



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

BEFORE SHRI R.C.SHARMA, AM

&

SHRI SANDEEP GOSAIN, JM

**ITA No.2800/Mum/2016
(Assessment Year :2011-12)**

**ITA No.2801/Mum/2016
(Assessment Year :2009-10)**

**ITA No.2802/Mum/2016
(Assessment Year :2008-09)**

**ITA No.2803/Mum/2016
(Assessment Year :2007-08)**

**ITA No.2804/Mum/2016
(Assessment Year :2010-11)**

M/s. Concept Communication Ltd., Ground Floor, Queens Mansion, Ghanshyam Talawalkar Marg Behind Khadi Emporium Mumbai – 400 001	Vs.	Dy. CIT, Circle 2(1), 5 th Floor, Aayakar Bhavan Mumbai
PAN/GIR No. AAACC5102G		
(Appellant)	..	(Respondent)

**ITA No.3026/Mum/2016
(Assessment Year :2011-12)**

M/s. Concept Production Ltd., First Floor, Queens Mansion, Ghanshyam Talawalkar Marg Behind Khadi Emporium Mumbai – 400 001	Vs.	Dy. CIT, Circle 2(1), 5 th Floor, Aayakar Bhavan Mumbai
PAN/GIR No. AAACK2497A		
(Appellant)	..	(Respondent)

**ITA No.2805/Mum/2016
(Assessment Year :2011-12)**

M/s. Concept Public Relation India Ltd., First Floor, Queens Mansion, Ghanshyam Talawalkar Marg Behind Khadi Emporium Mumbai – 400 001	Vs.	Dy. CIT, Circle 2(1), 5 th Floor, Aayakar Bhavan Mumbai
PAN/GIR No. AABCC5323Q		
(Appellant)	..	(Respondent)

Assessee by	Dr. K. Shivram / Shri Rahul Hakani
Revenue by	Shri H.N. Singh
Date of Hearing	04/10/2018
Date of Pronouncement	14/11/2018

आदेश / ORDER

PER SANDEEP GOSAIN (J.M):

These are the appeals filed by the assessee against the order of CIT(A)-4, Mumbai dated 11/02/2018 for A.Y.2007-08 to 2011-12 in the matter of order passed u/s.143(3) r.w.s. 147 of the IT Act.

2. Common grounds have been taken by the assessee in all the years under consideration in respect of above mentioned three concerns. The grounds taken in the case of Concept Communications Ltd., in the A.Y.2007-08 reads as under:-

1. The learned Commissioner of Income Tax (Appeals) erred in not appreciating that the AO had assumed jurisdiction by issuing an invalid notice u/s. 148.

2. The learned Commissioner of Income Tax (Appeals) erred in not appreciating that the AO had erred in issuing the notice u/s. 148 inspite of the fact that there was no income chargeable to tax which had escaped assessment and while doing so he amongst others failed to appreciate that:

a. The appellant had made a true and full disclosure of all material facts necessary for the assessment;

b. The notice was issued only on the basis of the statements illegally recorded during the course of survey proceedings u/s. 133A;

c. Report of Financial Investigation Unit in the case of a third party could not form basis to believe that there was income chargeable to tax which had escaped assessment in the case of the appellant;

d. In the reasons recorded in writing for reopening of assessment, there is no mention that the notice was issued after taking approval u/s. 151 of the Act.

3. The learned Commissioner of Income Tax (Appeals) erred in disallowing the expenditure of Rs. 11,92,65,022/- inspite of the fact that the appellant has proved with evidence that the expenses were incurred wholly and exclusively for the purposes of appellants business.

3. As common grounds are involved in all the years under consideration with respect to all the three companies, all the appeals were heard together and are now disposed by this consolidated order.

4. Rival contentions have been heard and record perused. Facts in brief are that assessee is engaged in the business of advertising agency. Return for A.Y.2007-08 in the case of Concept Communication Ltd was e-filed on 8/11/2007 declaring income of Rs.5,96,75,194/-. The case was selected for scrutiny under the scrutiny norms and notices u/s. 143(2) was duly served. The A.O. framed the assessment order u/s.143(3) on 20.7.2009 assessing the total income at Rs. 5,97,35,860/-.

5. On 22/11/2011 survey Proceedings were carried out in the case of assessee Group on the basis of statement of one Mr. Jignesh Patel Statement of Mr. Parag Sanghvi, CFO of the assessee Company was recorded during the course of survey. In his reply to Question No.4 he stated that assessee Co. has taken accommodation entries from bogus Entities as named in the reply for AY 2007-2008 to 2011-12. Thereafter, statement of Shri Vivek Suchanti, Managing Director of the assessee Co. was recorded. In his reply to Question No.4 he also stated that assessee Co. has taken accommodation entries from bogus Entities and in order to buy peace of mind, to avoid protracted litigation

and penal consequences as per the Income tax Act, 1961, he offered the following as the additional income in the respective companies

Asst. Year	Name of the company	Additional Income (Rs.)
2007-08	Concept Communication Ltd.	11,92,65,022
2008-09	Concept Communication Ltd.	15,34,75,543
2009-10	Concept Communication Ltd.	8,39,76,279
2010-11	Concept Communication Ltd.	9,10,42,415
2011-12	Concept Communication Ltd.	6,49,53,233
2011-12	Concept Production Ltd.	4,88,60,694
2011-12 [^]	Concept Public Relations India Ltd.	74,59,081

6. Thereafter on 28/11/2011 assessee filed Letter to ADIT asking for copy of statements and document impounded. On 01/12/2011, affidavit executed by Mr. Parag Sanghvi and Mr. VivekSuchanti retracting their statement recorded at the time of survey. Again on 05/12/2011, letter to ADIT asking for copy of statements and document impounded. On 23/12/2011 assessee filed declaration about the retraction of the statement recorded during survey executed by Mr. Parag Sanghvi and Mr. Vivek Suchanti.

7. On 05/03/2012 assessee got a letter from ACIT requiring assessee to file revised return as per Statement recorded during survey. On 12/03/2012 letter to ADIT bringing on record the affidavit and declaration of retraction. Again on 14/03/2012 assessee gave a letter to ACIT intimating that the statement recorded during survey was retracted and hence there was no requirement to pay any further taxes.

8. On 16/07/2012 AO issued notice u/s.148 and assessee filed return pursuant to notice u/s.148. Assessee also asked for the copy of the survey report. However on 25/09/2012, there was a letter of AO stating that survey report is confidential. Thereafter, AO submitted to the assessee copy of reasons recorded for reopening dated 12/07/2012. Assessee filed objection to reopening.

9. Before the AO on 08/03/2013 assessee filed three submissions dated 8/3/2013. First submissions with respect to sample contract with client GremachInfr. Ltd. Second Submissions with respect to Ledger A/c. of the Nine suspicious party. Third submission giving co-relation between client and suspicious vendor and submitted invoice of the vendors. Assessee also filed submissions of bank statement relating to the nine suspicious parties and explaining the nature of expenses. On 19/03/2013, affidavit given by Mr. Omprakash Paharia confirming services rendered by Entities suggested by him in mofussil areas. On 20/03/2013, statement on oath of one Shri Rajendra Bhimrajka dated 20/3/2013 whose name was mentioned by Mr. Omprakash. However, A.O. has relied

upon the statement of Shri Rajendra Bhimrajka for holding that assessee had taken accommodation entries from certain 7 entities mentioned by him. However, the assessee was not provided with opportunity of cross-examination of Shri Rajendra Bhimrajka. Also, statement of Rajendra Bhimrajka was not confronted to Mr. Omprakash Paharia. Moreso, when MD of assessee Mr. Vivek Suchanti had denied knowledge of Mr. Rahendra Bhimrajka it was incumbent upon AO to give cross-examination of Mr. Rajendra Bhimrajka to assessee. However, the AO has not brought any material on record to connect various entities mentioned by Mr. Rahendra Bhimrajka with him. Furthermore, the assessee had demanded at the time of Assessment copy of Statement of Mr Jignesh Patel on whose statement survey was undertaken & also copy of survey report prepared by Survey Officer. However, till date the assessee has not been provided with the same. Without properly appreciating assessee's contention, AO passed assessment order u/s. 143(3) making addition of entire expenses of Rs.11,92,65,022/- pertaining to nine suspicious parties on the ground of admission of taking accommodation entries and non service of notice u/s. 133(6). The disallowance made by the AO in the A.Y.2007-08 was in respect of the following parties:-

Name of the bogus company	Quantum of transaction (Rs.)
Antariksha Entertainment	2,56,51,881
ARSU Films P. Ltd.	2,52,22,294
Imax Multimedia P. Ltd.	56,12,000

Inorbit Advtg& Marketing Services P. Ltd.	72,22,644
Risk Design and Advertising Ltd,	30,52,928
Rutvi Communication	38,72,280
Urni Ads	43,77,360
Admire Entertainment P. Ltd.	2,08,62,828
Ratnadeep Entertainment P. Ltd.	2,33,90,807
Total	11,92,65,022

10. By the impugned order CIT(A) confirmed the action of the AO against which assessee is in further appeal before us.

11. It was contended by learned AR Dr. K. Shivram that Shri Parag Sanghvi, CFO of the assessee company started giving statement before survey officials on 22.11.2011 from 10.45 am which was concluded at 07.00 pm in the evening. As per Ld. AR, inspite of the fact that he is not aware of the day to day publicity related work assigned by clients to be carried out by various departments of assessee company, he was forced to admit the pre typed statements wherein it was stated that no work is done for clients and these are mere accommodation entries. Inspite of the fact that he was not ready to give the statement till the arrival of Shri Vivek Suchanti, MD of assessee company, who was supposed to return Mumbai from Delhi, but gave the statement in view of the following reasons:

a. Firstly survey officials were not ready to wait till the arrival of Shri Vivek Suchanti, MD of the assessee company and were in haste in getting the statement of Shri Parag Sanghvi so that the authorized officer allow the employees of assessee company to go home after office hours who were detained in office by survey team since morning.

b. Secondly the survey team was consistently putting a lot of mental pressure torture so that he admit that assessee company has availed accommodation entries only against booking of expenses.

c. Thirdly the statement given by Shri Parag Sanghvi is against his wishes, out of threat & coercion and taken in the absence of Shri Vivek Suchanti, MD of assessee company who is the key person of the company.

d. Fourthly the so called forceible statement of Parag Sanghvi has got no evidentiary value as the same has been retracted by filing affidavit's and declaration on the following premises that.

- No oath was administered to him prior to recording of statement
- He was forced by the authorized officer to append his signature on pre-typed statement
- His answers to question nos. 4,5,6,7 and 8 are wrong, incorrect and untrue.
- He retracted the statement on the ground that the deposition was made by fear, coercion and undue influence and was without his free will

or consent. In fact the statement was signed only after succumbing to undue coercion, pressure and threat

13. As per learned AR Dr. Shivram, Shri Vivek Suchanti, MD of assessee company who had gone to Delhi for official work was supposed to return after 2 days has to return back same day late night on 23/11/2011 at 12.10 am because of survey operation. In support of which copy of boarding pass and ticket was placed on record. After coming to office he came to know that the survey team has not allowed any of the staff to go home he got disturbed. Ld. AR further submitted that the survey team officials without giving him any rest or chance to think immediately started asking questions and then started recording statement due to which he got confused and was not in sound state of mind what to say or what not to say. All the survey team members then collectively put the pressure on Mr Vivek Suchanti to admit whatever Shri Parag Sanghvi has said and they put before him the pre-typed statement and asked him to sign as it is. In spite of his request to allow him some rest and opportunity to consult his staff and gather the necessary evidence they did not pay any heed to his request and started recording his statement. It was also stated that he was not allowed to read the statement of Shri Parag Sanghvi and forcibly asked to sign the already typed statement of him. Further it was pointed out that the statement was taken at an early hours on 23.11.11 where as the time mentioned is at 11.45p.m. 22.11.16. As per Ld. AR, when Mr Suchanti was not available in office at 11.45 pm due

to the fact that he arrived from Delhi at 12.10am only how the statement could have been recorded at 11.45 pm. This proves that the statement is ante dated and have been taken under undue pressure and force. In this regard our attention is drawn to the statement recorded of Shri Parag Sanghvi & Shri Vivek Suchanti, a perusal of which it is crystal clear that both the statements are same in verbatim. This proves that the survey team has taken the admission of both Shri Parag Sanghvi & Shri Vivek Suchanti by force. It is submitted that had it not been by pressure or force both the statement cannot be same in verbatim. This proves that the AO has taken the statement under undue force/pressure. Because of which there was no option left with Shri Parag Sanghvi & Shri Vivek Suchanti but to retract the admission made before survey team by filing an affidavit. As per learned AR, the reasons of the retraction affidavit of Mr Suchanti are as under. Shri Vivek Suchanti, MD in his affidavit retracted his statement because

- No oath was administered to him prior to recording of statement
- He was forced by the authorized officer to append his signature on the statement
- As stated in his affidavit, he had succumbed and agreed to sign whatever was
- placed in front of him but subject to the condition that the authorized officers add one more question in the statement as to whether all

expenses debited to books of account have been incurred for the purpose of the business of assessee company. He was told that the authorized officer has acceded to his request, but without his knowledge posed the question in a different language which read as under:

"Q7. Kindly explain as to where the unaccounted cash is utilized

14. In response to the aforesaid question, he answered that there was no unaccounted cash and the expenses debited in the books of account are wholly and exclusively incurred for the purposes of business. He also clarified that the necessary contemporary evidence by way of bills/vouchers maintained by the middleman agents are available in the office premises and that the same can be produced for your verification.

But the authorized officers recorded his answer differently as under,

Ans. Sir, the unaccounted cash is used for **various** purposes of business"

Thus, he state and affirm that the answer to Q7 has been wrongly recorded in this statement u/s. 131 dated 22.11.2011. Further he said and affirmed that the authorized officer, on intent and purpose, did not impound the contemporary records of actual expenses incurred wholly and exclusively for the purposes of business.

15. As per learned AR on perusal of the statement it is crystal clear that the statement recorded under oath has been recorded by force/coercion undue influence & threat. Moreover it was pre drafted before the arrival of Shri Suchanti. In this regard support is taken from the followings :

i. That he reached office only at around 12.10 am on 23.11,2011. However he was forced to sign the statement which states to have started at 11.45 pm on 22.11.2011. He actually signed the statement on 23.11.2011 at 04.30 am.

ii. That question no. 3,4 and 6 in his statement and in the statement of Shri Parag Sanghvi are the same and the answers to the said questions are also virtually same which is humanly or remotely not possible which goes to prove beyond doubt that the answers were preconceived and no opportunity to give correct and true answers were given.

- That the statement was taken under stress, panic and duress and various threats by the officers IT department, he was pressurized to accept certain allegations under oath. He succumbed to these pressures and signed the statement that was already printed prior to his reaching office awaiting his signatures.

- He therefore retracted the statement that the deposition was not without undue influence but was without his free consent/will in fact the statement was signed after succumbing to undue pressures.

16. From the series of events narrated above it was submitted that the AO has merely disallowed expenses on the basis of admission made before survey team by Shri Vivek Suchanti & Parag Sanghvi without bringing on record any adverse or cogent evidence. Here it is vehemently submitted that the statement has got no evidentiary value and addition

cannot & should not be sustained in view of the following further facts and submission:

17. Shri Vivek Suchanti has already stated that different transaction has been carried out for the clients of assessee company by vendor companies and the parties after verification of the work done have made payment to assessee company. Therefore one has to read the statement in totality and in comprehensive manner as Mr Vivek Suchanti is looking after overall activities, different departments of the assessee company carrying which is spread all over India. The selection process of vendor, place & activities, nature of PR activities are decided by respective departments of assessee company after consultation with various clients. Since it is a routine matter and is not looked on day to day basis by Shri Vivek Suchanti, MD of assessee company.

18. There is a contractual agreement between the assessee company and the vendors for the works to be done unless the work is done how could the assessee company can receive the payment. Moreover the parties for whom the assessee company has done the publicity work they have inturn made the payment to assessee company and that too after due verification about the work done. The reliance placed by the AO on statement of Shri Rajendra Bhimrajka has no relevance because it has been taken behind the back of the assessee and even after several request made to survey officials by assessee company to provide the copy of statement of Shri Rajendra Bhimrajka the same was not provided,

rather they used to pressurize the assessee company to accept the transactions done by vendors for the assessee company as accommodation entries against booking of expenses. Since both Shri Vivek Suchanti & Parag Sanghvi has never dealt with Shri Rajendra Bhimrajka the contention of the AO that retraction is an afterthought is totally baseless because he has not gone through the details and evidences submitted with reference to the expenses claimed during the course of scrutiny proceedings and merely relied on the statement.

19. During the course of assessment proceedings assessee company submitted Name, Address and PAN of vendors vide letter dated 20.03.2013 along with corresponding reference for whom they have carried out publicity campaign work as under:-

- Out of nine vendors most of them are private limited companies
- Vendors while raising their bills to assessee company have charged service tax, having valid Service Tax Registration Number issued by Service Tax Department
- Assessee company while making payment to vendors have deducted TDS as per provisions of Income Tax Act, 1961 and have made the payment by a/c payee cheques only..
- Vendors falls under the status "Company" having valid Company Identification Number issued by Registrar of Companies.

20. As per Ld. AR, once the above Statutory Compliances have been fulfilled it proves that the vendors have proper identity i.e. Name, Address, PAN, Service Tax Number, CIN (in case they are companies).

21. Assessee had furnished before lower authorities the Name, Address, PAN, Service Tax Registration Number, CIN (in case they are companies] of vendors. Moreover, during the course of assessment assessee company explained the process of assigning work to vendors The process of assigning work to vendors was explained as under:

- The assessee company finalizes the modus operandi with their clients to whom they are rendering publicity campaign services.
- Trained company officials of assessee company are deployed to supervise the publicity campaign,
 - (i) • The work done by the vendors are then get verified and approved by clients for whom assessee company is rendering publicity campaign services.
 - Finally the assessee company receives payment from their clients and in turn disburse the amount to vendors as agreed.

22. From the record we found that Publicity campaign work was carried out in mofussil area and tier two cities through vendors are identified by Mr. Om Prakash Paharia and supervised by assessee company's officials which is the regular practice & system followed by the assessee company. Assessee company executes the publicity campaign work in rural, B grade

cities and satellite towns through their network of contact persons. Assessee company has submitted the notarized affidavit of Shri Om Prakash Paharia dated 19.03.2013. In the said affidavit he has broadly stated how publicity campaign activities have been carried out i.e. identification of vendors, collection of payments and distribution of payments to vendors. The AO has simply read the affidavit and drawn adverse inference for the sake of disallowance of expenses which is not only incorrect but unjustified too. This attitude of the Assessing Officer prove that he has passed the assessment just to disallow the vendor bills by relying on the statement of Shri Rajendra Bhimrajka. It is pertinent to mention that the assessee company does not know him at all. Copy of affidavit given by Shri Om Prakash Paharia was placed on record.

23. In the affidavit given, Shri Om Prakash Paharia has clearly stated the details of trusts in which he is trustee, how he is creating work opportunities in semi-urban, rural & mofussil areas, how assessee company helps him in creation of such work opportunities and how he gets the work done.

24. As per Ld. AR in today's scenario it is not necessary for one to travel to assign work. Shri Om Prakash Paharia has a well settled establishment, network of contacts which he has developed on account of his vast experience. He executes the work by telephonic talks, word of mouth, computer network and other modes of modernized communication methods. For execution and result the company officials

are in regular touch with Shri Om Prakash Paharia. It was not necessary for Shri Om Prakash Paharia to travel every time to rural and moffusil areas to execute the work, because of his vast network. Therefore Shri Om Prakash Paharia did not provide any evidence to show that he travelled to rural and mofussil areas to execute the work. Just because he did not provide the travel evidence it can't be said that work has not been done. In fact work has been done for the clients for which vendors have raised bills on the assessee company, payment has been made by a/c payee cheques and in turn assessee company has raised bills on its clients and assessee company has received the payment.

25. Point No. 11 of duly notarized affidavit given by Shri Om Prakash Paharia on 19.03,2013 state as follows:

"Based on the aggregate amounts to be paid to the persons who had carried out the work, my associates Mr. Jayesh Shah and Mr. Dinesh Pareek would ask Mr. Rajendra Bhimrajka to make the payments after collecting payments from appellant company for which he used to raise bills on appellant company. On receipt of payments by cheque from appellant company Mr. Rajendra Bhimrajka would make payments to the various service providers."

26. The manner in which the publicity campaign is being carried out, it is clear that there is no occasion for the assessee company to know Shri Rajendra Bhimrajka therefore the assessee company does not know or have any direct contact with Mr. Rajendra Bhimrajka. Therefore the statement of Shri Rajendra Bhimrajka has no relevance for disallowing the expenses, so incurred by the assessee companies.

27. Sample copy of vendor bill put before us along with supporting which has been shown to Ld AO during the course of assessment proceedings, which clearly suggest that assessee company carried out publicity campaign activities viz. putting up of banners, posters, display boards, wall painting, road shows, market survey, event management, convening conferences and meeting of investors and brokers etc by providing necessary evidence.

28. From the above explanation and supporting provided, it was contended by Ld. AR that the expenses has actually been incurred by the assessee company.

29. From the record, we found that the assessee company deal with various corporate companies and the business activities carried out with various number of vendors spread over rural & mofussil and satellite cities. The modus operandi i.e. selection of vendors and have carried out work through known business intermediaries, their business activities are supervised by company officials which is then approved by clients of assessee company -there does not remain any doubt that no work has been carried out. Further assessee company has submitted the affidavit of Shri Om Prakash Paharia stating how the work is being carried out. Assessee company does not carry any authority to enforce presence of vendors officially but assessee company's duty is to provide required details like vendors like Name, Address, PAN, ST Registration Number, Company Identification Number (in case of companies] which are always

there in the records of respective departments. Assessee company to fulfill their onus has provided details of vendors which were available in their records for the purposes of completing the assessment.

30. From the record we also found that the assessee company in order to prove the genuineness of the expenses produced the vendor bills for verification during the course of assessment proceedings giving nature of services rendered by vendors like putting up of banners, posters, display boards, wall painting, road shows, market survey, event management, convening conferences and arranging meeting of investors and brokers etc. Evidence of having rendered services are placed on record as per Ex 'H'.

31. The primary details of the vendor like Name, Address, PAN, ST Registration Number, Company Identification Number (in case of companies) in government records were also furnished before the lower authorities.

32. The assessee company has provided the information like copy of bills, supporting for services rendered, name of clients to whom service rendered, details of work carried at rural and moffusil areas.

33. We also observe that the Service Tax Audit of assessee company has been conducted for Financial Year 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 by Service Tax Department. During the said service tax audit reconciliation of service tax returns with books of accounts for above mentioned financial years has been done and no

discrepancy of whatsoever nature has been pointed by the service tax department.

34. Reliance was placed by Ld. AR on the following judicial pronouncements, wherein it is held that unless corroborative evidence are found during the course of survey, search and seizure action addition cannot be made merely on the basis of statement recorded.

35. Apex Court in the case of *Andaman Timber Industries v. CCE* (2015) 281 CTR 241 (Bom)(HC) and *Kishanchand Chellaram v. CIT* (1980) 125 ITR 713 (SC) held that the department is bound to give the assessee an opportunity to controvert evidence and cross examine the evidence on which the department places its reliance. A failure in providing the same can result in the order being a nullity. The Bombay High Court in *H.R. Mehta vs. ACIT* (2016) 387 ITR 561 (Bom.)(HC) has held that while making addition under s. 68, the A.O. had relied upon some evidence collected in that behalf including statement on oath said to have been made on behalf of persons whose identity was not disclosed. It was held that assessee was bound to be provided with the material used against him apart from being permitting him to cross-examine the deponents by the department. This not having been done, addition was not sustainable.

36. Furthermore, Hon'ble Supreme Court in *CIT v Sunita Dhaddha* SLP(Civil) No 9432/2018 dtd 28/3/2018 (SC) wherein it was held that "if the AO wants to rely upon documents found with third parties, the presumption u/s 292C against the assessee is not available. As per the

principles of natural justice, the AO has to provide the evidence to the assessee & grant opportunity of cross-examination. Secondary evidences cannot be relied on as if neither the person who prepared the documents nor the witnesses are produced. The violation of natural justice renders the assessment void. The Dept cannot be given a second chance.

37. It was also argued by learned AR that the affidavit of Mr. Omprakash Paharia has not been found false. Hence, the expenses incurred by assessee cannot be disallowed. A.O. has not examined Mr Omprakash Paharia. For this purpose reliance was placed on the decision of Supreme Court in case of Mehta Parikh & Co. 30 ITR 181 where it was observed that when affidavits of directors of subscriber companies are filed, the same cannot be rejected unless deponents are examined. Affidavit is valid until found false.

38. It was also contended by learned AR that no evidence was brought by the revenue to show that consideration has not been paid or assessee has received back cash. No incriminating documents was found in the course of survey. Assessee has deducted TDS from the payments. Assessee has paid Service tax. Vendors have PAN No, TIN No, Service Tax No and Corporate vendors have CIN Nos. All the payments are made by account payee cheques.

39. As per learned AR the AO merely because those parties have not responded to notice u/s. 133(6) addition cannot be made. Thus unless those parties are summoned and opportunity of cross examination is

provided to the assessee no adverse inference should be drawn against assessee.

40. Our attention was invited to the statement of consumption of services as placed on record, according to which assessee has proved consumption of services rendered by the vendors which was filed before AO vide statement dated 08/03/2013. Our attention was also invited to the net profit declared by the assessee on the projects where suspicion parties were involved and it was highlighted that net profit during these years were higher as compared to the projects where suspicion parties were not involved. Hence, where all primary details regarding vendors has been provided by the assessee, consumption has been proved, payments are through banking channels and receipts are not doubted by the AO, then expenses cannot be disallowed merely because service providers have not appeared. For this purpose, reliance was placed on following judicial pronouncements.

(i) **Babulal C. Borana vs. ITO (2006) 282 ITR 251 (Bom.) (HC)**

Where the identity of the persons from whom goods are purchased has been explained, payment are made by A/c. payee (cheques, transactions are recorded in books, no addition can be made.

(ii) ***CIT vs. Smt. Anju Jindal (2016) 387 ITR 418 (P&H)(HC)[Para 4] (Paper Book No. II Pg. No.807-809)***

No addition of purchases can be made when parties have not responded to notice u/s. 133(6).

(iii) ***CIT vs. Hi Lux Automotive P. Ltd. (2009) 183 Taxman 260 (Delhi)(HC)[Para 10] (Paper Book No. II Pg. No. 810-815)***

Assessee having made payment of raw material purchase from two parties by means of A/c. payee cheques and produce bank statement showing the payments. No addition could be made if suppliers not found.

(iv) CIT vs. Nangalia Fabrics Pvt. Ltd. (2014) 220 Taxman 17(Mag.) (Guj.)(HC)[Para 3] (Paper Book No. II Pg. No. 816-819)

41. In this case the AO held that as the parties from whom the purchases were allegedly made by the assessee could not be located, they were bogus and an addition had to be made u/s 68 in the hands of the assessee. The CIT(A) and . Tribunal deleted the addition on the basis that the purchases could not be held to be bogus as corresponding sales had been effected by the assessee.

42. Our attention was also invited to the fact that the AO has also disputed the service tax element which was not claimed as deduction. Our attention was also invited to the extract of the Indian Newspaper Society Press Handbook wherein it is stated that the accredited Advertising Agency shall be entitled to receive from the member Publications the maximum and minimum trade discount of 15% in respect of advertisement business placed by it with such Member Publications which clearly indicates that the maximum & minimum commission which accredited advertising agency can earn is 15%.

43. As per learned AR as there was intense competition in the Advertising field in the said year ie Assessment year 2007-08 so as to meet the market competition and capture the market the assessee had

lowered its gross profit margin due to which there is a fall in gross profit margin in the said Assessment year. The assessee Company had earned in earlier 5 years ie for Assessment Year 2002-03 to 2006-07 an Average sales of Rs 35.74 Crores, average gross profit of 12.99% & average Net profit before tax of 2.28%. wherein no disallowance has been made on account of accommodation bills.

44. Our attention was also invited to the chart which indicated the effect on gross profit, Sales and Net Profit before tax on account of lowering of gross profit Margin in various Assessment Years as compared to earlier assessment years when there was no such allegation of bogus billing was as below

Particulars	Average of earlier 5 years	A.Y. 2007-08	A.Y. 2008-09	A.Y. 2009-10	A.Y. 2010-11	A.Y. 2011-12
Sales	35.74 crores	113.64 crores	156.39 crores	101.04 crores	129.40 crores	116.63 crores
Increase in sales as compared to average sales of earlier 5 years	-	218%	338%	183%	262%	226%
Gross Profit	12.99%	9.87%	9.25%	12.91%	12.31%	14.48%
Net profit Before Tax	2.28%	5.27%	5.69%	4.01%	5.51%	4.96%
Increase in net profit before tax as compared to average of earlier 5 years	-	2.99%	3.41%	1.73%	3.22%	2.68%

45. As per learned AR one can see from the above chart that because the assessee company had lowered its gross profits margin the assessee company has managed to increase its sales by 218% in Assessment Year 2007-08 ie from Rs 35.74 Crores to Rs 113.64 Crores and even after lowering its margin the assessee company has managed to increase its overall net profit before tax by 2.99% ie from 2.28% to 5.27% which clearly demonstrates that no disallowance is to be called for in the said Assessment year . In these years genuine vendor bills has been treated as accommodation bills & addition has been made.

46. On the other hand, learned DR relied on the orders of lower authorities and contended that as per observation of AO and CIT(A) during the course of survey assessee has conceded that they were taking bill from bogus suppliers. Accordingly lower authorities have correctly added the same to the income of the assessee.

47. We have considered rival contentions and carefully gone through the orders of the authorities below. We had also gone through the statement recorded during course of survey and post survey. We had also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR and DR during the course of hearing before us in the context of factual matrix of the case. From the record we found that Concept Communication Ltd., and other two companies of assessee are entertainment, media and

communication companies. Company delivers marketing solutions which covers integrated advertising campaigns, to embedded content, to innovative media solutions. There was survey at assessee's premises. Statement was recorded during course of survey. Immediately after survey, the assessee has retracted from the statement. The CIT(A) has dealt with the issue of retraction. CIT(A) has confirmed finding of AO . According to assessing officer during the course of post survey proceedings assessee was communicated by the investigation wing of the department however, while making compliance of various requirement the assessee has not raised any objection against statement given at the time of survey hence the retraction filed is an afterthought. In this regard we observe that the statement recorded on 21/11/2011 were duly retracted on 1/12/2011 i.e within one month. Said retraction was duly notarized. Assessee vide letter dated 15/12/2011 gave detailed explanation of impounded documents which implied that the statement was retracted. Further said retractions were conveyed to the survey team on 12/3/2012 i.e before the survey report ' and to the AO on 14/3/2012 i.e before any proceedings were initiated by the A.O. Hence, retraction being on affidavit was legal and valid and was not belated. Further \ retraction was supported by explanation of impounded ' documents to the Survey team. The impounded document did not contain any information which was not recorded in the books of accounts. Hence, retraction cannot be said to be an afterthought.

48. The CIT(A) observed that statement given at the time of survey was not out of fear/ coercion. In reply to the same, it was contention of learned AR that circumstantial evidences itself indicates that there was a hurry in taking statements of Managing Director in the middle of the night by keeping female employees at the office premises waiting which is on record and this itself shows that there was an atmosphere of fear and coercion to get statements as desired by the department .

49. CIT(A) has held that assessee has not appeared before the AO on various occasions. In reply assessee submitted that during the assessment, the assessee Company had produced relevant primary details of vendor like Name, Address, PAN, Service Tax Registration No before the AO during assessment proceedings & also all the payments made to the said vendor company are by a/c payee cheque The assessing officer could have found the latest address from these sources however instead of fulfilling their duties they asked the assessee to produce the latest address of vendor company with whom they have dealt with two years back.

50. It was also argued by learned AR that the assessing officer has himself in point no 24 page no 14 stated that the ward inspector vide his report dated 18.03.2013 had stated that on enquiry it was found that the referred companies have left the premises as per the address given by the assessee more than 2-3 years which the CIT (A) has not mentioned in his order which itself proves that the above referred company were in

existence and carrying on business in the address given by assessee 2-3 years back and only because they were not available at the time of serving of notice it cannot be held that they are bogus companies. For this purpose reliance was placed on the following judicial pronouncements:-

“i) Babulal C. Borana vs. ITO (2006) 282 ITR 251 (Bom.) (HC)

Where the identity of the persons from whom goods are purchased has been explained, payment are made by A/c. payee (cheques. transactions are recorded in books, no addition can be made.

(ii) *CIT vs. Smt. Anju Jindal (2016) 387 ITR 418 (P&H)(HC)[Para 4] (Paper Book No. II Pg. No.807-809)*

No addition of purchases can be made when parties have not responded to notice u/s. 133(6).

(iii) *CIT vs. Hi Lux Automotive P. Ltd. (2009) 183 Taxman 260 (Delhi)(HC)[Para 10] (Paper Book No. II Pg. No. 810-815)*

Assessee having made payment of raw material purchase from two parties by means of A/c. payee cheques and produce bank statement showing the payments. No addition could be made if suppliers not found.

(iv) *CIT vs. Nangalia Fabrics Pvt. Ltd. (2014) 220 Taxman 17(Mag.) (Guj.)(HC)[Para 3] (Paper Book No. II Pg. No. 816-819)*

In this case the AO held that as the parties from whom the purchases were allegedly made by the assessee could not be located, they were bogus and an addition had to be made u/s 68 in the hands of the assessee. The CIT(A) and Tribunal deleted the addition on the basis that the purchases could not be held to be bogus as corresponding sales had been effected by the assessee.”

51. With regard to allegation of CIT(A) that the assessee has not furnished any agreement entered into with clients for the said assignment. We found that sample copy of client agreements alongwith vendor bills had been submitted by assessee via letter dated 20/03/2013.

From the record we also found that an affidavit of Shri Omprakash Paharia was also filed wherein he has mentioned that areas .(He has mentioned in his affidavit that Concept group of companies was regularly in need of persons in semi urban rural and mofussil areas for execution of their clients work assignment & that he used to be contacted by the officials of concept group & his associates would help them in finding service providers and his associates used to coordinate with persons identified by them and ask them to execute the work for clients of the assessee.

52. It was also brought to our notice that Assessing Officer has not questioned Shri Om Prakash Paharia as to whether he has assigned work to the above entity. The affidavit of Shri Omprakash Paharia has not been found false. Hence, the expenses incurred by assessee cannot be disallowed outrightly. AO has not examined Shri Omprakash Paharia. In this respect proposition laid down by the Hon'ble Supreme Court in the case of Mehta Parikh & Co., (supra) are to be applied, wherein it was held that when an affidavit is filed, the same cannot be rejected unless deponents are examined. Affidavit is valid until found false. In the affidavit so filed Shri Omprakash Paharia has stated that Concept group of companies was regularly in need of persons in semi urban rural and mofussil areas for execution of their clients work assignment & that he used to be contacted by the officials of concept group for approaching various persons who can assist in carrying out the said activity.

53. We also observe that department has recorded statement of Shri Rajendra Bhimrajka, however, statement of Rajendra Bhimrajka was not confronted to Mr. Omprakash Paharia. Moreso, when MD of assessee Mr. Vivek Suchanti had denied knowledge of Mr. Rajendra Bhimrajka it was incumbent upon AO to give cross-examination of Mr. Rajendra Bhimrajka to assessee. Moreover, AO has not brought any material on record to connect various entities mentioned by Mr. Rajendra Bhimrajka with him. Further, parties named by Mr. Rajendra Bhimrajka have not dealt with assessee in AY 07-08. For this purpose reliance was placed on the decision of Hon'ble Bombay High Court in the case of Andaman Timber Industries 281 CTR 241 and decision of Hon'ble Supreme Court in case of Kishanchand Chellaram 185 ITR 713 wherein it was held that the department is bound to give the Assessee an opportunity to controvert evidence and cross examine the evidence on which the department places its reliance. A failure in providing the same can result in the order being a nullity. The Bombay High Court in H.R. Mehta vs. ACIT (2016) 387 ITR 561 (Bom.)(HC) has held that while making addition under s. 68, the A.O. had relied upon some evidence collected in that behalf including statement on oath said to have been made on behalf of persons whose identity was not disclosed. It was held that assessee was bound to be provided with the material used against him apart from being permitting him to cross-examine the deponents. This not having been done, addition was not sustainable.

54. Recently Supreme Court in CIT v Sunita Dhaddha SLP(Civil) No 9432/2018 dtd 28/3/2018 (SC) has held that "if the AO wants to rely upon documents found with third parties, the presumption u/s 292C against the assessee is not available. As per the principles of natural justice, the AO has to provide the evidence to the assessee & grant opportunity of cross-examination. Secondary evidences cannot be relied on as if neither the person who prepared the documents nor the witnesses are produced. The violation of natural justice renders the assessment void. The Dept cannot be given a second chance".

55. We also observe that the statement of Parag sanghvi on which assessing officer relies was later on retracted by stating the above statement was made under fear /coercion. Hence the above statement which was given at the time of survey has no evidentiary value in the absence of any corroborative materials having been brought on record by the AO. Retraction statement of CFO is also placed in the paper book.

56. Our attention was invited to the statement of Shri Vivek Suchanti wherein Shri Vivek Suchanti had answered that there was no Unaccounted cash and that expenses were wholly and exclusively incurred for the purpose of business & that necessary contemporary evidence by way of bills /vouchers are maintained by middlemen agents were also available in the office premises however the answer given by Mr Vivek Suchanti was wrongly mentioned in statement of oath, the declaration of which has been given in retraction statement hence the

statement at the time of survey has been recorded erroneously. Subsequently Mr. Vivek Suchanti also retracted from the statement which is also placed on the record.

57. The entire order of the AO indicate that he has only relied on statement of Mr Parag Sanghvi and Mr. Vivek Suchanti which appears to be given under coercion and fear and which was also later retracted and the AO has not collected any corroborative evidence to prove that assessee company has inflated the expenditure by passing accommodation entries. Judicial pronouncement clearly states that "Unless corroborative evidence are found during course of survey, search & seizure addition cannot be made merely on statement recorded which proves that the assessing officer has wrongly made addition without confirming the same with a reliable evidence.

58. Recently Hon'ble Rajasthan High Court in the case of Ashok Kumar Jain 369 ITR 145 held that addition made merely on the basis of statement in the course of survey is not justified unless accompanied by corroborative evidence. Similar view has been taken by the Gujarat High court in the case of M.P.Scrap Traders 372 ITR 507.

59. We also observe that Mr Parag Sanghvi in his statement on oath has clearly explained his responsibilities in the group which states as follows: "My responsibility is to keep and maintain books of account" which proves that he is not aware of day to day publicity related work signed by clients. His duty is only to keep and maintain books .His work is

only to record bills produced before him after authorization & verification by field executives, raise bills on clients on authorization and make payments on authorization. He is not aware of the operational & executional part of the client contract since it is done by field executives of the company who are handling clients & vendor directly .Mr Parag Sanghvi is not aware of any ground realities of execution he used to look after accounting matter & monitoring of working capital requirements of the company. Reconfirmation of facts unearthed at the time of survey should have been made from the person who handles clients & vendor directly and not from a person who is unaware of operational & executional part of client contract. In any event, asking the assessee to make disclosure of income and collecting cheques is contrary to the CBDT instruction No. 286/2/2003 dt. 10/3/2003. In his statement of oath Mr parag Sanghvi has stated his responsibility in the group is to keep and maintain books of account he has no where stated that he is aware of day to day publicity related work signed by clients. How can he know whether the company is dealing with bogus companies as his duty is to record the vendor company bills which comes to him after due authorization & verification by field executives & make payments when asked by authorized officials to do so. The survey officials should have waited till the arrival of Mr Vivek Suchanti who looks after overall management of business activities.

60. Even as per the boarding pass Mr. Vivek Suchanti reached Mumbai Airport at around 10:35 pm. After collecting his baggage etc., which normally takes around 15-20 minutes he would have come out from airport ie by 10.55 pm .and if he takes eastern Free Way route it normally takes 1 hr and western express highway route it takes 1 hr 10 minutes that at night time there is heavy traffic on the said routes because of trucks passing through so it proves that the assessing officers claim that he could reach office by 11.15 or 11:30 appears to be not correct.

61. We also observe that the admission of both the persons has been taken not on the basis of any incriminating material or documents. The question mentions certain information disclosed to them but no such information was disclosed. Infact, Assessee has not been given statement of Mr. Jignesh Patel on the basis of which survey was carried on. The loose papers impounded were invoices of various parties. Assessee vide letter dated 15/12/2011 have duly explained the invoices to the survey party. There is no adverse inference on impounded material brought on record by the Ld A.O.

62. It was also contention of learned AR that statement recorded u/s 133A of the Income tax Act on oath has no evidentiary value, relying on CIT vs. S. Khader Khan Sons (2008) 300 ITR 157 (Mad.)(HC) affirmed by Supreme Court in CIT v S. Kader Khan Sons (2013) 352 ITR 480(SC).

63. From the record we found that the Statement recorded on 21/11/2011 were duly retracted on 1/12/2011 i.e within one month.

Further said retractions were conveyed to the survey team on 12/3/2012 i.e before the survey report and to the AO on 14/3/2012 i.e before any proceedings were initiated by the A.O. Hence, retraction being on affidavit was legal and valid and was not belated. Further retraction was supported by explanation of impounded documents to the Survey team. The impounded document did not contain any information which was not recorded in the books of accounts. Hence, in view of retraction and such retraction based on concrete evidence, no addition can be made on the basis of statement taken during survey without bringing on record some corroborative materials. Reliance is placed on following decisions :

CIT v. Ashok Kumar Jain 2014) 369 ITR 145 (Raj) (HC)
Addition was held to be not justified merely on the basis of statement in the course of survey

CIT v. M.P. Scrap Traders (2015) 372 ITR 507 Guj) (HC)

Addition cannot be made on the basis of statement in the course of survey

Jain Trading Co. vs. ITO (2007) 17 SOT 574 (Mum) (Trib)

"It was held that "An assessee who makes an offer of additional income during course of an enquiry by income-tax authorities is not bound by his offer of additional income for all time to come."

64. We have also carefully gone through the analysis of profits earned by assessee in Assessment year 2007-08 to 2011-12 when compared to average profits of earlier 5 years in which no disallowance has been made on account of Accommodation bills.

65. Statement of profitability of earlier 5 years in which no disallowance has been made on account of accommodation bills wherein the average profitability which company has earned in earlier 5 years ie for Assessment Year 2002-03 to 2006-07 comes to 12.99% & average Net profit before tax comes to 2.28% is as below.

Particulars	Assessment Year 2002-03	Assessment Year 2003-04	Assessment Year 2004-05	Assessment Year 2005-06	Assessment Year 2006-07	Average 5 years
Sales	24.34 Crores	27.28 Crores	32.47 Crores	32.86 Crores	6 1.74 Crores	35.74 crores
Gross profit	16.22%	14.82%	12.29%	12.61%	11.48%	12.99%
Net Profit before Tax	2.69%	0.47%	1.88%	0.77%	3.94%	2.28%

1) **Statement of profitability for Assessment year 2007-08 to 2011-12 is as under**

Particulars	Assessment Year 2007-08	Assessment Year 2008-09	Assessment Year 2009-10	Assessment Year 2010-11	Assessment Year 2011-12
Sales	113.64Crores	1 56.39 Crores	10 1.04 Crores	129.40Crores	11 6.63 Crores
Gross profit %	9.87	9.25	12.91	12.31	14.48
Net profit Before tax %	5.27	5.69	4.01	5.51	4.96

2) **Statement of increase / decrease in sales /Net profit when Compared to average of earlier 5 years is as under**

Particulars	Assessment Year				
	2007-08	2008-09	2009-10	2010-11	2011-12
Increase in sales (Rs.) compared to average sales of	77.90 Crores	120.65 Crores	65.30 Crores	93.66 Crores	80.90 Crores

earlier 5 years					
Increase in sales % compared to average sales of earlier 5 years	218%	338%	183%	262%	226%
Increase In Net Profit Before Tax (Rs) when compared to - average of earlier 5 years	5.17 Crores	8.09 Crores	3.24 Crores	6.31 Crores	4.97 crores
Increase in net profit before tax % when compared to average net profit before tax of earlier 5 years	2.99%	3.41%	1.73%	3.22%	2.68%

Assessment Year 2007-08

66. The sales for the Assessment year 2007-08 when compared with Average sales of earlier 5 years has increased by 218 % ie from Rs 35.74 crores to Rs 113.64 Crores however gross profit % has decreased by 3.12% ie from 12.99% to 9.87% but one can see that net profit before tax % when compared with average net profit before tax of earlier 5 years has increased by 2.99% ie from 2.28% to 5.27%.

Assessment Year 2008-09

67. The sales for the Assessment year 2008-09 when compared with Average sales of earlier 5 years has increased by 338% ie from Rs 35.74 crores /-to Rs 156.39 Crores /- however gross profit % has decreased by

3.74% % ie from 12.99% to 9.25%. but one can see that net profit before tax % when compared with average net profit before tax of earlier 5 years has increased by 3.41% ie from 2.28% to 5.69%.

Assessment Year 2009-10

68. The sales for the Assessment year 2009-10 when compared with Average sales of earlier 5 years has increased by 183% ie from Rs 35.74 crores /-to Rs 101.04 Crores /- however gross profit % has decreased by 0.08% ie from 12.99% to 12.91% but one can see that net profit before tax % when compared with average net profit before tax of earlier 5 years has increased by 1.73% ie from 2.28% to 4.01%.

Assessment Year 2010-11

69. The sales for the Assessment year 2010-11 when compared with Average sales of earlier 5 years has increased by 262% ie from Rs 35.74 crores to Rs 129.40 Crores however gross profit % has decreased by 0.68% % ie from 12.99% to 12.31% but one can see that net profit before tax % when compared with average net profit before tax of earlier 5 years has increased by 3.22% ie from 2.28% to 5.51%.

Assessment Year 2011-12

70. The sales for the Assessment year 2011-12 when compared with Average sales of earlier 5 years has increased by 226% ie from Rs 35.74 crores /-to Rs 116.63 Crores & gross profit % has increased by 1.49% % ie from 12.99% to 14.48% & net profit before tax % when compared

with average net profit before tax of earlier 5 years has increased by 2.68% ie from 2.28% to 4.96%.

71. However we observe that the net profit before tax for all the Assessment Years has increased when compared with average of net profit of earlier 5 years which shows that even after lowering its profit margin the company was able to increase its overall profit when compared to Average of earlier 5 years.

72. In view of the above discussion, we conclude that no addition can be made merely on the basis of statement unless same is corroborated by documentary evidence. From the record we also observe that corresponding income booked by the assessee has not been disputed by lower authorities meaning thereby, income earned corresponding to the expenditure alleged to be bogus has been duly accepted by the lower authorities. Under these facts and circumstances, entire expenditure so incurred which is duly supported by income declared by assessee and accepted by Department cannot be declined. Keeping in view the totality of facts and circumstances of the case vis-à-vis average profit declared by the assessee in the earlier five years which is 12.99% it is very relevant to find out if any lower income has been shown by the assessee in any of the years to ascertain the additions warranted. Under these facts and circumstances, we are of the considered view that addition can be restricted to the difference in gross profit declared by the assessee during

the years under consideration as compared to the average gross profit rate of earlier five years which is 12.99%.

Particular	For assessment year 2002-03	For assessment year 2003-04	For assessment year 2004-05	For assessment year 2005-06	For assessment year 2006-07	Average of past 5 Years
Sales & Services Cost of Sales	24,33,74,961.00 20,38,92,062.00	27,28,26,455.00 23,24,05,662.00	32,46,60,467.00 28,47,70,613.00	32,85,88,540.00 28,71,60,635.00	61,73,72,260.00 54,64,95,501.00	35,73,64,536.60 31,09,44,894.60
Gross Profit	3,94,82,899.00	4,04,20,793.00	3,98,89,854.00	4,14,27,905.00	7,08,76,759.00	4,64,19,642.00
GP%	16.22%	14.82%	12.29%	12.61%	11.48%	12.99%

Comparative Statement of Profitability for the Years 2006-07 to 2010-11 with Average Profitability of past years are as under:-					
Particular	For the year 2007-2008	For the year 2008-2009	For the year 2009-2010	For the year 2010-2011	For the year 2011-12
Disallowance As Per AO Less Service tax	11,92,65,028.00 89,53,023.00	15,34,75,543.00 1,19,89,115.00	8,39,76,279.00 63,55,889.00	9,10,42,415.00 85,01,695.00	6,49,53,233.00 16,73,812.00
Net Billing debited to P&L A/c	11,03,12,005.00	14,14,86,428.00	7,76,20,390.00	8,25,40,720.00	6,32,79,421.00
Average Gross profit Of Earlier 5 Years Average Gross Profit (Rs) (a)	12.99% 1,43,28,908.60	12.99% 1,83,78,290.69	12.99% 1,00,82,451.80	12.99% 1,07,21,574.98	12.99% 82,19,640.64
Gross Profit As Per P&L A/c	9.87%	9.25%	12.91%	12.31%	14.48%
Gross Profit Already Offer in the P&L Account (b)	1,08,84,670.00	1,30,85,466.18	1,00,17,936.96	1,01,58,783.03	91,60,478.62
Net Difference (a) - (b)	34,44,238.59	52,92,824.51	64,514.84	5,62,791.94	(9,40,837.98)

73. In view of the above chart we direct the AO to restrict addition to the extent of lower profit shown by assessee in case of Concept Communication Ltd., as under:-

A.Y.	Amount (Rs.)
2007-2008	34,44,238.59
2008-2009	52,92,824.51

2009-2010	64,514.84
2010-2011	5,62,791.94

74. In the A.Y.2011-12, the gross profit shown by the assessee was 14.48% as against average gross profit rate of 12.99%. Since the gross profit shown by assessee in the A.Y.2011-12 was more than the average gross profit, no addition on account of alleged bogus expenses is warranted. We direct accordingly.

Concept Production Ltd., (ITA No.3026/Mum/2016)

75. From the record we found that comparative statement of profitability for the A.Y.2009-10, 2010-11 when no disallowance has been made on account of accommodation bills, and vis-à-vis 2011-12 when addition was made on the ground of accommodation bill, works out as under:-

Particular	For assessment year 2009-10	For assessment year 2010-11	Average of past 2 Years	For Assessment year 2011-12
Sales & Services Cost of Sales	1394107 1282044	21005431.5 19537707	11199769.25 10399875.5	8,28,03,188.00 8,03,25,668.00
Gross Profit	1,12,063.00	14,87,724.50	7,99,893.75	24,77,520.00
GP%	8.04%	7.08%	7.14%	2.99%

76. Assessee had declared GP rate of 2.99% in the A.Y.2011-12 wherein addition has been made by the AO. If we compare it with the average profitability for the past two years which is 7.14% the result will be as under:-

Particular	For the year 2011-2012 Amount(Rs)
Disallowance As Per AO Less Service tax	4,88,60,694.00 37,60,694.00
Net Billing debited to P&L A/c	4,51,00,000.00
Average Gross Profit of 2 Years (%) Average Gross profit (Rs) (a)	7.14% 32,21,067.09
Gross Profit As Per P&L A/c for 2011-12	2.99%
Gross Profit Already Offer in the P&L Account (b)	13,49,418.48
Net Difference (a)-(b)	18,71,648.61

77. It is clear from the above chart that assessee had shown average gross profit @7.14% in the A.Y.2009-10 & 2010-11, whereas in the A.Y.2011-12 under consideration the gross profit shown by the assessee works out to 2.99%. Thus, assessee had shown lower gross profit, we, therefore, confirm addition of Rs.18,71,648.61 in the A.Y.2011-12 under consideration as against disallowance made by AO.

M/s. Concept Public Relations (India) Ltd.,

ITA No.2805/Mum/2016

78. From the record we found that profit declared by assessee for the A.Y.2007-08, 2008-09, 2009-10 and 2010-11 vis-à-vis 2011-12 was as under:-

Particular	For assessment year 2007-08	For assessment year 2008-09	For assessment year 2009-10	For assessment year 2010-11	Average of past 4 years	For assessment year 2011-12
Sales & Services	34104581.4	48710484.76	44317813.33	41287297.25	42105044.19	7,25,53,681.25
Cost of Sales	25192107.43	33731556.16	28072610.32	29788223.09	29196124.25	5,27,25,078.85
Gross Profit	89,12,473.97	1,49,78,928.60	1,62,45,203.01	1,14,99,074.16	1,29,08,919.94	1,98,28,602.40
GP %	26.13%	30.75%	36.66%	27.85%	30.66%	27.33%

79. It is clear from the above that average profit shown by the assessee in the case of Concept Public Relations India Ltd., in the last four years works out at 30.66% as against profit rate of 27.33% declared during the A.Y.2011-12 under consideration wherein addition has been made by the AO on account of bogus purchase bills. We accordingly confirm the addition to the extent of difference in gross profit rate which works out to be Rs.2,26,391.28. The detailed break-up is as under:-

Particular	For the year 2011-2012 (Amount Rs)
Disallowance As Per AO Less Service tax	74,59,081.00 6,59,081.00
Net Billing debited to P&L A/c	68,00,000.00
Average Gross profit Of 4 Years (%) Average Gross Profit (Rs) (a)	30.66% 20,84,801.41
Gross Profit As Per P&L A/c	27.33%
Gross Profit Already Offer in the P&L Account (b)	18,58,410.13
Net Difference(a)-(b)	2,26,391.28

80. Accordingly, AO is directed to restrict the addition in case of all the three companies as enumerated above. We direct accordingly.

81. In the result, appeals of the assessee are allowed in part in terms indicated hereinabove.

Order pronounced in the open court on this 14/11/2018

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai; Dated 14/11/2018

Karuna Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai