

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री वी. दुर्गा राव, न्यायिक सदस्य के समक्ष
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &
SHRI V. DURGA RAO, JUDICIAL MEMBER

आयकर अपील सं./ **I.T(SS)A No.06/Mds/2013**
(Block assessment year 1.4.1986 to 24.09.1996)

Shri. M. Natarajan
M/s. Tamilarasi Publication,
No.84, TTK Road,
Chennai 600 018

The Dy. Commissioner of Income
Vs Tax,
Central Circle II(4),
Chennai

[PAN: ABCPN 7785J]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. T. Vasudevan, Advocate

प्रत्यर्थी की ओर से / Respondent by : Shri. Pathlaveth Priya, IRS, CIT

सुनवाई की तारीख/Date of hearing : 07.08.2015

घोषणा की तारीख /Date of Pronouncement : 30.09.2015

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal by the assessee is directed against the order of
the DCIT, Central Circle II(4) (i/c), Chennai dated 28.02.2013.

2. The assessee has raised the following grounds:-

- (1) The learned Assessing Officer erred in treating 85% of the subscribers' deposits of ₹1,47,86,860/- as the assessee's undisclosed income.
- (2) The learned Assessing Officer erred in making the disallowances/additions while computing the total undisclosed income of the block period.

1	Purchase of newsprint from capital market	:	7,50,000/-
2	Advance to Vivek	:	1,50,000/-
3	FD with Canara Bank	:	1,65,000/-
4	Difference in cost of construction	:	5,19,000/-
5	Personal expenses	:	1,94,000/-
6	Household articles	:	2,15,000/-
7	Deposits with Canara Bank	:	28,53,778/-
8	Investment in UTI	:	1,00,000/-
9	Gift to Master Vivek/Krishnapriya	:	1,20,000/-
10	Investment in Tamilarasi	:	52,500/-
11	Land at Thanjavur	:	2,13,000/-
12	Deposits in Tamilarasi	:	2,12,310/-
13	Interest suspense account	:	4,23,460/-
14	<u>Unexplained credits</u>		
	a. Capital account	:	10,00,000/-
	b. Apna Finance	:	7,80,000/-
	c. Ashok Mehta	:	5,76,000/-
	d. Omprakash Mehta	:	4,16,000/-
	e. Chandrasekhar & B. Gitanjali	:	6,50,000/-
15	Credit Card payments	:	3,15,714/-
16	<u>Unproved expenditure</u>		
	a. Advertisement	:	1,60,055/-
	b. Electricity charges	:	33,794/-
	c. Travelling and conveyance	:	1,20,000/-
	d. Car Maintenance	:	37,471/-
	e. Preliminary expenses	:	8,947/-
	f. Depreciation disallowed	:	4,60,000/-
	g. Donation	:	1,500/-
	h. Disallowance under sec. 40A(3)	:	1,33,365/-
	i. Scan Tech u/s.41(1)	:	67,055/-
17	Unexplained investment in jewellery	:	2,00,000/-
18	Foreign tour expenses	:	31,42,000/-

- (3) The learned Assessing Officer erred in treating the amounts as undisclosed income of the assessee for the block period asst. years 1987-88 to 1997-98 (upto 24.09.1996).

Further the Id. Authorised Representative for assessee filed additional grounds before us and also petition for admission of additional grounds as under:-

Additional Grounds of Appeal

1. The order of the officer is not in accordance with the provisions of sec.158BG of the Act and hence additions made therein without the approval of the concerned authority is invalid and unsustainable in law.

2. The officer ought to have appreciated that additions cannot be made in the block assessment without the prior approval u/s.158BG of the Act.



Advocate for assessee

Petition for admission of additional grounds

The petitioner has filed the grounds of appeal in which grounds were raised on the merits of the additions made in the assessment, apart from general ground on legality of additions. In the course of preparation of the appeal, it was noticed that a specific ground on the issue of approval u/s.158BG for the various additions made in the assessment is also required.

It is submitted that since this is a legal issue and goes to the root of the matter, the petitioner may be permitted to raise this issue by way of the additional grounds. It is submitted that the failure to raise this issue in the original grounds is purely due to inadvertence and unintentional and hence may kindly be condoned.

The petitioner therefore prays that the Hon'ble Tribunal may be pleased to admit the additional grounds, treat this as part of the grounds already filed, dispose it off on merits and thus

render justice.

Dated this the 27th day of May, 2015 at Chennai.



Advocate for assessee

3. First of all, we deal with the additional grounds raised by the Id. Authorised Representative for assessee. As seen from the above extract of the additional grounds and petition for admission of additional grounds, these are signed by the advocate for the assessee namely Shri. T. Vasudevan. Now the question before us, whether the additional ground filed by the Id. Authorised Representative for assessee is maintainable or not. What are the procedures for filing additional ground was discussed in Rule 29 of Income Tax Rules, which is as follows:-

Rule 29:- *'The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or , if the income tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced''.*

Further, whatever rule is applicable for filing the appeal before the Tribunal is also applicable for filing additional grounds. Thus sec. 253(6) of the Act

prescribes that appeal to the Tribunal shall be filed in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made, on or after the 1st day of October, 1998 irrespective of the date of initiation of the assessment proceedings relating thereto, be accompanied by a fee of :-

a) where the total income of the assessee as computed by the Assessing Officer, in the case to which the appeal relates, is one hundred thousand rupees or less, five hundred rupees,

(b) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, one thousand five hundred rupees,

(c) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one per cent. of the assessed income, subject to a maximum of ten thousand rupees :

(d) where the subject matter of an appeal relates to any matter, other than those specified in clauses (a), (b) and (c), five hundred rupees.

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

Further, Income Tax Rules, prescribes in Rule 47 as under:-

(1) An appeal under sub-section (1) or sub-section (2) of section 253 to the Appellate Tribunal shall be made in Form No.36(and where the appeal is made by the assessee, the form of appeal, the grounds of appeal and for the form of verification appended thereto shall be signed by the person specified in sub-rule(2) of rule 45).

(2) A memorandum of cross-objections under sub-section (4) of section 253 to the Appellate Tribunal shall be made in form No.36A(and where the Memorandum of cross-objection is made by the assessee, the form of memorandum of cross-objections, the grounds of cross-objections and the form of

verification appended thereto shall be signed by the person specified in sub-rule (2) of rule 45)

The Rule 45(2) reads as under:-

The form of appeal prescribed by sub-rule (1), the grounds of appeal and the form of verification appended thereto relating to an assessee shall be signed and verified by the person who is authorised to sign the return of income under section 140 of the Income Tax Act, 1961 as applicable to the assessee.

In this case, an additional ground filed by the Id. Authorised Representative for assessee and it is not by assessee himself. In view of the above provisions laid down by the legislature, whether this additional ground is maintainable or not. We came across judgment of Jurisdictional High Court in the case of *P. Kuttikrishna Nair vs. I.T.A.T., Madras and Another, (34 ITR 540)*. In that case, whether the Tribunal can consider the Miscellaneous Petition suo motu and the Tribunal, in exercise of its own powers, can verify the mistake whether pointed out by the D.R. or on its own. This decision of the jurisdictional High Court pertains to the old Income-tax Act of 1922 where rectification by the Tribunal is provided under section 35 of the old Act and in section 35 of the old Act, it was specifically provided that the words "in like manner" appearing in sub-section (2) of section 35 in relation to sub-section (1) of section 35 are not sufficient to apprehend the Authorised Representative of the Income-tax Department. It is noted that the Id. Authorised Representative for

assessee have no power to sign any appeals, Co-objections, grounds and additional grounds before the Tribunal. He is authorized only to argue the case. He is not competent to sign the appeals, Co-objections, grounds and additional grounds before the Tribunal as per the provisions of the Act. As per section 140 of the Income Tax Act, the following person could sign the appeals, co-objections, grounds and additional grounds before the Tribunal.

a) in the case of an individual,

(i) by the individual himself;

(ii) where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(iii) where he is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf ; and

(iv) where, for any other reason, it is not possible for the individual to verify the return, by any person duly authorised by him in this behalf :

Provided that in a case referred to in sub-clause (ii) or sub-clause (iv), the person verifying the return holds a valid power of attorney from the individual to do so, which shall be attached to the return ;

(b) in the case of a Hindu undivided family, by the karta, and, where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(c) in the case of a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to verify the return, or where there is no managing director, by any director thereof;

Provided that where the company is not resident in India, the return may be verified by a person who holds a valid power of attorney from such company to do so, which shall be attached to the return :

Provided further that(a) where the company is being wound up, whether under the orders of a court or otherwise, or where any person has been appointed as the receiver of any assets of the company, the return shall be verified by the liquidator referred to in sub-section (1) of section 178 ;(b) where the management of the company has been taken over by the Central Government or any State Government under any law, the return of the company shall be verified by the principal officer thereof ;

(cc) in the case of a firm, by the managing partner thereof, or where for any unavoidable reason such managing partner is not able to verify the return, or where there is no managing partner as such, by any partner thereof, not being a minor ;

(cd) in the case of a limited liability partnership, by the designated partner thereof, or where for any unavoidable reason such designated partner is not able to verify the return, or where there is no designated partner as such, by any partner thereof.

(d) in the case of a local authority, by the principal officer thereof ;

(dd) in the case of a political party referred to in sub-section (4B) of section 139, by the chief executive officer of such party (whether such chief executive officer is known as secretary or by any other designation) ;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or by some person competent to act on his behalf.

The procedure for filing of additional grounds is at par with the filing of appeal and the rules framed under ITAT Rules for filing of appeal will also apply to additional ground also. The IT Rules, 1962, prescribes an appeal shall be in form No.36 and the form gives the required verification portion. It is also prescribed in Rule 47 that memorandum and the grounds of

appeal as also the verification portion shall be signed by the assessee as prescribed under Rule 45(2). If the entire provisions of the IT Act, 1961, IT Rules, 1962 and ITAT Rules, 1963, are read together it clearly emerges that an application for admission of additional grounds in this case can be filed either by the assessee or the Assessing Officer, as the case may be. If additional ground filed before the Tribunal by the assessee or the Assessing Officer, the same can be considered, subject to the provisions of law. The only interested persons in the result can file the additional ground and the Tribunal has to act on representation made to it by the assessee or by the Department, i.e. through Assessing Officer only who is party to the appeal. The assessee or the Assessing Officer has a right just like a party to draw the attention of the Tribunal and they have a further right to insist that the Tribunal shall examine the additional ground. In view of the above legal and factual situation, the Authorised Representative whether of the Revenue or of the assessee stands in the same position as an outsider. The only person competent to sign and verify an appeal should sign and verify like miscellaneous petition, stay petition and others like additional ground. Where the signature and verification on the memorandum of appeal was made by any agent of the assessee or for the Revenue and not by the assessee or the Assessing Officer, it cannot be held that the appeal or any application filed is a valid

appeal or application. Further, as per the ITAT Rules, 1963, filing of additional grounds equates the procedure for filing of appeal with that of these applications. As far the assessee is concerned, the appeals are to be signed by the assessee and none other than the assessee. This additional ground of the assessee filed by the Id. Authorised Representative for assessee is not maintainable. Hence, the additional ground is dismissed as non-maintainable.

4. Now coming to the main appeal, the facts of the case relating to the first ground are that the assessee is the proprietor of M/s.Tamilarasi Publication. The business of this proprietary concern is publishing of two magazines namely, Tamilarasi, a weekly and Puthiaparvai, a fortnightly. Regular books of accounts are maintained in respect of this business. This business was commenced in the accounting period 1992-93. Prior to that upto 15.11.1988 he was employed with Tamil Nadu Government as Deputy Director, Information department. During the previous year relevant to assessment years 1990-91 to 1992-93. It was stated that he did not have any major income earning activity. There was a search in the case of the assessee on 24.09.96 u/s 132 of the Income-tax Act, 1961. His residence in Kalashetra colony and the business premises at No. 84, TTK Road, were searched. Various documents as per Panchanama

drawn up at the time of search were seized in the course of the search. A notice U/s, 158BC dated 04.11.96 was issued to the assessee. Subsequently notices were issued u/s. 142(1) of the Income-tax Act calling for certain particulars. On his request, the assessee was also permitted to take copies of seized materials. Finally on 05.09.97, the assessee filed his return of income in Form No. 2B in compliance with the notice u/s. 158 BC. In the return he admitted a total undisclosed income of ₹3,80,000. Subsequently notice u/s 143(2) was issued on 09.09.1997. In response to this notice u /s.143(2) and other notices, assessee's representative appeared and filed some of the details called for. After hearing the assessee's representative and after going through the books of account, seized documents, statements, letters etc. filed by the assessee and on behalf of the assessee and also relying on the Special Audit Report u/s 142(2A) furnished by Shri. K. Venkataraman, FCA of M/s. Murali and Associates, the total income for the A.Ys.1987-88 to 1997-98 (up to 24.09.1996) comprised in the block period was computed vide Order u/s 143(3) r.w. Sections 158BC, passed on 13/03/1998, determining the total undisclosed income at ₹3,77,41,760/-.

4.1 Against this order, the assessee preferred an appeal to the ITAT and the ITAT vide its order dated 17.06.2005 in *IT(SS)A*

No.91/Mds/98 dismissed assessee's appeal, deciding all the issues in favour of Revenue. Against the ITAT Order, the assessee preferred further appeal to the High Court and the High Court vide its order in Tax Case Appeal NO.1172 of 2005 dated 19.07.2012 held as under:

- (i) On the major addition of purchase of newsprints amounting, to ₹.2,35,30,767 the High Court held as under:-

"assessment in respect of genuineness of the newsprint purchases has to be excluded from the block assessment procedure and it can only be considered under regular assessment."

- (ii) In respect of other issues, the High Court held as under:-

"we remand the matter back to the Assessing Officer for deciding the matter afresh after granting sufficient opportunity to the assessee to place his case. The assessee shall extend full cooperation so as to enable the Assessing Officer to complete the assessment within a period of three months from the date of receipt of copy of this order."

4.2 This order of the High Court was received on 30.11.2012 by the Assessing Officer and as per the directions of the High Court, fresh opportunity was given to the assessee by the Assessing Officer to file his submissions, with reference to the block assessment order passed on 13.03.1998, vide letter dt. 04.12.2012. The letter was also served on the assessee on 07.12.2012. The case was posted for

hearing on different dates by Assessing Officer and the assessee's representative appeared before Assessing Officer on the following dates viz. 14.12.2012, 07.01.2013, 28.01.2013, 05.02.2013 and 19.02.2013. During the course of hearing before the Assessing Officer the assessee furnished various details on the issue of subscribers' deposits discussed elaborately in para 4 of the block assessment order dated 13.03.1998. The major issue of genuineness of purchase of newsprint was anyway deleted by the High Court as elaborated above. In respect of other issues forming part of the block assessment order, during the course of hearing before the Assessing Officer the assessee informed that since they **are all minor issues and that due to lapse of time, there are no** further details available. No written submissions were also made in respect of those issues before Assessing Officer. Accordingly, considering the submissions made during the assessment proceedings, the assessment order was passed by Assessing Officer within the three months time limit from the date of receipt of the order by Assessing Officer as directed by the High Court. During the course of this High Court remand proceedings before Assessing Officer, the assessee furnished further details only on the issue of Subscribers' deposit.

4.3 The assessee commenced his business of Tamilarasi Publication during the previous year relevant to assessment year 1993-94. During the previous year relevant to assessment year 1994-95 there was credit balance in the subscription deposit account of ₹70,32,500/-, which went up to ₹1,47,86,860/- for the year ending 31.03.1995. It was set to be received from 6000 parties ranging from ₹1,500/- to ₹2,500/- for which one of the magazines were given free of cost as along as deposit was not withdrawn, who has given ₹2,500/- two magazines were given free of cost. This deposits will not bear any interested and the assessee was asked to explain from whom it had received the deposits. Further, there was reference to the Special Audit u/s.142(2A) of the Act, and the report of the Special Auditor is as under:-

3.1 These deposits said to have been received from various vasagar vattams (appears to be kept on a location wise (District wise) basis. Except an additional place viz Mayiladuthurai) for amounts totalling ₹1,47,86,860/- had been received in cash except the following for amounts totalling ₹3,50,000/- stated to be received by means of Demands Drafts.

Date	Amount	Vasangar Vattam Ref
23.10.94	50,000/-	Tirunelveli
23.09.94	1,00,000/-	Madurai
23.12.94	2,00,000/-	Madurai

Relevant bank statement evidencing the above had been checked and verified.

3.2 No basic records such as (i) individual receipts (ii) Depositors registers (Vasagar vattam) are made available for the purpose of checking and verification and the publication did not appear to have maintained any depositor-wise summary at all.

3.3 This deposit control account in General Ledger has not been in agreement with the breakup of location wise accounts maintained relating to the financial years 1994-95 and 1995-96, the details are as under:-

VASAGAR VATTAM DEPOSIT

Year ended accounts in	As per control A/c. General ledger	As per location General Ledger
31.03.1995	1,47,86,860/-	1,45,74,550/-
31.03.1996	1,47,91,310/-	1,30,10,000/-

3.4 Further following amounts totaling ₹17,74,500/- stated to have been refunded in cash did not have any basis/correspondence /records

Vasagar Vattam Ref.	Amount Refunded	₹
VV2	77,500/- (29.4.95) 1,57,500/- (18.05.95) 1,40,000/- (21.01.96)	3,75,000
VV3	2,10,000/- (13.4.95)	2,10,000
VV4	1,57,700/- (13.4.95) 1,62,500/- (02.6.95) 30,000/- (13.12.95)	3,50,200
VV5	500/- (01.04.95)	500
VV10	3,30,000/- (2.5.95) 1,42,500/- (29.7.95) 1,66,300/- (24.2.96) 2,00,000/- (24.2.96)	8,38,800
		----- 17,74,500 -----

3.5 We understand that these subscribers (who have paid deposits from various locations) are sent with the weekly/fortnightly copies of Tamilarasi Puthiaparvai by

means of lorries/its own van etc. However, this statement could not be corroborated by any documents and no such despatches appear to have taken place at all. This is in view of our below mentioned findings in respect of despatches of both Tamilarasi (weekly) and Puthiaparvai (fortnightly) to the Agents/subscribers. Kept and maintained by the publications as to date.

i). The publication has been dispatching the magazines both by Rail and Book post (duly evidenced by the Despatch Register/Railway Acknowledgements /Postal expenses for Book Post etc.

ii). None of the Vasagar Vattams appear to have been included In the Despatch Summary/Register in evidence of despatches.

iii). In the absence of any supporting evidences for despatches to Vasagar Vattams (though stated to have been sent by lorries/their own vans). We could not check/verify such despatches at all.

iv). Further, the manuscript copy (manuscript copy-please see EXHIBIT 11- kept herewith of the details of despatches for November 1997 also did not evidence the despatches to the Subscribers Nasagar vattams.

3.6 To summarise the publication did not appear to have followed any of the Internal Control aspects/ maintenance of basic records (as mentioned below) in order to check/ascertain the genuineness and veracity of the scheme.

3.6.1 No receipts appeared to have been issued to any Depositor, which should form the basis of this type of

long term deposit.

3.6.2 No Depositor-wise records are maintained which forms the vital document in this kind of long-term commitments (Magazines to be sent free of cost).

3.6.3 No. documentary evidence or otherwise were maintained for evidencing the despatches being made to the vagagar vattams.

3.6.4 Substantially, the entire amount of deposit has been accounted for as received in cash which do not confirm to any Internal Control norms in spite of the fact that the subscribers being located all around the state."

4.4 The remarks quoted above are quite revealing. The entire deposits running to more than ₹147 lakhs are stated to be received in cash except for a negligible amount of ₹3.5 lakhs which is stated to be received by way of drafts from Thirunelveli and Madurai. This is strange considering the fact that these deposits are stated to be received from all over Tamil Nadu. There are no correspondences from the subscribers or their agents forwarding the money to the assessee. It is also strange that none of these depositors insisted on a receipt. The Auditor has also reported that in respect of the deposit no individual receipts have been issued. As a matter of fact, not only no individual receipts are issued but not even collective receipts have been issued to anybody. The auditor has reported that the depositors' registers were not made available for the purpose of checking and verification.

Assessee has not maintained any depositor wise summary also. It is reported that ₹17,74,500/- has been refunded to various depositors. The names and addresses of the persons to whom it is returned is not furnished. Receipts for the refunds stated to have been issued have also not been produced either to the auditor or before the AO. In short assessee does not know the names or have a record of the persons to whom the deposits have been returned. There is no correspondence also in this regard in the nature of request from the depositors for return of the deposits.

4.5 The information collected by the auditor with regard to the dispatch of the magazines to these alleged depositors is also quite revealing. The special auditor has reported that there is absolutely no evidence for dispatch of the magazines to these alleged subscribers. He has enclosed the manuscript copy of the details of the despatches effected in November, 1997. As per this manuscript. 6027 copies have been dispatched but none of it is for the alleged depositors. The details of despatches furnished by the Special auditor are as under:

Central	:	1853
Egmore	:	1785
City Agent	:	750
H.B. Stall	:	215
Postal	:	377

Free copies	:	100
Office copies	:	50
Subscription & Extra	:	896/-

6027/-

- 1). Since how long are you a reader/subscriber to the above magazine.
2. Whether you are subscribing to both the magazines.
- 3). Mode of subscription by you that is to say whether monthly, annual or any other mode
- 4). If the subscription is for more than a year, the period for which you paid the same and the amount of subscription.
- 5). Whether the subscription paid by you was by cash or by way of cheque/drafts etc.
- 6). Whether you . paid the subscription directly to the magazine office in chennai or to any local agent. If so, the name and address of such local agent.
- 7). Whether the magazines are supplied to you regularly.
- 8). The mode by which you get the magazines ie., directly from the magazine office by post. courier service etc. or through local agents.
- 9). Who canvassed for this subscription.

4.6 A number of these letters sent to the addresses furnished by the assessee were returned unserved by the postal authorities for the reason that there is no such addressee. A list of such addresses was also enclosed as Annexure-I to the Block Assessment Order. It is a

clear indication that the claim made by the assessee that the deposits have been made by such persons is incorrect. A number of persons who responded to the letters replied categorically that they are neither readers nor subscribers to the magazines. Some of them expressed that they have not even heard of the names of the magazines. It is redundant to state that they denied having made any deposit with the assessee for supply of the magazines. Some of those who replied stated that they had been asked for their names and addresses by somebody who promised that they would get these two magazines from the next month free. They have added that they received no magazines till date and also denied having made any deposit. What is to be remembered in this context is that, these letters were spontaneous and without persuasion from any body. (A list of such names was also enclosed as Annexure-II to the original Block Assessment Order.) Based on the above, the Assessing Officer observed that the claim made by the assessee regarding receipt of deposits is false.

4.7 At the time of block assessment proceedings, from a large number of persons, identical printed letters in identically addressed envelopes were received in Assessing Officer in various names confirming the deposit of ₹. 2500/- made by them to the assessee for

the supply of the 2 magazines. Obviously, these letters were filed at the instance of the assessee, since no letters had been addressed to these persons by this office. Again out of these letters a few at random were chosen by the then Assessing Officer for making enquiries. Since the letters have come from various places, like Madurai, Dindugal, Vellore, Palani etc. the local officers of Income Tax Department in these places were requested to make enquiries about the genuineness of the letters and also to ascertain whether such persons were in receipt of the magazines. Here also, the enquiries revealed that these persons in whose names letters were received are not real and genuine depositors. Everyone of them who were contacted by the officers of the department denied having made any deposit. They also denied knowledge about the magazine. Enquiries made at Namakkal revealed that Mr. Chandrasekar who is a lecturer in Ramakrishna Nallammai Industrial Training Institute, had obtained lot of letters signed by students of first year degree courses in his college. But none of the students had made any deposit. The names and addresses of the persons with whom such enquiries were made, along with the brief outcome of such enquiries were also enclosed as Annexure III to the Block Assessment Order.

4.8 Vide his letter dated 13.02.98, the result of these investigation

including Annexure I to III mentioned above, were made available to the assessee for his comments by the then AO. The assessee was specifically asked by Assessing Officer to produce necessary proof about the genuineness of the scheme. Inter alia, he was asked to furnish details and proof regarding

- a) Printing of sufficient number of copies of the magazines.
- b) Satisfactory proof regarding distribution and dispatch of the magazines to the alleged depositors.
- c) Details of the expenses debited for the distribution of magazines to these deposit holders.
- d) Copies of individual receipts issued to these deposit holders.
- e) Complete list of persons to whom the deposits have been returned. The mode of such repayment.
- f) Receipts obtained from these alleged depositors to whom refunds have been issued and.
- g) Basic records, if any, to prove printing, dispatch and distribution of the magazines.

4.9 As per this letter dated 13.12.1998, it was proposed by Assessing Officer that if no objections are received from the assessee on or before 26.02.98, it would be presumed that he has no objections to the proposal to treat the amount of ₹1,47,86,860/- as the undisclosed income.

4.10 In response the assessee filed his submissions before

Assessing Officer on 10-03-98 raising objections like the letters would have returned because the depositors have changed their address, the depositors were not asked specifically as to whether they had deposited ₹2500, the statements given were not voluntary etc. All these objections were countered in detail in the Asst. Order dt. 13-03-1998 by the then AO, in para nos.4.11 to 4.24, the assessee's dubious method of introducing credit and also considering that there is no material change in the assessee's contentions now.

4.11. During the course of remand proceedings before Assessing Officer the assessee requested for the copy of complete list of annexures I, II and III annexed to the earlier assessment order dated 13.03.1998 and also seized materials specifically the seized document no. RLN/ B & 0/17 & 18 containing the stereo typed letters confirming the Deposit. Annexure I contains name of the persons where letters were returned 'unserved'. Annexure II contains names of the persons where deposits were denied. Annexure III contains a mix of both types, namely where the letters could not be served and where the deposits were denied. In the remand proceedings, the assessee contended that letters sent to many cases were returned 'unserved' because of incomplete address and also due to the fact that many of

them have shifted their residences. During the course of hearings on different dates before Assessing Officer, the assessee filed the present address of some of these persons. He also filed affidavits from these persons to the effect that they have indeed subscribed to the two magazines by depositing life-term membership fee of ₹2,500/-. The assessee also filed the Id. proof and the address proof of these persons. After these were filed by the assessee, vide our letter dated 12.02.2013 before Assessing Officer, the assessee was directed to produce all the persons mentioned in his earlier letters, for personal examination by the undersigned on 19.02.2013. The assessee also produced 9 persons. The details of the persons produced are as under:

PERSONS PRODUCED BY THE ASSESSEE ON 19.02.2013

Name of the assessee	List in Asst. order	Ref. No in list	Whether income tax assessee PAN	Return copy	Bank statement copy
Mr. Sakthivelraja	Annx. III No such person in the given address	6	Yes	No	Not produced
T. Chandran	Annex. III denied the deposit	9	No	No	Not produced
S. Chinnan	Annex. I Notice returned	36	No	No	Not produced

	unserved				
R. Venkatraman	Annex. III denied the deposit	11	No	No	Not produced
G.Siddesaran	Annex. I Notice returned unserved	38	No	No	Not produced
R. Govindrajan	Annex. I Notice returned unserved	16	No	No	Not produced
G. Selvam	Annex. II Denied the deposited	2	No	No	Not produced
K. Kumaravel	Annex. I Notice returned unserved	15	No	No	Not produced
Smt. Rajathy	Annex. I Notice returned unserved	26	No	No	Not produced

4.12 Out of the above list of persons, 6 of them confirmed that they have indeed subscribed to the magazines. 2 persons, namely Shri.T.Chandran and Shri R.Venkataraman confirmed their earlier statement wherein they had denied having made any such deposit. One person by name Sri. Govindaraj, Kurugulam, Melappti, Tanjore District, has given a blatantly wrong statement answering in two different places that he is receiving the magazine from 1954 onwards whereas the publication itself is started only in 1992 or so. Therefore his statement is ignored as not reliable even though he insisted that he is receiving the

magazine. Thus, out of total 9 persons produced by the assessee, only 6 have satisfactorily confirmed that they have indeed subscribed to the magazines. To summarize, out of about 100 persons to whom letters were issued as brought out in the original assessment order, at that time only 8 persons have confirmed having deposited the money as seen from in para 4.20 of the assessment order dated 1303.1998. Now, during the remand proceedings, a further 6 persons only have confirmed having deposited the money. In respect of others the assessee was neither able to get the current address nor he could produce them for personal verification. In fact the assessee vide his letter dt. 19/02/2013 has admitted that he has taken copy of application of subscriber deposit in respect of more than 1000 persons from the seized materials. In spite of such a huge number, the assessee could produce for personal verification only 9 of them and the current address was furnished only in respect of these miniscule number of persons only. The whole exercise shows that even though enough time was given to the assessee to produce anyone out of the 6000 odd persons for personal examination, the ground reality is that the assessee could produce only 9 persons now out of which also only 6 have confirmed. Under the circumstances, after going through the records, on examining the details filed by the assessee and also taking into account the elaborate findings of the earlier Assessing Officer, as

extracted in paragraph 4(k) above, the Assessing Officer was satisfied that the assessee is not able to give proper explanation in respect of deposits lying in his account and the source for the same are not satisfactorily explained and since the provisions of sec. 68 is very clear that it is for the assessee to offer satisfactory explanation in respect of credits found in books and as elaborated above since the assessee could not offer satisfactory explanation the amounts credited represent assessee's own undisclosed income assessable u/s.68. However, considering that about 14 of them have affirmed the deposits and taking into account the other factors, it would be reasonable to treat a portion of these deposits as genuine. Going by the small no. Of persons who have confirmed the deposits to the satisfaction of the department, it was considered that it would be fair and proper to treat 15% of the total deposits as genuine and accordingly out of the total amount of ₹1,47,86,860/- and amount of ₹22,18,029/- is treated as genuine and the balance amount of ₹1,25,68,831/- is treated as unexplained credit u/s.68. Against this, the assessee is in appeal before us.

5. The Id. Authorised Representative for assessee submitted that the Assessing Officer having allowed 15% of subscriber deposits as genuine, it was implicit that he had accepted the bonafide of the subscriber deposit scheme of

the assessee. It logically follows that there was no case for the Assessing Officer to treat the balance of the deposits as not genuine. The only reason seems to be that in the random enquiry conducted, some of the addresses returned unserved since those persons had shifted their residence or some had not given accepted to have participated in the deposit scheme of assessee. It was submitted that the enquiry launched after a lapse of time would normally be at variance since many distancing themselves. Further, the details of responses were also not available to assessee to counter the negative statement of those persons. The assessee had in fact filed confirmation letters as to participation in the deposit scheme from substantial number of persons and the Assessing Officer had not given due cognizance to them. There was no basis for the Assessing Officer to reject the overwhelming evidence produced by the assessee as to the publication of the magazines and distribution to its subscribers and merely rely on some unserved letters and subject to addition the majority of the subscriber deposits collected as unexplained. The very fact that the Assessing Officer allowed 15% of deposits only reveals that the rejection of the remaining deposits on an estimated basis was only arbitrary and based on surmises and conjectures. In a block assessment, the Assessing Officer should have seen that there is no scope or estimated additions and disallowances. Having accepted the scheme in it was pertinent to note that the Tribunal in ITA Nos.1130/Mds/2003, 1151-1154/Mds/2002, dated 30.11.2007

had considered a similar deposit in a group case and accepted the claim of the assessee. Hence, it was submitted that there was no basis for the Assessing Officer to hold that 85% of the subscribers deposits were not genuine on an estimated basis and having accepted the bonafide of the deposit scheme run by the assessee, no part of the amount of deposits can be subject to addition as unexplained income in the hands of the assessee.

5.1. The Id. Departmental Representative relied on the orders of the Assessing Officer.

5.2 We have heard both the parties and perused the material on record. In this case, the assessee said to have collected the impugned deposits from 6000 persons. The Assessing Officer gave ample of opportunity to get confirmation from the parties from whom the deposits were collected. Out of 6000 persons only 14 of them have given confirmation saying that they have given deposit. Hence the Assessing Officer considered 15% deposit as genuine and the balance he considered as unexplained income of the assessee. Before us, the assessee submitted that the issue has to be decided in favor of the assessee in view of the decision of the Tribunal in the case of *M/s. Jaya Publications vide order dated 30.11.2007 in ITA No.1130/Mds/2003 and others*. In that case the Tribunal in para 5 observed as under:-

"5. We have heard both the sides and perused the records available with us including the written submissions filed by the learned

Counsel for the assessee. We have gone through the findings of the Commissioner of Income Tax (Appeals). From the impugned order it is not clear as to on what basis, the first appellate authority worked out the percentage 1.5% to give relief to the assessee. It is pertinent to note that the assessee has claimed to have collected Scheme Deposits from 2250 persons and filed complete details of the names and address of the depositors. We find that that the Commissioner of Income Tax (Appeals) accepted these deposits as genuine because the statements were obtained behind the back of the assessee without giving an opportunity of being heard. Therefore, we are of the view that the matter requires investigation at the level of the Assessing Officer and we are not commenting on the merits of the case. Keeping in view the facts and circumstances of the case and in the interest of justice, we set aside the matter to the file of the Assessing Officer with direction to decide the issue in dispute after re-investigation in respect of 41 persons only and after giving reasonable opportunity of being heard. Accordingly, the assessee's appeals on this issue is allowed for statistical purposes. Since, we have set aside identical issue in the assessee's appeal. The Revenue's appeals are dismissed."

In the present case, the Assessing Officer had given ample of opportunity at various level to prove the genuineness of the deposits. In spite of this, the assessee failed to prove the genuineness of the deposits. In our opinion, no useful purpose will be served by remitting the issue back to the file of the Assessing Officer for fresh consideration. Hence, the order of the Assessing Officer is confirmed. This ground of the appeal of the assessee is rejected.

6. The next ground raised by the assessee is with regard to disallowance made by the Assessing Officer treating purchase of newsprint from capital market as undisclosed income of the assessee .

6.1 The facts of the assessee are that for the year ended 31.3.1995, the assessee's account for purchase of newsprint debited the account of Capital Market with a sum of ₹7.5 lakhs on 21.7.1994. In the subsequent year, on 26.08.1995, the assessee's account for purchase of newsprint has been credited by (₹7,50,000/-) towards News Print return by Capital Market. Enquiries were made with capital market regarding this transaction. In their letter Dated 25.2.98 M/s. Capital Market while confirming the delivery of newsprint to the assessee on 21.7.94 denied having received back the news print on 26.8.95. As per entries made in their books of accounts of the assessee along with their letter M/s. Capital Market had sent to the Assessing Officer copies of their letters dated 17.11.95, 15.12.95 and 28.2.96 addressed to Tamilarasi Publication. Of these letters the last two were addressed to the assessee personally. In these letters M/s. Capital Market has made clear that they have not received back the news print or its cash equivalent of ₹7.5 lakhs. In their letter dated 25.02.1998 they have categorically stated that they have never got back either 24.5 tons of news print given to Tamilarasi Publication for performing certain job work or the cost of the news print till the date of the letter. All this information collected from M/s. Capital Market along with a copy of the letter dated 25.2.98 was furnished to the assessee by Assessing Officer vide letter dated 27.2.98. In this letter, it was proposed that since M/s. Capital market has denoted having received back the stock the entry passed by the assessee in his books on 26.8.95 it appears that the assessee did not propose to return the stock but at the same time create an impression that it has been returned. Since

the stock appeared to have been used by the assessee himself, or it is lying in stock with him, it is evident that he had derived benefit from this business. Such benefit is taxable within the meaning of section 28 (iv) of if not u/s. 28(iv) of the Act. It is liable to be assessed u/s 41 (1) on account of the cessation of liability as evidenced by the assessee ought to have filed his objection to this proposal on or before 3.3.98. Subsequently time was granted till 6.3.98 on assessee's representative request in this regard by Assessing Officer. The response to the letter dated 27.2.98 on this issue. finally came in a letter dtd.07.8.98 tiled on 09.3.98. In this letter he has stated that the paper was returned to M/s. Capital Market through one Mr. L. Raju.L-33. Raj Bhawan Colony, Check Post,Chennai-42. He has also enclosed copy of letter dated 26.8.95 purported to be from the said Mr. Raju. However it is stated that Mr.Raju is not authorized by M/s. Capital market to receive the stock on their behalf and hence the claim made by the assessee regarding the return of stock cannot be accepted as genuine. Further, the assessee has also not proved with reference his stock records and other records (such as incidental expenditure incurred etc.) that the stock was in fact returned. On the merit of the addition u/s.28(iv) assessee's representative stated that benefit or perquisite presupposes consensus ad idem or identity of mind between the parties and since this is not there in the given situation assessee is not liable for being taxed on this. The Assessing Officer do not agree with this contention. For taxing a benefit it was not necessary to have an agreement between the parties. What is to be seen is whether the assessee has received a benefit with or without the

agreement or consent from the other party. In this case if the claim regarding return of the papers is not correct, the assessee has gained a benefit u/s.28(iv). The AO have concluded that the claim of return of paper in my view is not genuine. Hence the sum of ₹7,50,000/- is to be and is being included as assessee's undisclosed income contained in section 158 B(b), even though the return of income was not due as on the date of search for this assessment year, never the less the. income of ₹7,50,000/- is assessable as undisclosed income. Against this, the assessee is in appeal before us.

6.2 The Id. Authorised Representative for assessee submitted that the Assessing Officer unilaterally relied on the version of capital market. Whereas, one, Raju had acted as the medium through which the newsprint was returned and he had also filed a confirmations letter dated 26.08.1995 from Raju. Statement of Raju was rejected without even examining him. No case for addition in assessee's hands and no benefit had accrued to assessee u/s.28(iv) as stated by the Assessing Officer.

6.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

6.4. We have heard both the parties and perused the material on record. In this case the issue was remitted back to the file of the Assessing Officer by Jurisdictional High Court vide judgment in T.C.No.1172/2005, dated 19.07.2012 for the purpose of affording sufficient opportunity of hearing to the assessee to substantiate the claim. In spite of giving opportunity to the assessee on 14.12.2012, 07.01.2013, 28.01.2013,

05.02.2013 and 19.02.2013, it was recorded by the Assessing Officer that the assessee has not made any submissions before the Assessing Officer. The Assessing Officer having no option passed the assessment order on 28.02.2013. Before us, the assessee placed reliance confirmation letter from Mr. Raju on 26.08.1995 returning this newsprint. Being so, the findings of the Tribunal of the earlier occasion holds good, wherein it was held as under:-

'23. Next issue relates to the addition of ₹7,50,000/- on account of purchase of newsprint from M/s. Capital Market. We have heard the rival submissions. For the year ended 31.03.1995 assessee's account for purchase of newsprint debited the account of M/s. Capital Market with a sum of ₹7,50,000/- on 21.07.1994. In the a subsequent year assessee's accounts for purchase of newsprint was credited by ₹7,50,00/- towards newsprint return by M/s. Capital Market. Enquires were made with M/s. Capital Market regarding this transaction. In their letter dated 25.02.1998 M/s. Capital Market while confirming the delivery of newsprint to the assessee on 21.07.1994 denied having received back the newsprint on 26.08.1995. It was made clear that M/s. Capital Market did not receive the newsprint or its cash equivalent of ₹7.5 lakhs. It was categorically stated by M/s. Capital Market that they have never got back either 24.5 tons of newsprint given to Tamilarasi Publication for performing certain job work or the cost of the newsprint. From this the Assessing Officer concluded that the assessee did not propose to return the stock. Since the stock appeared to have been used by the assessee himself or it was lying in stock with him, the assessee derived benefit from this business. Such benefit needs to be made eligible to tax within the meaning of section 28(i). Alternatively, it was proposed that the assessee can be assessed under section 41(1) of the Act for the cessation of liability. The assessee did not respond to the proposal. As such, the Assessing Officer included the sum as the undisclosed income of the assessee for the assessment year 1996-97 in the light of the definition of undisclosed income contained in section 158B(b) of the Act. No particular argument was advanced in his regard at the time of hearing. Order was contested on the ground of opportunity. Having heard both the parties and after perusing the records, we uphold the order of the Assessing Officer on this count.

Being so, there is no change of circumstances to take different view. Accordingly, we confirm the addition made in this issue. This ground of the appeal of the assessee is rejected.

7. The next ground raised by the assessee is with regard to ₹1,50,000/- as advance paid to Mr. Vivek which was treated as undisclosed income by the Assessing Officer.

7.1 The facts of the case are that the assessee advanced ₹1,50,000/- to Vivek for which the source has not been explained. Hence, the Assessing Officer treated the assessee as undisclosed income.

7.2 The Id. Authorised Representative for assessee submitted that considerable agricultural income for the family has been explained earlier available for expenses apart from other receipts reflected in the cash flow statement.

7.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

7.4 We have heard both the parties and perused the material on record. The assessee filed cash flow statement. We have gone through the cash flow statement. Which is reproduced herein below.

CASH FLOW STATEMENT

Particulars	31.3.87	31.3.88	31.3.89	31.3.90	31.3.91	31.3.92	31.3.93	31.3.94	31.3.95	31.3.96	30.9.96
Agricultural income -family	1.50	1.80	1.80	2.20	2.20	2.20	2.20	2.20	2.20	2.20	0.01
Agricultural income- lease	0.20	0.20	0.20	0.25	0.25	0.25	0.25	0.25	0.25	0.25	
Interest from Banks	0.14	0.16	0.18	0.21	0.23	0.26	0.28	0.30	0.26	0.17	0.08
Receipt from Tamlarasai							5.22	1.00	29.55	26.58	2.50
Loans & adv. Refunded						0.30	1.70	0.20			
Dividend-UTI						0.09	0.13	0.13	0.13	0.13	
Received from N. Sasikala							2.50				
Canara bank deposit maturity									0.87		
Land advance refund					1.50	1.60	2.90		1.50	10.00	
Salary income	0.48	0.50	0.33								
Rent received	0.12	0.12	0.18								
Unsecured loans										2.00	
LIC Policy											1.47
Total Receipts	2.44	2.78	2.69	2.66	4.18	4.70	15.18	4.08	34.76	41.33	4.06

PAYMENTS

Particulars	31.3.87	31.3.88	31.3.89	31.3.90	31.3.91	31.3.92	31.3.93	31.3.94	31.3.95	31.3.96	30.9.96
Units in UTI					1.00						
Ind Jothi Indian bank							0.10				
Travelling Expenses					0.20	0.80	0.80		1.10	1.00	
LIP paid & PF Paid					0.27	0.25		0.24	0.46	0.14	0.51
House construction expenses			0.19						25.00	23.50	1.48
Advance for land	1.00	2.00	1.00	2.00			10.00	1.50	1.50		
Loans and advances					2.00		0.20				
Gift Given						0.20	0.20	0.25	0.25	0.30	
Investment in Tamlarasai						0.53	2.12		0.87		
Land at Thanjavur						1.24	0.89				
Deposit in Canara bank	0.65					1.00					

Particulars	31.3.87	31.3.88	31.3.89	31.3.90	31.3.91	31.3.92	31.3.93	31.3.94	31.3.95	31.3.96	30.9.96
Interest from Bank reinvested	0.14	0.16	0.18	0.21	0.23	0.26	0.28	0.30	0.26	0.17	0.09
Drawings	0.30	0.30	0.35	0.40	0.40	0.40	0.40	.050	0.50	0.50	0.25
N. Sasikala – repayment								1.00	1.40		
House loan repaid	0.24	0.24	1.20								
Household articles						0.07	0.10	0.10		1.00	0.50
Expenses –All Indian Writers assn.								0.18	3.51	4.63	1.21
Land advance – Trf to Tamilarsi										10.00	
TOTAL PAYMENT	2.33	2.70	2.92	2.61	4.10	4.75	15.09	4.07	34.85	41.24	4.04
Net Surplus/ Deficit for the year	0.11	0.08	(0.23)	0.05	0.08	(0.05)	0.09	0.01	(0.09)	0.09	0.02
Opening balance cash on hand	0.05	0.16	0.24	0.01	0.06	0.14	0.09	0.18	0.19	0.10	0.19
Closing balance, cash on hand	0.16	0.24	0.01	0.06	0.14	0.09	0.18	0.19	0.10	0.19	0.21

7.5 We find there is no entry with regard to advance to Mr. Vivek in the cash flow statement. Being so, we consider this amount as undisclosed income of the assessee. Accordingly, this ground of the appeal of the assessee is rejected.

8. The next ground raised by the assessee is with regard to ₹ 1,65,000/- fixed deposits in Canara bank (i.e. ₹75,000/- for the assessment year 1987-88 and ₹1,00,000/- for the assessment year 1992-93) which was treated as undisclosed income by the Assessing Officer.

8.1 The facts of the case are that the assessee had invested ₹75,000/- and ₹ 1,00,000/- for the assessment years 1987-88 and 1992-93 respectively by way of Fixed Deposit in Canara Bank. The sources for this deposit has not been explained, though as per Assessing Officer dated 2.7.1997 the assessee had been specifically asked to furnish the details regarding the source of these deposits. The assessee replied vide letter dated 2.9.1997 which was in continuation of his reply dated 7.8.1997, the assessee stated that this deposit would be explained in the cash flow statement which is being submitted. The cash flow statement has already been discussed and rejected as unreliable. It was therefore obvious that there was explanation regarding the source for this deposit. The Assessing Officer treated this amount as undisclosed income to the assessee. Against this, the assessee preferred a appeal before us.

8.2 The Id. Authorised Representative for assessee submitted that sources for the fixed deposits is traceable to the cash flow statement filed by the assessee. The Assessing Officer's mere summary rejection of it cannot be a ground to hold that the amount invested is the undisclosed investment of the assessee.

8.3 The Id. Departmental Representative relied on the order of the Assessing Officer.

8.4 We have heard both the parties and gone through the cash flow statement.

There are entries for ₹65,000/- for the assessment year 1987-88 and ₹1,00,000/- for the assessment year 1992-93. Being so, we direct the Assessing Officer to give due credit to the tune of ₹1,65,000/- only. This ground of the appeal of the assessee is partly allowed.

9. The next ground raised by the assessee is with regard to ₹5,19,000/- being the difference in cost of construction which was treated as undisclosed income by the Assessing Officer.

9.1 The facts of the case are that during the year of account assessee has practically completed the constructions of a building in Parisutham Nagar. Tanjore. For its Construction assessee has debited an amount of ₹26.50 lakhs during 31.3.95 and ₹18.25 lakhs during the year ended 31.3.96. No books of accounts are maintained by the assessee in respect of the house construction. For the purpose of evaluating the cost. of construction of this property, a reference was made to the Valuation officer of the Department. The Valuation officer in his report has estimated the cost of construction at ₹49.94 lakhs. Thus between the value estimated by the Valuation officer and the cost admitted there is a difference of ₹5.19 lakhs, The assessee was asked to offer his explanation for the difference in this respect vide this office letter dated 04-03-98. A letter was filed by the assessee's representative on 11.03.1998 stating that the explanation is available in the cash flow statement. However. the cash flow statement has

already been rejected as unreliable. The explanation is rejected. Therefore the difference of ₹5.19 lakhs is treated as assessee's undisclosed income. Against this, the assessee is in appeal before us.

9.2 The Id. Authorised Representative for assessee submitted that reference to DVO for estimating the cost of construction in proceedings u/s.158BC is wrong. As per the Sec. 158BB, it was held that the undisclosed income of the block period shall be the aggregate of TI of the previous year falling within the block period computed in accordance with the provisions of the Act, on the basis of evidence found as a result of search or requisition of books of accounts or other documents and such other material or information as are available with the Assessing Officer and relatable to such evidence. The report of DVO is not a material found as a result of search and hence cannot form the basis of addition in block assessment. Reliance is also placed on *CIT vs. Ravikant Jain 250 ITR 14*. That apart, the estimate of DVO is based on CPWD rates which is incorrect. The construction being in Tangore, a moffusil place, the State PWD rates had to be applied. It was judicially noticed that the difference in rates would be 15% and also a margin of 10% to be given for self-supervision vide *Abdul Rahim vs ITO 258 ITR 714 (Mad HC)*, *CIT vs. Gajalakshmi 331 ITR 216 (Mad. HC)*. If these aspects are considered then the cost of construction returned by the assessee is correct and needs to be accepted. Further, the board in its Circular No.96 dated 25.12.1972 while explaining the newly inserted sec 55A has accepted that 15%

difference is acceptable margin between the cost determined by the officer and that returned by the assessee. The circular was applied by the ITAT, in the case of *Rm. Chinniah vs. ITO in ITA No.2035/2006* vide order dated 8.8.2008 and dismissed the department appeal. In this case, the margin of difference is 10.4% and hence the returned cost may kindly be accepted.

9.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

9.4. We have heard both the parties and perused the material on record. The addition is made only based on the DVO report and the variation between the amount shown by the assessee for construction and the DVO report which is less than 10.4% and there is no seized material reflecting this addition. Being so, we are inclined to delete the addition. This ground of the appeal of the assessee is allowed.

10. The next ground raised by the assessee is with regard to ₹1,94,000/- being the personal expenses which was treated as undisclosed income by the Assessing Officer.

10.1 The facts of the case are that the assessee did not file return of income for the assessment years 1990-91, 1991-92 and 1992-93. However as per block

return in form No.2B he had admitted an income of ₹21,000/-, 16,000/- and ₹19,000/- after deduction u/s 80L of ₹7,000/- for the assessment years 1990-91, 1991-92 and 1992-93 respectively. The assessee was specifically asked as to how he was meeting his personal expenses, since with effect from 15.11.88, the assessee had resigned his job with the Government of Tamilnadu and he had no ostensible source of income. The query stands not answered before the Assessing Officer inspite of giving a number of opportunities to do so. The gross income of ₹21,000/-, admitted by the assessee in the block return represents interest on fixed deposits with Canara Bank for the assessment year 1990-91. This amount of interest has not been admitted withdrawn. Hence, even this amounts is not available for his personal expenses. Therefore, the personal expenses has been met by the assessee out of undisclosed sources. Therefore, the Assessing Officer estimated ₹4,000/- per month i.e ₹48,000/- and ₹21,000/- interest from bank admitted in block return in form 2B and Assessing Officer made an addition of ₹69,000/- as undisclosed income for the assessment year 1990-91, for the assessment years 1991-1992 and 1992-93 , the Assessing Officer estimated his personal expenses at ₹48,000/- and ₹60,000/- respectively met by the assessee out of the undisclosed sources. Against this, the assessee is in appeal before us.

10.2. The Id. Authorised Representative for assessee submitted that the Assessing Officer has merely estimated the expenses and made the addition without any search material to this effect. It was settled law that there cannot be

any estimate of UDI unless there are material found in search warranting such an estimate. The assessee has shown drawings in the cash flow as well as the years in which the regular returns were filed. Further, source for the personal expenses is traceable in the cash flow statement filed by the assessee. A mere summary rejection of it cannot be a ground to hold that the amount invested is the undisclosed investment of the assessee.

10.3. The Id. Departmental Representative relied on the orders of the Assessing Officer.

10.4. We have heard both the parties and perused the material on record. The addition is only based on estimation and there is no seized material available on record to suggest the personal expenses. Being so, we delete the addition made by the Assessing Officer on this count. This ground of the appeal of the assessee is allowed.

11. The next ground raised by the assessee is with regard to purchase of ₹2,15,000/- as household articles which was treated as undisclosed income by the Assessing Officer.

11.1 The facts of the case are that during the course of search the assessee was found to be in possession the following household articles:

- | | | |
|---------------------|---|------|
| 1. Soni Colour TV26 | : | 1No. |
| 2. Soni Colour TV24 | : | 1No. |

3. Soni Colour TV18	:	1No.
4. Pioneer Audio Set	:	1 No.
5. CD-CDS Laser jet	:	1 No.
6. National AC 1 Ton	:	2 Nos.
7. General Split A/c	:	1 No.
8. General A.c -1 1/2 ton	:	1 No.
9. Fax machine	:	1 No.

The department vide letter dated 02.07.1997, the assessee was asked to explain the source of acquisition of the above assets. The assessee stated that the machine is the part of the business assets in Tamilarasi Publication. The cash flow statement promised to be filed by the assessee has not been filed before Assessing Officer. Hence, the estimated value of these items of household articles is included as the undisclosed income of the assessee by Assessing Officer for the assessment year 1997-98 comprised in the block period.

		Estimated Value Rs
1. Soni Colour TV26	:	1No. 30,000/-
2. Soni Colour TV24	:	1No. 25,000/-
3. Soni Colour TV18	:	1No. 20,000/-
4. Pioneer Audio Set	:	1 No. 20,000/-
5. CD-CDS Laser jet	:	1 No. 20,000/-
6. National AC 1 Ton	:	2 Nos. 30,000/-
7. General Split A/c	:	1 No. 50,000/-
8. General A.c -1 1/2 ton	:	1 No. 20,000/-
Total		2,15,000/-

Thus Assessing Officer treated ₹2,15,000/- as undisclosed income of the assessee. Against this, the assessee is in appeal before us.

11.2 The Id. Authorised Representative for assessee submitted that no estimated addition is possible in block assessment unless it is relatable to

evidence found in the course of search as to the unexplained nature of expenditure or investment. The assessee has shown drawings in the cash flow as well as the years in which the regular returns were filed. A mere summary rejection of it cannot be a ground to hold that the amount invested is the undisclosed investment of the assessee.

11.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

11.4 We have heard both the parties and perused the material on record. There is no seized material found during the course of search suggesting this addition. The addition is made only on estimation basis hoping that they were purchased during the course of block period. The assessee is being a senior person having means to purchase these articles from known sources as there is no evidence to suggest that it has acquired from unaccounted income of the assessee. Accordingly, this addition is deleted. This ground of the appeal of the assessee is allowed.

12. The next ground raised by the assessee is with regard to ₹28,53,778/- deposits in Canara bank for the assessment years 1991-92, 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97.

12.1 The facts of the the assessee has a savings Bank accountNo.23573 with Canara Bank; Abhiramapuram Branch. In this account during the assessment years 1991-92, 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97 the assessee has made a total deposit of ₹2,73,795/-, ₹2,00,378/, ₹14,21,862/-, ₹1,35,843/-, ₹1,10,700/-, ₹7,47,000/- respectively. The department vide letter dated 2.7.97, the assessee was asked to explain the source of funds for the deposits in this account. The assessee stated that the deposits in the Bank account will be explained in the cash flow statement which was filed 10.03.1998 and further the assessee submitted that for the assessment years 1992-93 , 1993-94 and 1994-95, the assessee submitted ₹9,800/-, ₹13,000/- and ₹13,000/- received from Unit Trust of India. This cash flow statement has been rejected as not reliable. The assessee's representative filed statement attempting to explain the source of deposits in the Bank alc ₹2,73,795/-, 1,90,578/-, 14,08,862/-, 1,22,843/-, 11,00,700/- and ₹7,47,000/-. But none of these confirmation letters are possible for verification. Hence this explanation are rejected by Assessing Officer. The Assessing Officer treated ₹28,53,778/- as undisclosed income of the assessee. Against this, the assessee is in appeal before us.

12.2 The Id. Authorised Representative for assessee submitted that the assessee has shown drawings in the cash flow statement as well as the years in which the regular returns were filed. Further, source for the personal expenses is traceable in the cash flow statement filed by the

assessee. The reason given by the Assessing Officer to discredit the cash flow statement is arbitrary and merely based on surmises. No independent enquiry was made by the Assessing Officer to falsify the source for the investments given in the cash flow. A mere summary rejection of it cannot be a ground to hold that the amount invested is the undisclosed investment of the assessee. Further, the loans were supported by confirmation letters which were rejected without any examination.

12.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

12.4. We have heard both the parties and perused the material on record. In the cash flow statement these deposits was not reflected in the respective assessments years. Being so, it is treated as undisclosed income of the assessee. This ground of the appeal of the assessee is dismissed.

13. The next ground raised by the assessee is with regard to investment of ₹1,00,000/- for the assessment year 1991-92.

13.1 The facts of the issue are that the assessee made an investment of ₹1 lakh in Unit Trust of India during the assessment year 1991-92. The assessee was asked to explain the source for the investment. The assessee submitted the cash

flow statement which has been rejected by the Assessing Officer. Therefore, the Assessing Officer treated ₹1,00,000/- as undisclosed income of the assessee.

13.2 The Id. Authorised Representative for assessee submitted that the source for the UTI investment of ₹1,00,000/- is traceable in the cash flow statement filed by the assessee. A mere summary rejection of it cannot be a ground to hold that the amount investment is the undisclosed income of the assessee.

13.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

13.4 We have heard both the parties and perused the material on record. This amount of ₹1,00,000/- was reflected in the cash flow statement for the year ending 31.03.1991. Accordingly, this ground of the appeal of the assessee is allowed.

14. The next ground raised by the assessee is with regard to gift payment of ₹1,20,000/-.

14.1 The facts of the case are that the assessee has given an gift of ₹20,000/-, ₹20,000/-and ₹30,000/- to Shri. Vivek, for the assessment years 192-93, 1993-94 and 1996-97, respectively ₹25,000/- to Shri. Krishnapriya for the assessment year 1994-95 and ₹25,000/- to Shakila for

the assessment year 1995-96. The source for this gift has not been explained. Vide department letter dated 02.07.1997, the assessee was asked to give the details and source thereof. The assessee has not explained the source for making this gift nor has given explanation. Therefore, the Assessing Officer treated ₹1,20,000/- as undisclosed income of the assessee. Against this, the assessee is in appeal before us.

14.2 The Id. Authorised Representative for assessee submitted that explanation were given regarding the source available in the cash flow statement filed. The reason given by the Assessing Officer to discredit the cash flow statement is arbitrary and merely based on surmises. No independent enquiry was made by the Assessing Officer to falsify the source for the investments given in the cash flow. A mere summary rejection of it cannot be a ground to hold that the amount invested is the undisclosed investment of the assessee.

14.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

14.4 We have heard both the parties and perused the material on record. These gifts are reflected in the cash flow statement for the financial year ending 31.03.1992 for ₹20,000/-, 31.03.1993 for ₹20,000/-. 31.3.1994 for ₹25,000/-, 31.03.1995 for ₹25,000/- and 31.03.1996 for

₹30,000/-, totaling to ₹1,20,000/-. Being so, we find that the assessee has explained this expenditure and accordingly, this addition is deleted. This ground of the appeal of the assessee is allowed.

15. The next ground raised by the assessee is with regard to investment in Tamilarasi for ₹52,500/- which was treated as undisclosed income by the Assessing Officer for the assessment year 1992-93

15.1 The facts of the issue are that the assessee commenced his proprietary business of M/s. Tamilarasi Publications during the year with an admitted capital investment of ₹52,500/-. The assessee was directed to explain the source of this capital investment vide department letters dated 02.07.1997 and 20.02.1998. The assessee has not explained the source. Hence, the Assessing Officer treated ₹52,500/- as undisclosed income of the assessee.

15.2 The Id. Authorised Representative for assessee submitted the explanation is given regarding source of fund in the cash flow statement. The reason given by the Assessing Officer to discredit the cash flow statement is arbitrary and merely based on surmises.

15.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

15.4 We have heard both the parties and perused the material on record. This amount of ₹52,500/- was reflected in the cash flow statement for the year ended 31.03.1992. Being so, the addition cannot be made. Hence, we delete the addition made by the Assessing Officer. Accordingly, this ground of the appeal of the assessee is allowed.

16. The next ground raised by the assessee is with regard to purchase of land at Thanjavur for ₹2,13,000/- which was treated as undisclosed income by the Assessing Officer.

16.1 The facts of the case are that the assessee purchased a land on 10.2.92 and 10.05.1992 in Parisutham Nagar, Thanjavoor at an admitted cost of ₹1,24,000/- and ₹89,000/- for the assessment years 1992-93 and 1993-94. The assessee was directed to explain the source of this investment vide department letter dated 02.07.1997. However, the assessee has not explained the source, and hence the Assessing Officer treated ₹2,13,000/- as undisclosed income of the assessee. Against this, the assessee is in appeal before us.

16.2. The Id. Authorised Representative for assessee submitted that explanation given regarding source available in the cash flow statement. The reasons given by the Assessing Officer to discredit the cash flow statement is arbitrary and merely based on surmises.

16.3. The Id. Departmental Representative relied on the orders of the Assessing Officer.

16.4 We have heard both the parties and perused the material on record. These amounts reflected in the cash flow statement at ₹1,24,000/- as on 31.3.1992 and ₹89,000/- as on 31.03.1993. Being so, the additions are deleted as the assessee has explained the investments. This ground of the appeal of the assessee are allowed.

17. The next ground raised by the assessee is with regard to deposit in Tamilarasi for ₹2,12,310/- which was treated as undisclosed income by the Assessing Officer for the assessment year 1993-94.

17.1 The facts of the case are that the assessee's capital account is credited with a sum of ₹2,12,310/- and the source for which was not explained by the assessee inspite of asking for the same. Hence, the Assessing Officer treated ₹2,12,310/- as undisclosed income of the assessee. Against this, the assessee is in appeal before us.

17.2 The Id. Authorised Representative for assessee submitted that the explanation was already given regarding source available in the cash flow statement. The reason given by the Assessing Officer to discredit the cash flow statement is arbitrary and merely based on surmises.

17.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

17.4 We have heard both the parties and perused the material on record. An amount of ₹2,12,000/- was reflected in the cash flow as on 31.03.1993. Being so, the addition cannot be made. Hence, we delete the addition made by the Assessing Officer. Accordingly, this ground of the appeal of the assessee is allowed.

18. The next ground raised by the assessee is with regard to interest suspense account of ₹4,23,460/- for the assessment year 1995-96.

18.1 The facts of the case are that there was a credit of ₹4,23,460/- under the head interest suspense. The details in respect of the same was not furnished by the assessee, though the department has called for the same vide letter dated 25.02.1998. Therefore, the Assessing Officer treated ₹4,23,460/- as undisclosed income of the assessee. Against this, the assessee is in appeal before us.

18.2 The Id. Authorised Representative for assessee submitted that there was actually a debit balance in the books of the assessee. The assessee has claimed deduction in respect of proportionate amount for two assessment years as

an expenditure. The Assessing Officer went wrong in not allowing the deduction but also erroneously treated this as a credit balance and made the addition.

18.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

18.4 We have heard both the parties and perused the material on record. The assessee has not furnished the details of these expenditure. In our opinion, whenever assessee claimed an expenditure it should be incurred wholly and exclusively for the purpose of business. In the absence of any evidence to substantiate this expenditure, we decline to appreciate the argument of the assessee counsel. This ground of the appeal of the assessee is rejected.

19. The next ground raised by the assessee is with regard to unexplained credits which was treated as undisclosed income by the Assessing Officer.

19.1 The facts of the case are that the assessee's capital account has been credited with an amount of ₹10,00,000/- described as advance for the land paid in 1992-93 from personal account. The assessee was asked to explain this entry. In the books of account pertaining to 1992-93 there was no such transaction as advance for land. The assessee has not explained the source. The special auditor in his report has observed that ₹10,00,000/- said to be advance for land purchase

was funded by a fresh credit into the assessee's capital account for which there was no supporting evidence. Hence, the Assessing Officer treated ₹10,00,000/- as undisclosed income of the assessee. Further, the Special Auditor has reported credits of ₹7,80,000/-, ₹5,70,000/- and ₹4,16,050/- in the Apna Finance, Ashok Mehta & Company and Om Prakash Mehta, and the assessee has not furnished the address of the parties. The department vide letter dated 25.02.1998, the assessee was informed that in case the assessee wished to prove the genuineness of these credits, they should produce books of accounts, bank accounts etc., supporting the transaction. The assessee ought to have complied with these by 02.03.1998. However, at a very late stage namely on 9.3.1998 assessee filed certain confirmation letters from these parties. However, the assessee has not produced the books of accounts, bank accounts etc.,. Hence, the Assessing Officer treated ₹7,80,000/-, ₹5,76,000/- and ₹ 4,16,000/- as undisclosed income of the assessee. Further, in Tamilarisari publication account is credited with ₹5,00,000/- in the name of S.N. Chandrasekaran and ₹1,50,000/- in the name of Ms. Geethanjali. Earlier, there were debit balance against these names for identical amounts. At a later stage on 9.3.1998, the assessee field a letter alongwith with confirmation letters from S.N. Chandrasekaran and Ms. Geethanjali. The letter does not in clear terms explains the credit worthiness of the persons and the exact source such as bank account etc from which was paid. These persons were not produced before the Assessing Officer. The confirmation

letters are not given any credence. Since, there is no evidence regarding the repayment of these loans by these individuals the credits in their accounts are treated as assessee's undisclosed income. Against this, the assessee is in appeal before us.

19.2 The Id. Authorised Representative for assessee submitted that confirmations letters from these parties and the Assessing Officer treated these credits as not genuine without any sort of examination of the parties concerned. The onus cast on the assessee of proving the credits was discharged by way of filing confirmation from the parties. It was within the powers of the Assessing Officer to summon them and examine the creditors which the Assessing Officer does not chose to do. The parties are regular financiers and the Assessing Officer could have caused their examination before treating the credits as unexplained. Under these circumstances, the rejection of the explanation and addition of the amounts are unexplained credits may be deleted. That apart, these credits figure in the books of Tamilarasi publications and the examination/addition of these credits would fall for consideration in regular assessment and cannot be considered in block assessment u/s.153BC.

19.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

19.4 We have heard both the parties and perused the material on record. The Assessing Officer has given ample of opportunities to prove the identity, genuineness and creditworthiness of the transactions. Whenever any amount found credited in the books of account of the assessee in the previous year relevant to the assessment year, it is the duty of the assessee to prove the above ingredient of the transaction. Since the assessee was not able to produce necessary evidence to prove the transaction with the supporting evidence, we are inclined to confirm the addition in respect of these substantive credits. Hence, this ground of the appeal of the assessee is dismissed.

20. The next ground raised by the assessee is with regard to credit card payments which was treated as undisclosed income by the Assessing Officer.

20.1 The facts of the case are that the assessee paid an payment of ₹17,766/- for the assessment year 1994-95, ₹,78,634/- for the assessment year 1995-96 and ₹24,314/- for the assessment year 1996-97. The assessee has not produced source of income for payment of ₹17,766/- and ₹24,314/- Hence, the Assessing Officer treated the amount as undisclosed income of the assessee. The Id. Authorised Representative for assessee vide letter dated 7.3.1998 has furnished the source of income for ₹2,78,634/- in respect of the credit card with American Express. Of this one payment on 23.03.1995 of US \$5642.00 was claimed to have

been made by Mr.Thomas Yip of Hongkong in connection with some hospital expenses incurred by the assessee in London on his behalf. Except for a copy of letter dated 28.4.1995 from the said Mr. Thomas Yip addressed to the assessee no proof has been furnished in the respect. The letter of Thomas Yip was not produced it till 09.03.1998 when the matter regarding payments to credit cards was brought to the notice for explanation on 02.07.1997 itself. As regards merits, as per the letter of Mr. Thomas Yip, who is from Hongkong, allegedly fell ill suddenly in London and the assessee attended to his medical needs the expenditure for which was debited to his account with credit card. The bills debited to his account are as under:-

Date	Amount in US \$
11.1.1995	3228
13.1.1995	375
16.1.1995	626
18.1.1995	1260
27.1.1995	153.02

The assessee has not adduced any evidence such as copies of hospital bills etc. to show that the expenditure was incurred on Mr. Thomas Yip and that the payment was in fact made by Mr.Thomas Yip. No details of source such as debit to a bank account of Mr. Thomas Yip etc., have been furnished to substantiate the claim that the payment was in fact made by Thomas Yip. No details of source such as debits to a bank account of Mr.Thomas Yip etc have been furnished to substantiate the claim that Mr. Yip made the payment. Further, if it was to be believed that Mr. Yip suddenly fell ill and the assessee helped him in

hospitalisation. It was not understandable a to why the amounts were debited to the assessee's account and that too spread over a period of 02 months or so. The Assessing Officer not satisfied that the source of this payment from Thomas Yip. Therefore, the payment of US\$5642/- (equivalent Indian money ₹1,80,262/-) was treated as assessee's expenditure from unexplained sources. The representative's letter was silent in respect of the following payments made to American Express Card

15.08.1994	:	2,503.71
09.01.1995	:	418.73

Total	:	2,922.44 US\$

The US \$2,924.44 amount converted into Indian currency is ₹39,372/- was also treated as expenditure from unexplained sources and assessed accordingly. Thus, the Assessing Officer treated ₹2,78,634/- as undisclosed income of the assessee. Against this, the assessee is in appeal before us.

20.2 The Id. Authorised Representative for assessee submitted that no plausible reason was given by the Assessing Officer to reject the evidence produced as to the medical expenses of Mr. Yip. In other payments, there is sources available in the cash flow filed by the assessee.

20.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

20.4 We have heard both the parties and perused the material on record. These credit card payments are not reflected in the cash flow statement. In our opinion, the credit card payments cannot be considered as explained. Being so, this addition is sustained. This ground of the appeal of the assessee is rejected.

21. The next ground raised by the assessee for the following unproved expenditures:-

a)	Advertisement	1,60,055/-
b)	Electricity charges	33,794/-
c)	Travelling & Conveyance	1,20,000/-
d)	Car Maintenance	37,474/-
e)	Preliminary expenses	8,947/-
f)	Dep. Disallowed	4,60,000/-
h)	Disallowance u/s.40A(3)	1,33,365/-
i)	Scan Tech u/s.41(1)	67,055/-

21.1 With regard to advertisement expenses to the tune of ₹1,60,055/- which was treated as undisclosed income by the Assessing Officer, the assessee has debited a sum of ₹16,77,646/- by way of Administrative expenses. The auditor in his special Audit report has stated that the following items are not supported by bills/ vouchers

(a)	Moulis Advertising	:	₹2,00,000/-
(b)	C.C. Display	:	₹45,000/-
(c)	Advertisement exp. Display	:	₹18,000/-
(d)	Moulis Advertising	:	₹2,26,341/-
(e)	2 publications	:	₹3,00,000/-
(f)	C C Display expenses	:	₹45,000/-
(g)	Dhina Thanthi	:	₹45,000/-
(h)	Excellent 2 publicities	:	₹4,30,642/-

	Total		<u>₹13,09,983/-</u>

The Department vide letter dated 25.2.1998 the assessee was asked to prove these details towards advertisement in the light of the observations made by the Special Auditor. The case was posted for hearing for this purpose on 02.03.1998 by Assessing Officer. The assessee has not furnished any proof in this regard. M/s. Excellent 2 Publication. M/s. 2 Publicities have confirmed the transaction with the assessee and the same was allowed. The transactions with M/s. Moulis advertising also was checked up and they have confirmed the transaction. The total expenses claimed by the assessee as payment to Moulis is ₹2,26,341/- only. The assessee has filed vouchers for payments of CC display also. Out of total amount of ₹16,77,646/- a sum of ₹1,08,000/- which is not proved by the assessee is disallowed. Further, special auditor has reported that advertisement expenses to the extent of ₹52,055/- are not supported by vouchers /Bills. In the absence of any explanation from the assessee, the special auditor. The Assessing Officer treated ₹52,055/- as assessee's undisclosed income. Under the head advertisement expenses, the Assessing Officer treated ₹1,60,055/- as undisclosed income of the assessee.

21.2 With regard to electricity charges which was treated as undisclosed income by the Assessing Officer, the facts of the case are that the Special Auditor

has observed that Electricity expenses debited to the extent of ₹33,794/- does not relate to assessee's business. Therefore, the Assessing Officer treated ₹33,794/- as undisclosed income of the assessee.

21.3 With regard to travelling and conveyance to the tune of ₹1,20,000/- which was treated as undisclosed income by the Assessing Officer, the facts of the case are that special auditor has commented that in the absence of vouchers and other relevant particulars, it has not been possible to determine the disallowable expenses under 6D. It was proposed that a portion will be disallowed as relating to estimated personal expense of the assessee. Since, the assessee has not responded to this letter so far, a sum of ₹1,20,000/- was treated as undisclosed income of the assessee.

21.4 With regard to car maintenance of ₹37,474/- which was treated as undisclosed income by the Assessing Officer, the facts of the case are that the assessee debited a sum of ₹68,256/- ₹52,399/- ₹22,240/-, by way of Car Maintenance, one fourth of this expenditure was treated as personal in nature i.e ₹17,064/- ₹14850/- and ₹ 5560/- totalling ₹37,474/-. The Assessing Officer treated ₹37,474/- as undisclosed income of the assessee.

21.5 With regard to Preliminary expenses of ₹8,947/- which was treated as undisclosed income by the Assessing Officer, the facts of the case are that the assessee debited ₹8,947/- as preliminary expenses. By its very description the

Assessing Officer considered the amount has not allowable. So, he treated ₹8,947/- as undisclosed income of the assessee.

21.6 With regard to depreciation disallowed to the tune of ₹4,60,000/- which was treated as undisclosed income by the Assessing Officer, the facts of the case are that the assessee had claimed depreciation of ₹30,26,551/-. One of the machineries viz WEB offset press model mark 62 is purchased for ₹48,40,956/-. Out of this consideration the assessee has not paid a sum of ₹2,06,794/- . During the course of discussion with the Id. Authorised Representative for assessee it transpired that this liability is not proposed to be paid off. In view of this, the amount of ₹2,06,794/- is reduced from the block of assets and the deprecation at 25% is disallowed, which works out ₹51,699/-, Apart from this, sale of a van was wrongly credited to sales a/c. in the books of Tamilarasi Publications. This mistake was pointed out by the Id. Authorised Representative for assessee in a revised computation of the income returned by the assessee in the block return. While deducting this from taxable income depreciation @20%. The Assessing Officer treated ₹68,799/-, ₹52,454/-, 193,612/- and ₹1,45,756/-, totalling ₹4,60,000/- treated undisclosed income of the assessee.

21.7 With regard to disallowance u/s.40A(3) to the tune of ₹1,33,365/- which was treated as undisclosed income by the Assessing Officer, the facts of the case

are that in the special audit report the payment of ₹38,365/- , 48750, 16,250/- and 30,000/-/- is made in cash on 11.10.1993, 14.06.1995, 15.06.1995 and 01.07.1995. The Id. Authorised Representative for assessee in his reply dated 9.3.1998 has stated that this payment was made in cash because of the urgency. According to him it is covered by Rule 6DD. The assessee however has not proved the genuiness of this payment. Moreover the circumstances has not proved the genuiness of this payment. Moreover, the circumstances explained for making the cash payment was also not satisfactory. So this amount is therefore added to the business income of the assessee.

21.8 With regard to liability due to Scantech for ₹67055/- which was treated as undisclosed income by the Assessing Officer, the facts of the case are that liability due to scantech u/s.41(1) at ₹67,055/- was treated as undisclosed of the assessee by the Assessing Officer.

21.9 The Id. Authorised Representative for assessee submitted that all these items are debited in the books of M/s. Tamilarasi Publications. Th veracity of the debits can be examined only in the regular assessment. These disallowances cannot be subject matter of addition in block assessment u/s.158BC. Hence, the Id. Authorised Representative for assessee prayed that all these disallowance may be deleted.

21.10 The Id. Departmental Representative relied on the orders of the Assessing Officer.

21.11. We have heard both the parties and perused the material on record. The contention of the Id. Authorised Representative for assessee is that these expenditures are reflected in the regular books of accounts in M/s. Tamilarasi Publications, if it is actually reflected in the regular books of accounts of M/s. Tamilarasi Publications the addition cannot be made in the hands of the assessee. These facts required to be examined by the Assessing Officer. Hence, these grounds are remitted back to the file of the Assessing Officer for fresh consideration. This grounds of the appeal of the assessee are partly allowed for statistical purposes.

22. The next ground raised by the assessee is with regard to investment in jewellery to the tune of ₹2,00,00/- which was treated as undisclosed income by the Assessing Officer.

22.1 The facts of the case are that the assessee stated that he owns jewellery worth of ₹2,00,000/- as on 31.12.1995. The department vide letter dated 02.07.1997 directed the assessee to furnish a list of jewels owned by him together with his explanation regarding the source of its acquisition. However, the assessee has not furnished the details till date. Hence, the Assessing Officer treated ₹2,00,000/- as unexplained investment of the assessee for the year

ending 31.03.1996 and accordingly assessed the investment as undisclosed income.

22.2 The Id. Authorised Representative for assessee submitted that the possession of jewellery was explained in the net wealth statement of the assessee. Further, the source is available in the cash flow statement filed by the assessee. A summary rejection of the cash flow by the Assessing Officer will not render the amount as unexplained investment.

22.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

22.4 We have heard both the parties and perused the material on record. In the cash flow statement for the year ending 31.03.1996, this amount of ₹2,00,000/- was not reflected in the cash flow statement filed before us. Being so, the addition of ₹2,00,000/- is sustained. This ground of the appeal of the assessee is dismissed.

23. The next ground raised by the assessee is with regard to foreign travel expenses to tune of ₹31,42,000/- which was treated as undisclosed income by the Assessing Officer.

23.1 The facts of the case are that the assessee made a foreign trip to Singapore, Hongkong and Phillipness. The duration of the trip is from 17.2.1991 to 18.4.1991. The expenses are spread over two previous year. The assessee was asked to explain the source of funds for his foreign trips. In this letter dated 2.9.1997 the assessee stated that the trip was for his business for attending printing and computer machine exhibition and the expenditure is accounted in the books. The assessee has not pin pointedly given any details including the debt in the books. In this regard, he had been specially asked for such details vide the department letter dated 20.02.1998. In this letter he was asked to furnish details of his foreign trips, destination, number of days stayed aboard, expenses involved and the precise information regarding the sources. If the expenses are met out of the business income of M/s. Tamilarsi Publications , the assessee was requested to point out the exact debit in the relevant books of account. The assessee had not furnished any reply in this regard. Therefore, the Assessing Officer estimated the expenses for 42 days(i.e from 17.2.1991 to 31.3.91) at ₹5,000/- per days , the expenses comes to ₹2,10,000/- and the ticket expense for onwards journey estimated at ₹10,000/-. The total foreign tour expenses taken at ₹2,20,000/- for the assessment year 1991-92. Further for the assessment year 1992-93, the assessee undertook foreign trips i.e from 1.4.91 to 18.04.91, i.e 18 days. The expenses in this regard is estimated at the rate of ₹5,000/- per day and ticket charged is estimated at ₹10,000/-. The

expenses at to USA and Singapore from 9.8.91 to 27.09.91 for 50 days and 1.10.91 to 12.10.1991 to Zurich, Dubai and Singapore 12days. The Assessing Officer estimated the expense for 62 days at 5,000 per days, the expense comes to ₹3,10,000/- and the cost of ticket for two trips is taken at ₹2,00,000/-. The total foreign tour expenses taken at ₹6,10,000/-. The assessee undertook foreign trips to Frankfurt, London from 23.04.1992 for 09 days and to Singapore from 23.05.92 for 5 days, Singapore and Malaysia from 13.11.92 for 16 days. The Assessing Officer estimated the expense for 30 days at 5,000 per days, the expense comes to ₹1,50,000/- and the cost of ticket for three trips is taken at ₹4,00,000/-. The total foreign tour expenses taken at ₹6,10,000/-. For the assessment years 1993-94, the assessee's total foreign tour expenses is ₹5,50,000/- , for the assessment years 1995-96, the assessee's total foreign tour expenses is ₹7,52,000/- and for the assessment years 1996-97, the assessee's total foreign tour expenses is ₹10,10,000/-. The Assessing Officer treated the amount as undisclosed income of the assessee. Against this, the assessee is in appeal before us.

23.2 The Id. Authorised Representative for assessee that in the scheme of block assessment there is no scope of estimation of expenses unless it is evidenced by material found in the course of search. It can be seen that all foreign travel expenses are estimated by the Assessing Officer and hence all the

additions are to be deleted as not emanating out of search and hence cannot be considered as UDI computed u/s.158BB of the Act. Further, the air ticket and expenses in India alone were met by assessee and duly reflected in the cash flow. All expenses relating to stay, food and travel in abroad were met by his business hotels, friends, and well –wishers in those countries. The explanation furnished by assessee in this regard in the source of assessment was summarily rejected by the Assessing Officer had restored to an estimate of the expense which is not in consonance with the scheme of UDI as contemplated in block assessment.

23.3 The Id. Departmental Representative relied on the orders of the Assessing Officer.

23.4. We have heard both the parties and perused the material on record. The contention of the Id. Authorised Representative for assessee is that addition is made only on estimation basis in the block assessment. One cannot estimate the expenditure in block assessment without any seized material suggesting the expenditure. Being so, we are remitting this issue back to the file of the Assessing Officer to verify the nexus between the seized material and the expenditure incurred and decide the issue afresh and if there is no seized material in respect of this addition, the Assessing Officer cannot make addition on this count. This issue

is remitted back to the Assessing Officer for fresh consideration. This ground of the appeal of the assessee is partly allowed for statistical purposes.

24. In the result, the appeal of the assessee in IT(SS)A-06/Mds/2013 is partly allowed for statistical purposes.

Order pronounced on Wednesday, the 30th day of September, 2015, at Chennai.

Sd/-

(वी. दुर्गा राव)

V. DURGA RAO

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य/ ACCOUNTANT MEMBER

चेन्नई/Chennai.

दिनांक/Dated:30.09.2015.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2. प्रत्यर्थी/ Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.