

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:5.3.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

TAX CASE (APPEAL) NOS.752 & 753 OF 2010

Commissioner of Income Tax
Salem.

.... Appellant in both Appeals

Vs.

Dr.K.Kannagi

.... Respondent in TCA.752/2010

Dr.N.Rajkumar

.... Respondent in TCA.753/2010

Tax Case (Appeals) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 9.10.2009 made in ITA Nos.32 & 33/Mds/2005.

TCA.No.752 of 2010:-

Appeal presented to the High Court Against the Order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 09.10.2009. I.T(SS)A.No.32/mds/2005 Block. Period 01.04.1996 to 04.06.2002 Against the Commissioner of Income Tax (Appeals) ITA.No.147/2004-2005, dated 15.02.2005 against Deputy Commissioner of Income Tax Circle, Salem PAN.No/GIR.No.CCPK 009, Block Assessment Year Period 01.04.1996 to 04.06.2002.

TCA.No.753 of 2010:-

Appeal presented to the High Court against the Order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 09.10.2009. I.T(SS)A.No.33/mds/2005 Block Assessment year 01.04.1996 to 04.06.2002 against the Commissioner of Income Tax (Appeals). ITA.No.148/2004-2005, dated 16.02.2005 against Deputy Commissioner of Income Tax Circle, Salem PAN/GIR.No.CCPR 013, Block Assessment Year period 01.04.1996 to 04.06.2002.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel assisted by
Ms.V.Pushpa,
Junior Standing Counsel

For Respondents: Mr.R.V.Easwar, Senior Counsel and
Mr.Rubal Bangal for
Mr.T.Vasudevan

COMMON JUDGMENT
(Delivered by DR.VINEET KOTHARI,J)

These Appeals have been filed by the Revenue raising the purported substantial questions of law under section 260-A of the Act arising from the order of the Income Tax appellate Tribunal, Chennai dated 9th October 2009 for the Block Assessment Period from 1.4.1996 to 4.6.2002 in the case of Dr.K.Kannagi (Wife) and Dr.N.Rajkumar (Husband), a couple of professional Doctors, having their establishment known as Kumaran Polyclinic at Namakkal.

2. These Appeals filed by Revenue were admitted by a co-ordinate Bench of this Court on 9.8.2010 on the following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the additions made in the Block Assessment in respect of investments found as a result of the search accepting the unsubstantiated claim of the assessee that the Investments came out of withdrawals of deposits made in fictitious names in four finance firms?

2. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in deleting the additions made on the basis of materials found during the search and the statement recorded u/s.132(4) of the Income-tax Act, accepting affidavits filed by some persons not connected with the search as true, without putting them to strict proof?

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the verification of return of Income of the firms by Dr.Rajkumar as Managing Partner would not convey much meaning, negating the statutory sanctity of verification of return of Income u/s.139(1) of the Income-tax Act, read with Rule 12 of the Income-tax Rules?"

3. We have heard the learned Senior Standing Counsel Mr.M.Swaminathan appearing for the Revenue and Mr R.V.Easwar the learned Senior Counsel appearing for the Respondents/Assessees.

4. The case on hand has a chequered history and though there are substantial questions of law on the basis of which the Appeals were admitted, the question, essentially, before us is, whether the order of the learned Income Tax Appellate Tribunal falls in the category of a perverse order based on no evidence, particularly, when there are findings of the two Authorities below viz., the Assessing Authority and the first Appellate Authority, CIT(A) in the Block Assessment in the case of a search conducted at the residential and business place of the said Doctor couple who seem to have their professional income from running a Hospital in the name and style of Kumaran Polyclinic at Namakkal and also having agricultural income and running 4 Financial Firms having the business of money lending.

5. Since the cases essentially revolve around a complexed cobweb of facts, we have to essentially re-produce the finding of facts returned by the three Authorities below and then deal with the question as to whether the order of the final fact finding Authority viz., the Income Tax Appellate Tribunal falls in the realm of perversity or not. Therefore, we quote below the relevant findings of the three Authorities below seriatim:- Findings of the Assessing Authority in the Assessment Order dated 29.7.2004 for the Block Period from 1.4.1996 to 4.6.2002:-

"9. The assessee's husband, Dr.N.Rajkumar and the assessee floated along with some of their close relatives, four finance firms, the details whereof are furnished below:

1. Medi Finance - Partnership firm - Assessed from 1991-92
2. Medi Finance Corpn.- Partnership firm - Assessed from 1991-92
3. Mahalakshmi Investments - Partnership firm - Assessed from 1993-94
4. K.S.M.Investment - Partnership firm - Assessed from 1994-95.

Dr.Rajkumar is a partner in all these finance concerns in his HUF capacity and is the Managing Partner of all the above said firms. According to the regular returns filed by these concerns, the firms used to accept deposits from relatives, friends and members of public, issue deposit receipts and cash certificates, and lend money for interest. The main source of income of these firms was 'interest from money-lending'.

10. It is claimed in the block returns that the amounts shown under the head "Deposits and Cash Certificates" in the Balance Sheets of these firms as 'Due' to third parties (liabilities) actually belong to the assessee and her husband, Dr.N.Rajkumar. It is pointed out that the deposits

and cash certificates shown in the firms' books represent aggregate of the income of Dr.N.Rajkumar and Dr.K.Kannagi earned from profession and the accumulated interest received by the firms every year. According to the assessee, the persons in whose names the Deposit receipts and Cash Certificates were issued are either non existing or those with fictitious address.

11. In the statements filed along with the block returns, a major part of the investments found during search (to the extent of Rs.2.23 crores) are claimed to have been made out of the withdrawals from the amounts available with the firms as 'Deposits and Cash Certificates' as on 31.3.95 (before the block period) but recorded in the firms' books as 'repayment to depositors'. In other words, the investments to this extent were made, according to the assessee, from out of the income earned by her and her husband, Dr.N.Rajkumar before the block period, but invested in the firms in the form of 'Deposits and Cash Certificates' from third parties. It is, therefore, claimed that these investments should be taken out of the purview of undisclosed income, , as relating to the period before the block period. No working in respect of this claim was filed with the block return.

12. During the course of assessment proceedings, the assessee and her husband, Dr.Rajkumar have furnished explanation vide latter filed on 7-6-2004 to support this claim, which is reproduced below:

"We are associated as partners with our close relatives in the following firms:

- a. Medi Finance,
- b. Medi Finance Corporation,
3. Mahalakshmi Investments and
4. K.S.M.Investments

The said finances were carrying out the business of advancing loans on hire purchase basis and also on promote basis. Dr.N.Rajkumar was the managing partner for all the concerns. These concerns are assessed to Income Tax from the year of commencement and the balance sheets of these concerns disclose the amounts of fixed deposits, cash certificates and pronote loans in fictitious names and those depositors are either non-existing

or are not verifiable with correct identity. These deposits were made out of our professional undisclosed income between the years 1980 to 1993. We commenced our professional practice way back in the year 1978-79 at Namakkal. The above fact was further affirmed by Dr.N.Rajkumar in his statement u/s. 132(4) recorded on 5.8.2002. We are also filing the affidavits of the partners of the firms affirming this fact. It is further submitted that the undisclosed income stated to have been earned, could not have been made well in a span of 6 years, which on an average works out to Rs.75 to 80 Lakhs per annum and since the earnings were made prior to the, block period and they were only invested at different intervals during the block period. It is also submitted that the total withdrawal from the finance firms amounts to Rs.3,54,61,800/, as against the claim of Rs.2,23,87,600/- made in the block return filed and the details of the same are summarized below:

Financial Year	Total Net Amount Withdrawn
up to 1995-96	96,04,911
1996-97	14,84,502
1997-98	1,33,68,127
1998-99	90,75,070
1999-2000	12,67,325
2000-01	6,61,829

	3,54,61,764

Say	Rs.3,54,61,800

These financing firms closed down their business on and from 31-3-2001 and are remaining for collection of loans due and conducting of legal cases. It is prayed that the above amount of Rs.3,54,61,800/- may please be adopted." Affidavits to the effect that the amounts shown as 'Deposits and Cash Certificates' actually belong to Dr.N.Rajkumar and Dr.K.Kannagi, have been obtained from, the other partners of the firms and filed.

13. I have considered the explanation very carefully. The assessee makes the claim apparently on the ground.

a. that Dr.N.Rajkumar gave a statement to this effect before the Assistant Director of Income Tax (Investigation) on 5-8-2002 during the course of search,

b. that the assessee and her husband, Dr.N.Rajkumar could not have earned such huge income in a span of about 6 years, and, possibly, the investments made during the block period include those made out of the income earned before block period also,

c. and that, as Dr.Rajkumar and the assessee were practicing medicine since 1978 and have been assessed to tax since 1981, the deposits etc. in the finance concerns were made out of their income earned during the period 1980 to 1993.

14. In support of the claim that amounts aggregating to Rs.3,54,61,800/- were withdrawn from the firms, Medi Finance, Medi Finance Corporation, K.S.M.Investments and Mahalakshmi Investments during the previous years 1994-95 to 2000-01) (but recorded in the books of the firms as repayments to depositors), consolidated cash flow statements of the firms have been filed for each year. The aggregate amount of alleged withdrawals for each year has been arrived at in the manner indicated below:

Opening balance (aggregate of the Fixed Deposits, Cash certificates etc) + Interest payments claimed during the year (since the interest is stated to have been received by the assesseees and treated as their income)

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Fresh investments, if any, in the firms during the year + Closing balance of Fixed Deposits, Cash certificates, Pronote loans etc.,

15. Apart from the consolidated cash flow statements in respect of the firms, consolidated cash flow statements prepared for Dr.N.Rajkumar (Individual), Dr.K.Kannagi and HUF of Dr.N.Rajkumar have also been furnished for the block period (for and from the previous year 1996-97). The alleged withdrawals amounting to Rs.3.54 crores from the firms have been taken to the consolidated cash flow statements of Dr.N.Rajkumar, Dr.K.Kannagi and HUF of Dr.N.Rajkumar and considered there in the respective years, for explaining various investments made during the block period, and outgoings. Apart from the alleged withdrawals, the income of those persons admitted for the earlier years, the drawings for personal, household, educational expenses etc., have also been reflected in these cash flow

statements in the respective years.

16. It could be seen that, as against the claim of around Rs.2.23 crores in the block returns towards 'relief' in respect of the income earned before the block period, it is now claimed that withdrawal to the extent of Rs.3.54 Crores (shown in the firms' book as repayments to the depositors) have been utilized for investments/outgoings during the block period. No working has been furnished to support the claim of Rs.2.23 Crores made in the block return. The withdrawals now claimed relate to the period from the previous year 94-95 till the date of search. The amounts stated to have been withdrawn from the firms include interest earned both before and during the block period. Though certain claims have now been made regarding withdrawals, it is to be noted, the assessee and her husband have not given any idea regarding the undisclosed income to be assessed. It is claimed that all the investments/outgoings have been taken care of in the consolidated cash flow statement filed and there is no deficit in any year. It is, therefore, inferred that, according to the assessee and her husband, the aggregate of the interest income earned by the four firms during the block period is to be treated as their undisclosed income.

17. I have considered the claim very carefully. I have also gone through the relevant records and the details, statements etc., filed. A close analysis of the relevant records of the assessee, her husband, Dr.N.Rajkumar and various finance concerns would show that the claim is bereft of force and far fetched.

18. The finance concerns are partnership firms wherein Dr.Rajkumar is the Managing Partner. All the firms have been constituted by Deeds of Partnership and regular returns were being filed by the firms for a quite a number of years before search. The 'verification' part in all these returns is found to have been signed by the assessee's husband, Dr.N.Rajkumar in his capacity as Managing Partner. According to the statements filed along with the returns, hundreds of persons are found to have invested in each firm in deposits / cash certificates. In all the cases, the names of the depositors and the cash certificate holders have been furnished with complete address and the details

of amounts deposited by them. Some of the assessments in the case of the firms were taken up for scrutiny as detailed hereunder:

Name of the firm	Assessment years
Medi Finance	91-92 and 93-94
Medi Finance Corporation	93-94

A substantial part of the interest income earned by the firms was spent, according to the regular returns filed by the firms, towards "interest payments" to depositors and cash certificate holders and the firms were admitting very small income for taxation.

19. No piece of evidence was found during search to support the claim that the funds of the firms belonged to the assessee and her husband, Dr.N.Rajkumar. Nor could the assessee or her husband furnish any evidence during assessment proceedings to prove the claim. While signing the 'verification' part of the regular returns filed by the firms, the assessee's husband, Dr.N.Rajkumar in his capacity as Managing Partner has given declaration to the effect that "to the best of my knowledge and belief the information given in the return and annexures and statements accompanying it are correct, complete and truly stated". It is, therefore, clear that the assessee, by requiring the Department believe that whatever statements furnished before search were false, and that what she now furnishes reflect the correct state of affairs, is now attempting in vain to make false claims to suit her interests, with a view to reducing the tax liability substantially. Admittedly, the assessee is not in possession of any evidence to take cognizance of the claim. This apart, the Revenue is not supposed to take cognizance of the claim that the statements furnished earlier were false and whatever she now says is true, particularly when there is no corroborative evidence. Even assuming but not accepting that the present stand of the assessee is correct, it is to be noted that the assessee and her husband, Dr.N.Rajkumar would have caused substantial loss to the revenue in the earlier years before the block period, which is irretrievable, by intentionally furnishing false statements before the Department. Apparently, the affidavits of the other

partners filed in this connection are self serving, as all the partners are closely related to the assessee.

20. The assessee wants to derive support from the statement given on 5-8-2002 by her husband before the ADIT(Inv). It is to be noted that this statement was given after about two weeks from the date of his first statement recorded on 19-7-2002, wherein he had not made any mention about this and he agreed to offer the entire investments as undisclosed income. The statement given on 5-8-2002 which should have been thought of, after prolonged planning, is also self serving.

21. With a view to giving an opportunity to substantiate her claim, the assessee was required by this office letter dated 17-6-2004 to furnish clarification as to how the alleged withdrawals could be correlated to the investments found during search, furnish the details regarding the date of the alleged withdrawals, the data when the withdrawn amounts were utilized for making investments etc, and to clarify whether the moneys withdrawn had been deposited in bank or elsewhere before they were utilized for investments.

22. In response, she furnished a reply on 24.6.2004, the relevant part whereof is extracted below:

" I . Withdrawal from Financing Firms:

In the reply filed by me in the course of block proceedings, I have filed details of withdrawals from the financing firms amounting in all to Rs.3,54,61,000/-. In the cashflow filed for the withdrawals from financing firms, drawings have started been made from the financial year 1994-95 onwards. I was mainly engaged in medical profession and looking after financing business also by employing one M.Murugesan as my manager and cashier and he was incharge of advancing loans, obtaining documents for loans as security. I also employed one person by name Sengodan as accountant. The two employees colluded with each other and started cheating me by obtaining commission from borrowers, advancing loans on the basis of falsified and forgery documents and also cheated me by collecting interest from

the borrowers. In view of this problem and also due to the fact so many litigations started in the recovery of loan, I started recovering the advances and kept as cash on my hand and with my in-laws. The above fact is evidenced by the copy of the petition made by me to DIG of Police, Chennai and seized by your department as per S.No.26 to 28 of S.M.No.PKS/B&D/S-1 of 19-7-2002. With the monies I have drawn from the financing firms, I planned to buy MRI Scan and CT Scan equipments for my hospital. Since the said proposals was not viable at that point of time as it involved heavy capital outlay of Rs.4 crores, I dropped the said proposal. In the meanwhile, the Reserve Bank of India has brought it an amending Act with effect from 1-4-97, where by the proprietary and partnership firm were debarred from carrying out financing business by accepting deposits and a severe imprisonment has also been prescribed under section 58B(5A) of the Reserve Bank of India Act, 1934. In view of the same also I kept on withdrawing money from the financing firms till 31-3-1999. The amount drawn from the financing firms against fixed deposits, cash certificates and pronote loans introduced by me jointly with my wife Dr.K.Kannagi out of our professional incomes earned during earlier years prior to block period were kept in my custody and with my in-laws. Since it involved an enormous amount, I was fear of investing the same either with bank or with private business people and only from financial year 1999-2000 onwards, I started investing the same as fixed deposits with banks and private companies like Sakthi Finance, Bhagavathy Textiles in fictitious and non-existing persons names. These facts are well explained in the cash flow statements filed by me jointly with my wife.

In view of the above submissions, it is pleaded that the above details may please be considered favourably while framing the block assessment".

23. I have considered the reply very carefully. The claims have no force for the reasons mentioned below:

a. The reply is vague insofar as it does not explain with evidence, the nexus between the alleged withdrawals from the firms (recorded in the books of the firms as repayments to depositors) and the investments made by her and her husband during the block period.

b. Though the alleged withdrawals amounted to more than Rs.3 crores up to 31-3-99, the assessee's reply to the query as to where these amounts were kept and in what form, is not convincing and is not supported by any material evidence. The claim that such huge amounts were in their personal custody and in the custody of her in-laws is far-fetched.

c. The claim that the assessee and her husband were planning to purchase scan machines is not supported by any material evidence.

d. The seized material No.PKS/B&D/S-1 (Sheets No.26 to 28) referred to by the assessee is the copy of the complaint lodged by Dr.Rajkumar (in his capacity as Managing Partner of the firms) with the I.G. of Police thro' the Supt. of Police, Namakkal against the employees of the firms and this has nothing to do with the claim that the deposits etc., in the finance concerns belong to the assessee and her husband.

24. In continuation of the above reply, the assessee filed another reply on 20-7-2004, which is reproduced below;

"In furtherance to the block assessment proceedings, we beg to submit the following for your information.

We have filed earlier a consolidated cashflow statement showing the sources of funds and its application in various assets. We have also filed the cashflow Statement of financing firms depicting the withdrawals and investments made in the form of pronote loans, cash certificates and fixed deposits. In the consolidated cashflow statement filed, the cash at the close of the year as on 31-3-97 to 31-3-2001 are as stated below:

Financial year	Cash on hand
31-3-97	98,79,733
31-3-98	2,34,87,100
31-3-99	3,30,06,040
31-3-2000	2,65,84,605
31-3-2001	1,91,76,938

The reasons for holding the above cash on hand are given below:

1. We advanced a loan of Rs.90 lakhs to M/s.Muthayammal Education Trust, Rasipuram in the financial year 97-98 and got back the principal alone during the year 2000-01 and this has got been reflected in the cash flow statement filed. We obtained pronotes from the trustees and a notarized sale agreement was also executed by the trustees of the said trust and in evidence of the same Xerox copies of the pronotes seized by the Investigating Official vide SM.No.28 and 30 are enclosed. The said trust has not so far paid the interest on loans borrowed and repaid and this fact is affirmed by them in the post search enquiries conducted and in the statement recorded by the Investigating officials.

2. Dr.N.Rajkumar was detected with a suspected cancerous tumour, called "liposarcoma" in the year 1997) and he consulted with various specialized hospitals like Tata Memorial Hospital, Bombay, Adayar Cancer Institute and Appollo Hospital, Chennai and in the course of the same, he was advised to undergo a surgery with "MD Anderson Cancer Centre, Houston, TX". The Surgery in USA would involve a cost of Rs.50 lakhs for carrying out the surgery and another Rs.50 lakhs for staying, post operative treatment and medicines etc. Therefore, Dr.N.Rajkumar, apprehended with a fear of life and also to make suitable provision for meeting out the cost, has kept the balances on hand with himself and with his in-laws for safety reasons and also to meet the obligation in time. In evidence of the same the Xerox copies of the opinion received from US and treatment undergone with Appollo Hospital are enclosed herewith.

3. Dr.K.Kannagi was detected with fibroid substance in her uterus in the year 97-98 and was also suspected of a cancerous substances in the same. She was also under drastic fear of the disease and was also proposing to undergo treatment in US along with Dr.N.Rajkumar, which would also involve an enormous expenditure if treated in USA. Later she consulted Dr.A.Kurian Joseph of Joseph's Nursing Home, Chennai and

after thorough clinical investigation, she underwent major surgery in the above said hospital. In view of the numerous disease occurred to Dr.K.Kannagi and Dr.N.Rajkumar, they were under a severe mental duress and fear of their lives and in order to come out of this available in any leading hospital anywhere in the world. In evidence of the treatment undergone by Dr.K.Kannagi, Xerox copy of the medical summary from Joseph's Nursing Home, Chennai is enclosed for your records. Obtained situation, they were under forced situation to retain heavy cash on hand not only to meet the operational expenditures but also to obtain a permanent health solution for their health condition by way of advance medicare.

4. While we are flooded with above chronic health problems, the employees of the financing firms have indulged in malpractices of embezzling the cash, interest receipts etc., and the loans advanced earlier also faced irregularity in repayment of principal and interests, which resulted in prolonged litigation in courts and therefore, we came to a decision to stop the financing activities slowly and proposed to carry out the running of the financing firms till the advances are fully recovered. The health problems coupled with employees malpractices and the requirement of huge money for treatment in foreign country, have forced us literally to collect the maximum amount possible and keep it in the form of liquid cash on hand as we are unsure of our future fate and our daughters are also not capable of recovering the same.

The above reasons have forced us to keep heavier cash balances on hand and only after clinical confirmation that the detection made earlier have turned out to be not Malignant Nature, these amount utilized for investment by way of fixed deposits with Banks and other public companies. Therefore, it is prayed that the amount arrived at as withdrawal made from the financing firms may please be considered for equating the investment made by us".

25. This explanation also does not come to the rescue of the assessee for the reasons stated below:

a. The reply is contradictory to that filed earlier and none of these reasons were stated in the reply filed on 24.6.2004.

b. Even as on 31-3-96, the alleged withdrawals amounted to around Rs.96 lakhs, but, admittedly, the loans amounting to 90 lakhs were advanced to Muthayammal Educational Trust only in 1998, after about two years. Here also, the explanation for the nexus between the alleged withdrawals and the loans is far fetched.

c. Other factors also, like proposed medical treatment of the assessee and her husband, are not sufficient to prove the nexus.

26. Be that as it may, the question is whether the stand of the assessee and her husband that the amounts shown in the books of the firms as 'deposits and cash certificates' represent their income, and that the 'repayments' recorded therein as having been made to outsiders represent withdrawals by the assessee and her husband of their own money, can be accepted. The answer is a clear 'No', as the claim has not been substantiated with evidence and is the result of after thought. The claim regarding the loans advanced, proposed medical treatment, proposed purchase of scan machines, etc., does not explain the basic question whether the amounts shown as 'deposits and cash certificates' appearing in the books of the firms in third parties' names could be treated as the income of the assessee. As, admittedly, this has not been proved with sufficient material evidence, the claim of the assessee is rejected."

Findings of the Commissioner of Income Tax (Appeals) in the order dated 16.2.2005:-

"47. The next issue is affirmation by the appellant that, he has not made any specific admission of undisclosed income to the tune of Rs.4,24,18,230/-. This is emphatically countered by the AO by making reference to Q/A 6 of statement dated 19-7-02., Q/A 14 of statement dated 2-8-02 and Q/A 7 of statement dated 17-6-02 of Dr.Kannagi. The statements have been called for and examined.

48. Q/A 5 & 6 of the statement contains specific references to movable and immovable

properties which have been accounted as well as unaccounted by the appellants.

49. The statement of Dr.Kannagi dt. 17-6-02 in Q/A reveals that admission of Rs.25 lakhs in respect of investment at house. Therefore, I do not find any merit in the contention that specific admission has not been made.

50. Regarding the collection of substantial amounts of undisclosed income from the time of initiating of practice, functioning of the Kumaran Poly Clinic to creation of finance firms is rebutted in a logical and able manner by the honourable AO and attempts of the appellant to show that most of the undisclosed income is beyond purview of the block period has not been substantiated by facts. Whereas the seized material coupled with statement clearly shows the period belong to block period and only the block period. For example, deposits Rs.74.34 lakhs emanating from PKS/B&D/S-19 & S-17 specifically lie in the period 1.4.02 to 4-6-02. This is from the material found, undisclosed and admitted as such by the assessee. Therefore, there cannot be greater evidence than admission of fact which as per notice 114 of the Evidence Act need not be proved once again to the detriment of the assessee. In this case reliance has been placed on AIR 1986 SC 1099, AIR 1996 SC 1599.

51. Much has been made out about, cash flow statement prepared by the appellant himself by saying that, the AO took greater assistance from the cash flow statements furnished by the assessee-appellant and had not made out any UDI by discovering investment from the seized material or making any enquiry etc. Therefore, it is contented that provisions of section 158BB have not been applied in coming to the conclusion that undisclosed income does exist. The AO in the form of Annexure has given yearwise description for items found and seized and admitted in the block return as under:

Year ended 31-3-2001

1. Deposit with
Bagavathi Textiles Rs.15,00,000 Evidence found
2. Purchase of Tata
Safari Rs.7,00,000 Evidence found
3. Hospital equipments
Purchase Rs.2,00,000 As in item
No.II for the
y.e.31.3.00
4. FD with LVB Rs.55,00,000 Evidence found
5. House at TNHB
Colony Rs.7,00,000 Evidence found
6. Stamp duty paid
for T.K.Muthu case Rs.29,450 Relatable to S.M.
No.PKS/B&D/
S-28 (5 to 17).

Year ended 31-3-2002

1. FD with KVB Rs.50,13,000 Evidence found
2. FD with LVB Rs.35,00,000 Evidence found
3. FD with LVB Rs.44,75,000 Evidence found
4. With Dr.Kannagi Rs.7,50,000 Pl.see para
37 to 40
5. With Dr.Rajkumar Rs.7,50,000 Pl.see para
37 to 40
6. Deposit in finance Rs.68,39,000 S.M.No.PKS/
B&D/S-19

Period from 1-4-02 to 4-6-02

1. Deposit in Rs.5,95,000 S.M.No.PKS/
B&D/517
2. Amount with
S.Nalliappan Rs.13,70,000 Pl.see para
37 to 40.

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This is a commendable effort in culling out the undisclosed income in the form of purchase, investments, advances, donations etc. from seized material. Therefore, I find no substance in the contention of the assessee that the cash flow statement was prepared out of his own labour from nowhere without any attributes or references. Infact, the basis for the UDI is the seized

material lying with the department and the appellant was afforded opportunity of making photo copies of seized material so as to explain the undisclosed income in various forms admitted by him as mentioned at supra (during the course of search proceedings as well as assessment proceedings).

52. The appellant contends that, the deposits in finance firms of Rs.74.34 lakhs belong to self, wife, HUF of Dr.Rajkumar. A weak attempt was made to show that these deposits belong to the period between 1992 -- 1995 i.e., prior to the block period. However, as mentioned elsewhere in the appellate order, the dates referred to the period which were taken cognizance of both by the AO as well as by the appellant show it in various years under the block assessment in the status of the individual. Therefore, it appears amazing that he wants to be assessed it in somebody else's hands. The investment for TNHB Housing Colony was found to the tune of Rs.3 lakhs has been contested on the ground of failure of the principle of natural justice by way giving copy of statement etc. However, the AO in his reply states that it is not found necessary to follow these procedures as the assessee himself in his cash flow statement voluntarily filed with the return of income shown value of Rs.3 lakhs. Therefore, the assessee cannot go back and allege motives which are contrary and contradictory to his conduct of filing cash flow statement by him.

53. On the Issue of cash with Rajkumar, Kannagi and Nelliappan, the appellant says that, there is no evidence except, cash flow statement and he discounts it's adjustment in his own cash flow. The AO in his reply relies on the cash flow statement and says that, it is the admission of the appellant in the form of cash flow statement and relies on the ITAT decision in the case Prasantchand Surana 76 ITD 423 (Hyd.) wherein it was held that, "admission, is clearly and unequivocally made is the best evidence against party until the same is effectively rebutted. It has been held that on the facts of 'agreed addition' no further enquiry is necessary.

1. CJ. Balakrishnan 223 ITR 5 (Mad.) followed in S.Sanakalan 241 ITR 825 (Mds.).
2. J.K.A. Rajappa Chettiar 153 ITR 215.
3. V.R.Desai 140 ITR 698 (Mds.).
4. T.P.K. Ramalingam 211 ITR 520 (Mds.)
5. Dr.A.Mohammed Abdul Khader (03) 260 ITR 650

(Mds.).

6. Lallu Bai Jogibhai Patel (03) 261 ITR 216 (Guj.).

7. C.J.Rathinsami 223 ITR 5 (Mds.)

8. Dhunji Bhoj Stud. & Agrl. Farm (02) 88 ITD 18 (Pune)-5 Member.

Therefore, it is clear that the assessee by showing these amounts in the cash flow statement, which, due to unknown reasons he desires to disown does not take the factum of disclosed cash to the extent of Rs.28.74 lakhs from being assessed as such."

Findings of the Income Tax Appellate Tribunal in the impugned order dated 9.10.2009:-

"10. Ground Nos.6 to 34 relate to certain evidences which according to the assessee do not relate to them but relate to HUF, which is a partner in the four firms. All these are being decided simultaneously. It was argued that although the block assessments are mainly based on cash flow statement but in the cash flow statement assets shown as belonging to HUF have been ignored and have been held to belong to two individuals alone, and that the reliance on the statement of the assessee has been choosy. Per contra, it was argued that both of them had filed their returns of the Block in their 'individual' status and there is no reference to HUF therein and that there is no evidence to indicate any of the seized assets belonged to anybody else other than the appellants. It was argued that till date no other entity has taken any legal action in any court of law or before the Tribunal challenging the action of the Department in seizing the assets belonging to them.

11. We have circumspected the entire records available before us vis-a-vis the oral and written submissions of the parties. When facts are churned in the light of available evidences only one inference can be drawn that the 'individuals' were searched and they have tried to explain the income earned by them so also the undisclosed income offered in the block return. Block returns were filed by the assessee Dr.N.Rajkumar and his wife Dr.K.Kannagi on 28.10.2002. Both returned total undisclosed income of Rs.88,71,130/- i.e., 50% in each hands coming at Rs.44,35,565/- each. But block assessments were framed u/s 158BC read with Section 143(3) on 29.07.04, computing undisclosed income, in

each hands, at Rs.2,10,45,340/-. The perusal of the return of income filed and the accompanying statements give a broad picture of the income earned and offered in the block returns. The assessee has explained the total deposits in banks, finance companies, private limited companies, hire purchase and pronotes as under:

Principal + accrued interest in four firms, finance cos.	Rs.3,50,38,000 (Principal) Rs.21,02,056 (Accrued int.)
	Rs.3,71,40,056
Add: Cash found	Rs.5,08,730
Gold & Jewellery	Rs.11,00,000
Tata Safari Car	Rs.7,00,000
Immovables	Rs.21,77,000
	Rs.4,27,25,786
Less: Sum of accrued int. but not realized	Rs.21,02,056
	Rs.4,06,23,730
UDI worked out by the assessee	
(i) Total assets disclosed	Rs.4,27,25,786
Less: (a) Surplus cash available	Rs.73,65,000
(b) Sale advance of land	Rs.20,00,000
(c) Amounts available with finance firm	Rs.2,23,87,600
A+b+c	Rs.3,17,52,600
UDI = (i) minus (a+b+c) =	Rs.88,71,130

The Assessing Officer in his order arrived at the UDI as follows;

(i) Rejected the claim of amounts available with the 4 finance firms	2,23,87,600
(ii) From the cash flow filed, added a number of investments disputing the source	1,56,58,450
(iii) Availability of Surplus cash accepted for Rs.29,51,179 - balance added	44,13,821
(iv) Accrued interest added	21,97,449
(v) Addition for the last period	27,21,106
	4,73,78,426
Less:	
(i) Disclosed income in earlier years	35,13,960
	4,38,64,466

12. There are no two opinions about the fact that Dr.N.Rajkumar's HUF was in existence and so also the four finance firms in which HUF was a partner. The assessee has explained the relatable income to HUF also in their cash flow statement. The Assessing Officer has totally ignored the existence and claim regarding HUF, even after accepting in his order the existence of HUF and four Finance Firms. It is not justifiable to make certain additions relying only on one portion of the cash flow statement and by totally ignoring other part thereof which support the claim of the assessee. The settled position in this respect is that a document has to be accepted in its entirety. The cash flow statement clearly indicates the HUF, and undisputedly HUF operated from the same premises. The existence of the HUF and the fact that it was deriving considerable income during the block and the pre-block period is admitted by the Assessing Officer himself as is evident from paras 9, 29, 39, 43, 45, 46 and 47 of the assessment order. The Assessing Officer has made substantial additions on the basis of the cash flow statement besides making some of the additions on the basis of seized materials. In other words, the assessment is largely

based on cash flow statement. These additions are as follows:

- (i) Addition of Rs.74.34 lakhs in Medi Finance
- (ii) Addition of Rs.28.7 lakhs stated to be cash in the hands of the two assessee and Shri.S.Nalliappan.
- (iii) As per pronote loan of Rs.21.75 lakhs.
- (iv) Additions of estimated interest on deposits.

13. In respect of pronotes the seized material clearly show that the transactions relate to Medi Finance and not to assessees. Most of the deposits were seized from the premises of Lakshmi Vilas Bank (LVB) and two companies. These deposits are not in the names of either of the assessees, but are admittedly in the names of others. The Bank Manager has stated in his statement that Dr.N.Rajkumar had approached regarding the transactions in question. But, when the assessee claimed that these deposits belong to his HUF and he being the Karta, had to contact the bank staff for deposit and also to four Finance Firms in which the assessee-HUF is a managing partner. The seized materials do not indicate that the assessees had made these deposits in their individual capacity. This is a search case and addition can be made only and only on the basis of direct disclosures from the seized materials. These investments are in different banks but admittedly not in the names of both the assessees, when the seized material do not directly relate the assessees, so, how an addition can be made in their hands in search cases, particularly. Given, the admitted facts that the office of HUF and the four Finance Firms was in the same premise, it would be too far fetched and unjustifiable to ignore this important fact to make addition in their two hands and that too after ignoring certain portions of the cash flow statement. There being no direct evidence found to connect the individuals, whereas the assessee has explained with reference to existing assessees like HUF and four Finance Firms, these additions are not justified. It is true that seized materials relating to immoveable properties are in the names of both assessees. It is also true that the assessee had stated that these investments are made from their income from the finance business. Dr.N.Rajkumar, HUF, as managing partner, and the books of accounts of the finance firms showed credits in various names, but the Assessing Officer did not make any enquiry in this regard. In our considered opinion, the credits in the books of the

firms like the Medi Finance at a sum of Rs.74.13 lakhs and pronotes of Rs.21.78 lakhs appearing in the books of the firms have been wrongly treated as undisclosed assets of Dr,N.Rajkumar (individual) or of Dr.K.Kannagi. These books of accounts undeniably belong to the four Finance Firms. Likewise, all the deposits in the banks and the limited companies are not found to relate to the assessees. The Assessing Officer himself has accepted that Dr.N.Rajkumar (individual) was not a partner in the firm but his HUF was a managing partner of the finance firm (refer para 9 at page 4 of Assessing Officer's order). All these additions are not at all warranted in the hands of the assessees and have to be deleted from their hands.

14. In so far as the existence of income of Rs.3.54 crores in the pre-block period is concerned, the Assessing Officer himself has admitted in page 5 para 12 of his order that the withdrawals substantially tally with the investments. In this regard, a very vital piece of evidence is that the deposits of income earned by the firms in pre-block period was invested in bogus names and was withdrawn and re-invested in the banks and other companies prior to the date of search. The Assessing Officer has failed to make any enquiry either with Finance Firms or the HUF. To substantiate the same, affidavits were filed by the assessee without disproving or controverting their averments, the Assessing Officer has just ignored them which is not legally permissible. We find force in the submissions of the ld. AR that even after invoking Benami Transaction Act, the conduct of the parties as evidenced by the seized materials indicates that the firms were receiving bogus deposits in benami names, of funds belonging to the firms, HUF etc. Hence, the claim that the withdrawals of the pre-block period were being invested in benami names even during the block period seems to be quite justified, reasonable and plausible. In our opinion, the verification of return of income of firms by the assessee-HUF as its managing partner would not convey much meaning. The Revenue has relied on the block returns and the statements attached at pages 12 & 19 of Department's paper book, but again ignored pages 11 & 18 which have to be jointly considered. The Department cannot pick and choose evidences, it has to apply them in toto. The investments made by family-members in their

individual capacity cannot be added in the assessee's hands without making any further enquiry. There is no logical in not accepting that four Finance Firms were in existence since 1990 and were separately assessed with separate PAN. The amounts were withdrawn due to changed Reserve Bank of India Rules and subsequently the firms diminished their work. So, the re-investment in similar fashion in fictitious names in FDRs in banks, as has been claimed by the assessee, seems to be more probable and consistent. Some of the such deposits were found during search and admittedly were renewals of the earlier deposits in bogus names. The seized record also include these fresh FDRs. In this background, the claim of the opening credit is within reasonable comprehension and is also sustainable considering that it is backed by seized materials and also the cash flow statement of the assessee. The factum of amounts available with the assessee even prior to the block period is evidenced by the seized materials. Hence, there is no reason why Rs.2,23,87,600/- cannot be accepted as the amount available with the assessee prior to the block period. But to be on more fair and just, 10% out of this amount can be disallowed to meet any discrepancy. The 90% of Rs.2,23,87,600/- is, therefore, accepted as the amount available with the assessee prior to the block period and 10% i.e. Rs.22,38,760/- is sustained.

15. The next issue relates to addition of investments totalling to Rs.1.56 crores added because the source not disclosed. The case of the assessee is that all the investments were made out of withdrawals from the finance firms and hence the source is the same amount that was considered by the Assessing Officer for addition.

16. Having held as above, the factum of amounts available by way of withdrawals is also accepted. The addition of separate amount on account of source of investments made seems to be not correct. All these additions are based on cash flow statement as has been discussed in earlier part of this order. So, the cash flow statement filed by the assessee is to be applied in its entirety and not in part. One part of it regarding cash availability can not be taken to be incorrect and the other part of it regarding investments cannot be taken as not supported by source. Same treatment has to be meted

out to both. Thus, this addition of Rs.1.5 crores is baseless and hence, ordered to be deleted from the hands of these assesseees.

17. In so far as surplus cash available to the extent of Rs.73,65,000/- prior to the block period is concerned, it was simply estimated by the Assessing Officer de hors any incriminating evidence found during search. These types of additions are not permitted in the block assessments. Hence, this entire amount is ordered to be deleted.

18. The next addition is of the amounts forming part of the records of the assesseees and relatable to the last (latest) period ending with the date of search i.e., 4.6.2002. It was argued that the due date for filing the Return was still available and hence that amount should form part of income of the regular Return for the relevant assessment year. This submission of the assessee is quite legal and justifiable. We hold accordingly. The impugned addition is, therefore, order to be deleted being hypothetical."

6. Upon careful and close reading of the relevant findings of all the three Authorities below, we are constrained to observe that the order passed by the learned Tribunal is based, merely on a strained guess work rather than weighing the relevant evidence before the final fact finding Body, the Tribunal.

7. The learned Senior Counsel Mr.R.V.Easwar appearing for the Assesseees sought to place reliance upon the following judgments of the Hon'ble Supreme Court in support of his contention that the Tribunal having believed the Assesseees contentions, that was an end of the matter and against those finding of facts, no question of law arises in the present Appeals filed by the Revenue:-

i) Gouri Prasad Bagaria & Others v. Commissioner of Income Tax ((1961) 42 ITR 112);

ii) Homi Jehangir Gheesta v. Commissioner of Income Tax ((1961) 41 ITR 135);

iii) Purushottam Khatri v. Commissioner of Income Tax, Bhopal, Madhyapradesh (2019 (7) TMI 1327 SC).

8. The relevant portions of the above decisions are also quoted below for ready reference:-

Gouri Prasad Bagaria & Others v. CIT ((1961) 42 ITR 112)

"5. In our opinion, this was a perfectly simple case, in which a question of law hardly arose. The Tribunal had believed the assessee's word in view of his conduct and past history, such as they had been able to see. Where the assessee's statement is believed, there is obviously material on which the finding is based; and to seek for other material is tantamount to saying that a statement made by an assessee is not material on which a finding can be given. In our opinion, the Tribunal having believed the assessee's statement, there was an end of the matter in so far as that fact was concerned, and if the finding was based upon a statement which was good material on which it could be based, no question of law really arose. However, treating the question as one of law, the answer is irresistible that there was material, viz., the statement of the assessee believed by the Tribunal, on which the finding could be given."

Homi Jehangir Gheesta v. CIT ((1961) 41 ITR 135)

" We must read the order of the Tribunal as a whole to determine whether every material fact, for and against the assessee, has been considered fairly and with due care; whether the evidence pro and con has been considered in reaching the final conclusion; and whether the conclusion reached by the Tribunal has been coloured by irrelevant considerations or matters of prejudice. Learned counsel for the appellant has taken us through the entire order of the Tribunal as also the relevant materials on which it is based. Having examined the order of the Tribunal and those materials, we are unable to agree with learned counsel for the appellant that the order of the Tribunal is vitiated by any of the defects adverted to in Dhirajlal Girdharilal vs. CIT (supra) or Omar Salay Mohamed Sait vs. CIT (1959) 37 ITR 151 (SC) : TC54R.372. We must make it clear that we do not think that those decisions require that the order of the Tribunal must be examined sentence by sentence, through a microscope as it were, so as to discover a minor lapse here or an incautious opinion there to be used as a peg on which to hang an issue of law. In view of the arguments advanced before us it is perhaps necessary to add that in considering probabilities properly arising from the facts alleged

or proved, the Tribunal does not indulge in conjectures, surmises or suspicions."

Purushottam Khatri v. CIT, Bhopal, M.P. (2019 (7) TMI 1327 SC)

"The impugned judgment has added as unexplained income a sum of Rs.1.03 crores, as aforesaid, basically on the ground that the assessee has been unable to present declaration forms that had been filled in by him at the time of his visits to India from abroad. Keeping in mind the fact that these declaration forms were asked for long after such expenditure had, in fact, been incurred, it cannot possibly be said that the Appellate Tribunal's judgment and findings therein are perverse, which is the only entry on facts for the High Court exercising its appellate jurisdiction under Section 260-A of the income Tax Act, 1961."

9. There is no quarrel on these principles as culled out above, but, the facts of the case before us in the present case and that of the cases before the Hon'ble Supreme Court are quite distinguishable and there cannot be any dispute that the perverse findings of the Tribunal gives rise to the question of law requiring interference of this court under Section 260A of the Act and as we have found that the order of the learned Tribunal in the present case falls in the realm of perversity, we are constrained to interfere with the same in the present case.

10. The findings of the Tribunal have not only gone against the admissions of the persons searched and their Statements recorded under Section 132(4) of the Act, but is also contrary to the Returns filed by the Assesseees in pursuance of the notices issued under Section 158BC of the Act consequent to the search operations carried out at their business and residential premises on 4.6.2002. It was not only curious coincidence that the professional Doctor couple in question were having as many as four Financial Firms, in which a large number of persons, mainly amongst the members of the HUF and Dr.N.Rajkumar was shown as the Managing Partner of the said Firms and a flimsy defence without any basis of evidence was raised before the Tribunal for the first time and it came to be believed in toto that the deposits were made in the said four Financial Arms, described to be Financial Firms of the said Assesseees, were admittedly made in the fictitious names and return of such deposits were also made in the fictitious names or benami persons were the source of unaccounted cash, which was withheld by the Assesseees and was largely found out during the course of

Search Operations and instead of taxing it as Undisclosed Income (UDI) in their individual hands, which they themselves claim in the Returns filed in pursuance of Notices issued under Section 158BC of the Act and in terms of their own admissions made in the Statements recorded during the course of Search under Section 132(4) of the Act. The learned Tribunal held that since the existence of HUF of Dr.Rajkumar was admitted by the Assessing Authority himself during the course of course of Assessment, the additions of the undisclosed income should not be made in the individual hands of both the Assesseees.

11. We are little surprised and dismayed at such reversal finding of the learned Tribunal contrary to the cogent and correct findings of the two Authorities below based on the incriminating materials and evidence gathered during the course of Search at the Assesseees' place of business and residence and setting aside the Additions made by the Assessing Authority as upheld by the first Appellate Authority viz., the Commissioner of Income Tax (Appeals) below.

12. It does not require a greater emphasis to say that the finding of facts has to be based on relevant and cogent evidence and not on the basis on a guess work or the averments made by the Assesseees or the Grounds of Appeal raised. We do not understand as to how the Cash Flow Statement relied upon by the learned Tribunal was treated as a piece of evidence on the basis of which the Tribunal has set aside the findings of the two Authorities below which held that the income of the Assessee was the Undisclosed Income (UDI) based on incriminating materials and admissions of the Assesseees which is, undoubtedly, a piece of evidence in Search cases, and the learned Tribunal chose to delete such additions of undisclosed income in the hands of the Assessee almost altogether except to the extent of 10% vide para 14 of the order impugned before us to the extent of Rs.22,38,760/- as against the additions of Rs.2,23,87,600/- made by the Assessing Authority treating the same as the amount available with the Assesseees prior to the Block period for which there was no explanation or evidence adduced by the Assesseees. Merely because the Assessee admitted deposits and refunds by these financial firms in fictitious names and retention of such money with them for considerable period, for their apprehended medical expenses or to purchase a MRI Machine, without any evidence, how could such amounts be treated by the Tribunal as explained source of Pre-Block Period investments. That is a moot and important failure on the part of the Tribunal while undertaking the said fact finding exercise. They could not merely rely upon the flimsy plausibility of the said explanation by the Assessee.

13. Merely because the Assessee's names are included in the Financial Firms alleged to have been run by the HUF and the name of the Assessee, Dr.N.Rajkumar was included as a Managing Partner of the Firms run by the Family, (one does not know what about the professional misconduct by him of being a Professional Doctor and doing the Business) it does not mean that the entire undisclosed income could be attributed to such Financial Firms and even their Deposits and Withdrawals in the fictitious names could be believed as Gospel Truth forming basis of the explained cash available at the beginning of the Block Period in the hands of HUF of Assessee Dr.Rajkumar. If such explanations were to be treated as pieces of evidence and believable facts in Search cases, such false and flimsy defences can be created in almost all Search cases rendering all the Assessments of undisclosed income nugatory exercise altogether.

14. The admission of the Assessee, which was the best evidence against him, that the Deposits in the Financial Firms and withdrawals thereof were in the fictitious names itself was sufficient to treat the same as Undisclosed Income (UDI) in the hands of the Assessee and that is what the Assessing Authority has done. But, surprisingly for the Grounds raised before the learned Tribunal that the undisclosed income did not belong to the Assessee in their Individual capacity but it could be attributed to the HUF of Dr.N.Rajkumar, one of the Assessee, the learned Tribunal, in our opinion, fell in the error in upholding such a contention made on behalf of the Assessee merely because HUF of Assessee might have existed. We do not think that such finding of facts, if at all they can be called as one, can be sustained in the Appeals filed by the Revenue aggrieved by such orders of the Income Tax Appellate Tribunal.

15. We are not able to, with great respects, subscribe to such findings returned by the learned Tribunal especially reversing the findings of the two Authorities below. While, a fact finding Body is expected to give its own reasons even in affirming the findings of the Authorities below, the burden is heavier for the higher Appellate Authority when it decides to reverse the findings of the Authorities below. We are not able to reconcile the such alleged reasons, which prompted the learned Tribunal to reverse the findings of the two Authorities below in the present cases and therefore, we are unable to sustain the said order of the learned Tribunal.

16. With the above observations, we have no other option but to allow the present Appeals filed by the Revenue. Accordingly, the Appeals filed by the Revenue are allowed, upholding the orders passed by the two Authorities below and

setting aside the impugned order dated 9.10.2009 passed by the learned Tribunal. The questions of law are thus answered in favour of the Revenue and against the Assesseees. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

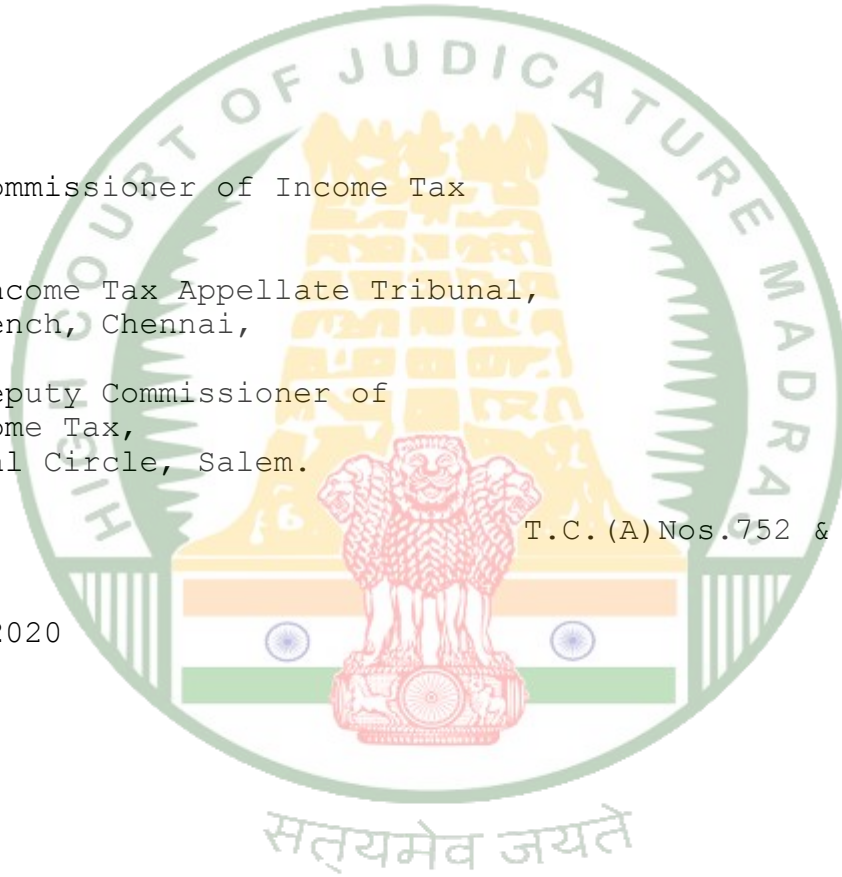
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To

1. The Commissioner of Income Tax
Salem.
2. The Income Tax Appellate Tribunal,
'A' Bench, Chennai,
3. The Deputy Commissioner of
Income Tax,
Central Circle, Salem.

T.C. (A) Nos. 752 & 753 of 2010

VSNII (CO)
CS/21/07/2020



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