

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

I.T.A Nos.: - 4630, 4631, 4632, 4633, 4634, 4635/Del/2014
A.Y.s: 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12

ACIT Central Circle-8 New Delhi.	Vs.	Meroform India Pvt. Ltd. A-37, Sector 80, Phase II Noida PAN AACCM5189P
(Appellant)		(Respondent)

ITA. No. 4494/Del/2014
Assessment Year 2011-12

Meroform India Pvt. Ltd. A-37, Sector 80, Phase II Noida Uttar Pradesh 201305 PAN AACCM5189P	Vs.	DCIT Central Circle 8 New Delhi.
(Appellant)		(Respondent)

Department by:	Smt. Shafali Swaroop, CIT(DR)
Assessee by :	Shri S.K. Tulsiyan CA
Date of Hearing	26/06/2018
Date of pronouncement	31/07/2018

ORDER

PER BENCH

The aforesaid appeals have been filed by the Revenue against separate impugned orders of even date, 30th May, 2014, passed by Ld.

CIT (Appeals) XXXII, New Delhi for the quantum of assessment passed u/s 153A r.w.s 143(3) for the assessment years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12. In the assessment year 2010-11 the assessee has also filed cross appeal. Since common issues are involved in all the appeals arising out of identical set of facts, therefore, the same were heard together and are being disposed of by way of this consolidated order.

2. The disallowances and additions as challenged in the grounds of appeal by the Department in various assessment years on merits as well as by the assessee in the assessment year 2011-12 are summarised as under: -

Nature of Addition made by the AO	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Personal expenses	5,23,970	4,77,263	6,16,841	5,43,453	29,52,758	19,93,202
Bogus purchases made from Nitin Enterprises	27,15,435	40,77,004	2,19,48,700	89,49,347	2,52,67,172	2,11,70,553
Unexplained purchases made from Kiran Furniture	1,87,375	8,17,996	14,28,290	9,88,687	2,54,685	1,03,39,624
Disallowance u/s 40A (3)	5,00,973	2,55,101	12,05,538	-	-	-
Unexplained Cash found	-	-	-	-	-	6,68,483

Disallowance on account of Tour Travelling, repairs, depreciation on car etc.	-	-	-	-	-	6,65,138
Sale of Scrap	-	-	-	-	-	1,74,23,441

3. Whereas on merits the assessee has challenged in the appeal for assessment year 2011-12 following two additions: -

- i) Addition on account of scrap sales: Rs.1,16,15,628/-
- ii) Disallowance on account of low declaration of income: Rs. 11,84,425/-

4. The assessee in the revenue's appeal for the assessment year 2006-07, 2007-08 and 2008-09 has filed a petition under rule 27 of the Income Tax Appellate Tribunal Rules, 1963, whereby a legal ground has been raised; that the additions made by the A.O. in the impugned assessment orders are beyond the scope of assessment u/s 153A, as no incriminating material was found during the course of search in relation to all additions made. In the said petition it has been submitted that this issue was also challenged before the Ld. CIT(A) vide ground No. 2 in all the three assessment years which reads as under: -

"2. The Ld. A.O. has grossly erred on facts as well as in law in making additions u/s 153A in spite of the fact that no incriminating material was found during the search to enable to the A.O. to make addition on the impugned issue in the

assessment u/s 153A against the already completed assessment.”

5. Before us Ld. Counsel has pointed out that this issue has been decided against the assessee by the Ld. CIT(A) in a very detailed way, however, since Ld. CIT(A) has granted relief on merits, therefore, assessee has not filed any cross appeal or cross objection. He further argued that Rule 27 permits the respondent even though he may not have appealed but can support the order appealed against on any of the grounds decided against him. This inter-alia means that if any issue has been decided against the respondent, then the same can be challenged by the respondent by invoking this rule.

6. On the other hand, Ld. CIT(DR) objecting to the admission of the petition made under rule 27, submitted that the respondent assessee cannot be permitted to raise a ground or an issue which has been decided against him which could have only done by filing of appeal. In support strong reliance was placed in the judgment of Hon'ble P & H High Court in the case of Self Knitting Works vs. CIT, reported in (2014) 227 Taxman 253; and ITAT Ahmedabad decision in the case of DCIT vs. Sandeep M Patel, reported in (2012) 137 ITD 104.

7. First of all, we shall decide the admissibility of assessee's petition made under Rule 27 made for the assessment years 2006-07, 2007-08 & 2008-09, challenging the validity of additions made in the impugned assessment orders on the ground that same are beyond the scope of section 153A. From the perusal of the material placed on record it is seen that assessee before the Ld. CIT (A) has challenged the validity of the additions made u/s 153A on the ground that, *firstly*, no incriminating material was found during the course of search so as to enable the AO to make the addition on the impugned issues in the

assessment passed u/s 153A; and *secondly*, they have already been considered in the assessment completed earlier and had attained finality. This ground has been raised vide ground Nos. 1 & 2 before CIT(A) in all these years, which has been decided against the assessee in a very detailed manner, which for sake of ready reference is reproduced hereunder: -

“6.1 From a plain reading of section 153A it is evident that it requires the Assessing Officer to assess or re-assess the total income of six assessment years immediately preceding the year of search. There has been lot of debate and judicial controversy regarding the nature of assessment or re-assessment proceedings to be undertaken u/s 153A. Legislature requires the Assessing Officer to assess or re-assess the total income of pending six assessment years. The words 'total income' has been used under clause 'b' of section 153A (1) as well as under first proviso to section 153A (1).

6.2 The assessment or re assessment proceedings to be undertaken u/s 153A may be classified as under:

- a. For the assessment year relating to the year of search- whether normal assessment can be framed examining and making additions relating to all the issues as can be done in normal scrutiny case?*
- b. In the case when assessment proceedings u/s 143(3) were pending and those proceedings were abated due to search having taken place- whether assessment for such years can be made as normal assessment examining and making additions relating to all the issues as can be done in normal scrutiny case?*
- c. For the years for which no notice u/s 143(2) was earlier issued and the same having been time barred - whether assessment for such years can be made as normal assessment examining and making additions relating to all the issues as can be done in normal scrutiny case? Such years may further be classified as the years for which processing under section 143(1)(a) has been done or*

d. In the case of proceedings u/s 153A relating to the years for which assessment order u/s 143(3) has been passed earlier - whether issues already examined in earlier assessment proceedings can be re-examined by the assessing officer? Whether there can be change of opinion by the assessing officer on the issues already considered without any new evidences coming to his possession?

6.3 Thus, there has to be a clarity regarding nature of the provision of section 153A requiring the assessment or reassessment to be made in the case of search cases. Requirement of section 153A is to open or re-open of the cases for the purposes of making assessment or re-assessment of the total income of proceedings for six assessment years prior to the year of search. It does not contain any provision regarding the concept of making assessment of undisclosed income alone as was the case under block assessment regime under chapter XIVB. It does not contain any provision regarding the nature of addition which can be made under this section. This section has rather provided, for the removal of doubts, by way of insertion of Explanation at the end of the section that 'save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section.'

6.4 Thus, it is clearly implies that the nature of assessment or re-assessment to be made under this section 153A shall be governed by the normal provisions of the Act. In case it is an assessment made for the first time, all principles of assessment which are applicable to assessment under section 143(3) shall become applicable and in case if a re-assessment is being made, all the principles of re-assessment which are applicable in the case of proceedings under section 147/148 shall become applicable.

6.5 The provisions contained under section 153A are not comparable with the nature of provisions contained under chapter XIVB regarding block assessment proceedings. Concept of block assessment under chapter XIVB was altogether different. It was a special procedure of assessment for search cases to be made relating to only undisclosed income. There was then the concept of dual assessment proceedings. Normal assessment proceedings for other than undisclosed income used to be undertaken

independently and simultaneously. Section 153A does not contain any such special procedure to assess undisclosed income found as result of search, rather pending normal assessment or re-assessment proceedings are abated and, in a way, merged with the proceedings to be undertaken u/s 153A. Assessment proceedings pursuant to notice u/s 153A are not intended to be restricted to make assessment of undisclosed income only detected as a result of search.

6.6 The proceedings under section 153A are in fact de novo assessment proceedings for the following reasons:

- 1. Section 153A requires total income for preceding six years to be assessed or re-assessed in pursuance to notice under section 153A. Total income would include any kind of income and it cannot be restricted to undisclosed income or escaped income.*
- 2. After initiation of search, pending assessment proceedings are abated and the same are merged with the assessment proceedings to be undertaken pursuant to notice under section 153A. Nature of assessment proceedings, so merged, cannot be restricted to make assessment only of undisclosed income.*
- 3. Section 153A requires total income for all the preceding six years to be assessed or reassessed, therefore, the nature of assessment proceedings for all the six years would be of the same nature and the nature of completed assessment proceedings to be reassessed pursuant to notice under section 153A cannot be different.*
- 4. There is no concept of assessment of undisclosed income under section 153A as was the case during block assessment regime under Chapter XIV8. Under block assessment, there was concept of dual assessment - one for undisclosed income detected as a result of search and other for normal assessment as per normal provisions of the Act. Since under section 153A, both the assessment proceedings are merged together, the nature of the additions made cannot be restricted to assess only undisclosed income detected as a result of search.*

5. *In case of reopening of assessment under section 147/148 specific reasons of income escaping assessment are recorded and, therefore, enquiries are made during assessment proceedings with respect to such issues. However, in case of search case, there are no specific reasons recorded. In the case of search before issuing search warrant, satisfaction may be recorded by the competent authority regarding accumulation of undisclosed income by the person to be searched and the legislature requires such person to be mandatorily assessed for preceding six years with respect to his total income. Therefore, enquiries can be made relating to all the issues during section 153A assessment proceedings.*

6.7 *In view of the above it is held that the assessment proceedings pursuant to notice u/s 153A are not intended to be restricted to make assessment of undisclosed income only detected as a result of search but normal assessment proceedings for other than undisclosed income can be undertaken independently and simultaneously. Delhi Bench of ITAT in the case of Shivnath Rai Harnarain (Indian) Ltd. v. Dy. CIT [2009] 117 ITO 74 wherein it has been held as under:*

"In view of our above analysis of the provisions of sections, the contentions of the learned counsel for the assessee have no force because there is no requirement for an assessment made under section 153A of the Act being based on any material seized in the course of search. Further, under the second proviso to section 153A pending assessment or reassessment proceedings in relation to any assessment year falling within the period of six assessment years referred to in section 153A(b) of the Act shall come to an end (abate), which means that the AO gets jurisdiction for six assessment years referred to in section 153A(b) of the act for making an assessment or reassessment."

Further Delhi Bench of ITAT in the case of Ms. Shaym Lata Kaushik v. Asstt. CIT [2008] 114 ITD 305 has expressed the similar view-

'The contention of the assessee was that there was no seized material based on which the assessment was completed by the AO in the case of the assessee and, therefore, the assessment

framed should be held to be null and void. It was also submitted that the provisions of section 153A cannot be invoked to make an assessment or reassessment of income just because a search had taken place in the case of an assessee. This contention of the assessee cannot be accepted. There is no requirement for an assessment made under section 153A being based on any material seized in the course of search. Further under the second proviso to section 153A, pending assessment or reassessment proceedings in relation to any assessment years falling within the period of six assessment years referred to in section 153A(b) shall abate. Thus, the AO gets jurisdiction for six assessment years referred to in section 153A(b) for making an assessment or reassessment. It is not the complaint of the assessee that any income, which is already subjected to assessment under section 143(3) or under section 148 completed prior to the search in respect of six assessment years referred to in section 153A(b) and in the second proviso to section 153A, has also been included in the assessment framed under section 153A. In such circumstances the plea of the assessee cannot be accepted. There is no requirement for an assessment made under section 153A being based on any material seized in the course of search."

6.8 In view of the above, I hold that the action of the Assessing Officer in making the impugned addition was within the scope of jurisdiction u/s 153A of the IT Act, 1961. The appellant has relied on various decisions but these decisions do not support the case of appellant's in view of the above discussion. In fact, the decision of Hon'ble Delhi High Court in the case of Anil Kumar Bhatia, relied upon by the appellant is also not in favour of the appellant. Therefore, the contention of the appellant that the additions made in the assessment completed u/s 153A read with section 143(3) was beyond the scope of jurisdiction u/s 153A is rejected. Hence this ground of appeal dismissed."

8. However, on merits all the additions have been deleted by Ld. CIT(A) and that is why assessee was not aggrieved by the outcome of the judgment and hence there was no reason to file any appeal.

9. Rule 27 of Appellate Tribunal Rules, 1963 provides that:

“27. The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him.”

The aforesaid rule gives the liberty to the respondent to support the first appellate order on any of the ground decided against him, that is, the respondent can raise a defence upon the order filed by the appellant on any of the grounds which have been decided against him. The appellant before the first appellate authority may raise many arguments in an appeal to plead his case and if one of the lines is accepted and other is rejected, then in the second appeal filed by the respondent (of the first appeal and now the appellant), then the respondent has a right to defend that part which was adversely decided. Here the issue of scope of addition in terms of assessment completed u/s 153A has been decided against the assessee and therefore, as a respondent it can very well raise the defence in the appeal filed by the revenue that additions which have deleted on facts are also not sustainable in law. The only limitation which can be inferred is that it is not open to the respondent that it cannot claim any fresh relief which has been denied to him by the first appellate authority and also which is not part of the grounds so raised by the revenue. Here it is not a claim of any fresh relief denied to the assessee and also it is not part of the ground raised by the revenue. The respondent assessee got the favourable judgment on merits but there is an adverse finding on the issue of scope of same addition under section 153A; and therefore, in our opinion the assessee can very well raise such an issue under Rule 27. Accordingly, we allow the assessee's petition filed under Rule 27.

10. As stated in the foregoing paragraph, the respondent assessee has challenged the additions made by the AO in the appeals for the assessment year 2007-08 ; 2008-09 and 2009-10 on the legal ground that the impugned additions made by the AO are beyond the scope of section 1543A for the reasons that at the time of search, the assessments for these assessment years were unabated in terms of *proviso* to section 153A; and in case of such unabated assessments additions can only be made on the basis of any incriminating material found during the course of search *qua* the assessment years and if no such incriminating material has been found then such an addition cannot be roped in the assessment framed u/s 153A. Before us, the Ld. Counsel for the assessee has given the following facts in this regard which are as under: -

Date of search u/s 132: 19.10.2010

Particulars	AY 2006-07	AY 2007-08	AY 2008-09
Date of filing of return of income and income returned	1.12.2006 Rs.1,37,31,204	27.10.2007 Rs.1,27,56,410	28.09.2009 Rs.3,68,63,690
Last date of issuance of notice u/s 143(2)	---	30.09.2008	---
Date of passing of assessment order u/s 143(3)	11.11.2008 At an income of Rs.1,37,31,204	No notice u/s 143(2) was issued, hence the return income attained finality	21.05.2010 At an income of Rs.3,68,63,690

11. Ergo, in this case search and seizure action was conducted at the business and residential premises of the assessee on 19.10.2010 and accordingly notices u/s 153A were issued on 27.9.2012, which also included for the assessment years 2006-07 to 2008-09. In all these years return had been filed on the due date u/s 139(1) and in the assessment years 2006-07 and 2008-09, the assessment order u/s 143(3) was passed much prior to the date of search and such an assessment order cannot be said to be abated in terms of *second proviso* to section 153A. In so far as assessment year 2007-08 is concerned, the return income filed by the assessee had attained finality, because no notice u/s 143(2) has been issued as required within the stipulated time period which was 30.9.2008. Thus, it was submitted by the Ld. Counsel that for these three assessment years, assessments were unabated. He further pointed out it is an admitted fact that none of the additions made by the AO are based on any seized material or incriminating documents found in the course of search, which fact is not only evident from the assessment order but also not disputed by the Ld. CIT(A). The Ld. CIT (A) has decided this issue against the assessee on the ground that once notice u/s 153A is issued for any other six assessment years then AO has to make the assessment /reassessment afresh and there is no bar under these provisions that the additions only based on incriminating material can be made and in support he placed strong reliance on the judgment of Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar Bhatia (2012) 211 Taxmann 453 (Delhi). He submitted that it is now well settled proposition of law that if the income of the assessee has already been assessed and on the date of search such assessment has attained finality and are not treated as abated assessment, then without any incriminating material found during the course of search no addition can be made. This issue has been discussed in detail by

the Hon'ble Jurisdictional High Court in the case of **CIT vs. Kabul Chawla (2016) 380 ITR 573** and catena of other judgments of the Hon'ble Delhi High Court. In support he relied upon following judgments: -

1. *Decision of Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation, All Cargo Global Logistics Ltd. [2015] 374 ITR 645 (Bom)*
2. *Decision of Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Kabul Chawla dated 28.08.2015 380 ITR 573 (Del)*
3. *Decision of Rajasthan High Court in the case of Jai Steel (India), Jodhpur vs. ACIT (2013) 259 CTR 281, 219 Taxman 223 (Raj)*
4. *Decision of Hon'ble Delhi High Court in the case of Principal Commissioner Of Income- Tax V. Kurele Paper Mills P. LTD dated 06.07.2015 [2016] 380 ITR 571 (Del)*
5. *Decision of Hon'ble Calcutta High Court in the case of Pr. CIT -2 vs Salasar Stock Broking Ltd dated 24.08.2016 (G.A. No. 1929 of 2016/ITAT No. 264 of 2016)*
6. *Decision of Hon'ble Delhi High Court in the case of Pr CIT & Ors vs Meeta Gutgutia, Prop. Ferns 'N' Petals & Ors (2017) 395 ITR 526, (2017) 82 taxmann.com 287 (Delhi)*
7. *Decision of Hon'ble Bombay High Court in CIT v. Gurinder Singh Bawa (2016) 386 ITR 483 (Bom)*
8. *Decision of Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC)*
9. *Decision of Hon'ble Delhi High Court in the case of Principal CIT, Delhi 2 Vs. Best Infrastructure (India) Pvt. Ltd. & Others in ITA Nos. 11/2017 to 22/2017*
10. *Decision of Hon'ble Delhi High Court in the case of Pr. CIT Vs. Dharampal Premchand Ltd. (2017) 99 CCH 202*
12. Thus, he submitted that none of the additions made by the AO can be sustained in the assessment year 2007-08, 2008-09 and 2009-10.

13. On the other hand, Ld. CIT (DR), though did not rebut the assessee's contention that no incriminating material has been found qua the additions made by the AO in these assessment years, however she strongly relied upon the order of Ld. CIT (A) and on judgment of Hon'ble Kerala High Court in the case of E.N. Gopakumar vs. CIT (2016) 75 taxmann.com 215 (Kerala), wherein the Hon'ble Kerala High Court has taken note of all the judgments of Hon'ble Delhi High Court. Besides this she also relied upon following judgments: -

i. *CIT Vs Raj Kumar Arora [2014] 52 taxmann.com 172 (Allahabad)/[2014] 367 ITR 517 (Allahabad) where Hon'ble Allahabad High Court held that Assessing Officer has power to reassess returns of assessee not only for undisclosed income found during search operation but also with regard to material available at time of original assessment.*

ii. *CIT Vs Kesarwani Zarda Bhandar Sahson Alld. [ITA No. 270 of 2014] (Allahabad), where Hon'ble Allahabad High Court held that Assessing Officer has power to reassess returns of assessee not only for undisclosed income found during search operation but also with regard to material available at time of original assessment.*

iii. *CIT Vs St. Francis Clay Decor Tiles (385 ITR 624), where Hon'ble Delhi Kerala Court held that notice issued under section 153A - return must be filed even if no incriminating documents discovered during search.*

iv. *Smt Dayawanti Vs CIT [2016] 75 taxmann.com 308 (Delhi)/[2017] 245 Taxman 293 (Delhi)/[2017] 390 ITR 496 (Delhi)/[2016] 290 CTR 361 (Delhi); where Hon'ble Delhi High Court held that Where inferences drawn in respect of undeclared income of assessee were premised on materials found as well as statements recorded by assessee's son in course of search operations and assessee had not been able*

to show as to how estimation made by Assessing Officer was arbitrary or unreasonable, additions so made by Assessing Officer by rejecting books of account was justified.

v. CIT Vs Anil Kumar Bhatia (24 taxmann.com 98. 211 Taxman 453. 352 ITR 493); where Hon'ble Delhi High Court held that jurisdiction of AO under 153A is to assess total income for the year and not restricted to seized material. Post search reassessment in respect of all 6 years can be made even if original returns are already processed u/s 143(1)(a) - Assessing Officer has power u/s 153A to make assessment for all six years and compute total income of assessee, including undisclosed income, notwithstanding that returns for these years have already been processed u/s 143(1)(a).

Even if assessment order had already been passed in respect of all or any of those six assessment years, either under section 143(1)(a) or section 143(3) prior to initiation of search/requisition, still Assessing Officer is empowered to reopen those proceedings under section 153A without any fetters and reassess total income taking note of undisclosed income, if any, unearthed during search.

Filalex India Ltd Vs CIT (49 taxmann.com 465); where Hon'ble Delhi High Court held that during assessment under section 153A, additions need not be restricted or limited to incriminating material, found during course of search.

14. We have heard the rival submissions and also perused the relevant material referred to before us and the decisions relied upon by the parties. As discussed above, it is an undisputed fact that for the assessment years 2006-07, 2007-08 and 2008-09 the return of income was filed u/s 139(1) and order u/s 143(3) was passed much before the date of search, except for the assessment year 2007-08, wherein no notice u/s 143(2) was issued within the stipulated time

period. Accordingly, on the date of search, i.e., 19.10.2010 the assessments for these assessment years have attained finality and hence has to be reckoned as unabated assessment in terms of *second proviso* to section 153A. Now under the jurisdiction of Hon'ble Delhi High Court it is a well settled principle that in the case of assessments which have attained finality and are non-abated assessment, then no additions can be made over and above the original assessed income unless some incriminating material has been found during the course of search *qua* that assessment year. This proposition has been well discussed in the judgment of CIT vs. Kabul Chawla, wherein their Lordships have also discussed the judgment of Shri Anil Kumar Bhatia (supra). After considering the various judgments the Hon'ble High Court have summarised the decisions in the following manner: -

“37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under :-

i. Once a search takes place under section 132 of the Act, notice under Section 153A (1) will have to be mandatory issued to the person searched requiring him to file returns for

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYs

"in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously, an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of

search which were not produced or not already disclosed or made known in the course of original assessment.”

15. The ratio laid down in the aforesaid judgment has been further reiterated on the Hon'ble Delhi High Court in the case of Pr.CIT vs. (supra) vs Meeta Gutgutia and catena of other cases as referred above. In so far as judgments relied upon by the Ld. CIT DR, same may not have binding precedence for the reason that; firstly, most of the judgments are distinguishable; secondly, majority of the High Court judgments are in favour; and lastly, jurisdictional High Court in series of judgment has reiterated the same principle. Thus, in view of the settled proposition laid down by the Hon'ble Jurisdictional High Court which is applicable on the facts of the present case also, we hold that all the additions made by the AO in the assessment years 2006-07, 2007-08 and 2008-09 are beyond the scope of assessment u/s 153A, because assessments for these assessment years had attained finality before the date of search and no incriminating material or seized documents were found qua these additions. Accordingly, additions made by the AO are quashed on this ground.

16. Since we have already deleted the additions on the legal ground therefore the deletion of the addition made by the Ld. CIT(A) which has been raised in the revenue's appeal in ITA Nos. 4630/Del/2014, 4631/Del/2014 & 4632/Del/2014 have become academic and infructuous. Accordingly, the revenue's appeals are treated as dismissed.

17. Now we come to the appeal for the assessment year 2009-10, 2010-11 and 2011-12. Here the common additions involved are: -

- 1) 1/5th disallowance of business expenses on adhoc basis;

- 2) Bogus purchase made from M/s. Kiran Furniture;
- 3) Addition on account of unexplained purchases made from M/s. Kiran Furniture;
- 4) Disallowance u/s 40A (3);
- 5) Unexplained cash;
- 6) Additional account of scrap sales and low declaration of income in the assessment year 2011-12.

18. We will first take up the issue of disallowance of business promotion expenses by the AO. The facts in brief are that as discussed in the assessment order for the assessment year 2009-10 are that AO noticed that the assessee has debited following expenses to its profit and loss account: -

<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
1.	<i>Business Promotion Expenses</i>	13,41,288/-
2.	<i>Staff labour and Welfare expenses</i>	3,12,213/-
3.	<i>Printing & Stationary</i>	7,80,974/-
4.	<i>Miscellaneous Expenses</i>	2,82,788/-
	Total	27,17,263/-

AO observed that most of these expenses have been incurred in cash or payment has been made through credit card of the Directors. The cash vouchers furnished by the assessee have been held by him to be not genuine as they do not prove the genuineness of the expenses claimed. He held that the element of personal expenses cannot be

ruled and accordingly, he has disallowed these expenses which come to Rs. 5,43,453/-.

19. Ld. CIT(A) held that AO did not point out any specific instance as to which are the expenses have been incurred for non-business purposes and any kind of adhoc disallowance without pointing out to any particular expenditure which in the opinion of AO was incurred in personal use cannot be sustained. Mainly because certain payments have been made in cash or through the credit card of the Directors, it cannot be ground for making any kind of disallowance. If the expenses debited are recorded in the regular books of accounts which have been incurred in the normal course of business and are subjected to various audits then such kind of disallowance cannot be upheld. He further held that expenses debited under the head business promotion expenses and staff labour and welfare expenses, printing and stationary and miscellaneous expenses are pre-dominantly associated in the execution of business activities and no personal expenses has been brought by the AO. Accordingly, he has directed the AO to allow the expenses.

20. After hearing both the parties and on perusal of the relevant finding in the impugned order, we find that assessee has filed entire details of expenses alongwith the relevant vouchers and audited books of accounts and had also informed the mode and manner of payment of such expenses. The very nature of these expenses debited shows that they have been incurred during the normal course of business and without pointing out any specific defect in the nature of expenses or specifying that such expenses were either for non-business purpose or for personal use, no adhoc disallowance can be made or sustained, especially when entire books of accounts and vouchers have been produced for scrutiny before the AO. Thus, we do not find any

infirmity in the order of the Ld. CIT (A) for deleting such an addition and same is affirmed and accordingly, the disallowance of business expenses is dismissed. Admittedly similar reasoning has been given by the AO for similar kind of expenses in the assessment year 2010-11 and 2011-12, therefore, our reasoning given above will apply mutatis mutandis for these two years also. Accordingly, the grounds raised by the revenue on this issue stand dismissed.

21. Other major issue which is permeating in all the years is disallowance on account of alleged bogus purchase made from M/s. Nitin Enterprises. The facts in brief are that in order to verify the genuineness of the purchase made by the assessee, a survey operation u/s 133A was carried out in the case of M/s. Nitin Enterprises and the statement of one of its partners, Shri Nitin Bansal was also recorded. During the course of survey, it was found that this firm was engaged in the practice of issuing bogus bills to various parties and AO observed that modus operandi adopted by this party was that the bogus bills were raised by M/s. Nitin Enterprises to a particular party and the payment on the basis of these bogus bills were returned to other parties out of the cash sales. In the statement also, the partner accepted that bogus bills were also issued to the assessee company and invoices raised by him to the assessee company for the goods were actually not supplied. He further stated that the amount received in cheque from the assessee company was returned to it in the form of cash. Relevant question No. 23 and 24 of the statement of Shri Nitin Bansal has been incorporated in the impugned assessment order at pages 3 and 4. Based on this survey and the statement of partner, the Ld. AO has made the addition on account of purchases shown by the assessee from this party to be bogus and disallowed the same while

computing taxable income for the assessment year 2009-10, 2010-11 and 2011-12.

22. Before the Ld. CIT (A), it was submitted that assessee has failed to take note of various facts and submissions made before him during the course of assessment proceedings which were as under: -

- “(a) That M/s. Nitin Enterprises, has filed a suit for recovery of balance due to them on account of purchases made by appellant company. This vital fact though in the knowledge of the Ld. A.O. has neither been rebutted by him, nor has been discussed in the assessment order.*
- (b) That the Ld. A.O. was unjustified in relying upon uncorroborated statement given by third party, recorded by some other authority, without independently verifying the same.*
- (c) The Ld. A.O. was unjustified in relying upon statement recorded from third party at the back of the appellant, without granting copy of alleged relied statement to the appellant and without granting any opportunity to the appellant for cross examination.*
- (d) The Ld. A.O. was unjustified in making disallowance of entire purchases made from such third party in absence of any evidence which could support that the purchases made were not genuine.*
- (e) The Ld. A.O. was unjustified in making addition without rejecting the books of accounts.*
- (f) The Ld. A.O. was unjustified in rejecting entire purchases and simultaneously accepting the liability on account of purchases made from M/s. Nitin Enterprises as genuine, acknowledged, confirmed liability and accepting cost of such purchases included in stocks.*

(g) The additions are contrary to settled position in favour of assessee by the judgment of Hon'ble High Court in the case of CIT v. Mahalaxmi Glass Works (P) Ltd., 318 ITR 116 (Bom) and also the judgment of Hon'ble Delhi High Court in the case of CIT v. Mahaveer Aluminium Ltd, 297 ITR 77 , wherein, it has been held that if there is change in valuation of closing stock in one end, it must necessarily be a corresponding change at the other end, otherwise, the true profit would not be reflected. Hon'ble Delhi High Court in the case of Mahaveer Almn Ltd (supra) have held after considering the decision in the case of CIT v. Ahmedabad New Cotton Mills Co. Ltd., AIR 1930 PC 56, that a mistake in the method of valuation cannot be rectified by refusing the valuation of closing stock only but the valuation of opening and closing stock had to be revised. In the case of Mahalaxmi Glass Works Pvt Ltd., (supra), the issue related to closing stock valuation of adjustment of unutilized Modvat credit. The Tribunal allowed the adjustment. Hon'ble High Court confirmed the order of the Tribunal. Therefore, the issue is covered in favour of the assessee by the decision of Hon'ble High Court. Hence, if the closing stock is to be increased on account of unutilized Modvat credit, the corresponding opening stock of that year should also be increased.”

Besides above submissions various decisions were also referred on the issue that if the statement given by third party is relied upon, without any opportunity to cross examine by the assessee then same cannot be relied upon. One most important submission made on the basis of material facts to prove that assessee has made actual purchases was that, this party has also filed a suit against the assessee for recovery of balance amount due to them on account of purchase made by the assessee company. This fact alone goes to show that the purchases made by the assessee cannot be held to be bogus.

23. Ld. CIT (A), after considering the entire facts and submissions placed on record, first of all held that, AO without granting a reasonable and meaningful opportunity to allow cross examination to the assessee of the said party has violated the principles of natural justice; and also, AO was required to provide all the incriminating documents / materials on which he has relied upon before proposing to make such addition. In support of his conclusion he has also referred to various judgments which have been incorporated at page 32 of his order. Thereafter he has given following finding of facts based on various materials which for sake of better appreciation is reproduced hereunder: -

“13.5 Further, in the instant case, from the details on record, I find that the appellant produced complete books of account in the course of the assessment proceedings conducted by the Assessing Officer u/s 153A of the IT Act, 1961 which also included the stock register maintained by it in the regular course of business. The purchases made by the appellant from M/s Nitin Enterprises were found recorded in the stock register. Without pointing out to any discrepancy in the books of account maintained by the appellant, the Assessing Officer in an unreasonable and unjustified manner treated such purchases as bogus. There was no incriminating material found in the course of search operation u/s 132 pertaining to purchases made by the appellant. Without bringing any adverse material on record and without rejecting the books of account pointing to any discrepancy, making an addition by the Assessing Officer was unwarranted.

13.6 On perusal of the details under the head "sundry creditors", I find that M/s Nitin Enterprises appeared as a creditor in the books of the appellant. Therefore, to doubt the purchases made by the appellant on the basis of the statement of Sh. Nitin Bansal, partner

of M/s Nitin Enterprises without considering the other evidence furnished by the appellant was not justified. From the details on record, it is seen that all purchases were supported by relevant bills and payments were made through banking channels as per the statements furnished. It is also a matter of record that M/s Nitin Enterprises filed a suit before the Hon'ble High Court of Delhi vide petition CS (OS) 2055 of 2011 for recovery of an outstanding balance. In the said writ petition, M/s Nitin Enterprises accepted the fact that material was supplied to the appellant regularly on credit basis and payments of some invoices were pending. Such copies of the invoices where the payments were pending was submitted by M/s Nitin Enterprises before the Hon'ble High Court of Delhi and the same were also furnished. before the Assessing Officer in the course of the assessment proceedings vide its letter dated 27.05.2013. M/s Nitin Enterprises also submitted before the Hon'ble High Court of Delhi, a copy of the ledger account of the appellant company i.e. M/s Meroform India Pvt. Ltd. in its books of accounts which evidenced that the material was delivered to the appellant. Subsequently, both the parties i.e. M/s Nitin Enterprises and the appellant concluded the matter by entering into an out of court settlement agreement, according to which M/s Nitin Enterprises agreed to receive the balance payment without the interest amounting to Rs.55.58 lacs and filed a combined application on May 31st 2012 before the Hon'ble High Court for disposal of the writ filed by M/s Nitin Enterprises. Vide order dated 01.06.2012, the Hon'ble Delhi High Court dismissed the writ filed by M/s. Nitin Enterprises and concluded the matter as extracted below:

- 1. Plaintiff has filed the present suit for recovery of Rs. 72,62,050/-.*

2. This is an application filed by parties under XXXIX Rule 3 CPC for recording the terms of settlement arrived at between the parties. This application is duly signed by Mr. Nitin Bansal, partner in the plaintiff company and by Mr. M.S. Vinod, one of the Directors of defendant company as also by learned counsel for the parties. This application is also supported by the affidavits of Mr. Nitin Bansal and Mr. M.S. Vinod. Alongwith this application the parties have also filed Deed of Settlement of Disputes dated 17.05.2012. The Deed of Settlement is marked as Exhibit C-1.

3. One of the authorized representatives of the defendant company is present in Court. He is duly identified by his counsel. The Director also identifies the signature of Mr. M. S. Vinod in the application as well as in the Deed of Settlement. He submits that he has seen Mr. M.S. Vinod write and sign.

4. Learned counsel for the defendant has handed over two cheques in the total sum of Rs.55,58,927/- [(i) Ch. No. 433650 dated 1.7.2012, drawn on YES Bank in the sum of Rs.25,58,927/- and [(ii) Ch. No.433648 dated 1.06.2012, drawn on YES Bank in the sum of Rs.30,00,000/-] to counsel for the plaintiff in Court today in full and final settlement of all the claims.

5. Learned counsel for the parties submit that in view of the settlement arrived at between the parties' present suit may be decreed in terms of Deed of Settlement dated 17.05.2012, marked as Exhibit C-1.

6. Heard counsel for the parties and also perused the application and the Deed of Settlement, marked as Exhibit C-1. The terms of settlement are lawful. Accordingly, present application is allowed. As prayed, suit stands decreed in terms of Deed of Settlement dated 17.05.2012, marked as Exhibit C-1,

leaving the parties to bear their own costs. Let a decree sheet be drawn up accordingly.

7. *Having regard to the fact that the parties have arrived at an amicable settlement before framing of issues, court fee shall be refunded to the plaintiff in terms of section 16A of the Court Fee Act, as prayed.*

8. *Application stands disposed of I.A.1683S/2011 (037 R 3) & I.A. 6313/2012 (Leave to defend)*

9. *Applications stand disposed of in view of the settlement arrived at between the parties."*

13.7 This action of M/s Nitin Enterprises was contrary to the statement given by its partner in the course of survey proceedings on 1.04.2011. On the other hand, such a petition for recovery before Hon'ble High Court substantiates the genuineness of purchases. No prudent person would expend money on legal matters which is not only time consuming but also long drawn in procedures on an issue which never existed or found to be bogus. Again, in the course of search u/s 132 there was no excessive cash found that substantiated that the appellant received cash in lieu of cheque from M/s Nitin Enterprises or any incriminating material where certain cash transactions were found recorded on loose sheets I papers to support cash receipt. In the course of appeal proceedings, as well as assessment proceedings the appellant filed complete details pertaining to the legal battle between them, which the Assessing Officer did not consider nor he has brought any material contrary to what was stated by the appellant. It is also a point to bring on record that there was no bar on the Assessing Officer to conduct further independent enquiry pertaining to these transactions. The Assessing Officer was unable to bring on record

the number of invoices which specify such adjustments alleged as bogus by him. In the assessment order, the Assessing Officer recorded that Sh. Nitin Bansal, partner of M/s Nitin Enterprises which provided the alleged entries, expressed his inability to attribute any particular invoice to such adjustments / accommodation made for the appellant company. Therefore, the Assessing Officer failed to bring on record any adverse material to prove that the purchases made by the appellant were not genuine and were bogus, except a third-party statement in the course of survey u/s 133A which was contrary to the settlement deed passed by the Hon'ble High Court of Delhi. Considering the facts and circumstances of this issue, the Assessing Officer was not justified in treating the purchases made from M/s. Nitin Enterprises by the appellant as bogus. Accordingly, the addition made by the Assessing Officer amounting to Rs. 89,49,347/- on account of bogus purchases is deleted.”

24. Before us Ld. DR strongly relied upon the order of the AO and submitted that once the said party has been found to be providing bogus bills and the partner has categorically admitted that the firm was providing bogus bills to the assessee after receiving the cheque and returning the same in cash, then it cannot be held that such purchases are genuine.

25. On the other hand, Ld. Counsel submitted that assessee had filed plethora of evidences like;

- a) Copy of Legal Notice dated 11.3.2011 issued by M/s. Nitin Enterprises to the assessee for recovery of dues.*
- b) Copy of Suit for Recovery of dues filed by M/s. Nitin Enterprises before Hon'ble Delhi High Court [CS(OS) 2055 of 2011].*

- c) Copy of Statement of Accounts (Ledger) and Reconciliation filed by M/s. Nitin Enterprises during Suit for Recovery before Hon'ble High Court, confirming the transactions and balance arising therefrom as recoverable on oath.*
- d) Copy of Ledger Account of M/s. Nitin Enterprises in the books of the assessee and reconciliation of balances.*
- e) Copy of Settlement Deed dated 17.05.2012 between the assessee and M/s. Nitin Enterprises and Settlement Order of Hon'ble Delhi High Court.*

It was pointed out that, AO even failed to acknowledge these evidences and instead choose to rely upon the statement of the partner taken behind the back of the assessee without allowing any opportunity to cross examine. Apart from that, during the course of search operation nothing incriminating in respect of bogus purchase has been found and there is an inherent contradiction in the conduct of the said party, because on one hand the partner Shri Nitin Bansal stated that it has given accommodation entry but at the same time the firm has issued legal notice to the assessee company for recovery of outstanding dues on account of bill raised against them for the purchases made by the assessee company and also filed a suit before the Hon'ble Delhi High Court; and thereafter deed of settlement has been executed between the said party and the assessee wherein the quantification of liability of unpaid purchases has been settled and Hon'ble High Court which has been accepted by the parties in the settlement ratified vide order dated 1.6.2012. Consequent to settlement the writ petition filed by M/s. Nitin Enterprises has been dismissed. Thus, under the facts and circumstances of the case, the purchases made by the assessee from M/s. Nitin cannot be held to be bogus.

26. After hearing the rival contentions and on perusal of the material referred to before us, we find that the main ground for making the addition by the AO is that; during the course of survey made in the case of M/s Nitin Enterprises was found to be engaged in providing bogus bills and one of its partner has given a statement that assessee was also given the bogus bill and has received cheque from the assessee for the said bills in lieu of cash for the same amount returned back to the assessee. On the other hand, the assessee before the AO has given various documents like; i) copy of legal notice issued by M/s. Nitin Enterprises to the assessee for recovery of the dues relating to same purchases made by the assessee; ii) suit of recovery filed by M/s. Nitin Enterprises before the Hon'ble Delhi High Court; iii) copy of statement of account and reconciliation filed by M/s. Nitin Enterprises during the suit for recovery before the Hon'ble High Court confirming the transaction of purchase and balance amount recoverable from the assessee; iv) copy of ledger account and reconciliation of balance in the books of account of both the parties; and v) settlement deed between the assessee and M/s. Nitin Enterprises whereby parties have settled the dues which got ratified by the settlement order of the Hon'ble Delhi High Court. All these evidences have neither been rebutted nor has any adverse view been given by the AO. Apart from that, there is a categorical finding that the statement of Shri Nitin Bansal recorded by the survey parties was behind the back of the assessee and the copy of the statement was neither provided nor was any opportunity given for cross examination. The assessee has made the payment to the party through banking channels and simply relying upon the statement of one of the partner that cash has been returned in lieu of cheque cannot be accepted without such a person being subjected to cross examination. Even otherwise also such a statement itself loses its credibility and

evidentiary value, when the firm itself has taken a legal action for recovery of same dues from the assessee on the purchases made for which it has issued the bills. Not only that, there has been amicable settlement of dues and payment has been made by the assessee to the said party. In light of these evidences filed before Hon'ble High Court in the suit proceedings, the statement of the partner gets mitigated and no credence can be given to such a settlement. The detailed finding of the Ld. CIT (A) on this issue as incorporated above is not only based on correct appreciation of facts but also in law, therefore, the said finding is affirmed and the addition made by the AO on account of bogus purchase is deleted. In the result issue of bogus purchases in all the assessment years from the said party stands decided in favour of the assessee and the grounds raised by the revenue are dismissed.

27. The next issue relates to addition on account of unexplained purchases made from M/s. Kiran Furnitures. The facts in brief are that in the course of assessment proceedings, notices u/s 133(6) was sent to various parties from whom the assessee company has made purchases during the year. All the parties have duly complied with the said notices except for one party, namely, M/s Kishore Mahadeo Mistry located in Mumbai. When this fact was confronted to the assessee, it provided the new address and notice was sent on the given address however again no response was received from the said party. Accordingly, AO concluded that the purchases made from the said party is non genuine. Before the Ld. CIT (A) it was submitted that M/s. Kiran Enterprises is engaged in manufacturing of furniture and during these years assessee has obtained services from the said party for its various projects and for service rendered invoices have been raised by M/s. Kiran Enterprises which have been duly recorded in the books of accounts. These invoices clearly show the nature of job work

performed along with the details of site and other information. The assessee has also classified this expenditure under the head job work charges. Not only that, TDS has also been deducted and deposited in the Government Treasury on the payment made to said party. There is nothing on record that either the alleged services have not been given by the said party or other evidences in the form of invoices and TDS certificate are not correct. The assessee had duly placed following record and information before the AO:-

- (a) Confirmed statement of accounts.
- (b) Invoices of the services rendered by M/s. Kiran enterprises
- (c) Permanent Account number of Mr. Kishore M. Mestry, Proprietor, M/s. Kiran Furniture.
- (d) The address of the Kishore M. Mestry, Proprietor, M/s. Kiran Furniture.
- (e) The mode of payments made.
- (f) Nature of services obtained, place where such service obtained and bills of services rendered raised by M/s. Kiran Furniture.
- (g) The Income tax returns of M/s. Kiran Furniture which duly reflected that the job charges received from the appellant were duly accounted for and income earned therefrom has been offered for taxation by the said party.
- (h) The TDS records in the form of TDS Certificates, as required by the provisions of Chapter XVII showing the nature of services obtained and TDS as required by law duly deducted and deposited by us to the credit of Central Govt.

28. Ld. CIT(A) after considering the facts and record has deleted the said addition after observing and holding as under :-

“6. I have gone through the facts of this issue, written submissions made by the appellant, citations of the case laws relied upon by the appellant in support of its contentions, and considered them. I have also called for the assessment record and perused it. During the year under consideration, the appellant company obtained services from the said party i.e. M/s Kiran Furniture at the project sites where certain job work was required. In the course of assessment proceedings the appellant furnished the following:

- (i) Confirmed statement of accounts.*
- (ii) Invoices of the services rendered by M/s. Kiran enterprises.*
- (iii) Permanent Account number of Mr. Kishore M. Mestry, Proprietor, M/s. KiranFurniture.*
- (iv) The address of the Kishore M. Mestry, Proprietor, M/s. Kiran Furniture.*
- (v) The mode of payments made.*
- (vi) Nature of services obtained, place where such service obtained and bills of services rendered raised by M/s. Kiran Furniture.*
- (vii) The Income tax returns of M/s. Kiran Furniture, which duly reflected that the job charges received from the appellant were duly accounted for and income earned therefrom has been offered for taxation by the said party.*
- [viii] The TDS records in the form of TDS Certificates, as required by the provisions of Chapter XVII showing the nature of services obtained and TDS as required by law duly deducted and deposited by us to the credit of Central Govt.*

From the details placed on record it is seen that Sh. Kishore Mahadeo Mistry is the proprietor of M/s Kiran Furniture and is situated in Mumbai and was engaged in the business activity of manufacture of furniture and fixture and also rendered services as a "labour contractor". On perusal of the details, it is seen that the Assessing Officer made the impugned addition merely on the basis of non-compliance to the notices issued to the above mentioned entity u/s 133(6) of the IT Act, 1961. While making

such disallowances, the Assessing Officer not only ignored all the material facts brought on record by the appellant, but also the nature of services rendered by M/s Kiran Furniture, and also the classification and disclosure made thereof in its audited books of account, which was furnished such as balance sheet and profit and loss account during the course of the assessment proceedings. In fact, one cannot ignore that the notices issued u/s 133(6) by the Assessing Officer on both the occasions were properly served upon the intended party and they were not returned to the sender un-delivered or with certain remarks by the postal authorities. This itself evidences the fact that the party existed and its identity was established. The Assessing Officer did not bring any adverse material on record to establish that such services were not rendered by M/s Kiran Furniture or that the same was not obtained by the appellant, or that the services obtained were not utilized for the business of the appellant. The Assessing Officer's action while making the impugned addition is contradictory to each other. On one hand, the entire job work charges paid were disallowed and on the other hand the Assessing Officer himself accepted the liability on account of services obtained from the party duly acknowledged and confirmed liability as a trade liability. Despite of the submissions made and evidences furnished notices issued u/s 133(6) which remained un-complied, does not tantamount to an adverse inference that could be drawn against the appellant as it was open to the Assessing Officer to conduct further investigations I enquiry by exercising the powers conferred upon him in the Income Tax Act, 1961 to issue a commission u/s 131 (1)(d) to his counterpart in Mumbai to carry out a conclusive enquiry. The appellant furnished the details of its transactions with M/s Kiran Furniture before the Assessing Officer in the course of the assessment proceedings for proper scrutiny in the form of invoices, schedule 9 forming part of the financial statements, copies of TDS certificates, where TDS was deducted in accordance with the provisions of law for the kind of nature of services rendered I obtained etc. However, the Assessing Officer ignored even the fact that M/s Kiran Furniture furnished the ITRs for various years and the Assessing Officer could have easily verified from the jurisdictional Assessing Officer where the said party was

assessed to tax regularly. Without an intended undertaking to further conduct necessary enquiries I investigation, to verify the genuineness of the transactions which the Assessing Officer doubted, merely disallowance of purchases only on the ground that the party did not respond to the notices which were rightfully served upon the said party u/s 133(6) is unjustified as the Assessing Officer at the least could have also levied a penalty for non-compliance of such notices served on it.

16.1 The evidence furnished by the appellant was ignored and not taken into account on merit by the Assessing Officer. The payments made which were duly supported, confirmed and vouched cannot be treated as the undisclosed income of the appellant in the name of unexplained purchases simply on the ground that M/s Kiran Furniture did and respond to the notice issued u/s 133(6) and that it represented and unexplained and undisclosed income of the appellant. The instant case is not a case of cash credit simplicitor, because the appellant furnished the entire proceeds and transactions before the Assessing Officer in the course of the assessment proceedings u/s 153A, and it is also not a case where the credit balance due to M/s Kiran Furniture could be added under the deeming provisions of section 68 of the IT Act, 1961 without assigning the reason for making such an addition. It is also seen that nowhere and at no point of time, the Assessing Officer expressed his dissatisfaction pertaining to the identity, creditworthiness of genuineness of the transactions involved which is the primary ingredient laid down in the provisions of section 68.

16.2 In the instant case, on perusal of the material placed on record, I find that all the services obtained by the appellant were duly supported by invoices raised by M/s Kiran Furniture and the payments made by the appellant in respect of the services obtained were subjected to the provisions of chapter XVII. On perusal of the details of sundry creditors I find that M/s Kiran Furniture duly appeared in the list of sundry creditors of the appellant. Sh. Kishore Mahadeo Mestry, who is proprietor of M/s Kiran Furniture is being regularly assessed to income tax under PAN AGPPM57590 with the ITO Ward- 25(3)(2) Mumbai and his accounts were duly audited. The appellant company also appeared in the list of sundry debtors of M/s Kiran Furniture. The transactions with the appellant company were duly accounted for and disclosed in the return filed and income earned from the said transactions were duly offered for taxation by M/s Kiran Furniture. The appellant in his submissions relied on plethora of

the case laws in support of its contentions. Considering all these facts I am of the view that there is substantial material on record to prove the existence of the party and the genuineness of the transactions. Without bringing any adverse material on record contrary to that furnished by the appellant, the Assessing Officer was not justified in considering only that piece of evidence that could probably be used against the appellant while ignoring the other corroborative evidence furnished by it. An assessment has to be made considering the entire material in the possession of the Assessing Officer in a fair and judicious manner / and in the interest of revenue but not to deal with it in a discretionary manner to choose what suited him. Therefore, the impugned disallowance made by the Assessing Officer was not justified. Accordingly, the addition of Rs.9,88,687/- made by the Assessing Officer on account of expenses incurred in connection with the services obtained by the appellant from M/s Kiran Furniture is deleted.”

29. After hearing both the parties and on perusal of the relevant material placed on record, we find that the assessee has furnished various evidences and documents as enlisted by the Ld. CIT (A) to prove the genuineness of the purchases made and simply because, the notices issued by the AO to the said party has not been replied back, it cannot be held that either the said party has not rendered any services to the assessee or the invoices raised by the said party is fictitious or the identity of the said party cannot be established. Moreover the payments have been made to the said party through cheques on which TDS has been deducted. All these facts ostensibly leads to conclusion that payment has been made to the assessee to the said party for receiving the services at various projects and such a payment cannot be held to be non genuine. The detailed finding of the Ld. CIT (A) as incorporated above cannot be deviated from without their being any other contrary material coming on record and hence the aforesaid finding is hereby confirmed. The grounds raised by the revenue in all the years are thus dismissed.

30. The next issue raised by the revenue in the assessment year 2011-12 is addition on account of unexplained cash of Rs. 6,68,483/-. The facts in brief are that during the course of search conducted on 19.10.2010 at the assessee's premises at A-37, Sector 80, Phase-IT, Noida (UP), it was found that it was shared by another entity, M/s. G.L. Litmus Events Pvt. Ltd. and other concerns. US Dollar \$ 15,017 (equivalent to INR 6,68,483) was found by the search party from the said premises. When confronted to the assessee, it was explained before the search party that the said foreign currency was personal property of foreign nationals, namely, Mr. Alexander Vidal, Mr. Herve Chu and Mr. Victor Besa, who were employees of M/s. G.L. Litmus Events Pvt. Ltd. whose premises was also covered under the same search proceeding and Panchanama was also drawn in their names jointly. Nothing further was asked or queries were raised from the assessee and the search team being satisfied with the ownership of the Dollars released the same to the said foreign nationals instantly. However, during the impugned assessment proceeding, the Ld. A.O. asked the assessee to explain the source of these dollars. In reply, the assessee reiterated the fact as stated above and further submitted that confirmation from M/s. G.L. Litmus Events Pvt. Ltd. is awaiting and the same will be filed as soon as it is received. In spite of the above facts, the A.O. without calling for any further explanation or issuing any further notice or enquiring the matter from M/s. G.L. Litmus Events Pvt. Ltd., whose search assessment was also under his charge, made the addition of Rs.6,68,483/- in the hands of the assessee as unexplained cash on the ground that the assessee failed to furnish a confirmation pertaining to the source of Dollars.

31. Before the Ld. CIT (A) assessee submitted that following documents in support of the claim that the dollar/cash found at the

searched premises jointly owned by several entities was not belonging to it:-

(a) Copy of Panchanama to establish that the premises searched was in the joint names of the assessee-company, M/s. G.L. Litmus Events Pvt. Ltd. and other entities.

(b) Copy of confirmation from M/s. G.L. Litmus Events Pvt. Ltd. stating that Mr. Alexander Vidal, Mr. Herve Chu and Mr. Victor Besa (foreign nationals) were working on its project and their US Dollars were kept for safe custody in the searched premises.

(c) Copies of statements of floating advance accounts duly acknowledged by the said foreign nationals for the period 04.10.2010 to 31.10.2010 establishing that they were contracted by M/s. G.L. Litmus Events Pvt. Ltd. for its projects as well as their presence in India at the time of search.

(d) Copy of FIR dated 28.08.2010 (before date of search) lodged by the said foreign nationals on outbreak of fire at their premises on 27.8.2010, establishing that their valuables were kept in the safe custody of M/s. G.L. Litmus Events Pvt. Ltd. at the premises shared by it with the assessee and others.”

32. Ld. CIT(A) after considering the entire facts and material on record has deleted the above after observing and holding as under:-

“ I have gone through the details of this issue and written submissions filed by the appellant. There is a considerable force in the contention of the appellant where the AR argued that without taking into account all the factors, addition was made by the Assessing Officer for not furnishing of confirmation is not only invalid but unreasonable also. From the details on record, it is seen that another group company M/s G. L. Litmus Events Pvt. Ltd. was also subjected to search and seizure operations u/s 132 of the IT Act, 1961 and thereafter it was centralized with the same Assessing Officer where the case of the appellant was also centralized. As the jurisdiction over both the cases i.e. M/s G. L.

Litmus Events Pvt. Ltd. and that of the appellant were vested with the same Assessing Officer i.e. Central Circle-B. New Delhi, verification of submissions made by the appellant pertaining to M/s G. L. Litmus Events Pvt. Ltd. could have been made by the Assessing Officer rather than simply discarding them. The Assessing Officer did not bring any material on record to substantiate that the foreign currency found in the premises of the appellant belonged to the appellant only and it represented the undisclosed income. It is a matter of fact that the appellant's premises was also shared by M/s G. L. Litmus Events Pvt. Ltd. and that pursuant to the search a Panchnama was also drawn in the joint names of the appellant and M/s G. L. Litmus Events Pvt. Ltd. with the address at A-37, Sector 80, Phase-II, Noida (UP). It is also a matter of record that considering the fact that the amount pertained to the foreigners, namely Mr. Alexander Vidal, Mr. Herve Chu and Mr. Victor Besa, contracted by M/s G. L. Litmus Events Pvt. Ltd., the search party did not seize the dollars but released the said amount of Rs.6,68,483/-. In the course of the assessment proceedings / post search proceedings the appellant furnished the following:

- (a) Copy of confirmation from M/s. CL Litmus Events Pvt. Ltd. confirming the facts that Mr. Alexander Vidal, Mr. Herve Chu and Mr. Victor Besa were persons contracted for the its project as well as that the foreign currency found during search belonged and returned to these contracted person.*
- (b) Statement of floating advance accounts for the period 4.10.2010 to 31.10.2010 acknowledged by said foreign nationals. This is undoubtedly acknowledgment of the fact that the said persons were contracted by M/s. Litmus Events Pvt. For its projects as well as they were in India at the time of search.*

(c) Refer P.B. page No 9D being copy of a FIR dated 28.08.2010 lodged by the foreign national contracted persons of M/s. G.L. Litmus Events Pvt. Ltd. subsequent to outbreak of fire at their premises on 27.08.2010 i.e. just prior to search. Therefore under the circumstances the valuables belonging to contracted foreign nationals were kept in the safe custody at the premises and under possession of M/s. C.L. Litmus Events Pvt. Ltd.

10.1 From the above discussion, it is evident that the appellant company furnished substantial material in support of its contention, but the Assessing Officer failed to bring on record anything adverse contrary to what is submitted and on record. Further, the release of foreign currency by the search party during their search operation u/s 132 itself proved that the same was released after the satisfaction of the search party with a conclusion that the same was neither an unexplained nor an undisclosed income of the appellant nor it belonged to M/s. G.L. Litmus Events Pvt. Ltd. but the same belonged to the foreigners contracted by the company M/s. G.L. Litmus Events Pvt. Ltd. Therefore, the addition made by the Assessing Officer cannot be sustained as no material was brought on record by the Assessing Officer to prove that an amount of Rs. 6,68,483/- (\$15,017) was the undisclosed income of the appellant which remained unexplained. As there is no justification for such an addition, I delete the addition of Rs. 6,68,483/-."

33. After hearing both the parties and on perusal of the relevant finding in the impugned order as well as material on record, we find that the assessee's stand consistently before the AO was that the foreign currency found from the premises of the assessee belong to different concern, namely, M/s. G.L. Litmus Events Pvt. Ltd. who have

their office at the same premises and were also subjected to search. The investigation authorities concluded that the foreign currency neither represents undisclosed income of assessee nor of M/s. G L Litmus Events Pvt. Ltd., therefore, the same was released. Although whatever cash was found from the possession of the assessee the same was found to be reflected in the books of accounts. The assessee in the course of search itself has categorical stated that the cash in the form of foreign currency belonged to M/s. GL Litmus Events Pvt. Ltd., and without any other material to hold that the foreign currency belong to the assessee AO has held to be undisclosed income of the assessee. Even the Panchnama also shows the joint name of assessee and M/s. G.L. Litmus Events Pvt. Ltd. and how this adverse inference has only been drawn by the assessee is not understood. The copy of confirmation from M/s. G.L. Litmus Events Pvt. Ltd. confirming the entire facts and other catena of documents which have been filed before the AO has neither been considered nor any has been rebutted by the AO. Accordingly, observation and finding of the Ld. CIT (A) based on facts and material on record that the foreign currency does not belong to the assessee but to M/s. G.L. Litmus Events Pvt. Ltd. cannot be disturbed and accordingly the order of Ld. CIT(A) affirmed. In the result the grounds raised by the revenue on this score is dismissed.

34. Coming to the issue of scrap sales which has been raised by the assessee as well as by the revenue in the assessment year 2009-10, the facts in brief are that the AO has made the addition of Rs. 2,90,39,068/- on account of alleged scrap sales. The facts in brief are that, Assessee Company is engaged in the business of erection, commissioning and consultancy of structure design process, decoration and exhibition pavilions etc. The assessee was awarded

work for execution of same. Before us Id. Counsel has explained the entire facts on this issue in the following manner:-

The assessee company awarded work for execution of Common Wealth Games, 2010 (CWG). In relation to this, the appellant had provided to M/s. GL Litmus Events Pvt. Ltd. for the execution of the CWG Games the following:

i) Services amounting to Rs.8.82 crores; and ii) Sales of Rs. 1,25,30,700/-.

2. The Id. AO. however noted that the Services (totalling to Rs.8.82 crores), included in it rental charges of Rs.5,80,78,138/- earned on material given on hire to M/s G.L. Litmus Events Pvt. Ltd. as under:-

S No.	Amount(Rs.)	Description
1	25,38,077	Rental charges for Pre- fabricated ceiling
2	48,34,400	Rental charges for providing cassette floor/ramps/cable ducts and stage in CWG
3	2,61,15,924	Rental charges for providing temporary walls and doors in CWG for games venue.
4	41,43,540	Rental charges for providing miscellaneous on site material in CWG
5	51,40,000	Rental charges for Providing signages, designs, hoarding services at National & International Airport
6	75,20,586	Rental charges for providing electrical & other equipment for execution of CWG
7	24,68,681	Rental charges for Installation of wall structures at different sites of CWG

8	53,16,930	Rental charges for providing temporary office, air conditioners & furniture at ITO site.
Total	5,80,78,138	

2.1. The Ld. AO during the assessment proceedings enquired about the details of purchases made by the Appellant for the CWG and also regarding the scrap/residual value of the said materials purchased for the CWG.

In connection to the same, it was explained to the AO. that the services and goods provided to M/s G.L. Litmus Events for CWG was provided out of common pool of the Appellant business and no separate purchases were made for the CWG. Thus it was explained that no such separate list of purchases and the resultant scrap/residual value of the same could be provided.

2.2. Also the Ld. AO noted that the Appellant had before the Settlement Commission surrendered Rs.20,00,000/- as unaccounted income from scrap sale from material supplied for CWG project.

In the said connection it was explained by the Appellant that one Shri Rajendra Kumar Site Manager, was in charge and looking after the CWG site. After his death, a noting on loose sheet was recovered from his office desk wherein an amount of Rs.16,78,340/- was found recorded as sale of scrap, without giving the details of the items sold, quantity and to whom sold. These facts were unknown to the appellant-company and he was doing so of his own.

However, inspite of the fact that during the entire search not a single document was found suggesting suppression of income, the Appellant, considering the above unforeseen peculiar circumstances owing to the noting on loose sheet recovered from the office desk of the said site manager after his death, with a view to coming out clean to protect its goodwill, to buy peace of mind and to cover up any other shortfall besides the abovementioned income of Rs.16,78,340/- arising from sale of scrap, offered a sum of Rs.20 lakhs on account of scrap sale to tax in the Settlement Application filed before the Hon'ble Settlement Commission u/s.245C of the Act to depict the true and full disclosure.

However the said application stood un-admitted for the reason that the company, according to Hon. Settlement Commission, could not satisfactorily explain as to why capitalization of income generated from sale of scrap in cash should be restricted to Rs.16,78,340/-.

2.3. The appellant also furnished a detailed chart, which is also appearing on pages 48 to 50 of the order of Ld. CIT(A), showing/narrating bill-wise contents of items, their utility, scrap value, stock position etc.

2.4. The Ld. A.O., however, alleged that although the appellant-company had admitted unaccounted sale of scrap but no evidence in that regard was filed.

He alleged that the material purchased was used for a short period of 45 days only after which it could be easily reused or sold at a price.

Without appreciating/consulting the analysis and related documents, he on his whims and fancies presumed that the scrap value of these items should not be less than 50% of their original

value and, accordingly, rejecting the explanation of the assessee added sum of Rs. 2,90,39,069/-, being 50% of total cost of Rs. 5,80,78,138/-, to the income of the appellant on the following grounds:

(a) That the scrap/residual value of material purchased for CWG has not been provided by the assessee.

(b) That the assessee before Hon 'ble Settlement Commission had suo moto offered Rs.20 lakhs on account of scrap sale for CWG project.

(c) That the Settlement Application was filed on the basis of rough noting in the loose papers found in the desk of Mr. Rajender Kumar, Site Manager, subsequent to his death and much later to the date of search conducted on the assessee-company.”

35. Before the Ld. CIT (A) also this issue was explained by the assessee as under:-

(a) That the appellant-company had executed orders placed by M/s GL Litmus Events Pvt. Ltd. for the supply of temporary structures etc. on hire basis at various locations of CWG. All the sites were to be vacated immediately after the event, failing which heavy penalty was envisaged. The employee of the appellant-company, therefore, sold a lot of material as scrap to local scrap dealers resulting in cash sale of Rs.16,78,340/-, which was written in the loose sheet recovered from the office desk of the Site Manager after his death and remained to be accounted for.

(b) The scrap generated in the normal course of business has been sold in the respective years and duly accounted for in the books of account.

- (c) Most of the material for rental contract was of such nature that either it does not have any scrap value or otherwise the scrap value is negligible. That in these types of work, the company had to bear cost for breakage and removal of the installed material/scrap/garbage, which was much more than the negligible scrap value. Hence, in many occasions the materials were not removed and the local contractors were asked to remove the same and to keep the scrap as payment in lieu of the services provided for dismantling/removing the structures and cleaning the village site.
- (d) That in the interest of the business and in view of various cost involved in removing the structures etc. within a short span of time, shortage of godowns for storing those scrap etc., the company gave authority to its site supervisor/in charge to dispose of at the site itself at the maximum bargain price.
- (e) That the structures erected in the CWG village have more artistic value than the cost of the material used, which has no residual value after the work is over.
- (f) The AO has alleged that the materials/goods were used for 45 days in the CWG village, but he has failed to appreciate that during this period the goods were subjected to such rough use, that by the end of the period the goods had lost their usable life. Further, the goods which were found re-usable, were taken back to the godowns, duly shown as part of the closing stock and valued the same in accordance with the prescribed accounting standards.
- (g) That during the course of verification of books of accounts, stock registers and other seized material in the impugned assessment proceeding, the AO admittedly has not come across

any unrecorded transaction or objected either about correctness of the books of account or valuation of the closing stock. The search party also did not find any incrimination.

- (h) Before the AO as well as before the Ld. C.I.T.(A), the appellant-company filed the details of services including the material given on hire to M/s. GL Litmus Events Pvt. Ltd. with respective bills/invoices, referred to above (pages 7 & 8 of assessment order). To elaborate the matter further, the company also filed a chart analyzing bill wise contents of items, their utility, scrap value, stock position etc., which is appearing on pages 48 to 50 of the appellate order.
- (i) That, therefore, the AO. on surmise & conjecture has made addition on lump sum basis of Rs.2,90,39,069/-, being 50% of total value of services of Rs.5,80,78,138/-, upon presumption of scrap sale without bringing on record any discrepancy therein or instances of alleged undisclosed sales brought on record during the assessment proceeding.

36. Ld. CIT (A) has given part relief after observing and holding as under:-

“22.2...From the details on record, I find that the Assessing Officer considered the stock that was recorded in the books of account of the appellant to the extent it was classified to be re-used and, therefore, no addition was made on that account by him.

In his submissions, the appellant itself expressed its inability to segregate useable and un-useable residue. Therefore, the Assessing Officer did not raise any question pertaining to the correctness of the books of account maintained by the appellant.

Further, it is also matter of record that apart from the transactions recorded on the loose sheets found in the desk of the site manager Sh. Rajinder Kumar, no other incriminating material pertaining to the scrap sale was recovered by the Investigating Wing of the department except that an amount of Rs.16, 78,340/- was found recorded as sale of scrap, without giving the details of the items sold, quantity, and to whom sold. However, the appellant did not admit the receipt of such amount from the manager site in charge i. e. Sh. Rajinder Kumar even though such existence of transactions prove that there was a sale of scrap by the appellant. Therefore, this was the evidence in the possession of the Assessing Officer with regard to the scrap sale and which was found not recorded in the books of account of the appellant. in the course of the assessment proceedings, the appellant failed to provide the complete details of sale of scrap and admitted that was an unaccounted sale of scrap to the extent of the transactions found recorded on the loose sheet recovered from the desk of the manager site in charge. The fact that the appellant offered Rs.20 lakhs as income on account of sale of scrap in an application filed before the Hon'ble Settlement Commission itself established beyond doubt that the appellant made sale of scrap out of its books.

22.4. It is also seen that the Assessing Officer made the disallowance on adhoc basis without specifying particular item or bill on an estimate basis as there was no material in his possession except the transactions recorded on the loose sheet pertaining to Rs. 16,78,340/-.

The appellant also did not furnish any details pertaining to the sale of scrap except to admit the transactions recorded on the

loose sheet, the one which is already in the possession of the Assessing Officer.

As there is no cogent evidence to substantiate the addition made by the Assessing Officer nor any evidence on the contrary with the appellant, in my view it would be fair and reasonable to estimate the value of the scrap sold at 20% of the purchase value, as 50% is an exorbitant estimate as the appellant's purchases also included items like MDF board, plywood, prefabricated ceiling, sown wood, laminates, carpets etc. where the value of the residue is not fetching, besides aluminium, iron and steel, MS plates, electrical items, electrical cables etc.

The Assessing Officer also did not bring on record any comparable cases where the scrap value was assessed at 50% of the purchase value or the nature of that business activity akin to that of the appellant where 50% of the purchases can generate a scrap value.

Therefore, the Assessing Officer is directed to modify the addition made by him to the tent of 20% of Rs.5,80,78, 138/- and to pass a consequential order accordingly.”

37. Before us Ld. Counsel submitted that the entire details of purchases made for CWG and scrap resale value of such goods were provided before the AO and in respect of scrap value of material used in CWG which the AO has presumed to have been sold. It was explained before him with reference to invoices raised for that purpose that the services for the supply of temporary structures etc. were on hire basis at various locations of CWG and goods were provided to M/s. G L Litmus Events Pvt. Ltd. out of common pool and no separate purchases were made for providing services / goods to the company. The assessee has also filed a chart describing the materials provided

to M/s. G L Litmus Events Pvt. Ltd. and ultimate utilisation which were as under :-

Bill No.	Nature of sale /services as per bills raised	Description of Rental Charges - Utilization of material & subsequent treatment of the same.
134	Rental charges for pre-fabricated ceiling provided in CWG (Rs.25,38,077)	PVC & AMF ceiling - This material has no scrap value
136	Rental charges for Tents (for providing cassette floor, ramps/cable ducts & stage at CWG) (Rs.48,34,400)	Tents are part of stock of assessee-company - brought back to its godown for reuse and reflected in stock as at 31.03.2011.
137	Rental charges for providing temporary walls & doors at CWG (Rs. 2,61,15,924)	Company had stock of these materials for recycle and these items formed part of stock as at 31.03.2011.
138	Rental charges for providing miscellaneous on site material (Rs.41,43,540)	Repair/renovation of doping centres toilets etc. - Nothing in the nature to be resold or scrap value.
177	Rental charges for providing signage, design, hoarding services at Delhi Airports. (Rs. 51,40,000)	Furniture supplied at the Airport brought back after CWG and part of closing stock valued as per their balance useful life. Signages installed at Airports were not dismantled and hence not taken as stock or scrap.
178	Rental charges for providing Electrical & other equipments (Rs.75,20,586)	a)Electrical Material supplied from own stock and taken back at stock as at 31.03.2011 - Rs.33,64,746 b)Air-conditioning done by taking on rent from outside parties & returned to respective

		parties -Rs.30,71,250 c) Labour charges for installation & dismantling of Air- conditioners – Rs. 10,84,590 - Therefore, no scrap value.
179	Rental charges for installation of wall structures at different sites of CWG (Rs. 24,68,681)	No material used, only installation charges incurred and for such services there can have any scrap value.
181	Rental charges for providing temporary office Air-conditioner & furniture (Rs. 53,16,930)	a) Most of the material was used out of appellant's stock and was taken back to its stock at the value of their balance useful life. b) Some material taken on rent were taken by party and hence no scrap value.

Thus, he submitted that neither the AO nor the Ld. CIT (A) could bring any record of any sale of alleged scrap by the assessee after the completion of CWG and the entire details and evidences have neither been disbelieved nor any material has been brought on record that the items allegedly sold as scrap were not represented in stock. During the course of search nothing was found evidencing scrap sale of Rs. 16,78,340/- and not disclosed in the accounts. Against that assessee has already offered Rs. 20 lacs. As far as purchases are concerned the same were part of stock duly disclosed and not disputed. Only rental income was earned by giving on hire such purchased goods in CWG which too has been duly accounted for. The amount of Rs. 16,78,340/- written on loose sheets found in the desk of Site Manager Shri Rajinder Kumar is beyond the knowledge of the assessee company after his death and only to give piece of mind , it has offered

sum of Rs. 20 lacs on account of scrap sale to tax in the settlement application. AO also could not bring on record any such evidence to establish sale of scrap. Thus neither the AO nor Ld. CIT(A) are justified in either estimating the 50% of the total cost of service/ material provided to M/s. G.L. Litmus Events Pvt. Ltd. was restricted to 20% of such services.

38. On the other hand, Ld. DR strongly relied upon the order of the AO.

39. After considering the entire gamut of facts and material on record, we find that the impugned issue of sale of scrap has arisen due to fact that assessee itself has admitted and offered Rs. 20 lacs as income on account of scrap and material placed from CWG project before the settlement commission and the assessee has not provided any documentary evidences. Based on this fact, the AO has treated the entire details of services and material given on hire to M/s. G L Litmus Events P Ltd. and disallowed 50% of their value on the ground assessee has failed to provide details of purchase made for CWG and keeping in view the material and usage. He held that scrap value of these items cannot be less than 50% of the value. Ld. CIT (A) too has made value of scrap sold at 20% of the purchase value. Assessee who has awarded the execution of CWG had assigned M/s G.L. Litmus Events for the execution of CWG for the services and sales the said services also included rental charges of Rs. 5,80,78,138/-. The details of which have been incorporated above. During the course of survey a loose document was found in the office of Site Manager showing an amount of Rs. 16,78,340/- recorded sale of scrap without giving the details of item sold etc. Based on this material assessee has offered sum of Rs. 20 lacs on account of scrap sale before the Settlement Commission but its application before Settlement Commission stood

un-admitted. One of the key contentions raised by the assessee is that most of the material was part of stock appearing in the books of account and scrap generating in the normal course of business has been sold in the respective years and income have been shown in the books of accounts. Before us Ld. Counsel has given the entire details of description of rental charges and utilisation of material and subsequent treatment which has been incorporated above, which goes to point out that these projects were either part of the stock or were taken on rent from outside parties which was returned back and we accept the contention of the Ld. Counsel that the renting of various equipments / material cannot be held to be having a scrap value which has been sold by the assessee outside the books of accounts, because they have been returned back.

40. The assessee has given before us the detailed chart describing the materials provided to M/s. G.L. Litmus Events Pvt. Ltd. and its ultimate utilisation of goods and services, the summary of which has already been incorporated above. From the said summary, it can be seen that; *firstly*, some of them were part of stock of assessee which are reflected in the books of account as stock as on 31st March, 2011; *secondly*, some of the equipments taken on rent from outside parties have been returned; *thirdly*, the labour charges for installation and dismantling cannot be said to have any scrap value; and *lastly*, some of the scrap has been stated to be sold in the next year which has been taken as income of the assessee. Under these facts, we find it very difficult to appreciate the stand taken by the AO and Ld. CIT (A) to estimate on adhoc basis, the sale of scrap material outside the books of account either by applying 50 % or 20%. More so, when all the invoices and details of services provided and purchases were duly supported by invoice and recorded in the books of accounts; and

neither the books nor the trading results including valuation of scrap made has been disturbed. None of the authorities have examined this issue in a proper perspective. Therefore, in the interest of justice we feel that this issue needs to be remanded back to the file of the AO, who shall see; *firstly*, whether the stocks which are reflected in the books of account are part of stock as on 31st March, 2011 or not and if so, then no addition should be made; *secondly*, if the stock taken on rent has been returned back then also no addition on account of alleged sale of scrap should be estimated; and *lastly*, the AO shall examine whether any part of the scrap which has been sold in the subsequent year has been accounted for or not. With this direction this matter is remanded back to the AO, who shall give proper opportunity of hearing to the assessee to substantiate its contention alongwith the documentary evidences. In the result grounds raised by the assessee as well as by the revenue on this score are treated as partly allowed for statistical purpose.

41. Lastly, in the assessee's appeal the other ground which has been raised relates to addition of Rs. 11,84,424/-. The facts *qua* the issue are that the assessee was awarded contract with DDA to provided installation of signage at different sites for Common Wealth Games. In its books of accounts for the impugned assessment year, (i.e., A. Y. 2011-12) the assessee company has booked an amount of Rs. 78,39,230/- as revenue from DDA, whereas the AO on the information obtained from DDA found that bill wise payment to the assessee were to the tune of Rs. 90,23,654/-. When confronted on this issue, the assessee explained that DDA has raised certain objections and it was not known as to when such bills will be cleared and what would be the final quantum of such bills, till the close of the relevant financial year 31st March, 2011. Hence, the amount pending objection

raised on certain bills by DDA, assessee had not recognised as revenue. Further, the assessee has fully accounted for the balance payment in its books and financial statement for the financial year 2011-12 and has shown it as income for the assessment year 2012-13 post settlement with the DDA. This fact was also informed to the AO. The ledger of the DDA in the books of the assessee was showing balance of Rs. 11,84,424/- which has been offered as income of the assessee in the subsequent year. However both AO and Ld. CIT (A) held that assessee should have shown it as the income in this year itself. Accordingly, the said differential amount has been added in this year.

42. After hearing both the parties and on perusal of the relevant finding and the material referred to before us, we find that the only reason for adding the income of Rs. 11,84,424/- by the Revenue was that DDA has informed AO that payments have been made to the assessee at Rs. 90,23,654/-, whereas the assessee has only accounted for Rs. 78,39,230/-. The assessee's contention has been that there were certain objections raised by the DDA and the final quantum of the bill amount that would be passed was not certain till the closing of the financial year 31st March, 2011. Accordingly, the assessee has shown the balance receipt of Rs. 11,84,424/- as receivable. Once the amount was received, the assessee has disclosed it as its income in the next financial year relevant to the assessment year 2012-13, which fact has neither been disputed by the AO nor by CIT (A). Once the amount has been offered to tax in the subsequent year, we do not find any reason to again tax the same amount in this year. Accordingly, we hold that the addition made on account of declaration of income from DDA amounting to Rs. 11,84,424/- under the facts and circumstances of the case cannot be added as income of the

assessee as the same has already been offered to tax in the subsequent year. Thus, ground No. 2 as raised by the assessee is allowed.

43. In the result appeals filed by the revenue are dismissed and appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 31st July, 2018.

sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER

Dated: 31/07/2018

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi