IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.417 & 418/LKW/2013
Assessment Year 2008-09 & 2009-10

ACIT, Range-2, Bareilly	Vs	M/s L.H. Sugar Factory Ltd., Civil Lines, Pilibhit. PAN AAACL 4597 L

CO No.26 & 27/Lkw/2013
(In ITA No.417 & 418/LKW/2013
Assessment Years 2008-09 & 2009-10

M/s L.H. Sugar Factory Ltd., Civil Lines, Pilibhit. PAN AAACL 4597 L	Vs	ACIT, Range-2, Bareilly

ITA No.339/LKW/2013
Assessment Year 2009-10

M/s L.H. Sugar Factory Ltd., Civil Lines, Pilibhit. PAN AAACL 4597 L	Vs	JCIT, Range-2, Bareilly

ITA No.518 & 53/LKW/2015
Assessment Years 2010-11 & 2011-12

M/s L.H. Sugar Factory Ltd., Civil Lines, Pilibhit. PAN AAACL 4597 L	Vs	JCIT, Range-2, Bareilly

ITA No.569/LKW/2015
Assessment Year 2011-12

DCIT, Circle-2, Bareilly	Vs	M/s L.H. Sugar Factory Ltd., Civil Lines, Pilibhit. PAN AAACL 4597 L
(Appellant)		(Respondent)

Appellant by	Shri Ajeet Kumar, CIT DR
Respondent by	Shri A.K. Gupta, CA
Date of hearing	15/12/2015
Date of pronouncement	09/02/2016

O R D E R

PER BENCH:

Out of this bunch of eight appeals and cross objections, there are three appeals of the Revenue for the Assessment Years 2008-09, 2009-10 and 2011-12 and there are three appeals of the assessee for the same three assessment years and there are two cross objections of the assessee for AYs 2008-09 and 2009-10. All these were heard together and are being disposed of by way of this common order for the sake of convenience.

2. First we take up the appeal of the Revenue for AY 2008-09 i.e. ITA No. 417/Lkw/2013.

2.1 The Ground No.1 of the Revenue is as under:-

> *"1. That the order of the learned Commissioner of Income tax (Appeals) is erroneous in law and on facts in deleting the addition of Rs 96,30,992/- made by A.O. on account of sale of carbon credit treating it as income of the assessee."*

3. Ld. DR of the Revenue supported the assessment order whereas the Ld. AR of the assessee supported the order of the Ld. CIT(A). He also submitted that the issue is squarely covered in favour of the assessee by the judgment of the Hon'ble Andhra Pradesh High Court rendered in the case of CIT Vs. My Home Power Ltd. reported in 365 ITR 82. He has submitted that copy of this judgment is available on pages 181 to 182 of the paper book. He has also submitted that the Tribunal's order in the same case is also available on pages 183 to 195 of the paper book and the same was reported in 63 SOT 227. He also placed reliance on a Tribunal's order rendered in the case of Ambika Cotton Mills Ltd. Vs. DCIT reported in 61 SOT 31 copy available on pages 196 to 199 of the paper book.

4. We have considered the rival submissions. We find that the issue in dispute as per Ground No. 1 of appeal is regarding nature of receipt on account of sale of carbon credit and in the case of CIT Vs. My Home Power Ltd. (Supra) also, the dispute before Hon'ble Andhra Pradesh High Court was this as to whether the amount received by the assessee on transfer of carbon credit is capital receipt or Revenue receipt. It was held by Hon'ble Andhra Pradesh High Court in that case that carbon credit is not an

offshoot of business but an offshoot of environmental concerns and no assets is generated in the course of business but it is generated due to environmental concerns and therefore, it was held that the Tribunal has correctly held that this is a capital receipt and it cannot be business receipt of income and in this manner, Hon'ble Andhra Pradesh High Court has upheld the Tribunal's order in that case. The dispute in the present case is also regarding nature of receipt on account of transfer of carbon credit. Ld. DR of the Revenue could not point out any difference in facts in the present case and in the case of CIT Vs. My Home Power Ltd. (Supra) and therefore, respectfully following this judgment of Hon'ble Andhra Pradesh High Court, we decline to interfere in the order of Ld. CIT(A) on this issue. Accordingly, Ground No.1 of the Revenue is rejected.

5. The Ground Nos. 2 and 3 of the Revenue are as under:-

> *"2. That the order of Ld CIT(A) is erroneous in law and facts in restricting the addition to Rs 1,00,000/- instead of Rs.3,24,708/-/- made by A.O, on account of miscellaneous expenses,*
>
> *3. That the order of Ld CIT(A) is erroneous in law and facts in restricting the addition to Rs 1,00,000/- and granting relief of Rs 8,35,016/- made by A.O. on account of building and machinery repairs."*

6. Ld. DR of the Revenue supported the assessment order whereas it is submitted by Ld. AR of the assessee that both these issues are covered in favour of the assessee by the Tribunal's order in assessee's own case for Assessment Year 2007-08 in ITA No. 416/Lkw/2013 dated 16.09.2015. He submitted a copy of this Tribunal's order and pointed out that same two

issues were raised by the Revenue in that year as per Ground Nos. 3 and 4 and the Tribunal rejected both these grounds of the Revenue in that order as per paras 11 to 16 of that Tribunal's order.

7. We have considered the rival submissions. We find that in Assessment Year 2007-08, similar issues were before the Tribunal in that year also and in that year, the Assessing Officer made the disallowance of Rs.3,11,522/- out of the expenses claimed as miscellaneous expenditure and Rs.6,78,700/- out of the expenses claimed as repair and maintenance expenses. Ld. CIT(A) restricted these two disallowances to Rs.1.00 lakh under each head. Against the aforesaid relief allowed by the CIT(A), Revenue was before the Tribunal and the Tribunal declined to interfere in the order of Ld. CIT(A) in that year on both these issues on this basis that the Assessing Officer has not pointed out any specific defect in the maintenance of account but at the same time, the assessee has not placed any evidence on record to justify that all expenses claimed by the assessee are duly vouched and open for verification. The Tribunal held in that year that under these circumstances, there is no infirmity in the order of Ld. CIT(A) who has restricted the addition to Rs.1.00 lakh under each head. In the present year also, these two disallowances were made by the Assessing Officer on general basis without pointing out any specific defect in the books of account of the assessee and at the same time, the assessee also could not establish that all the expenses are duly vouched and are open for verification. Hence, it is seen that the facts in the present year are similar to the facts in Assessment Year 2007-08 and therefore, we

do not find any reason to take a contrary view in the present year. Accordingly, both these grounds of the Revenue are also rejected.

8. The Ground No.4 of the Revenue is as under:-

> *"4 That the order of Ld CIT(A) is erroneous in law and facts in deleting the addition of Rs 1,85,43,165/- made by A.O. on account of suppressed production and sale of bagasse."*

9. Ld. DR of the Revenue supported the assessment order whereas it is submitted by Ld. AR of the assessee this issue was also before the Tribunal in Assessment Year 2007-08 as per Ground No.5 in that year and it was held by the Tribunal in that year that the Assessing Officer was justified in estimating the yield of bagasse at 34% because the assessee itself has shown yield of bagasse at 34.29% for Assessment Year 2008-09. Thereafter, it was submitted that in the present year, the Assessing Officer estimated the yield of bagasse at 36% as against yield disclosed by the assessee at 34.27%. He submitted that under these facts, no addition is justified in the present year.

10. We have considered the rival submissions. We find that in Assessment Year 2007-08, the Tribunal has considered the whole history of yield of bagasse from Assessment Year 2004-05 to Assessment Year 2008-09 and thereafter, the Tribunal held that the Assessing Officer is justified in estimating the yield of bagasse at 34%. Since in the present year, the yield of bagasse reported by the assessee is 34.27% which is more than 34% estimated by the Tribunal in Assessment Year 2007-08, we find force in the submissions of the Ld. AR of the assessee that no addition is called for in the present year on this issue under these facts.

Hence, by respectfully following the Tribunal's order in assessee's own case for Assessment Year 2007-08, we decline to interfere in the order of Ld. CIT(A) on this issue. Accordingly, Ground No. 4 of the Revenue is rejected.

11. The Ground No.5 of the Revenue is as under:-

> *"5. That the order of Ld CIT(A) is erroneous in law and facts in deleting the addition of Rs 5,94,01G/- made by A.O. on account of expenditure in the nature of capital expenditure made under the head molasses tank."*

12. Ld. DR of the Revenue supported the assessment order whereas Ld. Ld. AR of the assessee of the assessee supported the order of Ld. CIT(A).

13. We have considered the rival submissions. We find that the decision of Ld. CIT(A) on this issue is as per following paras on pages 18 and 19 of his order which are extracted as under:-

> *"I have gone through the facts and circumstances of the case. It is seen that the assessee had created the fund for creation of tank for molasses. This was as per the directions by the Central Government under the Molasses Control (Amendment) Order, according to which the assessee was directed to keep this amount under a separate account under the head "Molasses storage fund". Though the assessee collected this amount under the statutory obligation, it did not belong to the assessee, but to the molasses storage fund. The assessee could not utilize the amount in the said fund for any other purpose. The fund had to be utilized for the purpose of constructing a storage tank in accordance with the specifications given by the Central Government. Therefore, there was diversion of title at the source of the income collected under the directions given under the Molasses Control (Amendment) Order. The sum in question was not includible in the assessee's total income. This is also the view contained in the*

order of Madras High Court in Salem Coop Mills Ltd reported in 229 ITR 285 (Mad). This view is also supported by the judgments of the Honorable Supreme court in CIT Vs new Horizon Sugar Mills pvt Ltd (2004) 269 ITR 397 (SC) and CIT vs Ambur Coop Mills Ltd (2004) 269 ITR 398.

In view of the income, I have no option but to delete the addition made by the Assessing Officer on the issue. The addition made by the Assessing Officer is directed to be deleted."

14. From the above paras from the order of Ld. CIT(A), we find that Ld. CIT(A) has followed the various judgments of the Hon'ble Madras High Court and Hon'ble Supreme Court and Ld. Ld. DR of the Revenue could not show us as to how these judgments are not applicable in the facts of the present case. In this view of the matter, we decline to interfere in the order of Ld. CIT(A) on this issue also. Accordingly, Ground No.5 is also rejected.

15. The Ground No.6 of the Revenue is as under:-

"6. That the order of Ld CIT(A) is erroneous in law and facts in deleting the addition of Rs 80,03,203/-made by A.O. on account of low value of bagasse claimed and sold the same in open market at Rs 80,03,203/-."

16. Ld. DR of the Revenue supported the assessment order whereas Ld. Ld. AR of the assessee of the assessee supported the order of Ld. CIT(A). He also submitted that the statement of bagasse sales during the present year is available on page 55 of the paper book.

17. We have considered the rival submissions. We find that as per details regarding sale of bagasse in the present year available on page 55 of the paper book, there are different rates in the range of Rs. 40 per.qtl.

to Rs. 150 per qtl. and the average of entire sales comes to Rs.67.88 per qtl. The rate of Rs.80 per qtl. has been adopted by the Assessing Officer on this basis that this rate was disclosed by Pooranpur and Majhola Sahkari Chini Mill for the present year. Since the assessee has shown some sales at Rs.150 per qtl., some at Rs.130 per qtl. and some at Rs.120 per qtl. also, it cannot be said that lesser sales proceed of bagasse has been shown by the assessee without bringing some evidence on record, suggesting such reduction in sales proceeds accounted for by the assessee by showing lesser amount of sale proceeds as against actual realization of higher sales proceeds because if the assessee is doing so, then there is no need to show such high sale price of Rs. 120 to Rs. 150 per quintal for about 51,500 Quintals out of total sale of 615,631 Quintals. This has been deleted by the Ld. CIT(A) on this basis that there is no evidence in the possession of the Assessing Officer which goes to prove that the assessee had actually sold the declared bagasse at Rs.80 per qtl. or at a higher rate then what has been declared by the assessee and in the absence of such information or evidence, no addition can be made in the hands of the assessee. In the facts of the present case, we find no infirmity in the order of Ld. CIT(A) on this issue. Therefore, this Ground is rejected.

18. The Ground No.7 of the Revenue is as under:-

"7. That the order of Ld CIT(A) is erroneous in law and facts in deleting the addition of Rs 34,58,297/- made by A.O. under the head provision of interest on extra levy price."

19. Ld. DR of the Revenue supported the assessment order whereas Ld. Ld. AR of the assessee of the assessee supported the order of the Ld. CIT(A).

20. We have considered the rival submissions. This issue has been decided by the Ld. CIT(A) by way of on cryptic order of two lines which is reproduced below from page 17 of the order of the ld. CIT(A):-

> "*Provision of Interest I find substance in A.R.'s submissions. The liability could be treated as an ascertained liability. The same is directed to be allowed."*

21. Since the order of ld. CIT(A) on this issue is not a speaking order, we feel it proper that this matter should go back to the file of ld. CIT(A) for fresh decision by way of speaking order. Accordingly, we set aside the order of ld. CIT(A) on this issue and restore this matter back to his file for fresh decision by way of speaking and reasoned order after providing adequate opportunity of being heard to both sides. Accordingly, Ground no. 7 is allowed for statistical purposes.

22. In the result, appeal of the Revenue is partly allowed for statistical purposes.

23. Now, we take up the CO of the assessee for Assessment Year 2008-09 i.e. CO No. 26/Lkw/2013.

24. The grounds of the assessee are as under:-

> *"A- <u>Grounds to support order of CIT(A):</u>*

For that learned CIT(A) has passed order and allowed relief on consideration of facts and circumstances of the case, applicable law, written explanations filed by assessee, case laws and precedence relied on by assessee .Therefore, relief allowed by learned CIT(A) on various issues, may be confirmed and the ground nos. 1-8 of departmental appeal may be dismissed.

B. Grounds to seek further relief:

1. *For that learned CIT(A) was wrong in confirming disallowance on estimated and adhock basis to the extent of Rs.one lakh out of Miscellaneous Expenses and Rs. one lakh out of repairs and Maintenance Expenses with his contention for both items that "However to plug any possible lacunas, it is fair and just to sustain an addition of Rs.1,00,000/- in order to cover up for any deficiency" .*

2. *In view of assessee being a company, its size and nature of organization, location of sugar mill, internal check and control system, audit system, fact that major payments are made through banking channels and tax has also been deducted wherever applicable, and also petty nature of some of other expenses the disallowances out of miscellaneous expenses Rs, one lakh and out of repair and maintenance expenses Rs. one lakh totaling Rs. two lakh, being on presumption of lacunae, may kindly be deleted fully, (these grounds are related with ground nos. 2 and 3 of* departmental appeal)."

25. It was submitted that by Ld. AR of the assessee that these grounds are interconnected with Ground No. 2 and 3 raised by the Revenue in its appeal and these are also covered by the same Tribunal's order in assessee own case for Assessment Year 2007-08.

26 Ld. DR of the Revenue supported the assessment order.

27. We have considered the rival submissions. We find that in Assessment Year 2007-08 also, disallowance of Rs. 1.00 lakh under each of these two heads were confirmed by the ld. CIT(A) and the order of Ld. CIT(A) in that year was also confirmed by the Tribunal and no difference in facts could be pointed out by the Ld. Ld. AR of the assessee and therefore, in the present year, these two issues are decided against the assessee and accordingly these grounds of the CO are rejected.

28. In the result, CO of the assessee is dismissed.

29. Now, we take up the appeal of the Revenue for Assessment Year 2009-10 i.e. 418/Lkw/2013.

30. The Ground No.1 of the Revenue is as under:-

> *"1. That the order of the learned Commissioner of Income tax (Appeals) is erroneous in law and on facts in deleting the addition of Rs 2,77,08,800/-made by A.O. on account of sale of carbon credit treating it as income of the assessee."*

31. Both sides agree that this issue is identical to Ground no.1 in Revenue's appeal for Assessment Year 2008-09 and the same can be decided in the present year also on similar line. In Assessment Year 2008-09, as per Para No. 4 above, this issue has been decided by us in favour of the assessee and accordingly in the present year also, this issue is decided in favour of the assessee on similar line. Accordingly, Ground No.1 is rejected.

32. The Grounds No.2 and 3 of the Revenue are as under:-

"2. That the order of ld CIT(A) is erroneous in law and facts in restricting the addition to Rs 1,00,000/- instead of Rs 3,50,050/- made by A.O. on account of miscellaneous expenses.

3. That the order of Ld CIT(A) is erroneous in law and facts in restricting the addition to Rs 1,00,000V- and granting relief of Rs.8,25,190/- made by A.O. on account of building and machinery repairs."

33. Both sides agree that these two grounds are also identical to Ground no. 2 and 3 raised by the Revenue in Assessment Year 2008-09 and the same can be decided in the present year also on similar line. In Assessment Year 2008-09, Ground Nos. 2 and 3 were also decided by us in favour of the assessee as per Para No. 7 and therefore, on similar line, in the present year also, both these issues are decided in favour of the assessee. Accordingly, Ground Nos 2 and 3 of the Revenue are rejected.

34. The Ground No.4 of the Revenue is as under:-

"4. That the order of Ld CIT(A) is erroneous in law and facts in deleting the addition of Rs 1,29,29,258/- made by A.O. on account of suppressed production and sale of bagasse."

35. Both sides agreed that this issue is identical to Ground No.4 in Revenue's appeal for Assessment Year 2008-09. It was submitted by the Ld. AR of the assessee that in the present year, Assessing Officer has noted in para 5 of the assessment order that the assessee has disclosed yield of bagasse at 34.69% and since yield of 34% bagasse in Assessment Year 2007-08 is approved by the Tribunal, no addition is called for in the present year on this account.

36. We have considered the rival submissions. We find that as per the Tribunal's order in assessee own case for Assessment Year 2007-08, yield of baggase at 34% was approved by the Tribunal and since in the present year, the assessee disclosed the yield of bagasse at 34.69%, the addition made by the Assessing Officer by adopting yield of bagasse at 36% is not justified. We, therefore, decline to interfere in the order of Ld. CIT(A) on this issue. Accordingly, Ground No. 4 of the Revenue is rejected.

37. In the result, appeal of the Revenue is dismissed.

38. Now, we take up the CO filed by the assessee for Assessment Year 2009-10 i.e. CO No. 27/Lkw/2013.

39. It was submitted by Ld. AR of the assessee that the CO is withdrawn and accordingly, this CO of the assessee is dismissed as withdrawn.

40. In the result, CO of the assessee is dismissed.

41. Now, we take up the appeal of the assessee for Assessment Year 2009-10 i.e. ITA No. 339/Lkw/2013.

42. The grounds raised by the assessee in this appeal are as under:-

> *"1. For that learned AO was wrong in completely ignoring the facts that assessee has business loss of Rs.24.97 Crore and Rs.20.78 Crore as per return and as per assessment order, respectively. That such loss is kept apart for carry-forward. Therefore, there was no computation of 'Gross Total Income' from which deductions under Chapter VI-A could be allowed, to make a computation of 'total income' and then a computation of tax payable' on 'total income' could be made.*

2. *For that Id. CIT(A) was wrong in dismissing the grounds no. 6 and 7 in appeal before him, by not following the binding judgment of the Calcutta High court in the case of Vishnu Sugar Mills Ltd, approving order of ITAT, and other decisions relied on by assessee, in which it has been held that when there is no computation of Gross Total income, deductions under chapter VIA could not be allowed to compute 'total income' and 'tax payable' then S. 115JB will not be applicable as the charging section and computation provisions are integral code and computation fails when there is no gross total income so the charge also fails.*

3. *For that learned CIT(A) was also wrong in ignoring the fact that decisions of the Calcutta High Court and Tribunal has attained finality since the revenue has not challenged judgments of Calcutta High Court before the Supreme Court, and many judgments of Tribunal have not been challenged before the Calcutta High Court. Therefore, the judgments relied on by assessee, in cases of Vishnu Sugar Mills Ltd, Sasamusa Sugar Works Ltd and Neeraj Vanijya P. Ltd are binding in view of law laid down in case of Berger Paints India Ltd. Vs CIT [2004] 266 ITR 99 (SC).*

4. *For that learned CIT(A) was wrong in applying decision of ITAT, Kolkata, in case of Bhatkwa Tea Industries Ltd, and impliedly applying decision in case of DCW Ltd of Bombay Tribunal, though in these cases no grounds were taken at all by respective assessee about integrality of charging provision and computation provision and non applicability of S. 115JB when there was no 'Gross Total income* from which deductions could be allowed under chapter VI-A and , when there was no computation of total income' and 'tax payable' on normally computed 'total income'.*

5. *For that Ld. Assessing Officer (AO) may kindly be directed not to apply section 115JB since there is business loss which is kept apart for carry forward, there is no - computation of gross total income' from which deductions can be allowed to compute 'total income' and a*

computation of 'tax payable' can be made, and therefore, the pre-conditions to apply section 115JB are not satisfied and in view of the judgment of the Calcutta Tribunal in case of Vishnu Sugar Mills Ltd. which has been approved by the Calcutta High Court, and attained finality, and other judgments of Calcutta Tribunal which also have attained finality, section 115JB is not applicable in assessee's case for the year under consideration.

6. *For that learned CIT(A) was wrong in confirming disallowance on estimated basis to the extent of Rs.one lakh out of Miscellaneous Expenses and Rs. one lakh out of repairs and Maintenance Expenses with his contention for both items that "However to plug any possible lacunas, it is fair and just to sustain an addition of Rs. 1,00,000/- in order to cover up for any deficiency" .*

7. *In view of size and nature of organization, location of sugar mill, internal check and control system, audit system, fact that major payments are made through banking channels and tax has also been deducted wherever applicable, and also petty nature of some of other expenses the disallowances out of miscellaneous expenses Rs, one lakh and out of repair and maintenance expenses Rs. one lakh totaling Rs. two lakh may kindly be deleted fully.*

8. *For that during pendency of this appeal, the learned AO may be directed not to press for disputed dues of MAT u/s 115JB, which hopefully will not survive, when appeal is decided in view of binding judgments referred to in ground no.5.*

9. *The appellant seek permission to raise new contentions and new grounds of appeal in the interest of justice."*

43. The assessee has also raised additional ground, which is as under:-

"1. For that learned CIT(A) may be directed to consider the additional ground of appeal taken by assessee, before him,

which he seems to have inadvertently ignored to consider particularly when learned CIT(A) has allowed relief on similar ground of appeal of Assessment Years 2007-08 and 2008-09 heard and decided by him at the same time . Alternatively the learned AO may be directed to allow initial depreciation u/s 32(1) (iia) as an incentive and one time allowance @ 20% of cost of new eligible plant and machinery, as allowed by the learned CIT(A) in Assessment years 2007-08 and 2008-09."

44. As per Grounds No. 1 to 5 of the appeal, the issue involved is regarding applicability of the provisions of Section 115JB in the present case when the assessee is having no gross total income. In this regard, reliance was placed by the Ld. AR of the assessee on the Tribunal's order rendered in the case of DCIT Vs. M/s Vishnu Sugar Mills Ltd. in ITA No. 2131 and 2133/Kol/2004, 193 & 774/Kol/2005 and 918/Kol/2002 dated 17.08.2005. He submitted that the copy of this Tribunal's order is available on pages 65 to 83 of the paper book. He also placed reliance on another Tribunal's order rendered in the case of Neeraj Vanijya Pvt. Ltd. Vs. ITO in ITA No.1504/Kol/2008 dated 31.10.2008 copy which is available on pages 84 to 87 of the paper book and also on one more Tribunal's order rendered in the case of Sasamusa Sugar Work Ltd. Vs. DCIT in ITA No. 1024/Kol/2007 dated 28.09.2007, copy available on pages 88 to 89 of the paper book. He also pointed out one judgment of Hon'ble Kolkata High Court rendered in the case of CIT Vs. M/s Vishnu Sugar Mills Ltd. in GA No. 3015 of 2006 in ITA No. 359 of 2006 dated 20.11.2006 for Assessment Year 2002-03, copy available on page 90 of the paper book.

45. Ld. DR of the Revenue submitted that on this aspect, these judgments of the Kolkata Tribunal and the Hon'ble Kolkata High Court are not applicable in the present case because these judgments are in the

context of Section 115JA of the Act, whereas in the present case, the relevant Section is 115JB of the Act.

46. We have considered the rival submissions. We find that in the case of Tribunal's order rendered in the case of DCIT Vs. Vishnu Sugar Mills Ltd. (Supra), the assessment year involved was Assessment Years 1996-97 to 2001-02. Provisions of Section 115JA are applicable in respect of any previous year relevant to the assessment year commencing on or after 1st April, 1997 but before the 1st April, 2001. As per provisions of Section 115JA of the Act, if the total income computed under this Act is less than 30% of book profit then the total income of such assessee chargeable to tax for the relevant previous year shall deem to be the amount equal to 30% of such book profit. Section 115JB has been inserted by Finance Act, 2000 w.e.f. 1.04.2001 and as per the provisions of this Section 115JB, instead of comparing the taxable income and book profit as prescribed in Section 115JA, the comparison has to be made with regard of the tax payable under the normal provisions of the Act with a prescribed rate of tax on book profit and if such tax payable under normal provisions of the Act is less than seven and half percent of book profit in the present year, then the assessee has to pay tax at the rate of 7.5% of book profit. This rate of 7.5% has since been increased first to 10% then to 15% and thereafter to 18% and now this is 18.5%. But the rate is not relevant for the purpose of deciding the issue in dispute for the purpose of examining as to whether the Tribunal's order rendered in the case of DCIT Vs. Vishnu Sugar Mills Ltd. (Supra), is applicable in the present case or not. In our considered opinion, as per the provisions of Section 115JA of the Act, the

comparison was to be made between total income computed as per normal provisions of the Act and 30% of book profit and because of this, it was held by the Tribunal in that case that since the assessee was having losses under the normal provisions of the Act and for the purpose of computing book profit also, loss brought forward or unabsorbed depreciation whichever is less is also required to be reduced from the amount of book profit as per profit and loss account, it was held that the provisions of Section 115JA are not applicable but in the present case, after insertion of Section 115JB of the Act, there is no comparison to be made between 30% book profit and total income as per normal provisions of Act and therefore, the very basis of this Tribunal decision is not in existence. Now after insertion of Section 115JB of the Act, what is required is to compare the tax payable under normal provisions of the Act and if such tax payable is less than the specified percentage of book profit then the assessee has to make payment of the prescribed percentage of book profit as MAT u/s 115JB of the Act. This is undisputedly admitted position that tax payable by the assessee company under normal provisions of the Act is NIL and therefore, MAT is payable by the assessee u/s 115JB at the rate of 7.5% of book profit and this Tribunal order relied upon by the Ld. AR of the assessee having rendered in the case of DCIT Vs. Vishnu Sugar Mills Ltd. (Supra) is not rendering any help of the assessee in the present case. The judgment of the Hon'ble Kolkata High Court rendered in the case of DCIT Vs. Vishnu Sugar Mills Ltd. (Supra) is in respect of Assessment Year 2002-03, when the provisions of Section 115JB is applicable and this was the question before the Hon'ble Kolkata High Court as to whether the Tribunal was justified in holding that when there is no

gross total income assessed in the assessment order, Section 115JB will not be applicable and it was also noted in the same question that as per the provisions of Section 115JB of the Act, it is clear that if tax payable on the total income as computed under the Act is less than 7.5% of book profit then the book profit shall be deemed to be total income of the assessee and tax payable by the assessee on such total income shall be amount of income tax rate of 7.5%. But in spite of this specific question, the judgment of the Hon'ble Kolkata High Court is not a speaking judgment and it was held by the Hon'ble Kolkata High Court that from the perusal of the Tribunal order, it appears that the Tribunal has extensively dealt with the matter and no substantial question of law is involved in that case. Under these facts, in our considered opinion, this judgment of Hon'ble Kolkata High Court does not lay down a binding precedent that too out of its own jurisdiction. We also find that the Tribunal order in the case of DCIT Vs. Vishnu Sugar Mills Ltd. (Supra), for Assessment Year 2003-03 is also available on page 91 of the paper book and in this Tribunal order, there is no discussion and Tribunal has simply held that this issue is covered by the Tribunal's order in assessee's own case in a bunch of appeals filed by the Revenue and CO filed by the respondent wherein the Tribunal has held that if there is no gross total income or total income, the provisions of Section 115JB cannot be invoked. The issue was decided on the basis of Section 115JA of the Act. Although one of the year before the Tribunal in that order also was Assessment Year 2001-02, wherein the provisions of Section 115JB of the Act was applicable and although the Tribunal has noted in Para 42 of that Tribunal's order available on page 81 of the paper book that in this year, the provisions of Section 115JB are

applicable but while deciding the issue as per Para 44 of the Tribunal's order, the Tribunal has not taken note of the differences in the provisions of Section 115JA and 115JB of the Act and therefore, in our considered opinion, this Tribunal's order is per inqurium because it has not considered the change in law in proper prospective and therefore, this Tribunal's order also does not lay down a binding precedent.

47. Same is the case with regard to other Tribunal's orders, on which reliance has been placed by Ld. AR of the assessee because in these cases also, the Tribunal simply followed the judgment of the Hon'ble Kolkata High Court rendered in the case of DCIT Vs. Vishnu Sugar Mills Ltd. (Supra), and we have already seen that the judgment of Hon'ble Kolkata High Court rendered in the case of DCIT Vs. Vishnu Sugar Mills Ltd. (Supra) and the Tribunal's order in that case are not laying down binding precedent and therefore, any Tribunal's order by blindly following these judicial pronouncement also are not laying down a binding precedent. As per the above discussion, we find that none of the judicial pronouncements cited by Ld. AR of the assessee is applicable in the present case in support of this contention that because of loss, the provisions of Section 115JB are not applicable.

48. The second contention raised by Ld. AR of the assessee is that since Ld. CIT(A) himself has held that the receipt of account of transfer of carbon credit is a capital receipt not liable to tax, the same is required to be reduced from book profit because capital receipt cannot be considered as a part of book profit liable to tax. He placed reliance on a Tribunal's order rendered in the case of M/s Shree Cement Ltd. Vs. The Addl. CIT in

ITA No.503/JP/2012 dated 27.01.2014. He submitted a copy of this Tribunal's order. In particular, our attention was drawn to Para 40 of this Tribunal's order. It was submitted in that case also, same issue was before the Tribunal as to whether the receipt on account of carbon credit is to be reduced from book profit u/s 115JB of the Act or not and the Tribunal has decided this issue in favour of the assessee. He also placed reliance on another Tribunal's order rendered in the case of ACIT Vs. M/s Shree Cement Ltd. in ITA Nos. 614, 615 & 635/JP/2010 dated 09.09.2011. He submitted that the copy of this Tribunal's order is available from pages 163 to 180 of the paper book. He further pointed out that in this Tribunal's order, the Tribunal has duly considered the judgment of the Hon'ble Apex Court in the case of Apollo Tyres Ltd. vs. CIT reported in 255 ITR 273 and decided the issue in favour of the assessee by following another judgment of the Hon'ble Apex Court rendered in the case of Padma Sundara Rao Vs. State of Tamil Nadu reported in 255 ITR 147 (SC), wherein it was held that the court should not place reliance on the decisions without discussing as to how the factual situation fits in with the facts situation of the decision on which reliance is placed. In this regard, our attention was also drawn to Para 13 to 13.11 of this Tribunal's order. Ld. DR of the Revenue supported the order of authorities below.

49. We have considered the rival submissions. We find that this aspect has been already decided by us as to whether receipt on account of transfer of carbon credit is a capital receipt not liable to tax or not. Now, in the light of this factual position, we examine the applicability of this Tribunal's order rendered in the case of ACIT Vs. M/s Shree Cement Ltd.

(Supra), for Assessment Year 2004-05 to 2006-07. The relevant paras of this Tribunal's order are para 13 to 13.11 of this Tribunal's order and the same are reproduced herein below for the sake of ready reference:-

> *"13. We have heard the rival submissions and considered them carefully. We have also perused the orders of authorities below as well as other material on which our attention has been drawn. We have taken into consideration the ratio decidendi of all the decisions relied upon by the rival parties.*
>
> *13.1 At the outset, the issue in hand is covered in favour of the assessee in its own case for A.Y. 2003-04 vide order dated 23-12-2009 in ITA No. 942/Jp/08. The above decision of Tribunal has been appealed before the Hon'ble Jurisdictional Rajasthan High Court and Hon'ble Jurisdictional High Court vide order dated 01-10-2010 has admitted only one ground which is reproduced below:*
>
> > *"Whether on the facts & circumstances of the case, the Tribunal was justified in holding that the Sales Tax Subsidy received by the Assessee of Rs. 18,48,85,506 in the form of Sales Tax Exemption was a capital receipt & not a revenue receipt, ignoring the basic purpose for which the same was given which itself provides that the subsidy was given to the Assessee to enhance the production, employment & sales in the state of Rajasthan, which are all post operational activities"*
>
> *From the above, it could be clearly seen that Hon'ble High Court admitted only the ground as to whether the impugned subsidy was a capital receipt or a revenue receipt. Hon'ble High Court has not admitted the ground of the Revenue against relief granted by Tribunal under Section 115JB of the Act on above capital receipt. Therefore, respectfully following the decision of jurisdictional High Court and the Tribunal in Assessee's own case for AY 2003-04 we see no reasons to take any other view on the matter different from the conclusions arrived at by this bench in favour of the Assessee, as far as exclusion from book profit under section 115JB is concerned,*

that now stands affirmed by the Hon'ble Rajasthan High Court and we are in respectful agreement with the same.

13.2 Our above view also finds support from the decision of Hon'ble Apex Court in the case of Padmaraje R. Kadambande vs. CIT .(1992) 195 ITR 877 (SC), wherein it has been held by the Apex Court that Capital Receipts are not income within the definition of Sec 2(24) of the Act and hence are not at all chargeable under the I.T. Act. A receipt which is neither 'Profit' nor 'Income' and which does not have any element there-of embedded there in, cannot be part of. 'Profit' as per Profit & Loss account prepared in terms of Part II of Schedule VI to Companies Act.

13.3 As far as the decisions relied upon by the Ld D/R are concerned, we are unable to follow the same in the present case, as the facts of the said decisions are clearly different from the facts in the present case. It is a settled principle of law as laid down by the Hon'ble Apex Court in the case of Padmasundra Rao (Deed.) vs. State of Tamil Nadu (2002) 255 ITR 147 (SC) that Courts should not place reliance on the decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.

13.4 From perusal of the decisions of Rain Commodities (supra) and Growth Avenues (supra), we notice that both the decisions dealt with the issue of taxability of capital gains in computing Book profit u/s 115JB of the Act. These capital gains were otherwise income u/s 2(24) of the Act and exclusion was claimed in computing Book Profit u/s 115JB on the ground that the said capital gains was exempt either u/s 47(iv) or u/s 54EC of the Act, which the Tribunal did not agree. In the present case, however, we are dealing not with capital gains but with pure capital receipt, which does not even have any 'income', 'profits or, gains' embedded therein. The impugned incentive granted to the Assessee is pure and simple capital receipt, in terms of our decision on ground no. 1 at Para 10 here-in-above, which in turn is supported by the principles laid down by the Apex Court, various high courts & Special Bench of the

Tribunal. That being the case, it does not have any income or profit element embedded in it, since the incentive was granted to encourage industrial growth of industrially non developed area. No one can make profit out of the subsidy or incentive granted to it. Hence, it is not chargeable to tax under the Income Tax Act as held by the Apex Court in the case of Padmaraje (supra) and in the light of our fact finding -as above, clearly not includible in P&L account prepared under Part II &_Part III of Schedule VI to the Companies Act.

13.5. The genesis of Sec 115J, thereafter section 115JA and now section 115JB was to ensure that the assessee, while making profit from operations, should not enjoy tax free status due to various deductions available under the Income Tax Act. There was never any intention of the legislature to tax what is not income at all. In a recent decision, the Hon'ble Apex Court in the case of Indo Rama Synthetics (I) Ltd -vs- CIT (2011) 330 ITR 363 (SC) has held that the object of MAT provisions is to bring out the real profit of the companies. The thrust is to find out the real working results of the company. Inclusion of receipt in the computation of MAT would defeat two fundamental principles, it would levy tax on receipt which is not in the nature of income at all and secondly it would not result in arriving at real working results of the company. The real working result can be arrived at only after excluding this receipt which has been credited to P&L a/c and not otherwise.

13.6 For better understanding of the issue, let us also extract down relevant provision of sec. 115JB as under.

> *"Every assessee, being a company, shall for the purpose of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Part II and Part III of Schedule VI to the Companies Act, 1956 (1 of J956)."*

13.7 On consideration of the above, it is apparent that for the purpose of computing book profit u/s 115JB Profit and Loss a/c shall be prepared as per Part II and III of Schedule VI to the Companies Act. Part II of Schedule VI prescribes the requirements as to Profit and Loss A/c. Clause 2{a) of Part II

clearly spells that the profit and loss a/c shall be so made out as clearly to disclose the result of the working of the company during the period covered by the accounts, Hence, in our view, P&L Accounts do not reflect the true result of the working of the company for the year, it cannot be said to be as per Schedule VI, Part II & III of the Companies Act and it would necessitate corrective adjustment in that situation so as to comply with Schedule VI, Part II & III.

13.8 With the above discussions, the only issue left to be considered is whether exclusion of the above capital receipt is in line with the principles as laid down by Hon'ble Apex Court in the case of Apollo Tyres (supra). In the case of Apollo Tyres (supra), the question before the Apex Court was whether an AO can, while assessing a company for income tax u/s 115J of the IT Act, question the correctness of the P&L tic prepared in accordance with requirements of Parts II and III of Sch. VI to the Companies Act. From the question as framed before the Apex Court it is clear that the issue before the Hon'ble Court was with regard to power of the AO to recast audited accounts prepared in accordance with Part II and Part III of the Sch. VI to the Companies Act. Therefore, for applicability of the decision of the Apex Court the prerequisite is that the accounts are prepared in accordance with Part II arid Part III to Sch. VI of the Companies Act. If however the P&L accounts are not in accordance with Part II and III of Sch. VI to the Companies Act, the said decision cannot be applied and in that situation it does not prohibit the needful adjustment.

13.9 Our view as above is supported by the decision of-the Special Bench in the case of Rain Commodities (supra), which incidentally has been relied upon by DR. On examination of the said order, we find that at Para 17 (last sub-para) & Para 18, after considering the decision of Supreme Court in Apollo Tyres Ltd (supra), Special Bench have held that if Profit & Loss account is not in accordance with Part II & Part III of Schedule VI to the Companies Act, it is permissible to alter the net profit so as to make it in accordance with Part II & III of Schedule VI, which is the starting point for computation of 'Book Profit' in terms of section 115JB. We have concluded in Para 13.4 above,

that inclusion of sales tax subsidy in the Profit and Loss is not in accordance with Schedule VI, Part II & III. Hence it implies that needful adjustment to exclude the same is not only permissible, but is mandatory so as to make the Profit & Loss Account compliant, with the basic requirement of Section 115JB.

13.10 Our view per Para 13.8 above is also supported by, the decision of Mumbai Tribunal in the case of Bombay Diamond (supra) & that of Bangalore Tribunal in the case of Syndicate Bank (supra) [both analyzed in Para 12.1 above], where also Tribunal, after considering the decision of Supreme Court in the case of Apollo Tyres (supra) and explaining the same, have permitted adjustment to the Profit as per P&L Account, so as to comply with Schedule VI, Part II & Part III of the Companies Act, which is a prerequisite for section 115JB.

13.11 In the light of the aforesaid, the additional Ground filed by the Department is rejected and we hold that capital receipt in the form of Sales Tax incentive needs to be excluded from profit as per P&L Account for the year in computing Book profit u/s 115JB of the Act. This Ground of the Department is thus dismissed."

50. From the above paras, we find that the Tribunal has duly considered the judgment of the Hon'ble Apex Court rendered in the case of Apollo Tyres Ltd. ((Supra) and thereafter, it was noted by the Tribunal in this case that as per the decision of Special Bench of the Tribunal rendered in the case of Rain Commodities Ltd. Vs. DCIT, 41 DTR 449, if profit and loss account is not in accordance with Part II & Part III of Schedule VI to the Companies Act, 1956 because it is prerequisite for Section 115JB of the Act. The Tribunal in this case also considered two another Tribunal's orders rendered in the case of DCIT Vs. Bombay Diamond Company Ltd. 33 DTR 59 and Syndicate Bank Vs. ACIT, 7 SOT 51 Bangalore where it was held by the Tribunal after considering the decision of Hon'ble Apex Court rendered in the case of Apollo Tyres Ltd. (Supra), and after

explaining the same that adjustment to profit and loss account is possible to make it compliant with Schedule VI Part II and Part III of the Companies Act, 1956 which is prerequisite of Section 115JB of the Act. On this basis, the Tribunal in the case of Shree Cement Ltd. (Supra) decided this issue in favour of the assessee and it was held that capital receipt in the form of sales tax subsidy needs to be excluded from profit as per P&L account for the purpose of computing book profit u/s 115JB of the Act. By respectfully following these Tribunal's orders, we hold that in the present case also, the receipt on account of transfer of carbon credit which is held to be a capital receipt needs to be excluded from profit as per P&L account for the present year while computing the book profit u/s 115JB of the Act. This issue is decided in favour of the assessee and accordingly Ground Nos.1 to 5 are allowed. The assessee gets relief of Rs.27,70,880/- and consequent interest being 10% of amount received by the assessee on sale of carbon credit of Rs.277,08,800/-.

51. Now we take up Grounds Nos.6 and 7. Both sides agreed that this issue raised in these grounds is same as has been raised by the assessee in CO No.26/Lkw/2015 for Assessment Year 2008-09 and the same can be decided on similar line. In Assessment Year 2008-09, we have decided this issue against the assessee and therefore, in the present year also, this issue is decided against the assessee and accordingly grounds no. 6 and 7 are rejected.

52. Regarding additional ground, it was submitted by Ld. AR of the assessee that since this issue was not decided by the Ld. CIT(A), the

matter may be restored back to the file of the Ld. CIT(A) for a decision on this issue. Ld. DR of the Revenue supported the order of the Ld. CIT(A).

53. We have considered the rival submissions. We find that this issue regarding allowing of initial depreciation u/s 32(i)(ii)(a) was not raised by the assessee before Ld. CIT(A) as per the grounds of appeal raised before him as available on record as Annexure 2 to Form-35. This contention is stated to have raised by the assessee before Ld. CIT(A) also by way of additional ground. But there is no such mention in the order of Ld. CIT(A) that any additional ground was raised by the assessee before him. Apart from this, no supporting document has been produced before us to establish that any additional ground was raised by the assessee before Ld. CIT(A) which he did not decide. There is no discussion or disallowance on this account in the assessment order also. Hence, this additional ground is not arising out of the orders of the lower authorities and hence, the relevant facts are not available on record and therefore, this issue cannot be raised by the assessee before us by way of additional ground. Accordingly, additional ground is rejected as unadmitted.

54. In the result, this appeal of the assessee is partly allowed.

55. Now, we take up the assessee appeal for Assessment Year 2010-11 i.e. ITA No. 53/Lkw/2015.

56. The Grounds raised by the assessee are as under:-

> *"1. The learned CIT (Appeals) has erred in law and on facts in confirming the disallowance out of miscellaneous expenses of Rs. 50,000/-.*

2. *The learned CIT (Appeals) has erred in law and on facts in confirming the disallowance out of repairs and maintenance expenses of Rs. 50,000/-.*

3. *The learned CIT (Appeals) has erred in law and on facts in confirming the applicability of section 11 5 JB of the Income 'Tax Act. 1961 on the facts and circumstances of the case and confirming the assessment al book profit of Rs. 38,06,07,184/- and imposing the Minimum Alternate 'Tax of Rs.5,70,91,078/-.*

4. *Such other relief as may crave in during the course of proceeding of the appeal and found equitable or justified by the Hon'ble Tribunal."*

57. Both sides agreed that the Grounds No. 1 and 2 in the present year are same as Grounds No. 6 and 7 in assessee's appeal for Assessment Year 2009-10 in ITA No. 339/Lkw/2013 and the same may be decided in similar line. Regarding Ground No.3, it was submitted by Ld. AR of the assessee that since there is no taxable income after adjustment of brought forward business loss and unabsorbed depreciation, the provisions of Section 115JB are not applicable.

58. Ld. DR of the Revenue supported the order of authorities below.

59. We have considered the rival submissions. Regarding Ground Nos. 1 and 2 we find that this issue is squarely covered against the assessee because in Assessment Year 2008-09, disallowance was made by the Assessing Officer and confirmed by Ld. CIT(A) to the extent of Rs.1.00 lakh under each head whereas the present year, disallowance made and confirmed is only Rs.50,000/- under each head and therefore, we do not find any reason to interfere in the order Ld. CIT(A) on this issue. Grounds No. 1 and 2 are rejected.

60. Regarding Ground No.3, we find that this aspect of the matter regarding non applicability of the provisions of Section 115JB in the event of assessment of loss under normal provisions has been decided by us against the assessee a per Para No. 46 to 47 above in Assessment Year 2009-10 and therefore, in the present year also, this issue is decided against the assessee and Ground No.3 is also rejected.

61. In the result, appeal of the assessee is dismissed.

62. Now, we take up the appeal of the assessee for Assessment Year 2011-12 in ITA No. 518/Lkw/2015.

63. The Grounds raised by the assessee are as under:-

"1. The learned' CIT (Appeals) has erred in law and on facts in confirming the disallowance out of miscellaneous expenses of Rs.50,000/-.

2. The learned CIT (Appeals) has erred in law and on facts in confirming the disallowance out of repairs and maintenance expenses of Rs.50,000/-.

3. The learned CIT (Appeals) has erred in law and on facts in confirming the applicability of section 115 JB of the Income Tax Act, 1961 on the facts and circumstances of the case and confirming the assessment at income of Rs.19,75,97,090/- and imposing the Tax of Rs.8,63,89,200/- without allowing deduction of carried forward losses and unabsorbed depreciation and without seeking that Gross Total Income is nil. As there will not be Gross Total Income, therefore section 115 JB will not be applicable..

4. Such other relief as may crave in during the course of proceeding of the appeal and found equitable or justified by the Hon'ble Tribunal."

64. It was agreed by both sides that all three grounds raised by the assessee in this year are identical to the grounds raised by the assessee in its appeal for Assessment Year 2010-11. Therefore in the present year also, all the three grounds can be decided on similar line as per the Tribunal's order in Assessment Year 2010-11. In that year, all the three grounds of the assessee were rejected as per Para No… 59 to 60 above and accordingly, in the present year also, all these three grounds are rejected on similar line.

65. In the result, appeal of the assessee is dismissed.

66. Now, we take up the appeal the Revenue for Assessment Year 2010-11 in ITA No. 569/Lkw/2015.

67. The grounds raised by the Revenue are as under:-

> *"(1) That the order of the Commissioner of Income Tax (Appeals) is erroneous in law and on facts in deleting the addition rightly made by the Assessing Officer on account of Miscellaneous Expenses at Rs.2,98,238/-.*
>
> *(2) That the order of the Commissioner of Income Tax (Appeals) is erroneous in law and on facts in deleting the addition rightly made by the Assessing Officer on account of Repairs and Maintenance Expenses at Rs. 6,29,228/-.*
>
> *(3) That the order of the Commissioner of Income Tax (Appeals) is erroneous in law and on facts in deleting the addition rightly made by the Assessing Officer on account of low production of bagasse at Rs.3, 84,23,000/-.*

(4) That the order of the Commissioner of Income Tax (Appeals), Bareilly is erroneous in law and on facts may be cancelled and the order of the Assessing Officer may be restored.

(5) Any me ground of appeal may be taken at the time of hearing of appeal."

68. It was agreed by both sides that Grounds No. 1 and 2 are similar to Grounds No. 2 and 3 in Revenue's appeal for Assessment Year 2008-09 in ITA No. 417/Lkw/2013 and therefore, these grounds can be decided on similar line in the present year also. Regarding Ground No.3, it was agreed by both sides that this issue is identical to ground no.4 raised by the Revenue in Assessment Year 2008-09 and therefore, the same can be decided on similar line.

69. We have considered the rival submissions. We find that in Assessment Year 2008-09, the issue regarding deletion of part disallowance by the Ld. CIT(A) in respect of disallowance made by the Assessing Officer under the head miscellaneous expenses and repairs and maintenance have been decided by us in favour of the assessee as per Para No. 7 and therefore, in the present year also, these two issues are decided in favour of the assessee on similar line. Accordingly, Ground No. 1 and 2 are rejected.

70. Regarding Ground No.3, we find that in Assessment Year 2008-09, we followed the earlier Tribunal's order in assessee's own case for Assessment Year 2007-08 in which the Tribunal has approved the adoption of yield of bagasse at 34 % whereas the Assessing Officer has adopted the same at 36%. Respectfully following the earlier Tribunal's order for

Assessment Year 2007-08, we hold that the present year also, Assessing Officer should adopt yield percent of 34% as against 36% adopted by him and 32.80% reported by the assessee. Accordingly this ground no.3 is partly allowed.

71. In the result, appeal of the Revenue is partly allowed.

72. In the combined result, ITA No. 417/Lkw/2015 is partly allowed for statistical purposes, CO No. 26 & 27/Lkw/2013 and ITA Nos. 418/Lkw/2013, 53/Lkw/2015 and 518/Lkw/2015 are dismissed and ITA No.569/Lkw/2015 and 339/Lkw/2013 are partly allowed.

(Order was pronounced in the open court on the date mentioned on the caption page)

Sd/-	**Sd/-**
(SUNIL KUMAR YADAV)	**(A.K. GARODIA)**
Judicial Member	**Accountant Member**

Dated: 09/02/2016
Aks

Copy of the order forwarded to :

1.The Appellant
2.The Respondent.
3.Concerned CIT
4.The CIT(A)
5.D.R., I.T.A.T., Lucknow

Asstt. Registrar