आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए' अहमदाबाद।

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

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND SHRI KUL BHARAT, JUDICIAL MEMBER

ITA/IT(SS)A/CO No.	AY	Appellant	Respondent
IT(SS)A Nos. 615 to 618/Ahd/2010	2005-06 2006-07 2007-08 2008-09	ACIT, Central Circle 1(1) Ahmedabad	M/s. Kunvarji Finance Pvt. Ltd., 310, Shyamak Complex, Nr. Kamdhenu Complex, Ambawadi, Ahmedabad PAN : AAACK 8759 R
CO Nos. 250 to 253/Ahd/2010	2005-06 to 2008-09	Assessee	Revenue
IT(SS)A Nos. 677 to 680/Ahd/2010	2005-06 to 2008-09	Revenue	M/s. Kunvarji Commodities Brokers Pvt Ltd. PAN : AABCD 9219 N
CO Nos. 313 to 315/Ahd/2010	2005-06 2006-07 2007-08	Assessee	Revenue
IT(SS)A Nos. 813 & 814/Ahd/2010	2006-07 2007-08	Revenue	Shri Jayprakash R. Thakkar, Prop. Sureshkumar & Co., 11/1, Market Yard, Bhabhar (NG) PAN : ABPPT 6783 P
CO Nos. 342 & 343/Ahd/2010	2006-07 2007-08	Assessee	Revenue
IT(SS)A Nos. 815 to 817/Ahd/2010	2005-06 2006-07 2007-08	Revenue	Shri Prakash Hiralal Thakkar, A-501, Palak Avenue, Jodhpur, Satellite, Ahmedabad PAN : ABPPT 2321 K
CO Nos. 344 to 346/Ahd/2010	2005-06 2006-07 2007-08	Assessee	Revenue
IT(SS)A No. 301/Ahd/2011	2006-07	Revenue	Meenaben M Parikh, B-2, Ashwamegh Avenue, Mithakhali Six Roads, Navrangpura, Ahmedabad PAN : ACSPP 0205 B
IT(SS)A No. 302/Ahd/2011	2006-07	Revenue	Jay M Parikh, B-506, Kalasagar Flat, Jodhpur Char Rasta, Satellite, Ahmedabad PAN : AMRPP 5803 H

Revenue by :	Shri Subhash Bains, CIT-DR
Assessee(s) by :	Shri S.N. Soparkar, AR

सुनवाई की तारीख/**Date of Hearing : 23 & 25 /02/2015**
घोषणा की तारीख /**Date of Pronouncement: 19/03/2015**

आदेश/O R D E R

PER BENCH :

This bunch of appeals by the Revenue and Cross-objections by different assessees have been filed against the separate orders of learned CIT(A)-I, Ahmedabad. Since these appeals & Cross-objections involve common issues, these were heard together and are being disposed of by this consolidated order for the sake of convenience.

IT(SS)A No.615/Ahd/2010 : AY 2005-06 (by Revenue)

2. In this appeal by the Revenue following grounds were raised:-

"1. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.2,87,75,583/- made on account of suppression of profit by the assessee company by way of client code modification by the brokers in a large number of commodity transactions.

2. The Ld. CIT(A) has erred in law and on facts in accepting the view of the appellant that the disclosure at the time of search had no basis to be accepted.

3. The Ld. CIT(A) has erred in law and on facts in holding that the AO was not justified in invoking the provisions of Section 145(3) of the Act.

4. On the facts and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the A.O.

5. It is, therefore, prayed that the order of the CIT(A) be set aside and that of the A.O. be restored to the above extent."

3. The facts of the case are that the assessee-company is engaged in the business of share trading; F&O transactions in shares and securities, commodity trading, speculation in shares and commodities etc. The assessee-company is part of group of companies which include Kunwarji Commodity Brokers Pvt Ltd (KCBPL for short) and Kunwarji Finstock Pvt Ltd (KFPL for short). The company KCBPL is a registered broker in Commodity Exchanges while the company KFPL is a registered broker in share market. In the case of Kunwarji group of cases, a search u/s 132(1) was carried out on 25.03.2008. At paragraph 1 of the assessment order, the Assessing Officer has stated that during the course of search various books of account and documents as per Annexures A1 to A65 of the Panchnama were seized from the main office premises of this group and surveys were also carried out in the companies of this group. Searches were simultaneously carried out at the residential premises of the directors Shri Nayan Thakkar, Shri Kunal Shah and Smt. Rujuta Sheth and their statements were recorded. During the course of assessment proceedings, the Assessing Officer noticed that KCBPL has done client code modifications for unusually high numbers of time. Therefore, the Assessing Officer drew inference that the modification of the client code had been resorted to with malafide intention and for the purpose of transferring the profit/loss from one client to another, though he admitted in the assessment order that there are possibilities of committing mistakes that may require modification of client code. However, he was of the opinion that the assessee-company and KCBPL are the group concerns and since there was unusually high number of client code modifications in the case of the assessee, he was of the opinion that the client code modification was not the *bona fide* mistake but it was done with the intention of transferring the profit from one client to another. He, therefore, worked out the notional

profit/loss which could have been occurred to the assessee had the client code was not modified. As per his working, if the client code would have not been modified, then during the accounting year relevant to the assessment year under consideration, the assessee would have earned extra profit of Rs.2,87,75,583/-. Accordingly, he made the addition of Rs.2,87,75,583/- on account of suppressed profit. The ld. CIT(A) deleted the addition with the following findings:-

> *"4.11 I have given a very careful consideration to the various reasons given by the Assessing Officer for his conclusion that the client code modifications were deliberately and mala fide carried out with a view to transfer the profits so as to reduce the incidence of tax in the case of Kunwarji Group. I have also considered the detailed submissions made before me on behalf of the appellant Company and have also gone through the various judicial pronouncements cited before me. At the very outset, it may be stated that the huge additions made by the Assessing Officer in the assessment years under appeal on the basis of client code modifications have no reference to any seized material. These additions have been made by the Assessing Officer entirely on the basis of certain post-search enquiries made from the Commodity Exchanges. These enquiries revealed that Kunwarji Commodity Brokers Pvt. Limited (KCBPL), which is engaged in the business of brokerage on Commodity Exchanges, has carried out client code modifications. There is no other material or evidence to support the additions made by the Assessing Officer and the Assessing Officer has drawn his own inferences from the client code modifications. Further, the additions made by the Assessing Officer are on the basis of certain assumptions. The main basis of the Assessing Officer for making the additions is that large number of client code modifications were carried out by KCBPL and such modifications during the four Assessment Years under appeal come to 36,161. The assessee explained to the Assessing Officer as also before me that the total trades conducted by KCBPL on behalf of various clients including entities of Kunwarji Group, during the previous year's relevant to the four Assessment Years stand at 38,58,645. Thus, the client code modifications come to 0.94%. The assessee further explained that out of the client code modifications carried out, 15,310 modifications were done by the clients/traders themselves through direct connectivity with the Commodity Exchanges to which they had access. Thus, the client code modifications carried out directly by the traders come to 45% of such modifications, which means that the percentage of modifications carried out by KCBPL would be around 0.5%. It was further explained with supporting evidence that one trading order normally comprises of more than one trade,*

