

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. R.K. PANDA, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2471/Del/2018 to 2472/Del/2018
Assessment Year: 2013-14 and 2014-15

Forum Sales Pvt. Ltd. C-134, Ground Floor, Defence Colony, New Delhi -110024 PAN AAACF0285H	Vs	ACIT Central Circle -19 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.3248/Del/2014 to 3249/Del/2018
Assessment Year: 2013-14 and 2014-15

DCIT Central Circle-19 New Delhi	Vs	Forum Sales Pvt. Ltd. C-134, Ground Floor, Defence Colony, New Delhi -110024 PAN AAACF0285H
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Hiren Mehta, CA
Revenue by	Smt. Rachna Singh, CIT DR

Date of hearing:	25/07/2018
Date of Pronouncement:	22/10/2018

ORDER**PER R.K. PANDA, AM:**

ITA No.3248/Del/2018 filed by the revenue and ITA No.3471/Del/2018 appeal filed by the assessee are directed against the order dated 28.02.2018 of the CIT(A)-XVII, New Delhi relating to A. Y. 2013-14. ITA No. 3249/Del/2018 filed by the revenue and ITA No. 2472/Del/2018 filed by the assessee are directed against the order dated 28.02.2018 of the CIT(A)-XVII, New Delhi relating to A. Y. 2014-15. Since common grounds are involved in all these appeals, therefore, these were heard together and are being disposed of by this common order.

2. The facts of the case, in brief are that the assessee M/s. Forum Sales (P) Ltd. is engaged in providing corporate gifting solutions to various companies. Search & seizure and survey operations under section 132/133A of the Income Tax Act, 1961 were conducted on 15.02.2014 and subsequent dates in the case of the assessee alongwith other cases of the AMQ Group at various residential & business premises. In response to notice u/s 153 A of the Act, the assessee filed the return of income of Rs.75,88,078/- on 24.07.2015 for A. Y. 2013-14. Similarly for A. Y. 2014-15 the assessee filed return of income on 30.11.2014 disclosing total income of Rs.66,53,882/-. On the basis of the material seized during the course of search and on the basis of the submissions made by the assessee, the Assessing Officer completed the assessment determining the total income at Rs.74,33,6920/-for A.Y. 2013-14 and Rs.11,11,66,320/- for A. Y.2014-15. The assessee filed appeal before the CIT(A) who gave part

relief to the assessee. Aggrieved with such part relief, the assessee and the Revenue are in appeal before the Tribunal.

ITA No. 3248/Del /2018 (By Revenue)

3. Ground of appeal No.1 reads as under :-

“The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.22,29,092/- on account of disallowance of expenses.”

4. Facts of the case, in brief are that the Assessing Officer during the course of assessment proceedings, vide notice u/s 142 (1) alongwith questionnaire dated 05.12.2016, asked the assessee company to provide the detail/ explanation of the following expenses with supporting documents bills/ voucher, books of account maintained and allowability of expenses.

1.	Repair and maintenance	Rs.4,45,260/-
2.	Postage and courier	Rs.1,53,286/-
3.	Clearing and forwarding	Rs.4,29,790/-
4.	Printing and stationery	Rs.1,34,778/-
5.	Travelling –Directors	Rs.11,44,391/-
6.	Vehicle repair and maintenance	Rs.11,97,454/-
7.	Miscellaneous	Rs.6,61,984/-
8.	Entertainment	Rs.1,52,147/-
9.	Packing expenses	<u>Rs.1,39,393/-</u>
	Total	<u>Rs.44,58,183/-</u>

According to the Assessing Officer, the assessee submitted its reply on 21.12.2016, which contains only copy of ledger accounts but failed to provide bills/ vouchers and books of account, even for a single expenses claimed. In absence of proper explanation/ evidences in

support of these expenses claimed, the Assessing Officer held that these expenses are nothing but bogus/ inflated expenses claimed by assessee to reduce taxable income. He, therefore, treated 50% of these expenses as bogus and inflated expenses and accordingly made addition of Rs.22,29,092/- .

5. Similar disallowance of Rs.19,05,653/- has been made by Assessing Officer during the A.Y. 2014-15 under identical circumstances.

6. Before CIT(A) the assessee submitted that the addition made by the Assessing Officer by disallowing 50% of the expenses is highly arbitrary, illogical and without considering the nature and size of the business of the assessee. It was argued that the assessee has filed all the bills and vouchers alongwith copy of the ledger accounts of the expenses and such expenses are incurred wholly and exclusively for the purpose of business. Therefore, the addition made by the Assessing Officer is not at all justified.

7. Based on the arguments advanced by the assessee the Ld. CIT(A) deleted the addition by observing as under :-

“15.3 I have considered the facts of the issue and found that the AO has made the disallowances only on the basis that only copy of ledger accounts were provided by appellant to him but failed to provide bills/vouchers and books of account for these expenses. On the other hand, the appellant has submitted that vide letter dated 21.12.2016, it submitted necessary details/explanation/ledger accounts of all the expenses. It is further submitted that all the expenses are genuine and reasonable and the AO has failed to find any defect in the claim of these expenses. However, the perusal of the letter dated 09.12.2016 of AO and its reply dated 21.12.2016 in regards to the details of aforesaid expenses, reveals that the appellant has filed the details of expenses in the form of ledger accounts and the AO also has not raised any further query to examine the genuineness of these expenses but disallowed part of the expenses on the ad-hoc basis. He failed to give any specific remarks in respect of any defect or shortcoming in the

maintenance of details or bills/vouchers by the appellant. He has also failed to raise any doubt on the genuineness of the books of account which are duly audited by the auditor. In absence of any defect brought on record by AO in the books of account or supporting documents maintained by appellant, there is no justification on his part to make any disallowance on ad-hoc basis. I, therefore, delete the additions made by him in both the years and allow the grounds taken by appellant.”

8. Aggrieved with such order of the Ld. CIT(A), the revenue is in appeal before the Tribunal.

9. After hearing both the sides we do not find any infirmity in the order of the CIT(A) deleting the disallowance made by the Assessing Officer. We find the assessee during the course of assessment proceedings has filed various details including ledger account of the expenses a finding given by Ld. CIT(A) and not controverted by ld.DR. The Assessing Officer never raised any further query to examine the genuineness of the expenses. No specific remark in respect of any defect or shortcomings in maintaining of details has been made by the Assessing Officer. Since the accounts of the assessee are audited under the companies Act, 1956 and u/s 44 AB of the Income Tax Act, 1961, therefore, in absence of any defect brought on record by the Assessing Officer, the disallowance made by him by estimating the disallowance of expenditure of 50% of such expenses is uncalled for. We, therefore, do not find any infirmity in the order of the CIT(A) deleting the disallowance made by the Assessing Officer. Accordingly the same is upheld and the ground raised by the revenue is dismissed.

10. **Ground No.2 of the appeal reads as under :-**

“The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.6,43,198/- on account of deemed dividend u/s 2 (22) (e).”

11. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings, observed that the assessee company has received an amount of Rs.6,43,198/- from M/s. Juneja Marketing Pvt. Ltd. in A.Y. 2013-14 [Rs.51,72,955/- from M/s. Juneja Marketing Pvt. Ltd. and M/s. AMQ Agro India Pvt. Ltd. in A. y. 2014-15]. It was further observed by him that the directors namely Mr. Moin Akhtar Qureshi and Ms. Nasreen Moin Qureshi have the substantive share holdings in all above companies and all other conditions for treating this payments as deemed dividend u/s 2(22) (e) of the Act in the hands of the assessee are satisfied. Rejecting the various explanation given by the assessee, the Assessing Officer made addition of Rs.6,43,198/- to the total income of the assessee u/s 2 (22) (e) of the I. T. Act, 1961.

12. Before CIT(A) it was argued that the Assessing Officer during the course of assessment proceedings has not issued any show cause notice for the alleged addition made u/ 2 (22) (e) of the I. T. Act. It was argued that the maximum balance outstanding during the year in case of M/s. Juneja Marketing was Rs.4 77,837/- whereas the Assessing Officer has made the addition of Rs.6,43,198/-. The Assessing Officer has not properly appreciated the facts of the case and made the addition. Therefore, the same is liable to be deleted.

13. Based on the arguments advanced by the assessee, the Ld. CIT(A) held that the receipt of Rs.6,43,198/- from M/s. Juneja Marketing Private Limited and Rs.51,72,955/- from AMQ Agro India Private Limited cannot be treated as deemed dividend u/s 2 (22) (e) of the I. T. Act in the hands of the assessee. The relevant portion of the CIT(A) reads as under :-

16.2 *"I have considered the facts of the issue, basis of additions made by*

AO and submissions of appellant. As can be seen from the aforesaid submissions, appellant itself has admitted that the transactions involved in both the years attract the provisions of section 2(22)(e) of I. T. Act for treating the amounts of Rs.6,43,198/- and Rs.51,72,955/- in A.Y. 2013-14 and 2014-15 respectively as deemed dividend in its case. The only objection raised by appellant in this regard is based on the decision of Hon'ble Delhi High Court in the case CIT vs Ankitech (P) Ltd. 11 Taxmann.com 100, upheld by Hon'ble Supreme Court in the case CIT vs Madhur Housing & Development Company dated 05.10.2017 wherein it is held that any such receipt shall be considered as in the hands of the share holder and, therefore, shall be taxed in the hands of the shareholder u/s 56 of I. T. Act and not in hands of the company who is receiving such loans and advances. Since the decisions of Jurisdictional High Court as well as Hon'ble Supreme Court principle laid down by them, the receipts of Rs.6,43,198/- from Juneja Marketing Pvt. Ltd. and Rs.51,72,955/- from M/s AMQ Agro India Pvt. Ltd. cannot be treated as deemed dividend u/s 2(22)(e) in the hands of appellant, rather, it has to be taxed in the hands of shareholders i.e. Mr. Moin Akhtari Qureshi and Ms. Nasreen Moin Qureshi, who have substantial share holdings in both the companies. In view of these facts, since all other conditions to treat the aforesaid amounts as deemed dividend are fulfilled, by invoking the provisions of section 150(1) of I. T. Act, I direct the AO to initiate the proceedings in the case of share holders for treating the aforesaid amounts as deemed dividend u/s 2(22)(e) of the Act and delete the additions made in both the years in the case of appellant. These grounds are allowed for statistical purposes ”

14. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal.

15. The Ld. DR referring to the following decisions submitted that the deletion made by the CIT(A) is not proper.

1. Miss P. Sarada Vs CIT [96 Taxman 11,229 ITR 444, 144 CTR 209]
2. CIT Vs Miss. P. Sarada [21 Taxman 94]
3. Gopal and Sons (HUF) Vs CIT [2017] 77 taxmann.com 71 (SC)

4. CIT Vs Muukundray K. Shah [2007] 160 Taxman 276 (SC)/[2007] 290 ITR 433 (S C) / [2007] 209 CTR 97
5. Puneet Bhagat Vs. ITO (157 ITD353)
6. Addl. CIT Vs. Shri Chandrakant V Gosalia [2015-TIOL-1187-ITAT-MUM]
7. Sunil Kapoor Vs. CIT [2015] 63 taxmann.com 97 (Madras) / [2015] 235 Taxman 279 (Madras)
8. Shashi Pal Agarwal Vs. CIT [2015] 54 taxmann.com 289 (Allahabad)/[2015] 229 Taxman 307 (Allahabad) / [2015] 370 ITR 720 (Allahabad)
9. Star Chemical (P.) Ltd. Vs CIT [72 Taxman 279 203 ITR 11, 114 CTR 185]
10. CIT Vs. Sunil Chopra [2011] 12 taxmann.com 496 (Delhi)/[2011] Taxmann 316 (Delhi)/[2-11] 242 CTR 498 (Delhi).
11. M. Amareswara Reassessment order V. Dy. CIT [157 ITD 657 / 136 DTR 153 /178 TTJ 700]

16. The Ld. Counsel for the assessee on the other hand strongly relied on the order of the CIT(A).

17. We have considered the rival arguments made by both the sides and perused the material available on record. We do not find any infirmity in the order of the CIT(A) deleting the addition from the hands of the assessee and directing the Assessing Officer to make the addition in the hands of the share holders by following the decision of the jurisdictional High Court in the case of CIT Vs. Ankitech Private Limited (supra) which has been upheld by Hon'ble Supreme Court in the case of CIT Vs. Madhur Housing Development Company. Although the Ld. DR relied on various decisions, however, these decisions in our opinion are no longer applicable in view of the latest decision of the Hon'ble

Supreme Court in the case of CIT Vs. Madhur Housing (supra). The ground raised by the revenue is accordingly dismissed.

18. Ground of appeal No. 3 reads as under :-

“The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.5,00,10,163/- on account of inflated purchases.”

19. Facts of the case, in brief, are that the Assessing Officer during assessment proceedings asked the assessee to furnish the details of major parties from whom purchases exceeding Rs. 2 lakh has been purchased. The assessee vide its letter dated 21.12.2016 furnished the details in respect of parties from whom purchase above Rs.2,00,000/- has been made.

19.1 Assessee was also asked through notice u/s 142(1) of the IT Act, 1961 dated 09.12.2006 to furnish name and address of sundry creditors and confirmation from sundry creditors above 1 Lakh. In response to this assessee filed its reply on 21.12.2016, which contained only purchase amount, name and address of party.

19.2 In absence of bills/voucher in respect of purchase claimed of Rs.12,50,25,408/- and sundry creditor balance of R\$. 1,64,11,339/- the Assessing Officer held that these purchases are nothing but inflated/bogus purchase claimed by assessee company to reduce taxable income of assessee. According to the Assessing Officer since assessee is claiming business of gifts item and Novelties, Pet Treat Products, Market Survey and Research and Commission Business and the assessee was not doing any actual business with M/s Jagatjit Industries Ltd. from whom most of the transaction are shown by the assessee company, therefore, the Assessing Officer estimated 40% of such purchases as inflated purchases and

accordingly made addition of Rs.5,00,10,163/- to the total income of the assessee.

20. Before CIT (A) it was argued that in the present case not a single defect has been pointed out in the books of accounts and therefore its completeness and correctness cannot be doubted and hence the same cannot be rejected. It was argued that a perusal of the entire assessment order would reveal that the books of accounts have not been rejected. Being that the position the disallowance of purchases made in the assessment order is not sustainable. For the above proposition the decision in the case of Gujarat High Court in the case of Yunus Haji Ibrahim Fazawala Vs. CIT 70 taxmann.com 93 (Guj). was relied upon where it was held that the action of the assessing officer in disallowing 25% of purchases by doubting its genuineness without rejecting books of accounts cannot be sustained. The order of the Tribunal confirming the disallowance was reversed on the ground of perversity.

20.1 It was is submitted that the appellant during the course of assessment proceedings vide its reply letter dated 21.12.2016 has submitted copy of ledger accounts of all the parties along with the name and address of the creditors from whom purchases are being made. From the perusal of the same the genuineness and reasonableness of the purchases made by the appellant could be ascertained but the assessing officer failed to do so before making the alleged additions, in the absence of which additions made by the assessing officer are not justified and are liable to be deleted. The assessee filed the year wise details showing purchases made during the year, sales made during the year , gross profit, % of gross profit, expenses incurred during the year and profits made during the year.

20.2 It was argued that even if it is accepted that the above referred seized documents represent earning of income by receiving accommodation purchase bill and in turn raising an accommodation sale bill on M/s Jagatjit Industries Ltd., purchases cannot be treated as bogus

on estimate basis. It was argued that corresponding to every purchase bill there is a sale bill. Therefore, if purchases recorded in the books is treated as bogus corresponding sales will also have to be reduced.

21. Based on the arguments advanced by the assessee the Ld. CIT(A) deleted the addition for both the assessment year by observing as under :-

“14.3 I have considered the facts of the issue, basis of addition made by AO and submissions of appellant. As can be seen from the assessment order, AO has made the additions only on the basis that appellant failed to submit the confirmation, bills/vouchers or bank transactions. However, as per AO, assessee filed the details of purchase amount and names and addresses of the parties. Since, bills/vouchers were not produced by assessee, AO treated the 40% of total purchases amounting to Rs. 12,50,25,408/- as bogus/inflated purchase which comes to Rs.5,00,10,163/-. However, before making addition on account of purchases, the AO failed to make any enquiry or verification in order to examine the genuineness on these purchases. He could have done it very easily by issuing notices as the appellant had furnished the names and addresses and amounts of the purchases as asked by him. As reflected by the reply given by appellant as on 21.12.2016 to the AO, the copy of ledger accounts of all the parties were also provided to him which contained the details of each and every purchase and payments made thereof. However, the AO has failed to raise any objection on these documents and details containing therein. He has made disallowances only on the basis of a sweeping and general remark that in absence of bills/vouchers, 40% of purchases are treated inflated/bogus. Moreover, as already discussed in above paragraphs, in the case of M/s Hari Mohan Enterprises, M/s Bajrang Traders and M/s Guru Nanak Traders, though the actual goods were not transferred but the payments were made in cheque M/s Forum Sales Pvt. Ltd Appeal Nos. 524 to 527 and 474 to 476/16-17 A.Yrs. 2008-09 to 2014-15 which was, in terms, received from M/s Jagatjit Industries Ltd. Thus even if all the purchases are treated on the same pattern, the source of these purchases are explained, being received from the purchaser party. Moreover, the appellant has failed to find any defect in the audited books of account of appellant and without rejecting the books of account, such

disallowance of purchases is not justified. As shown by appellant in its submissions that net profit of 4.96% and 3.51% has been shown in A.Y. 2013-14 and A.Y. 2014-15 respectively but after making the disallowance as per AO, these profits would reach to 37.92% and 56.69%, which is illogical and absurd. Moreover, as discussed above, the profit element in respect of these transactions have already being included while returning back the money in cash to the purchaser parties and computed separately, making addition again on these transactions is not justified. In view of this, I hold that AO has wrongly made the additions of Rs.5,00,10,163/- and Rs.9,30,49,922/- in A.Y. 2013-14 and A.Y. 2014-15 respectively. The grounds taken by appellant in this regard are allowed.”

22. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal.

23. The Ld. DR strongly objected to the order of the CIT(A) deleting the addition made by the Assessing Officer. She submitted that the Ld. CIT (A) without any valid reasons has deleted the addition which is not proper under the facts and circumstances of the case.

23.1 The Ld. counsel for the assessee on the other hand submitted that the assessment was getting time bared on 31.12.2016 and the Assessing Officer for the first time asked the assessee to furnish the purchase bills of all the parties on 09.12.2016. The assessee filed the requisite details and the Assessing Officer thereafter did not ask any further query regarding the same. Assessee has furnished the copy of the ledger of each and every purchases and payments made thereof. Without asking any query the Assessing Officer could not have disallowed 40% of such purchases. Further the Assessing Officer has not rejected the books of account. Relying on various decisions he submitted that order of the Ld. CIT(A) deleting the entire addition made by the Assessing Officer for both the years is fully justified.

24. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Assessing Officer in the assessment order has made the addition on the ground that the assessee failed to submit the confirmation and bills and vouchers and bank transaction. From the assessment order we find the Assessing Officer at para 6 of the order has reproduced the reply of the assessee wherein the assessee had given the details of parties from whom purchases above Rs.2,00,000/- have been made. Similarly in his query dated 09.12.06 to furnish names and addresses of the sundry creditors and confirmation of the sundry creditors the assessee vide reply dated 21.12.2016 has furnished the name and address of the parties from whom purchases were made. The relevant observation of the Assessing Officer at para 6 of the Assessment Order is as under :-

6. *“During the course of assessment proceedings, notice u/s 142(1) of the IT Act, 1961 alongwith questionnaire was issued on 09.12.2016, the assessee was asked to furnish purchase bills for all year alongwith name of major party from whom purchase made above Rs.2 lacs in all seven F Yrs (FY 2007-08 to FY 2013- 14).*

In this regard, assessee vide its letter dated 21.12.2016 has submitted that:

“ in respect of parties from whom purchase above Rs.2,00,000/- has been made during the AY2008-09 to 2014-15. In this regard copy of ledger account of parties from purchase above Rs.2,00,000/- has been made during the AY 2008-09 to AY 2014-15 is enclosed ’

Assessee was also asked through notice u/s 142(1) of the IT Act, 1961 dated 09.12.2006 to furnish name and address of sundry creditors and confirmation from sundry creditors above 1 Lakh. In response to this assessee filed its reply on 21.12.2016, which contains only purchase amount, name and address of party. Not a single confirmation or any bills/ vouchers or bank accounts in respect of purchase claimed filed by the assessee company.”

25. We find although the Assessing Officer was having complete address of the parties, however, he did not bother to call for any information from the said parties if he had some doubts. The entire addition by disallowing of 40% of the purchases in our opinion is not justified when the books of account are not rejected. We find the Hon'ble Gujarat High Court in the case of Yunus Haji Fazawala Vs. CIT (supra) has held that action of the Assessing Officer in disallowing 25% of purchases by doubting its genuiness without rejecting the books of account cannot be sustained. The order of the Tribunal confirming the disallowance was accordingly reversed. Since in the instant case also the books of account are not rejected, therefore, action of the CIT(A) in deleting such addition is justified. Further we find merit in the findings of the CIT (A) that if the action of the Assessing Officer is accepted then profit of the assessee will be 32.9 % for A. Y. 2013-14 and 56.09% for A. Y. 2014-15 which is illogical and absurd. Since the order of the CIT(A) on this issue is just and proper under the facts and circumstances of the case, therefore, we do not find any infirmity in the same. Accordingly the same is upheld and the ground raised by the revenue is dismissed.

26. Ground of appeal No.4 being general in nature, is dismissed.

ITA No.3249/Del/2018 (By Revenue)

27. Ground of appeal No.1 reads as under :-

“The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.19,05,653/- on account of disallowance of expenses.”

28. After hearing both the sides, we find the above ground is identical to ground No. 1 in ITA No.3248/Del/2018. We have already decided

the issue and the ground raised by the revenue has been dismissed. Following similar reasoning, the above ground raised by the revenue is dismissed.

29. Ground of appeal No.2 is as under :-

“The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.51,72,955/- on account of deemed dividend u/s 2 (22) (e).”

30. After hearing both the sides we find the above ground is identical to ground of appeal No. 2 in ITA No.3248/Del/2018. We have already decided the issue and ground raised by the revenue has been dismissed. Following similar reasoning this ground by Revenue is dismissed.

31. Ground of appeal No.3 is reads as under :-

“The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.9,30,49,922/- on account of inflated purchases.”

32. After hearing both the sides. We find the above ground is identical to ground of appeal No.3 in ITA No.3248/Del/2018. We have already decided the issue and the ground raised by the revenue has been dismissed. Following similar reasoning, this ground raised by the Revenue is dismissed.

33. Ground of appeal No.4 is reads as under :-

“The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the protective addition of Rs.1,00,000/- on account of cash and seized.”

34. The facts of the case, in brief, are that during the assessment proceedings the Assessing Officer observed that during the search proceedings, cash of Rs.14,50,000/- was found to which the assessee company failed to explain the source of the said cash. As per Assessing Officer, out of this cash, the addition of Rs.13,50,000/- has already been made vide order u/s 143 (3) of the I.T. Act dated 31.03.2016 for A. Y. 2014-15 in the hands of Mr. Dinesh Kumar on protective basis and in the hands of Mr. Moin Akhtar Qureshi on substantive basis. He, therefore, made the addition of Rs.1,00,000/- in the hands of assessee on protective basis and the same amount on substantive basis in the hands of Mr. Moin Akhtar Qureshi.

35. Before the CIT(A) the assessee submitted that since the substantive additions of Rs. 14 50,000/- has already been made in the hands of Mr. Moin Akhtar Qureshi in his Assessment order passed on dated 17.08.2017 for the AY 2014-15 and protective addition of Rs.13,50,000/- has already been made in the hands of Mr. Dinesh Kumar, the reason for again making protective addition of Rs. 1,00,000/- in the hands of the appellant company is not justified and hence the same deserve to be deleted. It was submitted that Mr. Dinesh Kumar Gupta in his statement recorded on the date of search has already explained that the amount of Rs. 100,000/- belongs to personal savings of his wife by virtue of which total cash found during course of search of Rs. 14,50,000/- stands explained. Thus the action of the AO for again making addition of Rs.1,00,000/- in the hands of the assessee on protective basis is not justified and hence the same deserve to be deleted. Based on the arguments advanced by the assessee. The Ld. CIT(A) deleted the addition. After hearing both the sides we do not find

any infirmity in the order of the CIT(A) deleting the addition made Assessing Officer. We find while deleting the same the Id. CIT(A) has given the finding that substantive addition has already been made in the hands Mr. Moin Akhtar Qureshi as mentioned by the Assessing Officer himself. Since he has deleted the addition with certain directions, therefore, the same being in order we do not find any infirmity in the same. Accordingly, the ground raised by the revenue is dismissed.

ITA No. 2471/Del/2018 (By assessee)

36. The grounds raised by the assessee are as under :

1. *That on the facts and circumstances of the case and in law, the order passed by CIT (A)-27, New Delhi (hereinafter referred to as CIT (A)), is bad in law.*

2. *That on the facts and circumstances of the case and in law the CIT (A) was not justified in upholding the action of AO in making an addition of Rs. 83,85,628/- by estimating profit on the sales made by the appellant during the relevant assessment year to M/s Jagatjit Industires ltd on the basis of seized document Annexure A-2/ party D-1 page No.90, 109 & 108, which pertain to AY 2014-15 & not AY 2013-14.*

2.1 *That the Ld. CIT (A) erred in holding that entire sales made to M/s Jagatjit Industries ltd during the year was in the nature of bogus sales & estimating profit @7.825% on such sales without realising that estimation of profit had to be restricted to only those transactions which are reflected in seized material.*

2.2 *That the CIT (A) has erred in not considering the submission of the appellant that on the basis of alleged seized document, the addition should be made by calculating estimated profit on the transaction reflected in the seized material above and not on the entire sales made to M/s Jagatjit Industires ltd during the assessment year under appeal.*

2.3 That the CIT (A) has erred in not adjudicating the issue of reducing the element of percentage of profits already disclosed in the regular books of account out of the additions sustained of Rs.83,85,628/- in the absence of which the net addition sustained in the hands of the appellant can not be ascertained.

3. That on the facts and circumstances of the case and in law the CIT (A) was not justified in upholding the action of AO in making an addition of Rs. 54,80,758/- by estimating profit on the purchases made by the appellant during the relevant assessment year from M/s Bajrang Traders, M/s Gurunanak Traders on the basis of seized document Annexure A-2/ party D-1 page No.90, 109 & 108, which pertain to AY 2014-15 and not AY 2013-14.

3.1 That the Ld. CIT (A) erred in holding that entire purchases made from M/s Bajrang Trades & M/s Gurunanak Traders o M/s Jagatjit Industries ltd during the year was in the nature of bogus purchases & estimating profit @7.28% on such purchases without realising that estimation of profit had to be restricted to only those transactions which are reflected in seized material.

3.2 That the CIT(A) has erred in not considering the contention of the appellant company that the alleged addition of Rs.54,80,758/- pertains to the AY 2014-15 wrongly made by the Assessing officer in AY 2013-14 thus the same deserves to be deleted especially in the absence of any incriminating seized material pertaining to assessment year under appeal.

4. That the appellant craves leave to add, alter, modify any of the grounds at the time of hearing or before the hearing.

ITA No.2472/Del/2018 (By assessee)

37. The grounds raised by the assessee are as under :-

1. That on the facts and circumstances of the case and in law, the order passed by CIT (A)-27, New Delhi (hereinafter referred to as CIT (A)), is bad in law.

2. That on the facts and circumstances of the case and in law the CIT (A) was not justified in upholding the action of AO in making an addition of Rs. 42,53,909/- by estimating profit on the sales made by the appellant during the relevant assessment year to M/s Jagatjit Industries ltd on basis of seized document Annexure A-2/ partyD-l page No.90, 109 & 108.

2.1 That the Ld. CIT (A) erred in holding that entire sales made to M/s Jagatjit Industries Ltd during the year was in the nature of bogus sales & estimating profit @7.825% on such sales without realising that estimation of profit had to be restricted to only those transactions which are reflected in seized material.

2.2 That the CIT (A) has erred in not considering the submission of the appellant that on the basis of alleged seized documents, the addition should be made by calculating estimated profit on the transaction reflected in the seized material above and not on the entire sales made to M/s Jagatjit Industries ltd during the assessment year under appeal.

2.3 That the CIT (A) has erred in not adjudicating the issue of reducing the element of percentage of profits already disclosed in the regular books of account out of the additions sustained of Rs.42,53,909/- in the absence of which the net addition sustained in the hands of the appellant can not be ascertained.

3. That the appellant craves leave to add, alter, modify any of the grounds at the time of hearing or before the hearing.

38. In ITA No. 2471/Del/2018, the ground No. 1 and 4 being general in nature are dismissed. Similarly in ITA No. 2471/Del/2018 ground No. 1 and 3 being general in nature, therefore dismissed.

39. So far as the other grounds are concerned, the facts of the case, in brief, are that the Assessing Officer on the basis of the documents found and seized during the search proceedings observed that the

assessee has received cheques of Rs.18,93,528/- from M/s. Jagjit Industries Ltd on account of sales and out of that, Rs.18,32,722/- was transferred to M/s. Hari Mohan Enterprises on account of purchases. Since these were financial transactions without making any actual purchase of goods, M/s. Hari Mohan Enterprises, after deducting the commission @2% amounting to Rs.36,650/-, returned back the balance amount of Rs.17,96,072/- to the assessee. Assessee further transferred this cash amount back to M/s Jagatjit Industries Ltd. and on this transaction, it earned profit of Rs. 1,35,578/- (7.88%) and out of which, profit of Rs.60,806/- was received in cheque which has been shown in the books of account and balance Rs.74,772/- in cash which remained outside books of account. This process of earning commission and not disclosing the profit received in cash, is confirmed by the entries of the same page. In the lower half of the document, it is mentioned that Rs.1,00,01,828/- was paid by assessee to M/s Hari Mohan Enterprises in the name of purchases made which was received back in cash after deducting commission @2% amounting to Rs.2,00,000/- which comes to Rs.98,01,828/-. However, this amount was returned back by appellant to M/s Jagatjit Industries Ltd., after earning the profit of Rs.7,09,258/- (7.80%) in cash which was not disclosed in the regular books of account. Similar transactions have been entered on other document wherein cheque amount of Rs.14,81,551/- was received by assessee from M/s Jagatjit Industries Ltd. and after deducting 2% commission by M/s Hari Mohan Enterprises and earning profit of Rs.1,05,515/- (7.85%) which includes cash profit of Rs.83,292/- and profit received through cheque at Rs.22,223/- as shown in the books of account. One more document was found and seized of the similar nature wherein on the similar pattern, assessee has received cheque of Rs.61,88,742/- from M/s Jagatjit Industries Ltd., made payments to two different parties namely M/s Bajrang Traders and M/s Guru Nanak Traders, received the amounts in cash after the deduction of

commission @2.50%, returned back to M/s Jagatjit Industries Ltd. and earned profit of Rs.4,10,992/- @7.31%. Since the profit earned by assessee ranged from 7.8% to 7.85% in the case of transactions made with M/s Jagatjit Industries Ltd. and M/s Hari Mohan Enterprises, AO calculated the average at 7.825% and applied it on the transactions of Rs.10,71,64,580/- made by it with the aforesaid parties and computed the profit at Rs.83,85,628/- and added the same to the income of assessee. Similar addition has been made by AO in respect of transactions entered into with M/s Bajrang Traders and M/s Guru Nanak Traders amounting to Rs.54,80,758/- in the year under consideration.

40. Before CIT(A) the assessee made elaborate submissions challenging addition made by the Assessing Officer. However the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the action of the Assessing Officer by observing as under :-

“13.4 I have considered the facts of the issues, basis of additions made by AO and submissions of appellant. As can be seen from the transactions entered into as per the documents seized during the search proceedings, there is a certain pattern of receiving the cheque amounts from one party in the name of sales, transferring it to other party in the name of purchases and receiving it back after deduction of commission @2% or 2.5% and returning back the cash to the first party which had issued cheques, after deducting own commission in the form of profit. The appellant also has admitted this modus operandi in its submissions in respect of all the parties as mentioned above. The appellant has even offered the undisclosed income of Rs.8,89,545/- on the transactions entered into with M/s Jagatjit Industries Ltd. and M/s Hari Mohan Enterprises and Rs.5,24,012/- in respect of transactions made with M/s Jagatjit Industries Ltd. and M/s Bajrang Traders and M/s Guru Nanak Traders. However, the appellant has worked out the profit to be offered for taxation only on the basis of limited transactions reflected from the seized documents. He forgot that there are much more transactions with the same parties of the same nature which are reflected in the profit and loss account. For example, sale transactions of Rs. 18,93,528/- with

M/s Jagatjit Industries Ltd. has been shown in the document seized on which profit of Rs.1,35,578/- (7.88%) has been earned, whereas the total sales have been made at Rs.10,71,64,580/- in A.Y. 2013-14 and Rs.9,51,66,616/- in A.Y. 2014-15. Similarly, on the other part of document, transactions with M/s Hari Mohan Enterprises are reflected at Rs. 1,00,01,828/- on which, after reducing the commission etc., the profit of Rs.7,09,258/- (7.80%) has been earned. However, the actual purchases have been made by appellant with M/s Hari Mohan Enterprises at Rs.1,35,59,489/-. Similarly, the documents related to transaction with M/s Bajrang Traders and M/s Guru IManak Traders show that the profit of Rs.4,10,992/- and Rs.3,36,800/- was earned on the purchases of Rs.59,13,342/- and Rs.51,09,300/- respectively but the total purchases during the year have been made at Rs.3,15,97,561/- and Rs.4,36,87,576/- respectively which are much more than as reflected on seized documents. Thus the offer of appellant that only that profit should be added back as undisclosed income which reflects from the seized documents, is misplaced and cannot be accepted. Since there is a regular pattern in these transactions with the said parties of not making actual transactions of purchase and sale rather entering into the financial transactions and earning commission on it, it applies to all the parties mentioned in the seized documents in all the years on the total purchases/sales made from/with aforesaid parties. Since the different rates of profit have been shown in the seized documents, taking average by the AO of these rates is reasonable and justified. In view of this, I uphold the profits of Rs.83,85,628/- and Rs.54,80,758/- worked out by AO. However, since the appellant has already disclosed some element of profit in its regular books of account, same has to be reduced from the aforesaid profits. The AO is directed accordingly. This ground is partly allowed.”

41. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

42. The Ld. Counsel for the assessee submitted that addition has to be restricted to seized material only and extrapolation of seized documents is not legally permitted. The Assessing Officer cannot estimate the unaccounted receipts for all transactions with JIL in one assessment year for other assessment years based on isolated instance of 3 seized

documents reflecting transactions of meagre value without any cogent material available for the other transactions with the same party for same and different assessment years and without any statement/deposition of any of the office bearers of the assessee company that it had entered into similar transactions. In the absence of such findings, additions made based on the estimation of undisclosed income for entire sales made to JIL is required to be deleted.

43. He submitted that none of the lower authorities have conducted any enquiries from the party M/s Jagatjit Industries Ltd. (JIL) to whom sales have been made to the tune of Rs. 9,74,79,927/- out of total sales of Rs. 14,28,98,332/- during A.Y. 2013-14 and Rs. 9,51,66,616/- out of total sales of Rs. 18,26,67,336/- during A.Y. 2014-15 for verifying the genuineness of sales made by the appellant company to JIL.

44. He argued that no enquiries have been made by the lower authorities from the parties M/s Harimohan Enterprises (purchases Rs.53,24,210/- ASSESSMENT YEAR 2014-15), Bajrang Traders (purchase Rs.1,44,80,993/- ASSESSMENT YEAR 2013-14 and Rs.3,15,97,561/- Assessment year 2014-15), Gurunanak Traders (purchase of 21,14,700/- ASSESSMENT YEAR 2013-14 and Rs.4,36,87,576/- for Assessment year 2014-15) from whom purchases were made out of total purchases of Rs.12,93,92,152/- Assessment year 2013-14 and Rs.15,57,37,682/- Assessment year 2014-15.

45. Referring to the decision of Hyderabad Bench of the Tribunal in the case of Sree Educational Society Vs ACIT 88 Taxmann.com 363 he drew the attention of the Bench to Para 11 of the order which reads as under :-

¶11. In view of the above judicial precedents, we are of the view that the Assessing officer cannot estimate the unaccounted receipts for all the assessment years based

on the material found in the search proceedings relating to a particular AY without any cogent material available for the other AYs and without any statement/deposition of any of the office bearers of the society that it has collected additional fees in the earlier years also. With regard to pending assessments which abated in view of the provisions of section 153A of the Act, the Assessing Officer had already made addition based on the materials seized during the course of search. Apart from that, revenue has not found anything more to suggest that the assessee had collected beyond seized materials nor it has got any deposition from the office bearers of the society that it had collected beyond seized materials. In the absence of such findings, we delete the additions made based on estimation of additional capitation fees collected. ö

Relying on various other decisions, he submitted that the order of the CIT(A) be set aside.

46. The Ld. Counsel for the assessee further submitted that the seized documents on the' basis of which the alleged additions have been made pertained to the financial year relevant to the assessment year 2014-15, therefore, there is no reason for applying any adverse inference in making addition in the AY 2013-14 when there is no incriminating document found in relation to AY 2013-14.

47. The Ld. Counsel for the assessee submitted that the assessee be allowed credit of profit already disclosed in the regular books of the accounts of the assessee. The AO has not considered the element of profit already disclosed in these transactions before estimating the unaccounted profit on these transactions. Although the Ld. CIT(A) considered the fact that there is an element of disclosed profit, however the percentage of profit/ amount of profit has not been ascertained. In the absence of the same the net addition to be sustained on the basis of method of computation adopted in the assessment order cannot be ascertained.

48. He submitted that even if it is accepted that the above referred seized documents represent earning of income by receiving accommodation purchase bill and in turn raising an accommodation sale bill on M/s Jagatjit Industries Ltd., purchases cannot be treated as bogus on estimate basis. He submitted that corresponding to every purchase bill there is a sale bill. Therefore, if purchases recorded in the books is treated as bogus corresponding sales will also have to be reduced.

49. The Ld. Counsel for the assessee submitted that in case a presumption is drawn that certain transactions entered into with Jagatjit Ind. Ltd are of similar nature for which no documents were seized then an estimate will have to be made for quantifying the volume of such transactions. In the assessment order 40% of purchases have been estimated to be bogus on a different ground which stands deleted in appeal. Thus, on same analogy if it is assumed that 40% of sales made to JIL is in the nature of accommodation entries then computation of undisclosed income will have to be made in the following manner. The sales to JIL was Rs. 10,71,64,580/- in AY 2013-14 and Rs.9,51,66,616/- in AY 2014-15. 40% of such sales comes to Rs. 4,28,65,832/- and Rs. 3,80,66,646/- for AY 2013-14 and 14-15 respectively. The bank portion on such sale is already included in the P&L account. Thus, out of the margin of 7.88% the margin pertaining to cash portion i.e 3.95% which comes out to be of Rs. 16,93,200/- & 15,03,632/- for AY 2013-14 & 2014-15 which has remained untaxed and which would be the estimated undisclosed income from the activity of providing accommodation bills to JIL

50. The Ld. DR on the other hand heavily relied on the order of the CIT(A).

51. We have considered the rival arguments made by both the sides and perused the material available on record. We have also considered

the various decision cited before us. We find the Assessing Officer on the basis of seized documents found during the course of the search as noted that the assessee has received cheques of Rs18,93,528/- from M/s. Jagjit Industries on account of sales and out of that an amount Rs.18,32,722/- was transferred to M/s. Hari Mohan Enterprises on account of purchases. Since these were financial transactions without making any actual purchases M/s. Hari Mohan after deducting the commission @2% amounting to Rs. 32,650/- returned the balance amount of Rs.17,96,072/- to the assessee, who after deducting an amount of Rs.1,35,578/- towards its commission has refund the cash amount back to M/s. Jagjit Industries. The Assessing Officer accordingly found other transactions of similar nature wherein the assessee has received cheques from Jagji Industries and made payment M/s. Bajrang Traders and M/s. Gurunanak Traders and cash portion was refunded to M/s. Jagjit Industries. The Assessing Officer accordingly computed profit at Rs 83,85,628/- in case M/s. Jagjit Industries and Rs.54,80,758/- on account of purchases from M/s. Bajrang Traders and M/s. Gurunanak Traders. Similarly he made addition of Rs.42,53,909/- in assessment year 2014-15 on account of sales made to M/s. Jagjit Industries. It is the submission of the Ld. Counsel for the assessee that the seized documents pertain to A.Y. 2014-15 and therefore, no addition could have been made on account those seized documents in A. Y. 2013-14 in absence of any incriminating material. So far as assessment year 2014-15 is concerned, he submitted that the addition has to be restricted to seized the document only and no extrapolation is called for especially when no further enquiry was conducted by the Assessing Officer from the parties mentioned in the seized documents. We find some force in the arguments advanced by the Ld. Counsel for the assessee. When the assessee was making regular transaction with M/s. Jajit Industries, and making purchases from M/s. Hari Mohan Enterprises, M/s.

Bajrang Traders and M/s Gurunanak Traders. The Assessing Officer should have called for details from the said parties and should have verified the transactions, if any, over and above the figures mentioned in the seized documents. In our opinion the Assessing Officer cannot estimate the unaccounted purchase and sale for assessment year 2013-14 based on the material found in the search proceedings relating to A. y. 2014-15. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the Assessing Officer with a direction to obtain information from the parties regarding transactions carried on by the assessee during the above 2 years. In case there is no unaccounted transaction with the above parties over and above what has been found during the course of search as per the seized material then no extrapolation should be done. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee for both the assessment years are accordingly allowed for statistical purposes.

52. In the result, the appeals filed by the revenue are dismissed and appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 22.10.2018

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER
NEHA
Date:-22.10.2018

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Copy forwarded to:
1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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Date of dictation	01.10.2018
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	22.10.2018
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	