K. Hari Prasad Vs. Inspecting Assistant

K. Hari Prasad Vs. Inspecting Assistant

SooperKanoon Citation : sooperkanoon.com/66473

Court : Income Tax Appellate Tribunal ITAT Hyderabad

Decided On : Nov-22-1993

Reported in : (1994)50TTJ(Hyd.)450

Appellant : K. Hari Prasad

Respondent : inspecting Assistant

Judgement :

These are two appeals filed against the order of the CIT(A) dt. 1st March, 1988 for asst. yr. 1982-83 and a separate order of the same date for asst. yr. 1983-84.

2. The assessee is common in both these appeals. The genuineness or otherwise of the cash credits forms the main subject-matter in the appeal relating to asst. yr. 1982-83 and the interest said to have been paid to some of the cash creditors as well as genuineness of other cash credits said to have been borrowed by the same assessee forms the subject-matter of appeal for asst. yr. 1983-84. It is significant that the genuineness of the cash credit relating to asst. yr. 1982-83 as well as 1983-84 were examined by the Assessing Officer while passing the assessment order dt. 30th Dec., 1985 for asst. yr. 1982-83 and the findings given about the genuineness of those cash credits were followed while passing the separate assessment order dt. 30th Dec., 1985 for asst. yr. 1983-84. Therefore, since the issue involved in both appeals are intimately connected with each other and since some of the findings which may be given for asst. yr. 1982-83 will have an automatic bearing on some of the issues involved for asst. yr. 1983-84 and since the assessee is common in both these appeals, this Tribunal felt that it

would be convenient to take up both these appeals together and dispose them of by a common order.

3. The appellant is represented by Shri A. Satyanarayana and Shri G. V.V. S. Murthy, learned advocates for the assessee while the Revenue is represented by the Sr. Departmental Representative Shri S. C. Jaini.

Written arguments are filed both for the assessee as well as for the Department and they are made part of the records of these appeals. The assessee was a resident of House No. 3-4-876, Barkatpura, Hyderabad.

There was a search in the residential premises of the assessee on 22nd Sept., 1982 when cash of Rs. 75,000 was seized besides some papers showing accounts. A panchanama in which particulars of the seized material was drawn up. Admittedly the assessee was engaged in Abkari business either singly or in partnership with others. He was assessed to income-tax only for one year, i.e., for asst. yr. 1975-76 before the ITO, Gudivada on a total income of Rs. 6,287, the main source of income being share income from M/s. Elamanchala Babu Rao and P. Ranga Rao of Gudivada, a firm which carried on arrack business. As admitted by the assessee himself in his statements, he carried on arrack business in places like Chilakaluripeta, Machilipatnam, Pedana, Divi Tq. and Vijayawada, from the lease year 1977-78 onwards. Abkari lease commences from October and extends upto end of September next year. In the lease year 1979-80, he had taken some arrack contract in Khammam Dist. along others. In the same lease year, he was associated with Vijayawada Tq.

group of Arrack Shops, Vijayawada Toddy Group shops and Avinigadda Group Arrack shops. During the lease year 1980-81 and 1981-82, he carried on business in partnership with one Shri Narsa Goud and others at Kothagudam. During the same lease years of 1980-81 and 1981-82 he was also associated with M/s. Sri Venkateswara Enterprises, Arrack Contractors, for twin cities upto 15th Jan., 1982.

4. It is the case of the Revenue which is said to have been supported from the seized material at the resident of the assessee that the assessee had earned substantial amounts in the past five or six years in which he was in arrack

business and lent his monies to various parties either in his name or in the names of his benamies and the assessee failed to disclose the income earned by him for all these years. When the assessee was asked to produce books at account, if any, for these years, he stated that the statement of accounts for all these years businesses and also his present accounts are available with his uncle Shri V. Rama Mohan Rao, a resident of Gudivada. But no accounts of any sort were produced during the pendency of S. 132(5) proceedings which culminated in the orders. dt. 20th Dec., 1982 passed by the ITO, A Ward, Special Inv. Circle No. II, Hyderabad. The assessment orders for 1982-83 and 1983-84 were passed on 30th Dec., 1985. Few days before passing of such orders, the same books of accounts were said to have been produced by the assessee before the Assessing Officer on 17th Dec., 1985 which were stated to have been maintained at Gudivada by the assessees uncle, Shri Rama Mohan Rao. Before actually producing such accounts, the assessee had filed his letter dt. 6th Dec., 1987. In the said letter it is stated that he does not maintain any books of account himself and all his accounts are maintained by his uncle Shri Rama Mohan Rao at Gudivada. He periodically sends information to him on the basis of which the accounts are drawn up under his uncles (Rama Mohan Raos) supervision since the assessee used to be on tours very often due to his excise business and that was the reason why he was sending the information to his uncle so that all information and books are available at one place. The books have been written up in the relevant years. He had requested his uncle Shri Rama Mohan Rao to send the books. Shri Rama Mohan Rao was bed-ridden and down with cancer. He would be in a position to get the books within four or five days time and he will produce the books after they are received from Gudivada.

The Assessing Officer states that no books of accounts were seized at the time of search. He further states that the books produced later on 17th Dec., 1985 before him cannot entirely be relied for the following reasons : (1) The balances are drawn in pencil which could have been altered at any time to suit the convenience.

(2) These books were never produced before the ITO in proceedings under S. 132(5).

(3) In his statement, the assessee stated that his uncle maintained books of accounts. When it was pointed to him that books are in different writing; he stated that partly they were written by his uncle and partly by accountants engaged by him. This contradicts his earlier statement.

(4) Even if the books are maintained in regular manner, certain entries can be proved false. Mere entry is not enough.

(5) The books have been produced very belatedly. They were open for manipulation depending upon query by the Department.

Though the claim of the assessee was that the accounts were maintained by his uncle Shri V. Rama Mohan Rao for all the years in which the assessee carried on Abkari business, what he had produced before the Assessing Officer on 17th Dec., 1985 appears to he a truncated account maintained for the period from 29th Aug., 1981 to 1st Sept., 1982. The cash book purported to have been maintained for the said period was provided at pages 21 to 28 and the corresponding ledger for the same period was provided at pages 29 to 35 of the paper book filed on behalf of the assessee. The cash book as well as ledger maintained was in Telugu. Thus it can be seen that no regular books of account were maintained by the assessee himself where the entries are made as and when they occurred. Even according to the assessee, he used to periodically send information to his uncle Shri Rama Mohan Rao at Gudivada on the basis of which the accounts were used to be drawn up under the supervision of his uncle. When the search and seizure had taken place on 22nd Sept., 1982 though the accounts were available with his uncle at Gudivada no such accounts were ever produced in 132(5) proceedings. The assessment proceedings for 1982-83 and 1983-84 were started in 1985 and the assessment orders themselves were passed on 39th Dec., 1985. Only at the fag end of the assessment proceedings, the so-called accounts were produced. Under the circumstances, the accounts cannot be said to be full-fledged and there is no guarantee that all the transactions were entered into in such books. Various expenses incurred by the assessee were not vouched in the accounts. Under the circumstances no authenticity to the correctness of the accounts can be vouchsafed. Thus we hold that no great importance can be attached to such accounts except to serve as weak corroborative evidence. It is argued that the assessee had borrowed from the following five persons the amounts shown against each of them as cash credits for carrying on his arrack business : These borrowals were said to have been made in September, 1981, and therefore, since the first year after the borrowal ended on 30th Sept., 1981 relevant to asst. yr. 1982-83, the question of either claiming interest or disallowing the same did not arise for asst. yr. 1982-83.

It was also claimed by the assessee that he had borrowed a sum of Rs. 1,81,000 for his own business in the month of September, 1981 from the following six parties against whom the borrowed amounts were respectively shown : Thus the total of the addition made under the head other sources came to Rs. 5,61,000. Together with the income returned said to have been derived from Arrack business and running of the club of Rs. 28,904 the total income was determined by the Assessing Officer at Rs. 5,89,904.

In the abkari year 1981-82 relevant to asst. yr. 1982-83, the assessee jointly bid the arrack shops of twin cities of Hyderabad and Secunderabad along with one Shri K. Jangam Rao who was carrying on business under the name and style of K. Jangam Rao & Co. which was an income-tax assessee. The understanding between the assessee and Shri K.Jangam Rao was that the intended business was to be carried on in the name of M/s. Sri Venkateswara Enterprises. The account books of M/s. K.Jangam Rao & Co. showed that Rs. 42 lakhs invested by the assessee.

Annexure A to the assessment order for 1982-83 represents the explanation of sources for Rs. 42 lakhs. It is the case of the assessee that the arrack shops of the twin cities of Hyderabad and Secunderabad were auctioned before 30th Sept., 1981. The oral understanding between the assessee and Shri Jangam Rao was that the former should take 60% and the latter should get 40% share in the proposed partnership which should be conducted under the name and style of M/s. Venkateswara Enterprises. Shri Jangam Rao was the successful bidder at the auction for Hyderabad and Secunderabad. For the period from 1st Oct., 1981 to 30th Sept., 1982 which corresponds to the assessment year in question Shri

Jangam Rao bade at the auction for Rs. 60 lakhs. The Earnest Money Deposit and others amounted to Rs. 13,90 lakhs. They have deposited a sum of Rs. 73,90,000. The certificate granted by the Excise Superintendent dt. 17th Sept., 1981, which was filed, shows that the total deposit was Rs. 73,90,000. Till the formation of a new partnership under the name and style of M/s. Venkateswara Enterprises, the understanding between Shri Jangam Rao and the assessee remained oral. Ultimately no written partnership was executed. The group of the assessee is represented by 14 persons and the assessees case was that he had collected a total sum of Rs. 42 lakhs from all the persons in his group and supplied the money of Rs. 42 lakhs to M/s. Jangam Rao & Co. The list of 14 person from whom the amounts were collected or who constituted the group of fourteen is provided at Annexure-A to the assessment order. The said annexure gives details of both the payment as well as the amounts collected from persons of his group. The said list of 14 persons also contained in a part of the statement of the assessee given on 19th Dec., 1982, a copy of which is provided at pages 1 to 9 of the paper book. The credits at serial Nos. 2, 5, 7, 8 & 9 mentioned in the annexure-A were not accepted and the total of the credits borrowed from all of them amounted to Rs. 3,80,000. According to the assessee, these five creditors had actually invested their monies against promised share in the business profit. The assessee did not maintain any books of account but Jangam Rao & Co. had maintained the books of account for the arrack business carried on by it. However, in the books of Jangam Rao & Co. the investments made were all entered in a consolidated figure. Page No. 20 of the paper book was an extract given from out of the accounts of Jangam Rao & Co. It was argued that on the basis of entries at page 20 of the paper book, the assessee prepared the cash book and ledger noting from whom he borrowed and to whom he had repaid later. Copies of cash book and ledger are provided at pages 21 to 35 of the paper book. They represent part of the impounded documents and they have all along been in the custody of the Department. It appears the Department had examined all the creditors mentioned in Annexure A to the assessment order. They have accepted all other credits except credits borrowed from the five persons noted at sl. Nos. 2, 5, 7, 8 and 9 amounting to Rs. 3,80,000.

5. The first of the creditors whose debt was disbelieved was that of Ravi Ammayya of Tenali. His confirmatory letter was produced even during 132(5) proceedings. He was an income-tax assessee and this fact was admitted in the assessment order for 1982-83 itself. According to the assessee he borrowed a sum of Rs. 2 lakhs on 14th Sept., 1981.

Account copy of Ravi Ammayya is provided at page 67 of the paper book.

According to the said account copy which represents only the ledger account copy on 5th April, 1982 the sum of Rs. 18,000 was debited towards interest and the whole of Rs. 2,18,000 was repaid to the creditor on 5th April, 1982 itself and thus the account was closed.

Shri Ravi Ammayya was examined by the Revenue on 19th June, 1985 and 26th May, 1985 in the absence of the assessee at Tenali. He claimed that he did not advance either Rs. 2 lakhs to Shri K. Hari Prasad or gave any confirmatory letter. He also denied to have purchased a D/D on 9th Sept., 1981 at Tamil Nadu Mercantile Bank for Rs. 2 lakhs. He also denied to have obtained loan from 8 persons in order to raise Rs. 2 lakhs. He denied to have any business connection with Shri Hari Prasad.

He further denied the genuineness of the signature on the confirmatory letter. Subsequently, the letter dt. 29th Nov., 1985 was addressed to the assessee confronting him with the statements of Sl. Nos. 2, 5, 7, 8 and 9 Annexure A to the assessment order who had all denied of having given any loans to the assessee, Shri K. Hari Prasad. The assessee wanted to produce all of them for further examination. However, the assessee was able to produce only Shri A. Samba Siva Rao and Shri H.Seshagiri Rao for examination on 11th Dec., 1985 and 12th Dec., 1985 and failed to produce the other three creditors. Opportunities were granted to the assessee to produce the creditors on 11th Dec., 1985, 12th Dec., 1985 and 30th Dec., 1985. However, the assessee failed to produce any of them but produced the affidavits dt. 23rd Dec., 1985.

One of the affidavits is from Sri Ravi Ravindranath son of Ammaiah. It is unnecessary to extract the whole deposition of Shri Ravi Ammaiah which is already extracted by the Assessing Officer. It is enough if we pronounce upon the genuineness of the cash credit. There are certain pieces of evidence on record which go to prove the genuineness of this cash credit. The first piece of evidence is the fact that in the earliest of the statements given by the assessee in the search proceedings which is dt. 10th Dec., 1982 and 13th Dec., 1982, a copy of which is provided at pages 1 to 9 of the paper book, answering to question about the source of investment of Rs. 41 lakhs, the assessee replied, inter alia, that he had borrowed from 14 persons and he raised a total loan of Rs. 42 lakhs from them. He gave the names of the creditors as well as the amounts borrowed from them. The seventh name given was that of Shri Ravi Ammaiah, Tenali and the amount said to have been borrowed from him was Rs. 2,00,000. The assessee belongs to Hyderabad, whereas the creditor Ravi Ammaiah was a resident of Tenali.

The search proceedings also took place in the residential premises of the assessee at Hyderabad. If Sri Ravi Ammaiah was an utter stranger to him and no amount was borrowed from him, it is quite unlikely that the assessee could have revealed the name of the person, as well as the amount said to have been borrowed from him correctly, even in his earliest of statements given on 13th Dec., 1982 in the course of the search proceedings dt. 22nd Sept., 1982. It is significant that no statement of any sort was recorded in between 22nd Sept., 1982 to 10th Dec., 1982. The second piece of supporting evidence is that for Rs. 2 lakhs, a demand draft was purchased from Tamil Nadu Mercantile Bank at Guntur and the same was deposited with the Excise Superintendent, Hyderabad. A certificate was granted by the Manager, Tamil Nadu Mercantile Bank and copy of the said certificate was provided at page 64 of the paper book. The demand draft number was given as Hyb-608 (printed No. 426431). The said draft was said to have been issued to one Shri P. Sambasiva Rao on 9th Sept., 1981. Shri P. Sambasiva Rao was the relative or an employee working under the management of Shri Ravi Ammaiah. This was clarified by the affidavit of Shri Ravi Ravindranath.

A copy of the affidavit of Shri Ravi Ravindranath is provided at pages 65 and 66 of the paper book. The affidavit is no doubt dt. 19th Dec., 1985. In the affidavit it is stated that the manager Shri V. Subba Rao, son of Veeraiah who is now residing at Visakhapatnam obtained a demand draft No. 426431 on T. N. Mercantile Bank, Guntur on 9th Sept., 1981 for Rs. 2 lakhs and this amount was given as loan to the assessee. The loan amount was raised after borrowing from about eight persons whose names and the amounts borrowed from each of them were mentioned in the affidavit.

It is stated that the fact about the taking of D/D from Tamil Nadu Mercantile Bank was later intimated to his father Shri Ravi Ammaiah by the manager, Shri V. Subba Rao since Shri Ravi Ammaiah, who is his father was suffering from Hypertension and Paralysis. Shri Ravi Ravindranath was the Chairman of Municipal Council, Tenali and by virtue of the respectable position he held in public life, his affidavit surely carries weight. The demand draft mentioned in his affidavit and the number given in the certificate given by the Tamil Nadu Mercantile Bank tallied with each other. The third piece of evidence which goes to support the truth of the cash credit was the cash book and ledger obtaining at pages 21 to 35 of the paper book.

They were for the period from 29th Aug., 1981 to 1st Sept., 1982. It is already stated that it is prepared from the seized material now with the Department and in the cash book at page 21 it is clearly mentioned that a sum of Rs. 2 lakhs was borrowed on 14th Sept., 1981 from Shri Ammaiah Garu. Corresponding ledger account of Shri Ravi Ammaiah was provided at page 30 and in that it is clearly stated that the amount of cash credit together with interest was repaid on 5th April 1982. The total amount came to Rs. 2,18,000. This version of repayment was corroborated with the statement of the assessee recorded on 13th Dec., 1982. The question asked as well as the answer given are the following : "Q. You have stated that you have collected 42 lakhs from various people and paid Rs. 41 lakhs to M/s. Sri Venkateswara Enterprises as your share. Is it 42 lakhs investment or 41 lakhs invest. ?" A. I have retained 1 lakhs with me for emergency purpose. I have returned almost all the amount except 1 lakh 5 thousand payable to S.Ramanatha Rao & Co., i.e. Rs. 72,761 principal and interest Rs. 32,239." The answer would clearly show that the cash creditors from whom Rs. 42 lakhs were borrowed were all repaid and since Ravi Ammaiah was one of the cash creditors, it goes without saying that he was also repaid by the date of his statement i.e. 13th Dec., 1982. Admittedly Shri Ammaiah was examined behind the back of the assessee.

However, the assessee was confronted with the statement of Shri Ravi Ammaiah with the letter dt.

29th Dec., 1985 and the assessee was directed to produce the creditors and the assessment proceedings were posted to 11th Dec., 1985 and 12th Dec., 1985. The assessee was not able to comply and he addressed a letter dt. 21st Dec., 1985, copy of which is provided at page 139 of the paper book. In that it is stated that his mother was seriously ill and was admitted in the emergency ward of Osmania Hospital. S/Shri Koteswara Rao, K. Parasuramaiah, and Ravi Ravindranath, the witnesses whom he wanted to examine on his behalf expressed their inability to come to Hyderabad due to personal problems and, therefore, he was not in a position to produce them. He could only obtain affidavits from each of them which he was forwarded long with the letter, for the assessment that has to be completed on 31st Dec., 1985. He was left with no other choice except to request for time for three weeks to examine the witnesses, otherwise he requested to take into consideration the affidavits given by them. Shri Ravi Ammaiah and Shri Ravi Ravindranath are father and son and Shri Ammaiah was an old and sickly person suffering from hypertension and paralysis. Under the circumstances it is explained that all his affairs are looked after by his son Shri Ravindranath. It is argued that it is not uncommon in joint families to lend moneys in the name of Karta of the family even though the junior members happen to advance and were at the helm of affairs while advancing moneys. This argument is quit acceptable. Since Shri Ravi Ammaiah was examined behind the back of the assessee and no opportunity was given to the assessee to cross-examine him, the statement recorded from Shri Ravi Ammaiah cannot be taken against the assessee since it would be in violation of principles of natural justice. By the time Shri Ravi Ammaiah made the statement, he had realised all the monies which he had already advanced to the assessee.

He was also an income-tax assessee. One does not know whether the interest income of Rs. 18,000 earned by him was revealed in his own assessment and any admission on his part of having lent Rs. 2 lakhs or realising it back together with interest at 18% would certainly land him in trouble and that may be one of the reasons why he might have denied having lent the sum of Rs. 2 lakhs or having given a confirmatory letter or having passed the receipt at the time of repayment of Rs. 2,18,000. It is significant that his statements were recorded on 3rd May, 1985 and 22nd May, 1985 and during the course of giving the statement at the request of the Revenue he had furnished specimen signatures both in English and Telugu. Having obtained those signatures, the Revenue did not choose to send those signatures for the purpose of comparison with the signature obtaining on the confirmatory letter to conclusively prove that they are not of the same person.

Having regard to all the above, this Tribunal feels that the assessee was able to establish the identity of the creditor, his creditworthiness as well as the genuineness of the transaction.

Therefore, Rs. 2,00,000 cannot be considered as income of the assessee from other sources for asst. yr. 1982-83.

6. There are four more creditors, namely, Kadiyala Koteswara Rao, Kadiyala Parasuramaiah, Adusumilli Samba Siva Rao Nalluri Seshagiri Rao. The case of the former two can be considered separately from the latter two. The latter two persons were examined at the instance of the assessee on 11th Dec., 1985 and 12th Dec., 1985 whereas the former two were not examined. Now let us consider the case of Adusumilli Samba Siva Rao. He stated that he studied upto Intermediate. He along with his father owned 50 acres out of which 15 acres is dry and 35 acres wet. He has no other income except income from agriculture. Originally when he was examined on 19th June, 1985 denied of having known the assessee and he denied having let any money to him at any time. So also he denied the confirmatory letter and the signature thereunder. So also he stated that he had got savings bank account in State Bank of India, Sripuram. He stated that there are loans taken in the name of himself, his brother and mother. However, when he was examined again on 11th Dec., 1985, he maintained that he does not know the assessee but in Sept., 1981 he paid a sum of Rs. 30,000 to Shri Rambabu of Guntur whom he knew for the last seven or eight years. Shri Rambabu asked for doing some excise business and he gave it. Shri Rambabu had put the money in excise business and three months later the returned the money with interest. Though he denied having seen the confirmatory latter he

admitted that his own village Karnam might have signed the certificate about his agricultural holding. He also admitted that once Rambabu asked him for a certificate (confirmatory letter) which he gave. He does not remember what he had stated in the said certificate. In cross-examination by the Revenue he stated that he had paid Rambabu in cash and no pronote was obtained and the amount was paid out of his agricultural income. He also did not take any security and the amount was given on trust. He had not withdrawn any money from the bank and the amount was given out of sale proceeds of cotton and chillies. He also sold some lands prior to giving the loan. He sold two acres of land at Sripuram which was in his mothers name. He does not remember the purchasers name but the registered document was executed at Sattenapalli.

Sri Nalluri Seshagiri Rao had deposed that he does not know the assessee and that he did not give any loan to him also. He denied having signed confirmatory letter. However, when he was confronted with a Telugu typewritten letter in which receipt of Rs. 40,000 was acknowledged and interest of Rs. 4,100 was acknowledged from the assessee, the following answer was given by him : "The particulars in para 1 such as the name and the date, etc., appear to have been filled in by me. I do not remember under what circumstances I have signed this paper. The amount figures noted in para 2 have not been written by me. I have not given any loan or received back with interest." He had a Savings Bank Account in Syndicate Bank, Guntur. This had been opened to facilitate encashment of small demand drafts sent by his sons now and then. When he was examined next time he stated that earlier he had 17 acres of land at Bandarupalli and he sold in 1980 and 1985. At present he is not having any land at all. He got Rs. 1,50,000 by the sale of land. He was doing agriculture by taking land of others on lease, that he does not know the assessee though he admitted that he knows Rambabu and he had given about Rs. 40,000 to Shri Rambabu as loan. He became familiar with Rambabuy as he was meeting him at the shop of Shri Basavaiah at Guntur. He knows Rambabu since about six or seven years. After lending the money to Rambabu he received back the amount after 5 or 6 months. When he was confronted with the letter addressed to the ITO, Hyderabad and when he was confronted with the letter addressed to the ITO, Hyderabad and when he was questioned as to who signed it, he answered that the signature appeared to be his.

When he was confronted with the earlier statement on 26th June, 1985 and was asked as to why he denied the signature on the confirmatory letter at that time. He answered that since he had not given any loan to the assessee he had stated so. When he was questioned as to the purpose why he had lent the money to Sri Rambabu, he replied that he had given the money with a hope that he would start some business. He had not taken any security. In cross examination he had admitted that his village Bandarupalli is 8 miles away from Guntur. He was specifically asked as to why in his statement dt. 26th Aug., 1985, he stated he had no money in Sept., 1981 to give to Shri K. Hari Prasad, that during that time he owned amounts to others and also he had sold some lands to clear out those debts. However, now he is coming with the version that he lent Rs. 40,000 to Shri Rambabu. His answer was clear and categorical as follows : he was afraid that income-tax will be levied on him and, hence, he had stated so. He was left with Rs. 40,000 out of the sale proceeds of land after discharging the loans which he had given to Sri Rambabu. Thus it is clear that Shri A. Samba Siva Rao as well as Nalluri Seshagiri Rao came forth with the version that they lent moneys noted against each of them, not to the assessee, but to Shri Rambabu of Guntur and that the amounts were paid back to them after five or six months. Shri Rambabu was also examined and his statement was recorded in annexure B to the assessment order for asst. yr. 1982-83. He had stated that at the time of his deposition he was carrying on poultry business at Guntur. In 1981 though he did not himself enter into excise contract, indirectly he joined Shri Hari Prasad of Hyderabad to do excise business. He collected money from others in Sept., 1981 to do business. He collected amounts from the following persons : He knows them because they come to his shop since long time and he had contracts with the relatives of those persons. When the moneys were given to him no pronotes or security were taken fort the amounts. The moneys were given to do business and after collecting the money from the above persons he had given the same to the assessee. Initially the assessee told him that the contract was taken by him and others but later he told him that the business was taken over by others and he got back the money which he had returned to the persons from whom he had earlier taken. He had done any business jointly with the persons from whom he had taken the moneys. He had no marriage alliances with any of the four persons and Shri Seshagiri Rao also known him since a long time. Except taking a loan of Rs. 2,70,000 from bank in 1982 he had in 1982 he had not borrowed from any other person. He had not raised loans from similar sources for his poultry business. The interest charged by the bank is less. He knows the uncle of the assessee Shri Jaganmohan Rao and through him he came to know the assessee. He informed the four persons from whom the moneys were taken that the money was for excise contracts but he had not informed that he had paid to the assessee. He had taken receipts for the return of money. He had given those receipts to the assessee. He was not an income-tax assessee. He has a share in poultry farm as well as Venkateswara Finance, Guntur. Shri Basavaiah is one of the partners of Venkateswara Finance, Guntur in which he was also a partners. All the above persons from whom he had taken money are closely related to Shri Basavaiah. They used to come often to his shop and that is how he closely know. Their relationship with Basavaiah is also the reason for their coming to the shop. Sri Koteswara Rao is the brother-in-law of Basavaiah whom he knows from young age and that is how he came to know of him in the college itself. Thus the evidences of Shri A. Samba Siva Rao, N. Sheshagiri Rao and Rambabu from a complete chain which would go to establish the genuineness of the credits, their creditworthiness as well as the truth of the transactions. The translation of the confirmatory letters given by his A. Samba Siva Rao was at page 78 of the paper book. It is stated that he owns 17 acres at Sripuram in which he grows cotton, tobacco, etc., and obtain a net agricultural income of Rs. 20,000 and he advanced a loan of Rs. 30,000 to the assessee on 15th Sept., 1981. At page 79 the translation of certificate of village Karnam was given. The village Karnam certified that Shri A. Samba Siva Rao had 17 acres of land, which yields annual agricultural income of Rs. 30,000. At page 80 is the receipt given by Shri Samba Siva Rao in the name of the assessee for having received Rs. 30,000 and Rs. 3,100 totalling to Rs. 33,100 on 5th April, 1982 and 6th May, 1982. Similarly the translation of the confirmatory letter by Shri N. Seshagiri Rao was at page 82. The translation of the village Karnams certificate in the case of Shri N. Seshagiri Rao was at page 83, the translation of the confirmatory letter of Shri N. Seshagiri Rao was at page 84 and the account copy of Shri Seshagiri Rao was at page 85 of the assessees paper book.

It is significant that the assessee in the earlier of his statement given on 13th Dec., 1982 had stated the names of these two persons together with the amounts borrowed from each of them, correctly, as the two out of 14 persons from whom he borrowed Rs. 42 lakhs. Further the cash book and ledger at 21 and 35 of the paper book which still remains with the Department as part of the seized material disclose the amount borrowed from these two persons. At page 21 it is stated that the amount borrowed from Shri A. Samba Siva Rao, Sripuram on 15th Sept., 1981 was Rs. 30,000. Similarly the amount borrowed from N. Seshagiri Rao of Bandarupalli on 15th Sept., 1981 was Rs. 40,000. Similarly at page 33 of the paper book it is stated in the ledger accounts of each of these persons that on 5th April, 1982, the interest amounts of Rs. 3,100 and Rs. 4,100 were respectively paid and the original amounts of Rs. 30,000 and Rs. 40,000 were returned to them on 6th Sept., 1982.

Thus this Tribunal is completely satisfied with the evidence on record to hold that these two cash credits in favour of these two persons, namely, Samba Siva Rao and Seshagiri Rao are true credits and, hence, the amounts of Rs. 30,000 and Rs. 40,000 respectively should not be included in the hands of the assessee under the head other sources.

7. Now let us take up the credits in favour of Sri K. Koteswara Rao and Shri K. Parasuramaiah of Rs. 60,000 and Rs. 50,000 respectively. They were examined on 19th June, 1986 and 20th June, 1985. In his examination Shri Koteswara Rao stated that he studied upto M. Com. that he completed his studies in 1976, that he was looking after agriculture at Sripuram, that last year he had set up a ginning mill at Sripuram with others in which he was having 1/6th share. At present he is looking after the mill. He had invested Rs. 10,000 in the mill. For the last about 3 years his only source of income is from agriculture and he has 15 acres of agricultural land out of which 10 acres are wet and 5 acres dry. In wet land paddy crop in grown and cotton and chillies are grown in dry lands. There are irrigational sources even for dry lands.

He gets Rs. 20,000 to Rs. 25,000 from agriculture. He had not given any loan to the assessee of Hyderabad at any time. He does not know him.

The signature on the confirmatory letter is not his. He is not assessed to income-tax or wealth-tax. He was not maintaining books of accounts for agriculture. He was maintaining accounts for ginning mill. He had savings bank account in State Bank of India, Sripuram. He, his wife, son aged 11 years and daughter of 7 years comprised his family. His monthly family expenditure is Rs. 1,500 and he has put up his family at Guntur for the last four years. In Sept., 1981, he was not having cash of Rs. 60,000. There is not even possibility of his having such huge cash. He denied to have signed the receipt shown to him under which he purported to have acknowledged receipt of Rs. 6,300 on 5th April, 1982 and Rs. 60,000 on 6th May, 1982. He had given a specimen signature in his deposition. He denied to have given any receipt for having received the amount to the assessee. Shri K. Parasuramaiah was examined on 21st May, 1985. He stated that he had 15 acres of land. He does not have any liquid cash. For agricultural operations he raised funds from banks by way of loans. In the year 1979, 1980 and 1981 he had taken gold loan from State Bank of India, Sripuram. He does not know the assessee. He had not given any confirmatory letter for having advanced Rs. 50,000 and received it back with interest of Rs. 5,200. The signature in the confirmatory letter in not his. He had furnished his specimen signatures in his deposition. He had not given any loan for interest and he had sold 12 acres of land to discharge his debts about 4 years back. The ginning factory commenced in May 1985. Both Shri K. Koteswara Rao and Shri K. Parasuramaiah were examined behind the back and in the absence of the assessee. Though the assessee promised to produce them, he was not able to do so and ultimately he had he had filed their affidavits dt. 19th Dec., 1985. Accounts copy of Shri Koteswara Rao was provided at pages 70 and 71 of the paper book and copy of the accounts of Shri Parasuramaiah was provided at pages 75 and 76 of the paper book. The confirmatory letter of Shri K. Koteswara Rao was provided at page 68 and that of Shri Parasuramaiah was provided at page 73 of the paper book. The account copy of Shri Koteswara Rao was provided at page 77 of the paper book filed by the assessee. The names of these two creditors were mentioned in the list of 14 persons from whom the assessee borrowed Rs. 42 lakhs. In this statement recorded from the assessee which is the earliest of the statements recorded from the assessee in the search proceedings, their names as well as the amounts borrowed from each of them were correctly stated by the assessee. The borrowals were correctly recorded in the copy of the cash book provided at pages 21 to 28 of the paper book and also in the ledger copy which is provided at pages 29 to 31 of the paper book.

The statements recorded from these alleged cash creditors were confronted to the assessee along with the letter of the Assessing Officer dt. 29th Nov., 1985. If he wants to cross-examine these two witnesses the assessee can as well request the Assessing Officer to summon both of them under S. 131 of the IT Act. However, he did not choose to do so. On the other hand, he wanted to produce these two witnesses along with other himself and thereafter the Assessing Officer on the oral assurances of the assessee directed him to produce them for examination on 11th Dec., 1985 and 12th Dec., 1985. However, he failed to produce any of them but only produced their affidavits dt. 23rd Dec., 1975 retracting from the statements earlier given. The question is after having given their version of cash credits by their statements on 19th June, 1985 and 20th June, 1985 is it open to these two alleged creditors to tender their affidavits dt. 23rd Dec., 1985 and ask the Assessing Officer to accept the affidavits especially when those affidavits were produced by the assessee If the affidavits contents are not controverted should in each and every case the contents of the affidavits be taken to be true to be true or the question would depend upon the facts and circumstances under which the affidavit is given. In this connection, this Tribunal came across a decision of the Allahabad High Court in the case of Sri Krishna vs. CIT & Ors. (1982) 142 ITR 618 (All). The question before the Allahabad High Court was whether the affidavit filed in support of the writ petition should be deemed to be true when it is not controverted. In this connection, the Allahabad High Court had the occasion to consider the value to be attached to the affidavit at page 623 of the reported decision : "It is neither a rule of prudence nor a rule of law that the statements made in an affidavit which remains uncontroverted, must invariably be accepted as true and reliable. Ordinarily, in the absence of denial, the statements may be accepted as true but if there are circumstances which suggest that the statements on affidavit should not be accepted as true, the absence of denial by the order side, would not by itself be sufficient to clothe the statements of affidavit with truthfulness and reliability." In this case, they very fact that these alleged cash creditors had already been examined on 19th June, 1985 and 20th June, 1985 and they had given completely different versions than those now found in their affidavit dt. 23rd Dec., 1985 would show that their affidavits cannot be relied upon simply because they went un-controverted by the Revenue.

In our opinion, there are sufficient facts and circumstances which would justify us in not taking the contents of the affidavits of these two alleged cash creditors at their face value. However, it cannot be denied that there are two complete divergent versions coming from these two cash creditors which makes the task of any Tribunal difficult to come to a just conclusion about the truth or otherwise of the cash credit. However, these two persons had given their specimen signatures in their respective statements given to the ITO who had recorded their statement. A comparison of their specimen signature with the signatures obtaining on the confirmatory letters, as well as on the receipts stated to have been passed by them by a handwriting expert would have established whether the two sets of signatures are by the same persons or not and in such an event that evidence of the handwriting expert would have gone a long way in establishing the truth or otherwise of the confirmatory letters as well as the receipts. However, we are also aware that it is not the duty of the Revenue to do that exercise. It is for the assessee to prove the identity, creditworthiness as well as the truth of the transaction. Shri A. Satyanarayana, perhaps realising this obvious position had requested us that in case this Tribunal is not going to accept the contention of the assessee, the matter may be sent back to the Assessing Officer with direction that the cash creditors may be permitted to be cross-examined by the assessee. However, we cannot accept this request. The statements recorded from these two persons by the Revenue cannot be allowed to be treated as chief examination in which case it would amount to the Revenue bearing the initial onus to prove the cash credits which is not the case here.

However, we feel that the specimen signatures of these persons should be allowed to be sent to the handwriting expert at the instance and at the cost of the assessee. If, in the opinion of the handwriting expert, signatures are from one and the same persons, then the confirmatory letters as well as the receipts must be taken to be true and the benefit of those documents should be given to the assessee. For this limited purpose, we prefer to remand the case to the IAC

(Asst).

8. Now we are left with cash credits in the names of the following persons and the credits standing in their names are shown against each of them : The case of the assessee with regard to these six cash credits is that the assessee borrowed a sum of Rs. 1,81,000 for his own business in the month of September 1981 from these six parties and these amounts were accounted for in his books. These credits were not accepted as genuine and added in the assessments under S. 68 of the IT Act, 1961. Out of the list of 6 creditors given above, the last three creditors, namely, Sri K. Venkateswara Rao Shri K. V. Subramanyeswara Rao and Maganti Gopalakrishnaiah are the relatives of the assessee. The assessee is the son-in-law of the mother-in-laws sister of Shri K. Venkateswara Rao.

Shri K. V. Subramanyeswara Rao is the son of Shri K. Venkateswara Rao.

Shri M. Gopalakrishnaiah is also related to the assessee inasmuch as the assessee is the son-in-law of the mothers sister of Sri M.Gopalakrishnaiah. Out of these six persons mentioned above Shri K. V.Subramanyeswara Rao was not at all examined. His father Shri K. V.Venkateswara Rao claimed to have lent an amount of Rs. 30,000 in the name of his son. Firstly let us examine one whether the substratum of the truth of the assessees version is able to withstand the test of scrutiny. The assessment proceedings started in 1985. The assessee filed his return of income on 2nd Jan., 1985. During the course of the assessment proceedings, the trial balance drawn on 15th July, 1982 and the capital account of the assessee drawn on 18th Oct., 1981 which are respectively market as Bundle No. II item 72 and Bundle II page 63 were found at the time of search. Trial balance indicated only receivables and the capital account did not give details of credit side. The assessing officer asked the assessee to explain this whereupon the assessee had furnished trial balance as on 15th July, 1982 indicating both payables an receivables. Thus, it is very clear that in the trial balance as found at the time of search did not contain any payables whatsoever and the payable if any were supplied for in the new trial balance drawn on 15th July, 1982. Wherefrom the payables were mentioned in the trial balance, what is the basis in mentioning the payables in trial-balance is not made known. The trial balance which was found in the seized documents was never extracted in the assessment order for 1982-83. What is extracted was the trial balance prepared as on 15th July, 1982 and which must have been filed before the Assessing Officer only in 1985 during the assessment proceedings. For the first time such trial balance contained payables also. The text of trial balance as on 15th July, 1982 was given in 132(5) orders which was provided at pages 36 to 48 and at page 39 item No. 72 Bundle No. II is extracted. When we compare these two trial balance furnished in the assessment order is something different from the trial balance found in the seized papers which was extracted as last item at page 39 and continued at page 40.

In the trial balance now provided in the assessment order under the head payables there are two accounts, one is KHP No. 1 Account - Rs. 4,83,405 and the second is K. Damayanti Devi Account with an amount of Rs. 1,84,000. According to the assessee, the particulars of the payables in KHP Account No. 1 is given at page 21 of the assessment order for 1982-83. In the account, the following cash credits pertaining to this assessment year and which formed the subject-matter or this appeal are found : So the names of these six cash creditors had seen the light of the day for the first time only in the assessment proceedings which started in 1985, whereas the search proceedings were started on 28th Feb., 1982 and 132(5) proceedings had culminated in the order dt. 20th Dec., 1982.

We had not come across any of these names in any of the statements recorded from the assessee either on 10th Dec., 1982 or 13th Dec., 1982. These cash creditors were examined on the following dates : The case of the assessee as set out in his written arguments on this aspect is that from out of Rs. 42 lakhs borrowed for investment in arrack business, Rs. 41 lakhs were invested in arrack business and Rs. 1 lakh was utilised by the assessee for his own business for which he had kept separate books. These books of accounts were scrutinised by the Assessing Officer during the assessment proceedings and the genuineness of the books or entries made therein were never doubted.

9. We are unable to accept all these arguments. The so-called account books in which the credit of Rs. 1 lakh was entered into according to the assessee were never produced before the Assessing Officer or in 132(5) proceedings. A clear

question was put and answer was elicited from the assessee when he was examined on 13th Dec., 1982 in this regard. The question as well as the answer are extracted hereunder : "Q. You have stated that you have collected 42 lakhs from various people and paid Rs. 41 lakhs to M/s. Sri Venkateswara Enterprises as your share. Is it 42 lakhs investment or 41 lakhs invest A. I have retained 1 lakh with me for emergency purpose. I have returned almost all the amount except Rs. 1 lakh 5 thousand payable to S. Ramanatha Rao & Co., i.e. Rs. 72,761 principal and interest Rs. 32,239." In the examination of the assessee conducted on 10th Dec., 1982, in answer to a specific question put to him, the assessee came forth with a categorical answer that he borrowed from 14 persons for purpose of arrack business and he collected Rs. 42 lakhs from them. According to the answer given to the question, from out of 42 lakhs borrowed 1 lakh is set apart for conducting his own business; then the person from whom this one lakh was borrowed would not be different from the persons from whom the total of Rs. 42 lakhs was borrowed. That means, the cash creditors from whom Rs. 42 lakhs was borrowed would remain the same cash creditors from whom Rs. 1 lakh was borrowed. However, strangely according to the present version, the cash creditors from whom Rs. 1 lakh was borrowed were quite different from the cash creditors from whom Rs. 42 lakhs were borrowed. This would be one of the falsifying factors of the assessees case. Further, according to the assessee all accounts maintained on his behalf were with his uncle Shri Ramamohana Rao, Gudivada. It was never the case of the assessee at any time that he had maintained separate accounts for Rs. 1 lakh with him. The fact that some books of accounts were produced on 17th Dec., 1985 before the Assessing Officer was sought to be taken advantage of now. But unfortunately for the assessee it is clearly stated in the assessment order that the accounts which the assessee had produced on 17th Dec., 1985 are no other that the accounts maintained at Gudivada by the uncle of Shri Hari Prasad the assessee i.e. Shri Ram Mohan Rao. It is well to remember that the assessee filed a letter dt. 6th Dec., 1985 before the Assessing Officer requesting for some time to produce his accounts which are maintained at Gudivada by his uncle Sri Ram Mohan Rao. We have already adverted to this letter in the earlier part of this order to which a reference can be made now and in pursuance of that letter the assessee produced his accounts on 17th Dec. 1985. The question is whether the accounts thus produced on 17th Dec., 1985 are maintained by the assessee or by his uncle Shri Ram Mohan Rao. In the assessment order, the point is made very clear as follows : "Assessee has, however, also produced some books of accounts on 17th Dec., 1985 in support of his various claims. These books of accounts were not seized from assessees residence during search as according to him they were maintained at Gudivada by his uncle Sri Rama Mohan Rao.

In this order under S. 132(5), ITO has stated that though such a claim was made during proceedings, no books of accounts were ever produced." So we have hesitation to come to the conclusion that the only books of accounts produced before the ITO on 17th Dec., 1985 are the books maintained by Shri Rama Mohan Rao and it was never the claim of the assessee that he maintained separate books of accounts either for Rs. 1 lakh borrowed or for any other amount himself. Taking advantage of the fact that the books produced were not impounded by the Department, the assessee wanted now to introduce new books of accounts which were never produced before the ITO or before the officer who conducted the proceedings under S. 132(5). No sort of account books as such were ever seized at the time of search operations under S. 132(5). In view of the above information, the contention now raised in the arguments of the assessee that out of 42 lakhs borrowed Rs. 1 lakh was utilised by the assessee for his own business, he kept the said amount separately and he maintained separate books of accounts for the said amount and those books were produced as well as scrutinised by the Assessing Officer during assessment proceedings and the genuineness of those books of accounts or entries made therein were never doubted cannot be accepted as true or correct.

10. Now let us come to the statements given by the six persons now under consideration. The dates on which the statements were recorded were already noted against their names. From out of the six, S/Shri Aretla Viplav Kumar, Shri V. Gyaneswar and V. Seetharamareddy denied having lent any amounts to the assessee at the time of giving their statements. As far as these three persons are concerned, the grievance of the assessee is that they have been examined behind his back and he was denied the opportunity to cross-examine any of them and, therefore, the recorded statement from these six persons should not be taken into

account or should not be read against the assessee. We are unable to accept this contention. It is the primary duty of the assessee to substantiate the genuineness of the cash credit by producing creditors and proving their creditworthiness as well as the truth of the transaction with each of them. The assessment proceedings for 1982-83 and 1983-84 commenced in Jan., 1985 and culminated in the assessment order dt. 31st Dec., 1985. So the assessment proceedings were pending for a whole year. However, we do not come across any request letter of the assessee whereunder he wanted to examine these persons as his witnesses to substantiate his case. So also even after knowing that these persons were examined by the ITO, the assessee never put forward any request to cross-examine any of them during the whole of the assessment proceedings. Knowing fully well that they have not stated in his favour, the assessee now wants that he should be given chance to cross-examine these persons and in the absence of any cross-examination, he wanted to nullify their statements on the grounds that principles of natural justice was denied to him. The argument of the assessee that since chance of cross-examination of these creditors was given to him, the principles of natural justice were violated is fraught with mischief or constitutes a mischievous argument. Ordinarily he should have produced these persons. However, the Assessing Officer examined them, no doubt, in the absence of the assessee, though no burden to prove the cash credit lay upon the Revenue to any extent whatsoever. If the assessee is interested to establish his case, nothing prevented him to get these persons on summons and examine them.

That means these persons should always be treated as witnesses for the assessee and under no circumstances they should be permitted to be cross-examined by him. However, having failed to secure them as his witnesses the assessee wanted to take advantage of his own failure to set at naught the effect of their statements given to the ITO depicting or contending that the principles of natural justice were denied to him. The assessee did not either bring them as his witnesses or requested the ITO to summon them as his witnesses and therefore, he cannot be heard to advance failure of natural justice in any way.

Simply because the assessee had not examined these persons it does not prevent the ITO examine them. In our opinion the effect of their statements cannot be allowed to be set at naught simply because they were examined behind the back of the assessee by the Department. In this connection the decision of the Kerala High Court in CIT vs. C. P.Adam (1976) 105 ITR 465 (Ker) is very instructive and worthy to be followed. In facts of that case, the assessee had set up three persons as cash creditors, namely, V. M. & K. He requested to send summons to them and examine them as his witnesses. Summons were served against V but not against the two others (M & K). When V was examined, he denied having given any loan to the assessee or having received any interest.

The summons to M & K. were returned unserved. However, the ITO had examined them in the absence of the assessee at Madras. The ITO refused to issue fresh summons to them at the instance of the assessee on the ground that summons issued to them previously were returned answered and it was the responsibility of the assessee to produce them if he was keen to cross-examine them. The question was whether the statements of M & K can be taken into consideration while appreciating the truth or otherwise of the cash credits or whether their statements should be set at naught for not providing opportunity to cross-examine them by the assessee. The Honble Kerala High Court held the following at page 470 & 471 : "If the assessee has not been able to satisfactorily prove the source and nature of certain sums of money received by him during the accounting year, the officer is perfectly justified in drawing an inference that the receipts are undisclosed income. The Revenue is entitled to collect information from any source available to it and it is not obliged to reveal such source.

It is the responsibility of the assessee to adduce the necessary evidence to prove the source and nature of the cash credits. In the present case the assessee made no attempt to produce the witnesses whom he wanted to cross-examine, part from merely asking the Departmental to issue fresh summons.... The officer cannot be said to have acted unreasonably or in violation of the principles of natural justice. He was, in the circumstances of the case, entitled to draw an inference that the receipts were of an assessable nature... The only reason given by the Tribunal for accepting the assessees version concerning the two loans was, that, unlike in the case of Biharilal who was examined by the officer in the presence of the assessee, Newandram and Harising, although examined by the officer had not been produced by him for cross-examination by the assessee. As stated by us earlier, the officer had not denied any reasonable opportunity to the assessee to adduce evidence." Thus they have reversed the Tribunals decision and upheld the finding of the ITO whereby the addition of cash credits with regard to M & K was upheld. In this case also since the assessees primary duty of producing these persons was never attempted or discharged and since the ITO is entitled to secure his own evidence and he need not disclose the said evidence to the assessee, no principles of natural justice were violated by not summoning these witnesses for cross-examination of the assessee. Out of the three persons, Shri Aretla Viplav Kumar is stated to have lent Rs. 98,000 in total. Out of it Rs. 22,000 pertains to asst. yr. 1982-83 and the remaining Rs. 76,000 pertains to asst. yr.

1983-84. There are innumerable circumstances which would falsify the story about these cash credits. The assessee field the account copy of Shri Viplav Kumar at page 89 of the paper book. It would disclose that the amounts were given on credit from 31st July, 1981 to 25th Oct., 1981 and the repayments of principal and interest were made on 25th Oct., 1983, 30th, Nov., 1983 and 31st Dec., 1983 and by 31st Dec., 1983 and the amount was fully squared up under which total amount of Rs. 1,36,640 was paid to the cash creditor. However, contrary to the version thus depicted in the account copy, in the written arguments filed before CIT(A). Hyderabad in the appeal preferred against 132(5) proceedings, the assessee had taken a plea which is contrary to the plea depicted from the account copy stated above. A copy of the said arguments advanced before the CIT(A)-II, Hyderabad was furnished at pages 49 to 58 under the signature of the assessee himself and the arguments are dt. 18th Feb., 1987. At page 53 the argument with regard to Shri Aretla Viplav Kumar which inter alia, is as follows : "The amounts were taken actually for the purpose of arrack business and if the assessee had succeeded in the auction, this partly would have taken as a partner. That was the understanding. These amounts were repaid subsequently in 1984 as the assessee utilised the funds for his Peacock Restaurant business which he started in partnership with others. He could not take Sri Viplav Kumar as partner in that firm due to various reasons." Firstly it can be seen that the amount of Rs. 98,000 was taken as cash credit and it forms part of Rs. 42 lakhs borrowed by the assessee for conducting arrack business. If so, there is no reason why the name of Shri Viplav Kumar was not stated as one of the persons from whom part of Rs. 42 lakhs was borrowed. His name did not figure from among the 14 persons from whom he borrowed the amount totalling to Rs. 42 lakhs.

Secondly according to the account copy mentioned above, the repayment was made in 1983 whereas according to the written submissions, the repayment was made only in 1984. If the repayment is made in 1984 then the interest accrued on Rs. 22,000 which had fallen in the accounting year relevant to 1982-83 was not claimed as deduction for asst. yr.

1983-84. Apart from the above discrepancies and circumstances which destroys the credibility of this cash credit, Shri Viplav Kumar was examined and he denied having lent the money. In his statement which was extracted in the assessment order for 1982-83, he stated that the had 18 acres of land at Kolanupaka, Aleru Tq., Nalgonda Dist. out of which 8 acres wet and balance dry. The land stands in his fathers name.

He is the only son. It is a double crop net land. No crops are grown on dry lands. He lives along with his father. They get about Rs. 3,000 to Rs. 4,000 per annum from out of agriculture. There are seven members in their family, himself, his wife, father and mother, his two sons who are studying in schools and colleges and one daughter aged 11 years. He knows the assessee. His elder brother Jaya Prakash was his class-mate.

He explained the circumstances under which he gave an affidavit which is now produced by the assessee. He says that about 1/12 years ago the assessee met and told him that there was some family dispute between himself and his other brothers wherein his finances are involved. The assessee requested him to sign an affidavit to show it to his brothers for settling their matter. The assessee, at that time did not inform him that his affidavit is required to be filed before the income-tax authorities. Had he told that he has to file the affidavit before the ITO he would not have given the affidavit as he had neither any source of income nor he had any funds at his disposal at that time. In the written arguments filed by the assessee at present before this Tribunal, the assessee clearly admitted that he did not ask for an opportunity to cross-examine these three parties in his letter dt. 6th

Dec., 1985 because by the time they were examined by the Assessing Officer, the loans were repaid to them and they were under no obligation to the assessee. This reason is not convincing and acceptable. When he had repaid to them is open to doubt in view of the conflicting versions mentioned in his written arguments, one before the CIT(A) and another spelt out from the account copy maintained in the name of Shri A. Viplav Kumar. No doubt Shri Viplav Kumars parents are Ex-MLAs (Sri Aretla Ramachandra Reddy and Smt. Aretla Kamala Devi).

That does not mean that they should be presumed to be automatically rich and it cannot be presumed readily that they are in a position to lend an amount of Rs. 98,000 to the assessee. From all the above, we hold that the cash credit standing in the name of Shri A. Viplav Kumar is bogus cash credit which was never proved to be genuine.

11. The next creditor is Shri V. Gyaneswar. He was examined by the ITO on 11th Aug., 1985. He stated that at the time of examination, he had no occupation at all. But upto 1978 he worked as a general worker in V.S. T. Ltd. and used to get Rs. 800 per month. His wife was working in L. I. C. getting salary of Rs. 1,200 per month. They have got one daughter aged 6 and a son aged 8. Their family expenditure is at present met out of his wifes salary. He knows the assessee since last 10 to 12 years through his brother Jai Prakash. He did not give any loan to the assessee at any time. Explaining the letter purported to have been signed by him under which he acknowledged having given a loan of Rs. 15,000 to the assessee at 18% interest he answered that the signature on the undated letter is his. The assessee approached him and wanted the letter like that for purposes of settlement of dispute between his brothers and hence he had given that letter to accommodate him though actually he did not give any loan. He did not have even a house at Hyderabad either in his name or in his wifes name and they are living in a rented house bearing Door No. 1-8-7/1. His account copy is provided at page 91. It would show that both principal and interest were returned to him on 31st Oct., 1983. However, interest was not claimed as deductible expenditure in asst. yr. 1983-84 though it is substantial amount of Rs. 6,075. In the argument before the CIT(A), Hyderabad in the appellate proceedings against 132(5) order, inter alia, it is stated that under this cash credit as follows : "The amounts were taken actually

for the purpose of arrack business and if the assessee had succeeded in the auction this party would have been taken as a partner. That was the understanding. These amounts were repaid subsequently in 1984 as the assessee utilised the funds for his Peacock Restaurant business which he started in partnership with others." Thus whereas his accounts shows that he was repaid fully by 31st Oct., 1983 in the arguments it is clearly argued that he was paid only in 1984. The same findings which were adopted while discussing the cash credit of Shri A. Viplav Kumar equally apply here. We hold that though the identity of the cash creditor is established, the further ingredient that either he was creditworthy or the transaction was true were never established. Therefore, this cash credit was never proved and so it is correctly assessed in the hands of the assessee under S.12. The same arguments equally apply when we consider the cash credit in favour of Shri V. Seetharama Reddy. He was examined on 9th July, 1985. He admitted in his examination that he had 25 acres of wet land and 10 acres of dry land. Some wet lands were irrigated by Rechaluru Tank and rest of 18 1/2 acres by a well. Paddy and vegetables are grown in the wet land. Castor, Jowar etc. were brown in dry land. He has been carrying on contract business for the last four years. His gross receipts are below 1 lakh and he gets Rs. 5,000 from contracts. There are six members in his family. They have purchased a house at Kachiguda sometime in 1956 and they reside there. His family expenditure would be Rs. 15,000 per annum. He has no account books. He does not lend moneys to others. He knows the assessee since last 8 years and he is his friend. He did not give any loan to him at any time. Though the signature on the confirmatory letter is his he had not given the said loan either to the assessee or any firm or any other person relating to him. Explaining the circumstances under which the confirmatory letter was given he stated that Sri Hari Prasad met him and requested for signing the letter. As he is his friend, he signed the letter. Actually he had not given the amount. He was also not having Rs. 62,000 in September, 1981. In fact he owed Rs. 15,000 to Agricultural Land Mortgage Bank, Ibrahimpatnam. He studied upto 11th Class and he knows to read and understand English. Copy of his account maintained by the assessee was furnished at page 93 of the paperbook. It disclosed that on 15th Nov., 1983 and 30th Nov., 1983, the assessee returned the whole debt due to him namely, Rs. 86,645. While that is the version as per the account copy, in the arguments furnished before the CIT(A), Hyderabad the position is as follows which is found at page 54 of the paper book : "The amount was taken actually for the purpose of Arrack business and if the assessee had succeeded in the auction, this party would have been taken as a partner. That was the understanding. The amount was repaid subsequently in 1984 as the assessee utilised the funds for his Peacock Restaurant business which he started in partnership with others. He could not take this creditor as partner in that firm due to various reasons." This version in his arguments adverted to above was quite different from the version spelled out as per account copy as to the year of repayment. Further if really this cash credit is genuine, there is no reason why the aggregate interest at 18% per annum was not claimed as a deduction for asst. yr. 1983-84. This is a strong indication to doubt the genuineness of the cash credit itself. Further if this cash credit is genuine and real, it would have formed part of Rs. 42 lakhs but the name of this cash creditor was not found as one of the 14 persons from whom Rs. 42 lakhs was borrowed. It is the version of the assessee even before the CIT(A), Hyderabad, which was filed as late as on 18th Feb., 1987 that this credit was borrowed for purpose of arrack business. The reasoning which we have adopted while appreciating the cash credits of A. Viplav Kumar and V. Gyaneswar would equally apply here. The assessee admitted in his written arguments that in his letter dt. 6th Dec., 1985 addressed to the ITO he did not request to permit cross examination of this witness for certain reasons entertained by him. We have already held that the reasons for not requesting cross-examination is not valid. We, therefore, hold that though the identity of the cash creditor and his capacity to lend the amount cannot be doubted, the genuineness of the transaction in the face of clear evidence is not proved and for this reason the amount is to be held as correctly disallowed and correctly added in the hands of the assessee under S. 68 of the IT Act.

13. Now let us take up the other three cash credits which are the following : Firstly all of them are relative of the assessee. Secondly, their names for the first time were given in the assessment proceedings in explanation to the payables shown in KHP Account No. 1 amounting to Rs. 4,83,405. Till then they were never mentioned to be persons from whom the amounts are payable by the assessee. What is the basis which forms the explanation of the payable in KHP Account No.

1 is not known. We have grave doubts about their basis of payables under KHP account No.1. In fact as already discussed above, the trial balance as on 15th July, 1982 contained only receivables of Rs. 7,63,046 and payables were never shown. When the assessee was asked to explain, he gave altogether a different trial balance on 15th July, 1982 containing the payables also. The amount payable under KHP account No. 1 is Rs. 4,82,405. In further explanation of these payables, the names of these creditors as well as the amounts said to have been borrowed from them were first brought into the records. Thus we have very grave doubts about the truth of these payables. Thus, the very substratum of the assessees case about the genesis of these cash credits is open to grave doubt.

Out of the three, Shri Subramanyeswara Rao was not examined by the ITO, Shri K. Venkateswara Rao examined on 18th June, 1985 and Shri H.Gopalakrishnaiah was examined on 17th June, 1985. In the written arguments submitted before the CIT(A), Hyderabad in the appeal proceedings against order under S. 132(5), a copy of which is furnished at page 49, the assessee admitted that the loan from Shri K.Venkateswara Rao was utilised by him in his business under the name and style of M/s. Peacock Restaurant and the loan was repaid in May, 1985.

Similar is the case with the payment of loan due to Maganti Gopalakrishnaiah. The account copy of K. Venkateswara Rao as per the accounts of the assessee was furnished at page 96, the account copy of his son Sri K. V. Subramanyeswara Rao as per the accounts of the assessee was furnished at page 99 and the account copy of Shri Maganti Gopalakrishnaiah was furnished at page 101. According to those account copies, the debt due to Kollipara Venkateswara Rao and his son Subramanyeswara Rao were recorded to have been repaid on 10th June, 1985 and 18th June, 1985 respectively whereas the account of Shri M.Gopalakrishnaiah shows that repayment of his loan was made on 17th May, 1985. None of these amounts carried any interest or any interest was debited in any of their accounts. Shri Kollipara Venkateswara Rao is stated to have given the loan on 30th June, 1981. So also another sum of Rs. 30,000 was given by him only on 30th June, 1981 in his sons name. The day book or cash book and ledger where their accounts were entered into were never produced before either the IAC (Assts.) in 132(5) proceedings or before the CIT(A), Hyderabad, in appeal proceedings against order under S. 132(5) or in the assessment proceedings for asst. yrs. 1982-83 and 1983-84. It was not also filed before this Tribunal.

In view of the suspicious nature as to the genesis of their cash credits, it is the bounden duty of the assessee to satisfy the genuineness of the cash credit by producing the so-called accounts in which their cash credits were entered into especially when the said accounts were stated and asserted to have been maintained by the assessee himself. The very fact that the assessee had never produced the accounts till now would raise a genuine suspicion about the genuineness of the cash credits. There is discrepancy about the repayments of these loans. In the written arguments filed before the CIT(A), Hyderabad, it was stated that the repayment were made in May, 1985 whereas in the account copies it was stated that it was in June, 1985 that the repayments of loans to Shri K. Venkateswara Rao and his son Shri K. V. Subramanyeswara Rao were made. Further Shri K.Venkateswara Rao while under examination stated to a question whether he carries on moneylending business he answered, that now and then if any of his relatives requires money he gives money by taking pronote.

Therefore, it can be seen that this man is careful enough to lend moneys only on pronote which means with interest. The assessee is one of his relatives. Therefore, he is presumed to have followed the usual practice of lending money on pronote, that too, which carries interest.

However, he strangely deposed that he had given an amount of Rs. 40,000 and he does not remember the exact date. He also did not remember the rate of interest and also the fact whether any interest was charged or not. Whereas this account disclosed only Rs. 30,000 as having been lent, he deposed that he had lent Rs. 40,000. When his usual practice was to lend on pronotes that too with interest to his relative, his version that he does not remember, in the case of the assessee, either the date of loan or the rate of interest charged, evokes suspicion about the genuineness of the debt. No discharged pronote was ever produced. As to the sources disclosed by this witness, he states that he has 8-1/2 acres of agricultural land which he got on partition and the amount given to the assessee is from out of agricultural income. If really these cash credits in the name of Shri K.

Venkateswara Rao and his son Shri Subramanyeswara Rao were correct and if a total amount of Rs. 60,000 was repaid on 10th June, 1985 and 18th June, 1985, which is the date of examination of Sri K. Venkateswara Rao itself, it would be easier for him to state that on the date of examination he received Rs. 30,000 whereas after as week from the date of examination, he received Rs. 30,000 from the assessee. However, the version of Sri K.Venkateswara Rao that he lent Rs. 40,000 and that he does not remember when the amount was returned to him speak volumes about the genuineness of the cash credits. Further, these persons being near relatives of the assessee, in the opinion of this Tribunal, the assessee is bound to prove the source of source also. These three witnesses were not brought by the assessee but they were examined by the ITO on his own during the course of the assessment proceedings. That does not absolve the assessee to bring them as his witnesses, and to prove all the ingredients of cash credits. Shri M. Gopalakrishnaiah was examined on 17th June, 1985. He says that his only source of income is agricultural income. He had 10 acres of wet land and they raise two crops of paddy since the land is canal fed wet land (Ravis canal). Himself and his wife are the two members of the family and their annual expenditure will be about Rs. 8,000. In the last five years he had not given any loans. His money matters are looked after by his second son Srimannarayana Murthy and he does not remember whether he had given any money. When a specific question was put to him whether he had given any loan to the assessee of Hyderabad in the last five years, his specific answer was that he had not given any amount and he did not know whether his second son had given any amount on his behalf. His second son Sri Srimannarayana was also examined on 17th June, 1985 itself as he is claimed to be another cash creditor of the assessee having lent Rs. 45,000. Though he had admitted that he had given some amounts belonging to his father to the assessee, he stated that he did not remember the date, the amount or the year of giving the said loan. So also, he did not remember any pronote or receipt having been taken for the said loan. He also did not remember whether the amount is received back. If so when and how much. When the amount was actually received on 17th May, 1985 and it is a substantial amount of Rs. 22,000, will it be possible either for Srimannarayana or Shri Gopalakrishnaiah who deposed on 17th June, 1985 to forget about the payment of such a substantial amount only within one month of his deposition. This is also one of the strong circumstances to indicate that the cash credit is not genuine.

It is not simply enough to file confirmatory letters from the creditor.

They themselves do not after as sufficient proof of the genuineness of the cash credits. In this connection, we completely agree with the argument of the learned Departmental Representative that onus lies on the assessee to prove the genuineness of the cash credit with supporting evidence to the satisfaction of the Tribunal [Roshan Di Hatti vs. CIT (1977) 107 ITR 938 (SC)]. Out of the three persons, two persons were examined by the ITO. The assessee did not produce them since the statements given by them was not in his favour. He did not even pray for their cross-examination. At page 940 in the head note of the decision, the following statement of law is laid down by the Supreme Court : "The law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. If he disputes the liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Revenue is entitled to treat it as taxable income. To put it differently, where the nature and source of a receipt, whether it be of money or of other property, cannot be satisfactorily explained by the assessee, it is open to the Revenue to hold that it is the income of the assessee and no further burden lies on the Revenue to show that income is from any particular source." Our attention is also drawn to the decision of the Kerala High Court in M. A. Unneri Kutty vs. CIT (1992) 198 ITR 147 (Ker). In the headnote the following proposition is laid down : "It is for the assessee to prove the identity of the creditor as also his creditworthiness. The genuineness of the transactions should be proved.

Held, that the Tribunal had found that the assessee had established only the identity of the creditor but the creditworthiness and the genuineness of the transactions had not been proved. This was a finding of fact which had not been challenged. The Tribunal was justified in sustaining the addition of Rs. 75,000 and Rs. 25,000 to the total income of the assessee for the asst. yr. 1972-73. No question of law arose from its order." The proposition laid down by the Kerala High

Court is well known. Out of the three persons, Subramanyeswara Rao was not examined. Having regard to our above discussion, we have to hold that though the identity of the cash creditor was established, the substratum of assessees story about genuineness of the cash creditors is very much open to doubt and since the persons who are examined were near relatives of the assessee, it is natural for them to be obliged to the assessee. Their evidence does not inspire any confidence about the genuineness of the cash credit. In fact the cash credits were said to have been made in 1981. They saw the light of the day only at the fag end of 1985 and that too as an explanation as to what comprised the payables under KHP account No. 1. We have no reservation in our mind to come to the conclusion that the assessee failed to establish the genuineness of the credits and, hence, we hold that the amounts of cash credits were correctly treated as income of the assessee under S. 68 of the IT Act.

14. Now let us take up the appeal relating to asst. yr. 1983-84. We are concerned with the following cash credits in this appeal : According to the particulars given therein, Shri Sastry is said to be a resident of Satyanarayanapuram, Gudivada, Krishna District. When a registered letter with acknowledgement due was addressed to him to confirm the credit, the same had been received back with endorsement not known. No confirmatory letter has been filed. So it is easy for us to come to the conclusion that the cash credit is not true inasmuch as the identity of the creditor, his creditworthiness, etc., is not proved at all.

16. Next let us take up the cash credit of Smt. D. Premakumari. In the confirmatory letter received by her, the date and the amounts borrowed are mentioned as under : She is no other than the mother-in-law of the assessee and widow of Shri D. Rajendra Rao. A statement was obtained from her on 29th Nov., 1985. She stated that she is a widow of Shri D. Rajendra Rao who used to carry on business in purchase and sale of cars, motor cycles and scooters at Madras. They were in Madras for 18 to 20 years. Her husband also used to run a chit at Madras. She does not know his earnings from business. Her husband had no landed property but she had 4-1/2 acres of agricultural land in Rachapatnam village. Her sisters son Srimannarayana is looking after the lands. There is no fixed lease between them and she was taking money from him as and when she needed it. She does

not remember which are the amounts she had received from him for the last 15 years. They have no house at Madras and they used to stay in a rented house paying Rs. 450 per month. Her family consisted of herself, her husband, 4 daughters and one son. Three daughters were married during the time of her husband. The last daughter and son were yet to be married. Her husband died in March, 1980. After his death they were at Madras for another two years as the children were studying. Her family expenditure was about Rs. 2,000 per month. Her husband left a cash of Rs. 2,00,000 when he died and she used to get some amount from the land also and with that she used to maintain her family. There was no evidence that a sum of Rs. 2 lakhs was left" behind by her husband. While he was carrying on business he used to give her money. The entire amount was left in cash and it was not kept in any bank. He left three cars, one motor cycle, besides the above cash. He sold three cars for Rs. 30,000 and motor cycle for Rs. 3,000. She dose not remember whether she had any receipts taken for the vehicles sold. His vehicles were sold five months after the death of her husband. The above amounts together with another Rs. 7,000 lying with her was given to her son-in-law sometime in 1981. The amount was given to him at Madras. The sale proceeds received from out of the sale of cars and scooter were kept with her in cash. She had given Rs. 50,000 to her third daughter Syamala, w/o Budiri, as a hand loan. This amount is yet to be received back. She knows Shri Sobhanadri Chowdary.

She had given a loan of Rs. 80,000 on interest in the year 1980 and 1981 at the rate of Rs. 1.50 per Rs. 100 per month. She had not obtained any pronote from him. But he repaid the amount back to her with interest in 1983 or so. The exact date or year were not remembered by her. To a question as to what is the amount that is now receivable from her son-in-law, Shri K. Hari Prasad (the assessee), she answered that as on date she had to received Rs. 2,50,000 from the assessee. To another specific question as to when she had given the above amount to Shri K. Hari Prasad, she specifically answered that while her husband was alive, he had given Rs. 20,000 in the year 1981. She had given Rs. 40,000 and in 1983 she had given another Rs. 1,90,000. She had to receive all the three amounts from the assessee. She had not obtained any receipt or pronote from him. When asked about the sources for giving the amount of Rs. 1,90,000 to the assessee she stated that the amount realised from Sri R. Sobhanadri Chowdary of Rs. 80,000 and further amounts available with her she had given to the assessee. To a question she had got any bank account at Madras or Hyderabad and if so whether any transactions were routed through bank, she had clearly stated that in regard to the money given to R. Sobhanadri Chowdary she remember to have sent draft for Rs. 50,000 from Madras. She used to have saving bank account in Andhra Bank, Madras which was closed by her while being shifted to Hyderabad in 1982. She has now an account with M/s. Indian Bank, Barkatpura. She had not drawn any amounts from the bank for payment to the assessee or the balance of Rs. 30,000 to Shri R. Sobhanadri Chowdary. The marriage of her second daughter Nirmala had taken place in the year 1976. Smt. Nirmala is no other than the wife of the assessee. She was questioned whether any cash or jewellery were given at the time of marriage to Nirmala. She answered that she had given jewellery weighing 20 sovereigns and she does not remember whether she was given any cash by her husband. On her part she did not give any cash to her. After marriage, her second daughter did not sell any jewellery through her.

When questioned what are her present sources of income, she categorically answered that her son is working-partner in Hotel Peacock. He gets Rs. 1,500 per month. His son-in-law is giving Rs. 1,000 per month for meeting a expenses to be settled our of the amount due to her. Her fourth daughter also gives tuitions and those constituted her sources. She is not either an income-tax or wealth-tax assessee. She also stated that business stated by her, her husband had carried on contract business at Vijayawada, and Eluru prior to shifting to Madras. He had also carried on business at Tuticorin. Her husband used to have one house at Vijayawada and landed property at Pedagonnur village. Her husband sold away these properties and invested then in business. The cars were sold by her son-in-law, the assessee. On the death of her husband as per her remembrance she might have received Rs. 3 lakhs. She did not pay any estate duty on death of her husband. The ITO stated that the financial capacity of her ultimately was not good.

In Madras as well as in Hyderabad they continued to reside in rented house. If really her husband at the time of his death left Rs. 3 lakhs with her, she would have definitely purchased a site for construction of the house for herself. If really two lakhs were left by her husband, no prudent woman would keep cash of Rs. 2 lakhs idle especially when she was having a bank account. No estate duty return had been filed and the person who was having Rs. 2 lakhs and was also having three cars and one scooter cannot evade payment of income tax or wealth-tax. Her husband was only getting commission which was only nominal on sale of second-hand cars etc. Therefore, he estimated that at the most the commission her husband would have got on three cars and scooters sold was only about Rs. 7,000. She has got four daughters and one son and, therefore, considerable money must have been spent for their marriages and education. The very fact that she does not know how much cash was given for the marriage of her second daughter is indicative of her poor financial capacity. If really cash was given such details would not have missed the memory of a lady. So the natural inference is that she did not give anything in marriage of her second daughter. Only 20 gold sovereigns costing about Rs. 8,000 were given. The ITO came to the assumption that going by her version, the amount available to her in 1983 would work out to Rs. 1,43,000 (+) 9,000 (-) Rs. 72,000 = Rs. 80,000. He came to the conclusion that by no means he can lend Rs. 1,90,000 in 1982 as claimed by her. The ITO came to the conclusion that false statement falsify her entire deposition and renders it unsafe to rely upon. He also came to the conclusion that the assessee had evidently introduced his own unaccounted money in the name of his mother-in-law. In this appeal, we are only concerned with the cash credit of Rs. 40,000 said to have been lent by Shrimati D. Prem Kumari to the assessee in 1981. At page 108 of the paper book her account copies were provided. As per these, she lent Rs. 20,000 on 19th Dec., 1981 and same amount on 18th Jan., 1982. The question is whether her cash credit is true. There are strong indications available on record to hold that this cash credit must be true. Sec. 132(5) proceedings which culminated in the orders dt. 20th Dec., 1982 were provided at pages 36 to 48. We have already stated earlier that item No. 72 Bundle II represents the trial balance as on 15th July, 1982. The contents of that trial balance which formed the seized material was given in the orders passed under S. 132(5) of the Act dt. 20th Dec., 1982. Pages 39 & 40 of the paper book which form part of the order clearly reveals some credits taken by the assessee. Out of four credits standing in different names, the credit contracted from D. Kumari was mentioned as 40,000. It is also mentioned that it is taken on two dates, namely, 1st Oct., 1981 and 8th Jan., 1982. At page 108 the account copy of D. Prema Kumari in the so-called books of account of the assessee was provided.

These dates tallied with the dates mentioned in the seized trial balance which forms No. 72 of Bundle No. I as on 15th July, 1982. Since the amount lent by D. Prema Kumari also finds place in the seized records, we have to give utmost importance for the genuineness of this credit. According to S. 132(4A), the contents of the books of account or other documents which are seized during the course of the search from the control of the assessee are to be presumed to be true. No doubt the provisions of that sub-section is relevant only for search proceedings and the presumption is concerned only to that proceedings.

But, however, whether that presumption is available or not, it forms a believable piece of substantial evidence. We hold that it is a strong piece of evidence in favour of the assessee. If there is sufficient corroboration about the creditworthiness of Shrimati D. Prema Kumari, then the said credit can be taken to be true. In our opinion, there is believable pieces of substantial evidence which goes to corroborate the truth of the cash credit. The first of such pieces is to be found at page 111 of the paper book which constitutes the account copy of Smt.

Prema Kumari in the books of Ravi Sobhanadri Chowdary who is an income-tax assessee. It is seen from the account copy that from 1980 to 1982 the outstanding balance due to her by Shri R. Sobhanadri Chowdary was Rs. 77,695.90P. Smt. Prema Kumari also claimed that she had lent a sum of Rs. 80,000 through R. Sobhanadri Chowdary. She also claimed that her son was a partner in Peacock Restaurant in which the assessee was also a partner. Peacock Restaurant is run by a partnership firm called M/s. S. V. Enterprises and for asst. yr. 1985-86 it was denied registration. The matter was ultimately carried to the CIT(A), Hyderabad who disposed of the registration appeal of that firm by his orders dt. 16th July, 1990. The learned CIT(A) ultimately granted registration to the firm, and the contention of the Revenue in those proceedings was that Smt. Prema Kumari, as well as her son Sri D. V. S.Prasad were men/woman of no means and they were only benamies of the assessee herein (Shri Hari Prasad). That contention was negatived and both Smt. Prema Kumari and her son D. V. S. Prasad were held to be genuine partners of the said firm. The following was held by the learned CIT(A) allowing the appeal for registration of the said firm : "Apart from the above submissions, it is also explained that Sri Hari Prasad and Shri Gandhi Babu were the two main persons who started the venture with the assistance of one Shri Prakash H. Manglani who since retired. At some stage Sri Hari Prasad introduced his mother-in-law Smt. Prema Kumari and her son Sri D. V. S. Prasad and her daughter Sheela as partners because he was in need of funds. The husband of Smt.

Prema Kumari left some properties in Madras and after his death, Smt.

Prema Kumari joined the appellant firm as a partner and shifted to Hyderabad. Sri D. V. S. Prasad was a partner and because he was young, he was also put in the firm as supervisor, more as a matter of training to him. As he was drawing a salary, he mentioned only about his salary but he did not deny, at any stage, that he was a partner and, on the contrary, he did mention in his deposition dt. 26th Feb., 1988 that he was a partner in appellants firm and he also gave the particulars of other partners etc. In reply to a question put by the counsel before the Assessing Officer, he also specified that his investment in the appellant firm was by way of capital and not by way of loan. It is worthwhile to reproduce that reply : The amount given by me is capital and not deposit or loan. The amount was paid on partnership basis. I have a share in particular I have 3% or 5% share. I have not taken any money from capital. I have not taken any profit. If was told that the first two years there was loss and subsequent years there were marginal profits. I have not asked for return of capital. I am not aware of my share. It may be 10%. I have not asked for repayment as I was not in need.

The other portion of the deposition wherein he admitted to be a partner are referred to in the written submissions of the counsel reproduced above. So it is not necessary to detail them once again. I am of the view that the Assessing Officer ignored the material portions of the depositions and drew adverse conclusions on the appellant firm in a one-sided fashion. So, I have to hold that both Smt. Prema Kumari and Sri D. V. S. Prasad are partners and the appellant firm is entitled for the grant of registration." Now in this case also, the Revenue contends that Smt. Prema Kumari is not a person of substantial means and has no capacity to lend and in order to buttross their argument, the learned Departmental.

Representative argued the following points : (i) In her confirmatory letter, she has explained the source of credit as sale proceeds of car and motor cycle (Rs. 33,000 + savings of Rs. 7,000); (iii) The source for the credit is to be proved and for the sale proceeds of car and not from the sum of Rs. 2 lakhs alleged to be left behind by her husband.

(iv) The assessees husband was not assessee to IT/WT or Estate Duty which could have proved the availability of money with him.

(v) The appellate order of CIT(A) dt. 31st March, 1987 on which the assessee relies does not give any clear finding about the availability of the funds with the assessee. The CIT(A) order is not a speaking order. Hence no support can be taken by the assessee from the appellate order.

(vi) The records do not indicate that the assessee is a person of substantial means. Hence even on probability the availability of cash and its being advanced cannot be accepted.

(vii) The transaction is both ways by cash without any documentary evidence to support.

17. The assessee, as already stated, was assessed to income-tax for asst. yr. 1977-78. In the assessment order also a sum of Rs. 20,000 said to have been borrowed from his father-in-law Shri Rajendra Rao was added in the hands of the assessee under the head other sources. The assessee went in appeal before the CIT(A), Hyderabad. The CIT(A) in her order dt. 31st March, 1987 deleted the addition. In that appellate order, a reference was made to the affidavit given by Smt. D. Prema Kumari before the ITO, stating that her husband was carrying on business in purchase and sale of old cars, that her husband gave interest-free loan of Rs. 20,000 to their son-in-law, Shri Hari Prasad as he wanted to do some business in excise. Her husband died in the year 1980, the learned CIT(A) also

adverted to a portion of the sworn statement recorded from the assessee by the ITO on 29th Nov., 1983.

Especially she recorded question No. 16 and 17 and the answers given by her thereunder. In the answer given to question No. 17 she stated that while here husband was alive, he had given Rs. 20,000 to their son-in-law. Shri K. Hari Prasad, in the year 1981. She had given Rs. 40,000 in the year 1983. She had given another Rs. 1,90,000. All these amounts she has received from the assessee. She had not obtained any receipt or pronote from him. The learned CIT(A) who incidentally is the came CIT(A) who had passed the relevant impugned orders, which give rise to these appeals before us held the following : "In view of the fact that Smt. D. Premakumari had filed before the IAC (Asst.) an affidavit to the effect that her late husband, who died in 1980, had given an advance of Rs. 20,000 to the appellant and also confirmed it in her sworn statement recorded by the ITO on 29th Nov., 1985, I take them as sufficient basis for accepting the genuineness of the cash credit of Rs. 20,000 in the name of Shri D. Rajender Rao.

Hence I hold that the above-mentioned addition is not warranted. I delete it and I allow Ground 1." The above evidence would go to prove that even while her husband was alive they used to provide funds to their son-in-law who is the assessee before us for purposes of doing business. The appellate orders of the CIT(A) cancelling the addition of Rs. 20,000 in the name of Shri D. Rajender Rao would clearly go to establish the said fact. It is the claim of Smt. D. Prema Kumari in his statement that she is the owner of 4 1/2 acres (double crop) of wet land at Rachapatnam village. In this village M. Srimannarayana was also having land. In fact Sri Srimannarayana is her sisters son. Smt. M. Veerabayamma is her sister and Sri. M. Gopalakrishnaiah is her brother-in-law being her sisters husband. Generally for sale of second-hand motor cars and scooters/motor cycles one is not interested to keep their records throughout their lives and so the absence of any records evidencing the sale of either cars or scooters, cannot be taken to be an adverse factor, especially when they realised only Rs. 33,000 on sale. Thus her confirmatory letter, her statement before the ITO etc. clearly go to establish not only the identity of the cash creditor but also her creditworthiness. It is significant that out of the total advance of Rs. 80,000 lent to Sri R. Sobhanadri Chowdary she had given Rs. 50,000 by D. D. drawn on Andhra Bank, Madras. Therefore, from the available material on record, we believe the sale of three cars and one motor-cycle particularly after the death of her husband and realisation of Rs. 30,000 cash therefrom. We hold further that it is not at all impossible for her to lend the amount of Rs. 40,000 in all to her son-in-law especially while it was their practice to lend to him for carrying on business even earlier also, i.e., from her husbands time.

The genuineness of the cash credit, in our opinion, was sufficiently strengthened by the fact that the cash credit was found mentioned in the seized papers and that was the very reason why we uphold the cash credit even though Smt. Prema Kumari is the mother-in-law of the assessee and eventhough she is interested in the assessee.

18. Now let us take the cash credit of Shri A. Viplava Kumar amounting to Rs. 76,000. We have already discussed part of the cash credit said to have been received from this very creditor in our orders for asst.

yr. 1982-83. The same reasoning which we have set out in the said order holds good here and in pursuance of that reasoning, we hold that this cash credit is bogus and it cannot be believed. Incidentally, it may be stated that Shri A. Viplava Kumar in his statement denied the cash credit also.

19. Now let us take up the cash credits of Shri Srimannarayana - Rs. 45,000, Smt. Maganti Veerabayamma - Rs. 25,000 and Shri M. Raghavendra Rao - Rs. 25,000. Smt. M. Veerabayamma is one of the sisters of Smt. D.Prema Kumari and the assessee is her sisters son-in-law. Sri Srimannarayana is one of her sons. Sri M. Raghavendra Rao is another son and so the assessee is related to him as son-in-law of his mothers sister. We have already considered the cases of Kollipara Venkateswara Rao and Maganti Gopalakrishnaiah while we were considering the appeal for asst. yr. 1982-83. The same reasoning which we have applied in rejecting the cash credits in their favour fully applies even in the case of these cash creditors. Therefore, adopting the whole of the reasoning set out in our order for asst. yr. 1982-83, we holf that the cash credits in the names of these three persons also are held to be not genuine. In the case of Maganti Reghavendra Rao

there is a material discrepancy in his evidence. Whereas the cash credit in his name is stated to be Rs. 45,000, but during examination he stated that he actually lent an amount of Rs. 25,000. The following question and answer thereto are important and relevant to be noted : "Q. In the confirmatory letter you have stated that a sum of Rs. 45,000 was given to K. Hari Prasad as loan @ 18% interest. But in the statement now given before me you have stated that only Rs. 25,000 was given and that too only to meet the educational expenses of your boy.

How do you reconcile the two statements A. I do not have any papers relating to the exact amount given. There is some confusion. The amount given is only Rs. 25,000 (Twenty five thousand only)." Further at another place of his statement, he stated that his boy is in Hyderabad and further stated that he had sold 3 acres of land in 1980 for Rs. 30,000 for education of the boy. Out of this he had given Rs. 25,000 to Shri Hari Prasad in 1981 with a request to provide funds to his son as and when he needs it. It is not given as a loan. It is not interest bearing. But he stated that he wanted it back after his sons education. So one does not know whether really he meant it to be a loan that too interest bearing or not. The confirmatory letter says that it is interest bearing. Thus there is conflict between the confirmatory letter on the one hand and his statement on the other. One gets doubt whether it is really intended to be a cash credit or whether it is only a deposit from our of which he expected the assessee to give funds to the boy at Hyderabad as and when he needs money. These are the additional reasons why the cash credit in the name of Shri M.Raghavendra Rao is held to be not a genuine cash credit. Thus we hold that the cash credit in the names of these three persons are not proved to be genuine cash credits and their names as well as the cash credits, in our considered opinion was inserted or invented only at the fag and of 1985 while explaining the trial balance as well as the capital account of the assessee. Therefore, we hold that these amounts were correctly considered as income of the assessee.

20. Now let us take up the case of Smt. B. Ananta Bai. There is a pronote bundle found in the assessees premises market No. 13 Bundle No.I. This pronote stands in the name of the mother-in-law of the assessee. This amount was not mentioned in the trial balance as on 15th July, 1982. However, when the assessee was

confronted with this document in his deposition on 13th Dec., 1982, he stated that his mother-in-law Smt. Prema Kumari lent monies to Smt. Ananta Bai who is staying in Narayanguda, under which a sum of Rs. 10,000 was lent from her own funds. His mother-in-law stays at Nallakunta. When asked how the pronote happened to be with the assessee, his reply was that his mother-in-law asked him to preserve with him. Smt. Prema Kumari, mother-in-law of the assessee, in her statement dt. 27th Nov., 1985 categorically stated that she had not given any thing to anybody expect her third daughter and her son-in-law Shri K. Hari Prasad and Shri R.Sobhanadri Chowdary. The assessee offered another explanation dt. 6th Dec., 1985 in which he changed the version saying that according to his books of account the amount of loan is Rs. 10,000 on 27th Jan., 1982 and not Rs. 25,000. The amount actually lent is from the amount borrowed from his mother-in-law Smt. Prema Kumari. Since he had shown the amounts borrowed from his mother-in-law in his books, the amount lent by Smt. Ananta Bai from her loan amount is shown in his books.

This amount has been repaid by her on 30th June, 1983. The ITO held that the explanation is entirely at variance with the explanation earlier given in proceedings under S. 132(5). Even his present explanation is false vis-a-vis his books. In his books on 21st July, 1982, there is a deposit of Rs. 10,000 and there is no debit entry for this amount and thus he disbelieved the present version of the assessee and considered it to be his unexplained investment and added the same under S. 69. The argument advanced in the appeal proceedings against the order passed under S. 132(5) was found at page 57 as follows : "The addition was made on the basis of a pronote found in the assessees premises executed by this lady in the name of Smt. D. Prema Kumari. The assessees case is that the money belonged to his mother-in-law who kept the pronote with him in his custody. The lady of course stated that she did not lend any money to anybody other than J. S. Chowdary and the assessee, but the loan was given to Anantabai though the assessee and that was the reason why the lady did not mention about the loan given to Anantabai. Whatever it is, there is no evidence to connect the pronote loan with the assessee except that the pronote was found in the assessees premises during the search. The Assessing Officer should have examined Shrimati Anantabai or her son who stood as guarantor as per the endorsement on the pronote. Without such examination, he was not justified in inferring that the amount lent to Anantabai beloneded to the assessee and came out of his unaccounted funds." Having gone through the above argument, we hold that it is entirely in variance with the present argument of the assessee put forward in the assessment proceedings. The plea that the monies lent under the pronote belongs to his mother-in-law cannot be accepted as true, in view of her clear admission that she did not lend to any body except her third daughter, the assessee and Shri A. Sobhanadri Chowdary. It is also the present version of the assessee that the amount due under the pronote was discharged on 30th June, 1983. Therefore, the promissory note is intended to be a negotiable instrument and it is intended to be acted upon. It is now known to whom the monies under the pronote were paid.

If really they were paid why the pronote was still remaining in the custody of the assessee. Suffice it to say that inasmuch as the undischarged promissory note is remaining in the custody of the assessee at the time of search and even as per the version of the assessee it was meant to be enforced and it was never intended to be a collateral security, in our opinion, this amount of Rs. 25,000 was correctly considered to be the unexplained investment in the hands of the assessee. The plea of the assessee fails in this regard.

21. Now let us take up the promissory note executed by Shri K.Komaraiah for Rs. 25,000 which was another promissory note bearing No.14, Bundle No. I. As per the recital of the pronote it would indicate that the assessees mother-in-law had advanced this loan on 14th Aug., 1982. However, this amount was not mentioned in the trial balance on 15th July, 1982 and when this was put to the assessee and was asked to explain in his deposition dt. 13th Dec., 1982 he stated the same as he had stated in the case of Smt. Anantabai, According to the assessee, the moneys lent under the promote belonged to his mother-in-law. He does not know the source of her investment. However, this pronote was preserved by him. Smt. D. Premakumari in her deposition dt. 29th Nov., 1985 had stated that she did not give any loan to Shri Komaraiah. When the assessee was confronted with this statement he changed the explanation in his letter dt. 6th Dec., 1985, in which he stated the following : This amount was entirely repaid on 25th April, 1982 by Mr. Komaraiah. I have advanced these moneys from out of the loan taken by me from

mother-in-law Smt. Prema Kumari." The ITO held that the assessees explanation cannot be accepted because the seized pronote indicates that the amount was advanced on 14th Aug., 1982. What the assessee was referring in his explanation dt. 6th Dec., 1985 may be the old account which is closed on 25th April, 1982. As already stated, there is no entry in the books of account produced. The books of account no doubt bears a credit entry. However, there is no corresponding debit entry on any date. Under the circumstances, the explanation of the assessee in his letter dt. 6th Dec., 1985 is quite contrary to what he had stated earlier. His earlier explanation was found to be false when we conjointly read the explanation with the explanation of Smt. D. Prema Kumari and for the same reason for which we held while discussing the pronote of Ananta Bai, we have to hold even in this case also that the ITO correctly treated the amount under the pronote executed by Shri Komaraiah as having been advanced by the assessee only. This amount also was correctly considered as unexplained investment in the hands of the assessee under S. 69 of the IT Act.

22. Now let us consider the legality of the addition of Rs. 80,000 towards unexplained cash found in the possession of the assessee at the time of search. As already stated, the assessees premises were searched under S. 132 on 22nd Sept., 1982 and at that time, cash of Rs. 80,000 was found with him. The explanation of the assessee in his letter dt.

6th Dec., 1985 was found to be the same as the one which he had offered in the proceedings under S. 132(5). The seized money of Rs. 80,000 is said to belong to the following four persons : Out of the four persons, the assessee produced Shri Gyaneswar, Sri P.Krishna Reddy and Sri Jagdish but has failed to produce Sri V. Sailaja.

However, her affidavit dt. 9th Sept., 1983 was filed on 6th Dec., 1985.

The Assessing Officer held that the affidavit cannot be accepted since she was not produced before the ITO in proceedings under S. 132(5) which is part of regular assessment proceedings. The Assessing Officer gave further opportunity to the assessee to produce her on 30th Dec., 1985. However, it was not availed of and ultimately she was not produced. Her affidavit was taken up for scrutiny. According to the averment made in it a draft for Rs. 50,000 was alleged to have been received prior to 21st Sept., 1982. However, according to the assessees deposition before the ITO the draft was encashed on 21st Sept., 1982 and the proceeds were paid on that day to Shri Gyaneswar, another alleged creditor towards discharge of his debt. Therefore, it is obvious that on 22nd Sept., 1982 no part of the draft allegedly received from Smt. Sailaja was available with the assessee on the date of the search. That money borrowed from Smt. Sailaja was available on the day of the search stands disproved by the assessees own statement made before the ITO during the proceedings under S. 132(5). With this finding, he has disbelieved the story that from out of the seized amount Rs. 50,000 belonged to Smt. V. Sailaja. Shri Gyaneswar filed an affidavit dt. 8th Dec., 1982 and was examined by the ITO on 10th Dec., 1982. The ITO held that Gyaneswar was a man of no means and he depended entirely on his father who was running a small business and whose income was below the taxable limit. The ITO held that Shri Gyaneswar was not in a position to advance any money to the assessee. The onus is on the assessee to adduce necessary evidence concerning receipt of money from Shri Gyaneswar. Shri P. S. Jagdish and Shri P. Krishna Reddy were also held to be men of no means and their versions were disbelieved and thus the whole of Rs. 80,000 which was the seized cash at the time of search was held to be the unexplained income of the assessee and added the same under S. 69 of the IT Act in his hands.

23. After going through the case records and the evidence, we entirely agree that the addition of Rs. 50,000 out of Rs. 80,000 which is said to represent the cash credit in the name of Smt. V. Sailaja is correctly made. Firstly she was not examined. Secondly the particulars of the draft or the bank from which the draft was obtained, certificate as to the particulars of the draft obtained from the bank and the date of the draft were never furnished. Clearly this amount of Rs. 50,000 was borrowed from Smt. Sailaja for purposes of investing the same in the business of arrack. Then obviously it must have formed part of Rs. 42 lakhs borrowed by the assessee. If it is correct then her name must be found as one among the 14 persons whose names were given specifically in the examination of the assessee on 13th Dec., 1982 from whom a total of Rs. 42 lakhs was borrowed. Even according to the version of the assessee, out of that Rs. 42 lakhs, Rs. 41

lakhs was invested in partnership with Shri Jangam Rao and Rs. 1 lakh was set apart for conducting assessees own business. For that Rs. 1 lakh separate account was said to have been maintained. However, it is not the case of the assessee that the name of Smt. Sailaja was found recorded even in his account books maintained for Rs. 1 lakh worth of borrowings from out of Rs. 42 lakhs. If really her name is found as one of the persons from whom borrowal was made, the entry in his books would have been made. However, her name was not found either in the books of account produced by the assessee as having been maintained by his uncle, Shri V. Rama Mohan Rao at Gudivada or in his own accounts maintained by him. No such accounts were shown in his 132(5) proceedings. So there is no strong basis led for believing the version of the assessee that he had borrowed from Smt. Sailaja, Rs. 50,000.

Shri K. Gyaneswar was examined. He deposed that he was not carrying on any business either previously or now. Occasionally he was helping in getting kirana and other material to Jaihind Hotel. Gowlipura which is managed by his father Sattaya of Lal Darwaza. He is doing nothing now.

He intended to carry on arrack business in partnership with an investment of Rs. 14,000. He has collected Rs. 14,000 by saving now and then from out of the amounts given by his father. He is married having one daughter aged 9 years and one son aged 4 years. He lives in his own house (ancestral) along with his father jointly. His father used to take care of the household expenses. His father caries on hotel business in partnership. Except the ancestral house, he owns no other property. So also his parents do not have any other property like house, lands, etc. His father is not an income-tax assessee. He has no other source of income. He is completely relying on his fathers income for his livelihood. Though he did not remember the exact date, recently he had given a draft for Rs. 2,10,000 to the assessee. He also does not remember the month in which he had given it. In all, there are five drafts totalling to Rs. 2,10,000. He has purchased them in State Bank of Hyderabad, Himayatnagar. He does not have any bank account. His partners advised him to purchase a draft at Himayatnagar. He had collected the amounts from friends and relatives in order to purchase drafts to be given to the assessee. Apart from him who invested Rs. 14,000 there are 13 others who are his friends from whom different amounts were borrowed to make the total of Rs. 3,16,000. He had paid Rs. 1,04,000 in cash to the assessee. He along with one Vidyasagar and others whose names he does not remember, visited the assessee at his residence and paid the cash personally. He knows the assessee through P. S. Jagdish. He became acquainted with the assessee with an intention to carry on arrack business. They thought of carrying on arrack business in districts and not in the city, like Patancharu, Sangareddy and other nearby places. He himself signed application forms for obtaining bank drafts. They were not able to get the contract. He does not remember the date or month when they got back the amount. He and his friends took back the D. Ds from the assessee and thus got back the amounts. They have cancelled the D. Ds in the S. B. H. and got back the amount. To the question whether he was the sole person who cancelled all the D. Ds worth Rs. 2,10,000 he said that he does not remember. To the question whether he had received back the whole of Rs. 1,04,000 paid in cash, in lumpsum from the assessee, he answered that except for some amount, he had taken cash from the assessee to the question as to how much amount he had taken back and how much he left with the assessee, he answered that a sum of Rs. 1,60,000 was retained by the assessee which was in the shape of D. Ds. By the date of examination he got back the whole amount.

He could not tell how much he got back in each instalment. They have deposited the amount they got back in Indian Bank, Barkatpura, Hyderabad. The bank account is opened in his name and the amounts are deposited in his name. He had withdrawn these amounts and paid back to his friends. He had paid some in cash and some through cheques. He named the persons to whom the amounts stated against each of them was paid in cash. He also stated the names of the persons to whom he had paid the amounts shown against each of them through cheques. It appears that a bank pass book was produced by him on 20th Sept., 1982 which shows that a cheque of Rs. 1,20,000 was given to Shri P. S. Jagdish as against his contribution of Rs. 24,700 only. When a question was put to him as to why it happened like that the answer is he does not remember.

The raid was on 29th Sept., 1982. So that amount must have been collected only to invest in the arrack business for asst. yr. 1983-84.

A reading of the whole examination of this witness on 10th Dec., 1982 would show that at least a substantial amount was standing in the name of this witness in bank account. Therefore, having regard to the consistency maintained by this witness in his deposition, we feel that his version must be true and therefore, we hold that a sum of Rs. 14,000 out of the seized amount should be held to be belonging to Shri K. Gyaneswar and therefore, it should be excluded from the hands of the assessee. So also Shri P. Krishna Reddy was also examined. He deposed that he is an agriculturist owning lands in Narsapet which is about 48 KMs away from Mahaboobabad. He was gifted about 5 acres of land in 1970. Thus he held total of 7 acres of wet land at Damarvancha village, Narasraopet Tq. On an average he gets Rs. 3,000 as agricultural produce. He owns a house at Mahaboobabad which was purchased in 1967 for Rs. 2,500 in the name of his son. His elder brother aged 42 years stays at Hyderabad and is employed in railways. He never had any business all these years. In October, 1981, he joined as an employee in arrack depot owned by a person of Eluru. He used to get Rs. 300 per month. Even on the date to deposition he was working in the said depot.

He had paid Rs. 10,000 to the assessee with an intention to get a share in arrack business. That amount was paid to the assessee on 9th Sept., 1982 at the house of the assessee at Barkatpura. He could not get the tenders and the amount paid to the assessee is still due to him. He could not collect the amount all these days due to his daughters ill-health. Afterwards, he came to know that IT authorities had searched the residence of the assessee and the assessee asked to wait for the return of money. He knows the assessee for the last eight years. He was able to save money from out of his agricultural income.

He had no bank account. He is at present residing in a rented house.

After reading his evidence, there is nothing to indicate that he is a man of no means who was not in a position to advance Rs. 10,000 to the assessee. Though his affidavit was bald, at the same time he asserted that an amount of Rs. 10,000 belonging to him was lying with the assessee by the date of the raid. Shri P. S. Jagdish also claimed that a sum of Rs. 2,000 belonging to him was left with the assessee by the date of the raid.

24. Having regard to the statements given and also the affidavit, we are inclined to hold that the amounts of Rs. 10,000 belonging to Shri P. Krishna Reddy and Rs. 2,000 belonging to Shri P. S. Jagdish should be excluded from being considered as unexplained money possessed by the assessee on 22nd Sept., 1982 which is the date of search and seizure.

Thus from out of Rs. 80,000, Rs. 26,000 should be deleted from the unexplained money of the assessee. Rs. 54,000 is to be found by us as correctly added in the hands of the assessee under S. 69 of the IT Act.

25. A sum of Rs. 1,20,000 was added in the hands of the assessee said to be representing his investment in Bhagyanagar Club. The contention of the assessee was that he had no connection whatsoever with the said club. He explained that & Rs. 1,20,000 was initially received from Shri Jagdish and nine others for arrack business and as the said business did not come through, the amount was utilised by Shri Jagdish and Gyaneswar for starting a canteen in Bhagyanagar Club. Shri Gyaneswar was examined by the Assessing Officer and he confirmed collection of monies for arrack business. The assessee had filed a letter dt. 1st Sept., 1982 addressed by Shri Gyaneswar to the assessee to the effect that he was sending Rs. 2,10,000 by draft and Rs. 1,04,000 in cash for arrack business. The said canteen in Bhagyanagar Club was actually started by Shri Jagdish and others and the assessee helped them as a mediator between Jagdish, Gyaneswar and others on the one hand and the owner of the Club, on the other. The assessee did not make any investment in the Club or Canteen as observed by the ITO. Shri Gyaneswar and Sri Jagdish were examined in the absence of the assessee.

If he had been given an opportunity to cross-examine these persons, he would have made them to explain as to how the canteen was started and who invested the money as also whether he had any connection with the canteen or the Club. The ITOs inference in this respect was based on mere surmises and scrappy evidences without giving an opportunity to the assessee to establish the actual position in regard to the said canteen or the club by examining the parties concerned or by filing explanatory letters from them. The addition made by the ITO can be stated to be another instance where the principles of nature justice have not been observed and it is liable to be deleted on that score.

The assessee was examined on 13th Dec., 1982 on this aspect of the matter. In the accounts of Peacock Bar & Restaurant, pages 3, 4 & 5, it is said that they got invested Rs. 50,000 with house owner and got executed a promissory note for Rs. 70,000. What are the circumstances under which those entries were made, what is the nature of business carried on and what are these investments were asked to be explained by the assessee. In answerer to that, the assessee stated that himself, Jagdish and some others, the names of whom he does not a remember, thought of running a canteen in Bhagyanagar Club, Ameerpet. They club people required Rs. 1,20,000 interest payable. When the assessee and others wanted security for their deposit if paid, the club people said they got Rs. 50,000 deposit with the house owner and they will give a promissory note for Rs. 70,000. The assessee and others started the canteen from 2nd Oct., 1982 after paying Rs. 1,20,000. To a specific question how the assessee made the deposit and when he had paid the amount, the answer is that his personal contribution is Rs. 20,000, the balance Shri Jagdish, Amarnath and he does not remember the other names and the amounts invested. Now he remembers his brother Shri K.Gandhibabu is also a partner and he does not known how much he had invested. It is in Sept. or Oct., 1982. So admittedly, the investment of Rs. 1,20,000 was made. The assessee admitted that out of the said amount of Rs. 1,20,000, Rs. 20,000 belongs to him and the rest to Sri Jagdish, Amarnath and some others whose names he does not remember. He does not remember who invested how much. However, this happened in Sept., 1982. For the deposit of Rs. 1,20,000 the assessee and his friends wanted a security from the club authorities, who received the deposit on understanding that interest is payable. The house owner of the club deposited Rs. 50,000 and also gave promissory note for Rs. 70,000. However, the explanation of the assessee dt. 6th Dec., 1985 in this regard appears to be at variance with the statement made by the assessee on examination on 13th Dec., 1982. According to the explanation it is explained as follows : "During the course of my examination on x x x I have already explained that this sum of Rs. 1,20,000 represent the moneys received from Jagdish and 9 others which was invested in the Bhagyanagar Club for starting a canteen. The ITO examined Mr. P. S. Jagdish who said that on 29th Sept., 1982; a cheque for Rs. 1,20,000 was taken from

Gyaneswar for taking sub-lease of arrack shop in city. Gyaneswar was also examined by the ITO and he confirmed that he has given the cheques for Rs. 1,20,000 to Shri P. S. Jagdish in Sept., 1982. Since the excise contract could not be obtained the moneys was paid to Bhagyanagar Club for starting a canteen and bar. Mr. Ghyaneswar informed the ITO that this amount was received from his friends and relatives and he return the amount back to them after it was repaid. This sum of Rs. 1,20,000 represents moneys given by Sri Gyaneswar Jagdish & Ors. I have nothing to do with the investment of these moneys." At least this explanation is false as far as Rs. 20,000 from out of the total deposit of Rs. 1,20,000 is concerned. Whereas in the deposition the assessee himself admitted that Rs. 20,000 from out of Rs. 1,20,000 belongs to him, in his explanation dt. 6th Dec., 1985, it was alleged that he has nothing to do with the whole of the deposit made, and all the moneys belonged to Jagdish, Gyaneswar and others. S/Shri Jagdish and Gyaneswar were examined by the ITO on 10th Dec., 1982. In their statement they never whispered about their having any interest in the deposited money of Rs. 1,20,000 with Bhagyanagar Club. As per the books of Peacock Restaurant Rs. 50,000 deposit and Rs. 70,000 promissory note were stated to have been made and executed respectively in favour of the assessee. The assessee wanted to explain away the circumstances by saying that he only acted as a mediator in between Jagdish, Gyaneswar and others on the one hand and the owner of Bhagyanagar Club on the other. So the case of the assessee is that in fact the deposit was made only by Jagdish and Gyaneswar etc. and he has nothing to do with the deposit. The deposit of security of Rs. 50,000 as well as the pronote for Rs. 70,000 were executed by the owner of the house in which the club is situated in his favour nominally in the status of a mediator.

The assessee in fact wanted to say that apparent is not real. The onus is on him to prove. We hold that Sri Jagdish and Gyaneswar have to be examined by the assessee in order to prove his contention. However, the assessee without producing them himself in discharge of his onus tried to explain away the statements of Jagdish and Gyaneswar by contending that because the opportunity was not given for cross-examination, the absence of any statement from either of the two parties about anything relating to this deposit of Rs. 1,20,000 cannot be read against the assessee, since the principles on natural justice were violated and they were not permitted to be cross-examined. The assessee though under a duty to examine Jagdish and Gyaneswar etc. to substantiate his contention in this regard failed to do so. The ITO is entitled to collection of information from any source available to him and he is not obliged to reveal such source. When the assessee though under a duty to examine them failed to do so, the ITO is entitled to draw an inference that apparent state of affairs is real and that the whole of the deposit was made by the assessee only and not by Gyaneswar, Jagdish and others. In this connection, the principles underlying the ratio of the decision of the Kerala High Court in CIT vs. C. P. Adam (supra) already extracted in prior paras of this judgment clearly applies and in view of the said judgment, we hold that principles of natural justice were never violated. It is significant to note that no person from Bhagyanagar Club was examined, especially to establish as to who made the deposit of Rs. 1,20,000. Is it the assessee or anybody else 26. Having regard to all the above we bold that the ITO is clearly justified in holding that Rs. 1,20,000 invested in Bhagyanagar Club was made by the assessee himself and therefore, it was rightly included in his hands for asst. yr. 1983-84. Thus we hold that the appeals for 1982-83 and 1983-84 are partly allowed to the extent noted in the above paras of our order.