आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1824/Chny/2024, Assessment Years: 2013-14
आयकर अपील सं./ITA No.1825/Chny/2024, Assessment Years: 2014-15
आयकर अपील सं./ITA No.1826/Chny/2024, Assessment Years: 2019-20

Deputy Commissioner of Income Tax, Central Circle-1(3), Chennai.	**M.Mahadevan, No.24, Park Avenue Street, Shenoy Nagar, Chennai-600 030. [PAN: AAJPM5888R]**
(अपीलार्थी/Appellant)	**(प्रत्यर्थी/Respondent)**
अपीलार्थी की ओर से/ Assessee by : Shri G.Gireesh, C.A	
प्रत्यर्थी की ओर से /Revenue by : Ms.C.Vatchala, CIT	
सुनवाई की तारीख/Date of Hearing : 08.04.2025	
घोषणा की तारीख /Date of Pronouncement : 30.05.2025	

आदेश / O R D E R

PER AMITABH SHUKLA, A.M :

The below mentioned appeals have been filed by the appellant Revenue for AY-2013-14, AY-2014-15 and 2019-20 contesting the order of Ld. First Appellate Authority indicated Column-E, herein below:-

S. No.	Appeal Nos.	AYs	Appellant	CIT(A) Order Details	Respondent
A	B	C	D	E	F
1	**ITA No. 1824 / Chny / 2024**	2013-14	**Deputy Commissioner of Income**	DIN & Order No.ITBA / APL / M / 250 / 2024-25 / 1064439498(1) dated 29.04.2024.	**M.Mahadevan, No.24, Park Avenue Street, Shenoy Nagar,**

2	**ITA No. 1825 / Chny / 2024**	2014-15	**Tax, Chennai.**	DIN & Order No. ITBA / APL / M / 250 / 2024-25 / 1064439667(1) dated 29.04.2024.	**Chennai-600 030. [PAN: AAJPM5888R]**
3	**ITA No. 1826 / Chny / 2024**	2019-20		DIN & Order No. ITBA / APL / M / 250 / 2024-25 / 1064440314(1) dated 29.04.2024.	

2.0 The appellant Revenue has raised following grounds of appeal for AY's 2013-14. 2014-15 & 2019-20.

GROUNDS OF APPEAL

FOR AY-2013-14 & 2014-15

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

2. The Ld.CIT(A) erred in directing to treat the residential status of the assessee as Non-Resident and consequently deleting the addition made of Rs.1,95,70,965/ - being the income earned by the assessee abroad and brought to tax.

3. The ld. CIT(A) erred in holding that the data as per Foreigner Regional Registration Office cannot be considered for the purpose of determination of period of stay of the assessee in India.

4. The ld. CIT(A) erred in holding that the stampings in the Visas indicating the purpose of travel abroad to Malaysia, Singapore, Thailand, etc. as 'social purpose' is for business purpose and consequently, the travel outside India is for the purpose of employment and therefore the assessee has to be treated as Non-resident considering that the period of stay is not exceeding 182 days.

5. The ld. CIT(A) has erred in ignoring the fact that the assessee's claim that he was resident of UAE Was disproved by the AO with evidence and the same is also relevant for the purpose of determination of residential status of the assessee.

6. The ld. CIT(A) has failed to appreciate that the assessee has been declaring his residential status as NRI thereby not disclosing his income earned abroad in the income tax returns filed in India and that

he has not declared global income in the tax returns filed in any country.

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

FOR AY-2019-20

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

2. The Ld.CIT(A) erred in directing to treat the residential status of the assessee as Non-Resident and consequently deleting the addition made of Rs.2,11,13,549/- being the income earned by the assessee abroad and brought to tax.

2.1 The ld. CIT(A) erred in holding that the data as per Foreigner Regional Registration Office cannot be considered for the purpose of determination of period of stay of the assessee in India.

2.2 The ld. CIT(A) erred in holding that the stampings in the Visas indicating the purpose of travel abroad to Malaysia, Singapore, Thailand, etc. as 'social purpose' is for business purpose and consequently, the travel outside India is for the purpose of employment and therefore the assessee has to be treated as Non-resident considering that the period of stay is not exceeding 182 days.

2.3 The ld. CIT(A) has erred in ignoring the fact that the assessee's claim that he was resident of UAE was disproved by the AO with evidence and the same is also relevant for the purpose of determination of residential status of the assessee.

2.4 The ld. CIT(A) has failed to appreciate that the assessee has been declaring his residential status as NRI thereby not disclosing his income earned abroad in the income tax returns filed in India and that he has not declared global income in the tax returns filed in any country.

3. The ld. CIT(A) erred in deleting the addition made towards Long Term Capital Gains of Rs.2,94,33,160/- without appreciating that the transfer of shares at face value don't represent the real and actual

consideration and that transfer of immovable property to the wife of the assessee represent consideration received by the assessee indirectly for transfer of his shares.

3.1 The ld. CITA) has erred in deleting the addition made towards Long Term Capital Gains of Rs.2,94,33,160/- without appreciating the facts and evidence on record and disregarding the finding of the AO that the transaction of transfer of asset, being land & building, at a value less than the value in the books, by Oriental Cuisines Private Ld. (OCPL, in short) to the wife of the assessee, Smt. Badr Unissa amounts to a colourable device to avoid tax liability.

3.2 The ld. CIT(A) has failed to appreciate that the AO has clearly mentioned in the assessment order that the transaction of transfer of the asset under slumpp sale to the wife of the assessee is mere make-believe arrangement and that all the parties including the assessee's wife, his son and his entities are involved in these transactions.

3.3 The ld. CIT(A) has failed to appreciate that the transfer of shares of OCPL at a face value of Rs.100/- in August, 2018 was much less than the value of the shares as in June, 2018 of Rs.19,556/- per share as furnished by the assessee himself during the assessment proceedings, and that consideration has been received indirectly through transfer of Land & Building in favour of his wife at lesser value than the value of the property in the books of OCPL.

3.4 The ld.CITIA) having found that as per the Business Transfer Agreement, the impugned property at No.71, Cathedral Road was subject of transfer to M/s Cool Cream Milano Pvt. Ltd. (CCMPL) on 1.8.2018 ought to have inferred that the transfer of the said property by OCPL on 21.12.2018 to the wife of the assessee for a lesser consideration amounts to colourable device adopted by the assessee to avoid his tax liability.

3.5 The ld. CIT(A) failed to note that the Net Asset Value of the shares of OCPL adopted by the assessee of Rs.(-790/-) as on 31.3.2018 has no relevance considering that the subject matter of transfer related only to the transfer of Fine Dine & Lodging Division, and also that the value of brands transferred have not been considered.

3.6 The Ld.CIT(A) failed to note that the value of assets and

liabilities of the Fine Dine & Lodging division adopted in the books of OCPL and CCMPL was different, in as much the value of land was shown at Rs.7,74,90,625/- in OCPL, at Rs.2,25,12,000/- in M/s Cool Cream Milano Pvt. Ltd., for which no valid explanation was given by the assessee and in view of the same the CIT(A) ought to have confirmed that the sale consideration was received indirectly by the assessee.

3.7 The ld. CITIA) erred in observing that the transaction was between two corporate entities disregarding the fact that the same was on account of transfer of shares and controlling interest of the assessee in OCPL.

3.8 The ld. CIT(A) failed to note that as OCPL had not executed sale deed in favour of CCMPL in respect of the property at No. 71, Cathedral Road, CCMPL cannot be considered as owner of the property for the purpose of capital gains in regard to the transfer made to Badr Unissa.

3.9 The ld. CIT(A) has erred in holding that the assessee is not a party to the slumpp sale and the understated value of the property is only to be assessed in the hands of transacting parties without considering that all connected transactions are integrated one with related parties to give effect to the transfer of shares by the assessee in lieu of transfer of Fine Dine and Lodging Division in his nominee company.

3.10 The ld. CITIA) erred in observing that the assessee is not a party to the slumpp sale contradicting his own finding that the transfer of Fine Dine and Lodging division as in respect of his shareholding in OCPL.

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

All the three appeals raised by the Revenue, vide ITA Nos. 1824, 1825 &

1826 are centering around common issues and hence for the purposes of

convenience were heard and are being adjudicated together by this common order.

3.0 Before proceeding further we deem it necessary to briefly recapitulate the facts of the present case which are seminal to the appeal of the Revenue. The assessee, Shri M Mahadevan popularly known as 'Hot Breads Mahadevan' is into the business of setting up of restaurants and bakeries under his own brands like hot bread and of other brands in partnership with brand owners, in India and overseas. Thus, he is having holding companies, assets and financial interests in various countries including India. A search and seizure action u/ s 132 of the Act was carried out on 03.01.2019. During the search proceedings it was detected that the assessee Shri Mahadevan was claiming his status as Non-Resident in the Income tax returns filed by him and thus has been declaring his income earned in India only. He was not declaring the global income on account of his claim of being Non-Resident. Consequent to search proceedings, the assessment order u/s 153A for A.Y 2013-14 to 2018-19 and u/s 143(3) for A.Y 2019-20 were passed on 30.03.2022 by determining the residential status of the assessee u/s 6 of the Act as 'Resident in India' for Tax purposes as per the Income-tax Act, 1961 and his global income was brought to tax. The details of additions made during the relevant assessment years contested through the present appeal are as under:

AY	Addition made during assessment proceedings	Residential status as per AO
2013-14	Global income brought to tax– Rs. 1,95,70,965	Resident
2014-15	Global income brought to tax– Rs. 1,91,89,678	Resident
2019-20	1. Global income brought to tax — Rs.2,11, 13,549 2. Long term capital gain on sale of shares — Rs. 2,94,33,160/-	Resident

As regards the issue of Tax residency of the assessee, during the course of assessment proceedings, upon verification of the documents, Information obtained from the FRRO, copies of Visa and Passport etc, Ld.AO noted that Shri. Mahadevan had stayed / resided in India as per below mentioned details:-

SL. No	Asst. Year	Total No. of days resided in that year	Total No of days resided in India in Preceding 4 years	Residential status as per section
1	2008-09	109	-----	----
2	2009-10	215	-----	Resident
3	2010-11	253	-----	Resident
4	2011-12	186	577	Resident
5	2012-13	178	763	Resident
6	**2013-14**	**183**	**832**	**Resident**
7	**2014-15**	**183**	**800**	**Resident**
8	2015-16	182	730	Resident
9	2016-17	182	726	Resident
10	2017-18	178	730	Resident
11	2018-19	177	725	Resident
12	**2019-20**	**169**	**894**	**Resident**

3.1 From, the above table the Ld.AO concluded that the assessee had stayed in India for more than 182 days during AYs 2011-12, 2013-14, 2014-15, 2015-16, 2016-17, thereby satisfying Section 6(1)(a) and so he is a resident in India as per Income-tax Act, 1961 (hereinafter the Act). Further, he had stayed in India for more than 60 days in each year during AYs 2012-13, 2017-18 and 2018-19 and for more than 365 days in immediately preceding 4 years respectively. Accordingly, the assessee absolutely satisfies the provisions of Sec 6(1)(c) beyond doubt in those AYs i.e. an individual is said to be resident in India in any previous year if he had within 4 years preceding that year had been in India for a period or periods amounting in all to 365 days or more is in India for a period or periods amounting in all to 60 days or more in that year. Even otherwise, as the assessee has stayed in India for more than 60 days in each AY and more than 365 days in immediately preceding 4 years respectively, the AO held that he clearly satisfied the provisions of sec 6(1)(c). During assessment proceedings, the Ld.AO also noted from the stampings on copies of visas & passport that the assessee's overseas travel was meant for social purpose/visitors purpose and not for employment/Business purpose**.** It was also held that the period of stay in India would be counted from the time the assessee actually /physically left/entered the India and not from mere stamps on passports. Therefore, Shri. Mahadevan was

held to be resident for the purpose of Income-tax Act, 1961, in India during AYs 2013-14 to 2019-20. The Ld.AO rejected the arguments of the assessee qua his tax residency, in corresponding period, in UAE w.r.t DTAA between India and UAE. The Ld.AO, inter alia, observed that by merely furnishing the tax residency certificate from UAE in the name of the assessee (obtained during 2021 for the past years) does not confer the residential status to assessee, as per Article 4 of DTAA between INDIA and UAE, in the Arab Emirates. During the assessment proceedings, the assessee submitted before the Ld.AO, the computation of income for AYs 2013-14 to 2019-20 taking into account the global incomes of the assessee based on the return of income filed in USA and Canada for the said assessment years and for the other countries estimated income admitted in the sworn statement given on 03.01.2019, vide his letter dated 21.03.2022. The Ld.AO held that by being a resident of Indian the assessee ought to have declared all his global income, for taxation in India. The purpose of showing the residential status as NRI by the assessee is only a ploy to ensure that his global income is not assessed and thereby not brought to tax in India. In view of the above factual and evidence-based position, the assessee's residential status was determined as Resident in India and his global income brought to tax in India.

3.2 Another issue dealt by the Ld AO for AY 2019-20 was regarding the claim of Long term capital loss of Rs 2,60,11,810/- on account of share transfer transactions. As per brief facts the assessee was having 99.99 % holding of his company called cool cream milano pvt. Ltd. (CCMPL) . The said CCMPL acquired through a slump sale agreement, a fine dining division owned by another of assessee's company oriental cuisine pvt ltd (OCPL) , in which he was having 31.81% shareholding . The Ld AO noted from, evidences comprising valuation reports, email communication between assessee and his key associates including financial, legal consultants etc that a company whose shares were valued in upwards of Rs.19000/- app. in preceding about 6 months was sold for a paltry sum of Rs.100 per share . The AO also noted inherent inconsistency in email corresponds alluding that much after the share transfer agreements were executed , the assessee and his key associates including financial , legal consultants etc were still deliberating on share valuations etc alluding towards creation of a bogus and fictitious trail. The Ld AO also observed that the sale of fine dining division of OCPL to CCMPL included a significantly valued property at 71 cathedral road in Chennai, which was again sold by OCPL to assessee's wife Ms.Badrunissa at a much lower value. The Ld.AO concluded that the entire share transfer transaction was built to avoid and escape real

taxation and in reality represented a dubious colourable transaction. The Ld.AO therefore proceeded to make an addition of Rs.2,94,33,160/-.

3.3 Aggrieved by the order, the assessee filed appeal before Ld.CIT(A) for AYs 2013-14 to 2019-20 on the above issues. During appellate proceedings, the Ld.CIT(A) in his order dated 29.04.2024 allowed the appeal of assessee qua issue of tax residency in India , by stating in para 7.13.4 of his order, as under:

"….7.13.4 1 have considered the submissions of the assessee and the following inferences are drawn:

(a) The assessee has businesses outside India in many countries and this fact is not in dispute. He has business interests in UAE, USA, Singapore, France. USA, Switzerland, Muskat, Canada, Hongkong, Australia, Myanmar, Canada, Malaysia etc. This fact has been established during the search proceedings and is a finding of search. The AO has also considered that the appellant had earned incomes from activities from those countries.

(b) The assessee has Business Interests in Malaysia and Singapore and in fact his income in Singapore & Malaysia has been considered by the AO during the Assessment Proceedings.

(c) The details of Business caried at Singapore as discussed by the AO as under:

Country	*Entity name*	*Assessee's holding*
Singapore	*HSB Restaurants(7)*	*15%*
	Anjappar Restaurant(6)	*5%*
	Urban Roti Restaurants(2J	*10%*
	Stick Ice	*5%*
	KailashParbhat	*15%*
Malaysia	*Anjappar Restaurant(6)*	*5-7.5%*
	HSB Restaurants(6)	*10%*

(d) The various correspondences submitted by the appellant show that he had applied for Multi Entry Visa to Singapore and Malaysia and the purpose of the visit was made for business purpose.

(e) The Multiple Entry Visit to Malaysia can be used for Business Purposes as well as for Social purposes as per the Malaysian government website.

(f) The appellant is travelling every year 3-4 times to Singapore and Malaysia and unless there is business purpose, most would not travel to same places for tourism repeatedly year after year.

(g) The appellant's claim that his travel to Singapore and Malaysia has not been directly from India. He has travelled to Dubai and from there he has travelled to Singapore and Malaysia and vice versa. His claim that once he travels to UAE for business purpose and from there if he undertakes travel to other countries it makes no difference to stay in India and makes no difference in determination of stay cannot be brushed aside.

Lastly the Submission of the assessee that there is no provision in law to treat "travel outside India on visitor visa" as stay in India.

7.13.5 Though the assessee has travelled on Multiple Entry Visas/Social Visits to Malaysia and Singapore, the existence of business has been accepted by the AO. Infact the income from business in Singapore has been considered by the AO. The appellant's claim that his travel to those countries on Multiple Entry Visas/ Social Visits for purposes of business cannot be brushed aside as he has business interests in those countries. Infact the income from his activity from Singapore has been considered by the AO during the assessment proceedings. Further as stated by the assessee there is no provision to treat travel outside India on visitor visa as Stay in India. In view of the above, the view of the AO that the visit on Multiple Visit visa/ Social visits is not for business/Employment cannot be upheld.

7.13.6 The AO has relied on article of DTAA between India and UAE to determine residency but this is not relevant for determining stay period as the STAY in India has to be determined as per the provisions of section 6 of Income Tax Act, 1961.

7.13.7 Similarly, the reliance of the AO on the returns filed by the appellant in the USA is not material to determine his residential status in India which has to be determined as per section 6 of the Income Tax Act,1961.

7.14 In Conclusion,

- *The appellant has not stayed in India for 182 days in any of the relevant years under appeal.*
- *The appellant was travelling abroad for business purposes and judicial forums in the various case laws have held that the word Employment in clause (a) of explanation-I to section 6(1)(c)is to be interpreted widely to include business or profession.*

- *The appellant is eligible to claim the benefit as per clause (a) of explanation-I to section 6(1)(c) as he has not stayed for 182 days in any year.*

7.15 Hence the view of the AO that the appellant is Resident for Tax Purposes as per section 6 (1) (a) or 6(1)(c)cannot be upheld. The status of the appellant is "Non-Resident" for Tax Purposes for all the years under appeal as per section 6 of the Act. Consequently, only the income earned in India by the appellant is liable for taxation under the Income tax act. Hence the grounds no 1 to 15 are allowed.
7.16 The AO has made estimation to the income of the appellant in the years under appeal. As the assessee is held to be a Non-resident the estimation of income earned abroad cannot be brought to tax and the additions are deleted. Hence the ground no. 16 is allowed…."

3.4 As regards the issue of addition on account of long term capital gains , the Ld first appellate authority in para 8.6.1 to 8.6.13 of his order has held as under :-

8.6.1 A MOU dt: 30.07.2018 signed between the appellant and investor M/s Peepul provided for division of the business of the company OCPL as per their share holding pattern i.e. 31.245 : 67.746 in view of mounting losses. It was agreed upon that the Fine Dining and Lodging (FDL in short) business along with the liabilities would be taken over by the appellant and the balance assets and liabilities of OCPL would be with Peepul. The consideration for transfer of FDL Division as per the agreement was fixed was Rs. 21 Cr which included the taking over of liability of Rs.19,00,36,905/- payable to M/s City Union Bank by the assessee and adjusting Rs.2 Cr from capital of the assessee and the assessee had to transfer his shares in OCPL to Peepul.

8.6.2 The MOU was given effect by way of slump sale transfer of FDL division of business through BTA dt:01.08.2018 with the transfer of FDL Divison (including lodge at 71, Cathedral Road, Chennai-600086) from M/s OCPL to M/s Cool Cream Milano P Ltd (M/s CCMPL) for a consideration of Rs.1,00,000/- in which the appellant holds 99.99% shares.

8.6.3 On 18.08.2018, the assessee transferred the shares held by him in OCPL of Rs.2825600 (28256X100 face value) to M/s Peepul vide share purchase agreement dt: 18.08.2018. The assessee claimed long term capital loss of Rs. (-26011810/-) in the AY 2019-20 on the said transaction.

8.6.4 The transfer of shares by the appellant and the handing over of FD division to M/s CCMPL resulted in execution of the MOU dt: 30.07.2018.

8.6.5 The appellant has transferred his shares at face value to existing investor shareholders. The AO has made a mention of value of share of OCPL as Rs. 19,560/- per share however he has not provided the basis for arriving at this figure. The AO has also not adopted this value for detemination of capital gains. The appellant has submitted that there is no basis for adoption of this figures. The Appellant has submitted he has only transferred his shares for a consideration which was higher than the valuation under Section 50CA and Section 56 of the Income-tax Act, 1961 read with Rule 11UAA and Rule 11UA. In this context, the appellant has made his submission that the NAV of the shares of OCPL as per the Balance sheet as on 31/07/2018 is Rs.11 as per Rule 11UA and the same is considered for purposes of business transfer arrangement. Further the FMV of share as on 31/03/2018 as per rule 11UA is Rs.(-790). Hence it appears that AO has ignored the abovesaid value in computing the capital gains on transfer of shares.

8.6.6 As per Business Transfer Agreement dated 01/08/2018 the FDL division has been transferred from OCPL to CCMPL, nominee of the appellant. It is also seen that the business has been transferred by way of a slump sale transaction between OCPL and CCMPL. This slump sale also includes the property bearing No.71, cathedral road, Chennai. The Assets and Liabilities for slump sale shown by M/s OCPL and M/s CCPL is as under:

(a) In the books of M/s OCPL

Assets and Liabilities of Fine Dine and lodging Business as at 31.07.2018	
Particulars	**Value in (Rs.)**
Fixed Assets:	
Plant & Machinery	75,83,437
Furniture and Fixtures	18,31,370
Computers	1,09,291
Vehicles	2,04,993
Electrical & Fittings	21,31,182
Building/Leasehold improvements	1,08,93,545
Land	7,27,90,625
Current Assets:	
Security Deposits	2,47,24,467
Inventories	
Food & Beverages	29,39,310
Packing materials	1,72,980
Housekeeping materials	1,12,371
Stationery	34,448
Bank	22,135
Total Assets (A)	**12,85,50,154**
Liabilities:	
City Union Bank OD and Term loans	19,00,36,906
Loan from Director	2,03,00,000
Sundry Creditors	1,25,50,581
Total Liabilities (B)	**22,28,87,487**
Net (A-B)	**(9,43,37,333)**

(b) In the books of M/s Cool Cream Milano Pvt ltd, the details of slump sale assets and liabilities in FY 18-19 were reported as

5.1. The following are the assets and liabilities of "Fine Dining & Lodging Business" undertaking of Oriental Cuisines Private Ltd, bought by Cool Cream Milano Private Ltd:

S.No.	Particulars	In Rs.
I.	**Fixed Assets:**	
1	Plant and Machinery	75,83,437
2	Furniture and Fixtures	18,31,370
3	Computers	1,09,291

4	Vehicles	2,04,993
5	Electrical Fittings	21,31,182
6	Building-Leasehold	93,15,412
7	Building - Own	1,07,27,200
8	Land	2,25,12,000
II.	**Current Assets:**	
8	Security deposits	2,47,24,467
	Inventories	
9	Food & Beverages	29,39,310
10	Packing materials	1,72,980
11	Housekeeping materials	1,12,371
12	Stationery	34,448
13	Bank	22,135
	Total Assets (A)	**8,24,20,596**
III.	**Liabilities:**	
1	City Union Bank OD and Term Loans	19,00,36,906
2	Loan from Director	2,03,00,000
3	Sundry Creditors	1,25,00,000
	Total Liabilities(B)	**22,28,36,906**
IV.	**Sale Consideration (C)**	**1,00,000**
V.	**Goodwill [(B)+(C)-(A)]**	**14,03,16,310**

8.6.7 As the transaction is between two corporate entities, the seller is liable for payment of Capital gains arising as result of this transaction. The capital gains, as a result of this transfer arises in the hands of the seller M/s OCPL. The property bearing no 71, cathedral road, Chennai, instead of registering to CCMPL (by OCPL) has been handed over by way of Power of attorney to the Shri Tarun Mahadevan, son of the appellant. As this property is part and parcel of slump sale, the value of this property has to be taken into consideration while arriving at capital gains in the hands of the seller OCPL. The AO is directed to examine whether any capital gains has been paid on this transaction by OCPL and take necessary action in this regard.

8.6.8 It is also see that the company OCPL, through POA holder Shri. Tarun Mahadevan, son of the appellant has transferred the property at No.71, Cathedral road, Chennai to the wife of the appellant Mrs. Badrunnisa for a consideration of Rs. Rs.3,32,39,200/-. The appellant has claimed that this property is part and parcel of Slump sale. It is also observed that this finds mention in the balance sheet of the division FDL of OCPL which has been transferred to CCMPL. It is to be noted that even though this property is part

of the balance sheet of FDL division, immoveable property has to be transferred by way of Sale deed in favor of CCMPL. After slump sale, the property has been transferred from CCMPL to Mrs. Badrunissa. In the sale deed even though it is mentioned that OCPL is the seller, represented by POA holder, the actual owner is CCMPL who acquired the rights by way of slump sale. As CCMPL is the owner of the property at No. 71, cathedral road, Chennai, it is liable for capital gains taxation on the said transfer of property. Hence AO is directed to verify whether CCMPL has paid Capital gains tax on the said transfer and take necessary action to bring the amount of capital gains to tax in the hands of the seller CCMPL.

8.6.9 AO has made a remark that the transfer of above property by OCPL to the wife of the appellant is consideration paid to the appellant in lieu of transfer of shares to Peepul. However the AO has not brought anything on record to show that undue benefit is passed on to the appellant. The AO has not doubted the genuineness of transaction nor has he faulted anything in the transaction. It is not the case of AO that the assessee has suppressed anything related to the transaction or the transaction is below market value. The AO has not held the transaction as a colorable device in the facts of the case. In absence of any evidences, the view of the AO that undue benefit is passed on to the wife of the appellant in lieu of the transfer of shares of OCPL held by the appellant is not tenable.

8.6.10 The property no 71, cathedral road belongs to CCMPL after the slump sale transaction. The property had to be registered to CCMPL by OCPL. But instead, OCPL has issued POA to the son of the appellant. This property has been transferred to Mrs. Badrunnisa by CCMPL (OCPL represented by POA holder).

8.6.11 As it is established that the property no.71, cathedral road is sold below market value to the buyer, the same needs to be considered for taxation in the hands of the recipient Mrs. Badrunissa. As per provisions of Section 56(2)(x) any person receiving any immoveable property below guideline value is to be taxed in the hand of the recipient under the head Income from Other Sources.

8.6.12 It has been brought to my knowledge that addition was made in the hands of Mrs. Badrunnissa in respect property received at below guideline value. It is seen that the guideline value as per the stamp valuation authority was Rs.54203485/- and in the course of assessment proceedings in respect of Smt. Badrunissa Begum for AY 2019-20, the difference between the value adopted by the Stamp Valuation Authority and the sales consideration i.e Rs. 20964285/- was added u/s 56(2)(vii)(b) of the Act. However the AO has mentioned that the value of property shown by OCPL in its slump sale at Rs.7,77,90,625/- for land and Rs.1,08,93,545/- for building (total Rs.8,86,84,170/-). Hence the AO may examine this aspect and take necessary action in the case of Smt. Badrunissa.

8.6.13 As discussed above, the appellant is not a party to the slump sale or the sale of the property at no 71, cathedral road and the transactions are to be brought to tax in the hands of the transacting parties unless AO finds the transactions to be a colorable device adopted to avoid taxation. The addition of Rs. 2,94,33,160/- made by re-computing capital gains in the hands of the appellant is hereby deleted. Hence the grounds no 17 to 22 are allowed

4.0 In the above complex factual postulates of the present case, we would now proceed to examine the issues and controversy raised by the appellant Revenue. We have noted that broadly there are two main issues emanating from the order of Ld.CIT(A). The first being rejection of India Tax residency status of the assessee and second being deletion of long term capital loss made by AO.

4.1 The first issue raised by the appellant Revenue for AY's 2013-14, 2014-15 & 2019-20, vide ITA Nos. 1824, 1825 and 1826 through its grounds of appeal is regarding the action of the Ld.First Appellate

Authority in rejecting the action of the Ld AO in rejecting non-resident status of the assessee and holding that it's global income is liable for taxation in India as per provisions of section 6 of the Act. As the facts are common for all the 3 years, we proceed with facts & figures for AY 2013-14. The decision arrived at in ITA No. 1824 for AY 2013-14 shall apply mutatis mutandis for AY's 2014-15 & 2019-20 also.

4.2 As regards the controversy as to whether the global income of the assessee is liable for taxation in India or not exigible in India, it has been noted that there are claims and counter claims made by the Revenue and the assessee. The sub-issues seminal to the controversy are whether the assessee had stayed for more than 182 days in India to be made exigible to taxes in India, whether the assessee's travel to overseas locations for social visits/ tourists purposes would exclude it from Indian tax net, whether assessee was a resident of UAE to avoid taxation in the country, whether Revenue's preliminary conclusion in search proceedings that the assessee was having extensive overseas business interest and his overseas travels would exclude assessee from Indian tax net, whether income taxes paid in foreign jurisdictions would save the assessee from taxation in India.

4.3 The first and foremost issue seminal to the controversy is regarding the application of section-6 by the Ld.AO upon the assessee so as to conclude that the global income of the assessee is exigible to taxes

in India. During the course of assessment proceedings, the assessee, at the behest of Ld.AO, filed details of income of Rs.1,95,70,675/- for AY-2013-14 as profits and gains from business of profession qua its global income. The Ld.AO had noted that the return of income filed at other countries (USA) showed earning of income from rental real estate, partnership, trust , Royalty etc. Accordingly the Ld.AO treated the impugned global income as income from other sources as per the Act and taxed accordingly. While making the impugned determination of assessee's taxable income in India, the Ld. AO has relied upon documents seized during the search proceedings, statements recorded as well as information gathered from external agencies including foreigner regional registration office (FRRO). The latter being an agencies under the Government of India empowered to keep a record of movement of foreigners and Indians across specified borders check points available at Airports, Land as well as Sea routes.

4.4 We have heard rival submissions in the light of material available on records. Before proceeding further, we deem it necessary to reproduce the statutory provision of Section-6 of the Income Tax Act which lies at the base of the entire controversy.

"…..Residence in India.

[63-64] ***6.*** [65] *For the purposes of this Act,-*

(1) An individual is said to be resident in India in any previous year, if he-

(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or

(b) [66][***]

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

[67][[68][Explanation 1.]-In the case of an individual,-

(a) being a citizen of India, who leaves India in any previous year [69][70][as a member of the crew of an [71]Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or] for the purposes of employment [69] outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted ;

(b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and [72][eighty-two] days" had been substituted [73][and in case of [74][such person] having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, for the words "sixty days" occurring therein, the words "one hundred and twenty days" had been substituted].]

[75][Explanation 2.-For the purposes of this clause, in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed. [76]]

[77][(1A) Notwithstanding anything contained in clause (1), an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.]

[78][Explanation.-For the removal of doubts, it is hereby declared that this clause shall not apply in case of an individual who is said to be resident in India in the previous year under clause (1).]

(2) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management [79] of its affairs [79] is situated wholly [79] outside India.

[80][(3) A company is said to be a resident in India in any previous year, if-

(i) it is an Indian company; or

(ii) its place of effective management, in that year, is in India.

Explanation.-For the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made.]

(4) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is

situated wholly outside India.

(5) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.

[81]*[(6) A person is said to be "not ordinarily resident" in India in any previous year if such person is-*

(a) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or

(b) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less [82]*[; or*

(c) a citizen of India, or a person of Indian origin, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, as referred to in clause (b) of Explanation1 to clause (1), who has been in India for a period or periods amounting in all to one hundred and twenty days or more but less than one hundred and eighty-two days; or

(d) a citizen of India who is deemed to be resident in India under clause (1A).

Explanation.-For the purposes of this section, the expression "income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India)] [83]*[and which is not deemed to accrue or arise in India] ....."*

4.5 The first and foremost condition to be satisfied by a person to claim that he is not exigible to the provisions of the act is that during an year he should not have been "in India" for a period of 182 days or more. Thus, if a person was in India for a period exceeding 182 days or more, he / she shall be deemed to be resident in India and consequently its global income would be taxed. The Ld.AO has indicated in para 7.2 on page-3 of his order that the assessee was in India for 183 days, inter-alia, for AYs-2013-14 & 2014-15. In support of his contentions, the Ld. AO has relied upon information received from FRRO. The Ld. AO has

further argued that within the meanings of provisions of section-6(1)(c) assessee's global income for AY-2019-20 would also be liable for taxation in India. The Ld. AO had argued that explanation-1 (a) of section-6 would not come to rescue of the assessee as it has travelled on social visits / tourist purposes. The Ld. AO has also indicated in his assessment order that section-6 (4) of the act is also applicable in the case of the assessee given that it has shown all his control and management offices as located in Chennai, India. It is the case of the assessee that the FRRO data cannot be relied upon for the purpose of calculation of resident's period in India and that only the dates stamped upon the passport of the assessee should be taken into consideration for reckoning the period of stay in India. The argument has been put forth since the dates stamped upon the passport of the assessee are to be considered, then the assessee would not be falling into mischief of the period of 182 days or more. At the outset, the argument put forth by the assessee is unacceptable for the simple reason that sub-section-1 to 6 of section-6 including its explanations are to be given a conjoined reading and cannot be read in silos. Thus, whereas sub-section-1(a) prescribes the period of 182 days, sub-section-1(c) provides that a residency shall be deemed if a person stays in preceding four years for 365 days or more or in all to 60 days or more. Further, sub-section-6(4) postulates that residence of a person shall be deemed in a year, if the control and

management of his affairs is situated in India. The Ld. AO has clearly brought out on records with demonstrative evidences that all along the assessee has been showing that all the control and management of his affairs was situated in Chennai, India. The Ld.AO has relied upon assessee's own documents to support his arguments.

4.6 The Ld.Counsel for the assessee has vehemently argued that the FRRO data cannot be relied upon for assessee's period of residence in India. The argument put forth by the Ld.AR have been found to be far from convincing and bereft of any justifiable reason. We need to first examine as to what and why is an agency called the FRRO at all in existence. The answer actually lies in the sovereign authority enjoyed by a country. The existence of any nation is principally reflected by its territorial coverage over a mass of land. Thus, the territorial boundaries of a nation define the existence of a nation per se. Since, every nation is proud owner of the territory under its control, the border lines be it at land, or air or sea assume critical significance and constant monitoring and protection. Every sovereign nation has full authority to keep a track of all foreigners entering or exiting its boundary. This activity is performed by the FRRO a Central Government department under Union Ministry of Home Affairs. Different countries call their "FRRO's" with different names although the nature of work remains the same. Across the globe the FRRO's, also keep a track of its own citizens entering or

exiting the country from / for foreign locations. As the FRRO is the authorized Government agency to keep a track upon movement of foreigners and citizens at country's borders, the need and relevance of the organization cannot be less emphasized. Further, the agency being a Central Government Agency, its data cannot be suspected or doubted. The agency is mandated to keep on real time basis data of entry and exit of foreigners and citizens at country's borders. We therefore find force in the reliance of the Revenue upon the FRRO data for calculating the period of the stay of the assessee in the country. The arguments of the Ld.AR therefore cannot be accepted. We have also noted that provisions of section-6 cannot be read in silos and have to be given a conjoined reading. We have noted that not only section-6(1)(a), the assessee's also falls within the mischief of section-6(1)(c), Section-6(4) as also the explanation-1 so as to fasten it to tax laws of India.

4.7 The controversy that the assessee was travelling on social visits and tourist Visas have been considered. It is the case of the Revenue that the assessee, as evident from Visas granted to him, was not travelling for business purposes and therefore cannot claim that the visits were for business purposes. The Ld. AR has contested that assessee has extensive overseas business interest and that all the visits were for business purposes. It was argued that given the frequency of the visits

to the same country, no person can be expected to travel same country for tourist purposes. It was also argued by the Ld.AR that the depiction of social visit or tourist purpose on the visas by respective countries was a mere formality and that that cannot be a ground. It is also the case of the assessee that the Revenue has, through search proceedings, unequivocally admitted that the assessee was having extensive overseas business interest and was travelling and that therefore its global income cannot be taxed in India. The argument has been examined at length. The fact of the assessee having extensive overseas business interest is borne from records. So is the fact of overseas travel undertaken. The question that however comes is as to whether all the overseas travels were undertaken for business purposes particularly in cases where the Visa granted by foreign jurisdictions clearly specified the visit as for social purposes or tourists purposes. The details of Passports entries referred by the Ld.AO in his order clearly indicate that the visits under question were taken for social purposes or tourists purposes. It is an accepted international practice that every country restricts its Visas for a specific purposes. Whenever a Visa is granted by a foreign jurisdiction for employment or business, clear stipulations are made. The principal idea being to ensure that the income earned in foreign jurisdiction gets locally taxed or governed by double taxation avoidance agreements, if any. No country grants Visa for employment or business purposes liberally. The

mere argument that because Revenue has accepted that assessee was having overseas business and travelling would not, ipso facto, mean that the assessee would not be exigible to taxation in India. Merely having overseas business interest would not exclude assessee. To avoid taxation in India, the assessee will have to prove through demonstrative evidences that its case does not lie within the meanings of section-6 of the Act. Similarly, the assessee might have travelled several overseas visits in furtherance of its business interest, however the evidence, qua his overseas visits, in possession of the Revenue indicates that those visits were not falling in the realm of exclusive business visits so as to exclude him from Indian tax net. The assessee has also argued that he is travelling to Singapore and Malaysia several times in a year and that unless there is a business purpose embedded herein, he would not be travelling frequently as no person would like to travel same place for tourist purposes repeatedly. If one goes by probability theory the argument is plausible however the supposition that because the assessee is travelling to Singapore and Malaysia several times in a year would make all his visits for business purposes also may not be correct. A person can travel to a foreign country several times for tourist purposes depending upon the available tourist attractions. Further, tourist visits are also undertaken to revive social contacts. The conclusion that all the visits of assessee to foreign locations would be for business purpose

does not appears to be a convincing argument. Again the Revenue has argued that the Ld.First Appellate Authority has failed to appreciate that the mentioning of the investment or shareholdings of the assessee across various entities does not mean that he is engaged in the business , it only indicates that interest of the assessee held in various entities as such anyone can hold investment in any entity across the globe , it is not necessary for the direct link between the travel to those countries and the purpose of travel must be the business in those entities in which they have their investment. For that matter that having travelled on social visas it only supports the view of the Ld. AO and as such sec 6(1) (c) of the IT Act is squarely applicable and thereby the assessee is the resident for tax purposes in India. The arguments of the assessee therefore fails, and we are unable to subscribe its views qua it being a non-resident in assessment years under appeal.

4.8 Another argument taken by the assessee is that because he is a resident of UAE for which a certificate of tax residency was also produced, and therefore he is beyond the purview of section-6 of the Act. It has been therefore argued that the assessee's income cannot be brought to tax in India. The Ld. DR argued that the relief accorded by the Ld.CIT(A) accepting the residence certificate issued by UAE authorities indicating that assessee is a tax resident in Dubai is based upon wrong

appreciation of facts. At the outset, the Revenue has doubted the very certificate on the premise that it was issued in 2021. It has been argued that the very purpose of DTAA is to determine the tax liability of person who belongs to one country but has certain transaction which are taxable in both the countries but to avoid the double taxation of same income at both the countries has to necessarily determine the residential status of that person as per the relevant article of the DTAA only. It is the case of the Revenue that because in the instant case assessee has stayed for more than 182 days in India in accordance with the provisions of Section-6(1) of the Act, therefore Article-4 of the DTAA provisions of India-UAE would not be applicable. We have noted that the Ld. AO has comprehensively analyzed the situation to establish that Article-4 of the DTAA provisions of India-UAE is not applicable in this case.

4.9 In support of its arguments, the Ld.AR has placed reliance upon judicial precedence's which have been countered by the Revenue of the same being distinguished on facts. The arguments put forth by the Revenue have been examined and found to be in order. We have noted that the judicial precedence's relied by the assessee are squarely distinguished on facts and do not support its case. The reliance of Ld.First Appellate Authority on the impugned judicial precedence's has been found to be misplaced.

5.0 Upon consideration of the varied facts of the case, statutory provisions cited by the appellant Revenue, we are of the considered view that the global income of the assessee is exigible to taxation laws of India and that by virtue of being a resident within the meanings of Section-6 of the Act, the assessee's global income is to be taxed in India. We therefore confirm the order of the Ld.AO and set aside the order of Ld.First Appellate Authority. The Ld. AR submitted that it has paid taxes in foreign jurisdictions and that, given the assumption of the Ld.AO for taxing its global income treating the assessee as a resident, due credit ought to have been given for the said payment of foreign taxes. Credit of foreign taxes paid by an assessee as its overseas income is available in accordance with the provisions of the section-90-91 of the Act. The Ld. AO is directed to verify from the original records produced by the assessee of payment of foreign taxes and allow necessary credit in accordance with law. The assessee shall be required to produce all the documents in this regard before Ld.AO and the Ld.AO shall pass an order after giving due opportunity of being heard to the assessee on the issue of allowance of credit of foreign taxes. **All the grounds of appeal raised by the appellant Revenue on the issue for AY-2013-14 vide ITA No.1824 / Chny/ 2024 are therefore partly allowed.**

6.0 Since the facts of the case for AY-2014-15 vide ITA No.1825 / Chny/ 2024 and for ITA No.1826 for AY-2019-20 are identical qua the

issue of tax residency of the assessee in the country, the decision taken for AY-2013-14 vide ITA No.1824 / Chny/ 2024 supra shall apply mutatis mutandis. **Accordingly, all the grounds of appeal raised by the Revenue in ITA No.1825 & 1826 Supra are also partly allowed.**

7.0 The next issue raised by the appellant Revenue for AY-2019-20 is regarding an addition of Rs.2,94,33,160/- made by the Ld.AO under the head long term capital gains and its deletion by the Ld.CIT(A). The Ld. AO has discussed the issue in para 12.1 to 12.14 of his order. The Ld.DR explained the following brief factual matrix of the case. The assessee had claimed in its return of income loss on account of sale of shares of Rs.2,60,11,810/-. The Ld. AO had noted that the assessee was founder shareholder of a company Oriental Cuisine pvt ltd (OCPL) along with one Peepul Fund II LLC Mauritius (PF) having 31.8% and 62.5% shareholding each. The assessee was also shareholder of one Cool Cream Milano Pvt Ltd (CCPL) having 99.99% shareholding. On 01.08.2018 by way of a business transfer agreement CCPL acquired, Fine Dine division of OCPL for Rs.1 lakh by virtue of slump sale. On the impugned date, assets and liabilities of Fine Dine division of OCPL were Rs.12.85 Crores and Rs.22.28 Crores respectively. The assets included land and building alone of Rs.7.77 Crores and Rs.1.08 Crores respectively. The value of land was based upon a valuation report dated 23.09.2017 of one M/s Arul Nambi Engineering Consultant. The land and

building included a property bearing No.71 Cathedral Road Chennai. The Ld. DR submitted that OCPL sold the same property being No.71 Cathedral Road Chennai to Smt. Badrunissa W/o assessee vide sale deed dated 18.12.2018 for Rs.3,29,06,808/-, an amount for less than the stamp duty value. The Ld. DR further conveyed that the Ld.AO noted that the assessee has entered into a share transfer agreement dated 18.08.2018 with PF for sale of his 31.8% shareholding in OCPL comprising 28256 shares for Rs.100 each aggregating to Rs.28,25,600/-. The Ld. AO had noted that the FMV of the impugned share of OCPL sometimes in June-2018 was Rs.19,556/- and vide valuation report dated 09.03.2018 was about Rs.20,000/-. The Ld. AO noted that the impugned shares were valued at Rs.100/ share as on 18.08.2018. The Ld. DR drew reference to electronic communications exchanged between the assessee and its associates as well as valuation report of one Brahmayya and company CAs in support of its arguments. In support of its above contentions, the Ld.DR invited reference to following sworn statement of one Shri Sandeep Reddy sole director of Avini Pvt Ltd which provides advisory services to Peepul Fund II LLC Mauritius and Peepul Fund III LLC Mauritius.

Q.No. 18 As per the summary of valuation report (annexure 11), the share holding of Peepul Capital Fund II LLC in Oriental Cuisines Pvt Ltd of 56,502 shares is valued (fair market value) at Rs 1,10,50,00,000/- as on 30-06-2018. This works out to Rs 19,556/- per share. Similarly as per valuation report dated 9th March 2018(annexure 12), the fair market value of share holding of Peepul Capital Fund II LLC in Oriental Cuisines

Pvt Ltd is arrived at as Rs 1,14,90,00,000/-. In all the previous valuation reports also the value per share is consistently shown above Rs 19,000. But as per share purchase agreement dated 18th August 2018 (annexure 13), Peepul Capital Fund II LLC has purchased 28,256 shares of Oriental Cuisines Pvt Ltd from Mahadevan for Rs 28,25,600/-. The purchase price of 1 share works out to be Rs 100 where as the fair market value of these shares as per valuation reports accepted by Peepul Capital Fund II LLC is Rs 19,556/-. Please explain why the purchase of 28,256 shares should not be treated as purchase for inadequate consideration.

Ans Given the inability the sell the business as a whole, an option that was presented was to divide the business into 2 wherein Peepul Capital could move forward with the QSR assets that it believed it could monetize. The structure was arrived to reflect an equitable split in assets and the implementation was done in two stages on the advice of relevant lawyers and accountants.

7.1 The Ld. DR submitted that the valuation of OCPL shares of Rs.19,556/ share on 30.06.2018 was in the knowledge of Peepul Advisors by the valuer Shri N.Krishnan of Brahmayya and company vide email dated 04.09.2018 which was duly acknowledged by the former. It was urged that the valuation of OCPL share of Rs.19,556/share as on

30.06.2018 was reported on 04.09.2018 as against the alleged sale of share at Rs.100 / share indicated in the agreement dated 18.08.2018. The Ld. DR thus argued that the corresponding valuation of shares made by the assessee u/s 56(2)(x) of the Act r.w. rule-11UA(1)(c)(v) as on 31.07.2018 at Rs.11 / share was also an afterthought. The Ld. DR argued that the impugned valuation report dated 10.08.2018 of one M/s.Senthil and Associate was also not the correct report because the valuation was arrived at on the premise that *"…the above valuation per share of INR 11 is based on the financial data provided by the management as on 31.07.2018 after giving effect to the business transfer agreement…".* The Ld.DR argued that earlier share valuation reports indicating share valuation of Rs.19,000/- and more were intentionally withheld from valuer during 11UA exercise to avoid higher valuation. The Ld. DR further drew attention to several email exchanges between the assessee, his son, assessee's associates, advisors, Financial Consultants, Lawers, C.As etc undertaken in the second half of August - 2018 and September-2018 indicating that discussions regarding the formulization of drafts of slump sale agreement, share transfer agreements, Financials updation etc was taking place indicating that the agreements dated 18.08.2018 was fallacious agreement not based upon true facts of the case and merely made to serve vested interest of tax evasion. It is the case of the Revenue that from the above incriminating

emails, the valuation of share as on 30th June 2018 vide valuer's report dt 4th September 2018, and on 31st Dec 2017 vide valuation report dt 9th March 2017, and the valuation of shares of OCPL as per Rule 11UA of Income Tax rules as on 31st July 2018 vide valuation report dt 10.08.2018, it is proved beyond doubt that the entire transactions qua Business Transfer Agreement dt 1st August 2018, Share purchase Agreement dt 18th August 2018 are actually sham transactions and assume the nature of a colourable device intended with the only objective of evading and avoiding incidence of tax. It has been argued that predating of the agreements and exchange of series of emails on the same subject cannot be an innocuous coincidence. The sale of property to Smt Badrunissa on 18.12.2018 after concluding safely the Business Transfer & Share Purchase Agreements, the property on which OCPL does not have any rights in the light of the Business Transfer agreement dated 1st August 2018 also becomes a suspicious act. Thus all these transactions – Business Transfer, Share Purchase, Sale of Cathedral Road Property to Smt. Badrunissa were all well planned and executed for self-interest of the assessee being the interested parties for which all the reports and financials were prepared so as to suit their needs accordingly and that the makeover arrangements, which are not registered documents are carried out according to their convenience and supported by the Valuation Report under Rule 11UA of IT Rules,1962 which was

issued based on the inputs given by the interested parties themselves thereby promoting their self-interest by creating fictitious capital loss in the hands of the assessee through the share purchase agreement whereas the due amount is passed on to him by way of property sold to his wife Smt Badrunissa at a much lower rate than the valuation made by one M/s.Arul Nambi Engineering Consultants as on 23.09.2017 of Land at Rs.7,77,90,625/- and Building at Rs.2,74,18,600/- total Rs.10,52,09,225/-. The Ld. DR argued that the conclusions drawn by the Ld.CIT(A) while according relief to the assessee were therefore based upon wrong appreciation of facts and hence excessive and erroneous. The Ld. DR vehemently argued that the entire construction of agreements, valuation reports by the assessee indicated towards indulgence in tax evasion through the use of colourable devices. Reliance was placed upon the decision of Hon'ble Apex Court in the case of McDowell's.

7.2 The Ld. AR submitted that the Ld. CIT(A) has accorded relief after careful consideration of the facts of the case and that no intervention is required to be made at this stage. In support of its contentions, reference was invited to para 8.6.1 to 8.6.13 of the appellate order which is reproduced below:-

8.6.1 A MOU dt: 30.07.2018 signed between the appellant and investor M/s Peepul provided for division of the business of the company OCPL as per their share holding pattern i.e. 31.245 : 67.746 in view of mounting losses. It was agreed upon that the Fine Dining and Lodging (FDL in short) business along with the liabilities would be taken over by the appellant and the balance assets and liabilities of OCPL would be with Peepul. The consideration for transfer of FDL Division as per the agreement was fixed was Rs. 21 Cr which included the taking over of liability of Rs.19,00,36,905/- payable to M/s City Union Bank by the assessee and adjusting Rs.2 Cr from capital of the assessee and the assessee had to transfer his shares in OCPL to Peepul.

8.6.2 The MOU was given effect by way of slump sale transfer of FDL division of business through BTA dt:01.08.2018 with the transfer of FDL Divison (including lodge at 71, Cathedral Road, Chennai-600086) from M/s OCPL to M/s Cool Cream Milano P Ltd (M/s CCMPL) for a consideration of Rs.1,00,000/- in which the appellant holds 99.99% shares.

8.6.3 On 18.08.2018, the assessee transferred the shares held by him in OCPL of Rs.2825600 (28256X100 face value) to M/s Peepul vide share purchase agreement dt: 18.08.2018. The assessee claimed long term capital loss of Rs. (-26011810/-) in the AY 2019-20 on the said transaction.

8.6.4 The transfer of shares by the appellant and the handing over of FD division to M/s CCMPL resulted in execution of the MOU dt: 30.07.2018.

8.6.5 The appellant has transferred his shares at face value to existing investor shareholders. The AO has made a mention of value of share of OCPL as Rs. 19,560/- per share however he has not provided the basis for arriving at this figure. The AO has also not adopted this value for detemination of capital gains. The appellant has submitted that there is no basis for adoption of this figures. The Appellant has submitted he has only transferred his shares for a consideration which was higher than the valuation under Section 50CA and Section 56 of the Income-tax Act, 1961 read with Rule 11UAA and Rule 11UA. In this context, the appellant has made his submission that the NAV of the shares of OCPL as per the Balance sheet as on 31/07/2018 is Rs.11 as per Rule 11UA and the same is considered for purposes of business transfer arrangement. Further the FMV of share as on 31/03/2018 as per rule 11UA is Rs.(-790). Hence it appears that AO has ignored the abovesaid value in computing the capital gains on transfer of shares.

8.6.6 As per Business Transfer Agreement dated 01/08/2018 the FDL division has been transferred from OCPL to CCMPL, nominee of the appellant. It is also seen that the business has been transferred by way of a slump sale transaction between OCPL and CCMPL. This slump sale also includes the property bearing No.71, cathedral road, Chennai. The Assets and Liabilities for slump sale shown by M/s OCPL and M/s CCPL is as under:

(a) In the books of M/s OCPL

Assets and Liabilities of Fine Dine and lodging Business as at 31.07.2018	
Particulars	**Value in (Rs.)**
Fixed Assets:	
Plant & Machinery	75,83,437
Furniture and Fixtures	18,31,370
Computers	1,09,291
Vehicles	2,04,993
Electrical & Fittings	21,31,182
Building/Leasehold improvements	1,08,93,545
Land	7,27,90,625
Current Assets:	
Security Deposits	2,47,24,467
Inventories	
Food & Beverages	29,39,310
Packing materials	1,72,980
Housekeeping materials	1,12,371
Stationery	34,448
Bank	22,135
Total Assets (A)	**12,85,50,154**
Liabilities:	
City Union Bank OD and Term loans	19,00,36,906
Loan from Director	2,03,00,000
Sundry Creditors	1,25,50,581
Total Liabilities (B)	**22,28,87,487**
Net (A-B)	**(9,43,37,333)**

(b) In the books of M/s Cool Cream Milano Pvt ltd, the details of slump sale assets and liabilities in FY 18-19 were reported as

5.1. The following are the assets and liabilities of "Fine Dining & Lodging Business" undertaking of Oriental Cuisines Private Ltd, bought by Cool Cream Milano Private Ltd:

S.No.	Particulars	In Rs.
I.	**Fixed Assets:**	
1	Plant and Machinery	75,83,437
2	Furniture and Fixtures	18,31,370
3	Computers	1,09,291

4	Vehicles	2,04,993
5	Electrical Fittings	21,31,182
6	Building-Leasehold	93,15,412
7	Building - Own	1,07,27,200
8	Land	2,25,12,000
II.	**Current Assets:**	
8	Security deposits	2,47,24,467
	Inventories	
9	Food & Beverages	29,39,310
10	Packing materials	1,72,980
11	Housekeeping materials	1,12,371
12	Stationery	34,448
13	Bank	22,135
	Total Assets (A)	**8,24,20,596**
III.	**Liabilities:**	
1	City Union Bank OD and Term Loans	19,00,36,906
2	Loan from Director	2,03,00,000
3	Sundry Creditors	1,25,00,000
	Total Liabilities(B)	**22,28,36,906**
IV.	**Sale Consideration (C)**	**1,00,000**
V.	**Goodwill [(B)+(C)-(A)]**	**14,03,16,310**

8.6.7 As the transaction is between two corporate entities, the seller is liable for payment of Capital gains arising as result of this transaction. The capital gains, as a result of this transfer arises in the hands of the seller M/s OCPL. The property bearing no 71, cathedral road, Chennai, instead of registering to CCMPL (by OCPL) has been handed over by way of Power of attorney to the Shri Tarun Mahadevan, son of the appellant. As this property is part and parcel of slump sale, the value of this property has to be taken into consideration while arriving at capital gains in the hands of the seller OCPL. The AO is directed to examine whether any capital gains has been paid on this transaction by OCPL and take necessary action in this regard.

8.6.8 It is also see that the company OCPL, through POA holder Shri. Tarun Mahadevan, son of the appellant has transferred the property at No.71, Cathedral road, Chennai to the wife of the appellant Mrs. Badrunnisa for a consideration of Rs. Rs.3,32,39,200/-. The appellant has claimed that this property is part and parcel of Slump sale. It is also observed that this finds mention in the balance sheet of the division FDL of OCPL which has been transferred to CCMPL. It is to be noted that even though this property is part

of the balance sheet of FDL division, immoveable property has to be transferred by way of Sale deed in favor of CCMPL. After slump sale, the property has been transferred from CCMPL to Mrs. Badrunissa. In the sale deed even though it is mentioned that OCPL is the seller, represented by POA holder, the actual owner is CCMPL who acquired the rights by way of slump sale. As CCMPL is the owner of the property at No. 71, cathedral road, Chennai, it is liable for capital gains taxation on the said transfer of property. Hence AO is directed to verify whether CCMPL has paid Capital gains tax on the said transfer and take necessary action to bring the amount of capital gains to tax in the hands of the seller CCMPL.

8.6.9 AO has made a remark that the transfer of above property by OCPL to the wife of the appellant is consideration paid to the appellant in lieu of transfer of shares to Peepul. However the AO has not brought anything on record to show that undue benefit is passed on to the appellant. The AO has not doubted the genuineness of transaction nor has he faulted anything in the transaction. It is not the case of AO that the assessee has suppressed anything related to the transaction or the transaction is below market value. The AO has not held the transaction as a colorable device in the facts of the case. In absence of any evidences, the view of the AO that undue benefit is passed on to the wife of the appellant in lieu of the transfer of shares of OCPL held by the appellant is not tenable.

8.6.10 The property no 71, cathedral road belongs to CCMPL after the slump sale transaction. The property had to be registered to CCMPL by OCPL. But instead, OCPL has issued POA to the son of the appellant. This property has been transferred to Mrs. Badrunnisa by CCMPL (OCPL represented by POA holder).

8.6.11 As it is established that the property no.71, cathedral road is sold below market value to the buyer, the same needs to be considered for taxation in the hands of the recipient Mrs. Badrunissa. As per provisions of Section 56(2)(x) any person receiving any immoveable property below guideline value is to be taxed in the hand of the recipient under the head Income from Other Sources.

8.6.12 It has been brought to my knowledge that addition was made in the hands of Mrs. Badrunnissa in respect property received at below guideline value. It is seen that the guideline value as per the stamp valuation authority was Rs.54203485/- and in the course of assessment proceedings in respect of Smt. Badrunissa Begum for AY 2019-20, the difference between the value adopted by the Stamp Valuation Authority and the sales consideration i.e Rs. 20964285/- was added u/s 56(2)(vii)(b) of the Act. However the AO has mentioned that the value of property shown by OCPL in its slump sale at Rs.7,77,90,625/- for land and Rs.1,08,93,545/- for building (total Rs.8,86,84,170/-). Hence the AO may examine this aspect and take necessary action in the case of Smt. Badrunissa.

8.6.13 As discussed above, the appellant is not a party to the slump sale or the sale of the property at no 71, cathedral road and the transactions are to be brought to tax in the hands of the transacting parties unless AO finds the transactions to be a colorable device adopted to avoid taxation. The addition of Rs. 2,94,33,160/- made by re-computing capital gains in the hands of the appellant is hereby deleted. Hence the grounds no 17 to 22 are allowed

8.0 We have heard rival submissions in the light of material available on records. The principal issue seminal to the controversy is as to whether the assessee has indulged in any transactions with an eye on tax avoidance. The series of email communications between the assessee and his associates, Consultants, valuation reports etc and the business transfer agreement and share transfer agreement cited by the Revenue indicate that all was not fair in the transactions. The very fact that emails were exchanged for drafting of agreements, creation of financials, valuation report etc much after the so called agreements having been

executed on 01.08.2018 and 18.08.2018 itself goes on to indicate that a cover up exercise was being undertaken. The emails are part of demonstrative, documented electronic records which cannot be altered. The dates mentioned therein are therefore real dates and there cannot be any doubt about it. It goes on to indicate that the agreements executed prior to such electronic communication were engineered or fabricated to suit specific personal interests. As per any accepted principle of management, valuation reports, preparation of financial statements, draft agreements would precede actual execution of any formal agreement and not the otherwise. The Ld. AR of the assessee, during the present hearing, could not justify the genuineness and the need for the impugned emails. It was particularly pointed to him he was also one of the parties to whom the impugned emails were copied. The Ld. AR also could not satisfactorily explain as to how shares valued at upwards of Rs.19,000/- per share, were sold for just Rs.100/- per share in a gap of about six months. The valuation under Rule 11UA is also not credible as it has been done by intentionally withholding crucial valuation reports from the valuer. The Ld. AR could not explain as to why these crucial valuation reports were not provided to the valuer who did valuation under Rule 11UA. We have also taken note of the fact that the land and building belonging to Fine Dine Division of OCPL was sold through slump sale to CCPL and also that the assets of the impugned Fine Dine Division of

OCPL included the property at 71, Cathedral Road, Chennai. The sale of the same again to assessee's wife through assessee's son who was power of attorney holder of the CCPL again becomes questionable transaction. We have noted that the Ld.AO has observed that property worth Rs.8,79,84,170/- was sold for just Rs.3,32,39,200/-. The Ld. First Appellate Authority has seemingly failed in appreciating this crucial aspect of the case. The case at hand therefore assumes the character of being a case of ill-legitimate tax planning attempted by way of use of colourable devices.

8.1 On the matter we place reliance upon the decision of Hon'ble Supreme Court in the case of MacDowell and Company Limited vs The Commercial Tax Officer 1986 AIR 649 wherein the Hon'ble Apex held that tax planning may be legitimate provided it is within the frame work of law, colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges. We deem it necessary to extract the views of Hon'ble Apex Court on the matter

> *"……..We think that time has come for us to depart from the Westminister principle as emphatically as the British Courts have done and to dissociate ourselves from the observations of Shah, J. and similar observations made elsewhere. The evil consequences of tax avoidance are manifold. First there is substantial loss of much needed public revenue, particularly in a welfare state like ours. Next there is*

the serious disturbance caused to the economy of the country by the piling up of mountains of blackmoney, directly causing inflation. Then there is "the large hidden loss" to the community (as pointed out by Master Sheatcraft in 18 Modern Law Review 209) by some of the best brains in the country being involved in the perpetual war waged between the tax-avoider and his expert team of advisers, lawyers and accountants on one side and the tax-gatherer and his perhaps not so skilful, advisers on the other side. Then again there is the 'sense of injustice and inequality which tax avoidance arouses in the breasts of those who are unwilling or unable to profit by it'. Last but not the least is the ethics (to be precise, the lack of it) of transferring the burden of tax liability to the shoulders of the guideless good citizens from those of the 'artful dodgers'. It may, indeed, be difficult for lesser mortals to attain the state of mind of Mr. Justice Holmes, who said, "Taxes are what we pay for civilized society. I like to pay taxes. With them I buy civilization." But, surely, it is high time for tho judiciary in India too to part its ways from the principle of Westminister and the alluring logic of tax avoidance. We now live In a welfare state whose financial needs, if backed by the law, have to be respected and met. We must recognise that there is behind taxation laws as much moral sanction as behind any other welfare legislation and it is a pretence to say that avoidance of taxation is not unethical and that It stands on no less moral plane than honest payment of taxation. In our view, the proper way to construe a taking statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally, or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it. A hint of this approach is to be found in the judgment of Desai, J. in Wood Polymer Ltd. v. Bengal Hotels Limited(1) where the learned judge refused to accord sanction to the amalgamation of companies as it would lead to avoidance of tax.

It is neither fair nor desirable to expect the legislature to intervene and take care of every device and scheme to avoid taxation. It is upto the Court to take stock to determine the nature of the new and sophisticated legal devices to avoid tax and consider whether the situation created by the devices could be related to the existing legislation with the aid of 'emerging' techniques of interpretation as was done in Ramsay, Burma Oil and Dawson, to expose the devices for what they really are and to refuse to give judicial benediction….".

8.2 We are therefore of the considered view that the transactions of impugned long term capital loss shown by the assessee in its Return of Income of Rs.2,60,11,810/- is not a genuine loss. We have noted that the Ld.First Appellate Authority has not been able to effectively appreciate the full facts of the case and has tried to accord relief based upon piece

meal conclusions. He has apparently failed to appreciate and understand the larger picture as available in the complex factual matrix weaved in by the assessee. We have however also noted that the addition of Rs.2,94,33,160/- made by the Ld.AO is not based upon correct understanding and appreciation of the facts of the case. In para 12.14 of his order, the Ld. AO has chiefly premised that the property at 71, Cathedral Road, Chennai was valued at Rs.8,86,84,170/- out of which Rs.3,32,39,200/- was paid by Smt.Badrunissa wife of the assessee and that in the process a notional gain of Rs.5,54,44,970/- passed on to the assessee. According to the Ld.AO, this was the tacit gain which the assessee had acquired for selling shares at highly undervalued price. The Ld. AO therefore after reducing the reported cost of acquisition of OCPL shares amounting to Rs.2,60,11,810/-, made the impugned addition of Rs.2,94,33,160/-. We have however noted that the hypothesis propounded by the Ld.AO is flawed and not supported by the statutory stipulations governing the matter. It is true that the wife of the assessee has acquired a property for an amount significantly lower than its actual reported value. However, the said transactions would make the wife of the assessee liable for additional taxation within the meanings of Section-56(2). Stretching the transaction and implicating assessee into it does not appears to be the correct line of action. To the extent, we confirm the findings of the Ld.CIT(A) that Revenue is at liberty to take

action in respect of the impugned sale purchase transaction for property 71, Cathedral Road, Chennai, including any remedial action in accordance with law.

8.3 Reverting back to the present controversy, regarding the allowance of claim of long time capital loss of Rs.2,60,11,810/- made by the assessee in respect of sale of 28256 shares of OCPL, we have noted that the per share valuation figure adopted by the assessee of Rs.100 per share is not supported by facts on record. We have noted that the impugned figure of FMV of shares adopted by the assessee is far less than the value of shares adopted by assessee's own valuers in recent past. Thus, whereas the shares were transferred by the assessee to PF vide agreement dated 18.08.2018, the same shares were reportedly valued as on 30.06.2018 at Rs.19566 per share by one Shri N.Krishna who was partner of Brahmayya and company CAs. It is pertinent to note that in the email dated 04.09.2018 he had clearly conveyed that "…we have carried out the valuation of Peepul Capital Fund II LLC 's holding as on 30.06.2018…." . The valuer proceeds to value shares of Oriental Cusine Private Ltd at INR Rs.1105.56 Millions or US Dollars 16,121,907. The value of INR Rs.1105.56 Millions aggregates to Rs.19566 per share. The value adopted by the assessee at Rs.100 per share and by the assessee's 11UA valuer at Rs.30 per share is therefore far too low in

comparison to the valuations done as on 30.06.2018. Nothing has been brought on record as to how and what prompted such a drastic reduction in the value of the shares. It all goes on to indicate that the valuation of shares was intentionally brought down by the assessee to avoid true incidence of taxes. Be that as it may be, we are of the considered view that ends of justice would be met if the matter is remitted to the Ld.AO for readjudication de novo of correct long term capital gains arisen to the assessee from the impugned share transactions. Accordingly, we set aside the order of the Ld. CIT(A) and direct the Ld. AO to recalculate the long term capital gains by adopting the valuation figures as on 30.06.2018 recommended by Shri N.Krishna who was partner of Brahmayya and company CAs, as mentioned in his email dated 04.09.2018. We have taken the valuation figures of shares as on 30.06.2018, since the same was in the closest proximity to the share transfer agreement date of 18.08.2018. While recalculating the long term capital gains, the Ld. AO may also take recourse to valuation methodology prescribed under Rule-11UA and in accordance with law, by taking the valuation figures on 30.06.2018 as base figures. The Ld. AO shall be required to give due opportunity of being heard to the assessee and the assessee would be bounden to comply with the statutory notices of the Ld.AO. **All the grounds of appeal raised by the Revenue on the above issues are therefore partly allowed.**

9.0 In the result, the appeals of the Revenue are decided as under:-

ITA Nos	Assessment Year	Result
ITA-1824/Chny/2024	2013-14	Partly allowed.
ITA-1825/Chny/2024	2014-15	Partly allowed.
ITA-1826/Chny/2024	2019-20	Partly allowed.

Order pronounced on 30th, May-2025 at Chennai.

Sd/-
(यस यस विश्वनेत्र रवि)
(SS VISWANETHRA RAVI)
न्यायिक सदस्य / Judicial Member

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य /Accountant Member

चेन्नई/Chennai, **दिनांक**/Dated: 30th , May -2025.
KB/-

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**
1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/**CIT -** Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF