

**IN THE INCOME TAX APPELLATE TRIBUNAL
"RAJKOT BENCH", RAJKOT**

**BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER AND
SHRI RAJPAL YADAV, JUDICIAL MEMBER**

Sr.No.	ITA No.	Appellant	Respondent
1-2	958/RJT/2010 with CO No.38/RJT/2010 Asstt.Year 2003-04	DCIT, Cir.1 Rajkot.	Vs. Smt.Manishaben N. Mashru Prop. Of M/s.Shree Divya Travels 2/16, Galaxy Commercial Centre Jawahar Road, Rajkot.
3-4	959/RJT/2010 with CO No.39/RJT/2010 Asstt.Year 2004-05	DCIT, Cir.1 Rajkot.	Vs. Smt.Manishaben N. Mashru Prop. Of M/s.Shree Divya Travels 2/16 Galaxy Commercial Centre Jawahar Road, Rajkot.
5-6	960/RJT/2010 with CO No.40/RJT/2010 Asstt.Year 2005-06	DCIT, Cir.1 Rajkot.	Vs. Smt.Manishaben N. Mashru Prop. Of M/s.Shree Divya Travels 2/16, Galaxy Commercial Centre Jawahar Road, Rajkot.
7-8	961/RJT/2010 with CO No.29/RJT/2010 Asstt.Year 2005-06	DCIT, Cir.1 Rajkot.	Vs. Shri Nailesh M. Mashru Prop. Of Divya Air Travels 24/2, Galaxy Commercial Centre Jawahar Road, Rajkot.
9-10	966/RJT/2010 with CO No.37/RJT/2010 Asstt.Year 2004-05	ITO, Ward-1(3) Rajkot.	Vs. Shri Nailesh M. Mashru Prop. Of Divya Air Travels 24/2, Galaxy Commercial Centre Jawahar Road, Rajkot.
11	855/RJT/2010 Asstt.Year 2006-07	Smt.Manishaben N. Mashru Prop. Of M/s.Shree Divya Travels 2/16, Galaxy Commercial Centre Jawahar Road, Rajkot.	Vs. ITO, Ward- 1(3) Rajkot.
12	953/RJT/2010 Asstt.Year 2006-07	DCIT, Cir.1 Rajkot.	Vs. Smt.Manishaben N. Mashru Prop. Of M/s.Shree Divya Travels 2/16, Galaxy Commercial Centre Jawahar Road, Rajkot.
13-14	355 and 386/RJT/2011 Asstt.Year 2004-05 and 2005-06	ACIT, Cir.1 Rajkot.	Vs. Smt.Manishaben N. Mashru Prop. Of M/s.Shree Divya Travels 2/16, Galaxy Commercial Centre Jawahar Road, Rajkot.

Revenue by : Shri Hargovind Singh, CIT-DR
Assessee by : Shri M.J. Ranpura, CA

सुनवाई की तारीख/Date of Hearing : 30/10/2017

घोषणा की तारीख /Date of Pronouncement: 04/01/2018

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER: This bunch of appeals contains eight appeals by the Revenue, five cross-objections by two assessees viz. Smt. Manishaben N. Mashru and Shri Nailesh M. Mashru and one appeal filed by the assessee viz. Smt.Manishaben N. Mashru. All these appeals are directed against separate orders of the Id.CIT(A)-I. Assessment years involved in these appeals are from A.Y 2003-04 to 2006-07.

2. Out of this bunch, in two appeals viz. ITA No.355 and 386/RJT/2011 Revenue impugned the orders of the Id.CIT(A)-I, Rajkot against cancellation of penalty imposed by the Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961 for the Assessment Years 2004-05 and 2005-06. Since in all these appeals/cross-objections, issues and facts are intertwined to each other, we proceed to dispose of all by this common order for the sake of brevity and convenience

3. Before advertng the specific grievance of the parties in particular assessment year, we would like to take note of certain basic common facts.

4. Assessee, Smt.Manisaben N. Mashru is an individual engaged in the business of domestic and international air-tickets booking, incentive tours, hotel reservations and visa formalities under the name and style "M/s.Divya Travels". A survey under section 133A of the Income Tax Act, 1961 was carried out at the premises of the assessee on

18.2.2005. During the survey, certain loose papers, diaries, files etc. were found and impounded. Simultaneous survey action was also carried out at the premises of sister concern of the assessee i.e. "M/s.Divya Tourism Pvt.Ltd." in which Shri Nailesh Masura, husband of the assessee is Managing Director, who also looks after day-to-day affairs of the proprietary concern of the assessee i.e. "M/s.Divya Travels". Statement of Shri Nailesh Masura on oath was recorded under section 131(1A) of the Act in the case of survey of "M/s.Divya Travels". After the survey, summons were issued to the assessee requiring to appear and furnish certain requisite details, which remained unattended. However, after filing a reply on 28.2.2005, the assessee again filed a reply on 22.3.2005 disclosing an amount of Rs.32,20,478/- for the Asstt.Year 2003-04 and agreed to pay tax on the same.

5. In the above background the Assessing Officer issued notice under section 148 of the Act on 28.12.2007 which was served upon the assessee on 31.12.2007, requiring the assessee to file revised return. For which the assessee replied that the return filed vide receipt no.011775 on 28.12.2007 be considered. Thereafter, the Assessing Officer issued notices on various dates requiring the assessee to clarify its stand on various issues and to explain the contents of the impounded material. These notices remained unanswered. Since the assessment was getting time barred, and to give another opportunity to the assessee to explain its position, a final notice under section 142(1) and 143(2) was also issued to the assessee, which also remained unattended. According to the Assessing Officer, whatever documents impounded during the survey, copies of which were furnished to the assessee, whenever asked for by the assessee. Despite that the assessee has not turned up for finalization of the assessment. Therefore, based on the material available with the department, the Assessing Officer proceeded to finalise the assessment of the assessee.

6. First we take appeals and cross-objection for the Asstt.Years 2003-04 to 2005-06. In the case of Smt.Manishaben N. Mashru facts on all vital points are common except variation in the quantum. Therefore, for the facility of reference, we take up facts mainly from the Asstt.Year 2003-04. It is pertinent to observe that during the course of survey certain loose papers and diaries were found. These were inventorised as Annexure A/2, A/3, A/4 and A/8. The Id.AO has compiled details of narrations made in these annexures. He also took into consideration credit entries in these pages and reproduced them on page nos.4 to 11 of the assessment orders. He confronted the assessee to show why these credit entries should not be added as unexplained cash credit of the assessee under section 68 of the Income Tax Act, 1961. According to the AO, the assessee failed to explain source of credit entries and also failed to reconcile entries with other material. Accordingly he treated alleged credit entries as unexplained cash credit of the assessee and made addition of Rs.5,10,28,350/- in the Asstt.Year 2003-04. Similar additions have been made in other two assessment years. On appeal, the Id.CIT(A) has deleted these additions.

7. The Id.counsel for the assessee during the course of hearing compiled details in tabular form and filed a synopsis exhibiting additions made by the AO; relief granted by the Id.CIT(A) and additions sustained by the Id.CIT(A). Common composition of ground no.1 in the Revenue's appeals for all these three years has been depicted as under:

<i>The Ld. CIT(A)-I, Rajkot has erred in law and on facts in granting relief as per column (3) of following table out of total addition made as per column (1) on account of impounded annexure.</i>			
<i>A.Y.</i>	<i>Addition by AO</i>	<i>Relief granted by CIT(A)</i>	<i>Addition sustained by CIT(A)</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>03-04</i>	<i>5,10,28,350</i>	<i>5,07,28,350</i>	<i>3,00,000</i>

04-05	17,92,73,560	17,50,73,560	42,00,000
05-06	90,84,157	51,33,299 *	3,00,000
* for AY 2005-06, addition of Rs. 36,50,9781- was sustained by Ld. CIT(A) on the basis of appellant's own admission before Investigation Wing on account of peak credit of the entries in impounded documents.			

8. This ground in all these three assessment years is inter-connected with ground no.2 taken by the assessee in COs. filed in these assessment years. In other words, additions sustained by the Id.CIT(A) in the above table are being challenged by the assessee. Thus, we take all these grounds together.

9. With the assistance of the Id.representatives, we have gone through the record carefully. It is pertinent to observe that survey was conducted at the premises of the assessee on 18/19.02.2005. A notice under section 148 of the Act was issued on 28.12.2007 and AO has started investigation by issuance of notice under section 143(2) on 15.10.2008 i.e. this was first day of hearing fixed in these assessment years. The AO has passed assessment order on 18.12.2008. He observed that the assessee failed to submit requisite details explaining entries reflected in the seized papers. He also assumed that only cash credited are to be taken into consideration and these to be treated as unexplained cash credit. Before the Id.CIT(A) the assessee has filed details in the shape of additional evidence, and the Id.CIT(A) has called for remand report. As far as admission of additional evidences is concerned, Revenue has not impugned the order of the Id.CIT(A). The stand of the assessee has been reproduced by the Id.CIT(A) in para.4.1, which reads as under:

"4.1 Challenging the additions, the Id AR submitted as under:

"(a) The AO has invoked the provisions of section 68 of the Act in respect of credit entries appearing in rough note books impounded during the course of survey u/s 133A of the Act and made the following additions:

Sr.No.	Description	Amount(Rs.)
01 02	Annexure-A-2	54,30,111
03 04	Annexure-A-3	52,26,696
	Annexure-A-4	1,41,72,402
	Annexure-A-8	2,61,99,141
	Total	5,10,28,350

(b) At the outset, it is respectfully submitted that the appellant is engaged in the business of booking of domestic and international air tickets for AIR India: Kingfisher Jet Airlines: International Air Lines etc. (in short, principals) in her proprietary concern in the name & style as M/s Divya Travels.

(c) The appellant is having whole sale business on behalf of the principals and her major business is with the sub-travel agents. She is member of International Air Transport Association (IATA), who secure guarantee for payments to the principals.

(d) The turnover in respect of domestic & international booking of air tickets runs in cores of rupees and the Gross commission receipts on such sales was nearly Rs. 6.90 crores, during the year under consideration. The entire business transactions with principals are through the banking channel.

(e) The appellant is maintaining regular books of account, which are duly supported by business related documents. The same are subject to audit u/s 44AB of the Act as well. There is no disqualification in audit report (copy of audited accounts and auditor's report attached).

(f) The appellant has deployed number of employees for booking and taking score of financial transactions. There are sizable valuable clients who are used to book the domestic and international air tickets on account and payments are liquidated on subsequent dates.

(g) At this juncture, it is respectfully submitted that the appellant is required to make the payments towards booking of air tickets to the principals at a regular interval to respect the scheduled terms of payments. There happened instances, where the payments from clients are not materialized where as payments to the principals are required to be made on scheduled date.

(h) In the circumstances, the staff employed for taking score of the available fund and other contingencies, used to mark the availability of fund as also expected collection from clients, besides making entries in debit side for re-payment and miscellaneous expenses on debit side.

(i) The entire exercise is carried out by the responsible clerk in rough note book, where in the happening of withdrawals from bank: details of receipt number of payments received from clients: telephone numbers etc. are also mentioned. Such contingencies are summarized as under:

Opening cash balance of previous day;
The cash collection materialized and corresponding receipt numbers;
The expected collection from clients & corresponding receipts;
The bank withdrawals and details related to bank balance;
The telephone numbers;
The details related to domination of cash collection from various agents;
The details of advance receipts from agents;

(j) In short, the noting in rough note book is just note been of financial happenings, which may or may not be happened. The abbreviations or names marked in the rough note books are names of clients with whom there is regular business and business dealings with them are duly recorded in regular books of account as also the final financial transactions as a whole are reflected in regular books. The summary of explanation of relevant material impounded and marked as Annexures-A-2, A-3, A-4 and A-8 and bifurcation of various multiple additions are attached. "

(k) The AO did not appreciate the casual noting in rough note book in right perspective and has made total of the jottings of each credit entries mentioned in the rough note book ignoring the debit entries reflected on same pages. It is settled proposition of law that the document is to be considered as a whole. Reliance is placed on the decision in the case of Indore Malva United Mills Ltd. vs. State of Madhya Pradesh (1966) 60 ITR 41 (SC).

(l) Hon'ble Supreme Court has, in the case of National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383, observed that:

"The purpose of an assessment proceeding before the taxing authority is to assess correctly the tax liability of the assessee in accordance with law."

(m) The AO has made sum of the total of the credit entries in impounded note books on subjective consideration. There are multiple additions on repeated entries, besides additions in respect of telephone numbers and receipt voucher numbers which identified in summary as sated vide Para (j) above.

(n) It may be mentioned that the extensive survey proceedings were carried out at the business premises of the appellant and associate concerns simultaneously on same date. The appellant has also furnished necessary explanations during the course of post survey proceedings as also during the course of assessment proceedings. No material or circumstantial evidence was noticed to suggest unrecorded financial transactions or unrecorded investments.

(o) Your Honor will appreciate the fact that, the noting in rough note book cannot be regarded as books of account within the meaning of section 2(12A) of the Act. The casual noting in rough diary are dumb documents having no evidential value. The reliance is placed on following judicial pronouncements".

10. The Id.AO has submitted his remand report on the explanation of the assessee with regard to each entry in the Annexures considered by him during the course of assessment proceedings. The Id.CIT(A) has reproduced remand report of the AO as well as explanation of the assessee *qua* entries, thereafter, the Id.CIT(A) has deleted addition by observing as under: (A.Y. 2003-04).

"4.3 I have perused the assessment order, submissions of the appellant, the remand report and appellant's rejoinder on remand report carefully. I have also considered the business modus operandi. It is noticed that the appellant is engaged in the business of booking of domestic and international air tickets for the AIR India, Jet Airlines, International Air Lines etc, on whole sale basis besides allied activities in tourism field. She is having a voluminous turnover and getting sizeable commission there from. It is also noticed that the jotting in impounded documents are made by a clerk showing the details related to cash collection, expected collection, withdrawals from the bank, Telephone

numbers etc. The plea of the appellant that the jotting in rough notebook is just note been of financial happenings is found acceptable in principal, since the appellant is having voluminous business on behalf of the principals. She receives tickets from principals for which payments are made through bank, her commission receipts from the principals are through the banking channel her sales transactions to sub agents are voluminous and corresponding jotting in rough notebook can be considered to be reflection of financial happenings. The appellant has also conveniently demonstrated the fact that almost all the jotting in impounded notebooks are reflected in the regular books, except a few transactions amounting to Rs.1,59,624/- for which no convincing explanation or documents are forthcoming. The plea of the appellant that the diaries are not regular books of account and entries in such diaries cannot be a base for making the addition u/s 68 of the IT Act is correct. It is proposition of law that the scope of the provision of section 68 of the IT Act cannot be extended to noting in rough notebook which is not books of account as defined in section 2(12A) of the IT Act. There was no case for making the addition u/s68 of the Act on the basis of jotting in impounded documents. Further, the AO has made the addition of admitted income of Rs.36,50,978/- while finalizing the assessment for the assessment year 2005-06. There was no justification for making such a fresh addition in the assessment year under consideration. As per the settled proposition of law, the purpose of an assessment proceeding before the taxing authority is to assess correctly the tax liability of the assessee in accordance with law. However at the same time the appellant was not in a position to explain transactions to the tune of Rs. 1,59,624/- recorded in impounded documents. The instances of unrecorded business transactions lead to reasonable conclusion that there are business transactions which are not recorded in regular books of account considering totality of facts, I am convinced that the ration laid down in by the.Hon'ble High Court of Gujarat in the case of CIT vs P. Pravin & Co. (2005) 274 ITR 534(Guj) is applicable to the facts of this case and respectfully following the same I am of the considered view that it is reasonable to estimate the profit earned out of such unrecorded financial transactions at Rs. 3,00,000/-. In the circumstances, the additions based on Annx-A2,A3,A4,A8 amounting to Rs.5,10,28,350/- and addition of Rs.36,50,978/- taxed in the assessment year 2005-06 are hereby deleted and estimated addition of Rs.3,00,000/- is sustained the appellant gets relief accordingly."

11. The Id.DR has relied upon the order of the AO whereas the Id.counsel for the assessee relied upon order of the Id.CIT(A) as well as submissions filed by the assessee before the Id.CIT(A).

12. On due consideration of the above facts, we find that case of the assessee is that the assessee at the relevant time was a member of International Air Transport Association ("IATA" for short). She used to book domestic and international air-ticket for Air India, Kingfisher, Jet Airline and other international airlines. Her turnover was voluminous running into crores of rupees because commission receipts on such sales were nearly Rs.6.90 crores. She has deployed number of employees for booking and taking scores of financial transactions. She has valuable clients who used to book domestic and international air-tickets. Commission from airlines was credited in her account through banking channel. In other words, there was no concept of cash in this line of business. She has been maintaining her regular books of accounts which are duly supported by business related documents and auditors have not pointed out any disqualification to the books of accounts maintained by the assessee. Thus, the stand of the assessee was that in the loose paper certain notings, jottings have been made by the employees with regard to financial happenings of the assessee. These jottings contained certain receivable amounts, payments projection of the business etc. The Id.AO has construed these papers in an erroneous manner. He has simply taken into consideration entries selectively viz. he took into consideration credit entries only. In the remand proceedings, he himself was satisfied with regard to the explanation of the assessee. The assessee has compiled details and submitted before the AO exhibiting discrepancies worked out by the AO in assessment order which were reconciled by him in the remand proceedings and un-reconciled entries have been examined by the Id.CIT(A). We deem it appropriate to take note of these details which read as under:

AY	Discrepancies worked out by AO in assessment order	Discrepancies worked out by AO in remand report	Unreconciled entries as , accepted by Ld. CIT(A)	Ratio of discrepancy finally determined
2003-04	5,10,28,350	1,56,29,459	1,59,624	0.31%
2004-05	17,92,73,560	9,15,66,115	38,77,759	2.16%
2005-06	90,84,157	27,91,555	61,469	0.68%
Total	23,93,86,067	10,99,87,129	40,98,852	1.05%

13. At this stage, we would like to make a reference to section 68 of the Income Tax Act, which contemplates that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, or the explanation offered by the assessee is not, in the opinion of the AO satisfactory, then the sum so credited in the accounts may be treated as income of the assessee of that previous year.

14. Thus, a perusal of the above details would indicate that the AO has committed an error by assuming that these are unexplained cash credits of the assessee

15. In the remand proceedings the Id.AO has scaled down the figures of discrepancies. These aspects have been further examined by the Id.CIT(A). This exercise would indicate that in these papers, no unexplained credits were noted by the assessee. These are rough papers kept by employees for their personal reference. Therefore, there cannot be addition u/s.68 of the Income Tax Act. Assessee has explained the nature of transaction in these papers. The gross value of transactions in these papers were more than Rs.5.00 crores, Rs.17.00 crores and Rs.90 lakhs in Asstt.Years 2003-04, 2004-05 and 2005-06 respectively. The discrepancy in terms of percentage of gross value is 0.31%, 2.16% and 0.68% in Asstt.Years 2003-04, 2004-05 and 2005-06. Thus, in two years discrepancy comes out after reconciliation was

less than 1% of gross value. This was the result of time gap between the recording of entries and explanation sought. Some of the employees' who have noted these entries must have left the job also. Thus, we find that the Id.CIT(A) has rightly appreciated controversy and rightly deleted the additions. We do not find any merit in the grounds of appeal raised by the Revenue.

16. As far as grounds raised in the CO are concerned, we find that the Id.CIT(A) has worked out un-reconciled entries at Rs.1,59,624/-, Rs.38,77,759/- and Rs.61,469/- in the Asstt.Year 2003-04, 2004-05 and 2005-06. As observed earlier that entries in these pages were recorded by various employees for their personal reference, they are related to the business. They can be treated as unrecorded transaction but how they will become taxable on gross basis ? Only element of profit involved in them is to be taxed. In Asstt.Year 2004-05, the Id.CIT(A) has confirmed the addition of 42 lacs on an estimation basis. But even for estimation there should be some logic for working out the quantum. The Id.CIT(A) has taken the un-reconciled entries of rs.38,77,759/- for estimation of profit. But this is the gross value of some transaction. Corresponding expenses were also there in those entries. Therefore, gross entries cannot be taken as income of the assessee. Therefore, we modify the direction of the Id.CIT(A). The Id.AO shall calculate the profit at the rate assessee has shown on the basis of regular books in these years and accepted by AO. In other words only element of profit is to be included in the taxable income out of the un-reconciled entries worked out by the Id.CIT(A) and not the gross receipt. The grounds of CO are allowed.

17. Ground no.2 in Revenue's appeal for the Asstt.Year 2003-04. In this ground the Revenue has pleaded that the Id.CIT(A) has erred in law and on facts in deleting addition of Rs.36,50,978/- which was added by the AO on ground that the assessee has voluntarily admitted this

amount before the DDIT(Investigation). A perusal of computation of income for Asstt.Year 2003-04 would indicate that at serial no.5, the Id.AO has made an addition of Rs.36,50,978/- under the heading "Disclosure made before the DDIT(Investigation)-2, Rajkot.". The assessee pleaded that she has worked out peak balance of Rs.32,20,478/- on the basis of impounded documents and offered the same for taxation for the Asstt.Year 2005-06. Subsequently, peak balance was revised at Rs.36,50,978/-. The AO has finalised the assessment making an addition of Rs.96,69,920/- in Asstt.Year 2005-06. When the assessee challenged this addition before the Id.CIT(A) in the Asstt.Year 2005-06, then the Id.CIT(A) has observed that peak working for the Asstt.year 2005-06 is to be restricted to Rs.39,50,978/- . It includes Rs.36,50,978/- plus Rs.3.00 lakhs. Thus, the Id.CIT(A) has deleted addition of Rs.51,33,219/- in Asstt.Year 2005-06 which is discernible from details filed by the assessee in para-5 of this order. The assessee has impugned only retention of addition of Rs.3.00 lakhs by the Id.CIT(A) in this assessment year. She has pointed out that this Rs.3.00 lakhs is a gross income and only profit element of Rs.3.00 lakhs be added in her income. Revenue in the Asstt.Year 2005-06 has impugned deletion of Rs.51,33,219/- meaning thereby an amount of Rs.36,50,978/- retained by the Id.CIT(A) has not been challenged by the assessee in the Asstt.Year 2005-06. Thus, this amount has been added twice by the AO. It is also stand of the assessee that this amount was included in the peak balance for the Asstt.Year 2005-06. It cannot be assessed in the Asstt.Year 2003-04 also. The Id.CIT(A) has rightly deleted from the Asstt.Year 2003-04 and we do not find any merit in this ground of appeal. It is rejected.

18. Ground no.3, 2, 2 of Revenue's appeal in the asstt.Year 2003-04, 2004-05 and Asstt.Year 2005-06 respectively.

"The Id.CIT(A) has erred in law and on facts in deleting the addition on account of disallowance of proportionate interest expenditure for the respective assessment years."

19. Next common grievance of the Revenue pleaded in ground no.3 in Asstt.Year 2003-04 and ground no.2 in the Asstt.Years 2004-05 and 2005-06, is that the Id.CIT(A) has erred in law and on facts in deleting additions of Rs.88,850/-, Rs.7,92,111/- and Rs.3,29,757/- in the Asstt.Years 2003-04 to 2005-06 respectively. According to the Revenue, these disallowances were made by the AO out of interest expenses.

20. Brief facts of the case are that the assessee has advanced loan of Rs.7,40,410/-, Rs.1,31,33,329/- and Rs.21,31,627/- in the Asstt.Years 2003-04 to 2005-06 without charging interest. On the other hand, the assessee has borrowed funds from bank and claimed interest expenditure of Rs.4,38,451/-, Rs.7,92,111/- and Rs.9,82,322/- in the Asstt.Years 2003-04 to 2005-06 respectively.

21. The AO has calculated interest at the rate of 12% which ought to have been charged by the assessee on the interest free advance given by her. Accordingly, he made disallowance.

22. On appeal, the Id.CIT(A) has deleted disallowance made by the AO on the ground that interest free funds available with the assessee were much more than the interest free advance given by her. The Id.CIT(A) has observed that the assessee had interest free funds of Rs.2,63,69,501/- in the Asstt.Year 2003-04 and Rs.1,95,9,856/- in Asstt.Year 2004-05 and 2005-06.

23. On due consideration of the above facts, we do not find any error in the order of the Id.CIT(A) because interest expenditure could be disallowed if interest bearing funds were used by the assessee for the purpose of granting loan without charging interest. The assessee has demonstrated that she has more interest free funds during the year than the interest free advance, and therefore there could not be any

attribution of interest expenditure on such interest free loans. These grounds of appeal are rejected in all these assessment years.

24. Ground no.4, 4, 3, 5 of Revenue's appeal in the Asstt.Year 2003-04, 2004-05, 2005-06 and 2006-07:

"The Id.CIT(A) has erred in law and on facts in granting relief out of disallowance made from administrative and selling expenses.:"

25. Ground nos.3, 3, 3 and 4 of the assessee's appeal CO in the Asstt.Year 2003-04, 2004-05, 2005-06 and 2006-07 respectively.

"The Id.CIT(A) erred on facts as also in law in retaining disallowance out of total disallowance made from administrative and selling expenses.

26. Next common issue raised by the Department and the assessee is with regard to estimated disallowance of expenses viz. (a) out of vehicle expenses, (b) telephone and (c) travelling expenses etc. at 20% by the AO which were restricted by the Id.CIT(A) at 10% of total expenses.

27. After going through the record and the impugned orders of the Revenue authorities, we find that the AO has estimated impugned expenditures for disallowance at 20% for want of necessary supporting materials. However, the Id.CIT(A) after considering the size of business and quantum of transactions carried out by the assessee restricted disallowance to 10% of the total expenses, which we find to be reasonable and justifiable. Therefore, we are not inclined to disturb the order of the Id.CIT(A) on this issue. It is confirmed. The ground taken by both the sides in appeals/cross-objection are rejected.

28. No other ground is raised in the Asstt.Year 2003-04. We do not find any merit in the appeal of the Revenue. It is dismissed. So far as CO of the assessee in Asstt.Year 2003-04 is concerned, it is partly allowed for statistical purpose.

29. Now, we take the remaining grounds of appeal raised by the Revenue in the Asstt.Year 2004-05.

30. Ground no.3: In this ground, Revenue has pleaded that the Id.CIT(A) has erred in deleting addition of Rs.2 lakhs which was added by the AO with the aid of section 68 of the Income Tax Act.

31. With the assistance of the Id.representatives, we have gone through the record carefully. It emerges out from the record that a sum of Rs. 2 lakhs was appeared against the name of Shri Suryakant Maganlal. But this amount was carried from balance of earlier years. As observed by us, section 68 of the Act contemplates where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, or the explanation offered by the assessee is not, in the opinion of the AO satisfactory, then the sum so credited in the accounts may be treated as income of the assessee of that previous year. This amount was not found to be credited in the books of the assessee for the first time, rather, it was a carried forward from earlier year. Explanation of the assessee could be sought in the year in which the amount was for the first time shown as credit balance. Therefore, the Id.CIT(A) has rightly deleted this addition.

32. Ground no.4: In this ground of appeal, grievance of the Revenue is that the Id.CIT(A) has erred in deleting addition of Rs.2,36,700/- out of total addition made by the AO at Rs.4,71,700/-.

33. Brief facts of the case are that out of administrative expenses debited by the assessee, the Id.AO has made an *ad hoc* disallowance of Rs.4,71,700/- which is 20% of the total expenses debited by the assessee. On appeal, the Id.CIT(A) has restricted this disallowance to 10% on the ground that the assessee is an individual. She has huge turnover and earned commission income of more than Rs.12 crores.

We have considered this aspect while disposing of ground no.4 of the Revenue's appeal in the Asstt.Year 2003-04 i.e. in para 27 of this order. We do not find any merit in this ground of appeal. It is again dismissed.

34. Ground no.5: In this ground of appeal, grievance of the Revenue is that the Id.CIT(A) has erred in deleting addition of Rs.30,089/-. The assessee has written off the above amount in the books of accounts and claimed it as bad debt. She also alleged that these were expenses which could not be recovered, hence, she has written off them. The AO has disallowed the claim of the assessee on the ground that the assessee failed to demonstrate the efforts made by her for recovery of the outstanding amount. On appeal, the Id.CIT(A) has deleted the disallowance by following judgment of the Hon'ble Supreme Court in the case of TRF Ltd. Vs. Cit, 35 DTR (SC) 156. According to the Id.CIT(A) after 1.4.1989 the assessee was not supposed to bring demonstrative evidence on record to show that debts have actually become bad. It is sufficient if these amounts have been written off in its accounts. After considering the finding of the Id.CIT(A) we do not find any merit in this ground of appeal. It is rejected.

35. No other ground was raised by the Revenue in Asstt.Year 2004-05.

36. Ground No.4 in assessee's CO for the Asstt.Year 2004-05. It is inter-connected with ground no.3 in assessee's appeal for the Asstt.Year 2006-07.

37. Grievance of the assessee is that the Id.AO has erred in making estimated addition of Rs.1,20,000/- in the Asstt.Year 2004-05 and Rs.50,000/- in the Asstt.Year 2006-07 on account of low household withdrawal shown by the assessee.

38. Brief facts of the case are that Smt.Manishaben N. Mashru has shown withdrawal of Rs.60,000/- in the Asstt.Year 2004-05. Her husband Shri Nilesh Mashru shown withdrawal of Rs.36,000/-. Their HUF withdrew a sum of Rs.12,000/-. Similarly, in the Asstt.Year 2006-07, they have shown withdrawal of Rs.1,10,000/-. The Id.AO did not find this withdrawal sufficient for meeting household expenditure. Hence, he made addition of Rs.1,20,000/- in the Asstt.Year 2004-05 and Rs.50,000/- for the Asstt.Year 2006-07.

39. With the assistance of the Id.representatives, we have gone through the record carefully. It is quite difficult to determine household expenditure of any individual. It is a very subjective area. The AO must have considered his local knowledge about the assessee and their status of living in the society. The assessee has been carrying out voluminous business in ticket booking. She has earned commission of crores of rupees. Looking into the background, it appears that they must have living a good life and the AO must have considered that aspect while estimating the household expenses. Two Revenue authorities have exercised their discretion in estimating household expenditure. Therefore, without there being anything on record that such opinion was formed by the Revenue authorities for extraneous reasons, we do not wish to replace those opinions by a third-one, which is also based on estimation. We do not find any merit in these grounds of appeal. They are rejected.

40. Ground no.2 in assessee's appeal for the Asstt.Year 2006-07:

"The Id.CIT(A) erred on facts as also in law in confirming the disallowance made in respect of discount of Rs.82,63,965/- u/s.40(a)(ia) of the Act"

41. Brief facts of the case are that the assessee is a member of International Air Transport Association("IATA"). She used to book air-tickets for domestic and international air-travellers for AirIndia,

Kingfisher, JetAirline and other international air-lines. Some of travel agents booked air-tickets by using assessee's membership. In other words, tickets which were to be booked in the name of the assessee were to be sold to the agents at discounted price. The alleged travel agents made payment of concessional price and assumed role of customer of the assessee. The AO treated such travel agents as agents of the assessee and observed that the discounted rate on which tickets were sold to the customers is to be construed as commission paid. Assessee failed to deduct TDS and therefore the alleged concession in the ticket price is to be disallowed to the assessee. The case of the assessee is that the alleged travel agents were not working for the assessee as agents. They have booked tickets in their independent capacity through the assessee. The assessee has offered them a trade discount, for example, a ticket having value of Rs.100/- was purchased by the assessee after getting commission from the alleged airline at Rs.80/-. The assessee has sold that ticket at Rs.90/-. In this way, commission income from the airlines ought to be earned by the assessee at Rs.20/- has been reduced to Rs.10/-. Travel agents were not her agents. She has only allowed them a little more concession for achieving better business. The AO was not satisfied with the explanation of the assessee, and he observed that on the discount transferred to the travel agents the assessee should have deducted TDS by treating such discount as commission.

42. On appeal, the Id.CIT(A) has confirmed disallowance. The Id.counsel for the assessee contended that the issue in dispute is squarely covered by the decision of the Hon'ble Gujarat High Court in the case of Ahmedabad Stamp Vendors Association Vs. Union of India, 257 ITR 202. He further pointed out that this decision has been upheld by the Hon'ble Supreme Court and the judgment of the Hon'ble Supreme Court has been reported in CIT Vs. Ahmedabad Stamp Vendors Association, 25 taxmann.com 201 (SC). He further relied upon

order of the ITAT, Mumbai Bench in the case of ITL Tours & Travels P.Ltd. Vs. ITO 44 SOT 277 (Mum). He also made reference to the order of the ITAT, Cochin Bench in the case of ACIT Vs. AI Hind Tours & Travels P.Ltd. 29 taxmann.com 294 (Cochin-Trib.) On the other hand, the Id.DR relied upon the orders of the Revenue authorities.

43. We have duly considered rival contentions and gone through the record carefully. Admittedly, there is no relationship of principal and agent. In other words, there is no agency between the assessee and the alleged travel agents. Agency has been assumed by the AO with the help of section 194H of the Income Tax Act, 1961. The AO was of the opinion that since the assessee has parted with her volume of commission amongst travel agents, then it should be construed that those agents were acting on behalf of the assessee while booking international air-tickets. We find that the Hon'ble Gujarat High Court has considered almost similar situation in the case of Ahmedabad Stamp Vendors Association (supra). It is pertinent to take note of the following finding of the Hon'ble Gujarat High Court.

".....

It is also not possible to accept the contention of Mr. Naik for the Revenue that the definition of "commission or brokerage" as contained in the Explanation to Section 194H is so wide that it would include any payment receivable, directly or indirectly, for services in the course of buying or selling of "goods and that, therefore, the discount availed of by the stamp vendors constitutes commission or brokerage within the meaning of Section 194H. If this contention were to be accepted, all transactions of sale from a manufacturer to a wholesaler or from a wholesaler to a semi wholesaler or from a semi-wholesaler to a retailer would be covered by Section 194H. To fall within the aforesaid Explanation, the payment received or receivable, directly or indirectly, is by a person acting on behalf of another person (i) for services rendered (not being professional services), or (ii) for any services in the course of buying or selling of goods, or (iii) in relation to any transaction relating to any asset, valuable article or thing. The element of agency is to be there in case of all

services or transactions contemplated by Explanation (i) to Section 194H. If a car dealer purchases cars from the manufacturer by paying price less discount, he would be the purchaser and not the agent of the company, but in the course of selling cars, he may enter into a contract of maintenance during the warranty period, with the customer (purchaser of the car) on behalf of the company. However, such services rendered by the dealer in the course of selling cars does not make the activity of selling cars itself an act of agent of the manufacturer when the dealings between the company and the dealer in the matter of sale of cars are on "principal to principal" basis. This is just an illustration to clarify that a service in the course of buying or selling of goods has to be something more than the act of buying or selling of goods. When the licensed stamp vendors take delivery of stamp papers on payment of full price less discount and they sell such stamp papers to retail customers, neither of the two activities (buying from the Government and selling to the customers) can be termed as the service in the course of buying or selling of goods.

In view of the above discussion, we uphold the contention urged on behalf of the petitioner's association that the discount made available to the licensed stamp vendors under the provisions of the Gujarat Stamps Supply and Sales Rules, 1987, does not fall within the expression "commission" or "brokerage" under Section 194H of the Income-tax Act, 1961. The impugned communication dated March 14, 2002, from the Income-tax Officer, TDS 4, Ahmedabad, to the Senior Treasury Officer, Ahmedabad, s, therefore, quashed and set aside, and so also the consequential instructions dated March 19, 2002 (annex-ure "D" to the petition), issued by the Senior Treasury Officer, Ahmedabad, to the secretary of the petitioner's association are quashed and set aside."

44. In the light of the above interpretation of section 194H if the facts of the present case are looked into then it would reveal that the assessee has just given a trade discount out of commission earned by her from the airlines. She has not appointed any travel agents for acting on her behalf. Thus, there was no relationship of principal and agent. We further find that almost in an identical condition, ITAT Mumbai Bench has considered this issue and observed as under:

"

...It was clear that the intermediaries were booking tickets from the assessee. Therefore, the intermediaries were not working as agents of the assessee for doing the assessee's business rather the intermediaries were bringing the business to the assessee as recorded by AO and the assessee was passing out some handling charges. Thus, the assessee was, in fact, giving some discount to the intermediaries for getting business. It was not a transaction between the principal and agent but it was as transaction between the principal and principal.

45. Respectfully following judgment of the Hon'ble Gujarat High Court and order of the ITAT, Mumbai Bench, we are of the view that disallowance made by the AO and confirmed by the Id.CIT(A) with help of section 40(a)(ia) of the Act on account of non-deduction of TDS deserves to be deleted. We accordingly delete the disallowance. This ground of appeal is allowed.

46. In ground no.3, the assessee has challenged addition of Rs.50,000/- on account of low household withdrawals.

47. We have already considered this issue while taking up appeal for the Asstt.Year 2004-05. We reject this ground of appeal.

48. Ground No.4: In this ground, grievance of the assessee is that the Id.CIT(A) has erred in retaining disallowance of Rs.40,200/- out of total disallowance made at Rs.51,226/- representing vehicle expenses, travel expenses and depreciation on cars. We have confirmed similar disallowance in the Asstt.Years 2003-04, 2004-05 and 2005-06. Possibility of personal user of telephone, car etc. could not be ruled out, and the Id.CIT(A) has rightly confirmed the disallowance.

49. In the assessee's appeal, no other grounds remain to be adjudicated, hence, we treat this appeal as partly allowed.

50. Now we take up Revenue's appeal in the Assessment Year 2006-07.

51. In the first ground of appeal, grievance of the Revenue is that the Id.CIT(A) has erred in deleting the addition of Rs.3 lakhs made by the AO under section 68 of the Act.

52. Brief facts of the case are that on scrutiny of the accounts, it revealed to the AO that unsecured loan of Rs.3 lakhs was outstanding in the name of Shri Devabhai Rathod. He treated the above unexplained loan as unexplained credit. Accordingly, he made addition of Rs.3 lakhs. Before the Id.CIT(A), it was contended by the assessee this loan was received by her through account payee cheque on 19.10.2005. It was repaid on 25.3.2006 through account payee cheque. Details in the shape of bank statement, ledger account, confirmations were given. The Id.CIT(A) was satisfied that the assessee has fulfilled ingredients of section 68 and deleted addition.

53. On due consideration of the above facts, we do not see any reasons to interfere in the order of the Id.CIT(A). The assessee has submitted sufficient evidence demonstrating identity of the creditors, genuineness of the transaction and credit-worthiness. She has filed details showing receipt and payment of the amount through banking channel etc. Hence, this ground of appeal is rejected.

54. Ground No.2. In this ground grievance of the Revenue is that the Id.CIT(A) has deleted addition of Rs.3,18,688/- which was added by the AO by making disallowance of proportionate interest expenditure.

55. With the help of Id.representatives, we have gone through the record carefully. It emerges out from the record that the assessee has advanced Rs.21,24,587/- to four parties without charging interest. Therefore, the Id.AO has calculated proportionate interest expenditure on such advances and made disallowance. Before the Id.CIT(A) it was contended that the assessee has total interest free funds of

Rs.1,35,24,553/-. Thus, she has not used interest bearing funds for making interest free advances, the Id.CIT(A) deleted the disallowance.

56. We have already held that the assessee was able to demonstrate that if she has more interest free funds than the advance then on notional basis interest cannot be computed for disallowance. We do not find any error in the order of the Id.CIT(A). This ground is rejected.

57. Ground no.3: In this ground, grievance of the Revenue is that the Id.CIT(A) has erred in deleting an addition of Rs.1,31,000/-.

58. Brief facts of the case are that the assessee has obtained a loan from Manojbhai Anantraï and from Shri Anantraï Maganbhai. She has repaid these loans. Creditors have shown interest to the extent of Rs.50,000/- and Rs.81,000/- respectively. The AO assumed that since creditors have shown interest income in their accounts, therefore, the assessee must have paid interest to them without debiting in the books of accounts. He accordingly made addition of Rs.1,31,000/- under section 69C of the Act.

59. Before the Id CIT(A) it was contended that the assessee has not paid any interest to both creditors. They might have accounted in their books as receivable, but in fact there was no such payment. The AO has not collected any evidence showing that interest was paid to the creditors. The Id.CIT(A) has accepted this contention of the assessee and deleted addition.

60. On due consideration of the facts and circumstances, we are of the view that entries in the books of third person could not be given weightage over and above entries in the books of the assessee. The AO ought to have collected more evidence for establishing that the alleged payment was made. He has not recorded statement of the creditors showing that they have received such payment. Therefore, the

Id.CIT(A) has rightly deleted the addition, and this ground is also rejected.

61. Ground no.4: In this ground, grievance of the Revenue is that the Id.CIT(A) has erred in deleting addition of Rs.32,087/-.

62. Brief facts of the case are that on scrutiny of the details, the Id.AO found that the assessee has claimed TDS of Rs.1,377/- and Rs.421/- from TATA AIG General Insurance Co. But she has no corresponding receipts, therefore, he assumed the corresponding receipt of Rs.32,087/- and made addition. The Id.CIT(A) has deleted the addition by observing that a sum of Rs.22,003/- was reflected under the head "Other commission". Similarly, commission of Rs.8,798/- was credited in personal account. Aggregate of these two entries comes to Rs.30,800/-. Thus, according to the Id.CIT(A), corresponding receipts have duly been accounted by the assessee.

63. On due consideration of the finding of the Id.CIT(A), we do not see any reason to interfere into. The Id.CIT(A) has recorded a finding of fact that the assessee has duly credited commission receipts on which TDS deducted by the payer and she has claimed the credit of the TDS. Considering the finding of the Id.CIT(A), we do not find any merit in this ground. It is rejected.

64. Ground No.5: In this ground of the appeal, grievance of the Revenue is that the Id.CIT(A) has erred in granting relief of Rs.11,026/- out of total addition of Rs.51,226/-.

65. It is pertinent to observe that the Id.AO has made *ad hoc* disallowance out of the expenses incurred towards telephone, vehicle etc. The Id.CIT(A) has partly confirmed the disallowance and partly deleted. While considering ground of the assessee, whereby the disallowance of Rs.42,200- out of total disallowance of Rs.51,226/- was

confirmed, we observed that these are *ad hoc* disallowance made by the AO by observing that possibility of personal user of car and telephone cannot be ruled out. It is an estimated disallowance which has been scaled down by the Id.CIT(A) marginally. Therefore, we do not see any reason to interfere in the order of the Id.CIT(A). This ground of appeal is rejected.

66. In the result, the appeal of the Revenue for the Asstt.Year 2006-07 is dismissed.

67. Now we take up Revenue's appeal, ITA Nos.355 and 386 /RJT/2011 for the Asstt.Year 2004-05 and 2005-06.

68. In these appeals, grievance of the Revenue is that the Id.CIT(A) has erred in deleting penalty of Rs.13,84,548/- and Rs.13,00,713/- for the Asstt.Years 2004-05 and 2005-06 respectively.

69. With the assistance of the Id.representatives, we have gone through the record carefully. Facts on all vital points are common in both assessment years. Therefore, for the facility of reference, we take the facts from the Asstt.Year 2004-05.

70. Brief facts of the case are during the course of survey, certain documents were found viz. Annexure A/1 to A/18. On the strength of narration mentioned in these documents, the Id.AO has worked out unexplained income in shape of unexplained cash credits at Rs.17,92,73,560/-. This was added under section 68 of the Act. The assessee has pointed out to the Id.CIT(A) that the AO has erred in assuming narrations mentioned in these papers as representing cash credit. Remand report was called for by the Id.CIT(A) and ultimately, it was held by the Id.CIT(A) that rough entries having value of Rs.38,77,759/- could not be reconciled by the assessee. Thus, the Id.CIT(A) has confirmed addition of Rs.42 lakhs on an estimate basis.

The AO has visited the assessee with penalty on this estimated profit on the ground that the assessee has concealed the income. Similarly, in the Asstt.Year 2005-06, the assessee has admitted an income of Rs.36,50,938/-. During the course of assessment proceedings, the Id.AO treated it as a concealed income of the assessee. He levied penalty under section 271(1)(c) of the Act amounting to Rs.13,84,548/- in the Asstt.Year 2004-05 and Rs.13,00,713/-in the Asstt.Year 2005-06. On appeal, the Id.CIT(A) has deleted the penalty.

71. We have duly considered rival contentions and gone through the record. Section 271(1)(c) of the Income Tax Act 1961 has direct bearing on the controversy. Therefore, it is pertinent to take note of the section.

"271. Failure to furnish returns, comply with notices, concealment of income, etc.

(1) The Assessing Officer or the Commissioner (Appeals) or the CIT in the course of any proceedings under this Act, is satisfied that any person

*(a) and (b)***

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income.

He may direct that such person shall pay by way of penalty.

*(i)and (Income-tax Officer,)** ** **

(iii) in the cases referred to in Clause (c) or Clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefit the furnishing of inaccurate particulars of such income or fringe benefits:

Explanation 1- Where in respect of any facts material to the computation of the total income of any person under this Act,

(A) Such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the CIT to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then, the amount added or disallowed in computing the total income or such person as a result thereof shall, for the purposes of Clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed."

72. A bare perusal of this section would reveal that for visiting any assessee with the penalty, the Assessing Officer or the Learned CIT(Appeals) during the course of any proceedings before them should be satisfied, that the assessee has; (i) concealed his income or furnished inaccurate particulars of income. As far as the quantification of the penalty is concerned, the penalty imposed under this section can range in between 100% to 300% of the tax sought to be evaded by the assessee, as a result of such concealment of income or furnishing inaccurate particulars. The other most important features of this section is deeming provisions regarding concealment of income. The section not only covered the situation in which the assessee has concealed the income or furnished inaccurate particulars, in certain situation, even without there being anything to indicate so, statutory deeming fiction for concealment of income comes into play. This deeming fiction, by way of Explanation I to section 271(1)(c) postulates two situations; (a) first whether in respect of any facts material to the computation of the total income under the provisions of the Act, the assessee fails to offer an explanation or the explanation offered by the assessee is found to be false by the Assessing Officer or Learned CIT(Appeal); and, (b) where in respect of any fact, material to the computation of total income under the provisions of the Act, the assessee is not able to substantiate the explanation and the assessee fails, to prove that such explanation is bona fide and that the assessee had disclosed all the facts relating to the same and material to the computation of the total income. Under first situation, the deeming fiction would come to play if the assessee

failed to give any explanation with respect to any fact material to the computation of total income or by action of the Assessing Officer or the Learned CIT(Appeals) by giving a categorical finding to the effect that explanation given by the assessee is false. In the second situation, the deeming fiction would come to play by the failure of the assessee to substantiate his explanation in respect of any fact material to the computation of total income and in addition to this the assessee is not able to prove that such explanation was given bona fide and all the facts relating to the same and material to the computation of the total income have been disclosed by the assessee. These two situations provided in Explanation 1 appended to section 271(1)(c) makes it clear that that when this deeming fiction comes into play in the above two situations then the related addition or disallowance in computing the total income of the assessee for the purpose of section 271(1)(c) would be deemed to be representing the income in respect of which inaccurate particulars have been furnished

73. In the light of the above, if we examine the facts of the present case, then it would reveal that the income of the assessee has been determined on an estimate basis. By way of present order, we have changed that estimation. We have held that un-reconciled entries be considered only for working out element of profit involved in it. Gross receipt cannot be added. Similarly, we have observed that profit is to be estimated in these assessment years according to the rate of profit disclosed by the assessee on the basis of regular books of accounts. Thus, there cannot be any element of concealment of income. The assessee has explained papers found during the course of survey. As observed in the quantum appeals, discrepancy in explaining these papers was ultimately determined at 2.6% of the gross value of the transaction considered by the AO on the basis of entries in these papers. In other words, the gross value of the transaction was

Rs.17.92 crores worked out by the AO in the Asstt.Year 2004-05 and unreconciled entries were of only Rs.38,77,759/-. It was explained by the assessee that some of the employees must have left job and it was quite difficult to keep track of all entries noted by the employees. In this situation, the Id.CIT(A) has rightly deleted penalty. We do not find any error in both the orders of the Id.CIT(A). They are upheld and both appeals of the Revenue are dismissed.

74. Now we take up Revenue's appeal in ITA No.961/RJT/2010 and the CO of the assessee in CO no.37/RJT/2010.

75. In the first ground of Revenue's appeal grievance is that the Id.CIT(A) has erred in deleting addition Rs.16,00,670/- made on account of unexplained advances and probable interest thereon.

76. Brief facts of the case are that during the assessment proceedings, the AO has assumed on the basis of impounded papers that a sum of Rs.13,56,500/- was advanced to various persons and the same were not recorded. The AO accordingly made addition of this amount along with an amount of Rs.2,44,170/- as interest. It was contended before the Id.CIT(A) that no advance was given to its sister concern, and the amount reflected in the annexure was owned by Smt.Manishaben N. Mashru and while finalizing the assessment of Smt.Mansihaben Mashtru this addition was offered for taxation by way of peak value, and therefore, there cannot be double taxation. Even otherwise, no addition can be made on the basis of rough noting without any corroborative evidence. The Id.CIT(A) considered contentions of the assessee and deleted the impugned addition.

77. On due consideration of the facts and circumstances, and perusal of orders of the Revenue authorities, we are of the view that the Id.CIT(A) has rightly appreciated facts and circumstances leading to

addition made by the AO. The Id.CIT(A) has observed that Smt. Mansihaben Mashru, during the assessment proceedings has admitted and owned up the amount found in the papers impounded during the survey. She accordingly offered the same for taxation on the basis of peak value. Even otherwise also, there is no material with the Revenue to prove that the money was in fact belonging to the assessee and to suggest that any unrecorded advance was made to Smt.Mansihaben Mashru by the assessee. Therefore, we do not find any error in finding of the Id.CIT(A) on this issue, this ground is accordingly dismissed.

78. Next effective ground of appeal of the Revenue is that the Id.CIT(A) has erred in deleting addition of Rs.85,00,900/- on account of unexplained investment in shares.

79. Brief facts of the case are that during the assessment proceedings, the AO noticed increase of share capital of the assessee from Rs.24,99,100/- to Rs 1,10,00,000/-. The AO was not satisfied with the explanation of the assessee, therefore, he made addition of Rs.85,00,900/-. However, the Id.CIT(A) has deleted this addition by observing that the addition was made by the AO on the basis of surmises though investment was reflected in the books of accounts and that the assessee has sufficient funds in the form of bank balance and receivables for making investment of Rs.85,00,900/-.

80. On due consideration of the facts and circumstances, we are not inclined to interfere in the order of the Id.CIT(A), as the Id.CIT(A) has considered material facts on record and observed that impugned investment was recorded in the books of accounts and that sufficient funds is available with the assessee for making the investment. Though the assessee had submitted books of accounts during the assessment proceedings, the same was not considered at the end of the AO.

Therefore, there is no merit in this ground of appeal of the Revenue. It is dismissed.

81. In the result appeal of the Revenue for the Asstt.Year 2005-06 in ITA No.961/RJT/2010 is dismissed.

82. Now coming to the CO of the assessee, bearing No.29/RJT//2010, only issue in this CO is with regard to addition of Rs.72,000/- on account of alleged low household withdraw.

83. On considering orders of the Revenue authorities, we do not find any justification to take a different view than the one taken by the Revenue authorities on this issue. Looking to the quantum and size of the business carried out by the assessee and life their style both the authorities estimated low household withdrawals. There is nothing on record to show that estimation based on some opinion made by both the authorities below is unjustified, and therefore, we do not wish to replace the estimation of the Revenue authorities with a third estimation. We do not find any merit in this ground of CO. It is dismissed.

84. In the result CO no.29/RJT/2010 is dismissed.

85. Now we take Revenue's appeal in ITA No.966/RJT/2010 for the Asstt.Year 2004-05.

86. In first two grounds, Revenue is contesting deletion of addition of Rs.33,80,146/- and interest of Rs.6,08,426/- by the Id.CIT(A) on account of unexplained investment/advances.

87. Brief facts of the case is that during the assessment proceedings, the AO formed an opinion on the basis of impounded papers that a sum of Rs.13,56,500/- was advanced to various persons and the same were

not recorded. The AO accordingly made addition of this amount as unexplained investment. In the appeal before the Id.CIT(A), it was contended that no advance was given to its sister concern, and the amount reflected in the annexure was owned by Smt.Manishaben N. Mashru and while finalizing the assessment of Smt.Mansihaben Mashtru this addition was offered for taxation, and therefore, there cannot be double taxation. Even otherwise, no addition can be made on the basis of rough noting without any corroborative evidence. The Id.CIT(A) considered contentions of the assessee and deleted the impugned addition.

88. On due consideration of facts and circumstances of the present case, we find that similar issue was raised by the Revenue in its appeal for the Asstt.Year 2005-06 in ITA No.961/RJT/2010, wherein we have upheld the finding of the Id.CIT(A) and dismissed that ground of the Revenue. In the present case also, facts and circumstances are similar except the quantum, and there is nothing on record to force us to take a different view in this case. Therefore, we do not find any force in these two grounds of appeal of the Revenue. They are dismissed.

89. In the third ground, the Revenue challenges deletion of addition of Rs.27.00 lakhs by the Id.CIT(A) on account of disallowance of fictitious liability.

90. We heard both the parties and perused record and the orders of the Revenue authorities. During the assessment proceedings, on the basis of papers found in the survey proceedings, the AO formed an opinion that the assessee was having credit balance of Rs.8,05,000/- with M/s.Divya Travels, and in the books of the assessee the assessee has shown liability of Rs.18,95,000/-. The AO held the same to be fictitious liability and taxed accordingly. Assessee challenged this addition before the Id.CIT(A) who deleted the addition on the ground that rough papers found from the premises of wife of the assessee were

mere notebooks and diaries and not books of accounts of the assessee. Besides, he observed that wife of the assessee has owned up the noting in the rough diary and taxed accordingly. The Id.CIT(A) has also observed that there is no documents or material evidence with the Revenue to link flow of unrecorded transactions with the assessee. Since there is no contrary material brought before us by the Revenue to convince us to take a different view, we do not find any merit in this ground of appeal. It is dismissed.

91. In the result, appeal of the Revenue in ITA No.966/RJT/2010 is dismissed.

92. Coming to the CO No.37/RJT/2010 challenging addition of Rs.36,000/- made on account of alleged lower household withdrawals, we find that both the authorities based on some opinion has estimated low household withdrawals by the assessee. Reasoning given by the Revenue authorities viz. size of the business and life style of the assessee for estimating household expenses cannot be said to be baseless or unjustified. The assessee has also not demonstrated before us with some corroborative material that Revenue's finding requires our interference and a third opinion requires in this behalf. Therefore, we are not inclined to interfere on this issue, this ground of CO is dismissed.

93. In the result, appeals of the Revenue and Cross Objection of Shri Nailesh M. Mashru are dismissed, whereas appeal and Cross objection of Smt.Manishaben N. Mashru are partly allowed.

Order pronounced in the Court on 4th January, 2018 at Ahmedabad.

Sd/-
(PRAMOD KUMAR)
ACCOUNTANT MEMBER
Ahmedabad; Dated 04/01/2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER