

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER  
AND  
SHRI SANJAY GARG, JUDICIAL MEMBER.

ITA No.638/MUM/2011,( A.Y. 2005-06)  
ITA NO. 664/MUM/2011(A.Y.2006-07)

Shri Anil Mahavir Gupta,  
203, Giriraj, Iron Market,  
S.T.Road, Mumbai – 400009  
PAN: ADKPG 6798

... Appellant

Vs.

The ACIT, Cen. Cir.45,  
Mumbai

.... Respondent

ITA No.9215/MUM/2010,( A.Y. 2002-03)  
ITA No.9216/MUM/2010,( A.Y. 2003-04)  
ITA No.9225/MUM/2010,( A.Y. 2004-05)  
ITA No.9226/MUM/2010,( A.Y. 2005-06)  
ITA No.9227/MUM/2010,( A.Y. 2006-07)

The ACIT/DCIT, Cen. Cir.45,  
Mumbai

... Appellant

Vs.

Shri Anil Mahavir Gupta,  
203, Giriraj, Iron Market,  
S.T.Road, Mumbai – 400009  
PAN: ADKPG 6798

..... Respondent

C.O.No.179 to 182/Mum/2012  
(Arising out of ITA No.9215,9216,9225&9226/Mum/2010,  
A.Ys. 2002-03 TO 2005-06)

Assessee by : S/Shri Vijay Mehta/Govind Jhaveri  
Respondent by : Shri Sanjay Singh

Date of hearing : 22/07/2016  
Date of pronouncement : 31/08/2016

**ORDER****PER G.S.PANNU, A.M:**

The captioned are nine 11 appeals pertaining to the same assessee in relation to the assessment years 2002-03 to 2006-07 and involve certain common issues. Accordingly, all the appeals have been clubbed and heard together and a consolidated order is being passed for sake of convenience and brevity.

2. Before proceeding to adjudicate the issues raised in the respective appeals, a brief background is as follows. The assessee before us is an individual, who is director of a concern, viz. M/s. S.K.S.Ispat Ltd. Apart from deriving salary income from the said concern, assessee is carrying on proprietary business of trading in various steel products under the name and style of M/s. Gupta Steel Corporation. A search action under section 132(1) of the Income Tax Act, 1961 (in short 'the Act') was carried out by the Department in the premises of the aforesaid company and also at the residential premises of the directors, including the assessee on 10/11/2006. As a consequence, proceedings under section 153A of the Act were initiated by the Assessing Officer for seven assessment years starting from assessment year 2001-02 to 2007-08 and in response, assessee filed returns for each of the said assessment years. In so far as the assessment years 2002-03 to 2005-06 are concerned, the returns so filed have been subject to scrutiny assessments, which were completed under section 143(3) r.w.s. 153A of the Act dated 18/12/2008, and for assessment year 2006-07, assessment has been completed under section 143(3) of the Act. In the assessments so finalized, the Assessing

Officer made various additions which were carried in appeal before the CIT(A), who has allowed substantial relief. Against the reliefs allowed by the CIT(A), Revenue is in appeal for the captioned assessment years of 2002-03 to 2006-07. The assessee has filed Cross- Objections for assessment years 2002-03 to 2005-06, and cross-appeals for assessment year 2005-06 and 2006-07, whereby the additions sustained by the CIT(A) have been challenged and/or the addition deleted by the CIT(A) have been supported. In this background, we proceed to consider the respective appeals for each of the assessment years.

3. We may first take up the appeal of the Revenue for assessment year 2002-03, which is against an order passed by CIT(A)-36, Mumbai dated 15/10/2010, which in turn arises out of an order passed by the Assessing Officer under section 143(3) r.w.s. 153A of the Income Tax Act, 1961 (in short 'the Act') dated 18/12/2008.

4. In this appeal, the following two Grounds have been raised:-

*"1. On the facts and in the circumstances of the case} and In law} the CIT(A) was not Justified in deleting the addition made by the Assessing Officer by estimating the household expenses of the assessee at Rs.4.48lakhs without appreciating that the assessee had not furnished details of his household expenses and contribution, if any, by other family members for scrutiny particularly when the personal withdrawals shown by the assessee were very meager."*

*"2. On the facts and in the circumstances of the case}, and In law, the CIT(A) was not justified in deleting the addition of Rs.378,059/- made u/ s 2(22)(e) of the Act by holding that the transaction were not by way of loan or borrowing and were for supply of goods and repaid in kind without appreciating that the assessee had not adduced any evidence before the Assessing Officer in this regard and hence, the CIT(A) erred in accepting the additional evidence in contravention of the rule 46A of I. T Rules, 1962."*

*The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.*

*The appellant craves leave to amend or alter any ground and/or add new grounds which may be necessary."*

5. At the time of hearing, Ld. Representative for the assessee pointed out that the tax effect in the Grounds raised by the Revenue is below the limits prescribed by the CBDT for filing of appeals before the Tribunal. In this context, Ld. Departmental Representative appearing for the Revenue has not brought out anything to the contrary.

6. As a consequence, the appeal of the Revenue in ITA NO.9215/Mum/2010 for assessment year 2002-03 is dismissed as not-maintainable. Thus, the relevant cross-objection preferred by the assessee for assessment year 2002-03, which is merely in support of the order of CIT(A), is rendered infructuous and is accordingly dismissed.

7. Now, we may take up the appeal of the Revenue pertaining to assessment year 2003-04 in ITA No.9216/Mum/2010 and cross objection of the assessee vide C.O.No.180/Mum/2012,

7.1 In this appeal, Revenue has raised the following Grounds of appeal:-

*"1. On the facts and in the circumstances of the case, and in law, the CIT (A) was not Justified in deleting the addition of Rs. 69,28,100/- made under section 68 of the Act, as unexplained cash credit, claimed to be advances received from customers, by holding that there was no material to doubt assessee's explanation, though the assessee had neither furnished confirmations with PAN details etc., nor produced the party for verification to establish their identity and creditworthiness and the genuineness of the transaction and thus the assessee had failed to discharge the onus cast upon him under the provisions of section 68 of the Act.*

*"2. On the facts and in the circumstances of the case; and in law, the CIT(A) was not justified in deleting the addition made by 'the Assessing Officer by estimating the household expenses of the assessee at Rs. 6 lakhs without appreciating that the assessee had not furnished details of his household expenses and contribution, if any, by other family members for scrutiny particularly when the personal withdrawals shown by the assessee were very meager."*

*3. On the facts and in the circumstances of the case, and in law, the CIT(A) was not Justified in deleting the addition of Rs.14,26,974/- made u/s 2(22)(e) of the Act by holding that the transaction were not by way of loan or borrowing and were for supply of goods and repaid in kind without appreciating that the assessee had not adduced any evidence before the Assessing Officer in this regard and hence, the CIT(A) erred in accepting the additional evidence in contravention of the rule 46A of I T Rules, 1962"*

*The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.*

*The appellant craves leave to amend or alter any ground and/ or add new grounds which may be necessary."*

**7.2 In the Memo of cross-objection, assessee has raised the following Ground:-**

*"1. On the facts and circumstances of the case the Assessment Order passed under section 153A of the I.T. Act, 1961 is bad in law as the assessment was not pending at the time of search and there is no nexus between following additions made and any information & material found during the search.*

S.No.	Particulars	Amount (Rs.)
1.	Addition on account of advance from customers	69,28,100
2.	Ad-hoc addition of Household Expenses	6,00,000
3.	Addition on account of Deemed Dividend under section. 2(22)(e).	14,26,974/-

*2. The cross-objector carves leave to add to, amend, alter or delete all or any of the foregoing grounds of cross-objection."*

**7.3 Subsequently, another Ground has also been raised,which reads as under:-**

*"1. On the facts and circumstances of the case the additions made in the Assessment Order passed under section 153A of the I.T. Act, 1961 is bad in law as the assessment was not pending at the time of search and there is no nexus between following additions made and any information & material found during the search.*

<i>S.No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
1.	<i>Addition on account of advance from customers</i>	<i>69,28,100</i>
2.	<i>Ad-hoc addition of Household Expenses</i>	<i>6,00,000</i>
3.	<i>Addition on account of Deemed Dividend under section. 2(22)(e).</i>	<i>14,26,974/-</i>

*2. The cross-objector carves leave to add to, amend, alter or delete all or any of the foregoing grounds of cross-objection."*

7.4 At the time of hearing the Ld. Representative for the assessee submitted that the cross objection involves a point of law and, the Second Ground in the cross-objection has been raised as matter of abundant caution because even otherwise, the same point is subsumed in the Ground of cross objection raised originally. The point sought to be made out by the assessee is that the additions in question are not based on any incriminating material found in the course of the search; and, since the original assessment for the year under consideration does not abate in terms of the Second Proviso to section 153A(1) of the Act, therefore, following the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (NHAVA SHEVA) Ltd, 374 ITR 645 (Bom), such additions are beyond the scope and ambit of the jurisdiction conferred on the Assessing Officer under section 153A r.w.s. 143(3) of the Act.

7.5 The aforesaid controversy in our view, goes to the root of the matter, therefore, it is being addressed at the threshold. In order to appreciate the same, following discussion is relevant. As noted earlier, assessee and other entities in its group were subject to search and seizure action under section 132(1) of the Act on 10/11/2006. In pursuance to such action, a notice under section 153A of the Act was issued to the assessee on 5/10/2007 calling for a return of income for assessment year 2003-04, in response to which, assessee filed a return

of income declaring an income of Rs.30,48,790/-, which was the same as the income originally declared in the return of income filed under section 139(1) of the Act on 2/12/2003 for assessment year 2003-04. The return of income so filed by the assessee has been subject to scrutiny assessment under section. 143(3) r.w.s. 153(A) dated 18/12/2008, whereby the total income has been assessed at Rs.1,20,03,860/- by making following three additions, i.e. (i) Advances received from customers considered unexplained under section 68 of the Act - Rs.69,28,100/-; (ii) Amount received from M/s. S.K.S. Ispat Pvt. Ltd., considered as 'deemed dividend' under section 2(22)(e) of the Act - Rs.14,26,974/-; and, (iii) estimated addition on low household withdrawals – Rs.6.00 lacs. Notably, the CIT(A) has deleted all the additions so made by the Assessing Officer, which is being challenged in appeal by the Revenue as per above stated Grounds of appeal. Be that as it may, plea raised by the assessee in the cross-objection is to the effect that such additions are not based on any material found and seized during the course of search at the premises of the assessee and considering that the original assessment does not abate in terms of the Second Proviso to section 153A(1) of the Act, the said additions are beyond jurisdiction in terms of the judgment of the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (NHAVA SHEVA) Ltd. (supra).

7.6 At the time of hearing, the Ld. Representative for the assessee pointed out that with respect to the additions made during the course of assessment proceedings, there was no incriminating material found at the time of search and that such additions have been made as a result of the verification exercise carried out in the course of

assessment proceedings itself. It is also pointed out that in the context of the original return of income filed under section 139(1) of the Act on 02/12/2003, no notice under section 143(2) of the Act was issued within the prescribed period and, therefore, such assessment proceedings stood complete and that in any case on the date of search i.e. on 10/11/2006, the assessment for the impugned assessment year of 2003-04 was not pending. The said factual matrix has been canvassed by the assessee to say that assessment for the year under consideration does not abate in terms of the Second Proviso to section 153A(1) of the Act. As a consequence, it is canvassed that the impugned additions made by the Assessing Officer could not have been made in the impugned assessment proceedings as they are not based on any material seized or found during the course of search at the premises of the assessee.

7.7 On the other hand, Ld. Departmental Representative has pointed out that the proposition being canvassed by the assessee would not apply in a situation where an original assessment has not been finalized under section 143(3) of the Act, and in the present case original assessment has been made under section 143(1) of the Act. As per the Ld. Departmental Representative the provisions of section 153A empower the Assessing Officer to assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which a search was conducted and, therefore, under these circumstances the Assessing Officer was duty bound to assess or reassess 'total income' of such assessment years, and, therefore, the impugned additions were justifiably made in the assessment made under section 143(3) r.w.s. 153A(1) of the Act.



7.8 As the aforesaid discussion shows, the pertinent point raised by the assessee before us is that the impugned additions have been made in the absence of the requisite jurisdiction. In order to appreciate the controversy, it is pertinent to observe that Section 153A of the Act postulates the assessment in cases of search or requisition under section 132 or under section 132A of the Act respectively. The said section envisages that the Assessing Officer shall assess or reassess the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted. The second proviso to section 153A(1) of the Act also prescribes that assessment or re-assessment, if any, relating to any assessment year falling within the period of six years referred to in sub-section(1) of section 153A of the Act, which is pending on the date of initiation of search or making of requisition as the case may be, shall abate. In other words, in so far as the pending assessments are concerned, the competence of the Assessing Officer to make the original assessment converges with the assessment to be made under section 153A of the Act, i.e. only one assessment shall be made for such assessment years based on the findings of the search as well as any other material existing or brought on record by the Assessing Officer. Notably, there would assessments in the period of the six assessment years identified in section 153A(1) of the Act, which would have become final( i.e. which are not pending on the date of search); such assessments do not abate in the terms of the second proviso to sec. 153A(1) of the Act. The controversy before us is with respect to the scope and ambit of such an assessment because in the present case the assessment as on the date of search stood completed inasmuch as the

date for issuance of notice under section 143(2) of the Act had lapsed in relation to the return originally filed by the assessee under section 139(1) of the Act on 02/12/2003.

7.9 In this context, the judgment of the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (NHAVA SHEVA) Ltd. (supra) is relevant, whereby the decision of the Special Bench of the Tribunal in the case of All Cargo Global Logistics Ltd. & Ors. Vs. DCIT, 137 ITD 287 (Mum) has been upheld. A pertinent point addressed by the Hon'ble High Court was as to whether the scope of assessment under section 153A of the Act envisages additions, which are otherwise not based on any incriminating material found during the course of search. As per Hon'ble High Court, no addition could be made in respect of the assessment that had become final in the event no incriminating material was found during the course of search. The Hon'ble High Court also noticed its earlier judgment in the case of Murali Agro-products Ltd. (supra) and elaborately culled out the scope and ambit of the assessment and reassessment of total income under section 153A(1) of the Act read with the proviso thereof. The Hon'ble High Court has ruled that an unabated assessment under section 153A(1) of the Act would not encompass an addition for which no incriminating material is found during the course of search, because in such a case, the original assessment had become final.

7.10 In this context, it is also notable that the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla in ITA 707/2014 dated 28/08/2015 has also considered a similar dispute and has summarized the entire legal position as follows:-

*“ Summary of the legal position*

37. On a conspectus of [Section 153A\(1\)](#) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under [Section 132](#) of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under [Section 153A](#) merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not

*already disclosed or made known in the course of original assessment.*

7.11 In the above background, now we may examine the manner in which the impugned additions have been made by the Assessing Officer. The first addition is on account of Rs.69,28,100/- representing advances received from customers, which have been held by the Assessing Officer to be 'unexplained credits' within the meaning of section 68 of the Act. The relevant discussion in the assessment order reveals that there was a failure on the part of the assessee to produce the parties and, therefore, the Assessing Officer has proceeded to treat the same as unexplained cash credits under section 68 of the Act. With respect to the addition in respect of deemed dividend under section 2(22)(e) of the Act of Rs.14,26,974/-, the relevant discussion in para 9 of the assessment order reveals that the Assessing Officer has justified the addition on the basis of his examination of the balance sheet of M/s. S.K.S Ispat Ltd., from whom such amount is said to have been received. The third addition is on account of low household withdrawals and such addition is based on the perception of the Assessing Officer that the declared withdrawals for household expenses are low and ought to have been higher. Be that as it may, there is no discussion in the assessment order, which would suggest that any incriminating material was found in the course of search relatable to such additions. Therefore, factually speaking, we do not find that the additions in question are based on any incriminating material found during the course of search at the premises of the assessee. Therefore, in this background, we uphold the plea the plea of the assessee that such additions are beyond the scope and ambit of an assessment order under section 143(3) r.w.s. 153(A)(1) because in respect of assessment

year 2003-04, the original assessment had become final and it has not abated, having regard to the Second Proviso to section 153A(1) of the Act.

7.12 Before parting, we may refer to the argument set up by the Ld. Departmental Representative to the effect that the aforesaid proposition of law laid down by the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (NHAVA SHEVA) Ltd. (supra) is not applicable in the instant case, because, in this case, the original assessment was completed under section 143(1) of the Act itself and not as a scrutiny assessment under section 143(3) of the Act. In this context, Ld. Representative for the assessee had relied upon the decision of our Co-ordinate Bench in the case of Govind Agarwal in ITA No.3389&3390/Mum/2011 dated 10/01/2004, wherein under identical circumstances the addition made in assessment under section 153A of the Act without support of the incriminating material was held unsustainable even when the original assessment was completed under section 143(1) of the Act. The relevant discussion in the case of Govind Agarwal (supra) is as under:-

***“Decision of the Tribunal:***

*9. We have heard both the parties on the legal issue relating to the sustainability or validity of the additions made in the assessments made u/s 153A read with section 143(3) of the Act in respect of completed assessments.*

*10. The stand of the Revenue is that the first proviso to section 153A empowers the AO to issue notice u/s 153A of the Act in respect of the 6 AYs prior to the assessment year in which the search took place. The relevance of the existence of incriminating material is not provided in the said provisions. As per the revenue there should not be any difference qua the completed assessments and the abated assessments for all six AYs in so far as the powers of the AO is concerned and he is empowered to issue notice u/s 153A and make additions either based in the incriminating material or otherwise.*

11. *Per contra*, the case of the assessee is that the AO may be empowered to issue notices for all the six AYs in view of the cited decisions ie *Jai Steel (India) Ltd (supra)*, *Scope (P) Ltd (supra)* etc. However, in case of completed assessments, AO is empowered to make additions only based on the incriminating materials and not otherwise *Jai Steel (India) Ltd (supra)*, *LMJ International Ltd (supra)*, *Gurinder Singh Bawa (supra)* etc. For making the routine additions, which are normally done in the regular assessments, the completed assessment need not be disturbed by invoking the provisions of section 153A of the Act if not for reiterating the returned or assessed income as the case may be. Judgment in the case of *Jai Steel (India) Ltd (supra)* supports the above legal proposition. As per the assessee, regarding the cases of abated assessments, considering the scheme of assessments u/s 153A, *per contra*, even the routine additions are done in these assessments.

12. We have heard the parties and their divergent stands on the legal issue and the validity of the instant assessment/reassessment with the routine additions u/s 68 and section 14A of the Act based on the accounted transactions. The instant case for the AY 2002-03 deals with the case of disturbing the „completed assessment“. Earlier the assessment was completed u/s 143(1) of the Act. Completeness of the summary assessment is considered and held in favour of the assessee vide many judgments cited above. In the assessment u/s 153A, the AO made (i) Addition u/s 68 on account of artificially inflated investment in house duly disclosed in the balance sheet of the assessee Rs.31,33,070/-; and (ii) disallowance u/s 14A: Rs. 23,31,469/-. Admittedly, there is no incriminating material before the AO to support the above additions. The valuation report, which is garnered by the authorities constitutes mere estimates and the provisions of section 132 is not required to obtain such report from the DVO. As such, for making aforesaid additions of Rs 31,33,070/-, AO has not used even the said valuation report and the AO disallowed what is reported in the books. Similar is the case with the additions u/s 14A of the Act. Therefore, undisputedly, the impugned quantum additions are made merely based on the entries in the accounted books and certainly not based on either the unaccounted books of accounts of the assessee or books not produced to the AO earlier or the incriminating material gathered by the investigation wing of the revenue. Considering the legal propositions place before us by the assessee's counsel, we are of the opinion, such assessments or additions are unsustainable in law.

13. For the sake completeness of the assessee, we insert here some of the extracts from relevant judgments and they are:

A. [2013 36 taxmann.com 523 (Rajasthan) in the case of *Jai Steel (India) vs. ACIT* - From Held portion:

....The requirement of assessment or reassessment under the said section has to be read in the context of sections 132 or 132A,

*inasmuch as, in case nothing incriminating is found on account of such search or requisition, then the question of reassessment of the concluded assessments does not arise, which would require more reiteration and it is only in the context of the abated assessment under second proviso which is required to be assessed.*

*.....From a plain reading of the provision along with the purpose and purport of the said provision, which is intricately linked with search and requisition under sections 132 and 132A, it is apparent that:*

*(a) the assessments or reassessments, which stands abated in terms of second proviso to section 153A, the Assessing Officer acts under his original jurisdiction, for which, assessments have to be made;*

*(b) regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material and*

*(c) in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made.*

*.....The argument of the assessee that the Assessing Officer is also free to disturb income, expenditure or deduction de hors the incriminating material, while making assessment under section 153A is also not borne out from the scheme of the said provision which as noticed above is essentially in context of search and/or requisition.*

*Para 26 of the Judgment: The plea raised on behalf of the assessee that as the first proviso provides for assessment or reassessment of the total income in respect of each assessment year falling within the six assessment years, is merely reading the said provision in isolation and not in the context of the entire section. The words 'assess' or 'reassess' have been used at more than one place in the Section and a harmonious construction of the entire provision would lead to an irresistible conclusion that the word 'assess' has been used in the context of an abated proceedings and reassess has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only based on the incriminating material found during the course of search or requisition of documents.*

*B. [2012] 28 Taxmann.com 328 (Mumbai –Trib.) in the case of Gurinder Singh Bava vs. DCIT*

*.... Whether since assessment under section 153A was passed by Assessing Officer on basis of material available in return of income*

*and there was no reference to any incriminating material found during search and since no assessment was abated, assessment under section 153A was to be quashed being made without jurisdiction available under section 153A - Held, yes [Para 6.2] [In favour of assessee]*

*Para 6.1 of the Order: The Special bench in the case of Alcargo Global Logistics Ltd. (supra), has held that provisions of section 153A come into operation if a search or requisition is initiated after 31.5.2003 and on satisfaction of this condition, the AO is under obligation to issue notice to the person requiring him to furnish the return of income for six years immediately preceding the year of search. The Special Bench further held that in case assessment has abated, the AO retains the original jurisdiction as well as jurisdiction under section 153A for which assessment shall be made for each assessment year separately. Thus in case where assessment has abated the AO can make additions in the assessment, even if no incriminating material has been found. But in other cases the Special Bench held that the assessment under section 153A can be made on the basis of incriminating material which in the context of relevant provisions means books of account and other documents found in the course of search but not produced in the course of original assessment and undisclosed income or property disclosed during the course of search. In the present case, the assessment had been completed under summary scheme under section 143(1) and time limit for issue of notice under section 143(2) had expired on the date of search. Therefore, there was no assessment pending in this case and in such a case there was no question of abatement. Therefore, addition could be made only on the basis of incriminating material found during search.*

*B. All Carqo Global Logistics Ltd. v. Deputy Commissioner of Income-tax, Central Circle-44 [2012] 23 taxmann.com 103 (Mum.) (SB)*

*Para 58 of SB decisions: Thus, question No.1 before us is answered as under:*

*(a) In assessments that are abated, the AO retains the original jurisdiction as well as jurisdiction conferred on him u/s 153A for which assessments shall be made for each of the six assessment years separately;*

*(b) In other cases, in addition to the income that has already been assessed, the assessment u/s 153A will be made on the basis of incriminating material, which in the context of relevant provisions means - (i) books of account, other documents, found in the course of search but not produced in the course of original assessment, and (ii) undisclosed income or property discovered in the course of search.*



14. Thus, in case of the completed assessments either u/s 143(1) or 143(3), the above extracts are uniform in advocating against making additions in routine manner in the assessments made u/s 153A of the Act when there is no incriminating material gathered in the search action. Statutory notice u/s 153A of the Act can also be issued to reiterate the returned income or for making additions based on the incriminating material or unproduced books of account. Otherwise, additions made in routine matter as in the present appeal are not sustainable. Further, for the sake completeness of the order, we have perused the orders/judgments relied upon by Ld DR for the revenue and found they are distinguishable on facts for one reason or other. To start with, we have perused the judgment of Honble Hon`ble Delhi High Court in the case of Madugula Venu (supra) and find that, though explained the provisions in plain language, it does not dealt with the relevance or factum of incriminating material. Further, the judgment of Andhra Pradesh High Court in the case of Gopal Lal Bhadraka (supra) is not on the notices issued u/s 153A of the Act and the same is pronounced in the context of the notice u/s 153C of the Act. Further, also, the Coordinate Bench decision in the case of Scope (P) Ltd (supra) has granted relief to the assessee though the notice issued u/s 153A of the Act was upheld. However, this order has not considered the then existing decision of the Coordinate Bench decision in the case of Pratibha Industries Ltd (supra) which is relevant for the proposition that the completed assessment may not be disturbed in the absence of any incriminating material specific to the assessee. In fact, all these judgments take spirit from the Special Bench decision in the case of All Cargo Global Logistics Ltd (supra), which is relevant for the proposition that the assessment u/s 153A will be made on the basis of incriminating material such as books of accounts, other documents found in the search but not produced in the course of original assessment and undisclosed income or property discovered in the course of the search.

15. We also find that the CIT(A) made a reference to the incriminating material, which yielded disclosure of some undisclosed income. But, on perusal of the documents, we find that the CIT(A) entered into an error zone and the disclosure is only Rs 5 crores in this case and the same relates to the lands deals. In principle this disclosure has nothing do with the impugned additions u/s 68 or 14A of the Act. In the instant case, specific to the assessee, no incriminating material with the details was referred either in the assessment order or in the order of the CIT (A) for making the impugned additions. As per the cited judgment in the case of Jai Steels Ltd, supra, the assessment u/s 153A is only for reiteration rather than making any additions in a routine manner without the strength of the incriminating materials. Similar view was taken up by the ITAT, Delhi „H“ Bench, in the case of V.K. Fiscal Services P Ltd vs. DCIT vide ITA Nos.5460 to 5465/Del/2012 (www.itatonline.org). In this regard, para 13 from the said order of the ITAT Delhi Bench (supra) is relevant and the same reads as under:

*"13. Applying the above case laws to the facts of the case, we have to necessarily quash the assessment proceedings for AY 2004-2005, 2005-06, 2007-08, 2008-09 on the following grounds.*

*(a) No books of accounts belonging to the assessee were found and seized in the premises of the other person. What was found was in the hard disk was only a confirmation of account that an attached annexures. Such documents cannot be said to be books of accounts or documents belonging to the assessee.*

*(b) The Revenue has not produced the record of the searched person to demonstrate that satisfaction was recorded during the course of assessment proceedings in the case of M/s. Global Reality Ventures P. Ltd. On the date of recording of satisfaction, first notice u/s 153(c) was issued. There is no indication whatsoever, that the assessment proceedings in the case of Global Reality Ventures P. Ltd were in progress or not, at the point of time and that the AO during the course of that proceedings recorded this satisfaction. The procedure contemplated under the Act was not followed.*

*(c) The satisfaction is recorded on 23<sup>rd</sup> July, 2010. The relevant AY would be 2011-12. The six preceding AYs relevant to this AY would be 2005-14 06 / 2006-07 / 2007-08 / 2008-09 / 2010-11. Thus, the notice issued u/s 153"C" for the AY 2004-05 is clearly barred by limitation.*

*(d) Even otherwise, as there is no incriminating material found during the course of search, the AO should have dropped the proceedings initiated u/s 153"C" of the Act. (e) As there is no dispute that no assessment or reassessment has abated in this case for the reason, that the date of search, the date of search which in the case on hand would be 25.3.2010, by virtue of First Proviso to section 153"C", i.e., the date of passing an order u/s 127 transferring the cases of the assessee to the present Assessing Officer no assessment or reassessment was pending. When no assessment has abated, the question of making any addition or making disallowance which are not based on only material found during the search is bad in law."*

*16. In these circumstances, we have no doubt about the absence of any seized material which are incriminating in nature to back the additions u/s 68 or 14A of the Act made in the assessment made u/s 153A of the Act for the AY under consideration. Regarding the DVO's report gathered during the search action, we find that the report suffers from certain deficiencies qua cost of construction of residential property and the land obtained thereto. The said report constitutes an opinion of the third party which cannot be used by the AO for making additions and such additions, if any, cannot be sustained legally. As such, we find that the AO has not used the said report of the DVO also for making additions of Rs. 31,33,007/-, the difference between accounted amount of Rs. 46,13,007/-, claimed as the amount spent on construction of house and acquisition of land as on 31.3.2002 minus Rs. Rs. 14.8 lakhs, the investment made on the land plots. AO made addition for assessee's failure to provide evidences / bills in support of the claim of*

*expenditure on the construction. It the presumption of the AO that the plots since acquired only by July 2001, the assessee would not have spend Rs. 31,33,007/- by 31.3.2002. This is merely a presumption rather conclusion based on any evidences. Such additions are unsustainable in law in the assessments made u/s 153A r.w.s 143(3) of the Act.*

*17. Rajasthan High Court judgment in the case of Jai Steel (India) (supra), vide para 18, it is categorically mentioned that “the requirement of assessment or reassessment under the said section (153A) has to be read in the context of sections 132 or 132A of the Act, inasmuch as, in case nothing incriminating is found on account of search or requisition, then the question of reassessment of the concluded 15 assessments does not arise, which would more reiteration.....”. Thus, the judgment of Hon`ble High court in the case of Jai Steel Ltd, supra and above decisions of the Tribunal are categorical in concluding that, in case of the concluded assessments like the present one, the additions are made only based on the incriminating material discovered during the search action. The facts of the Jai Steel Ltd (supra) are identical to the present one ie AO made additions by reassessing u/s 153A on the completed assessment u/s 143(1) of the Act. Thus, considering the judgment in the case of the Jai Steel Ltd (supra), the arguments on the legal issue raised before us stands covered. Therefore, considering the Rajasthan High Court`s judgment in the case of Jai Steels Ltd, supra, we have no difficulty in (i) upholding the issue of notice u/s 153A of the Act and (2) in disapproving the making of the impugned additions u/s 68 and 14A of the Act, which are not backed by the incriminating materials. In the absence of incriminating material, the role of the AO is only to reiterate the returned income filed in response to the notice u/s 153A of the Act. Accordingly, in substance, the common legal issue raised in the grounds for both the appeals of the assessee (ITA NO 3389&3390/M/2011) is allowed.”*

7.13 Quite clearly, the Tribunal in the case of Shri Govind Agarwal (supra) has upheld that making of an addition in an assessment under section 153A of the Act, without the backing of incriminating material, is unsustainable even in a case where the original assessment on the date of search stood completed under section 143(1) of the Act, thereby resulting in non-abatement of such assessment in terms of the Second Proviso to section 153A(1) of the Act. Notably, the Tribunal has referred to various decisions, including the judgment of the Hon`ble Rajasthan High Court in the case of Jai Steel (India) (supra). Therefore,

the plea of the Ld. Departmental Representative is rejected in view of the aforesaid precedent.

7.14 In conclusion, by following the ratio of the judgment of the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava-Sheva) Ltd. (supra) and that of the Hon'ble Delhi High Court in the case of Kabul Chawla(supra), we hold that the impugned additions could not have been made in the assessment finalized under section 143(3) r.w.s. 153A(1) of the Act considering the absence of any incriminating material having been found in the course of search qua the impugned additions and the original assessment not having abated in terms of Second Proviso to section 153A(1) of the Act. As a consequence, the Ground raised by the assessee in its cross-objection is allowed.

7.15 Resultantly, the ultimate decision of the CIT(A) in deleting the additions made by the Assessing Officer on account of (i) Advances received from customers considered unexplained under section 68 of the Act - Rs.69,28,100/-; (ii) Amount received from M/s. S.K.S. Ispat Pvt. Ltd., considered as 'deemed dividend' under section 2(22)(e) of the Act - Rs.14,26,974/-; and, (iii) estimated addition on low household withdrawals – Rs.6.00 lacs is hereby affirmed, albeit on a different ground.

7.16 As a consequence, whereas the cross objection of the assessee is allowed, the appeal of the Revenue is dismissed.

8. Now we may take up the appeal of the Revenue in ITA No. 9225/Mum/2010 for assessment year 2004-05, which is directed

against an order passed by CIT(A)-36, Mumbai dated 15/10/2010, which in turn arises out of an order passed by the Assessing Officer under section 143(3) r.w.s. 153A of the Income Tax Act, 1961 (in short 'the Act') dated 18/12/2008.

9. In this appeal, Revenue has raised following Grounds of appeal:-

*"1. On the facts and in the circumstances of the case, and in law, the CIT(A) was not justified in deleting the addition of Rs.3,07,63,572/- by disallowing 25% of the entire. expenses of the proprietary business without appreciating that the assessee neither produced the parties to whom freight expenses were paid nor filed the details of such expenses for verification and more particularly when the confirmations from the parties were also not filed by the assessee."*

*"2. On the facts and in the circumstances of the case, and in law, the CIT (A) was not justified in deleting the addition of Rs.13,20, 00,143/- made on account of disallowance of commission and brokerage by holding that the disallowance was based on insufficient grounds without appreciating that the assessee neither produced the parties nor filed the details of such commission and brokerage for verification and also that the confirmations from the parties were not filed by the assessee and thus genuineness of the expenditure claimed as business expenditure was not proved."*

*"3. On the facts and in the circumstances of the case, and in law, the CIT(A) was not justified in deleting the addition made by the Assessing Officer by estimating the household expenses of the assessee at Rs.6lakhs without appreciating that the assessee had not furnished details of his household expenses and contribution, if any, by other family members for scrutiny particularly when the personal withdrawals shown by the assessee were very meager."*

*"4. On the facts and in the circumstances of the case, and in law, the CIT(A) was not justified in deleting the addition of Rs.2,50,89,124/- made u/s 2(22)(e) of the Act by holding that the transaction were not by way of loan or borrowing and were for supply of goods and repaid in kind without appreciating that the assessee had not adduced any evidence before the Assessing Officer in this regard and hence, the CIT(A) erred in accepting the additional evidence in contravention of the rule 46A of I T Rules, 1962"*

*"5. On the facts and in the circumstances of the case, and in law, the CIT (A) was not justified in deleting the addition of Rs. 35,44,18,832/- made u/s 68 of the Act by holding that that the addition made on a/c of the progressive peak balance relating to unexplained sundry creditors was not sustainable"*

*ignoring his own conclusion that the assessee was not reporting true and correct state of affairs particularly when assessee had no delivery details, lorry receipts and the alleged creditors had admitted that the transaction were only on paper."*

*"6. On the facts and in the circumstances of the case, and in law, the CIT (A) was not justified in deleting the addition of Rs. 35,44,18,832/- made u/s 68 of the Act without appreciating that the assessee did not produce books of accounts, bills, vouchers before the A.D. for examination and particularly when the alleged creditors had in their original statement recorded u/s. 131 had denied the transaction of any sale of goods to the assessee and also some of them have declared commission income only on the amount of accommodation entries of purchase / sale".*

9.1 The assessee has filed cross-objection raising a Ground, which is identical to that considered by us in the assessment year 2003-04 in the earlier paras. Since the issue raised in the cross-objection goes to root of the matter, it is being taken-up at the threshold.

9.2 In assessment year 2004-05, the relevant facts are that in response to the notice issued under section 153A of the Act, assessee filed a return of income on 14/02/2008 declaring total income at Rs.97,04,433/-, which was the same at which the return of income was originally filed under section 139(1) of the Act on 1/11/2004. In the ensuing assessment finalized under section 143(3) r.w.s. 153A(1) of the Act, the Assessing Officer has determined the total income at Rs.55,25,76,104/-, after making the following additions, (i) disallowance out of total expenses debited in the P&L Account on adhoc basis – Rs.3,07,63,572/-; (ii) commission and brokerage on account of non-production of parties – Rs.13,30,00,143/-; (iii) deemed dividend under section 2(22)(e) of the Act on account of receipt of money from M/s. SKS Ispat Ltd. of Rs.2,50,89,124/-; (iv) low household withdrawals Rs.6.00 lacs; and, (v) sundry creditor's balances considered as

unexplained under section 68 of the Act – Rs.35,44,18,832/-. Notably, when assessee carried these additions before the CIT(A), the same have been deleted by the CIT(A) for the reasons assigned in the order.

9.3 In the context of the proposition laid down by the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava-Sheva), which has been adverted to at length by us in the earlier paras in the appeal for the assessment year 2003-04, in the present year too, we have perused the manner in which the additions have been made in the assessment order. Quite clearly, the entire discussion in the assessment order does not refer to any material found during the course of search, leave alone any incriminating material, in order to support the impugned additions. Therefore, it is quite clear that the additions are not based on any seized material found during the course of search at the premises of the assessee and, therefore, following our discussion in the earlier paras for assessment year 2003-04(supra), herein also such additions are held to be beyond the scope and ambit contemplated under section 153A r.w.s. 143(3) of the Act. The facts and circumstances in the instant year are identical to those considered by us in assessment year 2003-04, except to the extent of the heads of additions and the amount of additions being different. Under these circumstances, in our view, our decision in the Ground in the cross-objection of the assessee for assessment year 2003-04(supra) applies *mutatis mutandis* in this year too. As a consequence, we hereby affirm the ultimate conclusion of the CIT(A) in deleting the aforesaid five additions, albeit on a different ground.

9.4 As a consequence, whereas the cross objection of the assessee is allowed, the appeal of the Revenue is dismissed.

10. Now we may take up the assessment year 2005-06, wherein Revenue and assessee have filed cross-appeals, and assessee has also filed a cross-objection. The appeal of the Revenue in ITA No.9226/Mum/2010, is directed against an order passed by CIT(A)-36, Mumbai dated 15/10/2010, which in turn arises out of an order passed by the Assessing Officer under section 143(3) r.w.s. 153A of the Income Tax Act, 1961 (in short 'the Act') dated 18/12/2008. In this appeal Revenue has raised the following Grounds of appeal:-

*"1. On the facts and in the circumstances of the case, and in law, the CT (A) was not justified in deleting the addition of Rs.1,89,39,320/- made on account of disallowance of commission by holding that the disallowance was based on insufficient grounds without appreciating that the assessee did not file the details of such commission, neither produced the parties nor furnished the confirmations from the parties for verification and thus genuineness of the expenditure claimed as business expenditure was not proved."*

*2. "On the facts and in the circumstances of the case, and in law, the CIT(A) was not justified in deleting the addition made by the Assessing Officer by estimating the household expenses of the assessee at Rs.6 lakhs without appreciating that the assessee had not furnished details of his household expenses and contribution, if any, by other family members for scrutiny particularly when the personal withdrawals shown by the assessee were very meager."*

*3. "On the facts and in the circumstances of the case, and in law, the CIT(A) was not justified in deleting the addition of Rs. 76,50,46,685/- made u/s 68 of the Act by holding that that the addition made on a/c of the progressive peak balance relating to unexplained sundry creditors was not correct and convincing, ignoring his own conclusion that the assessee was not reporting true and correct state of affairs particularly when assessee had no delivery details, lorry receipts and the alleged creditors had admitted that the transaction were only on paper."*

*4. "On the facts and in the circumstances of the case, and in law, the CIT(A) was not justified in deleting the addition of Rs.76,50,46,685/- made u/s 68 of*



*the Act without appreciating that the assessee did not produce books of a/cs, bills, vouchers before the A.O. for examination and particularly when the parties in their original statement recorded u/s 131 had denied the transaction of any sale of goods to the assessee and also some of them have declared commission income only on the amount of accommodation entries of purchase/sale ".*

*5. "On the facts and in the circumstances of the case, and in law, the CIT(A) was not justified in deleting the addition of Rs.2,14,45,387/- made u/s 68 of the Act, as unexplained cash credit, claimed to be advance received from customers, by holding that the addition was uncalled for, without appreciating that assessee had neither furnished the confirmations with PAN details etc., nor produced the parties for verification to establish their identity and creditworthiness and the genuineness of the transaction and thus the assessee had failed to discharge the onus cast upon him under the provisions of section 68 of the Act.*

*6 "On the facts and in the circumstances of the case, and in law, the CIT (A) was not justified in deleting the addition made u/s 69B of the Act of amount of Rs.5,05,39,000/-, by treating the difference between the cost paid by others and the cost to the assessee in respect of the shares of SKS Ispat Ltd, where in assessee is a director, by ignoring that the shares of SKS Ispat Ltd of face value of Rs. 10, which were shown as purchased at highly suppressed value of Rs.2/ - per share by the assessee whereas in the year under consideration and also in subsequent year they were sold @ Rs. 100/ - per share to others."*

*7. "On the facts and in the circumstances of the case, and in law, the CIT (A) was not justified in deleting the addition made u/s 69B of the Act of amount of Rs.5,05,39,000/-, by treating the difference between the cost paid by others and the cost to the assessee in respect of the shares of SKS Ispat Ltd, where in assessee is a director, by ignoring that the A. O. had sufficient material on record to draw reasonable inference as was held by the hon'ble Rajasthan H. C. in Amar Kumari V/s. CIT226 ITR 344."*

*8. "On the facts and in the circumstances of the case) and in law) the CIT (A) was not justified in deleting the addition made u/ s 69B of the Act of amount of Rs.5,05,39,000/-, ignoring that the broker in the transaction of sale/purchase of the shares was not produced for verification I examination though was specifically asked by the A. O.*

*9. "On the facts and in the circumstances of the case, and in law, the CIT (A) was not justified in deleting the addition made of Rs. 30,00,000/- as unaccounted receipts by holding that the amount does not represent receipt of the assessee ignoring that the addition was made on the basis of papers seized from assessee's trusted employee who had deposed that the same were given to him by the assessee.*

*10. "On the facts and in the circumstances of the case, and in law, the CIT(A) was not justified in deleting the addition made of Rs.30,00, 000/- as unaccounted receipts by holding that provisions of Sec 68) 69 etc. do not apply without appreciating that the addition was made on the basis of papers seized from assessee's trusted employee and there was sufficient material to infer that the notings in the seized paper pertained to the assessee.*

*The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the Assessing Officer be restored."*

10.1 In its cross-appeal, assessee has raised the following two Grounds of appeal:-

*"1. That on the facts and in the circumstances of the appellant's case and in law learned CIT (Appeal) has erred in sustaining, in part, the addition made by the assessing officer on the basis of maximum credit standing in the accounts of the Sundry Creditors of Rs.76,50,46,685/- u/s. 68 of the Act to the extent of Rs. 11.76/- crores after applying the Gross Profit rate of 6.5% on the sales of Rs. 430.94/- crores.*

*2. That on the facts and in the circumstances of the appellant's case and in law learned CIT (Appeal) has erred in upholding the interest charged by the assessing officer under the provisions of section 234A, 234B & 234C of the Act.*

*3. That on the facts and in the circumstances of the appellant's case and in law learned CIT (Appeal) has erred in not deciding the additional ground of appeal raised by the appellant.*

*4. That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.*

*5. That the Appellant craves leave to reserve to himself the right to add, alter or amend any of the aforesaid grounds of appeal before or at the time of hearing and to produce such further evidence, documents and papers in support of its claim as may be necessary."*

10.2 In the cross-objection, assessee has raised a ground which is identical to that considered by us in the appeal for assessment year 2003-04 in the earlier paras.

10.3 In assessment year 2005-06, the relevant facts are that in response to the notice issued under section. 153A, assessee filed a

return of income on 14/2/2008 declaring total income at Rs.1,26,18,084/-, which is same at which the return of income was originally filed under section 139(1) of the Act on 30/1/2005. In the ensuing assessment finalized under section 143(3) r.w.s. 153A(1) of the Act, the Assessing Officer has determined the total income at Rs.87,32,79,760/-, after making the following additions – (i) Disallowance of Commissioner & Brokerage expenses –Rs.1,89,39,320/- ; (ii)Low household withdrawals – Rs.6,00,000/- (iii) Addition under section 69B of the Act on account of unexplained investments in purchase of shares - Rs.5,05,39,000/-; (iv) Addition on account of advance from customers – Rs.2,14,45,387/-; (v) Addition on account of unaccounted receipts – Rs. 30,00,000/-; (vi)Sundry creditor's balances considered unexplained under section 68 of the Act- Rs.76,50,46,685/-; and, (vii) Disallowance under section 40(a)(ia) of the Act out of difference commission expenses – Rs.10,91,286/-.

10.4 In appeal before the CIT(A), assessee challenged all the additions made by the Assessing Officer. The CIT(A) has deleted all the additions except the addition in relation to item No. (vi) above, wherein it has been partly deleted and the addition has been scaled down to Rs.11,76,00,000/-.

10.5 Before us, the Ld. Representative for the assessee has raised a preliminary objection based on the judgment of the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava-Sheva)(supra), which has already been examined by us in the earlier paras for assessment year 2003-04. In the light of our said discussion, in the present year also we have perused the manner in which the

additions have been made in the assessment order. It is quite clear that except in relation to the addition on account of unexplained receipts of Rs.30,00,000/-, the discussion in the assessment order does not refer to any material found during the course of search, leave alone any incriminating material, to justify the additions. Therefore, in so far as the additions on account of item Nos.(i), (ii), (iii)(iv)(vi) and (vii) mentioned in para 10.3 above are concerned, it is quite clear the same are not based on only material seized during the course of search at the premises of the assessee; therefore, following the discussion in the earlier paras for assessment year 2003-04(supra), herein also we hold that such additions are beyond the scope and ambit contemplated under section 153A r.w.s. 143(3) of the Act, and our decision in the cross-objection of the assessee for assessment year 2003-04 applies mutatis mutandis in this year too, qua the additions enumerated by us in item Nos.(i) to (iv), (vi) and (vii) referred above. As a consequence, we hereby affirm the ultimate conclusion of the CIT(A) in deleting the additions enumerated at item Nos. (i) to (iv),(vi) and (vii) above, albeit on a different ground. Further, the ground raised by the assessee in its cross-appeal relating to sustenance of a part addition by the CIT(A) in relation to item No.(vi) above is also allowed, because the entire addition in this context made by the Assessing Officer is held to be untenable by us while adjudicating the issue raised in the cross-objection.

10.6 Thus, the appeal of the assessee in ITA No.638/Mum/2011 as well as C.O. No.182/Mum/2010 of the assessee are allowed.

11. Now the Grounds remaining in the appeal of the Revenue are Ground Nos. 9 & 10, which relate to an addition of Rs.30,00,000/- made by the Assessing Officer as unaccounted receipts.

11.1 In this context, the brief facts are that the said addition is in terms of the discussion in para 13 of the assessment order. The Assessing Officer has made an addition of Rs.30.00 lacs on the basis of a loose paper being page 13 of Annexure A-4 seized from the residence of one Mr. Bharat G. Shah, an employee of the assessee. The Assessing Officer notes that in the course of search, said Mr. Bharat G. Shah stated that such loose papers were given to him by the assessee to be kept with him. As per the Assessing Officer, the contents of the relevant seized material, which has been reproduced in para-13 of the assessment order, indicates that one Mr. Suresh Agarwal paid the assessee Rs.30,00,000/- in March, 2006 in two instalments of Rs.15,00,000/- each. It is further noticed by the Assessing Officer that though there was an account of Mr. Suresh Agarwal in the account books of assessee's proprietary concern, M/s. Gupta Steel Corporation, but the aforesaid amount was not accounted for. For the said reasons, the Assessing Officer treated the sum of Rs.30,00,000/- as unaccounted income of the assessee.

11.2 Before the CIT(A), assessee reiterated that the paper was found and seized from Mr. Bharat G. Shah and not from the assessee. Further, there was no material to say that such seized material related to the assessee for any of his activities. The assessee also pointed out that such loose papers were printed account papers and on top of it is

written “Trial Data” and that assessee had no knowledge as to who has written or printed the same.

11.3 The CIT(A) has considered the submissions put-forth by the assessee and found that there was no material brought on record to establish that the seized papers belonged to the assessee. The CIT(A) also found that the seized documents do not indicate who is the recipient of the amounts mentioned and in what connection the money was paid. According to the CIT(A), merely because there is an account appearing in the account books of the assessee in the name of Mr. Suresh Agarwal, it would not lead to an assumption that the seized document reflect transactions between assessee and Mr. Suresh Agarwal. In fact, the CIT(A) infers that the document reflects transaction between Mr. Bharat G. Shah and Mr. Suresh Agarwal, as the document was found in the possession of Bharat G. Shah. Under these circumstances, CIT(A) has deleted the addition in the hands of the assessee.

11.4 Before us, the Ld. Departmental Representative pointed out that the employee from whom the impugned loose papers were found is a trusted employee of the assessee and the notings in the seized paper showed that it pertain to the assessee. It was, therefore, contended that the addition has been wrongly deleted by the CIT(A).

11.5 On the other hand, the Ld. Representative for the assessee pointed out that the CIT(A) was justified in deleting the addition as there was no material to link the said seized document with the transactions undertaken by the assessee with Mr. Suresh Agarwal, which were duly accounted for in the account books.

11.6 We have carefully considered the rival submissions. Quite clearly the seized paper in question was found from the premises of Mr. Bharat G. Shah, who is an employee of the assessee. Therefore, the primary onus was on Mr. Bharat G. Shah to explain the contents of the document so as to justify the inference of the Assessing Officer that it reflected unaccounted transactions of the assessee, and, such an onus does not appear to have been discharged, having regard to the material on record. Even otherwise, we do not find any infirmity in the conclusion of the CIT(A) that there is no material to connect the assessee with such loose papers. Therefore, under these circumstances, we find no reasons to interfere with the conclusion of the CIT(A) in deleting the impugned addition. The order of CIT(A) is hereby affirmed and accordingly Revenue fails on Grounds of appeal No.9 & 10 also.

11.7 Resultantly, appeal of the Revenue for assessment year 2005-06 is dismissed.

12. Now we may take up assessment year 2006-07, wherein Revenue and assessee have filed cross-appeals. The cross-appeals are with respect to order passed by CIT(A) which is against an order passed by CIT(A)-36, Mumbai dated 15/10/2010, which in turn arises out of an order passed by the Assessing Officer under section 143(3) r.w.s. 153A of the Income Tax Act, 1961 (in short 'the Act') dated 18/12/2008. The Grounds of appeal raised by the Revenue as well as assessee read as under:-

**Grounds of appeal in ITA No.9227/Mum/2010(Revenue's appeal):**

*"1. On the facts and in the circumstances of the case, and in law, the CIT(A) was not justified in deleting the addition made by the Assessing Officer by*

*estimating the household expenses of the assessee at Rs.6lakhs without appreciating that the assessee had not furnished details of his household expense and contribution, if any, by other family members for scrutiny particularly when the personal withdrawals shown by the assessee were very meager.*

*" 2" On the facts and in the circumstances of the case, and in law, the CIT (A) was not justified in deleting the addition of Rs.24,03,56,882/- made u/s 68 of the Act by holding that that the addition made on a/c of the progressive peak balance relating to unexplained sundry creditors was not sustainable ignoring his own conclusion that the assessee was not reporting true and correct state of affairs particularly when assessee had no delivery details, lorry receipts and the alleged creditors had admitted that the transaction were only on paper."*

*3. "On the facts and in the circumstances of the case, and in law, the CIT (A) was not justified in. deleting the addition of Rs. 24,03,56,882/-made u/s 68 of the Act without-appreciating that the assessee did not produce books of accounts, bills, vouchers before the A.O. for examination and particularly when the alleged creditors had in their original statement recorded u/s 131 had denied the transaction of any sale of goods to the assessee and also some of them have declared commission income only on the amount of accommodation entries of purchase/sale".*

*4. On the facts and in the circumstances of the case, and in law, the CIT (A) was not justified in deleting the addition of Rs.1, 51,00,000/- made u/s 68 of the Act, as unexplained cash credit, claimed to be advances received from customers, by holding that there was no material to doubt assessee's explanation, though the assessee had neither furnished confirmations with PAN details etc., nor produced the party for verification to establish their identity and creditworthiness and the genuineness of the transaction and thus the assessee had failed to discharge the onus cast upon him under the provisions of section 68 of the Act.*

*5. "On the facts and in the circumstances of the case, and in law, the CIT (A) was not justified in deleting the addition made of Rs.30,00,000/- as unaccounted receipts by holding that the amount does not represent receipt of the assessee without appreciating that the addition was made on the basis of papers seized during search from assessee's trusted employee, who had deposed that the same were given to him by the assessee"*

*6. "On the facts and in the circumstances of the case, and in law, the CIT(A) was not justified in deleting the addition made of Rs. 30,00,000/- as unaccounted receipts by holding that provisions of sec 68,69 do not apply, without appreciating that the addition was made on the basis of papers seized during search from the assessee's trusted employee and there was*



*sufficient material to infer that the notings in the seized paper pertains to the assessee.”*

**Grounds of appeal in ITA No.664/Mum/2011-(Assessee’s appeal):**

*1. That on the facts and in the circumstances of the appellant's case and in law learned CIT (Appeal) has erred in sustaining, in part, the addition made by the assessing officer on the basis of maximum credit standing in the accounts of the Sundry Creditors of Rs.24,03,56,882/- u/s. 68 of the Act to the extent of Rs. 10.96/- crores after applying the Gross Profit rate of 6.5% on the sales of Rs.262,31,64,265/-*

*2. That on the facts and in the circumstances of the appellant's case and in law learned CIT (Appeal) has erred in upholding the interest charged by the assessing officer under the provisions of section 234A, 234B & 234C of the Act.*

*3. That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.*

*4. That the Appellant craves leave to reserve to himself the right to add, alter or amend any of the aforesaid grounds of appeal before or at the time of hearing and to produce such further evidence, documents and papers in support of its claim as may be necessary.*

12.1 The first Ground in the appeal of the Revenue is with respect to the decision of the CIT(A) in holding that there was no justification for the Assessing Officer to make an adhoc addition of Rs.6.00 lacs on account of unexplained household expenses. In this context, the relevant facts are that the Assessing Officer notes in the assessment order that looking at the status of the assessee a lumpsum addition of Rs.6.00 lacs is made as unaccounted expenditure for household expenses. The CIT(A) has deleted the same on the ground that it is purely an adhoc addition.

12.2 In our view, the order of the CIT(A) deserves to be affirmed as there is no evidence regarding unaccounted household expenses found during the course of search. The CIT(A) further notes that the Assessing Officer has not considered the number of family members and the

individual withdrawals made by them. None of the aforesaid findings of the CIT(A) have been negated by the Revenue before us and, therefore, we hereby uphold his decision of deleting the impugned addition. Thus, on this aspect Revenue fails.

13. In so far as, the Grounds No.2 to 4 in the appeal of the Revenue and the Ground No.1 in the appeal of the assessee are concerned, they arise out of a singular addition of Rs.24,03,56,882/- made by the Assessing Officer by invoking section 68 of the Act. Since the said cross-grounds relate to the same issue, they are being taken up together.

13.1 As noted earlier, assessee is carrying on the business of trading in various steel products under the name and style of proprietary concern M/s. Gupta Steel Corporation. In the course of assessment proceedings, the Assessing Officer considered the maximum credit balance standing in the names of the following eight creditors at Rs.24,03,56,882/- as unexplained credits within the meaning of section 68 of the Act:-

	Name of the party	Amount (Rs.)
1.	Nisha Enterprises	21608878
2.	Loha Ispat Ltd.	40280019
3.	Bhagwati Steel Cast. Ltd.	14961115
4.	Offshore Industrial Const.(P) Ltd.	29315674
5.	Balaji Trading Co.	14984883
6.	N. Mohanlal & Co.	52781812
7.	Shivoham Steel Traders	51329471
8.	Shree Sai Industries	15095030
		240356882

The primary reason advanced by the Assessing Officer to hold that the aforesaid credits as 'unexplained' was that the creditors claimed to have admitted before the Department that they have provided accommodation transactions only and thus, assessee had not made any actual purchases from the said creditors.

13.2 In appeal before the CIT(A), assessee made varied factual and legal submissions assailing the stand of the Assessing Officer. The CIT(A), after taking into consideration the submissions put-forth by the assessee, the remand report of the Assessing Officer as well as the material on record noticed that out of the statement of seven parties referred by the Assessing Officer six parties retracted their statements by filing affidavits. The CIT(A) has also noted that during the remand proceedings called for by him, the Assessing Officer recorded fresh statements of six parties, where they admitted that their transactions with the assessee were genuine. However, the CIT(A) noted that with respect to one party i.e. Mrs Mehrunisa Husseini , director of M/s. Chevend Technology P. Ltd. and Chevron Metal Product (P) Ltd., the statements were not retracted and, therefore, there remained an element of doubt and the trading results of the assessee could not be taken at its face value. For this reason, the CIT(A) deleted the addition of Rs.24,03,56,882/- made by the Assessing Officer under section 68 of the Act, but proceeded to retain an addition of Rs.10.96 crores with respect to the trading results of the assessee. The CIT(A) arrived at such an addition by considering that the gross profit normally earned is @ 6.5% and after taking into account the gross profit of 2.32% declared by the assessee, the differential of 4.18% was applied on the total turnover of Rs.262 crores declared by the assessee and computed the

addition of Rs.10.96 crores to the trading results. In this background, the Revenue is in appeal, challenging the action of the CIT(A) in holding that there was no justification for the addition of Rs.24,03,56,882/- made under section 68 of the Act, whereas the assessee is in appeal challenging the order of the CIT(A) in retaining an addition of Rs.10.96 crores to the trading results.

13.3 In the course of hearing, the Ld. Departmental Representative pointed out that the CIT(A) had failed to appreciate the stand of the Assessing Officer, wherein it has been brought out that in the original statement of the creditors recorded by the Department, such creditors had initially denied supply of goods and, therefore, the Assessing Officer was justified in treating such creditors as unexplained.

13.4 On the other hand, Ld. Representative for the assessee pointed out that the CIT(A) made no mistake in setting-aside the action of the Assessing Officer because there was no material adverse with respect to the seven parties in question. In this context, the Ld. Representative for the assessee referred to Page-18 of the Paper Book, wherein for each of the eight parties, it has been narrated as to how the Assessing Officer was wrong in inferring that the creditors were unexplained. On this aspect, Ld. Representative for the assessee pointed out that for the parties listed at S.No.2 to 8 in the para above, the enquires being referred by the Assessing Officer were not related to them, but the same related to other parties. It has been further pointed out that the statements referred by Assessing Officer also related to the purchases effected by the sister concern M/s. S.K.S. Ispat & Power Ltd., and in that case vide ITA NO.9203/Mum/2010 dated 06/06/2014 for

assessment year 2006-07, the addition has been deleted by the Tribunal. By referring to the copy of the order of the Tribunal dated 6/6/2014(supra), it is pointed out that in that case also additions with respect to the sundry creditors were made on similar circumstances and the same stood deleted.

13.5 We have carefully considered the rival submissions. Before we proceed to examine the efficacy of rival stands on the aspect of addition made under section 68 of the Act, the details of the eight parties and the say of the assessee on each of them is tabulated as under:-

<i>Sr.No.</i>	<i>Party Name</i>	<i>Additions made by AO</i>	<i>Say of the assessee</i>
1	Nisha Enterprises	21,608,878	Party confirmed the transaction before AO during remand proceedings. The A.O. made addition on the basis of statement of Shri Kamlesh Ajmera dated 09.06.2008 wherein he stated the transactions were mere paper transactions. However Shri Kamlesh Ajmera subsequently retracted his said statement vide affidavit dated 27.10.2008 and confirmed before the A.O. during remand proceedings on 23.02.2010 that the transactions were genuine.
2	Loha Ispat Ltd.	40,280,019	The addition was made without raising any specific query for this party. A.O. added the closing outstanding balance ignoring the business transactions during the year. No summons has been issued by the A.O. The Assessee has paid the entire outstanding amount in subsequent year. The assessee has filed confirmation of party with PAN before the CIT(A) and the same was forwarded to the A.O.
3	Bhagwati Steel Cast. Ltd.	14,961,115	The addition was made without raising any specific query for this party. No summons has been issued by the A.O. The Assessee has paid

			<i>the entire outstanding amount in subsequent year. The assessee has filed confirmation of party with PAN before the CIT(A) and the same was forwarded to the A.O. The party appeared before A.O. in remand proceedings and confirmed the transaction.</i>
4	<i>Offshore Industrial Const. (P.)Ltd.</i>	<i>29,315,674</i>	<i>The addition was made without raising any specific query for this party. No summons has been issued by the A.O. The Assessee has paid the entire outstanding amount in subsequent year. The assessee has filed confirmation of party with PAN before the CIT(A) and the same was forwarded to the A.O.</i>
5	<i>Balaji Trading Co.</i>	<i>14,984,883</i>	<i>AO has made addition of closing outstanding balance of Rs.1,49,84,883/- ignoring the fact that there was an opening debit balance of Rs.4,23,67,975/- on account of sales made to the party which has been accepted in the previous year relevant to A.Y.2006-07. No summons has been issued by the A.O. The Assessee has paid to the party Rs.1.45 Crs and received discount of Rs.4.84 Lacs in subsequent year. The assessee has filed confirmation of party with PAN before the CIT(A) and the same was forwarded to the A.O.</i>
6	<i>N.Mohanlal &amp; Co.</i>	<i>52,781,812</i>	<i>No summons has been issued by the A.O. The Assessee has paid the entire outstanding amount in subsequent year. The assessee has filed confirmation of party with PAN before the CIT(A) and the same was forwarded to the A.O.</i>
7	<i>Shivoham Steel Traders</i>	<i>51,329,471</i>	<i>No summons has been issued by the A.O. The Assessee has paid the entire outstanding amount in subsequent year. The assessee has filed confirmation of party with PAN before the CIT(A) and the same was forwarded to the A.O. The party appeared before Assessing Officer in remand proceedings and confirmed the transaction.</i>
8	<i>Shree Sai Industries</i>	<i>15,095,030</i>	<i>No summons has been issued by the A.O. The Assessee has paid the entire outstanding amount in subsequent year. The assessee has</i>

			<i>filed confirmation of party with PAN before the CIT(A) and the same was forwarded to the A.O.</i>
		<b>240,356,882</b>	

The findings of the CIT(A) with respect to the aforesaid parties is as under:-

*“46.It is pertinent to note that none of the above mentioned parties have denied making any sales to the appellant. The aforesaid parties had made purchases from some of the alleged parties who have stated that they had issued accommodation bills were in favour of the above parties and not the appellant. But of such accommodation bills, how much quantity or value of bills was part of the purchase of appellant has neither been enquired nor quantified. In none of the above cases, there are any instances of cash being withdrawn.*

*47.It is also gathered that in none of the above cases, there have been any addition disallowance of the purchases on account of they being bogus and the book results have been paid by a/c payee cheques in the subsequent financial year by the appellant and has been so allowed by the same AO . it is also gathered that out of the 169 parties who have allegedly issued accommodation bills or given entries, only 7 were examined and on that basis the addition has been made, This meant that the entire addition has been based on the examination of only less than 5% of the parties who initially accepted the transaction, then denied the same and later again changed the stance by accepting it. The frequent change of stance by such parties is by itself ( making their entire statements doubtful and not worth taking as evidence on record.*

*48. During the course of hearing, the appellant without prejudice to the submission already made submitted without admitting that assuming all the purchases are bogus then the corresponding sales has also to be treated as bogus. The AR of the appellant further emphasized that once the purchased are allowed as genuine then how come the outstanding balance can be disallowed and added to the income while the appellant is following mercantile system of accounting. If the appellant has to follow the methodology as adopted by the AO then the same should be allowed in the year of payment.*

*49. Considering the submission made, I agree that where both purchases and sales parties have been admitted as genuine then it is not correct to doubt the progressive balance of the said party as bogus particularly when the sundry creditors have appeared before the AO during the remand proceedings and have admitted of having supplied the goods and also*

*received the payment. The concept of peak or initial investment would apply in those cases, where the rotation of the funds is identified and there is some cash withdrawn at some stage. However, in the instant case, no such evidence is available. There is also no evidence, that wherever even if some cash is withdrawn this cash is routed to the appellant."*

*50. After perusing the assessment order and the submission made by the appellant I have reached the conclusion that only 7 parties involved in the purchase transactions had admitted to have done paper transactions before the AO in the various AY's. However, during the appellate proceedings, it was brought to my notice that the AO has not taken into consideration the retracted affidavit made by the 6 parties out of 7 parties inspite of the fact that the same were given to the AO during the course of assessment proceedings. The AO during the course of remand proceedings Issued summons to all these 6 parties have admitted to have sold goods to the appellant and have received the payments by a/c payee cheques only. Inspite of the said statements the doubt still remains because one party Mrs. Mehrunisa Hussein director of M/s. Chevend Technology P Ltd and Cheveron Metal Products (P) Ltd even during the search proceedings and post search proceedings maintained that her company had done only paper transaction with the appellant.*

*51. In this back ground and considering the overall facts, the trading results of the appellant cannot be taken at face value and accepted as genuine. The AO has accepted the purchases made from these 7 parties and the corresponding sales and also part payment made to these creditors as genuine but has doubted the progressive peak balance payable to these creditors as doubtful and made additions which is not correct and convincing particularly considering the-facts of the case made therefore on a/ c of progressive peak balance is not sustainable.*

13.6 The first point to be noticed is the finding of the CIT(A) that the aforesaid parties have not denied making of sales to the assessee, but the aforesaid parties had made purchases from certain other parties who stated that they had issued only accommodation bills in favour of the aforesaid parties. This aspect has not been disputed by the Revenue before us, and in any case, the further finding of the CIT(A) that no particular purchase effected by the assessee has been linked to such accommodation bills obtained by the suppliers has also not being disputed before us. In fact, it is for this reason that the Assessing Officer chose to treat the maximum credit balance standing in the



aforesaid eight creditor's as unexplained within the meaning of section 68 of the Act. The said approach of the Assessing Officer is itself suspect because what is expected to be assessed under section 68 of the Act are the particular credits which are found to be unexplained.

13.7 It is also emerging that the action of Assessing Officer is based on the verification carried out from seven parties involved in purchase transactions over various assessment years, and not in relation to the transactions carried out specifically in the instant assessment year. In fact, the CIT(A) records out of the 169 parties who were alleged to have issued accommodation bills, only 7 were examined by the Department and the addition is made on that basis. Quite clearly, the Assessing Officer proceeded to consider the aforesaid 8 creditors' maximum balance during the year as unexplained without recording an adverse finding with regard to their transactions for the year under consideration. Even with regard to those 7 parties who admitted initially to have undertaken accommodation transactions, 6 of them retracted their statements by filing affidavits and during the course of remand proceedings directed by the CIT(A), Assessing Officer summoned such 6 parties who admitted to have sold goods to the assessee. We find that after such retraction by the creditors and recording of their statement by the Assessing Officer, there is nothing brought on record by the Revenue to disprove that such retractions are untenable or bad in the eyes of law. In any case, there can be no dispute that only such creditors can be said to be doubtful or unexplained in whose case enquiries have been carried out specific to the transactions carried out with the assessee in the instant assessment year.

13.8 Even otherwise, we find that in the context of the creditors stated at Sl.No.2 to 8 of the tabulation above, the Assessing Officer has not brought out any adverse material specific to the transactions with assessee. In so far as the issue relating to M/s. Nisha Enterprises is concerned, the Assessing Officer made the addition on the basis of statements of Shri Kamlesh Ajmera dated 9/6/2008, wherein it was stated that the transactions were mere paper transaction. It is seen that subsequently, the said creditor retracted his statement and confirmed the same before the Assessing Officer in the remand proceedings by asserting that the transactions were genuine. We find that similar situation was before the Tribunal in the case of S.K.S Ispat & Power Ltd.(supra), a group concern, for assessment year 2006-07 itself and having regard to fact-situation, the transaction with M/s. Nisha Enterprises have been held to be genuine. In fact, in the order of the Tribunal dated 6/6/2014(supra), the affidavit of the said concern retracting the earlier statement dated 6/9/2008 has been reproduced, which also refers to the sales made to the assessee for the instant period. Be that as it may, in our view, the findings of the CIT(A) do not require any interference in so far as they relate to setting-aside of the action of the Assessing Officer in treating the sundry creditors as unexplained. Therefore, on this aspect Revenue fails.

13.9 In so far as assessee's appeal is concerned, it is contended that the CIT(A) was not justified in making an addition of Rs.10.96 crores to the trading results. It is seen that the CIT(A) opined that the trading results were not reliable for the reason that in the case of one of the

parties i.e. Mrs Mehrunisa Husseini , director of M/s. Chevend Technology P. Ltd. and Cheveron Metal Product (P) Ltd., the initial statements were not retracted, which showed an element of doubt on the purchases effected by the assessee. For this reason, he had made addition to the trading results.

13.10 On this aspect, the Ld. Representative for the assessee pointed out that so far as the instant assessment year is concerned, the statement of Mrs. Mehrunisa Husseini has no relevance because no transaction has been carried out by the assessee with the said concern during the year under consideration. Secondly, it is canvassed on an alternative basis that the adoption of gross profit @ 6.5% by the CIT(A) is unreasonable and in any case the CIT(A) has erred in applying the G.P at 6.5% on the entire sales of the assessee.

13.11 We have carefully considered the rival submissions. In our considered opinion, the addition to the trading results made by the CIT(A) is based on conjectures and surmises, in as much as, the statement of Mrs. Mehrunisa Husseini, relied upon by him is not relevant for the instant year. Secondly, even out of eight creditors, whose maximum balance was considered unexplained, the statement of only one party i.e. M/s. Nisha Enterprises was out of the statement of seven parties recorded by the Assessing Officer. Even on this aspect, we find that the said concern retracted it's initial statement and in the remand proceedings before the Assessing Officer, the said party admitted transactions with the assessee. The addition made on similar basis in connection with transactions with M/s. Nisha Enterprises in the hands of the sister concern S.K.S Ispat & Power Ltd. (supra) for

assessment year 2006-07 has been deleted by the Tribunal. Considered in this light, in our view, so far as trading results for the instant assessment year are concerned, the same cannot be treated as unreliable on the basis of the verification exercise of the creditors carried out by the Assessing Officer. Furthermore, the unsustainability of the addition made by the CIT(A) can be seen from the fact that he has applied adhoc gross profit rate of 6.5% on the entire sales made by the assessee instead of confining it to any particular transactions which were unproved, as per him. In fact, once the CIT(A) did not find the inadequacy brought out by the Assessing Officer with respect to sundry creditors as being justified, he had no plausible evidence, apart from mere doubts, to treat the trading result as unreliable. Therefore, the addition sustained by the CIT(A) is unwarranted and is hereby directed to be deleted. In the result, appeal of the assessee allowed.

14. The only other Grounds remaining in the appeal of the Revenue are Ground of Appeal Nos.5 & 6, which involve a common issue. The dispute relates to an addition of Rs.30.00 lacs received by the assessee as unaccounted receipts. This addition has been made on the basis of loose papers, being Page-13 to Annexure A-4 seized in the course of search from the premises of one Mr. Bharat G. Shah, an employee of the assessee. It was a common ground between the parties that the said issue is identical to the Ground Nos. 9 & 10 considered by us in the appeal of the Revenue for assessment year 2005-06 in earlier paras. Following our decision in Ground of Appeal Nos.9 & 10, in the appeal of the Revenue for assessment year 2005-06, the said Grounds are also decided accordingly and the same are dismissed.

15. Resultantly, whereas the appeal of the Revenue for assessment year 2006-07 is dismissed, that of the assessee is allowed.

16. Resultantly, the captioned appeals are disposed of, as above.

Order pronounced in the open court on 31/08/2016

Sd/-

(SANJAY GARG)  
JUDICIAL MEMBER  
Mumbai, Dated 31/08/2016

Sd/-

(G.S. PANNU)  
ACCOUNTANT MEMBER

Vm, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**