which would further reduce the percentage of modifications to a negligent figure. This point has been explained at page-35 of the Statement of Facts with reference to transactions at MCX. The total number of trades in MCX is 26,69,129 and the total number of trades modified stands at 15,678. The number of orders modified is only 5,915, which comes to 0.22% of the total number of trades. It has been pointed out on behalf of the appellant that the position regarding transactions in NCDEX would also be similar but the break-up is not available from NCDEX. Copies of circulars issued by MCX have been filed, which show that client code modifications with a view to rectify punching errors is permissible to the extent of 1%. If such modifications are more than 1% but less than or equal to 5%, nominal penalty of Rs. 500 is leviable. In the present case, if all the facts are objectively analysed, it is seen that effectively the client code modifications can be said to be around 0.5% for the Assessment Years under appeal. Therefore, I see no justification in the assumption of the Assessing Officer that large numbers of client code modifications were carried out. For the same reason, there is hardly any basis for the assumption on the part of the Assessing Officer that the client code modifications were carried out in large numbers with the motive of transferring profits. The Assessing Officer has failed to bring any material or evidence on record to even remotely suggest that the assessees of this Group resorted to deliberate client code modifications with a view to reduce incidence of tax.

4.12 Further, whatever modifications have been carried out, the reasons for sue-modifications were thoroughly explained before the Assessing Officer as also before me. The assessee's explanation has been summarised under six points at pages - 42 to 43 of the Statement of Facts. These reasons are convincing and obviously, the client code modifications have been carried out to rectify genuine punching errors. If such genuine errors are not rectified, and the transactions allowed to continue in the name of wrong clients, it would result into a chaotic situation. Therefore, I see no merit in the conclusion drawn by the Assessing Officer that client code modifications were carried out with a view to transfer profits. This view is further strengthened by the fact that the additions made by the Assessing Officer are entirely in the nature of "notional profit" and not "real income", which has also been termed as "notional" by the Assessing officer himself in the notice u/s. 142(1) issued by him.

> *(i) The Assessing Officer has calculated the alleged suppressed profits on a further assumption that the open position in all contracts to buy or sell are squared off at the expiry prices of the contract. In other words, the Assessing Officer assumed that the transactions would be finalised at the expiry date and accordingly, he calculated the assumed*

profit on the basis of the prices .of the commodity prevailing at the expiry date. Apparently this is a hypothetical exercise.

(ii) The Assessing Officer completely ignored the correct factual position that the client code modifications were, in most of the cases, carried out within a few minutes or in all cases by the end of the same day, as client code modification is not permitted beyond that day.
(iii) On the other hand, the expiry price is a price which prevailed on the day on which the contract expires and has to be square off. When the modification has been done, within a few minutes or on the same day, it is beyond comprehension as to how relevant contract is assumed to be open till expiry date and how the expiry prices can be adopted for calculating the so called suppressed profits.

(iv) The trading parties could not have been aware of the expiry price and therefore, no motive can be imputed that the modifications were carried out with a view to avoid tax. There is no material whatsoever to support the conclusion drawn by the Assessing Officer that client code modifications were carried out mala fide with a view to transfer profits. Such assumption is totally illogical for the simple reason that even if for the sake argument it is assumed that profits were transferred from one client to another, there can be no motive for such transfer because if such assumed profit is transferred within the Group, the transferee entity will have to pay the tax. On the other hand, if the profit is transferred to some outside client, it would amount to a situation where a sum of Rs. 100 is foregone by the appellant Company to avoid payment of tax of Rs. 30 to 35. The methodology adopted by the Assessing Officer for calculating notional and hypothetical profits gives rise to several crucial questions which remain unanswered and this point was thoroughly explained by the . assessee at-pages -14 to 19 of the reply dated 23rd November, 2009 filed before the Assessing Officer. These anomalies in the presumptions of the Assessing Officer have also been explained at pages - 45 to 50 of the Statement of Facts.

4.13 Another factor which cannot be ignored is that all transactions at the Commodities Exchanges have been duly accounted in the books of account maintained by the concerned parties. Such profits/loss has been duly accounted whenever the transactions have been closed. Thus, whatever profits have been generated on accounting of actual trade, have been offered and brought to the charge of tax in the cases of concerned assessees. All the points raised by the Assessing Officer during the course of assessment proceedings have been duly and properly replied to by various letters filed by

the assessee as enumerated at pages 57 to 66 of the Statement of Facts which have been reproduced supra.

4.14 Considering the entire facts and the legal position, I have no hesitation in holding that the additions made by the Assessing Officer in the four Assessment Years under appeal on account of client code modifications are without any basis and accordingly these additions are deleted."

4. The Revenue, aggrieved with the order of the ld. CIT(A), is in appeal before us.

5. At the time of hearing before us, the ld. CIT-DR argued at length. He stated that the assessee and the broker i.e. KCBPL are the group concerns and therefore, it was very easy for the assessee to modify the client code and transfer the profit to some other person as against the assessee. He also stated that the KCBPL has misused the facility allowed by the Stock Exchange for correcting the bonafide mistake for the purpose of transferring the profit from assessee to others. The client code of the assessee were modified by the broker i.e. KCBPL with the malafide intention to help the assessee to suppress the profit. He stated that the Assessing Officer has discussed all the facts in details and the ld. CIT(A) has not considered these facts correctly. The modifications of the client code were unusually high numbers and there cannot be bonafide mistake in thousands of cases. He further submitted that this is a search case and during the course of search, Shri Nayan Thakkar has disclosed the income of Rs.12 crores. However, when the Return of Income was filed, the income surrendered during the course of search was not offered for the purpose of taxation. That the Assessing Officer noticed that the suppression of the profit was more than Rs. 12 crores and therefore, he did not make addition of Rs.12 crores i.e., the income disclosed by the assessee during the course of search but made the addition of the correct amount suppressed by the assessee. He, therefore,

submitted that considering the totality of the facts, the addition made by the Assessing Officer deserves to be sustained and therefore, the order of the ld. CIT(A) should be reversed and that of the Assessing Officer may be restored.

