

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD

सर्वश्री राजपाल यादव न्यायिक सदस्य एवं वसीम अहमद, लेखा सदस्य, के समक्ष।
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.2255/Ahd/2016

(निर्धारण वर्ष / Assessment Year : 2012-13)

DCIT, Cir – 3(1)(2), Ahmedabad.	बनाम/ Vs.	M/s. Real Strips Ltd., 401-402, Florence, Opp. Ashram Road, Post Office, Ashram Road, Ahmedabad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCR 2893 N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Saurabh Singh, Sr. D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri P. D. Shah, A.R.

सुनवाई की तारीख / Date of Hearing	23/05/2018
घोषणा की तारीख /Date of Pronouncement	31/05/2018

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the appellate order of the Commissioner of Income Tax(Appeals)-9, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-9/650/DCIT-cir-3(1)(2)/14-15 dated 15/06/2016 arising in the assessment order passed under s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 27/03/2015 relevant to Assessment Year (AY) 2012-13.

2. The grounds raised by the Revenue per its appeal are as under:

- “1. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.4,57,82,539/- made on account of suppression of production and sale out of books.*
2. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.3,81,75,044/- made on account of estimation of gross profit.*
3. *The Ld. CIT(A) has erred in law and on facts by not appreciating the material facts brought on record by the AO in the assessment order.*
4. *On the facts and circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the AO.*
5. *It is therefore, prayed that the order of the Ld. CIT(A) may be set-aside and that of the AO be restored.”*

3. The issues raised by the Revenue are inter-connected to each other therefore we have clubbed all of them for the purpose of adjudication and brevity.

4. The Revenue in this appeal has challenged the deletion of the addition made by the AO on account of suppression of production leading to the suppression of sale as well as determination of gross profit on estimated basis.

5. Briefly stated facts are that the assessee in the present case is a Private Limited Company and engaged in the manufacturing business of S. S. Cold Rolled Coils/Strips and Generation of Power. There was a survey at the factory premises of the assessee located at 245-246, Village

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Sari, Ahmedabad Bawla-Highway, Ahmedabad dated 21-01-2015. During the survey proceedings, the statement of production manager Shri N. Anantha Padmanabhan was recorded. The relevant extract of the statement is reproduced as under:

Step No.	Details of process	Loss incurred
Step 1	Receipt of hot rolled coil from Jindal Steel	No loss
Step 2	Hot rolling annealing and pickling	Invisible loss of from 1.5% to 2% of weight
Step 3	Rolling to customers requirement	No loss
Step 4	Cold roll annealing and pickling	Invisible loss of 0.4% to 0.6% of weight
Step 5	Finishing i.e. slitting lines to cut coil as per requirement of customer	Scrap of 2% at head end and 1% scrap at fail end.
Step 6	Packing	No loss
Step 7	Dispatch	No loss

As per the above statement, it was revealed that there was maximum loss of 5.6% (2%+.6%+3%) in the manufacturing process of the material consumed on account of invisible loss as well as scrap loss. However, the assessee has shown processing loss @ of 6.9% of the material consumed in the year under consideration. Thus, the AO was of the view that the assessee has claimed excess loss by 1.3% (6.90%-5.60%) of the total material consumed. Accordingly, the AO treated the excess loss shown by the assessee as suppressed production which worked out at 445355 kgs (1.3% of total consumption 3,42,58,111 kgs). Thus the excess loss/suppressed production was treated as undisclosed sale made by the

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assessee outside the books of accounts. Accordingly the value of such undisclosed was determined by multiplying by the average sale price of Rs.102.80/kg to determine the amount of sale made by the assessee outside the books of accounts which worked out to Rs.4,57,82,539/- only. Thus, the said amount was treated as suppressed sale of the assessee.

In addition to the above, the AO also observed that the gross profit as well as net profit declared by the assessee is reducing consistently. The relevant details of the turnover, gross profit, net profit vis-à-vis gross profit ratio and net profit ratio stand as under:

A.Y.	Turnover (Rs. lakhs)	Gross Profit (Rs. lakhs)	GP Ratio (1%)	Net Profit (Rs. lakhs)	NP Ratio (1%)
2010-11	22781.97	2298.28	10.09	711.39	3.12
2011-12	28795.48	2454.32	8.52	782.64	2.72
2012-13	32887.26	2676.64	8.14	656.85	2.00

Accordingly, the AO was of the view that the assessee has suppressed its production leading to suppressed sale therefore there is a fall in the GP ratio consistently. In-fact the assessee has claimed all the expenses against the suppressed sale which is leading to fall in the GP ratio. Thus, the AO further observed that the financial statements are not reflecting the true and correct income of the assessee. Accordingly as per the AO the books of accounts of the assessee are liable for rejection u/s 145(3) of the Act. Finally, the AO after rejecting the books of accounts held that

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the gross profit of the assessee should have been enhanced by Rs.3,81,75,944/- (3,26,29,01,170 × 1.170%).

However, the AO further observed that the amount of addition on account of suppressed production/sales is greater than the amount of enhanced gross profit determined by 1.17% of the turnover. Accordingly, the higher amount of disallowance of Rs. 4,57,82,539/- was treated as suppressed sale/ income and added to the total income of the assessee.

Aggrieved assessee preferred an appeal to Ld. CIT(A). The submission of the assessee can be categorized as under :

6. Submission of the assessee regarding suppression of sales of Rs.4,57,82,539/- :

- (i) The suppression of production has been worked out by AO without considering the increase closing stock in the work in progress. There was net increase of 466497 kgs in the closing work-in-progress. There will not be any suppression of production if the increased work-in-progress shown in the audited financial statement is considered. Thus, the AO error in calculating the suppressed production though all the relevant details were duly available in the tax audit report in Form 3CD.
- (ii) There could not be any addition merely on the basis of statement obtained in survey u/s 133A of the Act as it does not have any evidentiary value as the same is also not supported with any

corroborative evidences. The assessee in support of his claim relied on the judgment of Hon'ble Apex Court in the case of P. R. Metrani vs. CIT reported in 287 ITR 209.

- (iii) The books of accounts were subject to audit under the companies Act, income tax Act, VAT and excise departments. There was no allegation in any of the audit report regarding the suppression of production as alleged by the AO.
- (iv) There was no evidence brought on record by the AO suggesting that the assessee has made any sales outside the books of accounts.
- (v) The statement of the production manager was taken u/s133A of the Act on 21-01-2015 and therefore, the same cannot be used against the assessee for the earlier years i.e. AY 2012-13. There was various modification / up gradation and changes in the type of raw material used for the production processed between the A.Y.2012-13 and the date on which statement u/s 133A of the Act was obtained. Therefore, no reference of the statement recorded u/s 133A of the Act can be made to the proceedings for the A.Y. 2012-13 which is under consideration.
- (vi) The statement given by the production manager was based on the production sheets, which was made for internal purpose and internal discussion. Therefore, no reliance can be placed on the statement vis-à-vis such production statement.

- (vii) The process of loss shown by the assessee at the 6.9% is within the limit as specified in the import and export policy, wherein, an ordinarily process loss in scrap is 11% but the assessee has shown only 6.90% of the material consumed.
- (vii) The assessee was maintaining day to day stock register of the inventories and no defect/ unaccounted stock was pointed out on the basis of such records in the details of the raw materials, its consumption, scrap and finished goods manufactured. The details of the goods removed are duly furnished to excise department on monthly basis but no defect whatsoever was recorded by such excise department.

7. The submission of the assessee for the rejection of the books of accounts:

- (i) Once books of accounts of the assessee have been rejected then the AO was required make the assessment u/s 144 of the Act but the assessment has been framed u/s 143(3) of the Act.
- (ii) There was no defect pointed out by the AO in the books of accounts of the assessee during the assessment proceedings.

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- (iii) All the books of accounts were duly audited under excise, income tax, VAT and companies Act but no defect in the same was mentioned.

The learned CIT (A) after hearing the contention of the assessee deleted the addition made by the AO by observing as under :

Finding of the Ld.CIT(A) regarding the addition of Rs.4,57,82,539/- as under:

“6.6 From perusal of the order of assessment and the submissions of the appellant summarized above it is evident that AO has not considered/discussed the effect of increase in the Work In Progress for the determination of the alleged unaccounted production Nowhere in the order of assessment has the AO considered the closing stock opening stock as well as the scrap generated during the production in order to undertake the quantitative analysis of unaccounted or suppressed production in the submission before the AO the appellant had done the working alter giving effect of opening and closing work in progress. According to which there has been a net increase in production by 4,66,497 Kgs. The AO has not taken into account the submission of appellant while doing the quantitative analysis. Whereas the AO has calculated suppressed production of 4,45,355 Kgs. Further, it is apparent that the year of survey and the year of assessment are different and during the said period the appellant has made investment in assets in order to improve the efficiency of production. There has been addition of Rs.13.97 crores to the Plant & machinery in the FY 2011-12 of Rs.13.35 crs in FY 2012-13 and of Rs.5.82 crs n FY 2013-14. These a'e significant changes in the production process. The appellant had made a change m the Air Quench section in the furnace. The length of acid tans in HRAP section was increased to enable process at higher speed. On going through Annexure 2© of Form 3CD it is observed that the appellant has made huge investment in Annealing Furnace (BA Line) (2 Nos.), Modification in HRAP Lines, Modification in AP lines etc The said additions into fixed assets of the company have been certified by the Tax auditor The quality of raw material purchased

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during the AY under consideration is different from the quality of raw material purchased at the time of survey. Appellant has started purchasing HRAP (non-black) coils from Jindal Stainless Ltd. due to which there is no invisible process loss at HRAP level Even the thickness wise production report reflects the change in the quality of finished goods. The excise department at periodic intervals had been conducting audit of its production process The appellant had been disclosing the process loss in its excise reports. If the opening and closing work in progress is taken into account and the process loss disclosed by the appellant is considered then it cannot be said that there is any other process loss in excess of what has been disclosed in Form E.R. 6 to the excise department. In absence of any corroborative evidences, all these factors go on to support the claim of the appellant that it had been able to reduce the process loss by bringing new machineries or making modifications in the existing ores Further during the course of survey no evidence of any unaccounted sales was found nor has any person at the factory confirmed of there being any accounted production/sales.

6.7 In light of the circumstances and facts mentioned above, I am of the considered opinion that the appellant has not suppressed its production by 4,45,355 kgs the average sale value of which comes to Rs.4,57,82,539/-. Therefore AO is directed to delete the addition of Rs.4,57,82,539/- Thus this ground of appeal 3(a) is allowed.”

Findings of the Ld. CIT(A) regarding the rejection of the books of accounts.

7.2 I have carefully considered the rival contention as well as the observation of the A.O The assessing Officer has determined addition of Rs.3,81,75,944/- on account of reduction in the Gross profit out no separate addition has been trade, as addition on account of suppressed production and unaccounted sale has been made in this regard it has been observed by the AO that there is decrease in average gross profit by 1.17% and therefore AO estimated Gross profit of 9.31% (8 14+1 17) and addition of Rs 3,81,75,944/- has been made. The AO has pointed that from the material impounded and statement recorded of Production Manager and Director of the Company, it is gathered that the assessee is claiming its invisible loss at higher side and is producing Cold Rolled Coil which is not recorded in the books of accounts. It is also

observation of the AO that from reduction of Net profit and Gross profit, it is evident that the findings of survey are correct. In view of the said facts and circumstances, the assessing Officer has observed that the books of accounts are not showing true and correct results of the assessee company and has concluded that book result of the assessee is liable to be rejected as per provision of section 145 of the Income Tax Act.

7.3 During the course of appellate proceedings, the appellant has submitted that as per section 145 of the Act, the AO can reject the result of books of accounts only if conditions of said section are satisfied and since in its case, no dissatisfaction about the correctness or completeness of the accounts have been found, results of the books cannot be rejected. It is also submitted by the appellant that there is no evidence/admission of suppression of the sales or claim of excess invisible loss for the assessment year under consideration has been found during proceedings under section 133A of the Act. With regard to quantitative analysis of suppression of production by 1.3% undertaken by the AO, I have already allowed the ground no 3(a) of the appellant and deleted the addition made on account of said unaccounted suppressed production.

7.4 The appellant has further submitted that the reduction in the gross profit cannot be ground for applying section 145 of the Act and placed reliance on the following judgments:

- (a) International Forest Co Vs CIT (1975) (101 ITR 721)(J&K)*
- (b) Pandit Brothers Vs CIT (1954) (26 ITR 159)*
- (c) Aluminum Industries (P) Ltd Vs CIT (80 Taxman 184)(Gauhati)*

That Hon'ble Gujarat High Court in the case of CIT Vs. Symphony Comfort System Limited (2013) 216 Taxman 225 (Mag) (Guj.)(HC) it has been held that "The Assessing Officer, noticed that there was fall in gross profit rate declared by assessee as compared to the preceding year and he made addition on account of low gross profit rate to assessee's income. However, no specific defect in maintenance of books of account by assessee had been pointed out by Assessing Officer. Held, the Assessing Officer was not justified in rejecting book results and enhancing gross profit rate. (AY.2005-06)".

7.5 In view of above facts circumstances, the decision taken with respect the ground no 3(a) and in view the case law mentioned above, I am of the considered opinion that the action of the AO in rejecting books of accounts and estimating profit is not justified and no addition on this count is required to be mace. Therefore, addition in the gross profit of Rs.3,81,75,944/- is also not required Thus this ground of appeal 3(b) is allowed.”

Being aggrieved by the order of Ld. CIT(A) Revenue is in second appeal before us.

The Ld. DR before us vehemently supported the order of the AO. On the other hand, Ld.AR before us submitted as under:

“Ground No.1 Addition of Rs. 4,57,82,539/- on account of alleged suppressed sales on account of alleged unaccounted production”

1. The statement recorded on oath during the course of proceeding under section 133 A of the Act does not have evidentiary value in the assessment- (a) CIT Vs S. Khader Khan (300 ITR 157)(Mad). Said Judgment has been confirmed by the Hon'ble Apex Court. Refer ITR 352 ITR 480(2013) (b) Hon'ble Apex Court in the case of P.R. Mctrani Vs. Commissioner of Income Tax (2006) 287 ITR 209 (SC).
2. The Impugned Assessment is for AY 2012-13 and statement recorded are dated 21.1.2015 and therefore the statements cannot be relied upon for the assessment year consideration.
3. The learned AO has worked out 4,45,355 kgs. as suppressed production, however while computing the alleged suppressed production the learned AO has not given effect of increase to the closing stock of Work in Progress of 4,66,497 Kgs (Closing WIP of 18,57,428 kgs Less Opening WIP of 13,90,931 kgs.). The said relevant fact was brought to the notice of ld. AO vide our letter dated 16/3/2016. Refer marked Para 4.2(iv) on page no.4 of the assessment order The said issue has not been discussed by the learned AO and accordingly the entire addition is against the fact of the case itself. In this regard relevant page of 3CD report

for F.Y. 2010-11 to 2013-14 (Giving details of raw material and finished goods only) along with the working of effect of Increase in Work In Progress on the production was submitted to the Id. CIT(A) as Page No H/1 to H/6 of paper Book.

4. *During the course of proceedings under section 133A of the Act, no evidence of unaccounted production and sales thereof for the year under consideration has been found nor any person in their statement accepted suppression of production or sales thereof and therefore the entire addition is on presumption and surmise basis.*
5. *The books of accounts are subject to audit under the Companies Act Income Tax Act, VAT and Excise and none of the authorities/ auditors have stated/highlighted anything with regard to suppression of production and sales thereof.*
6. *The yield for the subsequent assessment year and earlier years have been accepted in the order passed under section 143(3) and wherein no addition for suppressed production or sales has been made.*
7. *The observation of the learned AO for non-acceptance of the explanation have been met out before the Id.CIT(A) and after considering the same, the ground has been allowed by the Id.CIT(A).Refer marked para 6 on page no 15 of the Id.CIT(A). Further the explanation for the production sheet found during the course of proceeding under section 133A has been given by the company.*
8. *That, in any case, alleged working of suppressed production cannot be base for making an addition for sale, in absence of any evidences of its sales or unaccounted of lying in stock.*
9. *In view of the above facts and submission, reliance is placed on the order of the Id. CIT(A) and therefore ground of the revenue is required to be dismissed.*

Ground No.2

1. *That the said addition has been made without issuing any show cause notice.*
2. *In view of the above submission, no defect in the books of accounts have been found and therefore, the book result cannot be rejected under section 145 of the Act.*
3. *The reduction of the gross net profit cannot be ground for the rejection of the books of account under section 145 of the Act.*

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4. *In view of the above facts **and submission, reliance** is placed on the order of the ld. CIT(A) and therefore ground **of the revenue is required** to be dismissed.*

Your honor is requested to consider the above submission while deciding the appeals and oblige”

8. We have heard the rival contention and perused the materials available on record. The addition for the suppression of production / sales was made by the AO on account of statement recorded u/s 133A of the Act. In the statement, it was accepted that the process of loss comes to 5.6% of the total raw material consumption. However, from the production registers, it was pointed out by the AO that the assessee has claimed production loss @6.9% of the material consumption. Thus, the AO treated the excess loss of 1.3% of raw material consumption as suppressed production made by the assessee leading to suppressed sale of Rs.4,57,82,539/- outside the books of accounts. Accordingly, the addition was made by the AO.

Similarly, the AO rejected the books of accounts of the assessee on the ground that the financial statements prepared by it are not showing true and correct income. Therefore, the AO enhanced the gross profit @1.3% of the total sales declared by the assessee. However, the gross profit estimated by the assessee was less than the amount of suppressed sale therefore the addition on account of suppressed sale was made by the AO.

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However, the Ld. CIT(A) deleted the additions made by the AO by observing that no defect whatsoever was pointed out by the AO in the books of accounts of the assessee. As per the Ld. CIT(A), the addition was based merely on the statement obtained under section 133A of the Act during survey proceedings without any corroborative evidences and he was of the view that the addition cannot be held as sustainable.

Now the issue before us arises so as whether the deletion made by the Ld. CIT(A) is correct and in accordance with the provisions of law. In this regard, we note that there was no whisper highlighting the any defect in the books of accounts of the assessee by the AO. Thus, the addition was made merely on the basis of statement recorded u/s 133A of the Act.

We also note that the statement u/s 133A was recorded on 21-01-2015, wherein, the excess production loss was observed. The same observation was applied to the A.Y. 2012-13 and accordingly, suppressed production leading to suppress sale was determined. In our considered view, the statement recorded during the F.Y.2014-15 on the basis of documentary evidences pertaining to F.Y. 2014-15 cannot be ipso facto applied to the A.Y. 2012-13 without having any corroborative evidence.

In holding so, we find support and guidance by the order of this Tribunal in the case of ITO vs. Rutvi Steel & Alloys Pvt. Ltd. in ITA No.3870/Ahd.2007 pertaining to A.Y. 2005-06, order dated 18-06-2010, wherein, it was held as under:

“13. We have heard the rival submissions and perused the materials available on record. In the instant case, the assessee is a Private Limited Company engaged in the business of manufacture of M. S and CTD Bars. The Learned Assessing Officer observed that there was huge variation between the production shown by the assessee and the units of electricity consumed in each month during the year held that the books of accounts are not reliable and rejected the same by invoking section 145 of the Income Tax Act, 1961. He thereafter, observed that in the month of May 2004, the assessee has shown production of 133MT against consumption of 82847 units of power. Thus, he held that for 1 MT of production, 622.9 units of power consumption has been declared by the assessee. He noted that 14,15,899 units of power was consumed by the assessee in the entire year and by taking the production rate as 1 MT against consumption of 622.9 units of power arrived at total production of 2329.264 MT. as against 1736.535 MT. and by adopting the average sale price of 22436.88 MT. shown by the assessee arrived at the value of suppressed production of 592.729 MT. at Rs.1,33,04,916/-. After allowing rebate for all adverse eventualities in the production process with reference to the consumption of power unit and also considering contention of the assessee that production cannot be compared with consumption of power only estimated 70% of Rs.1,33,04,916/- as suppressed production of the assessee which worked out to Rs.92,89,426/- and made addition to the income of the assessee. In appeal, the Learned Commissioner of Income Tax(Appeals) held that rejection of book result was not justified by the Learned Assessing Officer for the reason that the assessee maintained books of account which were audited under the companies act and also under section 44AB of the Income Tax Act and the Learned Assessing Officer has brought no material to show that they are not maintained as per provisions of the Income Tax Act, 1961. Further, the Learned Commissioner of Income Tax(Appeals) observed that the Learned Assessing Officer has not brought on record any material evidences which indicates that the assessee was indulging in unaccounted manufacturing and sales and made unaccounted purchases of raw materials to manufacture unaccounted products. The Learned Commissioner of Income Tax(Appeals) has also observed that the excise authorities have verified the production records of the assessee and has found no discrepancies in them. He also observed that in the similar facts and circumstances, the Delhi Bench of the Tribunal in the case of Pandy Metal and Rolling Mills P. Ltd.

(Supra) deleted the addition made on account of suppressed production and deleted the addition of Rs.92,82,426/-made in the instant case of the assessee. The Learned Departmental Representative has merely relied upon the order of the Learned Assessing Officer. He could not point out any error in the above finding of the Learned Commissioner of Income Tax(Appeals). The Learned Departments Representative could not bring any material on record to show that the assessee has purchased raw materials outside the books of account for making unaccounted production. Further, the assessee has maintained books of account, purchase and sale register and no defects could be pointed out in the same by the Learned Assessing Officer. Further, no error could be pointed out in the submission of j the assessee that it has maintained RG-1 register which is subject to verification by Excise Authorities and no defect has been pointed out by them on their inspection and that the accounts of the assessee are audited under the Companies Act and the Income Tax Act, 1961 and no adverse comments were made by the auditors on the accounts of the assessee. Further, the Hon'ble Delhi Bench of the Tribunal in the case of Pandy Metal and Rolling Mills P. Ltd, (Supra) has held that where assessee is maintaining regular books of accounts and all the purchase and sales are duly vouched and supported by raw material register, production register and finished good register which were subject to check by excise authorities no addition can be made on account of alleged suppression of production simply on the basis of consumption of electricity. We also find that the contention of the assessee that the variation in consumption of electricity may be caused due to various reasons such as break down of machinery, quality of raw materials, thickness of finished goods and frequency of power failure, etc. could not be controverted by the Learned Assessing Officer. Rather it is observed that the above argument of the assessee was accepted by the Learned Assessing Officer to the extent of 30% for which no basis could be cited. No material was brought on record to show that it was scientific to arrive at the quantity of production merely on the basis of consumption of units of electricity. Therefore, in our considered opinion merely on the basis of units of electricity consumption, it cannot be concluded that the assessee's books of account were not reliable or the assessee is engaged in producing finished goods outside the goods of account. Keeping in view the above facts and circumstances of the case, we do not find any good reason to interfere with the order of the Learned Commissioner of

Income Tax(Appeals). It is confirmed and the ground of appeal of the revenue is dismissed.”

The addition was solely made on the basis of the statement furnished by the production manager of the assessee at the time of survey. The lower authorities have not brought any iota of evidence suggesting that the assessee has suppressed the production leading to suppressed sale out the books. Here it is pertinent to note that the CBDT has discouraged to its officers to make the addition on the basis of the statements and without bringing any tangible materials for any addition/disallowance. The relevant extract of CBDT instructions issued vide F. No. 286/98/2013-IT(Inv.II) dated 18th of December 2014 reads as under:-

“Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assessees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Boards has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the IT Act, 1961 and/or recording a disclosure of undisclosed income under undue pressure/coercion shall be viewed by the Board adversely.”

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From the above circular it is crystal clear that the CBDT has emphasized to its officers to focus on gathering evidences during search/survey operations and strictly directed to avoid obtaining admission of undisclosed income under coercion/ undue influence. Keeping in view the guidelines issued by the CBDT from time to time regarding the statements obtained during search and survey operation, it is undisputedly clear that the lower authorities have not collected any other evidence to prove the suppressed production other than the statement. Therefore under such facts & circumstances we are inclined not to interfere in the order of learned CIT (A). In this regard the AO is directed to delete the addition. Hence the ground of appeal of the Revenue is dismissed.

9. In the result, Revenue's appeal is dismissed.

This Order pronounced in Open Court on	31/05/2018
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Sd/-
(राजपाल यादव)
न्यायिक सदस्य
(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-
(वसीम अहमद)
लेखा सदस्य
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 31/05/2018
Priti Yadav, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-9, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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