's concern is not borne out by the statement of the said consultant who has stated that the books of account of the said entities are being maintained by the accountants of the respective entities in the respective office premises and the said fact has not been disputed by the Assessing Officer. The finding of the AO that the returns of income of the appellant and all the dummy entities have been filed from a common IP address has been found to be factually erroneous. It is not correct to draw adverse conclusion regarding the genuineness of purchases made from the alleged 28 dummy entities based on the fact that the former employees of the appellant are partners in the said entities and the employees/former employees and their relatives/friends are the individual suppliers to the said entities, having regard to the business advantages/considerations explained by the appellant in having such supply entities. Procurement from such registered dealers, which are known entities owned by former employees, is considered to bring business advantage as the appellant is assured of loyalty and preference in supply in a market which is often affected by fluctuations in supply and price. Further, the appellant also derives the business advantage of better credit period from such entities. This aspect is evident from the fact that all the 20 entities with whom the appellant had transactions during AY 2017-18 out of the alleged 28 dummy entities are reflected as creditors in the balance sheet of the appellant as on 31.03.2017 (Paper Book Vol-1 page -489) Similarly, it is noticed that all the 21 entities out of the alleged 28 dummy entities with

whom the appellant had transactions during the year are reflected as creditors in the balance sheet of the appellant as on 31.03.2018 (Paper Book Vol-1 page - 491). The supplier entities have given preference to procurement from friends and relatives of the partners or the employees of the appellant having agricultural operations as it would allow them to avail credit facility from such persons due to their personal acquaintance. We therefore are of the opinion that it is not correct to draw any adverse conclusion regarding the genuineness of the purchases made from the 28 entities based on the fact that former employees of the appellant are the partners of the said entities and those entities are in turn making purchases from 1317 individual suppliers who are either employees or former employees of the appellant or their relatives or friends. Having regard to the detailed discussion made in respect of certain critical aspects which have a significant bearing on the integrity and reliability of the seized material comprising pre-signed cheque books and ATM cards of the 1307 individual suppliers and the statements of the said suppliers, it has been held that the said evidences cannot be taken into cognizance for arriving at any adverse inference with regard to the issue of bogus purchases through dummy entities.

94. At this stage, it is very important to consider the observations of the Special Auditor with regard to the books of accounts maintained by the assessee and its correctness. The Assessing Officer has appointed Special Auditor to prepare financial statement and audit books of accounts of the assessee for the period covered under search having regard to the nature

and complexity of accounts maintained by the assessee and incriminating documents found during the course of search. The Special Auditor, in their audit report submitted in light of scope of audit clearly observed that the financial statements including P&L account and balance sheet prepared for the relevant assessment years gives true and correct position except as stated in notes of accounts. The Special Auditor has also analyzed quantitative details of purchases of raw materials, production of finished goods and sales made by the assessee and does not expressed any adverse opinion on books of accounts maintained by the assessee including stock registers. In fact, the Assessing Officer never disputed the audit report submitted by the Special Auditor on various factual issues, however, rejected Special Audit Report submitted by the special auditor only for the simple reason that the special auditor conducted independent enquiries with various parties including suppliers which is beyond the scope of audit work entrusted to the auditor. We find that, the reasons furnished by the AO for rejection of the report of the special auditor, with particular reference to the findings in the said report regarding the quantum of purchases and use of raw materials in the production process, have been found to be erroneous and factually unfounded. The reason cited by the AO to the effect that the special auditor has acted beyond the mandate of the special audit, which was ordered for the purposes of preparation of final accounts, is held to be not based on proper appreciation of the process of finalisation and auditing of accounts and the relevant standards on auditing.

95. The Revenue has challenged the findings of the Assessing Officer on the ground that the CIT(A) failed to appreciate that Smt.Anandhi, Shri.Vannakannan and Shri.Vijayanantham had admitted in their statements that the assessee has suppressed income by creating bogus purchases and sales through dummy entities. In this regard, it is noted that all the 3 persons had retracted their statements and it was accepted retractions of statements of various persons as valid on the ground that the statements were rendered under mistaken belief of facts, wherever we found based on the evidences available in the seized material that the contents of the statements are factually erroneous/contrary to the seized material. The revenue has not specifically rebutted the said findings of the CIT(A).The revenue has also contended in the grounds of appeal that the CIT(A) failed to appreciate that partners of 28 dummy entities and 1317 individual suppliers are the employees/ex-employees/ their relatives/friends and erred in accepting the explanation of the assessee that they were encouraged to start their own business ventures which is beneficial to them as well as the assessee though it is only an afterthought to cover up the bogus transactions. In this regard, it is noted that the CIT(A) has given detailed reasons backed by relevant facts from the financial statements (Paper Book Vol-1 page 490-492) for accepting the explanation of the assessee. The revenue has not disputed the correctness of such reasons with relevant facts and evidences and has merely termed the explanation of the assessee an afterthought without any basis.

96. The revenue also contended in the grounds of appeal that the CIT(A) failed to appreciate that the IT returns, partnership deeds and cheques books pertaining to 28 dummy entities, list of persons in-charge of such entities and the list of suppliers of the dummy entities who are relatives of employees of the appellant were found in the possession of Shri.L.Sivakarthi, a partner of one of the dummy entities. In this regard, it is observed that the revenue did not put forth any specific contention as to how the said fact has any conclusive bearing on the inference of dummy nature of the said entities and the bogus nature of the purchases made from such entities. Moreover, after considering the said fact as well as the statement given by Shri.Sivakarthi wherein he stated that the said documents were handed over to him by Shri Vijayanathan CA, and the inference drawn by the AO based on the said statement that the 28 dummy entities are being managed by Shri Vijayananthan, the consultant of the appellant concern, CIT(A) stated that the finding of the AO that the dummy entities are being controlled by the consultant of the appellant is not borne out by other evidences available on record. The CIT(A) observed that Shri Vijayananthan stated in his statement dated 07.07.2018 that the books of accounts of the 28 entities are being maintained by the accountants of the respective entities in their respective office premises and the annual returns of the said entities with various statutory authorities only are being filed by him and that the AO did not dispute the said factual averment of Shri.Vijayanantham in the assessment order. The CIT(A) therefore held that the allegation of the AO that Shri Vijayananthan is managing and controlling the 28 entities on behalf of the appellant concern is not substantiated by supporting

evidence. Therefore, we are of the considered view that the revenue fails to bring on record any evidences to counter the findings of facts recorded by the ld. CIT(A).

97. In this view of the matter and considering facts and circumstances of this case, we are of the considered view that the finding of the assessing officer that the appellant indulged in bogus purchases through dummy entities and corresponding bogus sales to suppress his income is unsustainable on facts. Thus, we are inclined to uphold the findings of the ld. CIT(A) and direct the assessing officer to delete the additions of Rs 121,87,08,905 and Rs 168,96,14,186 made for AY 2017-18 and AY 2018-19 respectively towards the unaccounted income arising from bogus purchases and sales through dummy entities.

98. The next issue that came up for our consideration from ground no. 5 & 5.1 of revenue appeal for assessment year 2009-10 to 2019-20 and ground no. 8 to 12 of assessee appeal for assessment year 2012-13 to 2018-19 is additions and apportionment of unexplained expenditure u/s. 69C of the Act. In the assessment order, the AO made additions towards apportionment of unexplained expenditure aggregating to Rs.687.25 crores u/s 69C for AYs 2012-13 to 2018-19. The apportioned amount of unexplained expenditure Rs. 687.25 crores was worked out by the AO by subtracting a sum of Rs.1369.50 crores (being the sources available by way of identified undisclosed incomes of the appellant and 3 other associate concerns represented by under reporting of income in ITR, bogus bought note purchases & sales and bogus purchases & sales

through dummy entities) from the total unexplained expenditure of Rs.2056.76 crores worked out as per the seized unaccounted cash book "Erandam Thall".

99. The brief facts of the impugned dispute are that during the course of search at the corporate office of the appellant, two pen drives were found and seized on 06.07.2018 vide Annexure-ANN/VP/ED/S14 from the cabin of Shri Harihara Krishnan, AGM (Finance). On verification of pen drives, it was noticed that the pen drives data contained details of unaccounted cash expenses incurred by the appellant and other group concerns. In the statement recorded u/s. 132(4) of the Act on 06.07.2018, Shri Harihara Krishnan confirmed that the contents of the pen drive are maintained by him and the same represents unaccounted cash expenditure incurred by the appellant and other group concerns. It was further noted that the data contained in the electronic device referred to as Erandam Thall seized from Shri. P. Karthikeyan was also contained in the pen drive seized from Shri HariHara Krishnan. During the course of search, it was noticed that the unaccounted cash books contains details of expenditure incurred in cash from financial year 2010-11 to 2018-19 at Christy, Bangalore and Chennai. The entries contained in Erandam Thall has been segregated into transactions made at the head office at Thiruchengode, and receipt and payments at Bangalore and Chennai offices. The Assessing Officer analyzed the contents of Erandam Thall in light of statement recorded from various employees including from Shri Valeeswaran, GM (Finance) and observed that Shri. Valeeswaran, admitted in his statement u/s. 132(4) dated 06.07.2018 that unaccounted cash expenses

has been computed after eliminating double entries, transfer entries to various branch offices and entries regarding keeping the unaccounted cash in Indian bank locker. The statements of Valeeswaran and Hariharan Krishnan were put to the appellant in the course of his statement recorded u/s. 132(4) of the Act on 08.07.2018 and in response to question no. 15 to 21, the appellant confirmed the existence of unaccounted cash book maintained by the finance team. The details of year wise break-up of the unaccounted cash expenditure for financial year 2011-12 to 2018-19 which aggregated to Rs. 2056,76,20,876/- furnished by Shri. Valeeswaran is reproduced in para 14.18 of assessment order. The details of the same are as follows:

| F.Y. | Unaccounted expenses in Tiruchengodu (Rs.) | Unaccounted expenses in Chennai (Rs.) | Total (Rs.) |
|---|---|---|---|
| 2011-12 | 1,911,025,080 | NIL | 1,911,025,080 |
| 2012-13 | 1,769,567,056 | NIL | 1,769,567,056 |
| 2013-14 | 1,885,241,868 | NIL | 1,885,241,868 |
| 2014-15 | 2,657,669,699 | 448,050,000 | 3,10,57,19,699 |
| 2015-16 | 3,895,516,120 | 297,500,000 | 4,19,30,16,120 |
| 2016-17 | 3,529,120,323 | 147,450,000 | 3,67,65,70,323 |
| 2017-18 | 3,498,720,445 | NIL | 3,498,720,445 |
| 2018-19 | 527,760,285 | NIL | 527,760,285 |
| **Total** | **19,674,620,876** | **893,000,000** | **20,56,76,20,876** |

100. The Assessing Officer further noted that the assessee has incurred unaccounted cash expenses from financial year 2010-11 to 2017-18 at Rs. 2056,76,20,876/- and as against this, the unaccounted income generated for the above period in the case of the appellant and other three associate concerns was at Rs. 1351,84,23,278/- which includes under reporting of income for

assessment year 2009-10 to 2014-15 at Rs. 306,21,74,184/-, unaccounted income arising out of bogus purchases through bought notes and dummy entities and corresponding bogus sales through bought notes and dummy entities for assessment year 2016-17 to 2018-19 was at Rs. 405,62,87,896/-. The sum total of above two including additional unaccounted income of three associated concerns was tabulated in para 14.21 of assessment order and details of which is as follows:

| AY | Income as per ITR | Income as per seized electronic devices vide Annexure VP/ED/S2 | Unaccounted Income |
|---|---|---|---|
| 2009-10 | 14,50,43,115 | 35,43,06,579 | 20,92,63,464 |
| 2010-11 | 34,25,24,801 | 38,38,75,986 | 4,13,51,185 |
| 2011-12 | 70,47,97,814 | 99,42,84,653 | 28,94,89,839 |
| 2012-13 | 67,73,13,951 | 1,86,73,46,489 | 119,00,32,538 |
| 2013-14 | 15,96,86,627 | 37,79,55,760 | 21,82,66,133 |
| 2014-15 | 21,56,01,358 | 1,32,93,72,383 | 111,37,71,025 |
| | | **Total** | **306,21,74,184** |

| AY | Bogus purchase through bought notes/dummy entities | Bougs sales through bought notes/dummy entities | Unaccounted sales |
|---|---|---|---|
| 2015-16 | 2,48,45,74,268 | 1,75,42,53,644 | 73,03,20,624 |
| 2016-17 | 2,64,41,58,035 | 2,22,65,13,854 | 41,76,44,181 |
| 2017-18 | 4,07,42,41,878 | 2,85,55,32,973 | 1,21,87,08,905 |
| 2018-19 | 3,73,93,17,103 | 2,04,97,02,917 | 1,68,96,14,186 |

| AY | Unaccounted Income (in Rs.) |
|---|---|
| 2009-10 | 20,92,63,464 |
| 2010-11 | 4,13,51,185 |
| 2011-12 | 28,94,89,839 |
| 2012-13 | 119,00,32,538 |
| 2013-14 | 21,85,66,133 |
| 2014-15 | 111,37,71,025 |
| 2015-16 | 73,03,20,624 |

| | |
|---|---|
| 2016-17 | 41,76,44,181 |
| 2017-18 | 121,87,08,905 |
| 2018-19 | 168,96,14,186 |
| **Total** | **711,84,62,080** |

| Q.No | Name of the concern | Undisclosed Income (in Rs.) |
|---|---|---|
| 20 | M/s. Christy Friedgram Industry | 751,05,65,605 |
| 27 | M/s. Natural Food Products | 270,08,13,095 |
| 31 | M/s. Rasi Nutri Foods | 147,50,47,872 |
| 35 | M/s. Suvarnabhoomi Enterprises Pvt Ltd | 183,19,96,706 |
| | **Total** | **1351,84,23,278** |

101. During the course of assessment proceedings, the Assessing Officer noticed that the total unaccounted expenditure of the assessee from financial year 2011-12 to 2018-19 was at Rs. 2056,76,20,876/- and as against this, the assessee has generated unaccounted income of Rs. 1351,84,23,278/- for financial year 2008-09 to 2017-18. Therefore, the difference amount of Rs. 687,25,81,663/- has been treated as unexplained expenditure of the assessee alone and thus, the same has been apportioned to assessment year 2012-13 to 2018-19.

102. The appellant challenged the said additions in the appeal filed before the CIT(A). In the appellate order, the CIT(A) held that the quantification of unaccounted expenditure as per Erandumthall at Rs.2056.76 crores is not sustainable on facts and consequently, the amount of unexplained expenditure of Rs.687.25 crores quantified in the hands of the appellant, which is derived from the same, is also unsustainable. However, the CIT(A) accepted the findings of the second special audit report and quantified the aggregate unexplained expenditure of the appellant and 3 other associate concerns at Rs.211.37 cores and

apportioned a sum of Rs.111.76 crores out of the same to the appellant. The said sum was further apportioned to assessment year wise for AYs 2012-13 to 2018-19 and the same was directed to be treated as the addition towards unexplained expenditure u/s 69C in substitution of the additions made u/s 69C in the assessment orders for the said assessment years. Being aggrieved by the CIT(A) order, the assessee as well as the revenue are in appeal before us.

103. The ld. CIT-DR, Shri. M. Rajan, submits that the ld. CIT(A) erred in deleting the additions made by the Assessing Officer towards apportionment of unaccounted cash expenditure as per Erandam Thall u/s. 69C of the Act, without appreciating fact that the assessee and his three group concerns incurred unaccounted expenditure of Rs. 2056.76 crores. The CIT-DR further submits that the Assessing Officer has made additions towards unaccounted expenditure of Rs. 687,25,81,663/- (being difference between of sum of Rs. 2056,76,20,876/- (-)sum of Rs. 1351,84,23,278/-) as net unexplained expenditure of the assessee after reducing the undisclosed income derived by the assessee from under reporting of income as per seized tally and income reported as per ITR, undisclosed income arising out of bogus bought note purchases and sales and also undisclosed income arising out of bogus purchases through dummy entities. But, the CIT(A) deleted additions made by the Assessing Officer towards unexplained expenditure of Rs. 2056.76 crores in total without appreciating fact that the assessee and his employees in their statement recorded u/s. 132(4) of the Act have quantified the unaccounted expenditure as per Erandam Thall after

eliminating duplicate entries, transfer entries and transfer of cash to bank lockers. The ld. CIT-DR further submitted that the CIT(A) deleted additions solely on the basis of findings of the Special Auditor appointed by the Assessing Officer in terms of provisions of section 142(2A) of the Act on the ground that the data contained in Erandam Thall cannot be considered as books of accounts which gives true and correct position of accounts of the assessee. But, fact remains that the Assessing Officer has rejected special audit report submitted by the auditor with a valid reason as per which, the special auditor travelled beyond the scope of special audit and obtained external confirmations and thus, same cannot be taken into account. Further, the Assessing Officer had also given various reasons to reject special audit report as per which, the special auditor is not privy to various incriminating documents possessed by the department and also the appraisal report submitted by the DDIT,(Inv). The CIT(A), ignoring reasons given by the Assessing Officer simply deleted additions made by the Assessing Officer on the ground that the contents of the Erandam Thall cannot be considered as an evidence for making additions.

104. The Counsel for the assessee, Shri. D. Anand, Advocate supporting the order of the CIT(A) in so far as the deletion of additions made by the Assessing Officer towards unexplained expenditure u/s. 69C of the Act, in the hands of the assessee on the basis of Erandam Thall, further submits that the CIT(A) is completely erred in considering second audit report of the special auditor and sustained additions towards unexplained expenditure of Rs. 211.37 crores and further apportioned to appellant and

other three group concerns. The Counsel for the assessee further submitted that the ld. CIT(A) erred in directing the Assessing Officer to make additions towards unexplained expenditure u/s. 69C of the Act on the basis of special audit report even though the special auditor very categorically observed that the Erandam Thall is dump document and it is inadmissible as evidence in view of non-compliance to the mandatory requirement of section 65B of the Evidence Act, 1872.

105. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The basis for the AO to make additions towards unexplained expenditure u/s 69C of the Income Tax Act, 1961 is EranadamThall seized during the Course of search conducted in the premises of asseseee on 6-7-2018. The sole basis for the additions is two pen drives seized from Shri. P.Karthikeyan containing the Erandam Thall and statement recorded from employees of appellant. According to the AO, the employees of the assessee quantified unaccounted expenditure of Rs.2056.76 crores based on Erandam Thall and admitted in their statement recorded u/s 132(4) of the Act. The AO had also taken support from statements of Sri.Hariharikrishnan recorded on 08.07.2018 and claimed that appellant and their employees admitted unaccounted expenditure incurred in the hands of four entities which has not been recorded in regular books of accounts. The AO discussed the issue at length in light of contents of Erandam Thall and statement of employee and came to the conclusion that said expenditure is unexplained which is taxable u/s 69C of the Act. The AO, while making additions has considered undisclosed

income admitted by the appellant in the hands of four entities and balance amount has been added under section 69C of the Act. The AO had also rejected special audit report submitted by the auditor in terms of section 142(2A) of the Act and arrived at the conclusion that special audit report and comments made therein are not binding on the AO and further, the special auditor is not privy to varies incriminating materials found during the course of search and appraisal report submitted by the investigation wing. Therefore, the observation of the special auditor cannot be taken into consideration to decide the issue. It was the argument of the assessee before the AO and CIT(A) that, Erandam Thall is a dumb document and contents there in cannot be taken at its face value, because as per the observation of the special auditor, it fails to qualify as book of accounts maintained in the normal course of business of the assessee and further it is not in accordance with basic principle of accountancy. The assessee further contested that the AO never furnished the details of working as to how sum of Rs.2056.76 crores has been worked out by the assessing officer even during appellate proceedings in spite the CIT(A) called for necessary details by way of remind report. Further, as per the observation of the special auditor, the entries recorded in Erandam Thall are almost identified with regular book of accounts maintained by the assessee and other group concerns also goes to prove that reason given by the AO to make addition toward unexplained expenditure is wrong. Therefore, in order to decide the issue of addition made towards unexplained expenditure, it is necessary to analysis reason given by the AO in light of provisions of section 69C of the Act, statement recorded from assessee and

their employees and also the special audit report submitted by the auditor u/s 142(2A) of the Act.

106. The provisions of section 69C of the Act, deals with unaccounted expenditure. As per said provision, in any financial year, if an assessee incurs any expenditure and he, offers no explanation about the source of such expenditure, or the explanation, if any offered by him is not in the opinion of the AO, satisfactory, then, said expenditure may be deemed to be income of the assessee for such assessment year. In order to invoke provisions of section 69C of the Act, two important points to be considered. The first and foremost point is an assessee should incurs any expenditure in any financial year. Secondly, the source of expenditure is not explained to the satisfaction of the AO. From the above, it is very clear that there should be some expenditure incurred by the assessee without there being any source of income to incur such expenditure. In this case, if you go through addition made by the AO u/s 69C of the Act, towards unexplained expenditure, there is no findings from the AO as to who incurred expenditure, and for which financial year and also what is the nature of expenditure.

107. In light of above factual and legal position, we have examined the reasons given by the AO to make additions u/s 69C of the Act, in light of various arguments of the assessee and we ourselves do not subscribe to reason given by the AO to make additions towards unexplained expenditure u/s 69C of the Act for the simple reason that, when the appellant requested the AO during the course of the assessment proceedings to provide the

details of the working of the alleged unaccounted expenditure of Rs.2056.76 crores from the contents of Erandam Thall for necessary verification and explanation, as he does not have any particulars with him to verify the correctness of the alleged unaccounted expenditure of Rs.2056.76 crores, the AO failed to provide the details of working of unexplained expenditure. Further, although the AO stated that Shri.Valeeswaran and Shri.Harihara Krishnan, who were stated to have furnished the computation of the said unaccounted expenditure in their statements recorded during the search, but they do not have any particulars of the working of the said amount (Paper book Vol-II, Page 48 to 49). In spite of repeated request, the AO rejected request of the assessee by stating that the year wise details of the unaccounted cash expenditure as per Erandam Thall were furnished by the employee of the appellant Shri Harihara Krishnan vide his reply to question no.25 (Paper book Vol-II, Page 62 ) in the statement recorded u/s 132(4) on 08.07.2018, wherein he stated that the total unaccounted cash expenses have been computed from the unaccounted cash book maintained by Shri.P.Karthikeyan, after eliminating the double entries, transfer entries to various branch offices and entries relating to keeping the unaccounted cash in Indian Bank locker. However, the appellant pointed out that the Annexure F referred to in the said reply, in statement of Shri.Harihara Krishnan contains the information of the original seized record of Erandam Thall and not the information relating to the working of Rs.2056.76 crores. We further noted that the assessing officer did not furnish the working of Rs.2056.76 crores despite repeated requests made during the assessment proceedings and the appellant was unable

to explain proposed addition u/s 69C, in the absence of availability of such working of the unaccounted expenditure adopted by the assessing officer. Since, the assessing officer failed to provide the list of entries, out of more than 30,000 entries in Erandam Thall, which were considered for arriving at the unaccounted expenditure of Rs.2056.76 crores, the addition made u/s 69C is unlawful and arbitrary.

108. We further noted that, during the course of appellate proceedings, the CIT(A) called for remand report from the AO and also furnish necessary workings of unexplained expenditure of Rs.2056.76 crores and the details of the duplicate entries, the transfer entries, etc in the Erandam Thall which were excluded while computing the said unaccounted expenditure. The AO furnished the remand report vide letter dt 07.07.2022 (Paper book Vol-IV, Page 641 to 660), wherein she reiterated the contents of the assessment order and stated that the assessee already has all the required details with him, since the working of the unaccounted expenditure of Rs.2056.76 crores was made by Shri.Harihara Krishnan and was confirmed by Shri.Valeeswaran as well as the appellant in the course of their statements recorded u/s 132(4) during course of the search. The AO further stated that the working was made by Shri.Harihara Krishnan, AGM (finance) with the help of his team and the same was furnished in the Annexures to his statement dt 08.07.2018. The AO stated that Sri.Valeeswaran, GM (Finance) has confirmed the said quantification in his statements dt 06.07.2018 and 08.07.2018 (Paper book Vol-1, Page 653 to 686). It was further stated that the said quantification was also confirmed by the appellant in his

statement dt 09.07.2018(Paper book Vo-II, Page 103). The AO stated that the vague and redundant request being made by the appellant for the entry wise working of unaccounted expenditure of Rs.2056.76 crores is a diversionary tactic of the appellant to avoid giving proper reply. The AO furnished copies of the annexures to the statement of Shri.Harihara Krishnan along with the remand report stating that the same contain details of the working of the unaccounted expenditure of Rs.2056.76 crores, which were already furnished to the appellant along with the copies of statements. The appellant submitted his rejoinder to the remand report vide letter dt 27.07.2022(Paper book Vol-IV, Page 661 to 670), wherein he reiterated that despite repeated requests made by him during the assessment proceedings vide letters dt 22.03.2019, 30.12.2019, 13.02.2020, 05.03.2020, 02.11.2020, 16.12.2020, 14.01.2021, 27.01.2021, the AO did not make available the working of the amount of Rs.2056.76 crores. The appellant pointed out that on careful examination of the annexures to the statement of Shri.Harihara Krishnan provided with the remand report, it is noticed that transactions shown therein do not represent the break-up of alleged unaccounted cash expenditure of Rs 2056.76 cr. The appellant stated that the said annexures contain the transfer entries also which were stated to have been removed while working out the amount of Rs 2056.76 cr. The appellant also pointed out that the AO has not explained the basis and manner of preparation of said annexures when the entries in the excel sheets in the seized material include many duplicate entries, transfer entries etc. The appellant stated that the assertion of the AO that the details of quantification of alleged unaccounted cash expenditure of Rs.2056.76 crores is

available in the said annexures is completely false, since the details of the entries out of the total entries found in the Erandam Thall, which were considered for the purpose of said quantification are not available in the said annexures. The appellant stated that it is obvious from the response of the AO that the department is not willing to part with the documents detailing the quantification of the unaccounted cash transactions of Rs 2056.76 cr. Since, the said cash expenditure has been adopted as the main basis for making addition in the hands of the appellant in the assessment orders for various assessment years, non-furnishing of the details of arriving at the said quantum to the appellant by the AO constitutes gross violation of the principles of natural justice. The appellant stated that he has an inherent right to know the details of the working of such amount, so that he can make proper verification of the correctness of the nature and quantum of the entries considered by the AO for arriving at the said amount and put forth his explanation to rebut the same, wherever necessary. The said inherent right guaranteed by the principles of natural justice has been denied to the appellant depriving him from defending his case. Such infraction of basic principles of natural justice has vitiated the entire assessment proceedings leading to legally unsustainable assessments. The appellant once again made a vehement and strong request for providing the entry wise break-up of the amount of Rs.2056.76 crores and item-wise, entry wise break-up of excluded entries to conform to the principles of natural justice and to enable him to defend himself.

109. During appellate proceedings, the CIT(A), having regard to the same and also to verify the working of the amount of

Rs.2056.76 crores for the purpose of adjudication of the grounds of appeal, called upon the AO to furnish the detailed entry-wise working of the said amount of Rs.2056.76 crores and the details of duplicate entries, transfer entries etc., in Erandam Thall, which were excluded while computing the said amount vide letter dated 27.07.2022(Paper book Vol-IV, Page 661 to 670). The AO furnished the supplementary remand report vide letter dt 08.08.2022(Paper book Vol-IV, Page 675 to 686). However, in the said report also, the AO did not furnish the detailed entry-wise working of the said amount of Rs.2056.76 crores and the details of duplicate entries, transfer entries etc., in Erandam Thall, which were excluded while computing the said amount. The AO reiterated the contents of the first remand report and stated further that the assessee was not able to provide any evidences to show that the working done during the course of search is wrong. The AO expressed the view that in the absence of any material evidence to question the working of the unaccounted expenditure, the request of the assessee for head wise break up of various categories of entries had to be considered as a ploy to dispute the quantification made during the course of the search proceedings. The appellant submitted his rejoinder to the supplementary remand report vide letter dt 17.08.2022 and pointed out that the AO is expecting the appellant to provide evidences that the working of the said amount is wrong, without first providing the item wise working and the basis for removal of some entries while making the said working. The appellant stated that the AO is bound to provide the working of the unaccounted expenditure worked out as per Erandam Thall as per the principles of natural justice. The appellant contended that the non-

furnishing of the relevant working of the sum of Rs.2056.76 crores during assessment as well as appellate proceedings goes to prove that the AO made the addition u/s 69C without having the relevant working of the amount and has merely followed the quantification stated in the appraisal report without application of his own mind and without independently ascertaining the same from the seized material. The appellant contended that the addition so made is arbitrary and cannot be sustained.

110. Having heard both sides, we find that there is no working with the AO to substantiate his claim that the assessee and their employees have furnished working of unaccounted expenditure of Rs.2056.76 crores which is clear from remand report submitted by AO, where the AO shifting onus to the assessee to prove how working arrived at during search is wrong. In our considered view, the primary onus is on the AO to prove the addition with evidence, because it is the AO who made the additions of Rs.2056.76 crores and claimed that the assessee and their employees had furnished the working. If at all, the AO is correct in his claim, then what prevented the AO to furnish the so called working of unaccounted expenditure furnished by the employees of assessee, when the assessee had repeatedly requested the AO to furnish the working. Further, even during appellate proceedings, when the CIT(A) called for remand report and details of working of unexplained expenditure, the AO could not furnish relevant details. Further, when the bench directed the revenue to furnish the working, the ld. DR failed furnish so called working sheet to justify the addition made by the AO. Therefore, from the above it is very clear that the AO does not have any evidence to

make additions towards unexplained expenditure u/s 69C of Act, except statement recorded from few employees. In our considered view, when a huge addition is sought to be made and a large tax liability is sought to be fastened on the appellant, the principles of natural justice demand that the appellant is made aware of the details of the quantification of the unaccounted expenditure worked out based on the seized Erandam Thall, to enable him to examine and verify the same in order to defend himself and furnish necessary explanations and rebuttal with regard to the entries in the Erandam Thall which have been taken into account for the purpose of such quantification. However, it is evident that the appellant has not been provided with the entry wise working of the relevant amount of Rs.2056.76 crores during the assessment proceedings despite the requests made by the appellant and the said details have not been furnished during the appellate proceedings also despite seeking of the same by CIT(A) through two remand reports. Therefore, we are of the considered view that there is no evidence with the AO to support the addition of unexplained expenditure u/s. 69C of the Act.

111. We further noted that the Erandam Thall is available in 3 excel sheets found in the electronic devices seized from the residence of Shri.P.Karthikeyan. The said excel sheets contain more than 30000 entries for the period from FYs 2011-12 to 2017-18. As stated by the appellant as well as the AO, there are duplicate entries, transfer entries from one excel sheet to another, transfer entries regarding placement of cash in the locker, etc in the Erandam Thall, which are required to be excluded for the purpose of working out total of the cash outflow

entries for arriving at the unaccounted expenditure. It is the claim of the AO that the duplicate entries and transfer entries were identified and excluded by the employees of the appellant and the unaccounted expenditure was worked out by them accordingly at Rs.2056.76 crores. The assessing officer has relied on the statement of Shri.Harihara Krishnan, AGM Finance, recorded on 08.07.2018 in support of such assertion. On the other hand, the appellant stated that the said amount was first quantified in the statement of Shri.Valeeshwaran, (GM Finance) on 06.07.2018 after the working copy of the image of the electronic devices seized from Shri.P.Karthikeyan was made available at 8.30 Pm (Paper book Vol-I, Page 653 to 668 ) on the said date and that it is humanly not possible to go through more than 30000 entries in Erandam Thall in a short time of 3 hours remaining on the said day and correctly identify all the entries which are required to be excluded, before computing the unaccounted expenditure based on the remaining cash outflow entries in Erandam Thall. From the arguments of the assessee and the manner in which statements were recorded from employees, it is undoubtedly clear that quantification of the unaccounted expenditure has been given by Shri.Valeeswaran in his statement dt 06.07.2018 under coercion only and that the same cannot be relied upon for holding it against the appellant. We further observed from the above arguments of the assessee and the assertion of the AO regarding the working out of the quantum of unaccounted expenditure as per Erandam Thall, the availability of the said details with AO is not borne out by the circumstantial evidences. The AO has wrongly mentioned that the quantification was made by Shri.Harihara Krishnan in his statement recorded on 08.07.2018,

whereas it is noticed that the quantification was first recorded in the statement of Shri Valeeswaran dt 06.07.2018 (Paper book Vol-I, Page 653 to 658) in his response to Q.No.27. The same question and answer have been subsequently recorded in the statement of Shri.Harihara Krishnan dt 08.07.2018(Paper book Vol-II, Page SCN). The complete Erandam Thall was found in the electronic devices seized from the residential premises of Shri.P.Karthikeyan on 05.07.2018, as noticed from the proceedings of the DDIT(Inv), Unit-4(3), Chennai dt 06.07.2018, and the said seized electronic devices were brought to the office premises of the appellant and seals placed on them were removed in the presence of Shri Harihara Krishnan and two independent witnesses on 06.07.2018, for the purpose of carrying out imaging of the data available in the said seized electronic devices. The imaging process was commenced at 2.30 PM and was completed at 8.30 PM as per the said proceedings. A master copy of the hard disc containing the imaged data was then seized vide ANN/VP/ED/S-16 on 06.07.2018(Paper book Vol-1, Page 651 To 652). The working copy of the said seized hard disc was also prepared at the same time. It is therefore evident from these facts that the seized Erandam Thall was made available for examination and verification for the purpose of quantification of the unaccounted cash expenditure by Shri.Valeeswaran only after 8.30 PM on 06.07.2018.In spite of the said fact, it is noticed that the quantification of the unaccounted expenditure has been recorded in the statement of Shri.Valeeswaran on 06.07.2018 itself, which is evident from the fact that the time available for the entire exercise was not more than 3 hours. It is implausible that the mammoth exercise of going through more than 30000 entries,

identifying and excluding the duplicate entries, transfer entries, etc and working out the unaccounted cash expenditure based on the remaining entries can be done within such a short span of time of about 3 hours. However, since such an exercise is shown to have been completed and a statement of Shri.Valeeswaran is shown to have been recorded within such a short span of time, the only conclusion that can reasonably be drawn is that the working was done in a hurried and adhoc manner without proper examination and verification of the entries in Erandam Thall. It is also reasonable to infer that the hurried manner of working was due to the insistence by the search team to complete it immediately without affording the opportunity to go through Erandam Thall systematically and comprehensively to Shri.Valeeswaran. The working so made is bound to be incomplete and inaccurate, which is also evidenced by the details available in Annexures A to H of the statement of Shri Valeeswaran, which do not tally with the stated amount of Rs.2056.76 crores. Even the said annexures were furnished to the appellant for the first time during the appellate proceedings along with the remand report dt 07.07.2022. Though there is no circumstantial evidence to show that Shri.Valeeswaran was coerced into giving erroneous quantification in his statement, it is evident from the facts and circumstances stated above that the said quantification cannot be regarded as accurate and reliable. Therefore, we are of the considered view that the AO does not have the working of the amount of Rs.2056.76 crores. Since, the entry wise details of the working of the unaccounted expenditure of Rs.2056.76 crores have not been provided to the appellant either during the assessment proceedings or during the appellate proceedings, it is

considered that the appellant has been deprived of the opportunity to rebut the said working of the unaccounted expenditure by furnishing necessary explanation with regard to the entries that were considered to represent the unaccounted expenditure of Rs.2056.76 crores. The appellant has also been deprived of the opportunity to point out the inaccuracies and discrepancies in the identification and exclusion of duplicate entries, transfer entries, contra entries, etc and the resultant inaccuracy of the quantum of the said unaccounted expenditure, huge tax liability cannot be fastened on an assessee without providing proper, adequate and effective opportunity to the assessee to rebut the adverse material and evidences which are proposed to be held against the assessee. Thus, it is noticed that there is a clear violation of the principles of natural justice in the present case in not providing the details of working of the unaccounted expenditure as per Erandam Thall to the appellant, though addition of huge sum has been made in the assessment orders based on the said working. Moreover, in matters relating to sorting and totaling of amounts in the seized materials, the quantification made during the course of search cannot be considered to be infallible and the correctness of the same is required to be thoroughly examined by the AO during the course of the assessment proceedings by application of his own mind without being influenced by the findings in the appraisal report. This is particularly applicable where the working is disputed by the assessee during the course of the assessment proceedings. Since, the AO failed to provide necessary details of working of unaccounted expenditure, the only inference that can be made is that the addition has been made on the basis of statement of

employees without there being any evidence to support the addition.

112. Having said so, let us come back to comments of special auditor on Erandam Thall. It is important to consider the observation of the special auditor with regard to correctness of entries recorded in Erandam Thall. As per special auditor, the Erandam Thall and contents recorded therein is a dumb document and thus, it should be discarded on face of it. It was further observed that said document even fail to qualify as a books of accounts, because it cannot be identifiable to any person or entity. This special auditor further observed that 90% entries recorded in Erandam Thall are identified/matched with regular books of account of four entities. Form the above, it is very clear that it is a parallel day book maintained for all entities together to have a complete track on various transaction of the assessee. The fact that more than 90% entries are identified with regular books of accounts itself is a strong reason to discard or reject Erandam Thall for the purpose assessment. Further, the special auditor made all effort to reconcile books of the assessee with Erandam Thall and where ever possible identified the entries in Erandam Thall with books of accounts. For remaining entries in Erandam Thall, the special auditor observed that those entries are not identifiable to any individual assessee or entity. The source of debit or receipt entry is not identified, whether it is received in cash or bank. Further, there is no details with regard to nature of debit/receipt whether it is a capital, loan or income. Further, there is no details as to from whom and for what purpose the amount is received. Similarly, in respect of credit or payment entries no

details available with regard to nature of payment, whether it is for repayment of loan, payment for purchase of any assets or expenditure incurred in the ordinary course of business. Further, there is no details, as to whom and for what purpose the amount is paid. From the above, it is very clear that the unidentified entries in Erandam Thall neither can be considered as accounting entries which reflect transaction in the normal course of business nor it can be considered as expenditure incurred in the course of business and thus, based on entries in Erandam Thall addition cannot be made towards unexplained expenditure u/s 69C of the Act. In our considered view, in order to bring any amount within the ambit of provision of section 69C of the Act, it is very important to identify the nature of expenditure and the entity to whom the expenditure has been incurred, because as per the provision of section of 69C of the Act, in any financial year, if an assessee incurs any expenditure and he offers no explanation about the source of such expenditure, or the explanation if any offered by him is not in the opinion of the AO, satisfactory then said expenditure may be deemed to be income of the assessee for such assessment year. In the present case, there is no findings from the AO as to nature of expenditure incurred by the assessee. Further, the AO has not brought out any reason as to how entries in Erandam Thall are considered as expenditure. The entries in Erandam Thall are not identified to any person or entity. There is no reason as to which financial year said expenditure relates to. In absence of any finding as to nature of expenditure and person to whom such expenditure belongs to, no addition can be made u/s 69C of the Act, on suspicious and surmise manner. In our considered view, the AO is completely erred in making addition

towards unexplained expenditure on the basis of Erandam Thall. Therefore, we are of the considered view that the additions aggregating to Rs.687.25 crores made u/s 69C in the assessment orders for AYs 2012-13 to 2018-19 based on the quantification of the unaccounted expenditure as per Erandam Thall at Rs.2056.76 crores cannot be sustained. The CIT(A), for the detailed reason rightly directed the AO to delete addition made u/s 69C of the Act, for AY 2012-13 to 2018-19. Thus, we are inclined to uphold findings of the CIT(A) and reject grounds raised by the revenue for all assessment years.

113. Coming back to enhancement of assessment made by the CIT(A) towards unexplained expenditure u/s 69C of the Act, on the basis of second audit report of the special auditor. During the course of assessment proceedings, the AO referred the matter of examination of the contents of Erandam Thall for drawing appropriate conclusions with regard to the same to the special auditor u/s 142(2A) of the Act on 08.04.2021(Paper book Vol-IV, Page 425 to 428), after taking prior approval of the Pr.CIT. As can be seen from the proposal submitted by the AO to Pr.CIT, it was considered necessary by him to refer the examination of the contents of Erandam Thall with reference to the books of accounts of the appellant and 3 entities of the group to the special auditor u/s 142(2A), in view of the dispute raised by the appellant with regard to placing reliance on Erandam Thall. It is therefore evident that, the AO was not satisfied with the correctness of the quantification of unaccounted expenditure made from the contents of Erandam Thall during the course of the search on account of the objections of the appellant and he considered it

necessary to refer the matter to the special auditor for fresh examination of the contents of Erandam Thall with reference to the books of account. Further, it is pertinent to observe that the Pr. CIT, while approving the proposal of the AO, had expressed the view that a correct picture on the real undisclosed income would be arrived at once the examination of the contents of Erandam Thall is made by the special auditor. It is therefore clear that both the AO and Pr.CIT were of the opinion that, the quantification of the unaccounted expenditure made based on Erandam Thall during the course of the search cannot be adopted mechanically in view of disputing of the same by the appellant and that the same needs to be worked out afresh by the special auditor, who is an expert in financial and accounting matters.

114. The scope of the work entrusted to the Special Auditor, includes, (a) identification and matching of the sources for the inflow of funds in the said excel sheets with the books of accounts of the assessee, including bank accounts;(b) Identification and matching of the expenses with the books of accounts of the assessee.(c) Whether the identified bank accounts and the sources for the inflow of funds have been disclosed in the books of accounts and consequently offered for taxation in the returns.(d) Assessee wise sources for the inflow of funds in the said excel sheets.

115. The Special auditor submitted his report regarding the examination of Erandam Thall and findings in respect thereof vide letter dated 15.04.2021(Paper book Vol-IV, Page 435-458). The Special Auditor stated that the examination of 'Erandam Thall'

was carried out in tune with the scope of work specified in the AO's reference. The Auditor further stated that though the entries in the Erandam Thall make it fit enough to be treated as a dumb document when examined in the light of accounting principles and widely accepted accounting concepts, he made certain assumptions in order to carry out the scope of work as entrusted by the AO to compare and match the entries of Erandam Thall with the books of accounts of the appellant and 3 other group entities. The special auditor stated that the following methodology has been adopted for identification and matching of entries in Erandam Thall with the books of accounts of the appellant and 3 other group entities as per the scope of the work:

i. In order to compare the entries of Erandam Thall with the seized books of accounts of the 4 entities, the cash book from the seized tally was extracted in the case of all the 4 entities and the contra entries therein have been removed. The same have been furnished in annexure 1(a) to 1(d) of the report.
ii. Since the entries in 3 different excel sheet are interlinked, the same were compiled into one consolidated file.
iii. Since the entries in Erandam Thall lack the "entity concept", the total inflow and the total outflow of the entries in Erandam Thall are cross verified with the total inflow and total outflow of cash in the seized tally books of accounts of the 4 entities put together. The consolidated cash withdrawals from bank accounts of 4 entities as found in the seized tally books of accounts have been furnished in Annexure 5.

iv. Based on the entries in the seized tally books of account, some of the entries in Erandam Thall are identified and matched on sample basis. Accordingly, the entries in Erandam Thall are marked as contra entries, expenses, advances, purchase or supplier payment, cash sales, bank receipts, bank payments, etc. The non-identifiable entries are culled out separately.

v. The entries with the same amount in the inflow column and outflow column have been treated as contra entries. The names as mentioned in the entries were filtered and such entries with the same amount of inflow and outflow have been treated as contra entries.

vi. The transfer entries such as "transfer to HO", "Head Office transfer", "IB Stock", "Stock IB", "PNB Stock", "Cash boss", "Cash TSK" have been treated as contra entries. The list of entries treated as contra entries have been furnished in Annexure-2 to the report.

vii. After elimination of the contra entries, the inflows majorly found entered with names were identified and matched with the seized tally books of accounts on sample basis. Since the entries in 'Erandam Thall' are single entry in nature, the figures have been matched to the nearest approximation on the date or nearest date of the entries in the seized tally books of the entity with which it was found matching.

viii. Substantial inflows of Erandam Thall were identified and matched with the withdrawal from the bank accounts and such entries have been marked as "cash withdrawal" under the column "nature of entry" in the consolidated file.

ix. On sample basis, it was observed that the inflow entries of Erandam Thall such as "Ganesh canvases", "Mahaveer & Pradeep", "Logesh", etc are found matching to the nearest approximation with the cash withdrawals reflected in the books of account. Such entries have been marked as "cash withdrawal" under the column "nature of entry" in the consolidated file shown in Annexure 4.

x. On sample basis, it was observed that the inflow entries of Erandam Thall such as "Salem Foods", "Elayaperumal", "Waste Sales", "Green Trading & Co", etc are found matching to the nearest approximation with the cash sales reflected in the books of account. Such entries have been marked as "cash sales" under the column "nature of entry" in the consolidated file shown in Annexure 4.

xi. With respect to the entry in Erandam Thall with the narration "cash withdrawn: Syn+KVB+IBNallur+IB+SBI" on 28.03.2017 with the figure Rs.65675, it is observed that the same matches with the sale receipts received through the bank account. Further, the consolidated receipts of such sales of these entities (shown in Annexure 6) and the consolidated entries of the above said nature of narration in Erandam Thall were cross verified and were found matching. Such entries have been marked as "cash sales" under the column "nature of entry" in the consolidated file shown in Annexure 4.

xii. After removal of the contra entries, the entries with narration "blend supply exps", "Jaggery", "Kavundapadi market" were identified and found matching with the nearest date or on the same date of the books of the account of

Christy Friedgram Industry. It is observed that the said nature of entries are matching with APMC/bought note purchases of jaggery, maize, ragi. These entries have been marked as "purchase or supplier payment" under the column "nature of entry" in the consolidated file shown in Annexure 4.

xiii. After removal of the contra entries, the entries with narration "RRM", "R.T", "egg", "dhall", etc were identified and found matching with the nearest date or on the same date of the books of the account of all the 4 entities. On verifying with the seized tally books of account of all the 4 entities, it is observed that the said nature of entries are matching with APMC/bought note purchase or with supplier payment. These entries have been marked as "purchase or supplier payment" under the column "nature of entry" in the consolidated file shown in Annexure 4.

xiv. After removal of the contra entries, the entries with narration "salary", "R.V", "muthusamy", "Rajaram", "Balamurugan", "PKR" were identified and found matching with the nearest date or on the same date of the books of the account of all the 4 entities. On verifying with the seized tally books of account of all the 4 entities, it is observed that the said nature of entries are matching with direct or indirect expenses. These entries have been marked as "cash expenses" under the column "nature of entry" in the consolidated file shown in Annexure 4.

116. After carrying out the examination and analysis of the contents of Erandam Thall as per the methodology mentioned

above, the special auditor furnished the following findings in respect of the scope of work assigned to him:

i. The outflow entries marked as "unidentified" under the column "nature of entry" in the consolidated file in Annexure 4 were found to be not matching with the seized tally books of account of the 4 entities and the same are extracted and shown separately in Annexure 8. These entries are termed as "disallowable".

ii. The identified entries marked in the consolidated sheet enclosed as Annexure 4 are found matching with the books of account of the respective entities. The comparison of summary of marked entries in the column "nature of entries" in Annexure 4 with that of summary of cash inflow and cash outflow of the 4 entities extracted from the seized tally data for the respective years is provided in Annexure 7. It is observed that the value of the tally extract is higher than the value arrived in Erandam Thall for both the cash inflow and cash outflow, which establishes that the entries in Erandam Thall are subsumed in the seized tally data.

iii. It is observed that there is no separate sources of fund for the Erandam Thall, other than the sources available in the books of account of the 4 entities.

iv. It is observed that the identified bank accounts and sources of the inflow are disclosed in the seized tally books of account of the respective entities. The identified bank accounts cited in Annexure 5 and other sources of inflow such as cash sales, are reflected in the seized tally books of accounts and the cash sales have been reported in the sales tax returns as well. On verification of income tax returns, it is observed that

the sources of inflow as per seized tally accounts and identified bank accounts are reported.

v. With regard to the assessee wise sources for the inflow of funds in Erandam Thall, it is observed that the entries do not comply with the fundamental accounting principle of "entity concept". The entries do not specify the entity to which they pertain to. In view of this, the cash inflows in Erandam Thall for each year have been apportioned to the 4 entities in proportion to the share of each entity in the aggregate cash inflows of the 4 entities as per the seized tally books of account of the relevant year. Similarly, the cash outflows in Erandam Thall for each year have been apportioned to the 4 entities in proportion to the share of each entity in the aggregate cash outflows of the 4 entities as per the seized tally books of account of the relevant year.

117. Further, the special auditor furnished the following findings as regards the undisclosed income to be considered on the basis of Erandam Thall:

i. On examination of Erandam Thall, it is opined that the same cannot be construed as a cash book. However, on accepting the same at the face of it, the inflow of funds and other transactions do not disclose any additional undisclosed income other than the income arrived under the original special audit.

ii. The code names contained in the Erandam Thall are not giving any prima facie information of evidence for decoding the names with appropriate authentication for considering as disallowable expenditure.

iii. On detailed examination of Erandam Thall and accepting the same on face of it and apportioning the income and after considering the inflows / outflows of funds, the disallowable expenditure arrived at for the 4 entities is computed for various financial years and submitted in Annexure 10 to the report. The disallowances for each year have been apportioned to the 4 entities in proportion to the share of each entities in the aggregate cash outflows of the 4 entities as per the seized tally books of accounts.

iv. The entire possible inflow / outflow of funds have been included in the books of accounts of the 4 entities for which a special audit report has already been submitted earlier on 03.12.2020. In the said report, the undisclosed income has been estimated at 1.50% of the total turnover of each entity for the relevant assessment years, keeping in view huge cash transactions involved for various financial years for the said 4 entities in their business. In the case of Christy Friedgram Industry and Suvarnabhoomi Enterprises Pvt Ltd, the undisclosed income has been estimated in the said manner only for the period after the demonetisation in November 2016 as the said entities have made disclosures under PMGKY for the earlier period.

v. Due to unreliability of Erandam Thall, the undisclosed income arrived at in the first special audit report dt 03.12.2020 may be accepted. However, if the revenue accepts the Erandam Thall, the undisclosed income arrived at and enhanced in this report can be relied for assessing the income of the 4 entities for various financial years.

118. On careful perusal of the said report of the special auditor dt 15.04.2021, we find that there is no separate source of funds for Erandam Thall, other than the sources available in the books of the account of the 4 entities. It was further noted that except for the entries marked as "unidentified", all other entries of cash inflow and cash outflow in the Erandam Thall were matching with the entries in the seized tally books of accounts of the 4 entities. The special auditor stated that the unidentified entries shown in a separate Annexure-8 to the report represented the entries which were found to be not matching with the seized tally books of account of the 4 entities (the appellant and 3 other group entities). Such unidentified entries aggregated to a net sum of Rs.211,37,37,982/- and the special auditor stated that the said amount of unidentified and unmatched entries represents disallowable expenditure. Since, the entries in Erandam Thall did not contain references to the entity to which they pertained to, the special auditor apportioned the year wise amount of such disallowable expenditure to the 4 entities in proportion to the share of each entity in the aggregate cash outflow of the 4 entities for the relevant year as per the final accounts prepared by special auditor books of accounts.

119. The issue arising for consideration is whether the second special audit report dated 15.04.2011, which was submitted with particular reference to examination of the contents of Erandam Thall, can be considered to constitute a systematic and scientific basis for the addition to be made under u/s 69C based on entries in Erandam Thall. As already mentioned, both the AO and Pr.CIT were of the unanimous opinion that the quantification of

unaccounted expenditure made during the course of the search based on seized Erandam Thall cannot be adopted mechanically on account of the objections of the appellant with regard to the same and that the same needs to be worked out afresh by the special auditor, who is an expert in financial and accounting matters. However, having proposed examination of contents of Erandam Thall by the special auditor and having assigned the said work to the special auditor, the AO completely ignored the special auditor's report dated 15.04.2021 while completing the assessments. The AO did not even mention the fact that a report was called for from the special auditor on the said issue. The AO remained completely silent with regard to the said report and its contents. The AO did not make any discussion in the assessment order regarding the reasons for not accepting the said report. The Pr.CIT expressed the view, while approving the proposal of the AO for special audit on the issue of the contents of Erandam Thall, that a correct picture regarding the real undisclosed income would be arrived at once the examination of the same is made by the special auditor. In this factual background, the disregarding of the report of the special auditor obtained subsequently without assigning any reasons for the same is inexplicable and the said action of the AO only adds strength to the appellant's contention regarding the mechanical manner of adopting the quantification of unaccounted expenditure made during the course of search, without addressing various objections and contentions of the appellant. The report of the special auditor obtained by invoking the provisions of the Act could not have been ignored and disregarded by the AO, without specifying the reasons for doing so in the assessment orders. Although, the AO given his own

reasons for rejecting special audit report, but in our considered view, the AO rejected special audit report on vague reasons just to substantiate addition made u/s 69C of the Act. In our considered view, the report has been prepared after making a very detailed, thorough, in-depth and scientific examination of the entries in Erandam Thall and comparison of the same with the books of account of the appellant and the other three group entities as per the scope of work assigned to him by the AO. The contra entries and transfer entries were identified using well defined parameters in conformity with accounting principles for such identification and the same were excluded from further consideration. Though said exercise of identification and exclusion of contra entries and transfer entries was stated to have been done during the course of search by the employees of the appellant as asserted by the AO, the appellant has strongly disputed the same and this issue has been a bone of contention between the AO and the appellant. The analysis made earlier has also strongly indicated that the said exercise was carried out during the search in a hurried and adhoc manner within a short span of three hours, when the entries in Erandam Thall were numbering more than 30,000. In the said facts and circumstances, the methodical exercise carried out by the special auditor for identification and exclusion of contra and transfer entries deserves to be accepted.

120. The scope of work assigned to the special auditor included identification and matching of sources of the cash inflows in Erandam Thall with the sources available in the books of account of the appellant and 3 other entities and the bank accounts of the

said persons. The scope also included identification and matching of expenses with the books of account of the 4 entities. The scope of work further required the special auditor to state whether the identified bank accounts and sources for the inflow of funds have been disclosed in the books of account and consequently offered for taxation in the returns. The said scope of work as laid down by the AO clearly brings out the fact that there were clear indications from the entries in Erandam Thall that some of the cash inflows therein are represented by the sources available in the books of account and withdrawals from the bank accounts and some of the cash outflows are represented by the expenses recorded in the books of accounts. The methodology chosen by the special auditor for carrying out the said activities included in the scope of work, as described in detail in the report, is found to be designed in an elaborate and well defined manner having regard to the accounting principles and concepts and the wide experience of the special auditor in probing financial transactions. Every step followed by the special auditor in accordance with the said methodology has been reduced to writing in the special audit report and the output at each step has been provided in separate annexures to the audit report, which is a clear indication of the transparent manner in which the said exercise was carried out. On making such meticulous and painstaking exercise as per the scope of work, the special auditor has identified and matched a large number of cash inflows into Erandam Thall with the corresponding withdrawals from the bank accounts of the 4 entities, the cash sales of the said entities and other sources in the books of account of the said entities. The special auditor has also identified and matched a large number of cash outflows from

Erandam Thall with the corresponding business expenses recorded in the books of account by way of purchases, direct expenses and indirect expenses. The special auditor has furnished the identified and matched nature of each entry of cash inflow and cash outflow in Annexure 4 to the special audit report. The special auditor has also cross checked the sources of inflow into Erandam Thall including the withdrawals from the bank accounts with the returns of income of the four entities and has given his finding that the same are reported in the said returns, except the unidentified entries. The entries of cash inflow and cash outflow which could not be identified and matched with the seized tally books of account of the 4 entities have been marked as "unidentified" in Annexure 4 and the said entries have been separately extracted in Annexure 8 to the special audit report.

121. We further, noted that all the entries found in Erandam Thall were found to be matching with the relevant sources of cash inflow, bank withdrawals and expenses recorded in the books of account of the 4 entities, with the exception of 2455 entries (out of total 30,654 entries) which represented unidentified entries. The entries which were identified to be matching with the books of account and bank accounts disclosed in the books of accounts are not incriminating in nature as the same are duly recorded in the books account. The amounts pertaining to the said entries are not liable to be considered for computing the undisclosed income or unaccounted expenditure. The unidentified entries, numbering 2455, are the entries which could not be matched with the books of account of the four entities. The said unidentified entries consisted of both cash inflows and cash outflows in Erandam

Thall. The net effect of such entries was presumed as cash expenditure of Rs.211,37,37,982/- for FYs 2011-12 to 2017-18. Since the said cash expenditure of Rs.211.37 crores is not recorded in the books of account of the four entities, the special auditor presumed that same has to be construed as unexplained expenditure u/s 69C of the Act. Though the scope of work assigned to the special auditor included identification of entity wise sources for the inflow of funds in the Erandam Thall, it was found by the special auditor that the same is not feasible as the narration of the entries in Erandam Thall did not indicate the name of the entity to which the entries pertained to. Having regard to the said constraint, the special auditor apportioned the unaccounted expenditure of Rs.211.37 crores to the 4 entities in proportion to the share of each entity in the aggregate cash outflow of the 4 entities in their books of account for the relevant assessment years.

122. The assessee has strongly opposed addition of unexplained expenditure of Rs. 211.37 crores and apportioned to four entities and for all assessment years. According to the assessee, though scientific examination of the Erandam Thall and conclusions drawn by the special auditor in his report is acceptable, but estimation of disallowable expenses made in the report is not acceptable as the same is based on assumptions stated in the report. Further, the appellant objected to the adoption of the unaccounted expenditure of the 4 entities including the appellant at Rs.211.37 crores based on the report of the special auditor on the ground that it was only an estimate made by the special auditor. We have carefully gone through

arguments of the assessee in light of observations of the special auditor, and we find that although, various assumptions made by the special auditor are logical, reasonable and in tune with normal characteristics associated with cash transactions, but when it comes to treating unidentified entries in Erandam thall as unexplained expenditure, we do not agree with suggestion made by the special auditor for simple reason that, in search assessment, addition can be made only on the basis of incriminating materials found during the course of search. Further, there is no scope for estimation of undisclosed income on adhac basis and to by extrapolating to various assessment years. In order to make additions, incriminating materials qua each assessment year is must. Further, it is also relevant to refer to the decision of Hon'ble supreme court in the case of CIT vs. Sinhgad Technical Educational Society [2017] 397 ITR 344 (SC), wherein it was held that the seized material should have co-relation with the assessment years for which the notices u/s 153C were issued and that the notices are not legally sustainable for the assessment years for which there is no such co-relation. This legal position is further strengthened by the decision of Hon'ble Supreme Court in the case of Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd(2023)149 Taxmann.com 399(SC). In case, the AO, had materials in respect of unaccounted sales or expenditure for part of the period, then he can estimate income or expenditure for the remaining period in the financial year, but such estimation cannot be extrapolated to previous years or subsequent years. In this case, basis for the special auditor to suggest estimation for unexplained expenditure is Erandam Thall. However, given the fact that seized Erandam Thall cannot be

equated with regular books of account and the entries therein are not made strictly in accordance with the accounting concepts and principles, there is no question of making estimation of unexplained expenditure and extrapolation of said estimation to all assessment years.

123. Having said so, let us come back to arguments of the asseseee that unidentified entries cannot be considered as expenditure of the assessee and other three entities. The ld. CIT(A) sustained addition of Rs. 211.37 crores towards unexplained expenditure u/s 69C of the Act. The arguments of the counsel for the assessee is that the seized electronic record represented by Erandam Thall, based on which the unmatched expenditure of Rs.211.37 crores was computed in the special audit report, is inadmissible as evidence due to non-compliance with the mandatory requirements of section 65B of Indian Evidence Act, dealing with admission of electronic record as evidence. The appellant contends that an electronic record is not admissible as evidence if all the conditions laid down in section 65B of Indian Evidence Act are not complied with and if a certificate u/s 65B(4) is not issued regarding the satisfaction of the said conditions as held by the Hon'ble Supreme Court in the cases of Anwar P.V Vs. P K Basheer AIR 2015 SC 180 and Arjun PanditraoKhotkar Vs. Kailash Kushanrao Gorantyal and Ors 220 SCC Online SC 571. In the case of the appellant, though certificate u/s 65B(4) was prepared during the search, the same does not represent a valid certificate since it is signed by a person other than Sri.P. Karthikeyan though it is prepared in the name of Sri.P. Karthikeyan and it is claimed to be signed by him

(Paper book Vol-I, Page 563-570 –panchanama & image proceedings pages 651-652). The signature found therein is completely different from the signature of Sri.P. Karthikeyan found in the panchnama dated 06.07.2018 and seizure annexures dated 05.07.2018 pertaining to the search at his residence. Therefore, the assessee contested that invalid certificate should not be taken into consideration and consequently, the electronic record represented by Erandam Thall is inadmissible as evidence due to non-compliance with the mandatory requirements of section 65B of Indian Evidence Act (Paper book Vol-IV, Page 597-636. Therefore, the appellant submits that the unmatched expenditure of Rs.211.37 crores computed in the special audit report on the basis of such inadmissible evidence in the hands of the appellant and three group entities is unlawful and the reliance placed by the CIT(A) on such finding in the special audit report for the purpose of directing that an amount of Rs.111.76 crores apportioned to the appellant out of the said amount of Rs.211.37 crores be treated as unexplained expenditure u/s 69C in the hands of the appellant is also legally invalid.

124. We have carefully considered arguments of the appellant and we find that there is no merit in argument of the assessee on the issue of correctness of imaging taken from Erandam Thall in light of provision of section 65B of the evidence Act, because the assessee could not prove his allegations on procedural aspects of taking images from Erandam Thall. Further, the lapses pointed out by the assessee at best can be considered as procedural lapses in taking signature of witness etc. and for this reason the veracity and acceptability of Erandam Thall cannot be questioned.

Further, as pointed out by the special auditor, it is a parallel day book maintained by the assessee for combined transaction of all four entities which is evident from entries in Erandam Thall which are also recorded in regular book of the assessee. Therefore, the assessee having been accepted the correctness of Erandam Thall to the extent it was favorable to the appellant, it cannot question the authenticity of the said documents in respect of entries which are not favorable to the assessee. Therefore, we reject argument of the assessee on this issue.

125. Another issue raised by the appellant in the grounds of appeal is that the apportionment of Rs.211.37 crores made based on estimation for arriving at unexplained expenditure u/s 69C in the hands of the appellant by the CIT(A) is not permissible in a search assessment u/s 153A without bringing proper evidence on record as to the identity of the persons who incurred the expenditure of Rs.211.37 crores and the extent of expenditure incurred by each person. The appellant also contended in the grounds of appeal that no addition is permissible u/s 69C unless the fact of actual incurring of expenditure is established with conclusive evidence. Since the unmatched entries in Erandam Thall are not supported by corroborative evidence regarding actual incurring of such expenditure, it is submitted that no addition can be made u/s 69C based on the said entries.

126. We have given our thoughtful consideration to reasons given by the ld. CIT(A) in light of arguments of the assessee and we ourselves do not subscribe to the reason given by the CIT(A) to direct the AO to sustain additions of Rs. 211.37 crores u/s 69C of

the Act, on the basis second audit report of special auditor for the simple reason that even though the special auditor made all effort to reconcile books of the assessee with Erandam Thall and where ever possible identified the entries in Erandam Thall with books of accounts, but for remaining entries in Erandam Thall, the special auditor observed that those entries are not identifiable to any individual assessee or entity. The source of debit or receipt entry is not identified, whether it is received in cash or bank. Further, there is no detail with regard to nature of debit/receipt whether it is a capital, loan or income. Further, there is no detail as to from whom and for what purpose the amount is received. Similarly in respect of credit or payment entries no details available with regard to nature of payment whether it is for repayment of loan, payment for purchase of any assets or expenditure incurred in the ordinary course of business. Further, there are no details, as to whom and for what purpose the amount is paid. From the above, it is very clear that the unidentified entries in Erandam Thall neither can be considered as accounting entries which reflect transaction in normal course of business nor it can be considered as expenditure incurred in the course of business. Therefore, based on entries in Erandam Thall addition cannot be made towards unexplained expenditure u/s 69C of the Act. In our considered view, in order to bring any amount within the ambit of provision of section 69C of the Act, it is very important to identify the nature of expenditure and the entity to whom the expenditure is belongs to, because as per the provision of section of 69C of the Act, in any financial year, if an assessee incurs any expenditure and he, offers no explanation about the source of such expenditure, or the explanation is any offered by him is not

in the opinion of the AO, satisfactory, then said expenditure may be deemed to be income of the assessee for such assessment year. In the present case, there is no finding from the AO as to nature of expenditure incurred by the assessee. Further, the AO has not brought out any reason as to how entries in Erandam Thall are considered as expenditure. The entries in Erandam Thall are not identified to any person or entity. There is no reason as to which financial year said expenditure relates to. In absence of any finding as to nature of expenditure and person to whom such expenditure belongs to, it is difficult to sustain addition u/s 69C of the Act. However, it is a matter on record that the Assessing Officer has totally ignored second special audit report submitted by the auditor in terms of section 142(2A) of the Act, in respect of Erandam Thall and its contents. If the Assessing Officer had taken into cognizance of second audit report and verified the observations of the auditor with reference to Erandam Thall, in our considered view probably the Assessing Officer would have verified unidentified entries as quantified by the special auditor to quantify unexplained expenditure. Since, the Assessing Officer ignored the special audit report in total and made additions on the basis of statements of employees towards unexplained expenditure u/s. 69C of the Act, in our considered view the Assessing Officer has miserably failed and missed an opportunity to determine the true and correct undisclosed income of the assessee in respect of unexplained expenditure. In our considered view when the Assessing Officer or CIT(A) is making additions u/s. 69C of the Act, the burden of proof is on the revenue, because if you go by the provisions of section 68 to 69C of the Act, where addition is made u/s. 68 of the Act, the burden is on

the assessee to explain the source of the credit. But, in cases falling u/s. 69, 69A, 69B and 69C of the Act, the words used therein goes to show that before any of these sections can be invoked, the conditions precedent as to the existence of any investment or expenditure must be conclusively established by evidence and/or material on record by the Assessing Officer. If the revenue cannot, or fails to prove, there cannot be any addition. The primary onus is thus, on the revenue. In the present case, if you go through the findings of the special auditor in their audit report issued u/s. 142(2A) of the Act coupled with reasons given by the CIT(A) to enhance the assessment and direct the Assessing Officer to make additions u/s. 69C of the Act towards unidentified entries in ErandamThall, we find that there is no conclusive evidence with the department/revenue to allege that the assessee has incurred unexplained expenditure and the source for the same has not been explained. As we have already noted in earlier paragraph of this order, unidentified entries in ErandamThall are neither linked to any entity or assessee nor the Assessing Officer or CIT(A) claims that the assessee has not explained the source. From the findings of the special auditor itself, it is very clear that the source for ErandamThall is from withdrawal from bank, receipt of sale proceeds which has been already recorded in the regular books of accounts maintained by appellant and other three entities. Therefore, on this count also there cannot be any addition u/s. 69C of the Act. Since, the unidentified entries are not conclusively established by any evidence or material on record to prove that said entries represents unexplained expenditure of the assessee, and further to any particular financial year, in our considered view

enhancement of assessment and consequent additions u/s. 69C of the Act made by the ld. CIT(A) cannot be sustained. Therefore, we reverse the findings of the ld.CIT(A) on enhancement of assessment and direct the Assessing Officer to delete additions made u/s. 69C of the Act for ay 2009-10 to 2018-19. Thus, we allow the grounds taken by the assessee for assessment year 2012-13 to 2018-19.

127. The next issue that came up for our consideration from ground no.5 & 5.1 of revenue appeal for AY 2009-10 to 2018-19 is additions on apportionment of difference in disclosure made for AY 2009-10 to 2018-19. The fact with regard to impugned dispute are that in the assessment orders for AY 2009-10 to 2018-19, the AO made addition towards apportionment of undisclosed income of Rs 39,21,03,525 admitted by the appellant in the statement u/s 131 dated 13.07.2018 over and above the undisclosed income of Rs 711,84,62,080 admitted for AY 2009-10 to assessment year 2018-19, with regard to the issues of under reporting of income and inflation of purchases through bogus bought notes and dummy entities. The said difference amount in the disclosure made by the appellant of Rs 39,21,03,525 was apportioned by the Assessing Officer to the AYs 2009-10 to 2018-19 in proportion to the unaccounted income quantified for the said Assessment Years.

128. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee submitted that the relevant amount of Rs.

39,21,03,525/- represents estimated income for assessment year 2018-19 as per the tally accounts and the assessee has paid advance tax on such estimated income. The assessee had also filed return of income for assessment year 2018-19 u/s. 139(1) of the Act, which is after the date of search. Since, the said amount has been included in the return of income subsequently filed for assessment year 2018-19, the same cannot be taxed once again by including it in the undisclosed income. The CIT(A) directed the deletion of the said addition for AYs 2009-10 to 2018-19 by stating that the said amount was included in the admission made by the appellant during the search as it represents net profit as per unaudited accounts of FY 2017-18(AY 2018-19) and the income pertaining to the said year after auditing of the accounts was declared by the appellant in the return of income filed for AY 2018-19 subsequent to the date of search.

129. The ld. CIT-DR, Shri. M. Rajan, submits that the ld. CIT(A) erred in deleting the addition made by the Assessing Officer towards declaration of undisclosed income of Rs. 39,21,03,525/- over and above the unaccounted income quantified by Assessing Officer for assessment year 2009-10 to 2018-19 on various issues without appreciating fact that the assessee in the statement recorded u/s. 131 of the Act has admitted the same as undisclosed income earned for the assessment year 2018-19. The ld. CIT-DR, further submitted that the CIT(A) without appreciating relevant facts simply deleted additions made by the Assessing Officer by holding that said income represents net profit of the appellant for ay 2018-19 and the same has been declared in the return of income filed u/s. 139(1) of the Act on 20.08.2019.

130. The ld. Counsel for the assessee supporting order of the CIT(A) submitted that additional income offered in the statement recorded u/s. 131 of the Act, represented net profit as per books of accounts of the assessee for assessment year 2018-19 and the assessee has also paid advance tax of Rs. 12,40,00,000/- in respect of said income. The counsel for the assessee further submitted that the assessee has also filed return of income for assessment year 2018-19 u/s. 139 on 28.02.2019, admitting total income of Rs. 37,00,72,000/- and the same has been confirmed by the special auditor in their audit report. The CIT(A) after considering relevant facts has rightly deleted additions made by the Assessing Officer towards apportionment of undisclosed income of Rs. 39,21,03,525/- to assessment year 2009-10 to 2018-19 and their order should be upheld.

131. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that at para 14.21 of the assessment order, the AO furnished assessment year wise details of the unaccounted income of the appellant, which was quantified at Rs 711,84,62,080 on the basis of under reporting income for AY 2009-10 to 2014-15 based on difference between the net profit as per seized tally account and income admitted in ITR and unaccounted income arising from bogus bought note purchases and sales and bogus purchases through dummy entities and sales for AY 2015-16 to AY 2018-19. The AO then referred to the sworn statement of the appellant recorded on 13.07.2018 u/s 131 and stated that the appellant admitted a sum of Rs 751,05,65,605 as the undisclosed income in his hands in the said statement. Since,

the undisclosed income admitted by the appellant is in excess of the unaccounted income of Rs 711,84,62,080 quantified by the AO, the difference amount in the disclosure made by the appellant of Rs 39,21,03,525 was apportioned by the AO to the AYs 2009-10 to 2018-19 in proportion to the unaccounted income quantified for the said Assessment Years.

132. We have given our thoughtful consideration to the reasons given by the Assessing Officer to make additions towards apportionment of undisclosed income of Rs 39,21,03,525/- in light of various arguments advanced by the ld. Counsel for the assessee, and we ourselves do not subscribe to the reasons given by the Assessing Officer for simple reason that, the sum of Rs 39,21,03,525 is the net profit as per the seized tally account for FY 2017-18 relevant to AY 2018-19 in annexure ANN/VP/ED/S13. We further noted that the Assessing Officer made additions towards difference between the disclosure of Rs 751,05,65,605 in the statement of the appellant dated 13.07.2018 and the unaccounted income for AYs 2009-10 to 2018-19 quantified in the statement dated 08.07.2018 of Shri. Vannakannan of Rs 711,84,62,080/- amounted to Rs 39,21,03,525/-, which represents the regular income of AY 2018-19 as per the seized tally account. Since, the return of income for AY 2018-19 was not yet filed till the date of search, the same appears to have been included in the amount of disclosure made by the appellant. However, subsequent to the search, the seized tally account for AY 2018-19 which had not been finalised and audited as on the date of the search was taken up for finalisation and audit and the net profit as per audited P&L account amounted to Rs

36,55,69,721/-. After finalisation and auditing of the accounts, the appellant filed the return of income for AY 2018-19 u/s 139(1) on 28.02.2019 admitting total income of Rs 37,00,72,000. On perusal of the schedule for computation of business income in the said return, it is seen that the net profit as per P&L account has been adopted at Rs 36,55,69,721/-, which is the net profit as per the audited P&L account. In this connection, it is pertinent to observe that the net profit as per P&L account was worked out by the special auditor also at Rs 36,55,69,726/- after preparation of final accounts for AY 2018-19. Hence, it is seen that the net profit as per the unaudited seized tally account of AY 2018-19, which was wrongly included in the disclosure of unaccounted income, has been rightly disclosed by the appellant as regular income by filing the return of income u/s 139(1) subsequent to the search, after arriving at correct amount of net profit on finalisation and auditing of such accounts. The said amount of net profit as per unaudited seized tally account cannot be taxed once again in the assessment made u/s 153A by regarding it as undisclosed income. Therefore, we are of the considered view that the net profit as per unaudited account of Rs 39,21,03,525 of AY 2018-19 is not liable to be included in the undisclosed income and apportionment of such income to AY 2009-10 to 2018-19 in the assessments made u/s 153A r.w.s 143(3) is not factually and legally sustainable.

133. The CIT(A), after considering relevant facts has rightly directed the Assessing Officer to delete additions made towards undisclosed of Rs. 39,21,03,525/-, because it amounts to double addition. In the grounds of appeal, the revenue disputed the

decision of the CIT(A) without specifying any reasons in support of its contention. The revenue also raised a sub-ground wherein it was contended that even if said amount of difference in the disclosure is considered as regular income, the same is required to be included in the unexplained expenditure u/s 69C added in the assessment orders. The revenue contended that since the addition of unexplained expenditure was computed by adjusting the unaccounted income computed in the hands of the appellant and 3 associate concerns against the unaccounted expenditure of Rs.2056.76 crores, the unexplained expenditure has to be increased when the unaccounted income of the appellant is reduced by the said regular income of Rs.39,21,03,525. In our considered view, the grounds of appeal raised by the revenue is without any basis because what was added by the Assessing Officer is total income of the appellant for the assessment year 2018-19 which is the year of search and thus, at any stretch of imagination, said income cannot be included in undisclosed income and assessed once again in the assessment. Since, the assessee had already declared net profit as per tally accounts for assessment year 2018-19 in subsequently filed return u/s. 139(1) on 28.02.2019, the additions made by the Assessing Officer on very same amount, amounts to double addition which is not permissible under the law. The CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer towards apportionment of said income for assessment year 2009-10 to 2018-19. Thus, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the revenue for assessment year 2009-10 to 2018-19.

134. The next issue that came up for our consideration from ground no 8 & 8.1 of revenue appeal for assessment year 2016-17 is deletion of addition towards on money paid for purchase of property. The fact with regard to impugned dispute are that, during the course of search at the office of M/s. Agni Plots at Chennai, an agreement of sale dated 28.06.2015 entered into between M/s. Agni Estates and Foundations Pvt Ltd and M/s. Handhold Ventures Pvt Ltd was seized. As per the said agreement, M/s. Handhold Ventures Pvt Ltd agreed to purchases 2.16 acres of land in survey no. 98/9A in Muthukadu Village for a total consideration of Rs. 15.5 crores. It was further noted that subsequently sale deed has been executed on 26.08.2016 for a consideration of Rs. 6.5 crore. During the course of search, a statement from the appellant was recorded u/s. 131 of the Act on 03.09.2018, where the appellant stated that the consideration of Rs. 3.1 crore per acre as per sale deed was paid by cheque and the balance consideration of Rs. 1.9 crore per acre was paid by cash. As regards source for funds of M/s. Handhold Ventures Pvt Ltd., the appellant explained that the cheque portion was paid by the said entity and that the cash portion was paid out of the unaccounted income generated by his proprietary concern. Based on the statement of the appellant, the Assessing Officer made additions of Rs. 9 crores in the hands of the assessee as undisclosed income towards on money paid for purchase of property in the name of M/s. Handhold Ventures Pvt Ltd. On appeal, the ld. CIT(A), deleted the addition by stating that the unaccounted investment in the purchase of property, if any is required to be taxed in the hands of the company which

purchased the property only and the same cannot be brought to tax in the hands of the appellant.

135. The ld. CIT-DR, Shri. M. Rajan, submits that the ld. CIT(A) erred in deleting the addition of Rs. 9 crores made towards unaccounted on-money paid for purchase of Muthakadu property in the name of M/s. Handhold Ventuers Pvt Ltd without appreciating fact that the assessee himself admitted in his sworn statement recorded during the course of post search investigation that the cash portion was paid out of unaccounted income generated by his proprietary concern. The DR further submitted that the findings of the CIT(A) that additions made towards on money for purchase of property in the hands of assessee amounts to double taxation without appreciating that the additions made in the hands of M/s. Handhold Ventures Pvt Ltd is pending before the CIT(A) and has not attained finality.

136. The ld. Counsel for the assessee Shri. D. Anand, Advocate, supporting order of the CIT(A) submitted that M/s. Handhold Ventures Pvt Ltd, is a separate legal entity and the transactions of the said company cannot be considered for taxation in the hands of the appellant, unless it is proved that money has been paid by the assessee. In this case, the so called sale agreement between M/s, Agni Estates and Foundations Pvt Ltd (Seller ) and M/s. Handhold Ventures Pvt Ltd (buyer) cannot be treated as the transaction of the assessee because the appellant is not a party to the said agreement. Further, the Assessing Officer made additions towards on money paid for purchase of property on the basis of statement of the appellant

u/s. 131 of the Act dated 03.09.2018, but said statement is not relevant because the appellant in his earlier statement recorded u/s. 132(4) dated 09.07.2018 stated that there is no on money payment for purchase of property. Further, there is no evidence with the Assessing Officer to allege that the assessee has paid on money out of his undisclosed income. Therefore, the CIT(A) after considering relevant facts has rightly deleted additions made by the Assessing Officer and their order should be upheld.

137. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The AO made addition of Rs.9 crores towards unexplained investment in the purchase of land at Muttukadu village on the basis of the difference in the sale consideration mentioned in the unregistered agreement of sale dated 28.06.2015 (which was found and seized during the course of search in the case of M/s Agni Plots on 05.07.2018) and registered sale deed dated 26.08.2015 and having regard to the statement of the appellant u/s 131 dated 03.09.2018, wherein he admitted that consideration has been paid over and above the consideration stated in the registered sale deed. The unregistered agreement of sale dated 26.08.2015 is an agreement between M/s Agni Estates and Foundations Pvt Ltd (seller) and M/s Handhold Ventures Pvt Ltd (buyer) and the appellant is not a party to the said agreement. It is noticed that the said agreement was signed by Shri.Dharmarajan, the authorised signatory of M/s Handhold Ventures Pvt Ltd. The registered sale deed dated 26.08.2015 was also signed by Shri.Dharmarajan only. The appellant was neither a party to the agreement of sale and the registered sale deed nor

he signed in the said documents as the authorised signatory of M/s Handhold Ventures Pvt Ltd. Though, the appellant is a shareholder and director of M/s Handhold Ventures Pvt Ltd, it needs to be borne in mind that the said company is a separate legal entity and the transactions of the said company cannot be considered for taxation in the hands of the appellant, unless a case is made out for lifting of the corporate veil. No such case has been made out in the case of the appellant. The reliance placed by the AO on the statement of the appellant u/s 131 dated 03.09.2018, wherein he admitted that the cash component of the sale consideration has been met out of the unaccounted income of his proprietary concern is not justified, having regard to the fact that he denied the payment of any excess consideration for the purchase of the relevant property in his earlier statements u/s 132(4) dated 09.07.2018 and 13.07.2018. Moreover, the facts stated by him in the statement u/s 131 are in contradiction to the facts available in the agreement of sale and registered sale deed. The appellant stated therein that the actual consideration was Rs.5 crores per acre as against Rs.3.10 crores per acre as per the registered sale deed, whereas the agreed sale consideration was shown at Rs.7.14 crores per acre in the agreement of sale. This apparent discrepancy in the quantum of actual sale consideration discredits the contents of the appellant's statement u/s 131 and weakens the evidentiary value of the said statement. Moreover, there is no evidence to corroborate the contents of the agreement of sale by way of any statement of the seller.

138. Further, regardless of whether the factum of payment of consideration over and above the consideration stated in the

registered sale deed is considered to have been established with proper evidences or otherwise, it is important to consider whether the excess consideration paid in cash, if any, is taxable in the hands of M/s Handhold Ventures Pvt Ltd or the appellant. M/s Handhold Ventures Pvt Ltd is a separate legal entity and the purchase of property has been made by the said company. The unaccounted investment in the purchase of property, if any, is therefore required to be taxed in the hands of the said company only and the same cannot be brought to tax in the hands of the appellant. The relevant unaccounted investment (on-money payment) of Rs.9.00 crores has also been added in the hands of M/s Handhold Ventures Pvt Ltd in the assessment order dated 14.06.2021 for AY 2016-17. The appeal against the said assessment order is presently pending. The addition of the same amount of Rs.9.00 crores made in the hands of the appellant in the assessment order for AY 2016-17 has amounted to taxing the same amount in the hands of the company as well as the director. Therefore, we are of the considered view that the addition of Rs.9.00 crores made in the hands of the appellant in the assessment order for AY 2016-17 is not sustainable. The CIT(A) after considering relevant facts has rightly deleted additions made by the Assessing Officer.

139. The revenue in the grounds of appeal, contested that the CIT(A) failed to appreciate that the appellant himself accepted in his statement that the cash portion was paid out of the unaccounted income generated of his proprietary concern. The revenue also contended that CIT(A) failed to appreciate that the appeal filed by M/s Handhold Ventures Pvt Ltd is pending and the

same has not reached a finality. In this regard, we find that the statement u/s 131 dated 03.09.2018 is contrary to the statements of the appellant u/s 132(4) dated 09.07.2018 and 13.07.2018 and that the facts stated by him in the statement u/s 131 are in contradiction to the facts available in the agreement of sale and registered sale deed. The CIT(A) therefore held that the such contradictions and discrepancies discredit the statement u/s 131 and weakened the evidentiary value of the same. The revenue has not rebutted the said findings of fact of the CIT(A). The appellant also submits that the pendency of appeal in the case of M/s Handhold Ventures Pvt Ltd has no bearing on the decision rendered by the CIT(A) keeping in view the fact that the property was purchased by the company which is a separate legal entity and unexplained investment if any is required to be examined in the hands of the company only. In view of the above, we are of the considered view that there is no merit in grounds taken by the revenue on this issue and thus, we are inclined to uphold the findings of the ld. CIT(A) and reject grounds taken by the revenue.

140. The next issue that came up for consideration from ground no. 7 to 7.1 of appeal filed by the revenue for assessment year 2016-17 to 2019-20 is additions on account of disallowance of working capital loan interest for AY 2016-17 to 2019-20. The fact with regard to impugned dispute are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed interest expenditure in respect of working capital loan borrowed from banks and financial institutions. The Assessing Officer further noticed that the assessee has diverted

the working capital loan funds for non-business purpose by advancing interest free loans to various group/associated concerns. The Assessing Officer, after analyzing the bank accounts of the appellant worked out diversion of funds for non-business purpose for assessment years 2016-17 to 2019-20 and called upon the assessee to explain as to why interest paid on loans cannot be disallowed u/s. 36(1)(iii) of the Act. In response, the assessee submitted that working capital loans borrowed from banks has been utlilised for the purpose of business alone and no part of loans funds has been diverted for non-business purpose. Therefore, submitted that the question of disallowance of interest expenditure u/s. 36(1)(iii) does not arise. The Assessing Officer, however was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee has borrowed working capital loan of Rs. 150 crores and diverted interest bearing funds of Rs. 79.15 crores to various group companies without charging any interest. Therefore, taking into account interest charged by the banks on working capital loans which was at 9.35% per annum, worked out disallowance of proportionate interest u/s. 36(1)(iii) of the Act for assessment year 2016-17 to 2019-20. The relevant details of diversion of working capital loan and amount of interest disallowed is worked out as under:

| AY | Amount of diversion of working capital loan | Amount of interest disallowed at 9.35% per annum |
|---|---|---|
| 2016-17 | 21,41,00,000 | 2,00,18,350 |
| 2017-18 | 4,40,00,000 | 41,14,000 |
| 2018-19 | 49,41,68,848 | 4,62,04,788 |

| | | |
|---|---|---|
| 2019-20 | 3,92,81,152 | 36,72,788 |
| Total | 79,15,50,000 | 7,40,09,926 |

141. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT)(A). Before the CIT(A), the assessee contended that no part of working capital loan has been diverted for non-business purpose as alleged by the Assessing Officer, because bank has given working capital loan in the form of OCC limit which is fully covered by stock and book debts for all assessment years. The assessee further contended that its own fund in the form of capital and reserves is more than the amount of loans and advances given to various group companies. Since, loans and advances given to group concerns is out of own funds, no disallowance can be made for interest expenditure u/. 36(1)(iii) of the Act.

142. The CIT(A), after considering relevant submissions of the assessee and also taken note of various facts including capital available with the assessee for each assessment year and amount of loans and advances given to group companies, opined that the Assessing Officer is completely erred in making additions toward disallowance of interest expenses u/s. 36(1)(iii) of the Act without appreciating fact that OCC limits sanctioned by the banks is against security of stock and debtors and the assessee is having investments in stock and debtor at each year end more than the amount of loan given by the banks and thus, the question of diversions of interest bearing funds for non-business purpose does not arise and consequently, interest expenditures cannot be

disallowed u/s. 36(1)(iii) of the Act. The CIT(A) had also discussed the issue in light of the decision of Hon'ble Supreme Court in the case of CIT vs Reliance Industries Ltd [2019] 410 ITR 466 (SC) and also the decision of Hon'ble Madras High Court in the case of Karur Vysya Bank Ltd vs CIT [TCA No. 509 to 511 of 2010] and observed that where the own funds and non-interest bearing funds are adequate to cover the investments/loans, it needs to be presumed that such investments have been made from own funds and non-interest bearing funds only. Therefore, directed the Assessing Officer to delete disallowance of interest paid on working capital loan u/s. 36(1)(iii) of the Act for assessment year 2016-17 to 2019-20.

143. The ld. CIT-DR, Shri. M. Rajan, submits that the Ld. CIT(A) erred in deleting the addition made toward proportionate disallowance of interest expenditure u/s. 36(1)(iii) of the Act for diversion of interest bearing funds to the group concerns for non-business purpose, without appreciating fact that the assessee has failed to prove availability of own funds which is sufficient to explain loans and advances given to group companies. The CIT-DR further submits that the CIT()A) erred in following the decision of Hon'ble Supreme Court in the case of CIT vs Reliance Industries Ltd (Supra), because in the said case the appellate authorities observed that investment made in subsidiary company and money advanced to related companies were for furthering business of the assessee, whereas in the present case, the assessee has not proved that the funds have been advanced to group concerns for the purpose of furtherance of business.

144. The ld. Counsel for the assessee Shri. D. Anand, Advocate, supporting the order of the CIT(A) submits that at the first stage, the Assessing Officer failed to make out a case of diversion of interest bearing funds for non-business purpose to other group companies. Further, loans and advances given to group companies is out of own funds of the assessee. The CIT(A) has analyzed the availability of own funds in light of financial statement of the appellant for these assessment years and categorically observed that OCC limit is fully used for the purpose of business of the assessee. The CIT(A) further observed that the assessee is having own funds of Rs. 246.25 crores for assessment year 2016-17 which is more than the amount of the alleged diversion of funds of Rs. 79.16 crores to group companies. Therefore, came to the conclusion that the question of disallowance of interest expenditure does not arise. Although, the revenue challenged the issue but failed to negate the observation of the CIT(A) with necessary evidences and thus, he submitted that the order of the CIT(A) should be upheld.

145. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The finding of the AO regarding the diversion of working capital loan funds to the associate concerns by way of interest free loans or investments in them is based on his observation that the relevant cheques were issued from the working capital loan account. In this regard, the appellant pointed out that all the business and other transactions are done through the OCC loan account (working capital loan account) only and the issue of cheques to the associate concerns through the said account

cannot be treated as diversion of working capital loan funds. The appellant stated that all the sale receipts and other funds available with the appellant are routed through the said working capital loan account and the investments made/loans advanced to associates concerns are made out of such funds. The appellant pointed out that this is evidenced by the fact that the own capital of the appellant in the balance sheet is much higher than the amounts advanced to or invested in the associate concerns in each of the relevant assessment years. The appellant, accordingly contended that there is no diversion of working capital loan funds and the disallowance of interest made in the assessment order is not justified.

146. We have given our thoughtful consideration to the reasons given by the Assessing Officer to disallow proportionate interest expenditure u/s. 36(1)(iii) of the Act, in light of arguments of the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for the simple reason that, the AO proceeded on the assumption that any outflow of funds from the OCC account represents utilisation of working capital loan funds. However, the said assumption is not founded on facts. The OCC account is also utilised for crediting various inflow of funds in the nature of owners capital, unsecured loans, realisation of loans advanced earlier etc., Such funds credited to the OCC account do not partake the character of working capital loan funds. The utilisation of such funds credited to OCC accounts for the purpose of advancing loans to associate concerns or making investment in such concerns does not represent utilisation and diversion of working capital loan funds. This aspect has not

been appreciated by the AO while coming to the conclusion that there is diversion of working capital loan funds.

147. Further, on examination of the balance sheet of the appellant for the relevant AYs 2016-17 to 2019-20, it is noticed that the working capital of the appellant represented by the aggregate of stocks and debtors and reduced by the creditors as on the balance sheet date is higher than the outstanding working capital loan as on the said date. From the above, it is clearly evident that the working capital loan has been fully utilised for the purpose of meeting the net working capital requirement of the appellant in AYs 2016-17, 2017-18, 2018-19 and 2019-20. It is therefore evident that, there is no diversion of working capital loan for any other purposes. Further, the amounts aggregating to Rs 79.15 cores paid to various associate concerns during the previous year's relevant to AY 2016-17 to 2019-20 by issue of cheques from the working capital loan account are found to be shown in the books of account either as investments or as loans & advances. The appellant stated that the own funds and interest free unsecured loans are available for meeting such investments and loans & advances. On analysing the availability of interest free funds with the appellant, it is noticed that the appellant has sufficient own capital and non-interest bearing unsecured loans for financing his investments and loans & advances (including the amount of Rs.79.15 crores shown in the assessment orders) as seen from the examination of the balance sheet relevant to the four assessment years. Therefore, we are of the considered view that there is no diversion of interest bearing funds for non-

business purpose to give loans and advances to group concerns as alleged by the Assessing Officer.

148. At this stage, it is relevant to discuss few judicial pronouncements on this issue. The Hon'ble Supreme Court in the case of CIT v. Reliance Industries Ltd. [2019] 410 ITR 466 (SC)held that where the own funds and non-interest bearing funds are adequate to cover the investments, it needs to presumed that such investments have been made from own funds and non-interest bearing funds only. The Hon'ble Madras High Court, being the jurisdictional High Court, rendered similar decision dated 08.02.2022 in the case of The Karur vysya bank ltd vs CIT (TCA No.509 to 511 of 2010) by following the above mentioned decision of the Hon'ble Supreme Court. The said decisions of the Hon'ble Supreme Court and Hon'ble Madras High Court are squarely applicable to the facts of the appellant's case. Therefore, by following the ratio of the said decisions, we are of the considered view that the loans advanced to/investments made in the associate concerns to the extent of Rs.79.15 crores have been made out of the interest free funds of the appellant consisting of own capital and interest free unsecured loans and not out of working capital loan funds. The CIT(A) after considering relevant facts has rightly deleted additions made towards disallowance of interest u/s. 36(1)(iii) of the Act for AY 2016-17 to 2019-20 and thus, we are inclined to uphold the findings of the ld. CIT(A) and reject ground taken by the revenue for all assessment years.

149. In so far as, the grounds of appeal raised by the revenue in light of the decision of Hon'ble Supreme Court in the case of CIT vs Reliance Industries Ltd, (supra), we find that on facts the loans advanced to/investments made in associate concerns are not out of working capital loan funds. Further, on analysis of working capital held in the business viz-a-viz the outstanding working capital loan amount as on the balance sheet date for the relevant years, it was observed that mere issue of cheques to the associate concerns from the OCC account (working capital loan account) cannot be construed as diversion of working capital loan funds since all the sale receipts and other receipts are credited to the working capital loan account. Thus, the question of diversion of working capital loan funds to associates concerns for non-business purposes as raised in the revenue's ground of appeal becomes irrelevant due to the finding that there is no such diversion in the first place. The revenue also contended in the ground of appeal that CIT(A) erred in placing reliance on decision of Hon'ble Supreme Court in the case of CIT vs Reliance Industries Ltd, though the facts of that case are distinguishable since it was found by the appellate authorities in that case that the investments made/loans advanced to subsidiary companies is for furthering the business interest of the assessee whereas there is no proof in the case of the appellant that loans advanced to associate concerns is for the purpose of business. In this regard, we find that the facts of case are actually similar to the facts of the appellant's case and the Hon'ble Supreme Court held that where the own funds and non-interest bearing funds are adequate to cover the investments, it needs to presumed that such investments have been made from own funds and non-interest

bearing funds only. From details filed by the appellant, net cash flows from operating activities are higher than the loans advanced/investments made in associates concerns and it cannot be said that working capital loan funds were diverted for non-business purpose. Therefore, we are of the considered view that the ground of appeal filed by the revenue is devoid of merits and thus, we are inclined to uphold the findings of the ld. CIT(A) and direct the Assessing Officer to delete additions made towards disallowance of proportionate interest expenditure u/s. 36(1)(iii) of the Act for assessment year 2016-17 to 2019-20.

150. The next issue that came up for our consideration from appeal filed by the assessee and, as well as the Revenue for assessment year 2019-20 is addition on account of unexplained cash u/s. 69A of the Act amounting to Rs. 16,26,67,400/- found during the course of search at various premises of the appellant and their group companies. The Assessing Officer has made additions toward cash found during the course of search on the basis of statement of Shri Valeeswaran, GM (Finance) recorded u/s. 132(4) of the Act on 06.07.2018. In response to question no. 50, Shri Valeeswaran stated that the unaccounted cash is kept in bank lockers in the name of employees at Indian Bank, Thiruchengode and Punjab National Bank, Erode. The Assessing Officer further taken note of fact that a sum of Rs. 5.5 crores was found in the locker of Shri. K.R. Baskar at Punjab National Bank. According to the Assessing Officer, the person present in the premises where the cash was found have stated that cash belongs to M/s Christy Friedgram Industry and that there are no supporting cash books to explain the said cash balance. During

the course of assessment proceedings, the Assessing Officer called upon the assessee to explain source for cash found and seized during the course of search. The Assessing Officer, further observed that the assessee did not furnish any explanation with regard to source for cash found during the course of search and thus, made additions of Rs. 16.27 crores u/s. 69A of the Act towards unexplained cash for the assessment year 2019-20.

151. The assessee challenged the additions made by the Assessing Officer towards cash found and seized during the course of search u/s. 69A of the Act before the CIT(A) and argued that cash found at different places is belongs to various group companies of appellant where either he is a director or partner or shareholder. The assessee has filed a list of companies and firms and closing cash balance as per books of accounts as on 05.07.2018. The assessee further contended that cash found and seized at locker no. 151, Punjab National Bank, Erode belonging to K.R. Baskar, director of M/s. Arogya Enterprises Pvt Ltd and the same has been explained by the company with known source of income as per which M/s. Arogya Enterprises Ltd is subsidiary of M/s. Hermit Enterprises LLP and cash balance available in their books of accounts on 05.07.2018 is more than the amount found in the locker.

152. The ld. CIT(A) after considering relevant submissions of the assessee and also taken note of various details filed in respect of cash balance available as per seized tally, deleted additions made by the Assessing Officer towards cash found and seized during the course of search and out of total seizure of Rs. 16.27

crores, the CIT(A) sustained additions to the extent of Rs. 40 lakhs towards cash balance claimed in the name of M/s. Balaji Constructions amounting to Rs. 25 lakhs and cash balance in the hands of M/s Pack Easy for Rs. 15 lakhs aggregating to Rs. 40 lakhs. However, the balance amount of cash found and seized during the course of search has been deleted by holding that the appellant had explained cash found and seized during the course of search with known source of income and as per which the cash balance available as on 05.07.2018 in the name of various group companies of appellant is sufficient or more than the amount of cash found during the course of search.

153. The ld. CIT-DR, Shri. M. Rajan, submits that the ld. CIT(A) erred in deleting the addition of Rs. 15,86,67,400/- made u/s. 69A of the Act towards cash found and seized during the course of search without appreciating fact that Shri Valeeswaran, GM (Finance) in his sworn statement recorded u/s. 132(4) on 06.07.2018 admitted the unaccounted cash kept in the bank lockers maintained in the name of employees and also furnished the details of locker in the name of Shri. Yuvraj, Shri. Murugan, Shri. Sathish Kumar and Shri. K.R. Baskar. The CIT-DR further submitted that the department has found cash balance of Rs. 5.5 crores in the locker of Shri K.R. Baskar at Punjab National Bank, Erode. The assessee could not explain source for cash found during the course of search, however the CIT(A) deleted additions made by the Assessing Officer u/s. 69A of the Act, without appreciating fact that parallel cash book (Erandum Thall) maintained by the appellant from which unaccounted cash

expenditure was quantified clearly shows that cash balance was not available on 05.07.2018 as claimed by the appellant.

154. The ld. Counsel for the assessee Shri. D. Anand, Advocate, supporting the order of the CIT(A) to the extent relief allowed by the CIT(A), further submits that the ld. CIT(A) erred in sustaining the addition to the extent of Rs 40 lakhs u/s. 69A of the Act in respect of cash balance of two entities namely M/s. Balaji Construction and M/s. Easy Pack, even though, cash book maintained by two entities clearly shows cash available in the books of above two entities. The ld. Counsel for the assessee further, rejecting the arguments of the ld. CIT-DR in light of Erandum Thall submitted that the appellant incurring the alleged expenditure has not been established for the purpose of making the addition and thus, addition towards cash balance ignoring explanation furnished by the assessee is totally incorrect. The ld. Counsel further submitted that although during search the employees of the appellant stated that unaccounted cash was kept in lockers of various employees, but fact remains that the assessee has proved availability of cash balance as per books of accounts and thus, no additions can be made on the basis of statement of the employees alone, when the materials available with the Assessing Officer shows that there is sufficient cash balance as per books of accounts of the assessee. The Counsel for the assessee further submitted that the statement recorded from employees cannot be considered as evidence, because the persons who gave the statement have filed retraction with sworn affidavit within 90 days from the date of the statement and explained how those statements have been obtained during the

course of search. Although, there is no direct evidence to disprove the contents of statements, if you go by circumstantial evidence it is very clear that the statements were recorded from employees under coercions and thus, because of withdrawal of statements, same cannot be considered as evidence for making addition. The CIT(A) after considering relevant submissions has rightly deleted additions made u/s. 69A of the Act towards cash found during the course of search and their order should be upheld.

155. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that a sum of Rs. 16,26,67,400/- was found and seized during the course of search from various premises either belongs to the assessee or his associated concerns, including bank lockers in the name of various persons. It is also an admitted fact that Shri Valeeswaran, GM (Finance) in his statement recorded u/s. 132(4) of the Act admitted that the appellant has kept unaccounted cash in bank lockers of various employees and also gave list of employees and bank locker account numbers. The Assessing Officer has made additions towards cash found during the course of search u/s. 69A of the Act on the basis of statement recorded from employees and the appellant. It was the contention of the assessee before the Assessing Officer that enough cash balance was available as per books of accounts of various firms and companies which is sufficient to explain source for cash found during the course of search. It was further contended that cash was kept in the safe custody of appellant even though said cash

was belongs to various entities. The appellant has furnished list of entities and cash balance available as on 05.07.2018 as per seized tally accounts and contended that cash balance available as on the date of search is in excess of cash found during the course of search.

156. We have carefully considered reasons given by the Assessing Officer to make additions towards cash found and seized during the course of search in the hands of the appellant in light of various arguments advanced by the counsel for the assessee. From the arguments and counter arguments, it appears that except statement recorded from the employees of the appellant on the date of search, the Assessing Officer could not counter explanation furnished by the assessee with regard to availability of cash in hand as on the date of search. In fact, the Assessing Officer never disputed the claim of the assessee that cash in hand from books of accounts from seized tally as on the date of search is in excess of cash found during the course of search. Therefore, it is very important to look into the issue leaving behind the statement recorded from Shri Valeeswaran, GM (Finance). The appellant explained that except for Rs.7,50,000 found at Villa 16, Natchatra Classic, Kalapatti, Coimbatore (appearing at Sl.No 10 of the list furnished in the assessment order) and the cash of Rs.5.50 crores found in locker in the name of Shri.K.R.Baskar held in Punjab National Bank, Erode, the balance cash of Rs.10,69,17,400 found during the search belongs to the appellant's proprietary concern M/s Christy Friedgram Industry and other group entities in which the appellant is either a shareholder-cum-director, a shareholder or a

partner and that the same is duly accounted in the books of account of the appellant and the said entities. The appellant furnished the names of the said entities and the cash balance available as per the books of account of the appellant concern as well as other entities as on the date of the search. The appellant stated that the books of accounts of all such entities, other than M/s Rasi Nutri Foods, were maintained in the corporate office of the appellant itself and such books of account maintained in the computer server were seized during the search vide annexure ANN/VP/ED/S-13. The appellant stated that the books of account of M/s Rasi Nutri Foods were separately seized from the premises of the said entity. The appellant furnished copies of relevant ledger extracts from the seized tally accounts of the appellant concern and the said entities to show that the cash found during the search is covered by the cash balance available in the books of accounts.

157. As regards, the cash of Rs.5.50 crores found in the locker of Shri.K.R.Baskar, the appellant explained that the said person is the director of M/s Arogya Enterprises Ltd and its sister concern M/s Hermit Enterprises LLP and that the cash found in his locker belongs to the said entities. The appellant furnished the copies of the cash ledger extract of the said entities to show that the cash found in the locker is covered by the cash balance available in the books of account of the said entities. As regards the cash of Rs.7,50,000 found at Villa 16, Natchatra Classic, Kalapatti, Coimbatore (appearing at Sl.No 10 of the list furnished in the assessment order), the appellant stated that the same does not belong to him or any of his entities. The appellant further pointed

out that the person available in the said premises had admitted in his statement dated 05.07.2018 that the said cash of Rs.7.50 lakhs belongs to him only. We find that with regard to the cash of Rs 7.50 lakhs found at Villa 16, Natchatra Classic, Kalapatti, Coimbatore, it is noticed that a statement u/s 132(4) was recorded on 05.07.2018 from Shri S.Vishnu, who is the occupant of the said premises and he admitted therein vide response to Q.No 9 that the cash of Rs.7.50 lakhs found in the said premises belongs to him and that the same is unaccounted in nature. Therefore, we are of the considered view that the AO has wrongly stated in the assessment order that the persons present in various premises, where the cash was found, have stated that the cash belongs to M/s Christy Friedgram Industry. It is evident from the said statement that the cash of Rs. 7.50 lakhs does not belong to either the appellant or his group entities. The explanation furnished by the appellant in this regard is found to be factually correct and acceptable.

158. In so far as, the cash of Rs.5.50 crores found in the locker of Shri.K.R.Baskar in Punjab National Bank, Erode, it is seen from the narration given in the relevant seizure annexure that the said cash was brought to the corporate office premises of the appellant after operating the locker and was seized from the said premises on 07.07.2018. The said amount is included in the cash of Rs.11,39,90,000 shown to have been found and seized from the corporate office of the appellant. It is noticed that the AO did not furnish proper justification in the assessment order for considering the cash found in the locker of Shri.K.R.Baskar as the cash belonging to the appellant. The AO merely referred to the

statement of Shri. Valeeshwaran dated 06.07.2018, wherein he stated that the unaccounted cash is kept in the lockers of some employees and furnished the details of the locker of Shri.K.R.Baskar also while stating the details of the lockers of the employees. However, Shri K.R.Baskar is not an employee of the appellant or his group entities. He is the director of M/s Arogya Enterprises Ltd, as mentioned in the relevant cash seizure annexure ANN/VP/CFI/cash/F&S itself. It is therefore seen that the statement of Shri.Valeeswaran in this regard is factually erroneous. Further, apart from the above, it is noticed that the appellant furnished copies of cash ledger in the books of M/s Arogya Enterprises Ltd and M/s Hermit Enterprises LLP as on the date of the search, which were stated to have been furnished in the paper book filed along with the writ petition before the Hon'ble High court of Madras. This information was already available with the assessing officer at the time of passing the assessment order, since the copies of writ petition and the paper book filed with the writ petition were furnished by the appellant to the Investigation wing and the same were later on handed over to the assessing officer. On perusal of the said cash ledgers, it is noticed that the cash balance available in the books of account of M/s Arogya Enterprises Ltd and M/s Hermit Enterprises LLP as on the date of search amounted to Rs 3,54,69,065 and Rs 3,43,20,137 respectively, which is cumulatively more than the cash of Rs.5.50 crores found in the locker of Shri.K.R.Baskar. Further, the appellant stated that the tally accounts of the said two entities have been seized by the department during the course of the search from the office premises of the auditor Shri.K.Ramachandran on 05.07.2018 and that the availability of

the said cash balances is verifiable from the said seized tally accounts also. From the above, it is very clear that the cash found in the locker of Shri.K.R.Baskar cannot be treated as the cash belonging to the appellant or any of his group entities.

159. The appellant stated that cash to the extent of Rs.10,10,000 found and seized at the premises bearing the address "S.F.No.134 & 133/2, S.F.No.450, Navani Village, R.Puliyampatti Village, Puduchatram, Namakkal – 637018" belongs to M/s Rasi Nutri Foods, as the said premises is the factory premises of that concern, which is evident from the seizure annexure itself. The appellant furnished ledger account of cash balance as per the books of account of the said entity as on the date of the search and as per books cash balance was at Rs.11,33,738/-, which is higher than the said cash found and seized. The appellant stated that the tally books of account of the said entity for FY 2018-19 were seized from the said premises on 27.08.2018 vide annexure ANN/SST/RNF/ED/S page-1 and the said cash balance is verifiable from the seized tally accounts. In this regard, on verification of the copy of the relevant panchnama, it is seen that the cash of Rs 10,10,000 was seized from the premises of M/s Rasi Nutri Foods only. Further, it is seen that the appellant furnished copy of cash ledger of the said entity in the paper book submitted to the Hon'ble High court along with the writ petition, which is available with the AO also. On perusal of the same, a copy of which was furnished during the appellate proceedings, it is noticed that the cash balance of the said entity as per the books of account amounted to Rs.11,33,738 as on the date of the search. Further, on perusal of the seized tally accounts

of the said entity, the same fact is noticed. From the above, it is evident that cash of Rs.10,10,000 is accounted in the books of M/s Rasi Nutri Foods and the same is not liable to be treated as unexplained cash of the appellant.

160. In respect of the balance cash of Rs.10,59,07,400, the appellant explained that the same represents the cash available in the books of account of the appellant entity and other entities of the group and that no part of the said cash represents unexplained cash. The appellant stated that the cash belonging to other group entities was kept under safe custody of the appellant concern. The appellant furnished the list of various entities of the group along with the cash balance as per their books as on the date of the search in the paper book furnished to the Hon'ble High Court, a copy of which is available with the AO. It is noticed that the appellant furnished copies of the cash ledger extracts of the said entities in the paper book furnished to the Hon'ble High Court in support of the claim of cash balances available with them. The said cash ledger extracts have been furnished along with the written submission also during the appellate proceedings. It is also noticed that the appellant furnished the list of group entities to whom the cash found during the search belonged to, in the letter dated 27.08.2019 furnished to the Assessing Officer. On examination, it is seen that out of the 27 entities shown in the table, two entities shown at Sl.No. 26 and 27 are not appearing in the list furnished by the appellant in the paper book filed along with the writ petition before the Hon'ble High court. Further, it is seen that the books of account of the said two entities were not found and seized from the corporate office premises of the

appellant. Further, it is seen that the said two entities do not figure in the list of entities in which the appellant is a partner or a shareholder or a shareholder-cum-director, as stated by him in response to Q.No.1 of his statement u/s 132(4) dated 09.07.2018. From the above, it is very clear that the claim of the appellant that cash found and seized from its office premises to the extent of Rs.25,00,000 and Rs.15,00,000 represents the cash available in the books of accounts of the said two entities i.e M/s Balaji Constructions and M/s Pack Easy respectively is not substantiated by evidence in the seized material and other material available on record. Therefore, we are of the considered view that, the appellant failed to furnish satisfactory explanation regarding the sources of the cash to the said extent of Rs.40 lakhs.

161. On the other hand, in respect of the appellant concern and other group entities shown at Sl.No 1 to 25 of the table, it is seen that the said entities are figuring in the list of entities in which the appellant is a partner or a shareholder or a shareholder-cum-director, as stated by him in response to Q.No.1 of his statement u/s 132(4) dated 09.07.2018. Further, it is seen that the tally books of account of all such entities are being maintained in the computer server at corporate office premises of the appellant only and the same were found and seized from the said premises of the appellant during the course of the search vide annexure ANN/VP/ED/S-13. The claim of the appellant that such entities have given safe custody of the cash available in their books of account to the appellant is considered to be reasonable and acceptable in the light of these facts. Moreover, it is noticed

that these 25 entities are appearing in the list furnished by the appellant in the paper book filed along with the writ petition before the Hon'ble High court and in the list furnished to the assessing officer vide letter dated 27.08.2019. Further, on perusal of the seized tally accounts of the said 25 entities, including the appellant concern M/s Christy Friedgram Industry, available in ANN/VP/ED/S-13, it is seen that the cash balance as per the books as on the date of the search is tallying with the details furnished by the appellant in the table. It is therefore evident that the cash found during the search to the extent of Rs.10,19,07,400 represents the cash available in the books of accounts of the appellant and other group entities as on the date of the search.

162. We further noted that, the AO merely relied on the statement of Shri.Valeeshwaran dated 06.07.2018 to draw the conclusion that the cash found during the search represents unaccounted cash of the appellant. As already mentioned earlier, some of the factual details furnished by Shri.Valeeshwaran regarding bank lockers of the employees where the unaccounted cash is kept are found to be erroneous. Though Shri.Valeeshwaran stated that the cash available over and above the book cash balances is placed in the lockers of the employees, the AO did not make any effort to ascertain the cash balances as per the books of account, before reaching his conclusion that the entire cash found represents unexplained cash. Moreover, it is noticed that the AO wrongly treated the cash found during the search, other than the cash found in the lockers, also as unaccounted cash based on the said statement of Shri.Valeeshwaran, though his statement has no relevance to

such cash which is not found in the lockers. Such action of the AO is considered to be arbitrary and without any basis. The statement of Shri.Valeeshwaran cited in support of the adverse conclusion reached in respect of cash found in the locker is also erroneous and unreliable as already mentioned while discussing the issue of cash found in the locker in the name of Shri.K.R.Baskar. From the forgoing discussion, it is very clear that the assessee has explained cash found during the course of search with known source of income as per books of accounts of appellant and their group companies. Further, the appellant had also explained how and why cash found and seized from the locker of K.R. Baskar cannot be considered as cash belongs to the assessee. The CIT(A) after considering relevant facts has rightly deleted addition to the extent of Rs.15,86,67,400, out of the seized cash of Rs.16,26,67,400 found during the search and the same is not liable to be treated as unexplained cash.

163. The revenue contended in the grounds of appeal that the CIT(A) failed to appreciate that Shri.Valeeshwaran in his sworn statement admitted unaccounted cash is kept in the lockers in the names of its employees Shri.Yuvaraj, Murugan, B.Satheesh kumar and K.R.Baskar. In this regard, we find that the factually erroneous and unreliable nature of statement of Shri.Valeeshwaran has been discussed and brought out by the CIT(A) at para 547 and 556 of the appellate order with supporting reasons and the revenue has not at all rebutted any of the factual findings given by the CIT(A). The revenue has not rebutted the specific observation of the CIT(A) in para 556 that the AO treated the cash found during the search, other than cash found in the

lockers, also unaccounted cash based on the statement of Shri.Valeeshwaran though his statement has no relevance to the cash not found in the lockers. The CIT(A) has given detailed reasons as to why the cash balance available as on the date of the search in the books of account of the other concerns of the group which were forming part of the seized material should be taken into consideration at para 555 of the appellate order and the revenue did not furnish specific rebuttal of the reasoning adopted by the CIT(A). Therefore, we are of the considered view that the findings of facts recorded by the ld. CIT(A) is uncontroverted by the revenue with any evidences or valid reasons and thus, we are inclined to uphold the reasons given by the CIT(A) to delete additions made towards cash found and seized during the course of search to the extent of Rs.15,86,67,400/- out of total cash found and seized at Rs. 16,26,67,400/- and reject grounds of appeal filed by the revenue.

164. In so far as, the arguments of the assessee on cash balance in the name of M/s. Balaji Constructions and M/s. Pack Easy to the extent of Rs. 40 lakhs, sustained by the CIT(A), we find that even before us the appellant could not file any evidences to prove availability of cash balance as on the date of search. Therefore, we are of the considered view that there is no error in the reasons given by the CIT(A) to sustain additions to the extent of Rs. 40 lakhs u/s. 69A of the Act, and thus, we reject grounds taken by the assessee on this issue.

165. The next issue that came up for our consideration from appeal of the revenue for assessment year 2017-18 is

enhancement proposed u/s 56(2)(vii)(a) and held to be not warranted with regard to the amount alleged to be received from Smt.V.K.Sasikala for AY 2017-18.

166. During the course of appellant proceedings, a notice of enhancement dated 10/06/2022 was issued by the CIT(A) proposing to bring the amount of Rs.237 crs held to have been given to the appellant by Smt.Sasikala in specified bank notes during the period of demonetisation on the basis of assessment order passed in the case of Smt.Sasikala for AY 2017-18. The CIT(A) proposed to enhance the assessment to the extent of Rs. 237 crores u/s. 56(2)(vii)(a) of the Act, towards alleged amount paid by Smt. Sasikala in specified bank notes, on the basis of search conducted in the case of Smt. Sasikala on 09.11.2017. The CIT(A) on the basis of pending appeal filed by Smt. V.K. Sasikala for the assessment year 2017-18 noticed that an addition of Rs. 237 crores was made u/s. 69A of the Act towards unexplained money represented by cash of Rs. 237 crores given to Shri T.S. Kumarasamy in specified bank notes during demonetization period. The basis for said addition was statement of Shri V.S. Shiva Kumar recorded during the course of search in the case of Smt. Sasikala. Further, the CIT(A) had also relied upon the statement of Shri. Thirupathi a relative of T.S. Kumarasamy and Shri Valeeshwaran, GM (Finance) of Christy Friedgram Industry recorded during the course of search in the case of the appellant. According to the CIT(A), although there is enough material before the Assessing Officer to suggest that a sum of Rs. 237 crores has been received by the appellant without any consideration, the Assessing Officer failed to bring said sum

to tax as per the provisions of section 56(2)(vii))(a) of the Act and thus, a notice of enhancement dated 10.06.2022 was issued to the appellant.

167. In response to proposed enhancement, the appellant filed detailed submissions and explained that the provisions of section 56(2)(vii)(a) is not applicable, since there is no conclusive proof that the Smt. Sasikala is the donor, who gifted Rs. 237 crores to the appellant. The appellant further contended that the alleged cash of Rs. 237 crores stated to have been received by the appellant on 29.12.2016 and 30.12.2016 was neither found during the course of search nor found invested in undisclosed asset. The CIT(A) after considering the detailed submission filed by the appellant in response to enhancement notice and the material available on record including the relevant seized material and statements of Shri.V.S.Sivakumar, Shri.Tirupati, Shri.Valeeshwaran, Smt.Sasikala and the appellant, concluded that there is no conclusive or clinching evidence to establish that the appellant received cash of Rs.237 crores from Smt.Sasikala during the demonetization period for conversion of the OHDs/SBNs into new currencies and held, the provisions of section 56(2)(vii)(a) are not attracted to the facts of the appellant's case. The CIT(A), therefore held that the enhancement proposed during the course of appellate proceedings in this respect is not warranted. Aggrieved by the CIT(A) order, the revenue is in appeal before us.

168. The ld. CIT-DR, Shri.M. Rajan, submits that the ld. CIT(A) erred in issuing suomoto enhancement notice, even

though the issue of cash received by the assessee of Rs. 237 crores in specified bank notes from Smt. V.K. Sasikala is neither emanating from assessment order, nor the issue has been contested by the assessee during appellate proceedings. The ld. CIT-DR further submits that the ld. CIT(A) erred in holding that enhancement of assessment to the extent of Rs. 237 crores u/s. 56(2)(vii)(a) is not warranted without appreciating fact that the chain of events and evidences collected during the course of search action established the fact that Shri. T.S. Kumarasamy received demonetized currency from Smt. V.K. Sasikala and deposited cash to his bank accounts maintained with M/s. Christy Friedgram Industry and M/s. Suvaranabhoomi Enterprises Pvt Ltd.

169. The ld. Counsel for the assessee Shri. D. Anand, supporting the order of the CIT(A) submits that there is no merit in grounds taken by the revenue on the powers of the CIT(A) for enhancement of assessment and subsequent action because, as per the provisions of section 251 of The Income Tax Act, 1961 and Explanation provided therein, clearly says that in disposing of an appeal, the CIT(A) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant. He further referring to the enhancement notice issued by the CIT(A) submits that the issue of alleged cash receipt of Rs. 237 crores from V.K. Sasikala during demonetization period was the subject matter of investigation by the Department during the course of search itself and further, the Department has recorded statement from Shri Valeeshwaran and asked about the sources of cash balances

noted in the seized diary. Further, the issue was staring at the time of appellate proceedings from the appeal proceedings of Smt. V.K. Sasikala and thus, the CIT(A) after taking cognizance of various material available with him, issued enhancement notice to bring into tax sum of Rs. 237 crores u/s. 56(2)(vii)(a) of the Act. However, the CIT(A) after considering relevant details and also the arguments of the assessee, came to the conclusion that there is no conclusive and clinching evidence to establish that the appellant received sum of Rs. 237 crores from Smt. V.K. Sasikala during the demonetization period and thus, dropped proposed enhancement of assessment. Therefore, there is no merit in arguments of the ld. CIT-DR, that the CIT(A) travelled beyond his powers on this issue.

170. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The notice of enhancement was issued proposing to tax the amount of OHDs/SBNs of Rs.237 crores received by the appellant from Smt.Sasikala without consideration u/s 56(2)(vii)(a) of the Act, based on the statements of Shri.V.S.Siva kumar, Shri.Tirupati and Shri.Valeeshwaran. However, on careful examination of the contentions of the appellant, it is seen that none of the said statements have conclusively established that a sum of Rs.237 crores was received by the appellant from Smt.Sasikala. It is noticed that the loose sheet seized during the course of search in the case of Smt.Sasikala from the premises of M/s Namadhu MGR bearing page no.98 of ANN/VSU/NMN/LS-1/S contained an entry “Tirupati-7.40” and it was with reference to the said entry that Shri.Siva kumar stated that it represents

commission of Rs.7.40 crores which is to be received from Shri Tirupati for facilitating the transfer of OHDs/SBNs of Rs.237 crores to the appellant on the instructions of Smt.Sasikala, for the purpose of exchanging the same with new currency. However, it is noticed that the said loose sheet does not contain any noting with regard to the alleged amount of Rs 237 crores. It is also noticed that the name of the appellant is not found noted anywhere in the said loose sheet. Moreover, as contended by the appellant, the statement of Shri.Siva Kumar that he was promised commission of Rs.7.40 crores for facilitating the transfer of amount of Rs 237 crores to the appellant does not stand to any reason as the commission, if any, is to be paid by the person who seeks to convert the demonetised currency into new currency and not by the person who is providing the service of conversion of the currency. The said statement of Shri.Siva Kumar is required to be considered as unreliable in view of this inherent discrepancy. The unreliable nature of his statement is also is evidenced by the averment made by him that the appellant agreed to return the amount of Rs 237 crores in new currency within one year. Considering the fact that the only avenue available to a person to convert such huge amount of OHDs/SBNs into new currency is to deposit the amount in the bank account and declare the same under PMGKY, it is impossible for any person to return the entire amount in new currency after paying 50% tax on the amount declared under PMGKY. It is therefore evident that the statement of Shri.V.S.Siva Kumar does not in accordance with the actual facts and the same cannot be considered as credible and reliable evidence.

171. The contention of the appellant with regard to the statement of Shri.Tirupati is also found to be acceptable, since the said person did not make any admission regarding receipt of Rs.237 crores from Shri.V.S.Siva kumar for the purpose of transporting and delivering the same to the appellant. His statement is also silent regarding the date of receipt of cash from Shri.Siva Kumar. It is noticed that he merely admitted to receiving some hardboard boxes from Shri Siva Kumar and transporting them from Chennai to Tiruchengode. He stated that he felt that the said boxes may have contained cash in view of the importance and confidentiality of their movement. It is therefore considered that his statement does not bring out clearly and unambiguously he received and transported a sum of Rs.237 crores and handed over the same to the appellant.

172. In respect of the statement of Shri.Valeeshwaran, it is noticed that the contention of the appellant regarding recording of two statements on 06.07.2018 and 08.07.2018 by the same officer with same questions and answers, except one new question inserted at Sl.No.11 in the statement dated 08.07.2018 is borne out by the said statements. It is noticed that the new Q.No 11 in the statement dated 08.07.2018 was posed to Shri.Valeeshwaran regarding the entries relating to introduction of cash as noted in the seized TTD diary on five dates from 01.12.2016 to 05.12.2016, which resulted in increase in the cash balance from Rs.3,36,19,000 to Rs.249,52,83,000. In response to the said question, Shri.Valeeshwaran stated that the cash introduction was made by the appellant and that the source for the same was the unaccounted cash received from Smt.Sasikala.

He stated that the same was later on deposited in the bank accounts of M/s. Christy Friedgram Industry and Suvarnabhoomi Enterprises Pvt Ltd under PMGKY scheme. As pointed out by the appellant, Shri.Valeeshwaran had earlier stated in his statement on 06.07.2018 that the cash balances noted in the said diary represents the unaccounted cash generated by booking bogus purchases. In view of the said contradiction in the explanation given by Shri.Valeeshwaran regarding the sources of cash balances noted in the seized diary between the two statements recorded on 06.07.2018 and 08.07.2018, it is considered that the statements of Shri.Valeeshwaran cannot be assigned any evidentiary value for making any inference against the appellant.

173. It is also significant to observe that there is a complete contradiction between the dates on which the cash introduction was noted in the diary seized from the cabin of Shri.Valeeshwaran, which were stated by him to be the dates of receipt of cash from Smt.Sasikala and the dates of delivering the cash to Shri.Tirupati as mentioned in the statement of Shri.V.S.Siva Kumar. It is noticed that the introduction of cash in the seized diary is shown on five dates from 01.12.2016 to 05.12.2016, whereas the cash of Rs.237 crores was stated to have been delivered to Shri.Tirupati on 29.12.2016 and 30.12.2016. The contention of the appellant that no evidentiary value should be attached to the statements of Shri.V.S.Siva Kumar, Shri.Tirupati and Shri.Valeeshwaran is therefore considered to be justified in the facts of the case. Apart from the said statements which have been held to be inconsistent and unreliable, it is noticed that there is no other corroborative

evidences to hold that the appellant has received OHDs/SBNs (cash in old currency) of Rs.237 crores from Smt.Sasikala. Further, it is seen that no evidence was found during the course of search in the case of the appellant regarding the receipt of said cash or its application by way of any undisclosed investment or asset. It is also relevant to add that Smt.Sasikala as well as the appellant have denied the said transactions in their statements recorded u/s 131 and 132(4) respectively.

174. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that there is no conclusive or clinching evidence to establish that the appellant received cash of Rs.237 crores from Smt.Sasikala during the demonetisation period for conversion of the OHDs/SBNs into new currencies. The CIT(A) after considering relevant submission of the assessee held that the provisions of section 56(2)(vii)(a) are not attracted to the facts of the appellant's case and accordingly, the enhancement proposed during the course of appellate proceedings in this respect is held to be not warranted. Therefore, we are of the considered view that there is no error in the reasons given by the Ld. CIT(A) to drop proposed enhancement of assessment and thus, we are inclined to uphold the findings of the ld. CIT(A) and reject grounds taken by the revenue.

175. In so far as the additional grounds of appeal filed by the Revenue during the course of the proceedings before the Tribunal, it was contended that the CIT(A) travelled outside his jurisdiction by issuing enhancement notice to the assessee on the issue of

cash receipt of Rs.237 crs in demonetised currency since the issue is neither reflected in the return of income nor the AO has examined its taxability in the assessment order. In support of this contention, the revenue placed reliance on the decisions of Hon'ble Supreme Court in the cases of CIT vs Rai Bahadhur Motilal Chamaria reported in (1967) 66 ITR 443 and CIT vs Shapoorji Pallonji Mistry (1962) 44 ITR 891 wherein it was held that appellate assistant commissioner has no jurisdiction to enhance assessment by discovering new sources of income not mentioned in the return of income or not considered by the AO in the assessment order. The revenue contended that the enhancement notice issued by the CIT(A) is ab initio void in the absence of jurisdiction to enhance the assessment and the subsequent conclusion in favour of the assessee is not valid in the eye of law. With regard to the said additional grounds, we find that the contention of the revenue is not justified since the same is founded on wrong facts. It is noted that the averment of the revenue in the additional ground that the issue of cash receipt of 237 crores of demonetised currency is neither reflected in the return of income nor the AO has examined its taxability in the assessment order is factually erroneous. The appellant as well as M/s Suvarnabhoomi Enterprises Pvt Ltd have disclosed the details of demonetised currency deposited in the bank accounts during the period from 09.11.2016 to 30.12.2016 in the column specified in the return of income for AY 2017-18 (Paper book Vol -I Page 315-317 ) for making such disclosure. In view of such disclosure, it is not correct to state that the issue of demonetised currency is not reflected in the return of income. With regard to the aspect of whether the AO examined taxability of such demonetised currency

in the assessment order, we find that the finding given by the AO at para 15.6.5 of the assessment order for AY 2017-18 that the unaccounted cash generated over the years have been offered during the scheme since the appellant has offered Rs. 124,79,05,500 under PMGKY and IDS and its group concern offered Rs.136,50,00,000 under PMGKY reveals very clearly that the AO examined the issue of source and taxability of the demonetised currency during the assessment proceedings. With regard to issue of whether the AO examined this matter during the assessment proceedings, attention is drawn to para 6.4 and 6.4.1 of order u/s 263 dated 01.03.2023 passed by the PCIT in the case of the appellant for AY 2017-18 wherein while dealing with the objection of the appellant that the internal correspondence dated 09.08.2021 submitted by the AO confirms that all the seized material was verified and action was taken wherever warranted. Further, the PCIT, while accepting that the AO has verified the seized material and the sworn statements referred by the investigation wing, stated that the proceedings u/s 263 are initiated due to the failure of the AO to make necessary enquiry on the issue of receipt of cash from Mrs.Sasikala. It is very much clear from the acceptance of PCIT himself in the revision order that the AO had verified all the seized material and taken action wherever required and the issue of receipt of Rs.237 crs from Mrs.Sasikala was not considered by the AO in the assessment order as he was satisfied that the same does not call for addition.

176. In so far as, the decisions of the Hon’ble Supreme Court relied upon by the revenue in the additional grounds have no

application to the case of the appellant as the facts are distinguishable as pointed out above. Further, as per the provisions of section 251 of the Act and Explanation provided therein, it is very clear that in appellate proceedings, the Commissioner (Appeal) may consider and decide any matter arising out of the proceedings, in which the order appealed against was passed, notwithstanding such matter was not raised by the appellant. If we examine the facts of the present case in light of provisions of section 251 of the Act, on powers of the Commissioner (Appeals), there is no dispute of whatsoever on the powers of the Commissioner in disposing of an appeal including enhancement of assessment, if such enhancement is necessary in the given facts and circumstances of the case, he may suomoto initiate enhancement proceedings to consider and decide the issue. In this case, on perusal of enhancement notice issued by the CIT(A) and subsequent finding on the issue, it is very clear that there is enough material in the appeal folders including statement recorded from various employees during search which were part of assessment proceedings. Further, the CIT(A) had taken note of the issue from the pending appeal proceedings of Smt. V.K. Sasikala where the Assessing Officer has made additions of Rs. 237 crores u/s. 69A of the Act as unexplained money for alleged payment of cash to the assessee during demonetization period. Therefore, we are of the considered view that, since the appellate proceedings are continuation of assessment proceedings to determine the correct taxable income of the assessee and further, the CIT(A) is having coterminous powers with that of the Assessing Officer, the CIT(A) can very well consider and decide any issue even if such issue is not emanating

from assessment order and further, such matter was not raised by the appellant before the CIT(A). Therefore, we are of the considered view that there is no merit in additional grounds filed by the revenue on the powers of the CIT(A) and thus, in our considered view the CIT(A) did not travel outside his jurisdiction by issuing enhancement notice and such notice is not void, ab initio and thus, the subsequent conclusion of enhancement proceedings in favour of the assessee is valid on facts and in law.

177. As regards the contention of the revenue that no opportunity was given to the AO by the CIT(A) while deciding the enhancement proposal which is against the procedure prescribed in the Act, since section 250(1) requires that notice be given to the appellant and the AO and sec 250(2) states that the AO has the right to be heard at the hearing of the appeal. The revenue contended that the AO was denied opportunity to present evidence on the issue. With regard to the said contention of the revenue in the additional grounds, it is noticed that the same is contrary to the facts on record for the simple reason that the notice of enhancement is dated 10.06.2022 and is uploaded in the ITBA portal on the same date as evidenced by the receipt of said notice by the appellant through e-filing portal. Since the notice is uploaded on ITBA portal, the same is available for view by the AO and the AO was very much aware of the enhancement proceedings before the first appellate authority. Further, on a request made by the appellant dated 14.06.2022 to the CIT(A) for a copy of sworn statement of Mr.V.S.Sivakumar which was referred to in the enhancement notice, a letter dated 17.06.2022 was addressed by the CIT(A) to the AO of Smt.Sasikala with a

copy marked to the Add.CIT Central-2 Chennai, who also happens to be the range head of the AO of the appellant. The said letter was uploaded in ITBA portal on 20.06.2022 as evidenced by the receipt of said letter by the appellant through e-filing portal. Since the letter is uploaded on ITBA portal, the same is available for view by the AO of the appellant and the AO was very much aware of the enhancement proceedings due to this reason. The Range head of the AO of the appellant is also aware of the enhancement proceedings since the letter was marked to him as stated above. The notice of hearing under section 250 of the Income Tax Act dated 30.06.2022 which was issued after the issue of enhancement notice was also uploaded in ITBA portal as evidenced by the receipt of said notice by the appellant through e-filing portal. Since the AO was informed through the ITBA portal regarding issue of enhancement notice and subsequent hearing notice, the contention of the revenue in the additional ground that no opportunity was given to the AO to present evidence on the issue is factually incorrect and false. Since, the AO had already been put on notice, it is for the AO to exercise his right to be heard at the hearing of the appeal in accordance with sec 250(2). Therefore, we are of the considered view that the additional ground of the revenue on this issue is false and baseless and hence, rejected.

178. The next issue that came up for our consideration from ground no. 6 to 6.3 of revenue appeal for assessment year 2009-10 to 2018-19 is validity of Special audit reports u/s 142(2A) of the Act, and its rejection by the Assessing Officer. During the course the assessment proceedings, considering the complexity of

books of accounts of the assessee, the Assessing Officer, in the interest of the revenue, direct the assessee to get the accounts audited by an Accountant in terms of provisions of section 142(2A) of the Act. The Assessing Officer with prior approval of the Principal Commissioner of Income-tax, appointed M/s. Ramesh & Company for auditing the books of accounts of the assessee and to submit their report with regard to correctness of books of accounts maintained by the assessee for the purpose of computing taxable income. The Special Auditor in light of scope of audit assigned to them, has submitted their audit report for assessment year 2009-10 to 2019-20 and also prepared financial statement for the above period and submitted their report on 03-12-2020. Further, the Assessing Officer also has called for special audit report from the auditor on seized electronic device Erandum Thall. The Special Auditor vide their report dated 15.04.2021, submitted their audit report on correctness of Erandam Thall and also verified the entries recorded therein. The Assessing Officer rejected Special audit report submitted by the auditor by stating that the special audit report suffers from infirmities in so far as the Special Auditor had to rely on the information furnished by the assessee himself which are false and contradictory and as evident from the ITR opening and closing balances and tally data seized during the course of search. The Assessing Officer, further observed that the special auditor who is not privy to the confidential findings of the search could not provide a true and correct picture, as the assessee's modus operandi of manipulation was not in the domain of knowledge of the special auditor. Further, the special auditor has done backward working of the entire accounts, making assessment

year 2009-10 as the base year and build the accounts for the rest of assessment years. Therefore, the Assessing Officer rejected special audit report submitted by the auditor and financial statement prepared for the relevant assessment years by stating that the Assessing Officer is not binding on the special audit report. Further, the AO has totally ignored and not even discussed the second audit report submitted by the auditor on Erandum Thall found and seized during the course of search. On appeal, the CIT(A) accepted the special audit report and financial statement prepared for relevant assessment year on the ground that the financial statements prepared by the special auditor and reports submitted on correctness of financial statement by the special auditor is based on systematic and scientific method followed for preparation of financial statements and further the assumptions employed by the special auditor is in accordance with Auditing Standards issued by the Institute of Chartered Accountants of India. Being aggrieved by the CIT(A), the revenue is in appeal before us.

179. The ld. CIT-DR, Shri. M. Rajan, submits that the ld. CIT(A) erred in holding that the rejection of the first special audit report u/s. 142(2A) of the Act, and complete disregarding of the second special audit report by the Assessing Officer is not legally sustainable. The ld. CIT(A) erred in failing to appreciate that the Assessing Officer has given various reasons for rejection of special audit report and as per the Assessing Officer, the special auditor has conducted independent enquiries which were beyond the mandate of the special audit and he had to rely on the information furnished by the assessee himself which are false and

contradictory, which is evident from the ITR opening and closing stock balances, and tally data seized during the course of search. The ld. CIT-DR further submits that the special auditor is not privy to the confidential findings of the search and he could not provide a true and correct picture of accounts of the assessee as the modus operandi of manipulation employed by the assessee was not in the domino of knowledge of the special auditor. Further, the special auditor has employed various assumptions in preparing financial statements and also adopted financial year 2008-09 as base year and build accounts for all assessment years. Therefore, the audit report submitted by the special auditor cannot give true and correct undisclosed income of the assessee and thus, the Assessing Officer has rightly rejected special audit report while completing assessment, but the CIT(A) without appreciating relevant facts accepted special audit report in total which is incorrect.

180. The ld. Counsel for the assessee Shri. D. Anand, supporting the order of the CIT(A) submits that it was the department and the Assessing Officer who had sought the special audit of the books of accounts of the assessee by stating that special audit of books of accounts is required considering the voluminous data and complexity of accounts of the assessee. Further, the special auditor has been appointed by the department from the panel of auditors maintained by the department having considered their expertise knowledge and experience in the field of audit. The scope of audit work has been given by the Assessing Officer. Therefore, it is incorrect on the part of the Assessing Officer to reject the special audit report

submitted by the auditor by stating that the special auditor is not having knowledge of modus operandi of manipulation of accounts by the assessee. Further, the observation of the Assessing Officer that he is not bound by the findings of the special audit report is incorrect, because when the department has directed the assessee to get his accounts audited in terms of section 142(2A) of the Act, the Assessing Officer is bound to consider the special audit report submitted by the auditor and financial statement prepared for the relevant assessment years. Just because, the audit report is not in conformity with the opinion of the Assessing Officer or not in accordance with appraisal report, it cannot be said that special audit report is not prepared in accordance with relevant accounting and auditing standards. The CIT(A), after considering relevant facts has rightly accepted the special audit report submitted by the auditor and thus, the grounds raised by the revenue on this issue should be rejected.

181. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We have also carefully considered reasons given by the CIT(A) for accepting special audit report submitted u/s 142(2A) of the Act, in light of grounds of appeal filed by the Revenue challenging findings of the CIT(A). In the grounds of appeal, the revenue raised various contentions with regard to the issue of rejection of first special audit report u/s 142(2A) and complete disregarding of the second special audit report by the AO. With regard to the first and second contentions of the revenue, the AO rejected first special audit report with the remarks that the independent enquiries made by the special auditor for verification

of the quantum of purchases and consumption of raw materials for production is beyond the mandate of the special audit. In this regard, we find that the special auditor has sought necessary confirmations from various persons with whom the appellant had transactions of purchases, sales, expenses etc., in accordance with the Standards on Auditing (SA)-505 prescribed by the Institute of Chartered Accountants of India. Such confirmations were sought in the normal course of the auditing process in accordance with auditing standards, as the terms of reference of the special audit included preparation of audit report in form 3CD and notes to accounts apart from preparation of final accounts. From the above, it is clear that the said reason cited by the AO for rejection of the report of the special auditor is not based on proper appreciation of the auditing process. In any case, the confirmations obtained by the special auditor and the conclusions drawn by him based on the same with regard to the transactions recorded in the books of accounts, do not place any restriction on the powers of the AO to make enquiries and gather any adverse evidences in respect of the said transactions for drawing different conclusions. However, the AO has not conducted a single enquiry with the suppliers of the alleged bogus purchases or the buyers of the alleged bogus sales and has merely sought to rely on the statements of the employees recorded during the search. Having not exercised his powers to make such enquiries, it is not correct on the part of the AO to discredit the report of the special auditor on the ground that he has made independent enquiries beyond the mandate of the special audit.

182. The terms of reference of the special audit included preparation of final accounts for AY 2009-10 to 2018-19 and accordingly, the special auditor prepared the final accounts for the assessment years under consideration. While rejecting the special auditor's report, the AO cited one of the reasons that the books of account were prepared by the special auditor by making AY 2009-10 as the base year and by adopting the closing stock AY 2008-09 as opening stock of AY 2009-10 and proceeding to build the accounts for the remaining years on the accounts of said base year. The AO stated that the accounts so prepared for the base year are not acceptable since the appellant himself has reported "0" in opening and closing stock figures in the return of income filed u/s 153A for AY 2009-10. However, the said reason cited by the AO is factually untenable. It is an undisputed fact that the original return of income for AY 2009-10 filed u/s 139 was filed under the category of "No account case". As a result, the original return of income does not contain any details of profit and loss account. As per the details relating to P&L account required to be furnished in a return filed under category of No Accounts case, the appellant separately furnished the details of gross receipts, gross profit, expenses and net profit in the relevant columns of the return of income. Further, the appellant furnished the details of sundry creditors, sundry debtors, closing stock and cash balance in the relevant columns of the return, which are required to be furnished in a No Accounts case. While filing the return of income in response to notice u/s 153A, the appellant filed the details in the same manner. The appearance of "0" entries in P&L account, as observed by the AO in the assessment order, were due to this reason. The citing of occurrence of "0" entries in the P&L account

by the AO as one of the reasons for rejecting the special auditor's report is therefore found to be irrelevant and untenable. Therefore, we are of the considered view that the final accounts prepared by the special auditor for the assessment year under consideration are required to be taken into consideration, instead of the seized tally accounts, which are incomplete and inaccurate.

183. As regards the remarks of the AO that the special auditor made backward working of consumption of raw materials based on the quantum of production shown by the appellant and that the same is not acceptable since the search has shown that the appellant manipulated its accounts to inflate purchases. In this regard, it is to be observed that the special auditor has not made any backward working with regard to consumption of raw material. The methodology adopted by him for verification of the consumption of raw materials has been detailed by the special auditor in the notes to accounts given separately for each assessment year in Annexures 1 to 10 of the special audit report. The special auditor stated therein that the consumption of raw material for production of weaning food, blend of critically processed material etc., as shown in the seized tally accounts of the assessee was cross verified with the formulations of respective products as per the terms of the tender document. The special auditor stated that the yield of each raw material used in the production has been computed as per the formulation specified in the tender document and the material wastage has been cross verified with the standards provided under Food Safety and Standard Regulation. Thus, it is seen that the remarks of the AO with regard to the backward working of raw material

consumption is not in tune with the methodology adopted in the special audit report. Similarly, as regards the observation that the quantum of production of finished goods and sales have been manipulated by the appellant as per the findings of the search and the said quantum could not have been considered by the special auditor for the purpose of working out the quantum of raw materials consumed in production, we find that the said observation of the AO in the assessment order does not contain any references to evidences in the seized material which reveal manipulation of quantum of production of finished goods. Similarly, the observation of the AO that the quantum of production as per the records of the appellant is not reliable in view of finding of evidences of bribing of public servants during the search which indicates manipulation of the sale quantity of finished goods by the appellant for the Govt. welfare schemes is seen to be mere surmise and speculation. The search did not reveal any evidence regarding supply of less quantity than the invoiced quantity or raising of invoice without actual supply of goods to the Govt. by the appellant. Based on the evidences found regarding bribing of public servants, the AO appears to have made a presumption that such bribing was for the purpose of manipulating the quantum of supplies made to the Govt. without any basis. In our considered view, the AO did not bring any evidence on record in respect of alleged manipulation of supply quantities by making necessary enquiries with the relevant Govt. departments. Therefore, we are of the considered view that these reasons cited by the AO are unfounded. Further, as could be seen from the discussion in the appellate order, the CIT(A) has given detailed factual reasons in support of his finding that the

rejection of first special audit report by the AO is not sustainable. The revenue has not disputed even a single fact finding of the CIT(A) given based on analysis and appreciation of the facts and circumstances of the case and the contents of the first special audit report. In view of this, the contention of the revenue that the CIT(A) erred in holding that the rejection of first special audit report by the AO is not sustainable is false, baseless and total non-application of mind by the AO.

184. We further noted that the revenue has not furnished even a single reason in support of its contention that the CIT(A) erred in holding that disregarding the second special audit report by the AO is not legally sustainable. Further, the AO himself proposed for obtaining a report from the special auditor u/s 142(2A) with regard to the contents of Erandam thall vide his letter dated 05.04.2021 addressed to Pr.CIT and the approval for the same was accorded by the Pr.CIT vide letter dated 07.04.2021. This report was sought in continuation of the earlier special audit report submitted by the special auditor vide report dated 03.12.2020 with regard to finalisation of the accounts of the appellant and 3 group entities. As could be seen from the proposal submitted by the AO, it was considered necessary by him to refer the matter of examination of the contents of Erandam thall with reference to the books of accounts of the appellant and 3 entities of the group to the special auditor, in view of the dispute raised by the appellant with regard to placing reliance on Erandam thall. The same is a clear evidence of the fact that the AO was not satisfied with the correctness of the quantification of unaccounted expenditure made from the contents of Erandam

thall during the course of the search on account of the objections of the appellant and he considered it necessary and expedient to refer the matter to the special auditor for fresh examination of the contents of Erandam thall with reference to the books of account. The Pr.CIT too expressed the view, while approving the proposal of the AO, that a correct picture regarding the real undisclosed income would be arrived at once the examination of the contents of Erandam thall is made by the special auditor. These facts leave no doubts in our mind that both the AO and the Pr.CIT were of the unanimous opinion that the quantification of unaccounted expenditure made during the course of the search based on seized Erandam thall cannot be adopted mechanically on account of the objections of the appellant with regard to the same and that the same needs to be worked out afresh by the special auditor, who is an expert in financial and accounting matters. However, having proposed examination of contents of Erandam thall by the special auditor, the AO completely ignored the special auditor's report dated 15.04.2021 while completing the assessments. The AO did not even mention the fact that a report was called for from the special auditor on this issue in the assessment orders. The AO remained completely silent with regard to the said report and its contents. This is surprising since the AO himself referred the matter for special audit u/s 142(2A) and obtained the report in pursuance thereof. The AO has not made any discussion in the assessment order regarding the reasons for not accepting the said report. In this factual background, the disregarding of the report of the special auditor obtained subsequently without assigning any reasons for the same is inexplicable and the said action of the AO only adds

strength to the appellant's contention regarding the mechanical manner of adopting the quantification of unaccounted expenditure based on entries in Erandam thall made during the course of search, without addressing various objections and contentions of the appellant. The report of the special auditor obtained by invoking the provisions of the Act could not have been ignored and disregarded by the AO, without specifying the reasons for doing so in the assessment orders. Although, the AO gave various reasons for rejecting special audit report, in our considered view, the reasons given by the AO are vogue and found to be incorrect from the discussions in previous paragraphs. Therefore, we are of the considered view that the AO is completely erred in rejecting first and second special audit report.

185. The power to direct the assessee to get its accounts audited u/s. 142(2A) of the Act is with the Assessing Officer. The Assessing Officer having regard to the complexity involved in accounts of the assessee and in the interest of revenue can direct for special audit and such direction can be issued with prior approval from the PCIT. The procedure laid down for making reference to the special auditor indicates that it is only when complexity in accounts is found, that an expert of accountancy having specialized skill is engaged to examine the books of accounts. The special auditor appointed by the Department is from the panel of special auditors maintained by the Department and such panel has been maintained considering the experience and expertise of the auditors. Further, the special auditor works under the department and carries out the audit work as per the scope of work specified in the appointment letter. Therefore,

when the Assessing Officer has sought special audit report on the financial statements of the assessee and books of accounts from their own empanelled auditors, then the Assessing Officer cannot simply reject or discard the special audit report merely for the reason that the findings in the special audit report is adverse/contrary to the appraisal report submitted by the investigation wing. If you see the intention and purpose behind the introduction of special audit in the statue to assist the Assessing Officer to determine correct taxable income of an assessee from the books of accounts and other documents found during the course of search. Therefore, in our considered view, the Assessing Officer having appointed special auditor, cannot ignore the audit report unless he makes out a case with reasons that the special audit report is incomplete or the auditor has not carried out the audit as per the standard auditing procedures. In this case, if we go through the reasons given by the Assessing Officer to reject special audit report for all assessment years, we find that the Assessing Officer has rejected said audit report on flimsy grounds without any finding as to how observation of the special auditor is incorrect. Further, it is nowhere provided that special audit report is binding or the assessment shall be made in conformity with special audit report. However, if there is no adverse material or adverse circumstances or the findings of the Assessing Officer during assessment proceedings is contrary to the special audit report, then such report has to be considered and relied upon. In our considered view, the Assessing Officer is completely erred in rejecting/discarding the special audit report without any valid reason. The CIT(A) after considering relevant facts, has rightly accepted special audit reports submitted u/s

142(2A) of the Act, and thus, we reject grounds taken by the revenue for Asst. year 2009-10 to 2019-20.

186. In the result, appeals filed by the revenue in ITA Nos. 895 to 905/Chny/2022 for assessment years 2009-10 to 2019-20 are dismissed and appeals filed by the assessee in ITA Nos. 872 to 879/Chny/2022 for assessment years 2012-13 to 2019-20 are partly allowed.

Order pronounced in the court on 07th July, 2023 at Chennai.

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| **Sd/-** | **Sd/-** |
| **(वी दुर्गा राव)** | **(मंजुनाथ. जी)** |
| **(V. DURGA RAO)** | **(MANJUNATHA. G)** |
| **न्यायिक सदस्य/Judicial Member** | **लेखा सदस्य/Accountant Member** |

चेन्नई/Chennai,
दिनांक/Dated: 07th July, 2023
***JPV***
आदेश की प्रतिलिपि अग्रेषित/Copy to:

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