6. The ld. Counsel for the assessee, on the other hand, relied upon the order of the CIT(A). He submitted that the client code modifications were not unusually very high as alleged by the Assessing Officer. He referred to the total number of trades in both the Exchanges and the number of client code modifications which read as under:-

Data showing Trades details of KCBPL for the period 2004-05 to 2007-08 at NCDEX & MCX

Number of total Trades	:	3858645
Number of Modified Trades	:	36161
% of modified trades to total trades	:	0.94%

He further submitted that if one looks at the total numbers of client code modifications in four years, it is 36161 and one may presume that client code modification is unusually high; but if it is looked in comparison to total number of trade transactions, it would be clear that the total number of trade transactions were more than 38 lacs and the percentage of the client code modifications with reference to total number of trade was less than 1% i.e. 0.94%. He referred to the Circular issued by MCX and pointed out that the client code modification upto 1% is permitted by the MCX and if there is client code modification greater than 1% but less than 5%, then penalty of Rs.500/- is levied and if it is between 5-10%, then penalty of Rs.1000/- is levied. He, therefore, submitted that client code modification upto 1% is not unusually high but is minimum which occurs in this line of trade. He further pointed out that the commodity exchange is a new concept and has started recently. He also pointed out that the brokers and his staff were also

new in this line of trade and therefore, a bonafide error while punching the transactions or the client code usually takes place and the commodity exchange permits the modification of client code on the same day. He referred to the time of the client code modification and pointed out that the client code modification is usually done within few minutes and in any case before the end of the day. He submitted that the presumption of the Assessing Officer that the client code modifications were done with the malafide intention of suppressing the profit could have some basis had the client code modification done after a considerable gap of time between the entering of the transactions and the modification of the client code. Since the client code modification is done on the same day, the assessee or the broker is not aware about the outcome of such transactions. Despite the modification of the client code with the commodity exchange same day, the Assessing Officer worked out notional profit/loss till the date of actual termination of the transactions. He, therefore, submitted that the presumption made by the Assessing Officer factually, logically as well as legally incorrect. In support of this contention, he relied upon the decision of ITAT, Ahmedabad Bench in the case of ACIT vs. Hina Nitin Parikh, reported in [2013] 144 ITD 157 (Ahmedabad - Trib.). He also submitted that the above decision of the ITAT, Ahmedabad Bench is upheld by the Jurisdictional High Court which is reported in [2014] 43 taxmann.com 317 (Gujarat), in the case of CIT vs. Prudent Finance (P.) Ltd. He, therefore, submitted that the order of the CIT(A) should be sustained.

7. With reference to disclosure of income of Rs.12 Crores is concerned, he stated that during the course of search, while recording the statement of Shri Nayan Thakkar, it was stated by the authorized officer that various papers and documents seized from the assessee's premises show various

defects and discrepancies. The assessee, believing this assertion made by the authorized officer, offered the income of Rs.12 crores in the group concern. However, after the receipt of seized documents, the assessee found that there was not a single defect or discrepancy in the books of accounts; therefore, no income was offered in the Return of Income. He further submitted that there is a separate ground raised by the Revenue with regard to disclosure of income by the assessee at the time of search and therefore, he will be making his submissions in details while ground No.2 of the Revenue's appeal could be considered. But, so far as the addition made on account of alleged suppression of income by way of client code modification is concerned, the same needs to be adjudicated on the basis of facts relating to client code modification and not on the basis of the disclosure made at the time of search on the basis of incorrect facts stated by the authorized officer.

8. We have carefully considered the arguments of both the sides and perused the material placed before us. The Assessing Officer believed the client code modification to be malafide because in his opinion the client code modification was for unusually high number of cases. Therefore, first thing to be decided is whether there was the client code modification for unusually high number of cases. The Commodity Exchange i.e. MCX vide circular No.MCX/T&S/032/2007 dated 22.01.2007, issued guidelines with regard to the client code modification, which reads as under:-

"Circular no. MCX/T&S/032/2007 *January 22, 2007*

Client Code Modifications

In terms of provisions of the Rules, Bye-Laws and Business Rules of the Exchange, the Members of the Exchange are notified as under:

Forward Markets Commission (FMC) vide its letter no. 6/3/2006/MKT-II (VOL III) dated December 20, 2006 and January 5, 2007 has directed as under.

a. The facility of client code modifications intra-day are allowed.
b. The members are also allowed to change their client codes between 5:00 p.m. to 5:15 p.m., in case of the contracts traded till 5:00 p.m. and between 11:30 p.m. to 11:45 p.m. for the contracts traded till 11:30 p.m. on all the trading days from Mondays to Fridays and on Saturdays the same shall be allowed between 2:00 p.m. to 2:15 p.m.
c. However, on the days when trading in commodities takes place till 11:55 p.m. the client code modification will be allowed only upto 12:00 p.m.
d. At all times, Proprietary trades shall not be allowed to be modified as client trades and client trades shall not be allowed to be modified as proprietary trades.
e. In order to ensure that client codes are entered with alertness and care, a penalty on the client code changes made on a daily basis shall be imposed as under:

S. No	*Percentage of Client Code changed to total orders (matched) on a daily basis*	*Penalty (Rs.)*
1	*Less than or equal to 1%*	*Nil*
2	*Greater than 1% but less than or equal to 5%*	*500*
3	*Greater than 5% but less than or equal to 10%*	*1000*
4	*Greater than 10%*	*10000*

f. It is clarified that the facility of client code modification is allowed as an interim measure only upto March 31, 2007 and after this date the said facility will be completely stopped.

With reference to point C. as referred above, Members may please note that the client code modifications will be allowed only upto 11:55 p.m. in international referenceable commodities (i.e. commodities traded upto 11:55 p.m.)

Members are requested to take note of the FMC directives and ensure strict compliance."

From the above, it is evident that client code modification is permitted intra-day, i.e. on the same day. As per Commodity Exchange, if client code modification is upto 1% of the total orders, there is no penalty and if it is greater than 1% but less than 5%, the penalty is Rs.500/-. If it is greater than 5% but less than 10%, penalty is Rs.1000/- and if it is greater than 10%, then penalty is Rs.10,000/-. From the above, the only inference that can be drawn is that as per MCX, the client code modification upto 1%

is absolutely normal and therefore, the broker is permitted to modify the client code upto 1% without paying any penalty. Even client code modification upto 5% is not considered unusually high because that is also permitted with the token penalty of Rs.500/-. In the context of the circular issued by Commodity Exchange, let us examine whether the client code modification done by the broker i.e. KCBPL is unusually high. At page No.16 on paragraph No.4.3, the CIT(A) has given the number of transactions entered into by the assessee for the period 2004-05 to 2007-08 and the number of client code modification and percentage thereof. We have also reproduced the same at paragraph No.6 of our order. From the said details, it is evident that the client code modification was done in four years 36,161 times. As an absolute figure, the client code modification may look very high, but if we look it at in terms of total transactions, it is only 0.94%. The total number of trade transactions is 38.58 lacs and the client code modification is only 36,161. Therefore, the client code modification is less than 1% of the total trading transactions. As per circular of Commodity Exchange, client code modification upto 1% is quite normal and is permitted without any penalty. That the Assessing Officer has not given any reason on what basis he presumed the client code modifications to be unusually high. In the light of the MCX circular, we are of the opinion that the client code modification was quite nominal and not unusually high as alleged by the Assessing Officer.

9. The Assessing Officer held the client code modifications to be malafide with the intention to transfer the profit to other person by modifying the client code so as to avoid the payment of tax. From the circular of the Commodity Exchange, it is evident that client code modification is permitted on the same day. Therefore, we are unable to find

out any justification for the allegation of the Assessing Officer that the client code modification was with the malafide intention. When the client code was modified on the same day, there cannot be any malafide intention. Had client modification done after the transactions period when the price of the commodity has already changed, then perhaps there could have been some basis to presume that client code modification is intentional. However, when the client code modification is done on the same day, in our opinion, there was no basis or justification to hold the same to be malafide.

10. Moreover, the ld. Assessing Officer has computed the notional profit/loss till the transactions period and not till the period by which the client code modification took place. Even if the view of the Revenue is accepted that the client code modification was with malafide intention, then the profit or loss accrued till the client code modification can be considered in the case of the assessee but by no stretch of imagination the profit/loss arising after the client code modification can be considered in the hands of the assessee.

11. The ld. CIT(A) in paragraph 4.13 of his order has also recorded the findings that "*all transactions at the Commodities Exchanges have been duly accounted in the books of account maintained by the concerned parties. Such profits/loss has been duly accounted whenever the transactions have been closed. Thus, whatever profits have been generated or accounting of actual trade, have been offered and brought to the charge of tax in the cases of concerned assessees.*" These findings of fact recorded by the ld. CIT(A) has not been controverted by the Revenue at the time of hearing before us. When the transaction has been duly accounted for and the profit/loss has accrued to the concerned parties in whose names transactions have been closed, there cannot be any basis or justification for considering those profit/loss in the case of the assessee on

the basis of mere presumption or suspicion. It is not the case of the Revenue that such alleged profit has actually been received by the assessee. In view of the totality of the above facts, we do not find any justification to interfere with the order of the CIT(A) in this regard and the same is sustained; and Ground Nos. 1 and 3 of the Revenue's appeal are rejected.

12. Ground No.2 of the Revenue's appeal is with regard to the claim of the Revenue that the CIT(A) ought to have directed for the addition in respect of the income disclosed by the assessee at the time of search.

13. It is submitted by the ld. Departmental Representative that during the course of search, statement of Shri Nayan Thakkar was recorded. He is the Director of the assessee-company. In his statement dated 25.03.2008, he disclosed the unaccounted income of Rs.12 Crores. That on 10.04.2008, he furnished a letter before the Assistant Director of Income-tax in which he gave the break-up of Rs.12 Crores, which reads as under:-

"(a) M/s. Kunvarji Finance Pvt Ltd.	-	*Rs.8,00,00,000*
(b) Individuals and other group entities Like Nayan Thakkar, Chetan Thakkar etc.	-	*Rs. 4,00,00,0000*
		Rs.12, 00,00,000
		=========="

Thus, in clear terms, he disclosed sum of Rs.8 Crores as unaccounted income of the assessee. This letter dated 10.04.2008 was filed after the conclusion of the search. That till the filing of the Return of Income, the disclosure made at the time of search was not retracted. However, in the Return of Income, the undisclosed income declared at the time of search was not offered; therefore, the addition for undisclosed income declared at the time of search ought to have been sustained by CIT(A). That the

Assessing Officer worked out the addition on account of client code modification. Since the addition worked out due to client mode modification was more than Rs. 8 crores, no separate addition for undisclosed income declared at the time of search was made. However, when the CIT(A) deleted the addition made by the Assessing Officer on account of client code modification, he ought to have sustained the addition for undisclosed income declared by the assessee at the time of search. He, therefore, submitted that if the ITAT sustain the addition for client code modification, then no addition on account of undisclosed income declared by the assessee at the time of search would be called for; otherwise the ITAT should sustain the addition of Rs.8 crores which was voluntarily declared by Shri Nayan Thakkar at the time of search without any pressure or coercion from the Department. In support of this contention, he relied upon the following decisions:-

(i) Rameschandra & Co. vs. CIT : (1988) 168 ITR 375 (Bom.)
(ii) Ramesh T. Salve vs. ACIT : (2000) 75 ITD 75 (Mum.)
(iii) Dr. S.C. Gupta vs. CIT : (2001) 248 ITR 782
(iv) Garibdas Chandrika Prasad vs. CIT : 230 ITR 771 (MP)
(v) Hotel Kiran vs. CIT : 82 ITD 453 (Pune)

14. The ld. Counsel for the assessee, on the other hand, stated that during the course of search, statement of Shri Nayan Thakkar was recorded for almost 36 hours. His grandfather was ill and was hospitalized. Therefore, Shri Nayan Thakkar was physically and mentally perturbed. The authorized officer who recorded his statement has told him that the various papers and documents seized from their office premises as per Annexure-1 indicated various defects and discrepancies. He was asked to explain the same without giving the copy of such Annexure-1. In that background, he offered some additional income. However, during the course of assessment proceedings, the assessee vide letter dated 27.03.2009 requested for

supplying of the Annexure-1. The Assessing Officer vide reply dated 27.08.2009 confirmed that there is no Annexure-1 but only Annexure-A which was inadvertently mentioned as Annexure-1. That when the assessee received the photocopies of all the seized documents, the assessee verified those documents with the books of accounts and found that there is not a single discrepancy in the assessee's seized books of accounts. Since there was no discrepancy in the assessee's books of accounts and the seized documents, the assessee did not offer any undisclosed income. From these facts, it is evident that disclosure made by the assessee at the time of search was erroneous, based upon incorrect facts conveyed by the authorized officer who was recorded his statement. He, therefore, submitted that the order of the CIT(A) is fully justified and the same should be sustained. In support of this contention, he relied upon the following decisions:-

(i) Kailashben Manharlal Chokshi vs. CIT : (2010) 328 ITR 411 (Guj)
(ii) CIT vs. K. Bhuvanendra and Others (2008) 303 ITR 235 (Mad.)
(iii) DCIT vs. Ratan Corporation: (2005) 145 Taxman 503 (Guj.)
(iv) CIT vs. Radhe Associates : (2013) 37 taxmann.com 336 (Guj.)

15. We have carefully considered the arguments of both the sides and perused the material placed before us. The facts of the case are that a search and seizure action was conducted on the "Kunwarji Group" on 25.03.2008. The assessee-company is one of the group concerns belonging to Kunwarji Group. During the course of search, statement of Shri Nayan Thakkar, who is Director of the assessee-company, was recorded in which he admitted unaccounted income of Rs.12 crores in the case of group concerns. On 10th April 2008, he filed a letter addressed to Assistant Director of Income-tax in which he reiterated the undisclosed income of Rs.12 crores and in the break-up, offered income of Rs.8 crores in the hands of the assessee and balance Rs.4 crores in the hands of individuals and other group entities. In the Return of Income, no undisclosed income was offered for taxation as was admitted in the statement during the course of search. However, an

affidavit was furnished retracting the statement given at the time of search. The Assessing Officer did not accept the assessee's affidavit and the submissions made during the course of assessment proceedings; however, since the total addition made by him was more than undisclosed income offered in the statement, he did not made any addition in respect of income disclosed at the time of search. The relevant finding of the Assessing Officer reads as under:-

> *"In view of the above, the claims made by the assessee in his affidavit and submissions made during the course of assessment proceedings are not acceptable and it is hereby rejected. However, since the total suppression of profits, which reflects the irregularities in the business affairs of the company and discrepancy in income, and worked out for different years (A.Y. 2005-06 to 2008-09) is Rs.17.71 Crores, which is in excess of the amount of Rs.12 crores voluntarily disclosed by the "Kunwarji Group", no separate addition is being made on this issue in the case of the assessee."*

The CIT(A) was of the opinion that no addition is required to be made on account of disclosure made at the time of search. The relevant finding of the CIT(A) in this regard reads as under:-

> *3.6 I have given a careful consideration to the facts having bearing on this issue and the submissions made on behalf of the appellant Company. There is no dispute that during the course of search Shri Nayan Thakkar disclosed income of Rs.1.2 crore and this disclosure was subsequently confirmed by filing a letter wherein the amount of disclosure was also bifurcated. However, all the relevant facts which have been brought to my notice in the Statement of Facts and also during the course of the hearing show that when the statement of Shri Nayan Thakkar was being recorded during the course of search, no specific incriminating papers or documents were available and were confronted to him. As a matter of fact, voluminous records in the form of loose papers, documents, books of account and digital record were found and seized, the contents of which were never ascertained at the time of search nor the assessees of this Group were specifically informed about such contents. It is true that the search continued non-stop for a period of. 36 hours and the statement of Shri Nayan Thakkar was commenced at about 11 O'clock in the night and continued upto 5.00 AM next day. I have also observed that at the time of recording the statement u/s 132(4), the Departmental authorities referred to Annexure-I, which was made the basis of disclosure. However, there seemed to be lack of clarity and uncertainty with respect to 'Annexure-A'. Subsequently, it was informed to the assessee that the said Annexure-l should be construed as Annexure-A and that the said Annexure-A contained a list of 65 items of books/ documents/ papers. It is also observed that on the basis of this Annexure-A, statement u/s 132(4) was recorded; however, the said Annexure was*

not made the basis of addition. Moreover, the Assessing Officer has not been able to deal with the contents of affidavit in a convincing manner. Regarding the delay in retraction, the facts and circumstances have been explained before me in detail. The appellant Company was never allowed adequate opportunity to inspect and go through the voluminous seized records and even the copy of the statement recorded on 25/26th March 2008 was given to the appellant Company on 20th March, 2009 after one year of the search. Moreover, I have also verified the content of the letter dated 10-04-2008, addressed by Shri Nayan Thakkar to the Asst. Director of Income-tax. In the said letter, he has clearly stated that he was allowed inspection of seized material only for about 3 ½ hours and that for proper verification of the same, the copies there of may be provided. He has also stated that the disclosure was made on account of certain irregularities, defect and mistakes in record keeping and business affairs. However, there is nothing on record to prove that there was any such irregularity, defect or mistake either in the record keeping or seized material. The entire position was also explained before the Assessing Officer by filing detailed letter dated 2nd September, 2009. During the course of entire assessment proceedings, the Assessing Officer has been unable to refer to any seized material, on the basis of which unaccounted income could be proved or established. It proves that whatever additions have been made by the Assessing Officer are not based upon any seized documents and the same have been made on the basis of various data collected by the Department from Commodity Exchanges which reflected client code modifications.

3.7 From the above referred .letter dated 2nd September, 2009 addressed to the Assessing Officer and the statement recorded u/s. 132(4), which I have perused, it becomes clear that the disclosure was obtained by the authorized officer on account of the following four counts :

(1) Annexure-1
(2) Seized material "A-6, Kachha books seriated from A-18 to A-29".
(3) Other irregularities / discrepancies
(4) Client code modification.

It is an admitted fact that no addition has been made in the assessment order on account of the first three aspects. It is also an admitted fact that the code modification details were not available and not confronted at the time of search. Code modification details were obtained by the Department from the Commodity Exchanges in post search inquiries and no such details were confronted at the time of search operations and accordingly, the basis of the disclosure did not exist. So far as the first three aspects are concerned, even the Assessing Officer has admitted that there is no such quantum of disclosure on the basis of the seized material, alleged incriminating documents or Annexure-1.

So far as Code modification is concerned, it has been dealt with by me on merits while dealing with the grounds relating to the addition. Accordingly, the statement recorded u/s. 132(4) had no basis of arriving at the disclosure of Rs.12 crores which did not contain any year or which did not even refer to any assets and it is a known

fact that any undisclosed income found during the course of search should also simultaneously be reflected in some valuables, assets or expenditure. In the assessment order, the Assessing Officer has not made any specific addition on account of statement recorded u/s.132(4) of the I.T. Act. In spite of exhaustive inquiries at the time of search and during the post search inquires and also at the time of assessment proceedings no undisclosed assets or expenditure were ever found out or referred to which can correspond to the alleged undisclosed income and accordingly, the view of the appellant that the disclosure at the time of search had no basis has to be accepted."

16. The Revenue aggrieved with the order of the CIT(A) is in appeal before us.

17. Before coming to the factual arguments of both the sides, it would be more appropriate to first discuss the judicial pronouncements relied upon by the ld. CIT-DR as well as ld. Counsel for the assessee. The first decision relied upon by the ld. CIT-DR was a Bombay High Court decision in the case of Rameschandra & Co. vs. CIT, (1988) 168 ITR 375 (Bom.). In the said case, during the course of assessment proceedings, the Assessing Officer came across the discrepancy in "Sarki" account. He asked the assessee for explanation. In response, the assessee filed a letter submitting that the discrepancy could not be explained and value thereof could be added to the firm's income. Thereafter, the Assessing Officer made the addition of Rs.18,052/-. The assessee filed appeal before the First Appellate Authority. The AAC admitted the appeal and deleted the addition. On appeal by the Revenue, the Tribunal held that AAC was wrong in entertaining the appeal. On a reference, the Hon'ble High Court has held *that the Appellate Assistant Commissioner had no jurisdiction to consider the ground of appeal against the addition of Rs.18,052 relating to alleged suppressed sales of "Sarki"."*

18. In the case of Dr. S.C. Gupta vs. CIT, (2001) 248 ITR 782, the Hon'ble Allahabad High Court has held as under:-

"that a statement made voluntarily by the assessee could form the basis of assessment. The mere fact that the assessee retracted the statement could not make the statement unacceptable. The burden lay on the assessee to establish that the admission made in the statement at the time of survey was wrong and in fact there was no additional income. Thus burden was not even attempted to be discharged. The order of the Tribunal was based on facts and no question of law arose from it."

19. In the case of Garibdas Chandrika Prasad vs. CIT, 230 ITR 771 (MP), heir Lordships of Madhya Pradesh High Court has held as under:-

"that as per the findings recorded by the three authorities, i.e. the Income-tax Officer, the Appellate Assistant Commissioner and the Tribunal, the assessee failed to show that U was an individual person, who was also doing the money lending business and thereafter the affidavit was produced to justify the undisclosed income of the assessee. All the authorities below had found that there was a contradiction between the statement recorded on oath of U and the subsequent affidavit filed by him. A perusal of the record showed that the affidavit of U filed by the assessee was nothing but an afterthought and just to cover up the undisclosed income. The authorities below after considering the affidavit and statement found that the affidavit did not inspire any confidence. In this view of the matter, it was not necessary to examine U on his affidavit. The statement given by U was on oath after the raid was on record and thereafter it appeared that U wanted to change his stand in order to oblige the assessee. The Tribunal was right in arriving at the conclusion that the money-lending business carried on by U belonged to the assessee-firm."

20. In the case of Kailashben Manharlal Chokshi vs. CIT, (2010) 328 ITR 411 (Guj), the Hon'ble Jurisdictional High Court held as under:-

"that the statement of the assessee was recorded under section 132(4) of the Act at midnight. In normal circumstances, it was too much to give any credit to the statement recorded at such odd hours. The person would not be in a position to make any correct or conscious disclosure in a statement if such statement was recorded at such odd hours. The assessee had given proper explanation for all the items under which disclosure was sought to be obtained from the assessee. …"

21. In the case of CIT vs. K. Bhuvanendran and Others, (2008) 303 ITR 235 (Mad.), the Hon'ble Madras High Court has held as under:-

> *"dismissing the appeal, that the Tribunal had found that there was non evidence or material found during the course of search operations. The statement recorded from the assessee was subsequently retracted and rebutted. Furthermore, the statement was not relatable to any seized material. Therefore, even the statement could not be the basis for making any addition. When the sale deed discloses a sale consideration, it si for the Revenue to show that what was disclosed in the sale deed is not the correct sale consideration. In this case the Revenue could not bring on record any material to show that the assessee had paid on-money of Rs.23,00,000. The reasons given by the Tribunal were based on valid material. The deletion of addition was justified."*

22. In the case of DCIT vs. Ratan Corporation, (2005) 145 Taxman 503 (Guj.), the Hon'ble Jurisdictional High Court held as under:-

> *"As noticed hereinbefore, the Tribunal has observed that, in light of the retraction by Shri Pravinbhai Rupawala from the statement, it was the duty of the Assessing Officer to make further inquiry in respect of shop owners. In the Assessment Order, in paragraph No.6(1), while referring to the explanation tendered by the assessee, the Assessing Officer has referred to one of the loose papers seized during the search and seizure operation under section 132 of the Act and recorded that the explanation was in contradiction to the notings in the seized document that these relate to Ratan Market Project containing names of shop holders, amount received from them, construction account with show-wise details. It is, thus, apparent that when the Tribunal refers to the duty of the Assessing Officer to make further inquiries in respect of the shop owners, it is in this context. The tribunal has also, as noticed hereinbefore, found that all the seized papers do not relate to Ratan Market Project. In these circumstances, it is not possible to accept the contention raised on behalf of the appellant that the Tribunal had omitted to consider other material."*

23. In the case of CIT vs. Radhe Associates, (2013) 37 taxmann.com 336 (Guj.), the Hon'ble Jurisdictional High Court held as under:-

> *"3. We have heard Ms. Paurami Sheth, learned counsel for the Revenue and considered the impugned judgment and order passed by the learned ITAT as well as the order of assessment passed by the AO.*

At the outset it is required to be noted that though in the order, the AO had mentioned that there is clinching documentary evidence with respect to receipt of "on-money", the AO has not mentioned as to what were those clinching documentary evidences. By making the aforesaid addition, nowhere it is mentioned by the AO that what was the nature of clinching documentary evidence on the basis of which the AO has come to the conclusion that the assessee has received Rs.1,45,37,500/- as "on-money" with respect to the office-cum-shop as well as the shops in 'Ganesh Plaza'. It appears that while passing the order of assessment, the AO has solely relied upon the statement of the assessee which has been subsequently retracted and the question answers recorded while recording the statement of the working partner on 01.05.1996.

3.1 The issue involved in the present appeal is squarely covered by the decision of the Madras High Court in the case of K. Bhuvanendran (supra); the decision of the Delhi High Court in the case of Balaji Wire (P.) Ltd. (supra) as well as this Court in the case of CIT v. Maulikkumar K. Shah [2008] 307 ITR 137.

4. Considering the aforesaid facts and circumstances and the reasoning given by the ITAT and the aforesaid three decisions, we see no reason to interfere with the impugned judgment and order passed by the learned ITAT in deleting the addition of Rs.1,45,37,500/- as unaccounted income as "on-money" alleged to have been received by the assessee. The decision of the ITAT is on appreciation of material on record and on facts. No substantial question of law arise in the present appeal. Hence, present Tax Appeal deserves to be dismissed and is, accordingly, dismissed."

24. Now we revert back to the facts of the assessee's case under the appeal before us so as to reach to the conclusion that the ratio of which of the above decisions would be applicable to the facts of the assessee's case. Xerox copy of the statement of Shri Nayan Thakkar is placed at page no.296 onwards of the assessee's paper-book. From the first page of the said statement, it is clear that the statement began on 25th March 2008 at 11.30 pm. Thus, recording of the statement was started at almost midnight of 25th March 2008. From the last page of the statement, it is evident that it was concluded on 26th March 2008. No time was mentioned on the conclusion of

the statement. However, the statement is running into 10 pages, therefore, it can safely be inferred that it was concluded on the early hours of 26th March 2008. In the case of Kailashben Manharlal Chokshi (supra), the Hon'ble Jurisdictional High Court held that if a statement is recorded at midnight, much credence cannot be given to such statement because the person would not be in a position to make any correct or conscious disclosure in a statement recorded at odd hours. The ratio of the above decision of the jurisdictional High Court would be squarely applicable to the facts of the assessee's case because the statement was recorded at the midnight of 25th and 26th March 2008.

25. The Revenue has heavily relied upon the question No.21 and answer thereto in the statement of Shri Nayan Thakkar, which reads as under:-

> *"Q.21 I am showing you various papers and documents which have been seized from your office premise as per Annexure-1, in which various defects and discrepancies are observed. You are requested to explain the same. Also, it is seen that client code modifications have been undertaken by your company. You are requested to explain the same. I am particularly showing A-6, Kachha books serialled from A-18 to A-29. You are requested to go through seized documents /papers and explain the same?*
>
> *Ans. I have carefully gone through the seized documents /papers shown to be by you and understood the contents. These are related to my trading as well as clients, whose complete details are maintained in my office situated at 310, Shyamak Complex, Ambawadi, Ahmedabad & Kunwarji House, Ambawadi, Ahmedabad. I have also carefully gone through various discrepancies defects pointed out by you. Looking into the various discrepancies as well as unrecorded transactions in my regular books and income, I admit unaccounted income of Rs.12 crores (Rupees twelve crores) on which, tax works out Rs.4 crores (Rupees four crores) approximately, which I am ready to pay. This admitted income is in addition to the regular income earned during the last six years, including the current year.*
>
> *I further request you to grant me sometime to pay the aforesaid tax. I further promise you that the aforesaid tax will be paid without fail. This disclosure and additional income of Rs.12 crores is made after consulting Mr. Kunal S. Shah, Mrs. Jayanaben N. Thakkar and Smt. Rujuta D. Sheth, who are*

Directors of Kunvarji Commodities Brokers Pvt. Ltd. The admitted unaccounted income pertains to Kunvarji Commodities Brokers Pvt. Ltd., Kunvarji Finstock Pvt. Ltd., Kunvarji Finance Pvt. Ltd., Kunvarji Commodities Pvt. Ltd."

26. From the above, it is evident that the authorized officer who was recording the statement informed Shri Nayan Thakkar that various papers and documents have been seized from their office which are listed in Annexure-1. From such papers and documents, various discrepancies and defects have been observed. He has also stated about the client mode modification. In response to these inputs from the authorized officer Shri Nayan Thakkar admitted unaccounted income of Rs.12 crores. The statement has to be read as a whole; the unaccounted income was offered in response to the information given by the authorized officer that various defects and discrepancies were observed in the seized documents. Now the question remains whether there were any defect and discrepancy in the seized documents as per Annexure-1. It was stated by the ld. Counsel that there was no Annexure-1 at all, and in response to the assessee's letter during the assessment proceedings, the Assessing Officer admitted these facts vide letter dated 27.08.2009 by the Deputy Commissioner of Income-tax which reads as under:-

"Office of the
Dy. Commissioner of Income-tax, Central Circle-1(1), 3fd floor, Aayakar Bhavan, Ashram Road, Ahmedabad - Phone: 079-27546781

No.DCIT/CC1(1)/Ahd/Kunvarji/2009-10 *Date: 27.08.2009*

To:

The Principal Officer
Kunvarji Finance Pvl. Ltd.
310, Shyamak Complex,
Nr. Kamdhenu Complex,
Ambawadi, Ahmedabad

Sir,

Sub: Clarification on certain claims made by you in the affidavit filed alongwith return of income of A.Y.2002-03 to 2008-09 -reg.

Ref: 1. Affidavit alongwith returns filed by you for A.Y.2002-03 to 2008-09
2. Your letter dated 27.03.2009 filed on 30.03.2009

You have claimed in the affidavit filed with the return of income that you have not been provided with the copies of Annexure-1, which has been mentioned in Question No.21 of statement of Shri Nayan Thakkar recorded in the course of his statement at 310, Shyamak Complex, Ahmedabad on 25 & 26.03.2008.

2. From the plain reading of the statement, it is clear that the Authorised Officer is referring to the documents / paper / electronic media seized as per the list which is an Annexure to the Panchnama. The Annexure-1 referred above pertains to Annexure A, containing pages number 1 to 3 and containing list of 65 items of books / documents / paper electronic media found and seized from office premises. While recording the statement, the Annexure-A is inadvertently referred as Annexure-1. If any document / papers is made part of statement then the question of seizing the same does not arise at all. It becomes part of the statement. In the statement it is specifically referred as seized Annexure. The question posed to the assessee was based on the seized documents / books as per Annexure-A. If it were to be part of the statement then the question of same being referred as seized Annexure-1 does not arise at all. Hence, it is clarified that the seized Annexure-1 is nothing but seized Annexure-A.

3. Further, the seized documents had been provided to you on 06.08.2008 as per evidence forwarded by Investigation Wing. Thus claims made by you in your affidavit are without any basis and are factually incorrect. This is for your information and record.

Yours faithfully,
Sd/-
(GAURAV BATHAM)
Dy. Commissioner of Income-tax
Central Circle 1(1), Ahmedabad"

27. Thus, there was no Annexure-1 as referred to in question No.21. Still the question remains whether there were any defects or discrepancies in the seized papers and documents as mentioned by the Officer recording the statement vide question no.21. In the assessment order, the Assessing

Officer has not pointed out any defect or discrepancy in any of the seized documents from the business premises of the assessee. The addition made by the Assessing Officer is on account of client code modification which has also been computed on the basis of information collected from the Commodity Exchange in post search enquiry. The CIT(A) has found the addition on account of client code modification to be untenable and while disposing of ground No.1 of the Revenu's appeal, we have concurred with the findings of the CIT(A). No defects or discrepancies in any of the seized documents have been pointed out by the Assessing Officer in the assessment order or by the ld. DR at the time of hearing before us. During the course of search also the officer recording the statement of Shri Nayan Thakkar has not specified any discrepancy or defect in any of the seized documents but made a general statement that there were defects and discrepancies in the various documents seized from the assessee's premises. Such assertion by the authorize officer is found to be factually incorrect. In the affidavit of Shri Nayan Thakkar furnished before the Assessing Officer these facts have been clarified. He stated that after getting the photocopy of the seized documents and their verification with reference to the books of accounts, since no discrepancy was noticed, no undisclosed income was offered in the Return of Income. If there was any discrepancy or defect in the assessee's books of accounts or the seized documents indicating any undisclosed income, the Assessing Officer ought to have mentioned the same in the assessment order. In the case of Kailashben Manharlal Chokshi (supra), the Hon'ble Jurisdictional High Court has noticed that when during the course of assessment proceedings the assessee has given the proper explanation for investment in various properties, the addition cannot be made on the basis of statement made at odd hours. Similarly, in the case of Ratan Corporation (supra), the Hon'ble jurisdictional High Court reiterated

that when the statement made during the course of search has been retracted, then it is duty of the Assessing Officer to make further inquiries. Similar view is expressed by their Lordships of Hon'ble Jurisdictional High Court in the case of Radhe Associates (supra), wherein the Assessing Officer has made the addition by mentioning that there were clinching documentary evidences with respect to receipt of on-money. However, these clinching documentary evidences were not specified. In the case under appeal before us also, we find that the officer recording the statement of Shri Nayan Thakkar has mentioned that various defects and discrepancies have been observed from the papers and documents seized from the assessee's premises. However, any defects or discrepancies were not specified. In view of the above, we are of the opinion that on the facts of the assessee's case the decisions of the Hon'ble Jurisdictional High Court in the cases of Kailashben Manharlal Chokshi, Ratan Corporation and Radhe Associates would be squarely applicable. The facts in the other cases relied upon by the ld. DR are altogether different. Moreover, when there is a decision of Hon'ble Jurisdictional High Court, it would be binding upon the ITAT functioning within the jurisdiction of Gujarat High Court. In view of above, we, respectfully following the decisions of Hon'ble Jurisdictional High Court in the cases of Kailashben Manharlal Chokshi (supra), Ratan Corporation (supra) and Radhe Associates (supra), uphold the order of the CIT(A) and reject ground No.2 of the Revenue's appeal.

28. Ground Nos. 4 & 5 of the Revenue's appeal are of general nature and need no separate adjudication.

IT(SS)A Nos. 616 to 618/Ahd/2010 : AY 2006-07, 2007-08 & 2008-09 (by Revenue)

29. In the appeals by the Revenue for Assessment Years 2006-07, 2007-08 and 2008-09 vide IT(SS)A Nos. 616 to 618/Ahd/2010, identical grounds are

raised. Therefore, for the detailed discussion in IT(SS)A No.615/Ahd/2010 for Assessment Year 2005-06, the Revenue's appeals for Assessment Years 2006-07, 2007-08 and 2008-09 are also dismissed.

CO Nos. 250 to 253/Ahd/2010 : AY 2005-06 to 2008-09 (by Assessee)

30. At the time of hearing before us, the ld. Counsel did not press the Cross-objections and accordingly, the same are rejected.

IT(SS)A Nos. 677 to 680/Ahd/2010 : AY 2005-06 to 2008-09 (by Revenue)

31. In all these appeals, common grounds are raised, and therefore, all these appeals were heard together.

32. Ground Nos. 1 & 3 of the Revenue's appeals in all the years under consideration are with regard to the deletion of the addition made by the Assessing Officer on account of client code modification. These grounds are identical to Ground Nos. 1 & 3 of the Revenue's appeal in the case of M/s. Kunvarji Finance Pvt Ltd. vide IT(SS)A No.615/Ahd/2010 for Assessment Year 2005-06. Therefore, for the detailed discussion in the case of M/s. Kunvarji Finance Pvt Ltd in IT(SS)A No.615/Ahd/2010 (supra) for Assessment Year 2005-06, we do not find any justification to interfere with the order of the CIT(A) in this regard. Accordingly, Ground Nos. 1 & 3 of the Revenue's appeals are rejected.

33. Ground No.2 of the Revenue's appeal is with regard to the addition which should have been sustained on account of disclosure of income in the statement recorded at the time of search. This ground is also identical to the Ground No.2 of the Revenue's appeal in the case of M/s. Kunvarji Finance Pvt Ltd. vide IT(SS)A No.615/Ahd/2010 for Assessment Year 2005-06.

Therefore, for the detailed discussion in the case of M/s. Kunvarji Finance Pvt Ltd in IT(SS)A No.615/Ahd/2010 for Assessment Year 2005-06, we do not find any merit in the Ground No.2 of the Revenue's appeal and the same is rejected.

34. Ground Nos. 4 & 5 of the Revenue's appeal are of general nature and need no separate adjudication.

CO Nos. 313 to315/Ahd/2010 : AY 2005-06 to 2007-08 (by Assessee)

35. The Cross-objections were not pressed by the ld. Counsel at the time of hearing and accordingly, the same are rejected.

IT(SS)A Nos.813 & 814/Ahd/2010 : AY 2006-07 & 2007-08 (by Revenue)

36. The only ground raised in these appeals is against the deletion of the addition made by the Assessing officer on account of client code modification. This ground is identical to Ground Nos. 1 & 3 of the Revenue's appeal in the case of M/s. Kunvarji Finance Pvt Ltd. vide IT(SS)A No.615/Ahd/2010 for Assessment Year 2005-06. Therefore, for the detailed discussion in the case of M/s. Kunvarji Finance Pvt Ltd in IT(SS)A No.615/Ahd/2010 (supra) for Assessment Year 2005-06, we do not find any merit in this ground and the same is rejected.

CO Nos. 342 & 343/Ahd/2010 : AY 2006-07 & 2007-08 (by Assessee)

37. At the time of hearing before us, the cross objections were not pressed and accordingly, the same are rejected.

IT(SS)A Nos.815 to 817/Ahd/2010 : AY 2005-06 to 2007-08 (by Revenue)

38. The only ground raised in these appeals is against the deletion of the addition made by the Assessing officer on account of client code

modification. This ground is identical to Ground Nos. 1 & 3 of the Revenue's appeal in the case of M/s. Kunvarji Finance Pvt Ltd. vide IT(SS)A No.615/Ahd/2010 for Assessment Year 2005-06. Therefore, for the detailed discussion in the case of M/s. Kunvarji Finance Pvt Ltd in IT(SS)A No.615/Ahd/2010 (supra) for Assessment Year 2005-06, we do not find any merit in this ground of appeal and the same is rejected.

CO Nos. 344 to 346/Ahd/2010 : AY 2005-06 to 2007-08 (by Assessee)

39. At the time of hearing before us, the cross objections were not pressed and accordingly, the same are rejected.

IT(SS)A No.301/Ahd/2011 : AY 2006-07 (by Revenue) [Meenaben M. Parikh]

40. The only ground raised in this appeal is against the deletion of the addition made by the Assessing officer on account of client code modification. This ground is identical to Ground Nos. 1 & 3 of the Revenue's appeal in the case of M/s. Kunvarji Finance Pvt Ltd. vide IT(SS)A No.615/Ahd/2010 for Assessment Year 2005-06. Therefore, for the detailed discussion in the case of M/s. Kunvarji Finance Pvt Ltd in IT(SS)A No.615/Ahd/2010 (supra) for Assessment Year 2005-06, we do not find any merit in the appeal of the Revenue and accordingly, the same is rejected.

IT(SS)A No.302/Ahd/2011 : AY 2006-07 (by Revenue) [Jay M. Parikh]

41. The only ground raised in this appeal is against the deletion of the addition made by the Assessing officer on account of client code modification. This ground is identical to Ground Nos. 1 & 3 of the Revenue's appeal in the case of M/s. Kunvarji Finance Pvt Ltd. vide IT(SS)A No.615/Ahd/2010 for Assessment Year 2005-06. Therefore, for the detailed

discussion in the case of M/s. Kunvarji Finance Pvt Ltd in IT(SS)A No.615/Ahd/2010 (supra) for Assessment Year 2005-06, we do not find any merit in the appeal of the Revenue and accordingly, the same is rejected.

42. In the combined result, all the appeals filed by the Revenue and Cross-objections by the assessee are dismissed.

Order pronounced in the Court on 19th March, 2015 at Ahmedabad.

Sd/-	Sd/-
(KUL BHARAT)	**(G.D. AGRAWAL)**
JUDICIAL MEMBER	**VICE-PRESIDENT (AZ, LZ & BZ)**

Ahmedabad; Dated 19/03/2015

Biju T., PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-I, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad