

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA**  
**BEFORE SHRI S.S.GODARA, JM & DR. A.L.SAINI, AM**  
 आयकरअपीलसं./ITA Nos.1209,1210&1211/Kol/2017  
 (निर्धारणवर्ष / Assessment Years :2010-11 to 2012-13

ITO, Ward-22(2), Kolkata  54/1, Rafi Ahmed Kidwai Road, Kolkata-700016	Vs.	M/s K.B. Medical Agency  55/F-9, B.R.B. Basu, 2 <sup>nd</sup> Floor, Room No. H-14, Mehta Building, Kolkata-01.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAGFK 6550 P		
(□ पीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

**C.O. Nos. 68,69,70 & 71/Kol/2017**  
**(Arising out of ITA Nos.1209,1210,1211 & 1212/Kol/2017)**  
 (निर्धारणवर्ष / Assessment Years : 2010-11 to 2013-14

M/s K.B. Medical Agency  55/F-9, B.R.B. Basu, 2 <sup>nd</sup> Floor, Room No. H-14, Mehta Building, Kolkata-01.	Vs.	ITO, Ward-22(4), Kolkata  54/1, Rafi Ahmed Kidwai Road, Kolkata-700016
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAGFK 6550 P		
(Cross object or)	..	(प्रत्यर्थी / Respondent)

आयकरअपीलसं./ITA Nos.705,706&707/Kol/2017  
 (निर्धारणवर्ष / Assessment Years : 2011-12, 2012-13 & 2013-14

ITO, Ward-22(2), Kolkata  54/1, Rafi Ahmed Kidwai Road, Kolkata-700016	Vs.	M/s K.B. Medical Agency  55/F-9, B.R.B. Basu, 2 <sup>nd</sup> Floor, Room No. H-14, Mehta Building, Kolkata-01.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAGFK 6550 P		
(□ पीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्वकीओरसे /Revenue by : Shri Saurabh Kumar, Addl. CIT DR

निर्धारितीकीओरसे /Assessee by : Shri S.M. Surana, Advocate

सुनवाईकीतारीख/ Date of Hearing : 17/01/2019

घोषणाकीतारीख/Date of Pronouncement : 08/02/2019

## आदेश / ORDER

### Per Bench:

These three appeals filed by the Revenue pertaining to assessment years 2010-11, to 2012-13, and three appeals filed by the Assessee pertaining to assessment years 2011-12 to 2013-14 along with the cross objections filed by the assessee pertaining to assessment years 2010-11 to 2013-14 are directed against the separate orders passed by the Commissioner of Income Tax (Appeals), which in turn arise out of separate assessment orders passed by the Assessing Officer u/s 147 / 143(3) of the Income Tax Act, 1961 (in short the Act).

2. These cross appeals and cross objections, relate to the same assessee, for different assessment years, identical and common issues are involved, therefore these have been clubbed and heard together and a consolidated order is being passed for the sake of brevity and convenience.

4. In these appeals, the Revenue as well as Assessee have raised multiple grounds of appeal, but at the time of hearing the main grievance of the Revenue and Assessee are concised and summarized. These summarized and common grounds of Revenue, and Assessee are given below:

**Summarized and Common grounds of appeal raised by Revenue in I.T.A. No. 1209,1210&1211/Kol/2017 for assessment years 2010-11, 2011-12 & 2012-13 are given below:**

1. *The ld. CIT(A) erred in deleting additions on account of difference in sales*
  - a. *Addition for assessment year 2010-11 Rs. 45,88,473/-*
  - b. *Addition for assessment year 2012-13 Rs. 6,50,172/-*
2. *The ld. CIT(A) erred in deleting addition on account of difference in purchases.*
  - a. *Addition for assessment year 2010-11 Rs. 24,35,545/-*
  - b. *Addition for assessment year 2012-13 Rs. 61,323/-*
3. *The ld. CIT(A) erred in deleting addition on account of difference in closing stock and difference in opening stock.*
  - a. *Addition for assessment year 2010-11, Rs. 38,39,828/-, difference on account of closing stock.*
  - b. *Addition for assessment year 2011-12 of Rs. 93,80,355/-, difference on account of closing stock.*
  - c. *Addition for assessment year 2012-13 of Rs. 93,80,355/-, difference on account of opening stock.*
  - d. *Addition for assessment year 2012-13 of Rs.1,36,14,608/-, difference on account of closing stock.*
4. *The ld. CIT(A) erred in deleting addition on account of difference in sundry debtors.*
  - a. *Addition for A.Y. 2011-12 of Rs. 1,65,196/-, on account of difference in sundry debtors.*
  - b. *Addition for A.Y. 2012-13 of Rs. 9,06,723/-, on account of difference in sundry debtors.*
5. *The ld. CIT(A) erred in deleting addition of Rs. 5,00,000/- on account of payment made by partner out of books of accounts (A.Y. 2012-13)*

**Summarized and Common grounds of appeal raised by Assessee in I.T.A. No. 705,706&707/Kol/2017, for assessment years, 2011-12 , 2012-13 & 2013-14 are as follows:**

1. *The ld. CIT(A) erred in confirming the addition on account of discrepancy in sundry creditors.*
  - a. *Addition for A.Y. 2011-12 of Rs. 11,53,985/- on account of discrepancy in sundry creditors.*
  - b. *Addition for A.Y. 2012-13 of Rs.1,50,417/- on account of discrepancy in sundry creditors.*
2. *The ld. CIT(A) erred in confirming addition as gross profit on account of discrepancy in sales.*
  - a. *Addition for A.Y. 2012-13 of Rs. 13,003/- as gross profit on account of discrepancy in sales.*
  - b. *Addition for A.Y. 2013-14 of Rs.1,06,146/-, as gross profit on account of discrepancy in sales.*
3. *The ld. CIT(A) erred in confirming addition made by Assessing Officer u/s 40A(3) of the Act, on account of cash payment exceeding threshold limit of Rs.20,000/-*
  - a. *Addition for A.Y. 2012-13 of Rs. 24,08,636/- made on account of violation of provisions of Section 40A(3) of the Act.*
  - b. *Addition for A.Y. 2013-14 of Rs. 14,54,806/- made on account of violation of provisions of Section 40A(3) of the Act.*
4. *The ld. CIT(A) erred in confirming the addition of Rs.4,30,819/- on account of bogus purchases (A.Y. 2013-14)*
5. *The ld. CIT(A) erred in confirming the addition of Rs. 38,750/- on account of reconciled credit notes for goods returned. (A.Y. 2013-14)*

We note that cross objections filed by the assessee, in cross objections nos. 69,70 & 71/Kol/2017, for assessment years 2011-12, 2012-13 and 2013-14 respectively are common and identical and are being dealt with / adjudicated by us in assessee's appeal in I.T.A. Nos. 705,706 and 707/Kol/2017 for assessment year 2011-12, 2012-13 and 2013-14 respectively. Hence for the sake of brevity and to avoid repetition, we do not deal the ground raised by the assessee in these cross objections.

However, the ground raised by the assessee is C.O. No. 68/Kol/2017, for A.Y. 2010-11 is not identical and common, therefore it will be adjudicated separately. The effective ground raised by the assessee in C.O. No. 68/Kol/2017 is as follows:

Ground no. 2- The ld. CIT(A) erred in confirming the addition of Rs. 44,118/- on account of discrepancy in Sundry creditors.

4. First, we shall take the summarized / common grounds of appeal raised by the Revenue. Ground no. 1 raised by the revenue is given below for ready reference.

*1. The ld. CIT(A) erred in deleting additions on account of difference in sales*

*a. Addition for assessment year 2010-11 Rs. 45,88,473/-*

*b. Addition for assessment year 2012-13 Rs. 6,50,172/-*

5. The facts of the case which can be stated quite shortly are as follows. In the assessee's case, a survey was conducted on 08.01.2013 in the business premises of the assessee. In the course of survey, the computerized accounts for the assessment year 2010-11 was found. On examination of computerized accounts and comparing with e-filed return of income including e-filed profit and loss account and balance sheet, the Assessing Officer noted some discrepancies, therefore the Assessing Officer reopened the assessee's case u/s 147 of the Act. The reasons for which the assessment was reopened are given below:

*ITA Nos.1209to1211/Kol/2017C.O. NOs.68to71/Kol/2017  
ITA Nos. 705to707/Kol/2017  
M/s K.B. Medical Agency  
A.Y.s2010-11,2011-12, 2012-13 & 2013-14,*

Sl.No. (1)	Particulars (2)	As per E-Return For the A.Y.2010-11 (3)	As per computerized accounts impounded on survey dt.08/01/2013 (4)	Discrepancies (3-4) (5)	Remarks/ identification marks (6)
1.	Cash in Hand	Rs.4,00,105/-	Rs.1,76,455/-	Rs.2,23,650/-	KBA-2
2.	Cash at Bank	NIL	Rs.9,10,767/-	(-)Rs.9,10,767/-	KBA-2
3.	Sundry Creditors	Rs.45,83,858/-	Rs.36,48,960/-	Rs.9,34,898/-	KBA-2
4.	Sundry Debtors	NIL	Rs.55,641/-	(-)Rs.55,641/-	KBA-2
5.	Sales	Rs.14,73,09,430/-	Rs.15,18,97,903/-	(-)Rs.45,88,473/-	KBA-2
6.	Purchase	Rs.14,68,33,453/-	Rs.14,92,68,998/-	(-)Rs.24,35,545/-	KBA-2
7.	Capital	Rs.27,89,666/-	Rs.2,15,03,707/-	(-) Rs.1,87,14,041/-	KBA-2

In view of the above, I have reason to believe that the income chargeable to tax, has escaped assessment for the A.Y.2010-11(F.Y.2009-10). Therefore, the assessment for the A.Y.2010-11 is reopened U/s. 147 of the I.T. Act, 1961.” **Unquoted,**

Therefore Assessing Officer issued notice u/s 148 on 18.12.2013 and reasons for reopening were also communicated to the assessee.

6. In response, the assessee submitted that he was maintaining books of accounts on software ‘Unisolve’ in computerized system. The assessee submitted that Unisolve software is the specialized software catering for the need of the medicine whole-sellers wherein all the mandatory requirements under the Drug control Rules have been incorporated. It also have features for maintenance of full-fledged books of accounts. The ‘Unisolve software’ has been developed by the local IT professional on DOS platform. The assessee submitted that the software which they were using was not user friendly and it used to give inconsistent results and therefore the assessee was using that software only for the purpose of issuing sales bills and up to some extent for the purpose of stock. The assessee also submitted that he maintains his books of accounts in its tally software and engaged a part time accountant. Unfortunately, the books of

accounts maintained on tally system was laying at accountant's office on the date of survey. The assessee submitted before the Assessing Officer, the reasons of discrepancy in sales of Rs. 45,88,473/- as follows:

*"a) The impounded system was used by us only for the purpose of raising sales invoices as the software has inbuilt technical defects and generate misleading results. We therefore, maintain sales account separately in tally software.*

*b) The sales return was not entered and not reflected as the return memo were prepared manually.*

*c) During the year, the sales return was amounting to Rs.22,68,630/- as per details already submitted.*

*d) Sometime, the sales bills prepared has to be cancelled as the party refuses to take delivery. The amount of such bills, though cancelled continued to be included and reflected in sales due to technical error of the software.*

*e) Considering the volume of sales bills, involving large number of items, it is not practically possible for us to identify errors in the impounded documents and prepare the reconciliation.*

*f) In the circumstances, we humbly submit that the sales recorded in our books and shown in the audited accounts should be treated as correct.*

*g) It is further submitted that the books of accounts has been audited by an independent auditor and there was no adverse findings and in some cases. Sales have also been verified u/s 133(6) of I.T. Act."*

7. However, the Assessing Officer rejected the contention of the assessee and noted that as per computerized account impounded on the date of survey on 08.01.2013 sales was found to the tune of Rs. 15,18,97,903/-. Whereas the assessee filed return of income where he has declared the turnover to the tune of Rs. 4,73,09,430/-, therefore the difference amount to the tune of Rs. 45,88,473/- (Rs. 15,18,97,903 – Rs. 14,73,09,430) was added to the income of the assessee.

8. On appeal , the Ld. CIT(A) deleted the addition. Aggrieved the revenue is in appeal before us. Before us,the ld. DR has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity.On the other hand, the ld. Counsel for the assessee defended the order passed by the Ld. CIT(A).

9. We have heard both the parties and perused the material available on record. We note that during the assessment proceedings it was explained by the

assessee that computerized accounts were maintained on 'Unisolve Software, which is a special software catering to the needs to the medicine whole-sellers which incorporates the statutory requirement of drug control rules. It was stated that the software used to give inconsistent results and it was used only for the purpose of issuing sales bills and to some extent for the purpose of maintenance of stock details. The books of accounts were being actually maintained on Tally software and books of accounts were lying at the office of the Accountant at the time of survey. It was also stated by the assessee that the goods returned to the supplier company, i.e. purchase return remained in stock and therefore the stock register was not updated. We note that later on, it was also stated by the assessee that the sales return were also not entered in the Unisolve Software and were prepared manually. We note that the assessee has maintained the details in Unisolve Software only for the purpose of proper compliance with drug control rules and proper records were maintained by the assessee in tally software, therefore the said difference had arisen. We note that assessee has explained the said difference at the appellate stage. We note that the Assessing Officer made the addition solely on the grounds that difference between sale of Rs.15,18,97,903/- as per computerized impounded account and sales of Rs. 14,73,09,430/- as per the books of accounts maintained in tally software for the purpose of e-filing of return therefore the difference to the tune of Rs. 45,88,473/- was not explained satisfactorily. However, we note that the assessee also pleaded during the appellate proceedings that only the profit on the sales found to be undisclosed by the Assessing Officer could have been added and not the entire sales. We find considerable force in this arguments of the counsel that instead of adding the entire sales only profit element is to be added. We note that profit on the unaccounted sale of purchases could be brought to tax and for that reason the Id. CIT(A) has rightly deleted the discrepancy in purchases of Rs. 24,35,545/-, computed by the Assessing Officer which is lower than the discrepancy of Rs. 45,88,473/- computed in respect of sales. Therefore, the Assessing Officer had already been directed to tax only the profit of Rs. 75,710/-, on the unaccounted sales computed by the Assessing Officer. That being so, we decline to interfere in

the order passed by the Id. CIT(A), his order on this issue is hereby upheld and the grounds raised by the revenue is dismissed.

10. The summarized / common ground no. 2 raised by the revenue reads follows:

*2. The Id. CIT(A) erred in deleting addition on account of difference in purchase.*

*a. Addition for assessment year 2010-11 Rs. 24,35,545/-*

*b. Addition for assessment year 2012-13 Rs. 61,323/-*

11. Brief facts qua the issue are that as per computerized account impounded during the survey on dated 08.01.2013, the survey team found purchases to the tune of Rs.14,92,68,998/-, whereas as per electronically return filed by the assessee it was only Rs.14,68,33,453/-. Therefore, the difference to the tune of Rs. 24,35,545/- (Rs.14,92,68,998 – Rs.14,68,33,453) was added as undisclosed purchases. On appeal by the assessee, the Id. CIT(A) deleted the addition on undisclosed purchases. Aggrieved the Revenue is in appeal before us.

12. Before us, the Id. DR for the revenue submitted that the Id. CIT(A) failed to appreciate the fact that the assessee had made unexplained investment of Rs. 24,35,545/- in purchases, out of books of account and assessee offered no satisfactory explanation about the nature of source of investment therefore addition made by the Assessing Officer should be sustained. On the other hand, the Id. Counsel for the assessee defended the order passed by the Id. CIT(A).

13. We have given a careful consideration to the rival submissions and perused the material available on record. We note that only the profit on the unaccounted sales and the purchases could be brought to tax. The discrepancy in purchases of Rs. 24,35,545/- computed by the Assessing Officer was lower than the discrepancy of Rs.45,88,473/- computed in respect of sales. Therefore, the Assessing Officer was directed by the Id. CIT(A) to tax only the profit of Rs. 75,710/- on the unaccounted sales computed by the Assessing Officer. The

logical inference that can be made is that the purchases of Rs.24,35,545/- computed by the Assessing Officer as not having been accounted for were also a part of unaccounted sales of Rs. 45,88,473/- made by the assessee. Therefore, the Id. CIT(A) by relying the decision of Co-ordinate Bench of ITAT, Kolkata in the case of Smt. Maya Sirkar in I.T.A. No. 995/Kol/2011, for assessment year 2007-08 order dated 15.10.2015 deleted the addition stating that no further addition of profit in respect of the discrepancy in purchase is warranted, hence the addition of Rs. 24,35,545/- on account of discrepancy in purchases was rightly deleted by the Id. CIT(A). That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue is hereby upheld and the ground raised by the revenue is dismissed.

14. The summarized and common ground no. 3 raised by the revenue is given below for ready reference.

3. *The Id. CIT(A) erred in deleting addition on account of difference in closing stock and difference in opening stock.*
  - a. *Addition for assessment year 2010-11, Rs. 38,39,828/- difference on account of closing stock.*
  - b. *Addition for assessment year 2011-12 of Rs.93,80,355/- difference on account of closing stock.*
  - c. *Addition for assessment year 2012-13 of Rs.93,80,355/- difference on account of opening stock.*
  - d. *Addition for assessment year 2012-13 of Rs.1,36,14,608/- difference on account of closing stock.*

15. The brief facts qua the issue are that on the basis of impounded books of accounts, the Assessing Officer calculated the closing stock at Rs.1,11,69,931/-, as against stock of Rs.73,30,103/- declared by the assessee in the return of income. Accordingly, the excess of Rs. 38,39,828/- ( Rs. 1,11,69,931 – Rs. 73,30,103) was added to the total income of the assessee. On appeal, the Id. CIT(A) deleted the said addition because the calculation of closing stock made by

the Assessing Officer was not correct. The Id. CIT(A) concluded that the value of closing stock as per impounded books of accounts was of Rs. 45,79,950/-, which was far less than the value shown by the assessee as closing stock in his return of income of Rs.73,10,103/-. Therefore, the Id. CIT(A) deleted the addition made by the Assessing Officer on account of discrepancy in closing stock / opening stock. Aggrieved the revenue is in appeal before us.

16. Before us, the Id. DR has primarily reiterated the stands taken by the Assessing Officer which we have discussed in our earlier para and the same is not being repeated for the sake of brevity. On the other hand, the Id. AR for the counsel has defended the order of the Id. CIT(A).

17. We have given a careful consideration to the rival submissions and perused the material available on record. We note that the assessee explained the differences and submitted the explanation before the Assessing Officer stating that the discrepancy in his stock was manually represented the accumulated effect of incorrect stock brought forward from earlier years and also effect of purchases or sales return not routed through inventory systems as also free samples included in the stock and valued at purchase rates. We note that the Assessing Officer has calculated the closing stock as per survey at Rs.1,11,69,931/- as against stock of Rs. 73,30,103/- declared by the assessee in the return of income, thereby computing the excess stock of Rs. 38,39,828/- The stock of Rs. 1,11,69,931/- has been computed by the AO as per the findings of survey. We note that the computation of closing stock as per survey findings done by the AO as above is not correct because of the following reasons:

a) The AO has computed that actual closing stock in respect of the details found in the computerized accounts during the survey, but has adopted a pick and choose method without any basis for this purpose.

b) The AO has computed unreported purchases of Rs. 45,12,763/- by a random method whereas the actual unreported purchases even according to the AO amounted to Rs. 24,35,545/-(purchases of Rs. 14,92,68,998/- as per computerized

accounts and Purchases of Rs. 14,68,33,453/- as per appellant). We note that a separate addition in this regard has been made by the AO as already discussed above.

In view of these factual details, the appellant's submission to the effect that addition to the value of closing stock is tax neutral and need not to be examined. There is no evidence of excess closing stock as per the computerized accounts found during the survey. Hence, the addition of Rs. 38,39,828/- is deleted by Id CIT(A). That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue is hereby upheld and ground raised by the revenue is dismissed.

18. The summarized/ common ground no. 4 raised by the revenue is given below for ready reference.

*4. The Id. CIT(A) erred in deleting addition on account of difference in sundry debtors*

*a. Addition for A.Y. 2011-12 of Rs.1,65,196/- on account of difference in sundry debtors.*

*b. Addition for A.Y. 2012-13 of Rs.9,06,723/- on account of difference in sundry debtors.*

19. The brief facts qua the issue are that during the assessment proceedings the Assessing Officer noted that as per audited balance sheet sales was shown by the assessee to the tune of Rs. 17,05,41,061/-, out of which cash sales amounting to Rs.6,15,51,642/- and cheques worth Rs.10,89,89,419/- were deposited. Therefore, as per Assessing Officer, the sundry debtors should have been zero.( Rs. 17,05,41,061-Rs.6,15,51,642-Rs.10,89,89,419). But the sundry debtors to the tune of Rs. 1,65,196/- was shown by the assessee in his balance sheet. The Assessing Officer asked for the explanation regarding the sundry debtors. In response, the assessee submitted that the accounts were maintained in the tally system and not in the Unisolve software. The survey team took the figures from the Unisolve software maintained by the assessee which does not show correct

results. The assessee submitted that he was maintaining books of accounts separately in tally software which was handled by a part time accountant. Therefore, the difference arises because of print out taken by the survey team from the Unisolve software which was not updated. However, the Assessing Officer rejected the contention of the assessee and made the addition to the tune of Rs. 1,65,196/-. On appeal, Id CIT(A) deleted the addition. Aggrieved the revenue is in appeal before us.

20. The Id. The Id. DR has primarily reiterated the stands taken by the Assessing Officer which we have discussed in our earlier para and the same is not being repeated for the sake of brevity. On the other hand, the Id. Counsel for the assessee defended the order of the Id CIT(A).

21. We have given a careful consideration to the rival submissions and perused the material available on record. We note that the Assessing Officer found that sales as per audited balance sheet amounted to Rs.17,05,41,061/-, out of which cash sales amounted to Rs.6,15,51,642/- and cheques worth Rs. 10,89,89,419/- were deposited, as stated at page 10 of the Assessing Officer. Hence sundry debtors should have been nil whereas the debtors amounted to Rs. 1,65,196/- was shown by the assessee in his balance sheet. We note that if we deduct from the total sales to the tune of Rs. 17,05,41,601/- cash sales and cheques there is no balance left (being Rs. 17,05,41,061 – Rs. 10,89,89,419 – Rs. 6,15,51,642). We note that the main allegation of the Assessing Officer was that the assessee could not reconcile this difference therefore the addition was made. We note that the Id. CIT(A) stated that no specific unexplained discrepancy was found despite issue of notice u/s 133(6) of the Act in case of sundry debtors. No sundry debtor was found to be bogus. We note that the reason given by the AO is very general in nature. We note that it is not the case of Assessing Officer that the assessee has introduced any bogus credit in the balance sheet which has reflected in the form of debtors on the debit side of the balance sheet. No discrepancy has been found in the case of any specific debtors. We also note that there is no evidence in

unaccounted sales and no debtor has been found to be bogus. Therefore, we note that the Id. CIT(A) has rightly deleted the addition. That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue, is hereby upheld and the ground raised by the revenue is dismissed.

22. The summarized / common ground no. 5 raised by the revenue is given as follows:

5. *The Id. CIT(A) erred in deleting addition of Rs. 5,00,000/- on account of payment made by partner out of books of accounts (A.Y. 2012-13)*

23. The brief facts qua the issue are that during the course of survey a deed of assignment (KBA-4) have been impounded. As per deed of assignment, Shri Arup Saha, partner of the firm was paid full consideration of Rs. 26,00,000/-. Shri Arup Saha denied that no payment made to him other than Rs. 5,00,000/-, which was paid in cash out of income generated from M/s K.B. Medical. During the assessment proceedings the assessee was asked to explain the reasons for this cash payment. In response, the assessee submitted that the nature of transaction was personal in nature. However, the Assessing Officer rejected the contention of the assessee and made addition to the tune of Rs. 5,00,000/-. On appeal the Id. CIT(A) deleted the addition. Aggrieved the revenue is in appeal before us.

24. The Id. The Id. DR has primarily reiterated the stands taken by the Assessing Officer which we have discussed in our earlier para and the same is not being repeated for the sake of brevity. On the other hand, the Id. AR for the assessee defended the order of the Id. CIT(A).

25. We have given a careful consideration to the rival submissions and perused the material available in the record. We note that the addition of Rs. 5,00,000/- is in respect of deed of assignment (KBA-4) found during the survey u/s 133A on 08.01.2013.

We note that the deed was executed between one Shri Aninda Chowdhury and Shri Arup Saha, Partner in the appellant firm. Shri Arup Saha had paid a total consideration of Rs. 26,00,000/- according to the deed of assignment. However, Shri Anup Saha stated during the survey, that no payment other than Rs. 5,00,000/- paid in cash out of income generated from M/s. K.B. Medical. It was stated at the stage of assessment by the appellant that the transaction was a personal transaction of Shri Arup Saha, Partner and the appellant firm had nothing to do with the said payment of Rs. 5,00,000/-. The same contention was made during the appellate proceedings. The AO rejected the explanation by relying upon the statement recorded during the survey and observed that no withdrawal of Rs. 5,00,000/- from the capital account of Shri Arup Saha was reflected in the appellant's balance sheet. We do not agree with the AO's conclusion. There is no evidence other than Shri Arup Saha's statement recorded during the survey that an amount of Rs. 5,00,000/- was paid out of the appellant firm's income. The appellant firm has denied any such payment. From the brief facts narrated in the assessment order, it is clear that the payment was a part of total payment of consideration by Shri Arup Saha in his personal capacity. As the transaction pertained to Shri Arup Saha and not the appellant firm, the addition of Rs. 5,00,000/- could not have been made in the hands of the appellant firm without any corroborative evidence. Hence, the addition of Rs. 5,00,000/- was correctly deleted by Id CIT(A). That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue, is hereby upheld and the ground raised by the revenue is dismissed.

26. Now we shall take summarized /common grounds raised by the assessee. Summarized ground no. 1 raised by the assessee is given for ready reference.

*1. The Id. CIT(A) erred in confirming the addition on account of discrepancy in sundry creditors.*

*a. Addition for A.Y. 2011-12 of Rs.11,53,985/- on account of discrepancy in sundry creditors.*

b. Addition for A.Y . 2012-13 of Rs.1,50,417/- on account of discrepancy in sundry creditors.

27. Brief facts qua the issue are that during the assessment proceedings the Assessing Officer worked out excess sundry creditors reflected in the balance sheet of the assessee, as computed by the Assessing Officer on page no. 9 of the assessment order. We note that the Assessing Officer added the purchase to the opening balance of the sundry creditors and reduced payment made against the purchases therefrom to arrive at a closing balance of sundry creditors of Rs. 40,49,240/- as on 31.03.2011, as against which the assessee's balance sheet reflected sundry creditors of Rs. 52,03,225/-. We note that the assessee's explanation is rejected and the difference of Rs. 11,53,985/- (52,03,225 – 40,49,240) was added. On appeal the Ld. CIT(A) confirmed the addition made by the Assessing Officer. Aggrieved the assessee is in appeal before us.

28. The Id. Counsel for the assessee relied on the submissions made before the authorities below. Whereas the Id. DR for the revenue relied on the order passed by the Assessing Officer. We have given a careful consideration to the rival submissions and perused the material available on record. We note that the assessee has explained that the discrepancy was computed on the basis of artificial calculations and discrepancy arose because the Assessing Officer treated the entire debits in the bank account as payment for purchases which was not correct. We note that the assessee submitted all the details of sundry creditors and purchases and we also note that no sundry creditor was found to be bogus.

Therefore, we note that the Assessing Officer did not bring any tangible material on record to show that there is a discrepancy of Rs.11,53,985/-. We note that the assessee was maintaining books of accounts in 'Unisolve Software' as well as tally software, and the survey team worked out the difference based on the Unisolve software which was not updated. Therefore, we note that the Assessing Officer has failed to bring any tangible evidence on record to show that there was a discrepancy in the sundry creditors specially where the sundry creditors had

been verified by issuing the notice u/s 133(6) of the Act. Therefore, we do not agree with the Assessing Officer and therefore the addition made by the Assessing Officer and sustained by the Ld. CIT(A) to the tune of Rs. 11,53,985/- is hereby deleted. Hence ground raised by the assessee in respect of discrepancy in sundry creditors for assessment year 2011-12 and 2012-13 are hereby deleted.

29. The summarized ground no. 2 raised by the assessee reads as under:

2. *The ld. CIT(A) erred in confirming addition as gross profit on account of discrepancy in sales.*
  - a. *Addition for A.Y. 2012-13 of Rs 13,003/- as gross profit on account of discrepancy in sales.*
  - b. *Addition for A.Y. 2013-14 of Rs 1,06,146/- as gross profit on account of discrepancy in sales.*

30. We note that during the course of survey it was found that the assessee maintained its accounts in Software by name "Unisolve System", which was not updated. The Unisolve software is specialized in nature and catering the need of medicines wholesalers and retailers wherein all the mandatory requirements have been incorporated, but the said software was not updated therefore it used to give un-consistency results. The assessee has submitted the reconciliation during the assessment proceedings and the Assessing Officer did not comment anything adverse except to say that the assessee's explanation are not accepted. The Assessing Officer did not give his findings as to why the difference was being added as undisclosed sales of the assessee. We note that the assessee's books of accounts were audited by the chartered accountant and Assessing Officer has not rejected the books of accounts u/s 145(3) of the Act. Moreover, the Assessing Officer has not doubted on the gross profit declared by the assessee in preceding previous year therefore we find force in the arguments in the ld. Counsel for the assessee and delete the addition to the tune of Rs. 1,06,146/-.

31. The summarized ground no. 3 raised by the assessee is given below:

*The ld. CIT(A) erred in confirming addition made by Assessing Officer u/s 40A(3) of the Act, on account of cash payment exceeding threshold limit of Rs.20,000/-*

*(a). Addition for A.Y. 2012-13 of Rs. 24,08,636/- made on account of violation of provisions of Section 40A(3) of the Act.*

*(b).Addition for A.Y. 2013-14 of Rs. 14,54,806/- made on account of violation of provisions of Section 40A(3) of the Act.*

32. The brief facts qua the issue are that the assessee entered in ledger of expenses cash payment of Rs.10,30 000/ on 31/03/2012. The computerized ledger copy impounded (KBA-1) on 08/01/2013. In this regard, assessee made his submission before the AO. The AO noted that the assessee has questioned own books of accounts which maintained in his business premises. The assessee paid Rs.13,78,636/- to 23 persons. Sri Arup Saha, partner of the firm, failed to explain the violation of the provision of section 40A(3) of the I.T.Act on the date of survey under oath (Q.34 & Ans.34) and no further explanation given in this respect. Therefore. the entry in Expenses Ledger of cash payment of Rs.24,08,636/- disallowed U/s.40A(3) of the I.T.Act and added to returned income of the assessee.

33. On appeal, the ld. CIT(A) confirmed the addition made by the Assessing Officer. Aggrieved the assessee is in appeal before us.

34. The ld. DR has primarily reiterated the stands taken by the Assessing Officer which we have discussed in our earlier para and the same is not being repeated for the sake of brevity. On the other hand the ld. Counsel for the assessee has defended the order of the ld CIT(A).

35. We have given a careful consideration to the rival submissions and perused the material available on record. We note that this ground of appeal relates to disallowance of Rs. 24,08,636/- u/s 40A(3) of the Act. This covers addition of cash payments made in excess of Rs. 20,000/-. We note that the assessee had submitted before the Assessing Officer the sources of such payments made. During the appellate proceedings, the assessee also submitted that the assessee had not made any cash payment. We note that Assessing Officer has stated in the assessment order that Shri Arup Saha, partner of the firm was confronted with the details of payment during the survey of 08.01.2013 in his statement. We note that the Assessing Officer has not brought any cogent evidence on record to prove the statement made by Shri Arup Saha is correct. There is no corroborative evidence to prove that the statement made by Shri Arup Saha is correct therefore we do not believe in the statement of Shri Arup Saha. Moreover, the Assessing Officer has not given opportunity to the assessee to cross examine Shri Arup Saha's statement. We note that the main object of section 40A(3) is to curb the unaccounted transaction and black money. There is no restriction on the assessee in his trading activities and provision of section 40A(3) are not intended to restrict the business activities of the assessee. We also note that in assessee's case under consideration the books of accounts are audited and not rejected by the Assessing Officer. We also note that the genuineness of the transactions and identity of the suppliers is established therefore, the payments should not be disallowed as held by the Hon'ble Calcutta High Court in the case of GirdharilalSoni vs. CIT reported in [1989] 179 ITR 111 (Cal). In the case under consideration supplier is identifiable and the payment has been made for genuine transaction. Moreover in the assessee's case under consideration the survey team worked out the difference between the books impounded from Unisolve Software system vis-à-vis audited books of accounts. Hence in the assessee's case under consideration the Assessing Officer has not established with cogent evidence that the assessee has made payment in cash exceeding to Rs.20,000/-. Therefore, we delete the addition made by the Assessing Officer and sustained by the Id. CIT(A)

36. The summarized ground no. 4 raised by the assessee is given below:

*4.The ld. CIT(A) erred in confirming the addition of Rs. 4,30,819/- on account of bogus purchases (A.Y. 2013-14)*

37. Brief facts qua the issue are that from the impounded documents it was found that the purchase up to 08.01.2013( date of survey) was Rs. 19,76,37,113.26/- and from 09.01.2013 to 31.03.2013 purchase was Rs. 5,31,89,504.74/- totalling to Rs. 25,08,26,618/-. Whereas the purchase appeared in the audit report for the period 01.04.2012 to 31.03.2013 ofRs. 25,12,57,437/-. Thus the excess purchase shown in the audit report amounting to Rs. 4,30 819/-. The assessee was asked to explain the same vide letter dated 20.01.2016. In reply, the assessee submitted vide his letter dated 25.01.2016 reconciling the purchases. From which it transpired that the following bills were entered after 08.01.2013. Details of which are as under:

Sl. No.	Name of the company	Bill No.	Date	Amount
1	Alkem Laboratories Ltd.	311233	31.12.2012	94,335.72
2	Do	7802	Do	107923.65
3	Eskag Pharmaceutical	1357	08.01.2013	17947
4	Do	1358	Do	5033
5	Cadila Pharmaceuticals	ICL 1201931	29.12.2012	9813
6	Do	ICL1201978	31.012.2012	3195
7	Alkem Laboratories Ltd.	3510310899	30.12.2012	101481.24
8	Do	3510311268	08.01.2013	88253.48
Total				427982.09

During the course of survey ( 08.01.2013) the bills mentioned in above were not found for entry into the system. Therefore, AO made addition of Rs. 4,30,819/-.

38. On appeal, the ld. CIT(A) confirmed the addition made by the Assessing Officer. Aggrieved the assessee is in appeal before us. The ld. The ld. DR has primarily reiterated the stands taken by the Assessing Officer which we have discussed in our earlier para and the same is not being repeated for the sake of brevity. On the other hand, the ld. Counsel for the assessee defended the order of the Ld CIT(A).

39. We have given a careful consideration to the rival submissions and perused the material available on record. We note that this grounds of appeal is against the disallowance of bogus purchases of Rs. 4,30,819/-. The Assessing Officer found that the assessee had claimed purchases of Rs. 25,12,57,437/- in the audited books of accounts. On the other hand, the purchase worth Rs. 19,76,37,113/- had been made during the relevant previous year till the date of survey u/s 133A i.e. on 08.01.2013 as per computerized accounts impounded during the survey and during the period from 09.01.2013 to 31.03.2013, purchases aggregating to Rs. 5,31,89,505/- had been made by the assessee. Therefore the total purchase as evidenced by the documents impounded during the survey impounded to Rs. 25,08,26,618/-. We note that the assessee has explained during the assessment proceedings that purchases totaling to Rs. 4,27,982/- had been made on date prior to 08.01.2013, the date of survey We note that assessee was maintain books of accounts in tally software, whereas the figures taken by the Assessing Officer were from Unisolve software, which was not updated, as explained by the assessee. The assessee submitted the reconciliation and the difference is reconciliatory. The Assessing Officer did not bring any cogent evidence on record to show that the difference of Rs. 4,33,819/- is on account of bogus purchases. We note that the books of accounts of the assessee were audited and Assessing Officer did not reject the books of accounts. Moreover, the Assessing Officer has not doubted the sales, if corresponding sales are accepted by the AO then the purchase in respect of that sale is going to be correct. Hence we delete the disallowance of Rs. 4,30,819/-.

40. The summarized ground no. 5 raised by the assessee is given below:

*5.The ld. CIT(A) erred in confirming the addition of Rs. 38,750/- on account of reconciled credit notes for goods returned. (A.Y. 2013-14)*

41. We have given a careful consideration to the rival submissions and perused the material available on record. We note that the assessee's books of accounts are audited and Assessing Officer has not rejected the books of accounts u/s 145(3) of the Act. We have also deleted the addition made on account of sale and purchase therefore whatever sales and purchase shown by the assessee in audited books of accounts have been upheld by us. Since the credit notes for goods returned to suppliers to the tune of Rs. 38,750/- relates to purchase, and we have not confirmed any bogus purchases therefore this ground is consequential in nature and the addition made by the Assessing Officer and sustained by the Id. CIT(A) needs to be deleted accordingly we delete the addition.

42. Now we shall take the grounds raised by the assessee in cross objection in C.O. No. 68/Kol/2017, for assessment year 2010-11, which reads as under:

*Ground no. 2- The Id. CIT(A) erred in confirming the addition of Rs. 44,118/- on account of discrepancy in Sundry creditors.*

43. We have given a careful consideration to the rival submissions and perused the material available on record. We note that the assessee's books of accounts were audited by chartered accountant. The books of accounts were not rejected by the Assessing Officer u/s 145(3) of the Act. We have deleted all the additions relating to bogus purchases and sales made by the Assessing Officer. The discrepancy in sundry creditors to the tune of Rs. 44,118/- worked out by the Assessing Officer is not based on any cogent material. This discrepancy worked out by the Assessing Officer has not been corroborated by any tangible material by the Assessing Officer therefore, we delete the addition of Rs. 44,118/-. Hence the cross objection filed by the assessee in C.O. No. 68/Kol/2017 is allowed.

44. In the result, the appeals of the Revenue in I.T.A. No. 1209, 1210&1211/Kol/2017 and the cross objections of the assessee in C.O. Nos.

68,69&70/Kol/2017 are dismissed and the appeals of the assessee in I.T.A. Nos.

705,706&707/Kol/2017 are allowed.

Order pronounced in the open court on this 08/ 02/2019.

**Sd/-**

**(S.S.Godara)**

न्यायिकसदस्य / JUDICIAL MEMBER

**Sd/-**

**(DR. A.L.SAINI)**

लेखसदस्य / ACCOUNTANT MEMBER

कोलकाता Kolkata; दिनांक Dated 08/ 02/2019

SB, Sr.PS.

Copy of the order forwarded to:

1. ITO, Ward-22(2),Kolkata
2. M/s K.B. Medical Agency
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches