

Smt N.Saroja vs The Commissioner Of Income — T.C.A. Nos. 1395 to 1401 of 2009

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T.C.A.Nos.1395 to 1401 of 2009 IN THE HIGH COURT OF JUDICATURE AT MADRAS Reserved on :09.03.2026 Pronounced on :18.03.2026 CORAM THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN AND THE HONOURABLE MR.JUSTICE R.SAKTHIVEL
T.C.A.Nos.1395 to 1401 of 2009 T.C.A.No.1395 of 2009: Smt.N.Saroja, 6-C, Kaveri Nagar, Near Railady, Mayiladuthurai. ..Appellant/Appellant /versus/ The Assistant Commissioner of Income Tax, Central Circle-II, Tiruchirappalli. ..Respondent/Respondent Prayer: Tax Case Appeal is filed under Section 260-A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 13.03.2009 in I.T.(SS)A.No.45/Mds/2008 for Block Period 01.04.1997 to 23.05.2003. Page Nos.1/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 T.C.A.No.1396 of 2009: Shri N.Ravichandran, 6-C, Kaveri Nagar, Near Railady, Mayiladuthurai. ..Appellant/Appellant /versus/ The Assistant Commissioner of Income Tax, Central Circle-II, Tiruchirappalli. ..Respondent/Respondent Prayer: Tax Case Appeal is filed under Section 260-A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 13.03.2009 in I.T.(SS)A.No.46/Mds/2008 for Block Period 01.04.1997 to 23.05.2003. T.C.A.No.1397 of 2009: Shri.N.Ravichandran, 6-C, Kaveri Nagar, Near Railady, Mayiladuthurai. ..Appellant/Respondent /versus/ The Assistant Commissioner of Income Tax, Central Circle-II, Tiruchirappalli. ..Respondent/Appellant Prayer: Tax Case Appeal is filed under Section 260-A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 13.03.2009 in I.T.(SS)A.No.58/Mds/2008 for Block Period 01.04.1997 to 23.05.2003. Page Nos.2/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 T.C.A.No.1398 of 2009: Shri.N.Muralidharan, 6-C, Kaveri Nagar, Near Railady, Mayiladuthurai. ..Appellant/Respondent /versus/ The Assistant Commissioner of Income Tax, Central Circle-II, Tiruchirappalli. ..Respondent/Appellant Prayer: Tax Case Appeal is filed under Section 260-A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 13.03.2009 in I.T.(SS)A.No.47/Mds/2008 for Block Period 01.04.1997 to 23.05.2003. T.C.A.No.1399 of 2009: Shri.N.Muralidharan, 6-C, Kaveri Nagar, Near Railady, Mayiladuthurai. ..Appellant/Respondent /versus/ The Deputy Commissioner of Income Tax, Central Circle-II, Tiruchirappalli. ..Respondent/Appellant Prayer: Tax Case Appeal is filed under Section 260-A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 13.03.2009 in I.T.(SS)A.No.56/Mds/2008 for Block Period 01.04.1997 to 23.05.2003. Page Nos.3/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 T.C.A.No.1400 of 2009: Shri.N.Mohanraj, 6-C, Kaveri Nagar, Near Railady, Mayiladuthurai. ..Appellant/Appellant /versus/ The Assistant Commissioner of Income Tax, Central Circle-II, Tiruchirappalli. ..Respondent/Appellant Prayer: Tax Case Appeal is filed under Section 260-A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 13.03.2009 in I.T.(SS)A.No.48/Mds/2008 for Block Period 01.04.1997 to 23.05.2003. T.C.A.No.1401 of 2009: Shri.N.Mohanraj, 6-C, Kaveri Nagar, Near Railady, Mayiladuthurai. ..Appellant/Respondent /versus/ The Deputy Commissioner of Income Tax, Central Circle-II, Tiruchirappalli. ..Respondent/Appellant Prayer: Tax Case Appeal is filed under Section 260-A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 13.03.2009 in I.T.(SS)A.No.57/Mds/2008 for Block Period 01.04.1997 to 23.05.2003. Page Nos.4/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 For Appellant: Mr.I.Dinesh for (in all cases) M/s Philip George For Respondent: Mr.V.Mahalingam, S/C in (in all cases) T.C.A.Nos.1395 of 2009 to 1399 of 2009 Mr.D.Prabhu Mukunth Arunkumar Senior Standing Counsel in T.C.A.Nos.1400 and 1401 of 2009 COMMON JUDGMENT (Judgment was made by Dr.G.JAYACHANDRAN,J.) Smt.Saroja and her three sons, namely, Muralidharan, Mohanraj and Ravichandran were all living jointly at No:6-C and C-27, Cauvery Nagar, Mayuram. The family members were carrying jewellery business individually as well as HUF in different trade name. On 23.05.2003, a search was conducted in their residential premises as well as the business premises, during which incriminating documents, jewels and cash were seized. Based on the materials collected during the course of search and seizure, notice under Section 158 BC of Income Tax Act, 1961 (hereinafter referred to as "IT Act") was issued to each of them and enquiry was conducted. Block assessment for the Assessment years 01-04-1997 to 23-05-2003 was made by the Assessing Officer, based on the materials recovered during the course of seizure. The Assessing Officer had Page Nos.5/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 opined that the house property purchased by the brothers showing sale value as Rs.14 lakhs was infact, worth more than Rs.1,50,00,000/- and a payment of Rs.61,69,000/- proved through the loose sheets recovered during the search. Further, for 3032 grams of gold jewellery kept in their house, the source was unexplained. That apart, for silver and diamonds found in the residential premises was not disclosed in their wealth tax returns. Hence, those jewellery were held as business stocks investment from undisclosed income.

2. The contention of the assesseees that the loose sheets recovered from their premises neither contained any signature nor were written by the buyer (assessee) or by the vendor and therefore, in the absence of corroborative materials, it is not reliable, was negated by the Assessing Officer. As far as the jewellery is concerned, since for 9525.060 grams of jewels found in their possession, they were able to account only for 6155.710 grams and the balance remains unexplained, the contention of the assesseees that they are the business stock, was rejected. As a consequence of the said finding, for the undisclosed income, the Assessing Officer assessed income of these individuals for the block period from 01.04.1997 to 23.05.2003 as below:- Total Undisclosed Income: I. Investment in property: Rs. 13,68,865/- II. Investment in Jewellery: Rs. 3,79,044/- ----- Total Rs. 17,47,909/- ----- Page Nos.6/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009

3. The Assessing Officer computed tax payable by each of the brothers as below as issued the assessment order on 30/05/2005 reserving the right to initiate penalty proceedings u/s 158 BFA(2) separately. Computation of undisclosed income in respect of N.Ravichandran, N.Muralidharan and N.Mohanraj each: Asst. year Source Total Income Returned Undisclosed Rs. Income Income Rs. Rs. 2000-01 Investment in 13,68,865 --- 13,68,865 Property Para 20 2004-05 Investment in 3,79,043 ---- 3,79,043 Upto Jewellery Para-9 23-05-2003 Total 17,47,908 Total undisclosed Income R.17,47,908 Add: Tax Thereon at 60% Rs.10,48,745 Add:Surcharge @ 10% Rs. 1,04,874 ----- Total tax payable Rs.11,53,619 -----

4. In the case of Smt. N.Saroja, to the extent of unaccounted jewellery held by her jointly with her sons, Rs.3,79,044/- being the 1/4th value, treated as her undisclosed income, the tax payable was computed as below:- Computation of undisclosed income Asst.Year Source Total

Income Undisclosed Income 2004-05 Investment in jewellery 3,79,040 3,79,040 (upto 23.5.03) Page Nos.7/24
<https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 Total undisclosed income :3,79,040 Tax thereon @ 60% :2,27,424 Add:SC @ 10% : 22,742 ----- Total tax payable :2,50,166 -----

5. Aggrieved by the Assessment Order, each of the assessee preferred appeals before the Commissioner of Income Tax (Appeal), Tiruchirappalli. The Appeals of N.Mohanraj, N.Muralidaran and N.Ravichandran were taken up as I.T.A Nos:262, 264 and 265 of 20008-07 respectively. The Appellate Authority vide order, dated 08.01.2008, passed identical, but separate orders in all the appeals, the facts being one and the same. The appeals were partly allowed with the following observations:- "(a) The appellant could not prove nature and source of payment of cash amounting to Rs. 18094448 (Rs 3143959 - Rs 1334502) for purchase of property. Therefore addition to the extent of Rs 1809448 is confirmed. 1/3rd share of the appellant in this undisclosed investment works out to Rs. 603150/-. The Assessing Officer is directed to treat the undisclosed income of the appellant for the assessment year 2000-2001 falling within the Block Period at Rs 603150/- and the balance amount is directed to be deleted. b) The plea of the appellant regarding telescoping of excess jewellery is rejected because of lack of any documentary evidence in this regard. Since the excess jewellery was owned by the mother (Smt.Saroja) and her three sons and their families, the share of excess jewellery in the hands of the appellant in the Page Nos.8/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 total excess works out to Rs: 2,97,344 being 1/4th share of the appellant in the total excess jewellery found at the time of search and the sources of which could not be satisfactorily explained by the appellant. Therefore the addition to the extent of Rs 2,97,344/- is confirmed."

6. The appeal by N.Saroja was taken as I.T.A.No:83/2007-08. The Appellate Authority, vide, order dated 08/01/2008 reiterating the observation made in the connect appeal preferred by her sons. Since she was only concern about the computation of tax in respect of value of the excess jewels, it held as undisclosed income. The appellate authority passed the following order:- "The total undisclosed investment in Jewellery by the family works out to Rs.11,89,375/- as against the addition to the Rs.15,16,175/- made by the Assessing Officer. Accordingly, the addition to the extent of Rs.11,89,375/- towards unexplained investment in jewellery held by the appellant and her sons is confirmed and balance amount is directed to be deleted."

7. The Order of the Appellate Authority dated 08/01/2008, who partly allowed the appeals in the above terms, was challenged by the assessee in respect of the disallowed portion of their prayer and the Department as against the allowed portion have preferred the appeals before the Income Tax Appellate Tribunal (herein after referred to as "ITAT"). Page Nos.9/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009

8. The ITAT took into consideration the pleadings of the vendor, that the property in the civil suit held between the assessee and the seller of the property and his statement to corroborate the entries was found in the loose sheets recovered from the premises of assessee during the search operation. The ITAT by a common order dated 13/03/2009, dismissed the appeals preferred by the assessee and partly allowed the appeals by the Department.

9. As against the common order passed in the respective appeals, the assessee are preferred appeals before this Court under Section 260A of the IT Act,

10. For convenience sake, the name of the assessee, the Appeal number before ITAT and the Tax Case Number before this Court is given below:- S.No Name of the assessee Appeal Number before Tax Case Appeal ITAT Number before HC 1 Smt.N.Saroja I.T.(SS)A.No:45/Mds/2008 T.C.A.No: 1395/2009 2 N.Ravichandran I.T.(SS)A.No:46/Mds/2008 T.C.A.No: 1396/2009 3 N.Ravichandran I.T.(SS)A.No:58/Mds/2008 T.C.A.No: 1397/2009 (Dept. Appeal) 4 N.Muralidaran I.T.(SS)A.No:47/Mds/2008 T.C.A.No: 1398/2009

5. N.Muralidaran I.T.(SS)A.No:56/Mds/2008 T.C.A.No: 1399/2009 (Dept. Appeal) 6 N.Mohanraj I.T.(SS)A.No:48/Mds/2008 T.C.A.No: 1400/2009 7 N.Mohanraj I.T (SS)A.No:57/Mds/2008 T.C.A.No: 1401/2009 (Dept. Appeal) Page Nos.10/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009

11. At the time of admitting the appeals, T.C.A.No:1395 to T.C.A.No:1399 of 2009 on 04.01.2010, in T.C.A.No:1395 of 2009, T.C.A.No:1396 of 2009 and T.C.A.No:1398 of 2009, this Court has framed the following Substantial Question of Law:- "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the jewellery kept at home cannot form part of business stock?

12. In T.C.A.No:1397 of 2009, the Court has framed the following Substantial Questions of Law:- "(1)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in setting aside the order of the CIT(A) on the issue of telescoping of deficit in the explained cash for making payment towards purchase of property (2)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not allowing telescoping of explained cash till the date of search, while making addition on account of undisclosed income for purchase of property?

13. T.C.A.No:1400 of 2009 and T.C.A.No:1401 of 2009 came for admission on 19/01/2010, wherein, the Court, taking note of the Substantial Page Nos.11/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 Questions of Law, framed in the identical appeals admitted earlier, has framed the Substantial Question of Law as below:-

14. T.C.A.No:1400 of 2009: (1)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the addition of undisclosed income on account of investment in property merely on the basis of loose sheet found which was not in the handwriting of the appellant nor of the vendor? (2)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in placing reliance on the loose sheet against the decision of the Additional Subordinate Judge in the civil suits? (3)Whether on the facts and in the circumstances of the case, the income Tax Appellate Tribunal was right in law in holding that onus is on the appellate under Section 132(4A) to prove the negative that the entries in the loose sheet does not reflect the actual consideration? (4) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the jewellery kept at home cannot form part of business stock? Page Nos.12/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009

15. T.C.A.No:1401 of 2009: "(1)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in setting aside the order of the CIT(A) on the issue of telescoping of deficit in the explained cash for making payment towards purchase of property (2)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not allowing telescoping of explained cash till the date of search, while making addition on account of undisclosed income for purchase of property?

16. The Learned Counsel for the Appellants, at the outset, submitted that the facts and law involved in these appeals are common. Therefore, the Substantial issues framed in T.C.A.No:1400/2009 and T.C.A.No.1401/2009 being composite, the same may be addressed for appropriate decision.

17. The submission of the Learned Counsel for the appellants in short:- (a) The addition of undisclosed income on account of investment in the property, merely based on the uncorroborated entries found in the loose sheets are unworthy of any reliance. Presumption under Section 132(4A) of the IT Act cannot be drawn to the facts of the case, when sale of the property was for a Page Nos.13/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 consideration of Rs.14 lakhs only and the same is not controverted by the seller. (b) The stock in trade kept in the residence has erroneously been held as investment from undisclosed income. Just because the jewels were in single piece, the authorities have declined to take it as business stock. The said reason is not sustainable and logic. Traders keeping valuable stocks in residence is not uncommon. (c) The Commissioner of Income Tax (Appeal) had rightly held that there was actual deficit of cash balance available for the concern period for which necessary telescoping should be granted. Whereas the Tribunal erred in setting aside the order of the CIT (A) on the issue of telescoping of deficit in the explained cash for making payment towards purchase of property. The Tribunal ought to have allowed telescoping of explained cash for making payment towards purchase of the property, till the date of search. (d) In the civil suit by the assessee against the seller for enforcing the sale, the Court has held that the actual sale consideration for the property agreed is only Rs.14 lakhs and not Rs.1.5 crores as claimed by the seller. Therefore, the doctrine of "Approbation and Reprobation" is not applicable to the facts of the case. Therefore, the Tribunal has grossly erred in law by applying the doctrine of "Approbation and Reprobation". The Tribunal cannot substitute its view on the value of the property is contrary to the finding of the Civil Court. Page Nos.14/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009

18. Per contra, the Learned Senior Standing Counsel appearing for the Department submitted that considering the fact that the assessee has not explained source for the investment in house property and the excess gold jewellery was found on the date of search and the same was treated as investment from undisclosed income in respect of jewellery held in excess of the account maintained as on the date of search (03.05.2003). Thus, undisclosed income on account of excess jewellery ascertained at Rs.15,16,175/- as the 4 family members live jointly, 1/4th of undisclosed income at Rs.3,79,044/- is assessed in the hands of: 1. Smt.Saroja 1/4th :Rs.3,79,044 2. Sri N.Muralidharan 1/4th :Rs.3,79,044 3. Sri.N.Mohanraj 1/4th :Rs.3,79,044 4. Sri.N.Ravichandran 1/4th :Rs.3,79,043 ----- Total :Rs.15,16,175 -----

19. Regarding the property purchased in the name of the three brothers, the seized Doc.No.SS/B&D/F-30/Loose, Sheet No.101, deals with purchase of property at 109, Pattamangalam Street, Mayiladuthurai. The nature and amount recorded in the loose sheet are : Advance :Rs. 1,00,000 1st Instalment :Rs.40,00,000 Page Nos.15/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 House tax paid 1999-2000 13,406/- 2000-2001 26,812/- 2001-2002 26,812/- Water tax 1,920/- ----- :Rs.68,950 ----- Additional payment to Backside :Rs.10,00,000 Municipal Tax paid :Rs. 2,00,000 Stamp duty paid :Rs. 3,00,000 Legal Fees :Rs. 6,00,000 ----- Rs.62,68,950 -----

20. In view of the above, payment made as per the said document, the true value of the property works out to Rs.62,68,950/-. Further, as per the Annexure-A (attached with the deed) which is also one of the Government document the market value of the property is Rs.6,000/- per sq.ft. This works out to Rs.6,000/- x 3180 sq.ft. = Rs.1,90,80,000/-. This shows that the worth of property is not Rs.14 lakhs but near about Rs.2 crores. As per the assessment, based on these uncontroverted documents, the valuation been made and tax imposed for the undisclosed income, which the assessee failed to prove the source.

21. The dispute between the assessee and the seller was on a different Page Nos.16/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 context. The pleading of the assessee in their suit is different from the plea before the Department. From the loose sheet, it is evident that, after detailing the payment of Rs.1 lakh as advance and Rs.14 lakhs in the seller's loan account, Further, sum of Rs.68,950/- as house tax on behalf of sellers and a sum of Rs.40,68,950/- paid towards sale consideration. The suit filed before the Additional Subordinate Judge is entirely on a different context. The claim by the assessee that the Civil Court had confirmed that the vendor has agreed to sell the property for Rs.14 lakhs, while considering whether the suit filed by the assessee against the sellers was maintainable and the assessee was entitled to the relief sought in the suit, cannot be taken as a bar for proceedings in tax laws. The veracity of the loose sheets, in the light of Section 132(4A) of the Income Tax Act, 1961, was not produced before the civil suit or tested in the Civil Court. Hence, the assessment of the tax liabilities have to be judged on the anvil of provisions of tax laws alone.

22. With regard to the claim of the jewellery found in excess as the business stock, the assessee failed to provide evidence. The excess jewels found in possession of the assessee ought to have reflected either in their stock in trade or in their wealth tax return. Since their books of account does not explain the possession of the excess jewellery, the same has been treated as undisclosed investment and assessed to tax as per law. Page Nos.17/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009

23. In so far as the plea of telescoping, the learned Senior Standing Counsel for the Department contended that, in the absence of corroboration, the deficit in cash balance in the explained cash balance for the concerned period, principle of telescoping, shall not apply.

24. Heard the Learned Counsels representing the appellants and the learned Senior Standing Counsel representing the Department.

25. The Substantial Question of Law primarily is the probative value of the entries found in the loose sheets recovered during the course of search qua Section 132(4) and (4A) of the Income Tax Act, 1961. That apart, whether the assessee is entitled for 'telescoping' their unexplained cash in hand prior to the date of investment in the property and should be given credit before arriving at undisclosed income.

26. Law of evidence regarding appreciation of evidence in a judicial proceedings either in the civil case or in the criminal case qua Income Tax Act is not the same. Particularly, when the proceedings under Income Tax Act, 1961 is not a Judicial proceedings and the Act prescribes presumption of fact, the decree of proof and the onus to prove substantial differs. In case of Income Tax Act Page Nos.18/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 which is a composite Act, the fact in issue regarding undisclosed income is to be decided based on the entries disclosed in the books of accounts maintained by the assessee. In the civil suit, the documents inter-se parties are relevant and the books of account, if any, relied, it must clear the test of Section 34 of the Indian Evidence Act, 1872. In that context, the terms of the agreement and the consideration shown in the agreement will prevail. Whereas, under the Income Tax proceedings, the books of account as well as the records maintained contemporaneously found in contradiction/variation/omission/addition, in view of Section 132 (4) and (4 A) of the Act, 1961, it is the onus of the assessee to explain.

27. Point regarding the probative value of spiral note book/loose sheets, which contains details about money transaction, came up for consideration before the Hon'ble Supreme Court, in a criminal case widely known as "Jain Hawala Dairy case" (CBI -vs- V.C.Shukla and others reported in 1998 (3) SCC 410). The Hon'ble Supreme Court, after elaborate discussion on the expressions like 'Account', 'Books of Account' and 'regularly kept' employed in Section 34 of the Indian Evidence Act, 1872, in the context of criminal prosecution, had observed as below:- "24. It cannot be gainsaid that the words "account", "books of account", "business" and "regularly kept" appearing in Section 34 are of general import. Necessarily, Page Nos.19/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 therefore, such words must receive a general construction unless there is something in the Act itself, such as the subject-matter with which the Act is dealing, or the context in which the words are used, to show the intention of the legislature that they must be given a restrictive meaning.

25. Indubitably, the Act lays down the rules of evidence to be applied and followed in all judicial proceedings in or before any court including some courts-martial. Keeping in view the purpose for which the Act was brought into the statute-book and its sweep, the words appearing in Section 34 have got to be given their ordinary, natural and grammatical meaning, more so, when neither the context nor any principle of construction requires their restrictive meaning. While on this point we may refer to Section 209 of the Companies Act, 1956 which expressly lays down what "books of account" to be maintained thereunder must contain and, therefore, the general meaning of the above words under the Act may not be applicable there."

28. Thus, loose sheets or scraps of paper though cannot be termed as books of account for the purpose of applying Section 34 of the Indian Evidence Act, 1872, in a criminal prosecution, for the purpose of assessing tax, under the Income Tax Act, 1961, such loose sheets containing entries contemporaneous with the transaction entered are trustworthy, if fairly corroborated. The probative value of the entries in the loose sheet recovered from the assessee, who in the habit of making regular business records contemporaneously is high and the onus to disprove those entries is on the assessee, in view of Section 132 (4) of Income Tax Act, 1961. Page Nos.20/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009

29. In Commissioner of Income Tax v. T.Rangroopchand Chordia reported in [(2016) SCC Online Mad 4297], the Division Bench of this Court, while considering the probative value of the loose sheets picked up during search by the officials, relying upon the definition of documents as found in Section 2 of the Indian Evidence Act, 1872 and explanation under Sub-Section (4) of Section 132 of the Income Tax Act, 1961, held that addition made by the Assessing Officer, based on the loose sheets, cannot be found fault with. Following this judgment, the learned Single Judge of this Court in M.Vivek v. Deputy Commissioner of Income Tax reported in [2020 SCC online Mad 28272], declined the contention of the assessee that the loose sheets seized during the search under Section 132 of the Income Tax Act, 1961 does not have any evidentiary value.

30. In the instant case, the assessee admits the recovery of loose sheets during the search process. They admit all the payments, which are reflected in their books of account, but deny the payments which are not reflected in their account. This un-accounted payment is termed as undisclosed investment by the Department and the source of the investment as undisclosed income. To prove the contrary, the assessee had failed to produce evidence, but only plead that those entries are not in their hand writing, but admit that it may be written by Page Nos.21/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 their Accountant. The vague denial is not sufficient to shift the onus of proof. To rebut the statutory presumption, the assessee is bound to place evidence to probalise the falsehood in the entries. In this case, the assessee had miserably failed to discharge the burden. Therefore, we hold the substantial questions of law in respect of the probative value of the entries found in the loose sheets in favour of the Department.

31. In respect of the question regarding the excess jewellery found in the residential premises, it is purely a question of fact and not a substantial question of law. The accounts maintained by the individual as well as the partners of the business does not disclose the excess jewellery either in the wealth tax returns or in the stock of the business. Therefore, the assessee has no case to claim the excess jewellery kept in the residence, is the business stock.

32. The theory of telescoping the excess from one head to another head is permissible, if the source is satisfactorily explained. Whereas, in the case in hand, we find the source of the cash recovered during the search not explained satisfactorily for telescoping it to the investment made for purchase of the property. In fact, the argument of the assessee that there was deficit in cash balance, in the explained cash balance for the concerned period and necessary telescoping should be provided to that extent negated by the tribunal holding Page Nos.22/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 that the chart showing disclosed cash balance of the assessee group over the period cannot be relied unless the source is explained. The assessee without explaining the source seeks the relief of telescoping, which is impermissible in law. In the absence of cogent evidence regarding the source of the cash in hand, the Tribunal has rightly rejected the plea of telescoping. We uphold the finding of the Tribunal.

33. As a result of the above discussion and finding, the Substantial Questions of Law are held in favour of the Department. The common order passed by the ITAT dated 13/03/2009 in I.T.(SS)A.Nos. 45 to 48 and 56 to 58 of 2008 is upheld. The Appeals T.C.A.No:1395 of 2009 to T.C.A.No:1401 of 2009 filed by the assessee stand dismissed. No costs. (G.JAYACHANDRAN, J.) (R.SAKTHIVEL, J.) 18.03.2026 Neutral Citation:Yes ari To The Assistant Commissioner of Income Tax, Central Circle-II, Tiruchirapalli. Page Nos.23/24 <https://www.mhc.tn.gov.in/judis> T.C.A.Nos.1395 to 1401 of 2009 Dr.G.JAYACHANDRAN, J. AND R.SAKTHIVEL, J. ari Common Judgment made in T.C.A.Nos.1395 to 1401 of 2009 18-03-2026 Page Nos.24/24 <https://www.mhc.tn.gov.in/judis>